
A BILL FOR AN ACT

RELATING TO FOOD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 328, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . COTTAGE FOOD OPERATIONS

5 §328-A Definitions. For purposes of this part, the
6 following definitions shall apply:

7 "Cottage food employee" means an individual, paid or
8 volunteer, who is involved in the preparation, packaging,
9 handling, and storage of a cottage food product, or who
10 otherwise works for the cottage food operation. A cottage food
11 employee does not include an immediate family member or
12 household member of the cottage food operator.

13 "Cottage food operation" means an enterprise that is
14 operated by a cottage food operator produces non-potentially
15 hazardous food products only in the home kitchen of the cottage
16 food operator's private home or in a farm kitchen for sale to
17 consumers pursuant to this part.



1 "Cottage food operator" means a person who operates a
2 cottage food operation in the individual's private home or farm
3 kitchen and who is the owner of the cottage food operation.

4 "Cottage food products" means non-potentially hazardous
5 foods, including foods described in section 328-E, prepared for
6 sale in the home kitchen or farm kitchen of a cottage food
7 operation.

8 "Department" means the department of health.

9 "Direct sale" means a transaction between a cottage food
10 operator and a consumer, whereby the consumer purchases the
11 cottage food product directly from the cottage food operation
12 and not from a third party. The term includes but is not
13 limited to transactions at holiday bazaars, bake sales, food
14 swaps, or other temporary events; transactions by mail order;
15 transactions at farm stands and farmers' markets; or
16 transactions occurring in person at the site of the cottage food
17 operation.

18 "Farm kitchen" means a kitchen that is designed for
19 private, non-commercial use, is located in a building on a farm
20 and not in a private home, complies with all applicable building



1 and zoning laws, and is used by a cottage food operator for the
2 production of cottage food products.

3 "Home kitchen" means a kitchen designed and intended for
4 use by the residents of a private home but also used by a
5 cottage food operator for the production of cottage food
6 products. A home kitchen may contain one or more stoves, ovens,
7 and other pieces of equipment designed for residential use,
8 though it may also contain one or more pieces of equipment
9 designed for commercial use if allowed by local building
10 ordinances.

11 "Indirect sale" means an interaction between a cottage food
12 operator, a third-party retailer, and a consumer, whereby the
13 consumer purchases cottage food products made by the cottage
14 food operation from a third party. The term includes but is not
15 limited to sales made to restaurants, retail shops, or retail
16 food establishments where food may be immediately consumed on
17 the premises.

18 "Private home" means a dwelling, including an apartment or
19 other leased space, where individuals reside.

20 "Registered or permitted area" means the portion of a
21 private home that contains the private home's home kitchen used



1 for the preparation, packaging, storage, or handling of cottage
2 food products and related ingredients or equipment, or both, and
3 additional rooms within the home that are used for storage of
4 cottage food products and related ingredients or equipment, or
5 both.

6 **§328-B Requirements for cottage food operations.** (a) A
7 cottage food operation shall not be required to obtain a food
8 establishment permit from the department but shall instead be
9 required to obtain a cottage food operation permit as described
10 in subsection (b).

11 (b) A cottage food operation shall apply for a permit as a
12 class A cottage food operation, subject to the requirements
13 under section 328-C, or as a class B cottage food operation,
14 subject to the requirements under section 328-D.

15 (c) A cottage food operation that has a permit issued
16 pursuant to this part shall be subject to the following rules:

17 (1) No personal food preparation, packaging, or handling
18 may occur in the home or farm kitchen concurrently
19 with any other domestic activities, such as family
20 meal preparation, dishwashing, clothes washing or
21 ironing, kitchen cleaning, or guest entertainment;



