

JAN 21 2022

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# A BILL FOR AN ACT

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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 sold directly to consumers, or  
4 "cottage food", is a small but growing industry, and is  
5 preferred among many consumers who are mindful of responsible  
6 sourcing and healthy eating options and those who want to  
7 support the local communities and individuals producing the  
8 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 the department of health for  
16 cottage foods. Amending these laws 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 mainland brands,  
3 create employment opportunities, and 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 Access  
6 to Local Foods Act and allow cottage food operations to sell  
7 cottage food products, under certain conditions, upon receiving  
8 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 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 "Department" means the department of health.

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



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

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

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

(b) Cottage food operations that sell products using the preservation methods of:

(1) Jelly, jam, preserve, and conserve making;

(2) Acidifying low-acid products;

(3) Pickling;

(4) Fermenting; or

(5) Dehydrating;

shall submit proof of a valid Hawaii master food preserver certificate for each cottage food operator or shall submit a food sample of the product to be sold to consumers to a department-approved laboratory or food testing facility to have the food tested and the recipe approved for appropriate pH and water values for food safety. Cottage food operations that sell products made through the use of preservation methods that do not have proof of a valid Hawaii master food preserver



1 certificate may only sell products made from recipes that have  
2 been approved pursuant to this subsection and shall maintain  
3 proof that the recipe for the product being sold has been  
4 approved.

5 (c) Cottage food operations shall submit proof of a valid  
6 food handlers education certification for each cottage food  
7 operator.

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

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

12 **§328-C Cottage food operations; requirements; permit; fee.**

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

17 (b) An application fee in the amount of \$25 shall be  
18 collected by the department with each permit application under  
19 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 Internet, and subject to the conditions provided in section 328-  
10 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; 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





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

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

(b) Cottage food operations may sell cottage food products and eggs to the maximum extent permitted by federal law.

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

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

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

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

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



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

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

(A) The cottage food operator;

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

(C) Mail.

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

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

(e) The cottage food product may contain meat, meat byproduct, meat food product, seafood, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the Federal Meat Inspection Act and Federal



1 Poultry Products Inspection Act; provided that the production  
2 and sale of the product:

- 3 (1) Qualifies for an exemption pursuant to C.F.R. §  
4 303.1(d) or 9 C.F.R. § 381.10(c); and  
5 (2) Complies with other applicable federal requirements.

6 **§328-G Cottage food operations; investigation.** Nothing in  
7 this part shall be construed to impede 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;



(4) Exempt producers or sellers of cottage food products from any applicable tax laws;

(5) Exempt producers or sellers of cottage food products from any applicable fishing or hunting laws;

(6) Exempt cottage food operations, cottage food operators, sellers, or cottage food products from any applicable federal law, including any federal law prohibiting the sale of certain food products in interstate commerce; or

(7) Exempt cottage food operators or sellers of homemade food products or cottage food products from any applicable law of another state.

**§328-J Limitation of state liability.** The State and counties shall not be liable for claims associated with cottage food products distributed, delivered, or sold by cottage food operations, cottage food operators, or sellers, except for instances of gross negligence and intentional misconduct by the State or counties.

**§328-K Preemption.** This part shall preempt county and 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 upon its approval.

8

INTRODUCED BY:



# S.B. NO. 2000

**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.*

