
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF HEALTH'S AUTHORITY TO REGULATE
FOOD, DRUGS, AND COSMETICS.

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

1 PART I

2 SECTION 1. The purpose of this Act is to relocate from
3 chapter 321, Hawaii Revised Statutes, the department of health's
4 authority to regulate the manufacture, sale, holding for sale,
5 and distribution of food, and transfer this same authority to
6 chapter 328, Hawaii Revised Statutes (chapter 328), where
7 duplicative authority currently resides, so that all relevant
8 authority will be consolidated into one chapter. This will
9 improve the safety of food, drugs, and cosmetics, and facilitate
10 the development of food and related goods made and sold in the
11 State by clarifying the department's legal authority pertaining
12 to the regulation of food, drugs, and cosmetics as it relates to
13 food safety and public health.

14 To this end, this Act makes conforming amendments to
15 chapter 328, including the addition of authority respecting the
16 collection and disposition of fees and penalties and the



1 adoption of rules related to the issuance of permits and
2 variances. The consolidation of the department's regulatory
3 authority into one chapter will support the efficient
4 administration of the department's retail-focused program, the
5 food safety branch, and the regulation by the department of
6 higher volume food manufacturing and wholesale distribution by
7 its food and drug branch, both of which will be governed by
8 chapter 328 and the rules adopted pursuant thereto.

9 PART II

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 . FOOD SAFETY CONSULTATIVE AND EDUCATION PROGRAM

14 §328-A Food safety consultative and education program.

15 (a) There is established the food safety consultative and
16 education program within the department. The department may
17 place this program within any appropriate division.

18 (b) The program shall be managed and staffed by persons
19 who are trained and experienced in public health aspects of
20 food, including food science, foodborne disease epidemiology,
21 food microbiology, and food sanitation.



1 (c) Generic food safety information gained from studies
2 conducted as part of the program may be shared with food
3 handlers in certification workshops and food safety classes.

4 **§328-B Food safety control system.** The department may
5 conduct studies using the hazard analysis and critical control
6 points system after foodborne disease outbreak investigations
7 are completed by the department or when requested by food
8 service operators.

9 **§328-C Public information monitoring system.** Within the
10 food safety consultative and education program under section
11 328-A, the department shall investigate food handling practices
12 that appear to represent poor food safety techniques, and shall
13 develop ways in which the public can gain information on food
14 safety and can report practices that appear to represent poor
15 food safety techniques."

16 SECTION 3. Chapter 328, Hawaii Revised Statutes, is
17 amended by adding four new sections to part I to be
18 appropriately designated and to read as follows:

19 **"§328-D Producers of hand-pounded poi; exemption. A**
20 **producer of hand-pounded poi shall not be required to process**



1 poi in a certified food-processing establishment or be required
2 to obtain a permit from the department, if the producer:

- 3 (1) Sells hand-pounded poi directly to consumers;
- 4 (2) Prepares hand-pounded poi adjacent to permanent or
5 temporary hand-washing facilities; and
- 6 (3) Complies with rules adopted by the department to
7 protect the health and safety of the public.

8 The department shall adopt rules pursuant to chapter 91 to
9 effectuate this section.

10 **§328-E Agricultural processing facilities; permits;**
 11 **priority.** (a) Any agency subject to this chapter or this title
 12 that issues permits shall establish and implement a procedure
 13 for the priority processing of permit applications and renewals,
 14 at no additional cost to the applicant, for agricultural
 15 processing facilities that process crops or livestock from an
 16 agribusiness; provided that the majority of the lands held,
 17 owned, or used by the agribusiness shall be land designated as
 18 important agricultural lands pursuant to chapter 205, part III,
 19 excluding lands held, owned, or used by the agribusiness in a
 20 conservation district.



1 Any priority permit processing procedure established
2 pursuant to this section shall not provide or imply that any
3 permit application filed under the priority processing procedure
4 shall be automatically approved.

5 (b) As used in this section, "agribusiness" means a
6 business primarily engaged in the care and production of
7 livestock, livestock products, poultry, poultry products,
8 apiary, horticultural or floricultural products, the planting,
9 cultivating, and harvesting of crops or trees, or the farming or
10 ranching of any plant or animal species in a controlled salt,
11 brackish, or fresh water environment.

12 **§328-F Food safety and environmental health special fund.**

13 (a) There is established within the department the food safety
14 and environmental health special fund, into which shall be
15 deposited:

16 (1) All moneys collected from fees for permits, licenses,
17 inspections, various certificates, variances,
18 investigations, and reviews, pursuant to this chapter;

19 and

20 (2) All moneys collected from fees for permits, licenses,
21 inspections, various certificates, variances,



1 investigations, and reviews pursuant to sections 321-
2 11.5 and 321-15.

