

JAN 20 2023

A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 SECTION 1. The legislature finds that local food
2 production is integral to the State's economic development and
3 food security. Homemade food that is sold directly to
4 consumers, or "cottage food", is a small but growing industry,
5 and is preferred among many consumers who are mindful of
6 responsible sourcing and healthy eating options and those who
7 want to support the local communities and individuals producing
8 the foods they consume.

9 The legislature further finds that there is great interest
10 in small-scale cottage food operations in the State, but the
11 existing regulatory framework creates several challenges for
12 entrepreneurs, especially for those in rural areas who do not
13 have access to commercial or certified kitchens. In fact,
14 Hawai'i is one of only a few remaining states that does not
15 provide certain exemptions from its department of health for
16 cottage foods. Amending state law to expand access to local
17 cottage food products will help foster small businesses,



1 innovation, and economic growth. Moreover, cottage food
2 operations offer locally made alternatives to imported brands,
3 create local employment opportunities, can help keep more money
4 circulating within the State's economy and increase tax revenue.

5 Accordingly, the purpose of this Act is to establish the
6 Access to Local Foods Act and allow cottage food operations to
7 sell cottage food products, under certain conditions, upon
8 receiving a permit from the department of health.

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

12 "PART . ACCESS TO LOCAL FOOD ACT: COTTAGE FOOD OPERATIONS

13 §328-A Definitions. For purposes of this part, the
14 following definitions shall apply:

15 "Cottage food operation" means an enterprise that is
16 operated by a cottage food operator and produces cottage food
17 products only in the home kitchen of the cottage food operator's
18 private home or in a farm kitchen for direct sale to consumers
19 pursuant to this part.



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

4 "Cottage food products" means foods prepared for sale in
5 the private home kitchen or farm kitchen of a cottage food
6 operation.

7 "Delivered" means to be transferred from a cottage food
8 operator to a consumer, either immediately upon sale or at a
9 time thereafter.

10 "Department" means the department of health.

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

19 "Farm kitchen" means a kitchen that is designed for
20 private, non-commercial use, is located in a building on a farm
21 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 as
8 allowed by county building ordinances. A home kitchen may also
9 contain one or more pieces of equipment designed for commercial
10 use if allowed by county building ordinances.

11 "Potentially hazardous cottage food product" means a food
12 that requires time or temperature control for safety to limit
13 pathogenic microorganism growth or toxin formation.

14 "Prepared" means a cottage food product that has been
15 cooked, baked, dried, mixed, cut, fermented, preserved,
16 dehydrated, grown, raised, or otherwise processed.

17 "Private home" means a dwelling, including an apartment or
18 other leased space where individuals reside, and which complies
19 with all applicable county ordinances if used in the production
20 of cottage food products.



1 "Seller" means a person or entity, other than a cottage
2 food operator, who sells a non-potentially hazardous cottage
3 food product to a consumer.

4 **§328-B Requirements for cottage food operations; rules.**

5 (a) A cottage food operation shall be required to obtain a
6 permit from the department pursuant to section 328-C.

7 (b) Cottage food operations shall submit proof of a valid
8 food handlers education certificate for each cottage food
9 operator issued by the department or other food handler training
10 certificate program accredited by the American National
11 Standards Institute.

12 (c) Cottage food operations that sell products using the
13 preservation methods of:

- 14 (1) Freeze drying;
- 15 (2) Jelly, jam, preserve, and conserve making;
- 16 (3) Acidifying low-acid products;
- 17 (4) Pickling;
- 18 (5) Fermenting; or
- 19 (6) Dehydrating;

20 shall submit proof of a valid certificate from Hawaii Master
21 Food Preservers, Inc. or a comparable department-approved



1 certificate for each cottage food operator in addition to the
2 requirements of subsection (b).

