

JAN 17 2024

A BILL FOR AN ACT

RELATING TO VALUE-ADDED PRODUCTION.

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. The legislature recognizes that what the
4 department of health calls "homemade food" is what most states
5 define as "cottage food". Cottage food, or homemade food that
6 is sold directly to consumers, is a small but growing industry,
7 and is preferred among many consumers who are mindful of
8 responsible sourcing and healthy eating options and those who
9 want to support the local communities and individuals producing
10 the foods they consume.

11 The legislature further finds that there is great interest
12 in small-scale homemade food operations in the State, but the
13 existing regulatory framework creates several challenges for
14 entrepreneurs, including those in rural areas who do not have
15 access to commercial or certified kitchens or those who no
16 longer have access to commercial or certified kitchens. In
17 fact, Hawai'i is one of only a few remaining states that does not



1 provide certain exemptions from its department of health for
2 homemade food products. The legislature further recognizes that
3 expanding access to local homemade food products should require
4 the same food safety training and certification as that required
5 of other food establishments in the State.

6 The legislature further believes that permitting homemade
7 food operations in the State would grow small businesses; foster
8 innovation and economic growth; offer locally made alternatives
9 to imported brands; create local employment opportunities; keep
10 more money within the local economy; and increase tax revenues
11 to support the growing needs of the State, including ongoing
12 wildfire relief efforts. Notably, the legislature also believes
13 that implementing exemptions for small-scale homemade food
14 operations will provide a valuable opportunity for local
15 entrepreneurs to bring their homemade food products to market
16 and can serve as an essential lifeline for producers impacted by
17 the recent Maui wildfires.

18 Accordingly, the purpose of this Act is to establish the
19 Access to Local Value-Added Products Act and allow homemade food
20 operations to sell homemade food products, under certain
21 conditions.



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

4 "PART . ACCESS TO LOCAL VALUE-ADDED PRODUCTS ACT: HOMEMADE
5 FOOD OPERATIONS

6 §328-A Definitions. For purposes of this part, the
7 following definitions shall apply:

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

11 "Department" means the department of health.

12 "Farm kitchen" means a kitchen that is designed for private
13 use, is located in a building on a farm and not in a private
14 home, and complies with all applicable building and zoning laws.

15 "Home kitchen" means a kitchen designed and intended for
16 use by the residents of a private home. A home kitchen may
17 contain one or more stoves, ovens, and other pieces of equipment
18 designed for residential use as allowed by county building
19 ordinances. A home kitchen may also contain one or more pieces
20 of equipment designed for commercial use if allowed by county
21 building ordinances.



1 "Homemade food operation" means an enterprise that is
2 operated by a homemade food operator and produces homemade food
3 products only in the home kitchen of the homemade food
4 operator's private home or in a farm kitchen pursuant to this
5 part.

6 "Homemade food operator" means a person who operates a
7 homemade food operation in the person's private home kitchen or
8 farm kitchen and who is the owner of the homemade food
9 operation.

10 "Homemade food product" means a food prepared for sale in
11 the private home kitchen or farm kitchen of a homemade food
12 operation.

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

16 "Prepared" means a homemade food product that has been
17 acidified, baked, cooked, cut, dehydrated, dried, fermented,
18 grown, mixed, pickled, preserved, raised, or otherwise
19 processed.

20 "Private home" means a dwelling, including an apartment or
21 other leased space where individuals reside, that complies with



1 all applicable county ordinances if used in the production of
2 homemade food products.

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

6 **§328-B Requirements for homemade food operations; rules.**

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

9 (b) A homemade food operation shall submit proof of a
10 valid food handlers education certificate, issued by the
11 department or other food handler training certificate program
12 accredited by the American National Standards Institute, for
13 each homemade food operator.

14 (c) A homemade food operation that sell products using the
15 preservation methods of:

- 16 (1) Freeze drying;
- 17 (2) Jelly, jam, preserve, and conserve making;
- 18 (3) Acidifying and pasteurizing low-acid products;
- 19 (4) Pasteurized pickling;
- 20 (5) Pasteurized fermenting; or
- 21 (6) Dehydrating;



1 shall submit proof of a valid certificate from Hawaii Master
2 Food Preservers, Inc. or a comparable department-approved
3 certificate for each homemade food operator in addition to the
4 requirements of subsection (b).

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

17 (1) Only sell products made from recipes that have been
18 approved by:

19 (A) The department pursuant to this subsection;

20 (B) Organizations and institutions such as the
21 National Center for Home Food Preservation;



1 Hawaii Master Food Preservers, Inc.; or
2 universities with participating master food
3 preservers; or

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

8 (2) Maintain proof that the recipe for the product being
9 sold comes from an approved source.

10 (e) A homemade food product that uses the preservation
11 methods in subsection (c) shall be classified as a non-
12 potentially hazardous homemade food product by the department;
13 provided that the requirements of subsection (d) are met.

14 (f) The department shall post the homemade food operations
15 requirements of this part on its website.

16 (g) The department may adopt rules on food safety
17 training, food testing, and permitting pursuant to chapter 91 to
18 carry out the purposes of this part.

19 **§328-C Homemade food operations; requirements; permit;**
20 **fee.** (a) Each homemade food operation shall specify in the
21 permit application the names of each of its homemade food



1 operators and shall submit proof of applicable certificates
2 pursuant to section 328-B.

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

6 (c) A homemade food operation shall not engage in business
7 unless the homemade food operation has registered with the
8 department and been issued a permit pursuant to this section.

9 (d) The department shall issue a permit to a homemade food
10 operation that meets the requirements of this section.