3 (b) Moneys in the special fund shall be expended by the
4 department to partially fund the operating costs of program
5 activities and functions authorized pursuant to this chapter to
6 enhance the capacity of food safety and environmental health
7 programs to:

8 (1) Improve public outreach efforts and consultations to
9 regulated businesses and industries;

10 (2) Educate the public, staff, and regulated businesses
11 and industries;

12 (3) Plan for future growth and expansion to meet emerging
13 needs;

14 (4) Provide training opportunities to ensure the
15 maintenance of professional competence among food
16 safety and environmental health staff and
17 administrators; and

18 (5) Conduct program activities and functions of the food
19 safety, food and drug, and environmental health
20 programs, including permit issuance, inspections, and
21 enforcement and the hiring of additional inspectors;



1 provided that for these programs, no more than
2 \$140,000 of the special fund may be used during any
3 fiscal year for fund administration, including the
4 hiring of no more than two full-time equivalent
5 personnel, and the purchase of office and electronic
6 equipment.

7 (c) Any amount in the special fund in excess of \$1,500,000
8 on June 30 of each year shall be deposited into the general
9 fund.

10 (d) The department shall submit a report to the
11 legislature no later than twenty days prior to the convening of
12 each regular session concerning the status of the special fund,
13 including:

14 (1) The amount of moneys taken in by and expended from the
15 special fund; and

16 (2) The sources of receipts and uses of expenditures.

17 **§328-G Audit of food safety and food and drug programs.**

18 The department shall perform annual audits of the food safety
19 and food and drug programs to be completed by November 30 of
20 each year, including an audit of:

21 (1) Fees collected;



- 1 (2) The number and results of inspections;
2 (3) The number of training seminars held; and
3 (4) The cost of training personnel in the food safety and
4 food and drug programs."

5 SECTION 4. Section 321-11, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§321-11 Subjects of health rules, generally.** The
8 department of health, pursuant to chapter 91, may adopt rules
9 that it deems necessary for the public health and safety
10 respecting:

11 (1) Nuisances, foul or noxious odors, gases, vapors,
12 waters in which mosquitoes breed or may breed, sources
13 of filth, and causes of sickness or disease, within
14 the respective districts of the State, and on board
15 any vessel;

16 ~~[-(2) Adulteration and misbranding of food or drugs;~~
17 ~~-(3)]~~ (2) Location, air space, ventilation, sanitation,
18 drainage, sewage disposal, and other health conditions
19 of buildings, courts, construction projects,
20 excavations, pools, watercourses, areas, and alleys.

21 For purposes of this paragraph, "pool" means a



1 watertight artificial structure containing a body of
2 water that does not exchange water with any other body
3 of water, either naturally or mechanically, and is
4 used for swimming, diving, recreational bathing, or
5 therapy by humans;

6 [~~+4~~] (3) Privy vaults and cesspools;

7 [~~+5~~] (4) Fish and fishing;

8 [~~+6~~] (5) Interments and dead bodies;

9 [~~+7~~] (6) Disinterments of dead human bodies, including the
10 exposing, disturbing, or removing of these bodies from
11 their place of burial, or the opening, removing, or
12 disturbing after due interment of any receptacle,
13 coffin, or container holding human remains or a dead
14 human body or a part thereof and the issuance and
15 terms of permits for the aforesaid disinterments of
16 dead human bodies;

17 [~~+8~~] (7) Cemeteries and burying grounds;

18 [~~+9~~] (8) Laundries, and the laundering, sanitation, and
19 sterilization of articles including linen and uniforms
20 used by or in the following businesses and
21 professions: barber shops, manicure shops, beauty



1 parlors, electrology shops, restaurants, soda
2 fountains, hotels, rooming and boarding houses,
3 bakeries, butcher shops, public bathhouses, midwives,
4 masseurs, and others in similar calling, public or
5 private hospitals, and canneries and bottling works
6 where foods or beverages are canned or bottled for
7 public consumption or sale; provided that nothing in
8 this chapter shall be construed as authorizing the
9 prohibiting of laundering, sanitation, and
10 sterilization by those conducting any of these
11 businesses or professions where the laundering or
12 sterilization is done in an efficient and sanitary
13 manner;

14 [~~(10)~~] (9) Hospitals, freestanding surgical outpatient
15 facilities, skilled nursing facilities, intermediate
16 care facilities, adult residential care homes, adult
17 foster homes, assisted living facilities, special
18 treatment facilities and programs, home health
19 agencies, home care agencies, hospices, freestanding
20 birthing facilities, adult day health centers,
21 independent group residences, and therapeutic living



