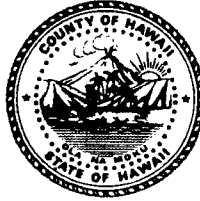



BRENDA J. FORD
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HAWAI'I COUNTY COUNCIL
County of Hawai'i
West Hawai'i Civic Center
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

DATE: September 25, 2014
TO: J Yoshimoto, Chairperson,
and Members of the Hawai'i County Council
FROM:  Brenda J. Ford, Council Member
SUBJECT: Proposed Amendment To Resolution No. 501-14 Requesting The Hawai'i State
Legislature To Adopt Provisions For Truth-In-Labeling For Hawai'i-Grown Coffees.

2014 SEP 25 PM 3:33
COUNTY CLERK
COUNTY OF HAWAII

Please find attached a proposed Draft 2 for Resolution No. 501-14. As the proposed amendments to Resolution No. 501-14 are significant in volume and would be difficult to communicate by way of Ramseyer format to the Committee on Agriculture, Water, and Energy Sustainability, I will be making a motion to amend Resolution No. 501-14 by substitution, to replace the current version with the draft attached hereto.

Robert's Rules of Order provides for a motion to amend by substitution per §12(3)(b). A motion to amend by substitution can be utilized to "introduce a different or better approach to the real question raised by a main motion."

BJF/
att.

Comm. No. 998.1
Ref. To: PAWESC
Ref. Date SEP 30 2014

A RESOLUTION REQUESTING THE HAWAI‘I STATE LEGISLATURE TO ADOPT PROVISIONS FOR TRUTH-IN-LABELING FOR HAWAI‘I-GROWN COFFEES.

WHEREAS, the State of Hawai‘i is the only place in the United States that can grow coffee for commercial purposes; and

WHEREAS, of the approximately 1,100 coffee farmers statewide, approximately 1,000 are on the Island of Hawai‘i; and

WHEREAS, all coffee growing regions in the State of Hawai‘i are negatively impacted if Hawai‘i-grown coffees or coffee blends do not maintain high quality and excellent taste or receive negative cupping scores or publicity; and

WHEREAS, 100% Hawai‘i-grown coffees have a worldwide reputation as a premier coffee and for its distinctive and rich flavor; and

WHEREAS, “truth-in-labeling” means honest and “full-disclosure” of the material facts - specifically including the geographic origin and percentage of all coffees in a geographically-identified coffee blend; and

WHEREAS, it is inherently deceptive and misleading to label coffee as a geographically-identified blend (such as “Hāmākua Blend” or “Ka‘ū Blend” or “Kona Blend”) unless at least a majority (51%) of the coffee is from that region; and

WHEREAS, the following attempts have been made to provide the consumers of Hawai‘i - grown coffees sufficient and material information to make an informed decision regarding their potential purchase of Hawai‘i-grown coffees:

June 13, 1986, the Governor vetoed House Bill 2142 (HSCR 472-, SSCR 711-86) which required a minimum of ten percent Kona coffee in the blend to use the “Kona” name on the package and required any person involved with roasting, handling, processing, selling, blending, packaging, or labeling any Kona coffee or Kona coffee blend to keep and make available for inspection records of quantities of coffees received versus quantities shipped, and required the director of measurement standards to enforce the rules; and

In 1990, the Hawai‘i County Council on Economic Development sought State legislation protecting the interests of Hawai‘i County farmers by requiring that at least 51% of a blend should be Kona before it could be labeled as a “Kona blend” but the Council’s position was sharply opposed by Honolulu’s largest blender, Superior Tea and Coffee (a C. Brewer company); and

June 19, 1991, after the Legislature had disregarded the request of the Hawai'i County Council on Economic Development, the Governor approved Senate Bill 0154 (SSCR 535, HSCR 1210) which allowed the use of the names of Hawai'i-grown coffees on blends with as little as 10% genuine content. Kona coffee grower Tom Greenwell called the standard "false advertising" because it allowed Kona coffee beans to be mixed with low-grade beans, twigs and other debris. Another Kona coffee grower, Michael Craig, described the misuse of the name "Kona" as a misuse of the cultural heritage of Hawai'i; and

May 26, 2006, the Hawai'i State Democratic Party adopted a resolution recommending truth-in-labeling measures for Kona coffee; and

December 20, 2006, the Hawai'i County Council adopted Resolution No. 18-06 requesting the Hawai'i State Legislature to revise and clarify Hawai'i Revised Statutes Section 486-120.6 and recommend that any coffee labeled "Kona Coffee Blend" shall have a minimum of 75% Kona coffee and shall be labeled accordingly; and

January 18, 2007, House Bill No. 72, which incorporated the recommendations of Resolution No. 18-06, was introduced in the State House of Representatives, and on January 19, 2007, an identical bill (Senate Bill No. 661) was introduced in the State Senate; and

