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# 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, and can help keep more  
4 money circulating within the State's economy and increase tax  
5 revenue.

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

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

13 **"PART . ACCESS TO LOCAL FOOD ACT: COTTAGE FOOD OPERATIONS**

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

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



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

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

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

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. "Direct sale" includes but is not  
13 limited to transactions at holiday bazaars, bake sales, food  
14 swaps, or other temporary events; transactions at farm stands  
15 and farmers' markets; or transactions occurring in person at the  
16 site of the cottage food operation.

17 "Farm kitchen" means a kitchen that is designed for  
18 private, non-commercial use, is located in a building on a farm  
19 and not in a private home, complies with all applicable building  
20 and zoning laws, and is used by a cottage food operator for the  
21 production of cottage food products.



1 "Home kitchen" means a kitchen designed and intended for  
2 use by the residents of a private home and by a cottage food  
3 operator for the production of cottage food products. A home  
4 kitchen may contain one or more stoves, ovens, and other pieces  
5 of equipment designed for residential use as allowed by county  
6 building ordinances and one or more pieces of equipment designed  
7 for commercial use if allowed by county building ordinances.

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

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

14 "Private home" means a dwelling, including an apartment or  
15 other leased space where individuals reside, that complies with  
16 all applicable county ordinances if used in the production of  
17 cottage food products.

18 "Seller" means a person or entity, other than a cottage  
19 food operator, who sells a non-potentially hazardous cottage  
20 food product to a consumer.



1           **§328-B Requirements for cottage food operations; rules.**

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

4           (b) Each cottage food operation shall submit proof of a  
5 valid food handlers education certificate issued by the  
6 department or other food handler training certificate program  
7 accredited by the American National Standards Institute.

8           (c) Cottage food operations that sell products using the  
9 preservation methods of:

- 10           (1) Freeze drying;
- 11           (2) Jelly, jam, preserve, and conserve making;
- 12           (3) Acidifying low-acid products;
- 13           (4) Pickling;
- 14           (5) Fermenting; or
- 15           (6) Dehydrating;

16 shall submit proof of a valid certificate from Hawaii Master  
17 Food Preservers, Inc. or a comparable department-approved  
18 certificate for each cottage food operator in addition to the  
19 requirements of subsection (b).

20           (d) In lieu of a valid certificate from Hawaii Master Food  
21 Preservers, Inc. or comparable department-approved certificate,



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

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

- 13 (A) The department pursuant to this subsection;
- 14 (B) Organizations and institutions such as the  
 15 National Center for Home Food Preservation;  
 16 Hawaii Master Food Preservers, Inc.; or  
 17 universities with participating master food  
 18 preservers; or
- 19 (C) Additional organizations and institutions  
 20 approved by the department that approve recipes



1 for appropriate pH and water values for food  
2 safety; and

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

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

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

9 **§328-C Cottage food operations; requirements; permit; fee.**

10 (a) Each cottage food operation shall specify in the permit  
11 application the names of each of its cottage food operators and  
12 shall submit proof of applicable certificates pursuant to  
13 section 328-B.

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

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

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



1 (e) The cottage food permit shall authorize cottage food  
2 operations to engage in direct and remote sale of their cottage  
3 food products at multiple locations, including by telephone or  
4 the Internet, subject to the conditions provided in  
5 section 328-F.

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

13 **§328-D Cottage food products; labeling requirements.** (a)  
14 Any cottage food product produced by a cottage food operation  
15 shall be labeled as a cottage food product. The label shall be  
16 displayed in a conspicuous place on the principal display area  
17 of the packaging or container, and shall contain, in clearly  
18 displayed and legible type, the following:

19 (1) The words "Made in a Home Kitchen or Farm Kitchen" and  
20 "Not inspected by the Department of Health";



1 (2) Allergen identification information as specified under  
2 section 403 of the Federal Food, Drug, and Cosmetic  
3 Act, title 21 United States Code section 343; and

4 (3) Ingredients in order of predominance.

