

ACT 343

S.B. NO. 422

A Bill for an Act Relating to Precious Metals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings. The legislature finds that unscrupulous firms have been manufacturing in Hawaii, or importing into Hawaii gold and silver items that are improperly marked to overstate the precious metal content, or both. Sales of such items are deceptive and mislead consumers into purchasing items believed to be of higher value than they actually are. The widespread publicity and sales of such items have eroded the public's confidence in jewelry items sold in Hawaii. The public has no practical way of knowing if an item is mismarked or underkarated and no way of checking the manufacturer's reputation if the item does not have a trademark.

The legislature further finds that firms which sell items with a lower precious metal content than indicated by the quality mark, compete at an unfair advantage against legitimate firms selling legitimate items. Existing federal law requires that items made of gold and silver bearing a mark stating fineness shall be within a specified tolerance of the fineness indicated and have a duly registered trademark. The federal agencies have not enforced this law because they are understaffed and do not rank this crime high on their priorities. Other states have enacted laws governing the stamping of gold and silver articles. The

crimes of manufacturing, importing, and selling mismarked gold and silver items continue in Hawaii at the expense of unsuspecting customers and legitimate merchants who cannot compete with mismarked merchandise. A Hawaii state law setting marking requirements similar to the existing federal requirements would not create any major hardships on firms which are in compliance with existing federal law.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER GOLD AND SILVER STAMPING

§ -1 **Definitions.** As used in this chapter:

“Article of merchandise” means any goods, wares, works of art, commodities, or other things which may be lawfully kept or offered for sale, imported into, or exported from the State.

“Person” means an individual, partnership, corporation, or any other form of business enterprise, capable of being in violation of this chapter.

“Stamped” means branded, engraved, or printed on the article or upon any sign, tag, card, label, box, package, cover, or wrapper used to encase, enclose, display or promote the article.

“Test” means analysis or assay to determine the fineness of the gold, silver, or alloy.

“Trademark” shall include any trademark or tradename duly registered under the laws of the United States.

§ -2 **Importation or manufacture of falsely marked gold or silver articles prohibited.** It shall be unlawful for any person being a manufacturer or dealer of or in wholesale or retail in gold or silver articles to manufacture, sell, import, or export gold or silver jewelry or gold or silver articles, manufactured after October 1, 1981, and made in whole or in part of gold or silver, or any alloy of either of these metals, and having stamped any mark or word indicating or designed or intended to indicate that the gold or silver or alloy in the article is of a greater degree of fineness than the actual fineness of quality of the gold, silver, or alloy, according to the standards established in this chapter.

§ -3 **Standard of fineness of gold articles; deviation.** The actual fineness of gold or alloy shall not be less by more than .003 parts than the fineness indicated by the mark stamped upon any part of the article; provided, however, that:

- (1) In any test for the ascertainment of the fineness of any article mentioned in this chapter, the part of the article taken for the test, shall be the portion as does not contain any solder or alloy of inferior fineness used for brazing or uniting the parts of the article; and
- (2) The actual fineness of the entire quantity of gold or of its alloys contained in an article including all solder and alloy of inferior fineness used for brazing or uniting the parts of the article (all gold, alloys, and solder being assayed as one piece), shall not be less by more than .003 parts, in the case of a watchcase or flatware, or than .007 parts, in the case of any other article, than the fineness indicated by the mark stamped upon the article.

§ -4 Standard of fineness of silver articles; deviation. (a) The actual variation of fineness of silver or alloy of articles made in whole or in part of silver or its alloys shall not be less by more than .004 parts than the actual fineness indicated by any mark (other than the word "sterling" or the word "coin") stamped upon any part of the article.

(b) No article shall be stamped with the word "ster", "sterling", or "sterling silver" or any colorable imitation thereof, unless the article contains .925 parts pure silver.

(c) No article shall be stamped with the words "coin" or "coin silver" or any colorable imitation thereof, unless the article contains .900 parts pure silver; provided, however:

- (1) That in the case of all articles whose fineness is indicated by the word "sterling" or the word "coin" there shall be allowed a divergence in the fineness of .004 parts from these standards;
- (2) That in any test for the ascertainment of the fineness of any article mentioned in this section that part of the article taken for the test shall be such part as does not contain any solder or alloy of inferior fineness used for brazing or uniting the parts of such article; and
- (3) That in the case of any article mentioned in this section in addition to the foregoing tests and standards, the actual fineness of the entire quantity of silver or of its alloys contained in the articles, including all solder and alloy of inferior fineness used for brazing or uniting the parts of such article (all such silver, alloys, and solder being assayed as one piece), shall not be less by more than .010 parts than the fineness indicated by the mark stamped upon the article.

