

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. BOX 3378
HONOLULU, HI 96801-3378
doh.testimony@doh.hawaii.gov

In reply, please refer to:
File:

**Testimony in OPPOSITION to HB0520
RELATING TO ECONOMIC DEVELOPMENT**

REPRESENTATIVE DANIEL HOLT, CHAIR
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

Hearing Date: 2/3/2023

Room Number: 423

1 **Fiscal Implications:** This measure will impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities.

4 **Department Testimony:** The Department respectfully opposes this measure.

5 The Department already allows food products that are not time/temperature control for
6 safety (TCS) or not potentially hazardous, to be made in a home kitchen and sold directly to
7 consumers. These are classified as "Homemade Food Operations" in Hawaii Administrative
8 Rules (HAR) Title 11, Chapter 50, Food Safety Code (HAR 11-50). The "homemade food
9 products" are required to be labeled to indicate that they are made in a home kitchen not
10 routinely inspected by the Department. The operators of these "homemade food operations" are
11 also required by HAR 11-50 to obtain a food safety certification issued by the Department or by
12 third party vendors that the Department recognizes as valid.

13 The Department will oppose any attempt to expand "cottage foods" or "homemade food
14 products" to include foods that require time/temperature controls to prevent or eliminate the
15 growth of pathogenic bacteria that are known to cause foodborne illnesses. HAR 11-50 adopted
16 the 2013 version of the U.S. Food and Drug Administration (FDA) model Food Code that does
17 not allow home kitchens to be used for the commercial preparation of certain foods. These foods
18 include beef, pork, poultry, seafood, cooked starches including cooked plant products that
19 become TCS when heat-treated, cooked, fermented, pickled, canned, and/or dried.

1 The measure proposes to allow the use of home kitchens to produce TCS foods, which
2 would be dangerous to public health for the following reasons:

3 1) A home kitchen may contain person(s) with communicable diseases. Existing
4 HAR requires permitted food establishments (FE) owners and operators to restrict all persons
5 with gastrointestinal or other communicable diseases from the FE. This is not likely to happen in
6 an environment where infected occupants cannot be restricted from their home;

7 2) Private homes are not suitable as an FE as it cannot be inspected at all times
8 during operation as allowed by HAR 11-50. A home can potentially operate a “cottage food”
9 operation 24 hours a day, 7 days a week, 365 days out of the year;

10 3) The Food Safety Branch’s (FSB) Food Safety Specialists (FSS) may conduct
11 inspections at an FE any time, during their operating hours under HAR 11-50. This allows
12 accessibility by an FSS to enter an FE and perform an unannounced routine or complaint
13 inspection. It would be difficult, if not impossible, to conduct a unannounced routine inspection
14 at a “cottage food” facility that is someone’s private home;

15 4) If the homeowner refuses inspection, the Department would have to obtain a
16 search warrant from a judge which would not be timely and could delay food disease outbreak
17 investigations that may be associated with serious illnesses or death;

18 5) The FSB FSS and supervisors are represented by dedicated men and women and
19 it is not safe sending them into a person’s private home. The FSB does not have the requisite
20 staffing to conduct inspections in pairs to prevent any inferences of misconduct or to prevent
21 harassment during an inspection.

22 6) Private homes typically will contain household chemicals and cleaners not
23 approved for use in the Department’s permitted Fes;

24 7) Prescription, over-the-counter medications, and the like are prohibited in a
25 permitted FE. In a private home, there is a possibility of adulteration by these items into the food
26 product they are producing; and

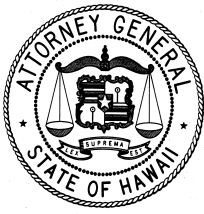
27 8) Presence of pets (dogs, cats, birds, rodent-like pets, etc.) may adulterate the food
28 product they are producing;

29 The Department’s FSB has a long history of working with industry and other community
30 members in utilizing the public hearings process in updating and changing rules to be more

1 progressive. The FSB codified the current allowance for non-TCS food products that are
2 homemade and sold directly to the consumer in 2014. We prefer that the legislature allow us to
3 continue this practice for any changes to HAR 11-50. We will not consider allowing a private
4 home to produce TCS foods unless the above issues can be addressed and standardized by the
5 FDA or the FDA adopts a “Cottage Food” control measure in the FDA model Food Code of
6 which the State of Hawaii uses primarily to regulate the food industry in Hawaii.