January 2007, the Hawai'i State Democratic Party made House Bill No. 72 and Senate Bill No. 661 part of the Party's legislative package; and

April 27, 2007, the Hawai'i State Legislature adopted Senate Concurrent Resolution No. 102, SDI, HD1, which stated, in part, the following:

1. Existing labeling requirements for Kona coffee causes consumer fraud.
2. Existing labeling requirements for Kona coffee degrades the "Kona coffee" name.
3. Confusion as to the difference between Kona coffee and Kona coffee blends caused Consumer Reports magazine to rate Kona coffee as "second rate"; and

May 3, 2014, the Hawai'i County Democratic Party Convention adopted Resolution No. 8 requiring a minimum of 51% origin product in all coffee grown in Hawai'i labeled with a Hawai'i origin and adopted Resolution No. 12 requiring a minimum of 51% Kona-grown coffee in any coffee package labeled as a "Kona Blend" and prominent identification on the label stating the country or region of origin of the non-Kona portion. On May 24, 2014, after having been read a letter in opposition from the president of Hawai'i's largest

coffee blending company, the delegates to the State Democratic Party Convention declined to adopt these Hawai'i County resolutions; and

WHEREAS, there is no opposition to the practice often used by coffee roasters to blend various roasts or various origins to create unique flavor profiles; however, the basic principles of consumer protection and fair marketing are violated when blenders mislead consumers by using an geographic-origin name (“Ka'ū”, “Maui” or “Kona”) in the name of a blend that contains only a small percentage of coffee grown in that region. Blending is fine; deceptive labeling of blends is not; and

WHEREAS, nowhere on the labels of 10% Hawai'i coffee blends are consumers advised that 90% of the coffee in the packages is imported, foreign-grown coffee or may be a mixture of multiple Hawaiian regions and foreign-grown coffee; and

WHEREAS, not identifying the origin of the 90% portion of a coffee blend is inherently deceptive to consumers who are often erroneously led to believe that the entire amount of coffee in the package is a coffee blend of many Kona farms' or another Hawaiian region's coffee; and

WHEREAS, the Hawai'i State Legislature has not protected the regional coffees grown in the state of Hawai'i; and

WHEREAS, Hawai'i is the only region anywhere in the world that authorizes by law the use of its geographic names (“Kona”, “Ka'ū”, “Hāmākua”) on labels of its specialty agriculture products with only 10% genuine contents; and

WHEREAS, it is essential that the Hawai'i State Legislature act immediately to stop the consumer fraud, deception, and confusion that continues due to existing labeling requirements for Hawai'i-grown coffees of any region or district; and

WHEREAS, the blenders currently gain immense excess profits from using cheaper commodity coffees from other areas of the world (Viet Nam, Mexico, Panama, Africa, Brazil, etc.) to fill 90% of the coffee blend, and those excess profits benefit the Mainland corporate owners of Hawai'i blending companies and do not benefit Hawai'i coffee farmers; and

WHEREAS, to protect the consumers by providing genuine “truth-in-labeling” and “full-disclosure”, the Hawai'i Revised Statutes §486-120.6 (b) needs to be amended as indicated in Exhibit A, attached; and

WHEREAS, only disclosing the 10% portion on the label of blended coffee is deceptive. For consumer protection and information, the majority portion of the package should be listed on the front label first followed by the next largest portion of the contents and its percentage

followed by the next lowest portion, et cetera in the same font size required for the identity statement in HRS 486-120-6(a)(3). For example:

“51% Ka’ū Coffee,

49% Vietnamese Coffee (This could also be stated as “Foreign-grown” coffee.)”

Or

“51% Hāmākua Coffee,

45% Mexican Coffee,

4% other Hawai‘i-Grown Coffees”;

WHEREAS, immediate legislative action is necessary to protect the reputation of Hawai‘i-grown coffees as premier, specialty coffees from further degradation; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAI‘I that the Hawai‘i State Legislature is requested to schedule committee hearings, give floor consideration, and adopt into law provisions for truth-in-labeling for Hawai‘i-grown coffees providing:

- (1) For the use of a Hawai‘i geographic-origin name in the labeling or advertising of a coffee blend only if the coffee blend contains at least 51% from that origin; and
- (2) A change from voluntary to mandatory of the current provisions of HRS 486-120.6(b) as recommended above to provide for full and genuine identification on the front panel of the geographic origin of all coffee contained in any coffee blend using a Hawai‘i geographic origin name.

BE IT FINALLY RESOLVED that the County Clerk shall forward copies of this resolution to the Honorable Mayor William P. Kenoi, the Hawai‘i County Department of Research and Development, the Honorable Governor Neil S. Abercrombie, the Hawai‘i State Department of Business, Economic Development and Tourism, and all members of the Hawai‘i State Senate and House of Representatives.