1 programs, but excluding youth shelter facilities
2 unless clinical treatment of mental, emotional, or
3 physical disease or handicap is a part of the routine
4 program or constitutes the main purpose of the
5 facility, as defined in section 346-16 under "child
6 caring institution". For the purpose of this
7 paragraph, "adult foster home" has the same meaning as
8 provided in section 321-11.2;

9 ~~[(11)]~~ (10) Hotels, rooming houses, lodging houses,
10 apartment houses, tenements, and residences for
11 persons with developmental disabilities including
12 those built under federal funding;

13 ~~[(12)]~~ (11) Laboratories;

14 ~~[(13)]~~ (12) Any place or building where noisome or noxious
15 trades or manufacturing is carried on, or intended to
16 be carried on;

17 ~~[(14)]~~ Milk;

18 ~~[(15)]~~ (13) Poisons and hazardous substances, the latter
19 term including any substance or mixture of substances
20 that:

21 (A) Is corrosive;



- 1 (B) Is an irritant;
- 2 (C) Is a strong sensitizer;
- 3 (D) Is inflammable; or
- 4 (E) Generates pressure through decomposition, heat,
- 5 or other means,
- 6 if the substance or mixture of substances may cause
- 7 substantial personal injury or substantial illness
- 8 during or as a proximate result of any customary or
- 9 reasonably foreseeable handling or use, including
- 10 reasonably foreseeable ingestion by children;
- 11 [~~(16)~~] (14) Pig and duck ranches;
- 12 [~~(17)~~] (15) Places of business, industry, employment, and
- 13 commerce, and the processes, materials, tools,
- 14 machinery, and methods of work done therein; and
- 15 places of public gathering, recreation, or
- 16 entertainment;
- 17 [~~(18)~~] ~~Any restaurant, theater, market, stand, shop, store,~~
- 18 ~~factory, building, wagon, vehicle, or place where any~~
- 19 ~~food, drug, or cosmetic is manufactured, compounded,~~
- 20 ~~processed, extracted, prepared, stored, distributed,~~



1 ~~sold, offered for sale, or offered for human~~
2 ~~consumption or use;~~

3 ~~(19) Foods, drugs, and cosmetics, and the manufacture,~~
4 ~~compounding, processing, extracting, preparing,~~
5 ~~storing, selling, and offering for sale, consumption,~~
6 ~~or use of any food, drug, or cosmetic;~~

7 ~~(20)]~~ (16) Device as defined in section 328-1;

8 ~~(21)]~~ (17) Sources of ionizing radiation;

9 ~~(22)]~~ (18) Medical examination, vaccination, revaccination,
10 and immunization of school children. No child shall
11 be subjected to medical examination, vaccination,
12 revaccination, or immunization, whose parent or
13 guardian objects in writing thereto on grounds that
14 the requirements are not in accordance with the
15 religious tenets of an established church of which the
16 parent or guardian is a member or adherent, but no
17 objection shall be recognized when, in the opinion of
18 the department, there is danger of an epidemic from
19 any communicable disease;

20 ~~(23)]~~ (19) Disinsectization of aircraft entering or within
21 the State as may be necessary to prevent the



1 introduction, transmission, or spread of disease or
2 the introduction or spread of any insect or other
3 vector of significance to health;

4 ~~[(24)]~~ (20) Fumigation, including the process by which
5 substances emit or liberate gases, fumes, or vapors
6 that may be used for the destruction or control of
7 insects, vermin, rodents, or other pests, which, in
8 the opinion of the department, may be lethal,
9 poisonous, noxious, or dangerous to human life;

10 ~~[(25)]~~ (21) Ambulances and ambulance equipment;

11 ~~[(26)]~~ (22) Development, review, approval, or disapproval of
12 management plans submitted pursuant to the Asbestos
13 Hazard Emergency Response Act of 1986, Public Law
14 99-519; and

15 ~~[(27)]~~ (23) Development, review, approval, or disapproval of
16 an accreditation program for specially trained persons
17 pursuant to the Residential Lead-Based Paint Hazard
18 Reduction Act of 1992, Public Law 102-550.

19 The department of health may require any certificates,
20 permits, or licenses that it may deem necessary to adequately



1 regulate the conditions or businesses referred to in this
2 section."