7 Thank you for the opportunity to testify.

8 **Offered Amendments:** None.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 520, RELATING TO ECONOMIC DEVELOPMENT.

BEFORE THE:

HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

DATE: Friday, February 3, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 423

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Wade H. Hargrove III, Deputy Attorney General

Chair Holt and Members of the Committee:

The Department of the Attorney General provides the following comments.

This purpose of this measure is to add a new part to chapter 328, Hawaii Revised Statutes (HRS), to allow for the sale of homemade or farm-made foods and to prescribe the manner in which such foods, defined as "cottage food products," shall be prepared, packaged, labeled, and sold. Additional provisions in this new chapter require cottage food operators to obtain training certification, third party or Department of Health (DOH) menu approval or product testing, and a permit.

This bill appears to contain the following conflicting or inconsistent provisions:

(1) The definition of a "cottage food operation" appears to limit all sales under the new chapter to direct sales to consumers and not through a third party. See page 2, line 18, and page 3, lines 11 to 14. However, other provisions appear to contemplate sales through third parties. See page 10, lines 19 to 21, and page 11, lines 4 to 6 (allowing for sale by an agent or third-party vendor, such as a retail shop or grocery store). For clarity, we suggest removing the conflicting limitation in the definitions and placing any specific restriction into the conditions for exemption on page 10, line 9, through page 12, line 9.

(2) This measure requires cottage food operators to obtain a permit. Yet, there is also a reference to operators being separately "registered with the department" on page 8, lines 1 to 3. The registry obligation is not clarified elsewhere in the bill and may be inconsistent with a permitting scheme. As a result, we suggest that this single

reference to being registered with DOH be deleted or, in the alternative, that a new section for registration be created prescribing more precisely what is required for registration and how the registry is to function.

Additionally, the duration of a permit issued under this new part is unclear. The bill states that if a permit remains valid and "unencumbered within the first year of issuance, subsequently renewed permits shall remain valid for two years." See page 8, line 15. The word "unencumbered" is not defined, and it is uncertain, without further explanation, what kind of encumbrance would render a permit invalid. We suggest either that this condition be deleted or that a description be provided of what constitutes an "encumbered" permit.

We appreciate the opportunity to testify on this measure.

JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



SHARON HURD
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
KA 'OIHANA MAHI'AI
1428 South King Street
Honolulu, Hawai'i 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF SHARON HURD
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

FRIDAY, FEBRUARY 3, 2023
10:00 A.M.

CONFERENCE ROOM 423 AND VIDEO CONFERENCING

HOUSE BILL NO. 520
RELATING TO ECONOMIC DEVELOPMENT

Chairperson Holt and Members of the Committee:

Thank you for the opportunity to present testimony on House Bill 520. This bill establishes the Access to Local Food Act by amending Chapter 328 HRS, to allow cottage food operations to sell cottage food products, under certain conditions, upon receiving a permit from the Department of Health.

The Department of Agriculture appreciates the intent of this measure and provides comment. With the escalating cost of living facing many local residents and potential food entrepreneurs, the Department acknowledges there is great interest in small-scale cottage food operations across the state. This measure could help small and startup businesses, particular in rural areas to produce, and deliver innovative cottage foods to markets. Additionally, this effort could elevate the contribution of cottage food operations to the local economy by providing direct sales to consumers, regional food hubs, and farmers' markets. All these activities generate revenues, create jobs, raise tax revenues, and keep the money circulating in Hawaii.

Thank you for the opportunity to testify on this measure.





P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 3, 2023

HEARING BEFORE THE
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

TESTIMONY ON HB 520
RELATING TO THE ECONOMIC DEVELOPMENT

Conference Room 423 & Videoconference
10:00 AM

Aloha Chair Holt, Vice-Chair Lamosao, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports the intent of HB 520, which 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.

As expenses rise, increases in farm revenues and profits are critical to the continued viability of farms and ranches. One way farmers can do this is by "adding value" to raw agricultural crops. Currently, off-grade and excess production is sometimes wasted due to market conditions. Converting them into value-added products will not only increase farm revenue but also provide new business opportunities, increase employment opportunities, and address Hawai'i's goals of increased self-sufficiency and sustainability.

