

## CARE Committee

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**From:** Racoma, Robin K <robin.mulleitner@doh.hawaii.gov>  
**Sent:** Monday, August 02, 2021 2:27 PM  
**To:** CARE Committee  
**Cc:** Char, Elizabeth; Tangonan, Sharon S.; Ho, Kathleen S; Rodrigues, Darlene L.; CleanWaterBranch; Felton, Diana; Seto, Joanna L  
**Subject:** Response to Sunscreen (CARE-54)  
**Attachments:** 20210726.King 07-30-2021.pdf; 20210726.King 07-30-2021 (part 2).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

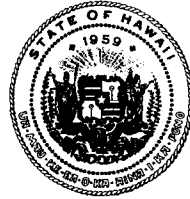
Aloha Councilmember King,

Please find attached the Department of Health's response to your letter dated July 26, 2021, regarding Sunscreen (CARE-54).

If you should have any questions, please contact Ms. Joanna L. Seto, Chief of the Environmental Management Division at (808) 586-4305.

Thank you,  
Robin Racoma  
Environmental Management Division  
(808) 586-4304

DAVID Y. IGE  
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:  
20210726.King EMD/CWB

July 30, 2021

The Honorable Kelly Takaya King, Chair  
Climate Action, Resilience, and  
Environment (CARE) Committee  
Maui County Council  
200 S. High Street  
Wailuku, Maui, Hawaii 96793  
[via [care.committee@mauicounty.us](mailto:care.committee@mauicounty.us) only]

Dear Councilmember King:

SUBJECT: SUNSCREEN (CARE-54)

Thank you for the copy of the proposed Maui County Council bill entitled "A BILL FOR AN ORDINANCE TO PROHIBIT THE SALE, USE, OR DISTRIBUTION OF SUNSCREEN CONTAINING OXYBENZONE AND OCTINOXATE" and invitation to attend your August 4, 2021, 9:00 a.m. meeting. Dr. Diana Felton of the Hazard Evaluation and Emergency Response (HEER) Office will be attending via your online meeting platform.

The Department of Health (DOH) HEER Office and Environmental Management Division Clean Water Branch (CWB) have reviewed your questions and have the following comments:

**1. Please provide information on how the Department is administering and enforcing HRS §342D-21.**

No one is allowed to sell, offer for sale, or distribute for sale any prohibited sunscreen product without a prescription issued by a licensed healthcare provider. Please refer to Hawaii Revised Statutes §342D-21. The DOH has received notifications from concerned citizens so we are aware that this is happening. While the DOH is just one of the many potential State and county health authorities with power to enforce this statute, including police officers, the DOH lacks the resources to effectively enforce this sunscreen ban.

The DOH will be implementing an outreach campaign to sellers with a letter and fact sheet reminding them of the ban and encouraging them to not sell these sunscreens. In addition, we are considering a simple survey study of stores to gather data of products on shelves.

If any potentially illegal sunscreen products are found, DOH will follow up with a specific Request for Information. In that request, DOH will ask the store what sunscreen products it carries and ask them to provide a list of what is in those products. If the banned compounds are found in a product they disclose to DOH, DOH can warn them that the sale, etc. is illegal and require the store to stop selling, etc. that particular product.

**2. Please provide the Department's comments on the proposed bill.**

The DOH supports your proposed bill from a human health and environmental standpoint and submits the following comments on specific sections of the proposed bill:

- Section 20.41.010.A does not closely track HRS §342D-21(a). Unless the County's intent is to change the scope of the current prohibition, it would be prudent to more closely track the statutory wording.
- Section 20.41.010.B provides that selling, providing, or offering for use a banned sunscreen would be allowed at County-authorized concessions, County-sponsored or County-permitted events, or County programs if the sunscreen is "from a prescription." HRS §342D-21(a) requires that such a prescription be issued by a licensed healthcare provider. "Licensed healthcare provider" is defined in HRS §342D-21(c). To the extent a "prescription" might be from a person who does not fall within the definition of "licensed healthcare provider," the proposed ordinance would be contrary to statute. We recommend the wording be revised to conform to statute.
- Section 20.41.010.C prohibits the use or application of a banned sunscreen. We note that HRS §342D-21(a) does not currently prohibit use or application.

The DOH recognizes the benefits of the ban on oxybenzone and octinoxate containing sunscreen products in Hawaii. The DOH also notes a dramatic increase in availability, variety, and consumer acceptance of oxybenzone and octinoxate-free options and mineral sunscreen products entering the consumer market. These products appear to meet standards for public health protection and offer the public a concrete alternative to help protect Hawaii's coral reefs and marine environment when enjoying our beaches.

The DOH strongly supports public education efforts and outreach strategies to inform Hawaii beachgoers about steps they can take to reduce the unintended impacts of sunscreen use while safely enjoying our tropical marine waters and sunny beaches.

**3. Please provide information on whether counties can enact regulatory restriction to prohibit the sale, use, labeling, packaging, handling, distribution, or advertisement of sunscreens containing oxybenzone, octinoxate, or any other ingredients considered to have significant negative impacts on the environment.**

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There is no statute or administrative rule which precludes the Counties from promulgating a regulatory restriction on "other ingredients" or other acts. We note, however, that the statute does not address "labeling," "packaging," "handling," or "advertisement" directly. Restrictions that are in addition to those set forth in statute may only have effect in Maui County. Banning "advertisement" may raise enforcement issues where advertising has a reach beyond the County's jurisdiction.

4. **Please provide information on whether counties can enact regulatory restrictions to allow the sale, use, labeling, packaging, handling, distribution, or advertisement of sunscreens containing zinc oxide or titanium dioxide only as active ingredients.**

As noted above, the Counties do not appear to be precluded from restricting other active ingredients.

From a skin cancer/human health perspective, it is not advisable to limit sunscreens to only zinc/titanium as the active ingredients. Some people have hypersensitivity type reactions to these ingredients, or just don't like them and would likely not use sunscreen at all if these were the only options. In addition, research is definitely needed to better understand the risks to the environment from other chemical sunscreen constituents.

If there are any questions, please contact Ms. Joanna L. Seto, P.E., Chief of the Environmental Management Division, at [joanna.seto@doh.hawaii.gov](mailto:joanna.seto@doh.hawaii.gov) or (808) 586-4304.

Sincerely,

*Kathleen Ho*

KATHLEEN HO  
Deputy Director for Environmental Health

- c: Elizabeth A. Char, M.D., Director of Health [via [libby.char@doh.hawaii.gov](mailto:libby.char@doh.hawaii.gov) only]  
CWB [via [cleanwaterbranch@doh.hawaii.gov](mailto:cleanwaterbranch@doh.hawaii.gov) only]  
HEER Office [via [diana.felton@doh.hawaii.gov](mailto:diana.felton@doh.hawaii.gov) only]