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# 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 section 91 to  
9 effectuate this section.

10       **§328-E Agricultural processing facilities; permits;**  
11 **priority.** (a) Any agency subject to this chapter or title 19  
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 part III of chapter  
19 205, excluding lands held, owned, or used by the agribusiness in  
20 a 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 (a) and (b) 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.] No person shall manufacture, produce, process,~~  
14 ~~package, offer, distribute, or hold for sale any food without a~~  
15 ~~permit or variance issued by the department, which shall remain~~  
16 ~~valid for a period of one year unless suspended by the~~  
17 ~~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. [~~Such~~] The  
2 permits and variances shall be subject to [~~such~~] terms and  
3 conditions as the 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 that  
8 the director may, without regard to chapter 91, establish  
9 tolerance levels and regulatory or action levels by reference to  
10 the provisions of the regulations or guidelines of the United  
11 States established in title 40 Code of Federal Regulations  
12 [~~Parts~~] parts 180 and 185 or the United States Food and Drug  
13 Administration Compliance Policy Guides as the regulations or  
14 guidelines become effective at any time or from time to time."

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

17 "**§328-21 Rules and regulations, hearings.** (a) Subject to  
18 chapter 91 the director may adopt and enforce [~~such~~] rules or  
19 regulations as the director may deem necessary for the efficient  
20 enforcement of this part. The director may make the rules or



1 regulations prescribed under this part conform insofar as  
2 practicable with those promulgated under the Federal Act.

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

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

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

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

15 (4) Milk; and

16 (5) Shellfish.

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

21 PART III



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

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

- 4 (1) Health care facilities including all such facilities  
5 enumerated in section [~~321-11(10);~~] 321-11(9);
- 6 (2) School dormitories of a public or private educational  
7 institution providing education in grades kindergarten  
8 through twelve, or of any institution of higher  
9 education;
- 10 (3) Lodging provided by nonprofit corporations or  
11 associations for religious, charitable, or educational  
12 purposes; provided that this exemption shall apply  
13 only to the activities of the religious, charitable,  
14 or educational corporation or association as such and  
15 not to any rental or gross rental the primary purpose  
16 of which is to produce income even if the income is  
17 used for or in furtherance of the exempt activities of  
18 such religious, charitable, or educational corporation  
19 or association;
- 20 (4) Living accommodations for persons in the military on  
21 permanent duty assignment to Hawaii, including the



1           furnishing of transient accommodations to those  
2           military personnel who receive temporary lodging  
3           allowances while seeking accommodations in Hawaii or  
4           while awaiting reassignment to new duty stations  
5           outside the State;

6           (5) Low-income renters receiving rental subsistence from  
7           the state or federal governments and whose rental  
8           periods are for durations shorter than sixty days;

9           (6) Operators of transient accommodations who furnish  
10          accommodations to full-time students enrolled in an  
11          institution offering post-secondary education. The  
12          director of taxation shall determine what shall be  
13          deemed acceptable proof of full-time enrollment. This  
14          exemption shall also apply to operators who furnish  
15          transient accommodations to students during summer  
16          employment;

17          (7) Accommodations furnished without charge such as, but  
18          not limited to, complimentary accommodations,  
19          accommodations furnished to contract personnel such as  
20          physicians, golf or tennis professionals, swimming and  
21          dancing instructors, and other personnel to whom no



1 salary is paid or to employees who receive room and  
 2 board as part of their salary or compensation; and  
 3 (8) Accommodations furnished to foreign diplomats and  
 4 consular officials who are holding cards issued or  
 5 authorized by the United States Department of State  
 6 granting them an exemption from state taxes."

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

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

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

17 "[~~§~~321-11.9[~~§~~] **Dental health facilities; health care**  
 18 **facilities; use of latex gloves.** All personnel working in  
 19 dental health facilities or health care facilities, including  
 20 all facilities listed in section [~~321-11(10),~~] 321-11(9), shall  
 21 be prohibited from using latex gloves for patient care where the



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

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

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

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

15 ""Hospital" means any institution with an organized medical  
16 staff, regulated under sections [~~321-11(10)]~~ 321-11(9) and  
17 321-14.5, that admits patients for inpatient care, diagnosis,  
18 observation, and treatment."