3 SECTION 5. Section 328-8, Hawaii Revised Statutes, is
4 amended by amending subsections (b) and (c) to read as follows:

5 "(b) [~~Temporary permits now or hereafter granted for~~
6 ~~interstate shipment of experimental packs of food varying from~~
7 ~~the requirements of federal definitions and standards of~~
8 ~~identity are automatically effective in this State under the~~
9 ~~conditions provided in such permits. In addition, the director~~
10 ~~may issue additional permits where they are necessary to the~~
11 ~~completion or conclusiveness of an otherwise adequate~~
12 ~~investigation and where the interests of consumers are~~
13 ~~safeguarded. Such] No person shall manufacture, produce,
14 process, package, offer, distribute, or hold for sale any food
15 without a permit or variance issued by the department, which
16 shall remain valid for a period of one year unless suspended by
17 the department, after which the permit or variance shall expire
18 unless renewed, except that no permit or variance shall be
19 required for a producer of hand-pounded poi who sells directly
20 to consumers, producers of homemade food products, or producers
21 of non-time/temperature control for safety foods, as those~~



1 producers may be defined by department rules. The permits and
2 variances shall be subject to [such] terms and conditions as the
3 director may prescribe.

4 (c) The director may establish rules as necessary for the
5 enforcement of this part~~[-]~~, including but not limited to the
6 establishment and collection of fees for permits and variances.
7 The rules shall be adopted pursuant to chapter 91; ~~[except]~~
8 provided that the director may, without regard to chapter 91,
9 establish tolerance levels and regulatory or action levels by
10 reference to the provisions of the regulations or guidelines of
11 the United States established in title 40 Code of Federal
12 Regulations ~~[Parts]~~ parts 180 and 185 or the United States Food
13 and Drug Administration Compliance Policy Guides as the
14 regulations or guidelines become effective at any time or from
15 time to time."

16 SECTION 6. Section 328-21, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§328-21 Rules ~~[and regulations]~~, hearings.** (a) Subject
19 to chapter 91 the director may adopt and enforce ~~[such]~~ rules
20 ~~[or regulations]~~ as the director may deem necessary for the
21 efficient enforcement of this part. The director may make the



1 rules [~~or regulations~~] prescribed under this part conform
2 insofar as practicable with those promulgated under the Federal
3 Act.

4 (b) The subjects of the rules may include, generally:

5 (1) Adulteration and misbranding of food or drugs;

6 (2) Foods, drugs, and cosmetics, and the manufacture,
7 compounding, processing, extracting, preparing,
8 storing, selling, and offering for sale, consumption,
9 or use of any food, drug, or cosmetic;

10 (3) Any restaurant, theater, market, stand, shop, store,
11 factory, building, wagon, vehicle, or place where any
12 food, drug, or cosmetic is manufactured, compounded,
13 processed, extracted, prepared, stored, distributed,
14 sold, offered for sale, or offered for human
15 consumption or use;

16 (4) Milk; and

17 (5) Shellfish.

18 [~~(b)~~] (c) Hearings authorized or required by this part
19 shall be conducted by the director or any officer, agent, or
20 employee designated by the director for that purpose and shall
21 be subject to chapter 91."



1 PART III

2 SECTION 7. Section 237D-3, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§237D-3 Exemptions.** This chapter shall not apply to:

5 (1) Health care facilities including all such facilities
6 enumerated in section [~~321-11(10)~~] 321-11(9);

7 (2) School dormitories of a public or private educational
8 institution providing education in grades kindergarten
9 through twelve, or of any institution of higher
10 education;

11 (3) Lodging provided by nonprofit corporations or
12 associations for religious, charitable, or educational
13 purposes; provided that this exemption shall apply
14 only to the activities of the religious, charitable,
15 or educational corporation or association as such and
16 not to any rental or gross rental the primary purpose
17 of which is to produce income even if the income is
18 used for or in furtherance of the exempt activities of
19 such religious, charitable, or educational corporation
20 or association;



- 1 (4) Living accommodations for persons in the military on
2 permanent duty assignment to Hawaii, including the
3 furnishing of transient accommodations to those
4 military personnel who receive temporary lodging
5 allowances while seeking accommodations in Hawaii or
6 while awaiting reassignment to new duty stations
7 outside the State;
- 8 (5) Low-income renters receiving rental subsistence from
9 the state or federal governments and whose rental
10 periods are for durations shorter than sixty days;
- 11 (6) Operators of transient accommodations who furnish
12 accommodations to full-time students enrolled in an
13 institution offering post-secondary education. The
14 director of taxation shall determine what shall be
15 deemed acceptable proof of full-time enrollment. This
16 exemption shall also apply to operators who furnish
17 transient accommodations to students during summer
18 employment;
- 19 (7) Accommodations furnished without charge such as, but
20 not limited to, complimentary accommodations,
21 accommodations furnished to contract personnel such as



1 physicians, golf or tennis professionals, swimming and
 2 dancing instructors, and other personnel to whom no
 3 salary is paid or to employees who receive room and
 4 board as part of their salary or compensation; and
 5 (8) Accommodations furnished to foreign diplomats and
 6 consular officials who are holding cards issued or
 7 authorized by the United States Department of State
 8 granting them an exemption from state taxes."