3 (d) In lieu of a valid certificate from Hawaii Master Food
4 Preservers, Inc. or comparable department-approved certificate,
5 cottage food operations that sell products using the
6 preservation methods under subsection (c) shall submit a food
7 sample of the product to be sold to consumers to a department-
8 approved laboratory or food testing facility to have the food
9 tested and the recipe approved for appropriate pH and water
10 values for food safety. Cottage food operations that sell
11 products made through the use of preservation methods that do
12 not have proof of a valid certificate from Hawaii Master Food
13 Preservers, Inc. or a comparable department-approved
14 certificate:

15 (1) Shall only sell products made from recipes that have
16 been approved by:

- 17 (A) The department pursuant to this subsection;
- 18 (B) Organizations and institutions such as the
19 National Center for Home Food Preservation;
20 Hawaii Master Food Preservers, Inc.; or



1 universities with participating master food
2 preservers; or

3 (C) Additional organizations and institutions
4 approved by the department that approve recipes
5 for appropriate pH and water values for food
6 safety; and

7 (2) Shall maintain proof that the recipe for the product
8 being sold comes from an approved source.

9 (e) The department shall post the requirements of this
10 part for cottage food operations on its website.

11 (f) The department may adopt rules pursuant to chapter 91
12 to carry out the purposes of this part.

13 **§328-C Cottage food operations; requirements; permit; fee.**

14 (a) Each cottage food operation shall specify in the permit
15 application the names of each of its cottage food operators and
16 shall submit proof of applicable certificates pursuant to
17 section 328-B.

18 (b) An application fee in the amount of \$25 shall be
19 collected by the department with each permit application under
20 this section.



1 (c) A cottage food operation shall not engage in business
2 unless the cottage food operation has registered with the
3 department and been issued a permit under this section.

4 (d) The department shall issue a permit to a cottage food
5 operation that meets the requirements of this section.

6 (e) The cottage food permit shall authorize cottage food
7 operations to engage in direct and remote sale of their cottage
8 food products at multiple locations, including by telephone or
9 the Internet, subject to the conditions provided in
10 section 328-F.

11 (f) The cottage food permit shall be valid for one year
12 after the date of issuance and shall authorize cottage food
13 operators to sell cottage food products for a three hundred
14 sixty-five-day period; provided that, if the operator's permit
15 remains valid and unencumbered within the first year of
16 issuance, subsequently renewed permits shall remain valid for
17 two years.

18 **§328-D Cottage food products; labeling requirements.** (a)
19 Any cottage food product produced by a cottage food operation
20 shall be labeled as a cottage food product. The label shall be
21 displayed in a conspicuous place on the principal display area



1 of the packaging or container, and shall contain, in clearly
2 displayed and legible type, the following:

- 3 (1) The words "Made in a Home or Farm Kitchen" and "Not
4 inspected by the Department of Health";
- 5 (2) Allergen identification information as specified under
6 section 403 of the Federal Food, Drug, and Cosmetic
7 Act, title 21 United States Code section 343; and
- 8 (3) Ingredients in order of predominance.

9 The seller of any cottage food product shall have the
10 information required by this section readily available upon
11 request by a consumer.

12 (b) The information required by subsection (a) shall be
13 provided:

- 14 (1) On a label affixed to the package if the cottage food
15 product is packaged;
- 16 (2) On a label affixed to the container if the cottage
17 food product is offered for sale from a bulk
18 container;
- 19 (3) On a placard displayed at the point of sale if the
20 cottage food product is neither packaged nor offered
21 for sale from a bulk container; or



1 (4) On a webpage on which the cottage food product is
2 offered for sale if the cottage food product is
3 offered for sale on the Internet.

4 **§328-E Cottage food products; exemption.** The production
5 and sale of cottage food products regulated under this part
6 shall be exempt from all other licensing, permitting,
7 inspection, packaging, and labeling laws administered by the
8 department.

9 **§328-F Cottage food products; conditions for exemption.**

10 (a) The exemption set forth in 328-E shall apply only if the
11 conditions in this section are satisfied.

