

JAN 23 2015

A BILL FOR AN ACT

RELATING TO FOOD.

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

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Cottage food operations; permitted use in residential areas. (a) For the purposes of zoning, a cottage food operation shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as a cottage food operation.

(b) For purposes of this section, "cottage food operation" has the same meaning as in section 328-A."

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

"PART . COTTAGE FOOD OPERATIONS



1 **§328-A Definitions.** For purposes of this part, the
2 following definitions shall apply:

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

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

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

17 "Cottage food products" means non-potentially hazardous
18 foods, including foods described in section 328-F, and prepared
19 for sale in the home kitchen or farm kitchen of a cottage food
20 operation.

21 "Department" means the department of health.



1 "Direct sale" means a transaction between a cottage food
2 operator and a consumer, where the consumer purchases the
3 cottage food product directly from the cottage food operation,
4 and not from a third party. The term includes but is not
5 limited to transactions at holiday bazaars, bake sales, food
6 swaps, or other temporary events; transactions by mail order;
7 transactions at farm stands and farmers' markets; or
8 transactions occurring in person at the site of the cottage food
9 operation.

10 "Farm kitchen" means a kitchen that is designed for
11 private, non-commercial use, is located in a building on a farm
12 and not in a private home, complies with all applicable building
13 and zoning laws and is used by a cottage food operator for the
14 production of cottage food products.

15 "Home kitchen" means a kitchen designed and intended for
16 use by the residents of a private home but also used by a
17 cottage food operator for the production of cottage food
18 products. A home kitchen may contain one or more stoves, ovens,
19 and other pieces of equipment designed for residential use,
20 though it may also contain one or more pieces of equipment



1 designed for commercial use if allowed by local building
2 ordinances.

3 "Indirect sale" means an interaction between a cottage food
4 operator, a third-party retailer, and a consumer, where the
5 consumer purchases cottage food products made by the cottage
6 food operation from a third party. The term includes but is not
7 limited to sales made to restaurants, retail shops, or retail
8 food establishments where food may be immediately consumed on
9 the premises.

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

12 "Registered or permitted area" means the portion of a
13 private home that contains the private home's home kitchen used
14 for the preparation, packaging, storage, or handling of cottage
15 food products and related ingredients or equipment, or both, and
16 additional rooms within the home that are used for storage.

17 **§328-B Requirements for cottage food operations.** (a) A
18 cottage food operation shall not be required to obtain a food
19 establishment permit from the department but shall instead be
20 required to obtain a cottage food operation permit as described
21 in subsection (b).



1 (b) A cottage food operation shall apply for a permit as a
2 class A cottage food operation, subject to the requirements
3 under section 328-C, as a class B cottage food operation,
4 subject to the requirements under section 328-D, or as a class C
5 cottage food operation, subject to the requirements under
6 section 328-E.

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

9 (1) No personal food preparation, packaging, or handling
10 may occur in the home or farm kitchen concurrently
11 with any other domestic activities, such as family
12 meal preparation, dishwashing, clothes washing or
13 ironing, kitchen cleaning, or guest entertainment;

14 (2) No infants or animals may be in the home or farm
15 kitchen during the preparation, packaging, or handling
16 of any cottage food products;

17 (3) Kitchen equipment and utensils used to produce cottage
18 food products shall be clean and maintained in a good
19 state of repair;

20 (4) All food contact surfaces, equipment, and utensils
21 used for the preparation, packaging, or handling of



S.B. NO. 379

any cottage food products shall be washed, rinsed, and
sanitized before each use;

(5) All food preparation and food and equipment storage
areas shall be maintained free of rodents and insects;

(6) Smoking shall be prohibited in the portion of a
private home or farm used for the preparation,
packaging, storage, or handling of homemade food
products and related ingredients or equipment, or
both, while food products are being prepared,
packaged, stored, or handled;

(7) Potable water shall be used for all washing of hands,
utensils, equipment, and surfaces in the home or farm
kitchen at all times; and

(8) Cottage food operators shall not dump cooking oil or
grease into the home or farm kitchen sink or the
toilet bowl, and shall not use hot water and soap to
wash grease down the drain. Instead, cottage food
operators shall place cooled cooking oil in sealed
non-recyclable containers and discard with regular
garbage, and shall use paper towels to wipe residual



grease or oil off of dishes, pots and pans prior to washing them.