9 SECTION 8. Section 321-11.5, Hawaii Revised Statutes, is
 10 amended by amending subsection (c) to read as follows:

11 "(c) Other than the fees collected under subsection (b),
 12 all other fees collected under this section and section 321-15
 13 shall be deposited into the [~~sanitation and environmental health~~
 14 ~~special fund established under section 321-27.~~] food safety and
 15 environmental health special fund under section 328-F."

16 SECTION 9. Section 321-11.9, Hawaii Revised Statutes, is
 17 amended to read as follows:

18 "[~~§~~321-11.9[~~§~~] **Dental health facilities; health care**
 19 **facilities; use of latex gloves.** All personnel working in
 20 dental health facilities or health care facilities, including
 21 all facilities listed in section [~~321-11(10),~~] 321-11(9), shall



1 be prohibited from using latex gloves for patient care where the
2 patient is unconscious or otherwise physically unable to
3 communicate. Where the patient is conscious and physically able
4 to communicate, latex gloves may be used if the patient
5 affirmatively states that the patient is not allergic to latex."

6 SECTION 10. Section 321-15, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) Every person holding a license to practice any
9 occupation specified in section 321-13(a)(1) shall reregister
10 with the department of health every other year in accordance
11 with the rules of the department, before February 1 except where
12 superseded by federal law, and shall pay a reregistration fee.
13 The failure, neglect, or refusal of any person holding a license
14 to reregister or pay the reregistration fee, after thirty days
15 of delinquency, shall constitute a forfeiture of the person's
16 license; provided that the license shall be restored upon
17 written application therefor together with a payment of all
18 delinquent fees and an additional late reregistration fee that
19 may be established by the director of health. All fees
20 collected pursuant to this section shall be deposited into the
21 [~~sanitation and environmental health special fund established~~



1 ~~under section 321-27.]~~ food safety and environmental health
2 special fund established under section 328-F."

3 SECTION 11. Section 321-33, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) For the purpose of this section:

6 "Hospital" includes:

7 (1) An institution with an organized medical staff,
8 regulated under section [~~321-11(10),~~] 321-11(9), that
9 admits patients for inpatient care, diagnosis,
10 observation, and treatment; and

11 (2) A health facility under chapter 323F.

12 "Medical care" means every type of care, treatment,
13 surgery, hospitalization, attendance, service, and supplies as
14 the nature of the injury or condition requires.

15 "Parent" includes a biological mother or father, foster
16 mother or foster father, adoptive mother or adoptive father, and
17 stepmother or stepfather.

18 "Shaken baby syndrome" means an injury caused by the
19 vigorous shaking of an infant or young child that may result in
20 injuries such as subdural [~~+~~]hematoma[~~+~~], head injury,
21 irreversible brain damage, blindness, retinal hemorrhage, eye



1 damage, cerebral palsy, hearing loss, spinal cord injury,
2 paralysis, seizures, learning disability, central nervous system
3 injury, rib fracture, or death."

4 SECTION 12. Section 321-511, Hawaii Revised Statutes, is
5 amended by amending the definition of "hospital" to read as
6 follows:

7 "Hospital" means any institution with an organized medical
8 staff, regulated under sections [~~321-11(10)~~] 321-11(9) and
9 321-14.5, that admits patients for inpatient care, diagnosis,
10 observation, and treatment."

11 SECTION 13. Section 323D-54, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§323D-54 Exemptions from certificate of need**
14 **requirements.** Nothing in this part or rules with respect to the
15 requirement for certificates of need applies to:

- 16 (1) Offices of physicians, dentists, or other
17 practitioners of the healing arts in private practice
18 as distinguished from organized ambulatory health care
19 facilities, except in any case of purchase or
20 acquisition of equipment attendant to the delivery of
21 health care service and the instruction or supervision



- 1 for any private office or clinic involving a total
2 expenditure in excess of the expenditure minimum;
- 3 (2) Laboratories, as defined in section [~~321-11(12)~~,]
4 321-11(11), except in any case of purchase or
5 acquisition of equipment attendant to the delivery of
6 health care service and the instruction or supervision
7 for any laboratory involving a total expenditure in
8 excess of the expenditure minimum;
- 9 (3) Dispensaries and first aid stations located within
10 business or industrial establishments and maintained
11 solely for the use of employees; provided [~~such~~] that
12 the facilities do not regularly provide inpatient or
13 resident beds for patients or employees on a daily
14 twenty-four-hour basis;
- 15 (4) Dispensaries or infirmaries in correctional or
16 educational facilities;
- 17 (5) Dwelling establishments, such as hotels, motels, and
18 rooming or boarding houses that do not regularly
19 provide health care facilities or health care
20 services;