5 The seller of any cottage food product shall have the  
6 information required by this section readily available upon  
7 request by a consumer.

8 (b) The information required by subsection (a) shall be  
9 provided:

10 (1) On a label affixed to the package if the cottage food  
11 product is packaged;

12 (2) On a label affixed to the container if the cottage  
13 food product is offered for sale from a bulk  
14 container;

15 (3) On a placard displayed at the point of sale if the  
16 cottage food product is neither packaged nor offered  
17 for sale from a bulk container; or

18 (4) On a webpage on which the cottage food product is  
19 offered for sale if the cottage food product is  
20 offered for sale on the Internet.



1           **§328-E Cottage food products; exemption.** The production  
2 and sale of cottage food products regulated under this part  
3 shall be exempt from all other licensing, permitting,  
4 inspection, packaging, and labeling laws administered by the  
5 department.

6           **§328-F Cottage food products; conditions for exemption.**

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

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

11           (1) Non-potentially hazardous cottage food products shall  
12 be sold by:

13           (A) The cottage food operator to the consumer,  
14 whether in person or remotely, including by  
15 telephone or the Internet; or

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

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

21           (A) The cottage food operator;



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

4 (C) Mail; or

5 (D) Shipping.

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

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

13 (e) Cottage food operations shall be allowed to the  
14 maximum extent permitted by federal law. The following food  
15 shall be allowed:

16 (1) Poultry, poultry byproducts, or poultry food products;  
17 provided that the cottage food operator raised the  
18 poultry pursuant to the exemption under title 9 Code  
19 of Federal Regulations section 381.10(c);

20 (2) Poultry, poultry byproducts, poultry food products,  
21 meat, meat byproducts, or meat food products; provided



1           that the poultry or meat is from an inspected source,  
 2           such as a retail store or similar-retail-type  
 3           establishment exempted under title 9 Code of Federal  
 4           Regulations section 381.10(d); and

5           (3) Seafood.

6           **§328-G Cottage food operations; investigation.** Nothing in  
 7 this part shall be construed to limit the department in any  
 8 investigation of a reported foodborne illness.

9           **§328-H Cottage food operations; consultation.** Nothing in  
 10 this part shall preclude an agency from providing assistance,  
 11 consultation, or inspection at the request of the cottage food  
 12 operator or cottage food operation.

13           **§328-I Cottage food operations; construction.** This part  
 14 shall not be construed to:

- 15           (1) Preclude the production or sale of food products
- 16                 otherwise permitted by law;
- 17           (2) Preclude the sale of live animals or portions of live
- 18                 animals before slaughter for future delivery;
- 19           (3) Change the regulation of other goods and services
- 20                 where cottage food products are also prepared,
- 21                 produced, or sold;



- 1           (4) Exempt cottage food operators or sellers of cottage
- 2           food products from any applicable tax laws;
- 3           (5) Exempt cottage food operators or sellers of cottage
- 4           food products from any applicable fishing or hunting
- 5           laws;
- 6           (6) Exempt cottage food operations, cottage food
- 7           operators, sellers, or cottage food products from any
- 8           applicable federal law, including any federal law
- 9           prohibiting the sale of certain food products in
- 10          interstate commerce; or
- 11          (7) Exempt cottage food operators or sellers of homemade
- 12          food products or cottage food products from any
- 13          applicable law of another state.

14           **§328-J Limitation of state liability.** The State and

15 counties shall not be liable for claims associated with cottage

16 food products distributed, delivered, or sold by cottage food

17 operations, cottage food operators, or sellers, except for

18 instances of gross negligence and intentional misconduct by the

19 State or counties.

20           **§328-K Preemption.** This part shall preempt county and

21 other political jurisdictions or administrative rules



1 prohibiting and regulating the production and sale of cottage  
2 food products."

3 SECTION 3. In codifying the new sections added by section  
4 2 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 4. This Act shall take effect on June 30, 3000.



**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. Effective 6/30/3000. (HD1)

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