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

§328-E Class C cottage food operations; requirements. (a)

A class C cottage food operation may engage in direct sales and indirect sales of all food products, including acidified and



1 fermented foods, from the cottage food operation, direct sales
2 venues, or a food establishment with a valid permit issued by
3 the department.

4 (b) The following requirements apply to class C cottage
5 food operations:

6 (1) A class C cottage food operation shall not be open for
7 business unless it obtains a permit from the
8 department to engage in the direct and indirect sales
9 of cottage food products and has been approved by the
10 department. The department shall setup a review
11 process, which may include a review with a food
12 processing authority and a special course as provided
13 in section 328-J(c). The review process shall verify
14 that the class C cottage food operation conforms to
15 this part and any rules adopted pursuant to this part;

16 (2) The department shall issue a permit after it has
17 determined that the proposed class C cottage food
18 operation and its method of operation conform to this
19 part; and



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

§328-F Approved cottage food products. (a) The

department shall adopt and post on its website a sample list of non-potentially hazardous foods and their variations that may be offered for sale by a cottage food operation.

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

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

(2) Dried fruit;

(3) Dried pasta;

(4) Dry baking mixes;

(5) Dry herbs, herb blends, and seasoning blends, including seasoning salt;

(6) Fruit pies;

(7) Granola, dry cereal, and trail mixes;

(8) Jams, jellies, chutneys, preserves, and fruit butter;



- 1 (9) Nut mixes and nut butters;
- 2 (10) Popcorn;
- 3 (11) Roasted coffee and dried tea;
- 4 (12) Vinegar and mustard;
- 5 (13) Waffle cones and pizzelles;
- 6 (14) Cotton candy;
- 7 (15) Candied apples;
- 8 (16) Candy such as brittle and toffee;
- 9 (17) Chocolate-covered nonperishable foods, such as nuts
- 10 and dried fruit;
- 11 (18) Confections such as salted caramel, fudge, marshmallow
- 12 bars, chocolate-covered marshmallow, nuts, and hard
- 13 candy, or any combination thereof;
- 14 (19) Flat icing, buttercream frosting, buttercream icing,
- 15 buttercream fondant, and gum paste that does not
- 16 contain eggs, cream, or cream cheese;
- 17 (20) Dried or dehydrated vegetables;
- 18 (21) Dried vegetarian-based soup mixes;
- 19 (22) Vegetable and potato chips;
- 20 (23) Ground chocolate;
- 21 (24) Shave ice;



1 (25) Doughnuts or andagi;

2 (26) Mochi;

3 (27) Fresh fruit juice made from fruits not including
4 cantaloupe, melon, or tomatoes;

5 (28) Poi; and

6 (29) Sauces, pickles, fermented foods such as sauerkraut
7 and kim chi, and other acidified foods that have an
8 equilibrium pH of 4.6 or less as verified and approved
9 through the process described in section 328-J.

10 (c) The department may add or delete food products to or
11 from the approved cottage food products list described in
12 subsection (b) based on current scientific knowledge related to
13 food safety. Notice of any change to the approved cottage food
14 products list shall be posted on the department's website. Any
15 change to the approved cottage food products list shall become
16 effective thirty days after the notice is posted. The notice
17 shall state the reason for the change, the authority for the
18 change, and the nature of the change. The notice shall allow at
19 least twenty days for comments to be submitted and shall
20 indicate the physical address or electronic mail address to
21 which comments are to be submitted and the deadline by which the



1 comments are required to be received by the department. The
2 department shall consider all comments submitted before the due
3 date. The department may withdraw the proposed change at any
4 time by notification on the department's website or through
5 notification by other electronic means. The approved cottage
6 food products list and any updates shall not be subject to the
7 requirements of chapter 91.