- 1 (2) No infants or animals may be in the home or farm
2 kitchen during the preparation, packaging, or handling
3 of any cottage food products;
- 4 (3) Kitchen equipment and utensils used to produce cottage
5 food products shall be clean and maintained in a good
6 state of repair;
- 7 (4) All food contact surfaces, equipment, and utensils
8 used for the preparation, packaging, or handling of
9 any cottage food products shall be washed, rinsed, and
10 sanitized before each use;
- 11 (5) All food preparation and food and equipment storage
12 areas shall be maintained free of rodents and insects;
- 13 (6) Smoking shall be prohibited in the portion of a
14 private home or farm used for the preparation,
15 packaging, storage, or handling of homemade food
16 products and related ingredients or equipment, or
17 both, while food products are being prepared,
18 packaged, stored, or handled;
- 19 (7) Potable water shall be used for all washing of hands,
20 utensils, equipment, and surfaces in the home or farm
21 kitchen at all times; and



1 (8) Cottage food operators shall not dump cooking oil or
2 grease into the home or farm kitchen sink or the
3 toilet bowl, and shall not use hot water and soap to
4 wash grease down the drain. Instead, cottage food
5 operators shall place cooled cooking oil in sealed
6 non-recyclable containers and discard with regular
7 garbage, and shall use paper towels to wipe residual
8 grease or oil off of dishes, pots, and pans prior to
9 washing them.

10 (d) The department shall provide a self-certification
11 checklist for cottage food operations, including requirements
12 related to preparation, packaging, and handling of cottage food
13 products in the home or farm kitchen; equipment and utensils;
14 and sanitation.

15 (e) A cottage food operator or cottage food employee who
16 prepares or packages cottage food products in a cottage food
17 operation shall complete a food safety workshop or class
18 approved or offered by the department within four months of the
19 cottage food operation becoming registered or obtaining a
20 permit.



1 (f) The department shall post the requirements for class A
2 and B cottage food operations on its website.

3 **§328-C Class A cottage food operations; requirements. (a)**

4 A class A cottage food operation may engage only in direct sales
5 of cottage food products from the cottage food operation or
6 other direct sales venues.

7 (b) The following requirements apply to class A cottage
8 food operations:

9 (1) A class A cottage food operation shall not be open for
10 business unless the class A cottage food operation has
11 registered with the department and has submitted a
12 completed self-certification checklist approved by the
13 department. The self-certification checklist shall
14 verify that the class A cottage food operation
15 conforms to this part and any rules adopted pursuant
16 to this part;

17 (2) Except as provided in section 328-H, a class A cottage
18 food operation shall not be subject to initial or
19 routine inspections; and



1 (3) The department shall issue a permit to a class A
2 cottage food operation that meets the requirements of
3 this section.

4 **§328-D Class B cottage food operations; requirements. (a)**

5 A class B cottage food operation may engage in direct sales and
6 indirect sales of cottage food products, not including acidified
7 or fermented foods, from the cottage food operation, direct
8 sales venues, or a food establishment with a valid permit issued
9 by the department.

10 (b) The following requirements apply to class B cottage
11 food operations:

12 (1) A class B cottage food operation shall not be open for
13 business unless it obtains a permit from the
14 department to engage in the direct and indirect sales
15 of cottage food products and has submitted a completed
16 self-certification checklist approved by the
17 department. The self-certification checklist shall
18 verify that the class B cottage food operation
19 conforms to this part and any rules adopted pursuant
20 to this part;



1 (2) The department shall issue a permit after it has
2 determined that the proposed class B cottage food
3 operation and its method of operation conform to this
4 part; and

5 (3) Except as provided in section 328-H, a class B cottage
6 food operation shall not be subject to more than one
7 inspection per year by the department.

8 **§328-E Approved cottage food products.** (a) The
9 department shall adopt and post on its website a sample list of
10 non-potentially hazardous foods and their variations that may be
11 offered for sale by a cottage food operation.