The Access to Local Food Act can provide benefits to our local agricultural sector by encouraging farmers to diversify their farming operations to incorporate value-added products as another avenue for revenue as well as increase sales of locally grown products to Cottage Food businesses. Communities will also benefit from greater access to locally produced foods.

We are concerned that potentially hazardous cottage food products are included as part of the Access to Local Food Act. We support non-potentially hazardous cottage food products as part of the Local Food Acts and defer to the Department of Health regarding potentially hazardous cottage food products.

Thank you for the opportunity to testify on this important subject.



Feb. 3, 2023

10 a.m.

VIA VIDEOCONFERENCE

Conference Room 423

To: House Committee on Economic Development

Rep. Daniel Holt, Chair

Rep. Rachele Lamosao, Vice Chair

From: Grassroot Institute of Hawaii

Jonathan Helton, Policy Researcher

RE: HB520 — RELATING TO ECONOMIC DEVELOPMENT

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HB520](#), which would allow cottage food operations to sell cottage food with a permit from the state Department of Health.

We commend the Legislature for examining ways to reduce unnecessary regulation and provide new opportunities for local businesses. Expanding access to cottage food is a smart, relevant way to help small businesses and local food producers.

In the past several years, Hawaii lawmakers, farmers and the general public have taken an increased interest in local agriculture and food production. Many express the desire to make Hawaii more self-reliant and sustainable.

The state Department of Agriculture and various other state agencies have invested significant resources in Hawaii's food-production capabilities. This bill augments those efforts by reducing red tape on selling locally produced food.

By focusing on smart regulation, HB520 could help decrease the cost of operating a cottage food establishment.

In addition, providing new opportunities for Hawaii's residents to become entrepreneurs is exactly what we recommended in our "[Road map to prosperity](#)" report, issued in May 2020.

In that report, we focused on strategies to rebuild the state's economy following the COVID-19 pandemic and lockdowns. Its suggestions are just as relevant today as Hawaii continues to recover and deals with rampant inflation as well.

In the report, the Grassroot Institute emphasized the importance of implementing regulatory reforms that would help local businesses innovate, explore different products and services and reach new customers.

One of the recommendations offered was that the Legislature "remove county zoning and licensing restrictions on home-based businesses and state restrictions on cottage foods."

It said, "The simplest approach would be to enact statewide legislation that protects home-based businesses that are compatible with residential use, secondary to residential use, and do not adversely impact the community."

This measure would further that goal and provide Hawaii families with new potential income streams that would contribute to the local economy and a more sustainable, diversified future.

Thank you for the opportunity to testify.

Jonathan Helton
Policy Researcher
Grassroot Institute of Hawaii



Officers

Kaipo Kekona
State President

Anabella Bruch
Vice-President

Maureen Datta
Secretary

Reba Lopez
Treasurer

Chapter Presidents

Madeline Ross
Kohala, Hawai'i

Odysseus Yacalis
East Hawai'i

Puna, Hawai'i

Andrea Drayer
Ka'u, Hawai'i

Chantal Chung
Kona, Hawai'i

Fawn Helekahi-Burns
Hana, Maui

Reba Lopez
Haleakala, Maui

Kaiea Medeiros
Mauna Kahalawai,
Maui

Kaipo Kekona
Lahaina, Maui

Rufina Kaauwai
Molokai

Negus Manna
Lāna'i

Brynn Foster
North Shore, O'ahu

Christian Zuckerman
Wai'anae, O'ahu

Ted Radovich
Waimanalo, O'ahu

Vincent Kimura
Honolulu, O'ahu

Ray Maki
Kauai

Aloha Chair Holt, Vice Chair Lamosao, and Members of the House Economic Development Committee,

The Hawaii Farmers Union United (HFUU) is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFUU supports HB520.**

The Access to Local Food Act will provide much needed support to small farmers in Hawaii and enable them to produce and sell value-added products. Cottage food operations are an important part of the local agricultural economy and this bill would ensure that they're appropriately regulated. It will also make sure that local farmers can bring their products to market and contribute to the state's economy.

With this bill, Hawaii will be able to take advantage of the opportunities that local agriculture offers and create value-added jobs on small farms. The Hawaii Farmers Union United therefore wholeheartedly supports this bill and encourages its passage.

Mahalo for the opportunity to testify.

Kaipo Kekona, President HFUU/HFUF