§ -5 Identifying plated articles; words "gold", "karat gold", "solid gold", "ster", "sterling", "sterling silver", or "coin silver" forbidden. No article made in whole or in part of an inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto a plating, covering, or sheet composed of gold or silver, or of an alloy of either of these metals, and known in the market as rolled gold plate, gold plate, gold filled, silver plate, or by any similar designation, shall be stamped with any word or mark to indicate the fineness of gold including the word "gold", "solid gold", or "karat gold" unless the word or mark is accompanied by other words, plainly indicating that the article or part thereof is made of rolled gold plate, gold plate, or gold electroplate, or is gold filled, as the case may be, and no such article shall be stamped with the word "ster", "sterling", "sterling silver", or the word "coin silver" either alone or in conjunction with other words or marks.

§ -6 Quality marks; identifying trademarks. (a) No article of merchandise bearing a quality or fineness mark made in whole or in part of gold or silver or of an alloy of either metal shall be sold, offered for sale, imported into, or exported from the State unless it is stamped with a trademark that has been registered under the laws of the United States or applied for registration within thirty days of being imported or offered for sale in the State.

(b) Every article of merchandise which is composed of two or more parts which are complete in themselves but which are not identical in quality, and any one of the parts bears a quality mark or stamp, each other part of that article of merchandise shall bear a quality mark or stamp of like pattern and size disclosing the quality of that other part.

(c) Each identifying trademark applied to any article of merchandise in compliance with this section shall be applied in a position as close as possible to the quality mark or stamp and shall be as clear and legible as the quality mark.

§ -7 Violation of fineness standards and stamping requirements. (a) A person commits a criminal offense if the person is a manufacturer or dealer of gold or silver articles of merchandise and the person sells or possesses articles of merchandise which violates sections -3, -4, or -5. If the aggregate value of the articles which violate sections -3, -4, or -5 is \$300 or less, the offense shall be a misdemeanor. If the aggregate value of the articles which violate sections -3, -4, or -5 exceeds \$300, the offense shall be a class C felony.

(b) Each and every person, being a manufacturer of or a wholesale or retail dealer in gold or silver jewelry or articles, who shall knowingly violate sections -3, -4, or -5, shall be deemed guilty of a class C felony.

§ -8 Violation of trademarking requirement. Any person, being a manufacturer or dealer of gold or silver articles of merchandise, who sells or possesses articles which are not stamped with a trademark as required by section -6 shall:

- (1) Be guilty of a misdemeanor for the first offense; and
- (2) Be guilty of a class C felony for any subsequent offense.

§ -9 Contraband; forfeiture. It is unlawful for any manufacturer or dealer to possess any article of merchandise found to be in violation of sections -3, -4, or -5. All articles of merchandise found to be in violation of sections -3, -4, or -5 shall be contraband and subject to seizure and forfeiture as provided in part VII, chapter 708 and chapter 712A, Hawaii Revised Statutes. Any articles seized and forfeited pursuant to this section, and any proceeds thereof, may be made available to any victim who has a valid claim for loss or damage against the person from whom the articles were seized.

§ -10 Injunctive relief and suits. (a) Any competitor, customer, or competitor of a customer of any person in violation of this chapter, or any subsequent purchaser of an article of merchandise which violates this chapter shall be entitled to injunctive relief restraining further violations and may sue as the real party in interest in any circuit court of the State, and shall recover damages and the cost of suit, including reasonable attorney's fees.

(b) If the court determines that the action was brought frivolously, for purposes for harassment, or in implementation of any scheme in restraint in trade, it may award court costs, reasonable attorney's fees and any other remedies, including punitive damages, the courts deems reasonable.

(c) Any defendant against whom a civil action is brought under the provisions of this chapter shall be entitled to recover the cost of defending the suit, including a reasonable attorney's fee, in the event such action is terminated without a finding by the court that such defendant is or has been in violation of this chapter.

§ -11 Jurisdiction of civil actions. The circuit courts shall have exclusive original jurisdiction of any civil action arising under the provisions of this chapter."

SECTION 3. This Act shall take effect upon its approval; provided, however that Section -6 shall take effect ninety days.

(Approved July 9, 1990.)