12 (b) The list of non-potentially hazardous foods shall be
13 known as the approved cottage food products list and shall
14 include but not be limited to:

15 (1) Baked goods without cream, custard, or meat fillings,
16 such as breads, biscuits, churros, cookies, pastries,
17 cakes, and tortillas;

18 (2) Dried fruit;

19 (3) Dried pasta;

20 (4) Dry baking mixes;



- 1 (5) Dry herbs, herb blends, and seasoning blends,
2 including seasoning salt;
- 3 (6) Fruit pies;
- 4 (7) Granola, dry cereal, and trail mixes;
- 5 (8) Jams, jellies, chutneys, preserves, and fruit butter;
- 6 (9) Nut mixes and nut butters;
- 7 (10) Popcorn;
- 8 (11) Roasted coffee and dried tea;
- 9 (12) Vinegar and mustard;
- 10 (13) Waffle cones and pizzelles;
- 11 (14) Cotton candy;
- 12 (15) Candied apples;
- 13 (16) Candy such as brittle and toffee;
- 14 (17) Chocolate-covered nonperishable foods, such as nuts
15 and dried fruit;
- 16 (18) Confections such as salted caramel, fudge, marshmallow
17 bars, chocolate-covered marshmallow, nuts, and hard
18 candy, or any combination thereof;
- 19 (19) Flat icing, buttercream frosting, buttercream icing,
20 buttercream fondant, and gum paste that does not
21 contain eggs, cream, or cream cheese;



- 1 (20) Dried or dehydrated vegetables;
- 2 (21) Dried vegetarian-based soup mixes;
- 3 (22) Vegetable and potato chips;
- 4 (23) Ground chocolate;
- 5 (24) Shave ice;
- 6 (25) Doughnuts or andagi;
- 7 (26) Mochi;
- 8 (27) Fresh fruit juice made from fruits not including
- 9 cantaloupe, melon, or tomatoes;
- 10 (28) Poi; and
- 11 (29) Sauces, pickles, fermented foods such as sauerkraut
- 12 and kim chi, and other acidified foods that have an
- 13 equilibrium pH of 4.6 or less as verified and approved
- 14 through the process described in section 328-I.
- 15 (c) The department may add or delete food products to or
- 16 from the approved cottage food products list described in
- 17 subsection (b) based on current scientific knowledge related to
- 18 food safety. Notice of any change to the approved cottage food
- 19 products list shall be posted on the department's website. Any
- 20 change to the approved cottage food products list shall become
- 21 effective thirty days after the notice is posted. The notice



1 shall state the reason for the change, the authority for the
2 change, and the nature of the change. The notice shall allow at
3 least twenty days for comments to be submitted and shall
4 indicate the physical address or electronic mail address to
5 which comments are to be submitted and the deadline by which the
6 comments are required to be received by the department. The
7 department shall consider all comments submitted before the due
8 date. The department may withdraw the proposed change at any
9 time by notification on the department's website or through
10 notification by other electronic means. The approved cottage
11 food products list and any updates shall not be subject to the
12 requirements of chapter 91.

13 (d) Cottage food operations may produce non-potentially
14 hazardous foods that are not on the approved cottage food list
15 described in subsection (b) if they submit their product to
16 recipe testing and review, as determined by the department, to
17 ensure the foods are non-potentially hazardous.

18 **§328-F Labeling requirements for cottage food operations.**

19 (a) A cottage food operation shall label each cottage food
20 product and include on the label the following:



- 1 (1) The words "Made in a Home or Farm Kitchen that has not
2 been inspected by the Hawaii Department of Health" in
3 at least twelve-point type, displayed in a conspicuous
4 place on the principal display area of the packaging
5 or container;
- 6 (2) The common name of the cottage food product;
- 7 (3) The name and address of the cottage food operation
8 that produced the cottage food product;
- 9 (4) The ingredients of the cottage food product, in
10 descending order of predominance by weight;
- 11 (5) The net weight or net volume of the cottage food
12 product if the product is priced according to its
13 weight;
- 14 (6) The date of production of the product;
- 15 (7) Allergen information, if required, as specified in
16 section 403 of the federal Food, Drug, and Cosmetic
17 Act (21 U.S.C. 343); and
- 18 (8) Nutrition labeling, if required, as specified in title
19 21 Code of Federal Regulations part 101.
- 20 (b) Cottage food products identified and labeled pursuant
21 to subsection (a) are acceptable cottage food products that may



1 be sold by a class B cottage food operation in an indirect sale
2 via a retail shop or retail food establishment.