11 (e) The homemade food permit shall authorize the homemade
12 food operation to engage in direct and remote sale of their
13 homemade food products at multiple locations, including by
14 telephone or the Internet, subject to the conditions provided in
15 section 328-F.

16 (f) The homemade food permit shall be valid for one year
17 after the date of issuance and shall authorize the homemade food
18 operator to sell homemade food products for a three hundred
19 sixty-five-day period; provided that, if the homemade food
20 operator's permit remains valid and unencumbered within the



1 first year of issuance, subsequently renewed permits shall
2 remain valid for two years.

3 (g) Any food permit issued to a homemade food operation
4 prior to July 1, 2024, shall remain in full force and effect
5 until the department issues the homemade food operation a new
6 permit pursuant to this section.

7 **§328-D Homemade food products; labeling requirements.** (a)

8 Any homemade food product produced by a homemade food operation
9 shall be labeled as a homemade food product. The label shall be
10 displayed in a conspicuous place pursuant to subsection (b), and
11 shall contain, in clearly displayed and legible type, the
12 following:

- 13 (1) The words "Made in a Home or Farm Kitchen not
14 routinely inspected by the Department of Health";
- 15 (2) Common name of the product or other descriptive name;
- 16 (3) Allergen identification information as specified under
17 section 403 of the Federal Food, Drug, and Cosmetic
18 Act, title 21 United States Code section 343;
- 19 (4) Ingredients listed in descending order of
20 predominance; and



1 (5) Name and contact information of the homemade food
2 product operator.

3 The seller of any homemade food product shall have the
4 information required by this section readily available upon
5 request by a consumer.

6 (b) The information required by subsection (a) shall be
7 provided:

8 (1) On a label affixed to the package if the homemade food
9 product is packaged;

10 (2) On a label affixed to the container if the homemade
11 food product is offered for sale from a bulk
12 container;

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

16 (4) On a webpage on which the homemade food product is
17 offered for sale if the homemade food product is
18 offered for sale on the Internet.

19 **§328-E Homemade food products; exemption; conditions of**
20 **sale and delivery; allowances.** (a) The production and sale of
21 homemade food products regulated under this part shall be exempt



1 from all other licensing, permitting, inspection, packaging, and
2 labeling laws administered by the department; provided that the
3 conditions of subsection (b) and all labeling requirements of
4 section 328-D are satisfied.

5 (b) Non-potentially hazardous homemade food products
6 shall:

7 (1) Be sold by:

8 (A) The homemade food operator for direct sale to the
9 consumer, whether in person or remotely,
10 including by telephone or the Internet; or

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

14 (2) Be delivered to the consumer by:

15 (A) The homemade food operator;

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

19 (C) Mail; or

20 (D) Shipping.



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

10 (c) A homemade food operator may sell a potentially
11 hazardous homemade food product to a consumer either in-person
12 or remotely, including by telephone or the Internet; provided
13 that only the homemade food operator shall deliver the
14 potentially hazardous homemade food product to the consumer.

15 (d) Homemade food operations shall be allowed to the
16 maximum extent permitted by federal law. The following food
17 shall be allowed:

18 (1) Poultry, poultry byproducts, or poultry food products;
19 provided that:



1 (A) The poultry had been raised by the homemade food
2 operator pursuant to the exemption under title 9
3 Code of Federal Regulations section 381.10(c); or

4 (B) The poultry is from an inspected source, such as
5 a retail store or similar-retail-type
6 establishment exempted under title 9 Code of
7 Federal Regulations section 381.10(d); and

8 (2) Seafood.

9 **§328-F Homemade food operations; investigation.** Nothing
10 in this part shall be construed to limit the department in any
11 investigation of a reported foodborne illness.

12 **§328-G Homemade food operations; consultation.** Nothing in
13 this part shall preclude an agency from providing assistance,
14 consultation, or inspection at the request of a homemade food
15 operator or homemade food operation.

16 **§328-H Homemade food operations; construction.** This part
17 shall not be construed to:

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

20 (2) Preclude the sale of live animals or portions of live
21 animals before slaughter for future delivery;



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

16 **§328-I Limitation of liability.** The State and counties
17 shall not be liable for claims associated with homemade food
18 products distributed, delivered, or sold by homemade food
19 operations, homemade food operators, or sellers, except for
20 instances of gross negligence and intentional misconduct by the
21 State or counties.



1 **§328-J Preemption.** This part shall preempt county and
2 other political jurisdictions or administrative rules
3 prohibiting and regulating the production and sale of homemade
4 food products unless authorized by this part."

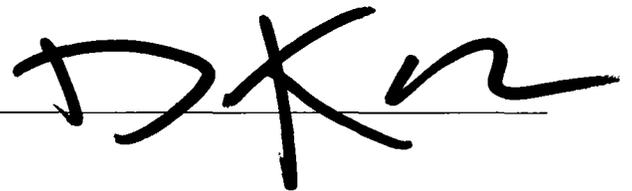
5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. In codifying the new sections added by
9 section 2 of this Act, the revisor of statutes shall substitute
10 appropriate section numbers for the letters used in designating
11 the new sections in this Act.

12 SECTION 5. This Act shall take effect on July 1, 2024.

13

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'DKR', is written over a horizontal line.

S.B. NO. 2106

Report Title:

DOH; Economic Development; Access to Local Value-Added Products Act; Homemade Food Operations; Permit; Rules

Description:

Establishes the Access to Local Value-Added Products Act to allow homemade food operations to sell homemade food products, under certain conditions, upon registering with and 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.