- 1 (6) Any home or institution conducted only for those who,
2 pursuant to the teachings, faith, or belief of any
3 group, depend for healing upon prayer or other
4 spiritual means;
- 5 (7) Dental clinics;
- 6 (8) Nonpatient areas of care facilities, such as parking
7 garages and administrative offices;
- 8 (9) Bed changes that involve ten per cent or ten beds of
9 existing licensed bed types, whichever is less, of a
10 facility's total existing licensed beds within a two-
11 year period;
- 12 (10) Projects that are wholly dedicated to meeting the
13 State's obligations under court orders, including
14 consent decrees, that have already determined that
15 need for the projects exists;
- 16 (11) Replacement of existing equipment with its modern-day
17 equivalent;
- 18 (12) Primary care clinics under the expenditure thresholds
19 referenced in section 323D-2;
- 20 (13) Equipment and services related to that equipment, that
21 are primarily invented and used for research purposes



1 as opposed to usual and customary diagnostic and
2 therapeutic care;

3 (14) Capital expenditures that are required:

4 (A) To eliminate or prevent imminent safety hazards
5 as defined by federal, state, or county fire,
6 building, or life safety codes or regulations;

7 (B) To comply with state licensure standards; or

8 (C) To comply with accreditation standards,
9 compliance with which is required to receive
10 reimbursements under Title XVIII of the Social
11 Security Act or payments under a state plan for
12 medical assistance approved under Title XIX of
13 such Act;

14 (15) Extended care adult residential care homes and
15 assisted living facilities; or

16 (16) Other facilities or services that the agency through
17 the statewide council chooses to exempt, by rules
18 pursuant to section 323D-62."

19 SECTION 14. Section 323D-71, Hawaii Revised Statutes, is
20 amended by amending the definition of "hospital" to read as
21 follows:



1 ""Hospital" means an institution with an organized medical
2 staff, regulated under section [~~321-11(10)~~] 321-11(9) which
3 admits patients for inpatient care, diagnosis, observation, and
4 treatment, but does not include a public health facility under
5 chapter 323F."

6 SECTION 15. Section 346-16, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) None of the facilities defined in subsection (a)
9 shall be considered a special treatment facility in the sense of
10 section [~~321-11(10)~~] 321-11(9) unless clinical treatment of
11 mental, emotional, or physical disease or handicap is a part of
12 the routine program or constitutes the main purpose of the
13 facility."

14 SECTION 16. Section 431:10H-301, Hawaii Revised Statutes,
15 is amended by amending subsection (c) to read as follows:

16 "(c) For the purpose of subsection (b) and for the purpose
17 of describing examples of services typically found in this
18 State, coverage shall be one or more of the following services
19 or any combination of services:

20 (1) Home health care services, as defined in section
21 431:10H-201;



- 1 (2) Adult day care, as defined in section 431:10H-201;
- 2 (3) Adult residential care home, as defined in section
- 3 321-15.1;
- 4 (4) Extended care adult residential care home, as defined
- 5 in section 323D-2;
- 6 (5) Nursing home, as defined in section 457B-2;
- 7 (6) Skilled nursing facilities and intermediate care
- 8 facilities, as referenced in section [~~321-11(10)~~];
- 9 321-11(9);
- 10 (7) Hospices, as referenced in section 321-11;
- 11 (8) Assisted living facility, as defined in section
- 12 323D-2;
- 13 (9) Personal care, as defined in section 431:10H-201;
- 14 (10) Respite care, as defined in section 333F-1; and
- 15 (11) Any other care as provided by rule of the
- 16 commissioner."

17 SECTION 17. Section 457-13.5, Hawaii Revised Statutes, is
 18 amended by amending subsection (c) to read as follows:

19 "(c) A temporary permit shall be issued only to an
 20 applicant who has been appointed or accepted employment with a



1 single health care entity in the State listed in section
2 [~~321-11(10)~~] 321-11(9)."

3 SECTION 18. Section 457A-1.5, Hawaii Revised Statutes, is
4 amended by amending the definition of "medicare or medicaid
5 certified nursing facility" to read as follows:

6 "Medicare or medicaid certified nursing facility" means
7 any intermediate care facility or skilled nursing facility
8 licensed pursuant to section [~~321-11(10)~~] 321-11(9) and
9 certified by the department of health in accordance with title
10 42 United States Code sections 1395i-3 and 1396r."