3 **§328-G Prohibitions.** A cottage food operation shall not
4 process low-acid canned foods or potentially hazardous foods;
5 offer for sale adulterated or misbranded food; refuse an
6 inspection or the taking of samples as authorized by section
7 328-H or by rule; produce or sell food items not appearing on
8 the approved cottage food products list unless they have prior
9 approval pursuant to section 328-E(d); or sell cottage food
10 products outside the State of Hawaii.

11 **§328-H Inspections; food sampling.** (a) The department
12 shall only conduct inspections of class A cottage food
13 operations in response to a complaint as described in subsection
14 (b). The department may require routine inspections of class B
15 cottage food operations as it deems necessary to protect public
16 health.

17 (b) If the department receives a consumer complaint about
18 a cottage food operation or cottage food product, the department
19 may access, for inspection purposes, the registered or permitted
20 area of a private home or farm where a cottage food operation is
21 located to determine if the cottage food product is misbranded



1 or adulterated or if the cottage food operation is in violation
2 of this part. If a cottage food operator wilfully denies access
3 to a department official, the cottage food operator's permit may
4 be automatically revoked. The department may adopt rules that
5 allow a cottage food operator to re-apply for a permit to
6 operate after its permit has been revoked, and such rules may
7 entail a follow-up inspection to ensure the cottage food
8 operation is in compliance with all health laws.

9 (c) The department may conduct food sampling of the
10 cottage food product as part of the inspection.

11 (d) Access to the private home or farm under this section
12 is limited to the registered or permitted area and solely for
13 the purpose of enforcing or administering this part.

14 (e) The department may charge a reasonable permit fee for
15 class B cottage food operations that takes into account costs of
16 inspection and related administrative costs. In the event of an
17 inspection conducted in response to a complaint, the department
18 may seek recovery from a cottage food operation of an amount not
19 to exceed the department's reasonable costs of inspecting the
20 cottage food operation only if the cottage food operation is
21 found to be in violation of this part.



1 (f) The department shall adopt rules establishing
2 procedures for the inspection of cottage food operations and
3 standards for food sampling of cottage food products.

4 (g) The department shall post on its website a list of
5 cottage food operations whose permits have been revoked.

6 (h) If the department chooses to revoke a cottage food
7 operation permit due to lack of conformity with this part, a
8 list of reasons shall be provided, in writing, to the cottage
9 food operator within seven business days after an inspection has
10 been completed.

11 (i) It is the responsibility of the department to enforce
12 laws described in this part related to public health, and not to
13 enforce local zoning ordinances, or any other laws.

14 **§328-I Sauces, pickles, fermented and acidified foods.**

15 (a) Any cottage food operation seeking to produce any items
16 listed in section 328-E(b)(29) shall submit recipes for these
17 items to an acceptable process authority, as approved by the
18 department, for product testing and production process review
19 and recommendations.

20 (b) The department may publish a list of acceptable
21 process authorities for reviewing cottage food products



1 described in subsection (a). Process authorities may include
2 any qualified person who has expert knowledge acquired through
3 appropriate training and experience in the processing of
4 fermented and acidified foods, including but not limited to
5 nonprofit organizations, businesses, university departments or
6 extension agencies, and individuals.

7 (c) Cottage food operators producing acidified foods shall
8 complete a United States Food and Drug Administration approved
9 food processing course and comply with other United States Food
10 and Drug Administration acidified food regulations.

11 (d) The department may issue further recommendations for
12 producing acidified foods safely in the tropics."

13 SECTION 2. In codifying the new sections added by section
14 1 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 3. This Act shall take effect on January 1, 2016.

18



Report Title:

Homemade Food; Cottage Food

Description:

Expands and creates new categories for homemade food processing for sale to the public. Takes effect on 1/1/2016. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