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

13 **§328-G Labeling requirements for cottage food operations.**

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

16 (1) The words "Made in a Home or Farm Kitchen that has not
17 been inspected by the Hawaii Department of Health" in
18 at least twelve-point type, displayed in a conspicuous
19 place on the principal display area of the packaging
20 or container;

21 (2) The common name of the cottage food product;



(3) The name and address of the cottage food operation that produced the cottage food product;

(4) The ingredients of the cottage food product, in descending order of predominance by weight;

(5) The net weight or net volume of the cottage food product if the product is priced according to its weight;

(6) The date of production of the product;

(7) Allergen information, if required, as specified in section 403 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 343); and

(8) Nutrition labeling, if required, as specified in title 21 Code of Federal Regulations part 101.

(b) Cottage food products identified and labeled pursuant to subsection (a) are acceptable cottage food products that may be sold by a class B or C cottage food operation in an indirect sale via a retail shop or retail food establishment.

§328-H Prohibitions. A cottage food operation shall not process low-acid canned foods or potentially hazardous foods; offer for sale adulterated or misbranded food; refuse an inspection or the taking of samples as authorized by section



1 328-I or by rule; produce or sell food items not appearing on
2 the approved cottage food products list unless they have prior
3 approval pursuant to section 328-F(d); or sell cottage food
4 products outside the State of Hawaii.

5 **§328-I Inspections; food sampling.** (a) The department
6 shall only conduct inspections of class A cottage food
7 operations in response to a complaint as described in subsection
8 (b). The department may require routine inspections of class B
9 and C cottage food operations as it deems necessary to protect
10 public health.

11 (b) If the department receives a consumer complaint about
12 a cottage food operation or cottage food product, the department
13 may access, for inspection purposes, the registered or permitted
14 area of a private home or farm where a cottage food operation is
15 located to determine if the cottage food product is misbranded
16 or adulterated or if the cottage food operation is in violation
17 of this part. If a cottage food operator wilfully denies access
18 to a department official, the cottage food operator's permit may
19 be automatically revoked. The department may adopt rules that
20 allow a cottage food operator to re-apply for a permit to
21 operate after its permit has been revoked, and such rules may



1 entail a follow-up inspection to ensure the cottage food
2 operation is in compliance with all health laws.

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

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

8 (e) The department may charge a reasonable permit fee for
9 class B and C cottage food operations which takes into account
10 costs of inspection and related administrative costs. In the
11 event of an inspection conducted in response to a complaint, the
12 department may seek recovery from a cottage food operation of an
13 amount not to exceed the department's reasonable costs of
14 inspecting the cottage food operation only if the cottage food
15 operation is found to be in violation of this part.

16 (f) The department shall adopt rules establishing
17 procedures for the inspection of cottage food operations and
18 standards for food sampling of cottage food products.

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



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

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

9 **§328-J Sauces, pickles, fermented and acidified foods.**

10 (a) Any cottage food operation seeking to produce any items
11 listed in section 328-F(b)(29) shall submit recipes for these
12 items to an acceptable process authority, as approved by the
13 department, for product testing and production process review
14 and recommendations.

15 (b) The department may publish a list of acceptable
16 process authorities for reviewing cottage food products
17 described in subsection (a). Process authorities may include
18 any qualified person who has expert knowledge acquired through
19 appropriate training and experience in the processing of
20 fermented and acidified foods, including but not limited to



1 nonprofit organizations, businesses, university departments or
2 extension agencies, and individuals.

3 (c) Cottage food operators producing acidified foods shall
4 complete a United States Food and Drug Administration approved
5 food processing course and comply with other United States Food
6 and Drug Administration acidified food regulations.

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

9 SECTION 3. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on January 1, 2016.

11

INTRODUCED BY:

Paul E. Bell
Joe D'Amico *Breene Hart*
Mike Gottard *John H.*
Will Zew *SP Levine*
Donna *A.C. Rich-Adams*
Donna *Donna*
Donna *Donna*



S.B. NO. 379

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.

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