12 (b) The following conditions shall apply to the sale and
13 delivery of non-potentially hazardous cottage food products:

14 (1) Non-potentially hazardous cottage food products shall
15 be sold by:

16 (A) The cottage food operator to the consumer,
17 whether in person or remotely, including by
18 telephone or the Internet; or

19 (B) An agent of the cottage food operator or a third-
20 party vendor, such as a retail shop or grocery
21 store, to the consumer;



1 (2) Non-potentially hazardous cottage food products shall
2 be delivered to the consumer by:

3 (A) The cottage food operator;

4 (B) An agent of the cottage food operator or a third-
5 party vendor, such as a retail shop or grocery
6 store;

7 (C) Mail; or

8 (D) Shipping.

9 (c) Potentially hazardous cottage food products may be
10 sold to the consumer by the cottage food operator either in-
11 person or remotely, including by telephone or Internet; provided
12 that the potentially hazardous cottage food product shall be
13 delivered to the consumer only by the cottage food operator.

14 (d) All labeling requirements pursuant to section 328-D
15 shall be satisfied.

16 (e) Cottage food operations shall be allowed to the
17 maximum extent permitted by federal law. The following food
18 shall be allowed:

19 (1) Poultry, poultry byproducts, or poultry food products;
20 provided that the cottage food operator raised the



1 poultry pursuant to the exemption under title 9 Code
2 of Federal Regulations section 381.10(c);

3 (2) Poultry, poultry byproducts, poultry food products,
4 meat, meat byproducts, or meat food products; provided
5 that the poultry or meat is from an inspected source,
6 such as a retail store or similar-retail-type
7 establishment exempted under title 9 Code of Federal
8 Regulations section 381.10(d); and

9 (3) Seafood.

10 **§328-G Cottage food operations; investigation.** Nothing in
11 this part shall be construed to limit the department in any
12 investigation of a reported foodborne illness.

13 **§328-H Cottage food operations; consultation.** Nothing in
14 this part shall preclude an agency from providing assistance,
15 consultation, or inspection at the request of the cottage food
16 operator or cottage food operation.

17 **§328-I Cottage food operations; construction.** This part
18 shall not be construed to:

19 (1) Preclude the production or sale of food products
20 otherwise permitted by law;



- 1 (2) Preclude the sale of live animals or portions of live
2 animals before slaughter for future delivery;
- 3 (3) Change the regulation of other goods and services
4 where cottage food products are also prepared,
5 produced, or sold;
- 6 (4) Exempt producers or sellers of cottage food products
7 from any applicable tax laws;
- 8 (5) Exempt producers or sellers of cottage food products
9 from any applicable fishing or hunting laws;
- 10 (6) Exempt cottage food operations, cottage food
11 operators, sellers, or cottage food products from any
12 applicable federal law, including any federal law
13 prohibiting the sale of certain food products in
14 interstate commerce; or
- 15 (7) Exempt cottage food operators or sellers of homemade
16 food products or cottage food products from any
17 applicable law of another state.

18 **§328-J Limitation of state liability.** The State and
19 counties shall not be liable for claims associated with cottage
20 food products distributed, delivered, or sold by cottage food
21 operations, cottage food operators, or sellers, except for



1 instances of gross negligence and intentional misconduct by the
2 State or counties.

3 §328-K Preemption. This part shall preempt county and
4 other political jurisdictions or administrative rules
5 prohibiting and regulating the production and sale of cottage
6 food products."

7 SECTION 3. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 4. This Act shall take effect upon its approval.

12

INTRODUCED BY:

A handwritten signature in black ink, consisting of the letters 'D', 'K', and 'N' in a stylized, cursive font, written over a horizontal line.

S.B. NO. 756

Report Title:

Economic Development; Access to Local Food Act; Cottage Food Operations; Department of Health; Permit; Rules

Description:

Establishes the Access to Local Food Act to allow cottage food operations to sell cottage food products, under certain conditions, upon receiving a permit from the Department of Health.

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