11 SECTION 19. Section 514B-84, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) In addition to the information required by section
14 514B-83, the developer's public report for a project containing
15 any assisted living facility units regulated or to be regulated
16 pursuant to rules adopted under section [~~321-11(10)~~] 321-11(9)
17 shall disclose:

18 (1) Any licensing requirements and the impact of the
19 requirements on the costs, operations, management, and
20 governance of the project;

21 (2) The nature and scope of services to be provided;



1 (3) Additional costs, directly attributable to the
2 services, to be included in the association's common
3 expenses;

4 (4) The duration of the provision of the services;

5 (5) Any other information the developer deems appropriate
6 to describe the possible impacts on the project
7 resulting from the provision of the services; and

8 (6) Other disclosures and information that the commission
9 may require."

10 PART IV

11 SECTION 20. Chapter 321, part XXXII, Hawaii Revised
12 Statutes, is repealed.

13 SECTION 21. Section 321-4.5, Hawaii Revised Statutes, is
14 repealed.

15 ~~["§321-4.5] Inspection of food establishments.~~
16 ~~Inspections of food establishments may be performed only by a~~
17 ~~registered sanitarian or a food and drug inspector."]~~

18 SECTION 22. Section 321-4.6, Hawaii Revised Statutes, is
19 repealed.

20 ~~["§321-4.6] Advisory council on food protection~~
21 ~~practices; created. (a) There is created within the department~~



1 ~~for administrative purposes only, an advisory council on food~~
2 ~~protection practices, whose members shall be appointed by the~~
3 ~~director of health, consisting of one representative from at~~
4 ~~least the following:~~

5 ~~(1) An organization representing the restaurant industry;~~

6 ~~(2) An organization representing the hotel industry;~~

7 ~~(3) An organization representing the food manufacturing~~
8 ~~industry;~~

9 ~~(4) An organization representing the food service~~
10 ~~industry;~~

11 ~~(5) A registered sanitarian from the department of health;~~

12 ~~(6) The University of Hawaii, food technology department;~~

13 ~~(7) The community college food service program;~~

14 ~~(8) A corporate chain restaurant doing business in Hawaii;~~
15 ~~and~~

16 ~~(9) A member of the general public.~~

17 ~~(b) Each member shall serve for a term of three years;~~

18 ~~provided that the director shall initially appoint three members~~
19 ~~to serve for one year, three members to serve for two years, and~~
20 ~~three members to serve for three years. No member shall serve~~
21 ~~for more than two consecutive three-year terms.~~



1 ~~(c) Vacancies occurring before the expiration of a~~
2 ~~member's term shall be filled by election of the council.~~
3 ~~Individuals elected to fill a vacancy shall serve only for the~~
4 ~~remainder of the unexpired term.~~

5 ~~(d) The council shall appoint from its members a~~
6 ~~chairperson, vice chairperson, secretary, treasurer, and any~~
7 ~~other officers that the council may deem necessary or desirable~~
8 ~~to carry out its functions.~~

9 ~~(e) Members shall serve without compensation, but may be~~
10 ~~reimbursed for the necessary expenses, including travel~~
11 ~~expenses, incurred in the performance of their duties.~~

12 ~~(f) The council shall:~~

13 ~~(1) Advise the department on sanitation issues and food~~
14 ~~protection practices;~~

15 ~~(2) Review and advise the department, in consultation with~~
16 ~~the department of the attorney general, regarding the~~
17 ~~adoption of rules relating to sanitation and food~~
18 ~~protection practices; and~~

19 ~~(3) Advise the department on the incorporation of salient~~
20 ~~provisions of the most recent version of the United~~



1 ~~States Food and Drug Administration's Model Food Code~~
2 ~~into the department's food sanitation rules."]~~

3 SECTION 23. Section 321-4.7, Hawaii Revised Statutes, is
4 repealed.

5 ~~[" §321-4.7 Producers of hand-pounded poi; exemption. A~~
6 ~~producer of hand-pounded poi shall not be required to process~~
7 ~~poi in a certified food processing establishment or be required~~
8 ~~to obtain a permit from the department of health, if the~~
9 ~~producer:~~

- 10 ~~(1) Sells hand-pounded poi directly to consumers;~~
11 ~~(2) Prepares hand-pounded poi adjacent to permanent or~~
12 ~~temporary hand-washing facilities; and~~
13 ~~(3) Complies with rules adopted by the department to~~
14 ~~protect the health and safety of the public.~~

15 ~~The department shall adopt rules pursuant to section 91 to~~
16 ~~effectuate this section no later than December 31, 2011."]~~

17 SECTION 24. Section 321-10.5, Hawaii Revised Statutes, is
18 repealed.

19 ~~[" §321-10.5 Agricultural processing facilities; permits;~~
20 ~~priority. (a) Any agency subject to this chapter or title 19~~
21 ~~that issues permits shall establish and implement a procedure~~