Exhibit A

§486-120.6 Hawaii-grown roasted or instant coffee; labeling requirements.

(a) In addition to all other labeling requirements, the identity statement used for labeling or advertising roasted or instant coffee produced in whole or in part from Hawaii-grown green coffee beans shall meet the following requirements:

- (1) For roasted or instant coffee that contains one hundred per cent Hawaii-grown coffee by weight the identity statement shall consist of either:
 - (A) The geographic origin of the Hawaii-grown coffee, in coffee consisting of beans from only one geographic origin, followed by the word "Coffee"; provided that the geographic origin may be immediately preceded by the term "100%"; or
 - (B) The per cent coffee by weight of one of the Hawaii-grown coffees, used in coffee consisting of beans from several geographic origins, followed by the geographic origin of the weight-specified coffee and the terms "Coffee" and "All Hawaiian";
- (2) For roasted or instant coffee consisting of a blend of one or more Hawaii-grown coffees and coffee not grown in Hawaii, the per cent coffee by weight of one of the Hawaii-grown coffees used in the blend, followed by the geographic origin of the weight-specified coffee and the term "Coffee Blend"; and
- (3) Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight. The identity statement shall be conspicuously displayed without any intervening material in a position above the statement of net weight. Upper and lower case letters may be used interchangeably in the identity statement.

(b) A listing of the geographic origins of the various Hawaii-grown coffees and the regional origins of the various coffees not grown in Hawaii that are included in a blend ~~[may]~~ shall be shown on the label. ~~[If used, this]~~ This list shall consist of the term "Contains:", followed by, in descending order of per cent by weight and separated by commas, the respective geographic origin or regional origin of the various coffees in the blend ~~[that the manufacturer chooses to list]~~. Each geographic origin or regional origin ~~[may]~~ shall be preceded by the per cent of coffee by weight represented by that geographic origin or regional origin, expressed as a number followed by the per cent sign. The type size used for this list shall not ~~[exceed]~~ be less than half that of the identity statement. This list shall appear below the identity statement ~~[, if included]~~ on the front panel of the label.

(c) It shall be a violation of this section to:

- (1) Use the identity statement specified in subsection (a)(1)(A) or similar terms in labeling or advertising unless the package of roasted or instant coffee contains one hundred per cent coffee from that one geographic origin;
 - (2) Use a geographic origin in labeling or advertising, including in conjunction with a coffee style or in any other manner, if the roasted or instant coffee contains less than ~~[ten]~~ fifty-one per cent coffee by weight from that geographic origin;
 - (3) Use a geographic origin in advertising roasted or instant coffee, including advertising in conjunction with a coffee style or in any other manner, without disclosing the percentage of coffee used from that geographic origin as described in subsection (a)(1)(B) and (a)(2);
 - (4) Use a geographic origin in labeling or advertising roasted or instant coffee, including in conjunction with a coffee style or in any other manner, if the green coffee beans used in that roasted or instant coffee do not meet the grade standard requirements of rules adopted under chapter 147;
 - (5) Misrepresent, on a label or in advertising of a roasted or instant coffee, the per cent coffee by weight of any coffee from a geographic origin or regional origin;
 - (6) Use the term "All Hawaiian" on a label or in advertising of a roasted or instant coffee if the roasted or instant coffee is not produced entirely from green coffee beans produced in geographic origins defined in this chapter;
 - (7) Use a geographic origin on the front label panel of a package of roasted or instant coffee other than in the trademark or in the identity statement as authorized in subsection (a)(1) and (2) unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin;
 - (8) Use more than one trademark on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package is from that geographic origin specified by the trademark;
 - (9) Use a trademark that begins with the name of a geographic origin on a package of roasted or instant coffee unless one hundred per cent of the roasted or instant coffee contained in the package comes from that geographic origin or the trademark ends with words that indicate a business entity; or
 - (10) Print the identity statement required by subsection (a) in a smaller font than that used for a trademark that includes the name of a geographic origin pursuant to paragraph (7) and in a location other than the front label panel of a package of roasted or instant coffee.
- (d) Roasters, manufacturers, or other persons who package roasted or instant coffee covered by this section shall maintain, for a period of two years, records on the volume and geographic origin or regional origin of coffees purchased and sold and any other records required by the department for the purpose of enforcing this section. Authorized employees of the department shall have access to these records during normal business hours.
- (e) For the purpose of this section:

"Geographic origin" means the geographic regions in which Hawaii-grown green coffee beans are produced, as defined in rules adopted under chapter 147; provided that the term "Hawaiian" may be substituted for the geographic origin "Hawaii".

"Per cent coffee by weight" means the percentage calculated by dividing the weight in pounds of roasted green coffee beans of one geographic or regional origin used in a production run of roasted or instant coffee, by the total weight in pounds of the roasted green coffee beans used in that production run of roasted or instant coffee, and multiplying the quotient by one hundred.