1 ~~for the priority processing of permit applications and renewals,~~
2 ~~at no additional cost to the applicant, for agricultural~~
3 ~~processing facilities that process crops or livestock from an~~
4 ~~agribusiness; provided that the majority of the lands held,~~
5 ~~owned, or used by the agribusiness shall be land designated as~~
6 ~~important agricultural lands pursuant to part III of chapter~~
7 ~~205, excluding lands held, owned, or used by the agribusiness in~~
8 ~~a conservation district.~~

9 ~~Any priority permit processing procedure established~~
10 ~~pursuant to this section shall not provide or imply that any~~
11 ~~permit application filed under the priority processing procedure~~
12 ~~shall be automatically approved.~~

13 ~~(b) As used in this section, "agribusiness" means a~~
14 ~~business primarily engaged in the care and production of~~
15 ~~livestock, livestock products, poultry, poultry products,~~
16 ~~apiary, horticultural or floricultural products, the planting,~~
17 ~~cultivating, and harvesting of crops or trees, or the farming or~~
18 ~~ranching of any plant or animal species in a controlled salt,~~
19 ~~brackish, or fresh water environment."]~~

20 SECTION 25. Section 321-11.51, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§321-11.51] Sanitation permits; transfer. Sanitation~~
2 ~~permits that have not expired as of July 2, 1997, shall be~~
3 ~~transferable upon the sale of a food establishment; provided~~
4 ~~that such transfers are subject to the new owner agreeing to~~
5 ~~abide by the compliance schedule of the department of health."]~~

6 SECTION 26. Section 321-27, Hawaii Revised Statutes, is
7 repealed.

8 ~~["§321-27 Sanitation and environmental health special~~
9 ~~fund. (a) There is established within the department of health~~
10 ~~the sanitation and environmental health special fund into which~~
11 ~~shall be deposited all moneys collected from fees for permits,~~
12 ~~licenses, inspections, various certificates, variances,~~
13 ~~investigations, and reviews, pursuant to sections 321-11.5(e)~~
14 ~~and 321-15.~~

15 ~~(b) Moneys in the fund shall be expended by the department~~
16 ~~to partially fund the operating costs of program activities and~~
17 ~~functions authorized pursuant to section 321-11 to enhance the~~
18 ~~capacity of sanitation and environmental health programs to:~~

19 ~~(1) Improve public outreach efforts and consultations to~~
20 ~~regulated businesses and industries;~~



- 1 ~~(2) Educate the public, staff, and regulated businesses~~
2 ~~and industries;~~
- 3 ~~(3) Plan for future growth and expansion to meet emerging~~
4 ~~needs;~~
- 5 ~~(4) Provide training opportunities to ensure the~~
6 ~~maintenance of professional competence among~~
7 ~~sanitation and environmental health staff and~~
8 ~~administrators; and~~
- 9 ~~(5) Conduct program activities and functions of the~~
10 ~~sanitation branch, including permit issuance,~~
11 ~~inspections, and enforcement and the hiring of~~
12 ~~additional inspectors;~~
- 13 ~~provided that for environmental health programs, not more than~~
14 ~~\$140,000 of the fund may be used during any fiscal year for fund~~
15 ~~administration, including the hiring of not more than two full-~~
16 ~~time equivalent personnel, and the purchase of office and~~
17 ~~electronic equipment.~~
- 18 ~~(c) Any amount in the fund in excess of \$1,500,000 on June~~
19 ~~30 of each year shall be deposited into the general fund.~~



1 SECTION 28. Any unexpended or unencumbered balance in the
2 sanitation and environmental health special fund established by
3 section 321-27, Hawaii Revised Statutes, and repealed by section
4 26 of this Act shall be transferred as of the close of business
5 on June 30, 2027, to the food safety and environmental health
6 special fund, established by section 328-F, Hawaii Revised
7 Statutes.

8 SECTION 29. In codifying the new sections added by
9 sections 2 and 3 of this Act, the revisor of statutes shall
10 substitute appropriate section numbers for the letters used in
11 designating the new sections in this Act.

12 SECTION 30. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 31. This Act shall take effect on July 1, 3000;
15 provided that section 26 shall take effect on June 30, 2027.



Report Title:

Department of Health; Food, Drugs, and Cosmetics; Consolidation of Food Safety; Chapter 328, HRS; Special Fund

Description:

Removes duplicative food-related statutory material and aligns all food-related provisions under chapter 328, HRS. Ensures adequate statutory authority for permits, fees, inspections, and enforcement. On 6/30/2027, repeals the Sanitation and Environmental Health Special Fund and transfers any unexpended or unencumbered balance to the newly established Food Safety and Environmental Health Special Fund. Makes conforming amendments. Effective 7/1/3000. (HD2)

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