19 SECTION 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 SECTION 19. Section 323D-54, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§323D-54 Exemptions from certificate of need**

13 **requirements.** Nothing in this part or rules with respect to the  
14 requirement for certificates of need applies to:

15 (1) Offices of physicians, dentists, or other  
16 practitioners of the healing arts in private practice  
17 as distinguished from organized ambulatory health care  
18 facilities, except in any case of purchase or  
19 acquisition of equipment attendant to the delivery of  
20 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  
12 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 PART IV

20 SECTION 20. Section 321-4.5, Hawaii Revised Statutes, is  
21 repealed.



1       ~~["§321-4.5] Inspection of food establishments.~~

2       ~~Inspections of food establishments may be performed only by a~~  
3       ~~registered sanitarian or a food and drug inspector."]~~

4       SECTION 21. Section 321-4.6, Hawaii Revised Statutes, is  
5       repealed.

6       ~~["§321-4.6] Advisory council on food protection~~

7       ~~practices; created.~~ (a) ~~There is created within the department~~  
8       ~~for administrative purposes only, an advisory council on food~~  
9       ~~protection practices, whose members shall be appointed by the~~  
10      ~~director of health, consisting of one representative from at~~  
11      ~~least the following:~~

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

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

14           ~~(3) An organization representing the food manufacturing~~  
15           ~~industry;~~

16           ~~(4) An organization representing the food service~~  
17           ~~industry;~~

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

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

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



1       ~~(8) A corporate chain restaurant doing business in Hawaii;~~  
2             ~~and~~

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

4       ~~(b) Each member shall serve for a term of three years;~~  
5 ~~provided that the director shall initially appoint three members~~  
6 ~~to serve for one year, three members to serve for two years, and~~  
7 ~~three members to serve for three years. No member shall serve~~  
8 ~~for more than two consecutive three-year terms.~~

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

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

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

20       ~~(f) The council shall:~~



- 1       ~~(1) Advise the department on sanitation issues and food~~
- 2           ~~protection practices;~~
- 3       ~~(2) Review and advise the department, in consultation with~~
- 4           ~~the department of the attorney general, regarding the~~
- 5           ~~adoption of rules relating to sanitation and food~~
- 6           ~~protection practices; and~~
- 7       ~~(3) Advise the department on the incorporation of salient~~
- 8           ~~provisions of the most recent version of the United~~
- 9           ~~States Food and Drug Administration's Model Food Code~~
- 10          ~~into the department's food sanitation rules." ]~~

11           SECTION 22. Section 321-4.7, Hawaii Revised Statutes, is  
12 repealed.

13           ~~["**[§321-4.7] Producers of hand-pounded poi; exemption.** A~~

14 ~~producer of hand-pounded poi shall not be required to process~~

15 ~~poi in a certified food-processing establishment or be required~~

16 ~~to obtain a permit from the department of health, if the~~

17 ~~producer:~~

- 18       ~~(1) Sells hand-pounded poi directly to consumers;~~
- 19       ~~(2) Prepares hand-pounded poi adjacent to permanent or~~
- 20           ~~temporary hand-washing facilities; and~~



1 ~~(3) Complies with rules adopted by the department to~~  
2 ~~protect the health and safety of the public.~~

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

5 SECTION 23. Section 321-10.5, Hawaii Revised Statutes, is  
6 repealed.

7 ~~["~~§321-10.5~~ **Agricultural processing facilities; permits;**~~  
8 ~~**priority.** (a) Any agency subject to this chapter or title 19~~  
9 ~~that issues permits shall establish and implement a procedure~~  
10 ~~for the priority processing of permit applications and renewals,~~  
11 ~~at no additional cost to the applicant, for agricultural~~  
12 ~~processing facilities that process crops or livestock from an~~  
13 ~~agribusiness; provided that the majority of the lands held,~~  
14 ~~owned, or used by the agribusiness shall be land designated as~~  
15 ~~important agricultural lands pursuant to part III of chapter~~  
16 ~~205, excluding lands held, owned, or used by the agribusiness in~~  
17 ~~a conservation district.~~

18 ~~Any priority permit processing procedure established~~  
19 ~~pursuant to this section shall not provide or imply that any~~  
20 ~~permit application filed under the priority processing procedure~~  
21 ~~shall be automatically approved.~~



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

8       SECTION 24. Section 321-11.51, Hawaii Revised Statutes, is  
9 repealed.

10       ~~["§321-11.51] Sanitation permits; transfer. Sanitation~~  
11 ~~permits that have not expired as of July 2, 1997, shall be~~  
12 ~~transferable upon the sale of a food establishment; provided~~  
13 ~~that such transfers are subject to the new owner agreeing to~~  
14 ~~abide by the compliance schedule of the department of health."]~~

15       SECTION 25. Section 321-27, Hawaii Revised Statutes, is  
16 repealed.

17       ~~["§321-27 Sanitation and environmental health special~~  
18 ~~fund. (a) There is established within the department of health~~  
19 ~~the sanitation and environmental health special fund into which~~  
20 ~~shall be deposited all moneys collected from fees for permits,~~  
21 ~~licenses, inspections, various certificates, variances,~~



1 ~~investigations, and reviews, pursuant to sections 321-11.5(e)~~  
2 ~~and 321-15.~~

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

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

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

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

13 ~~(4) Provide training opportunities to ensure the~~  
14 ~~maintenance of professional competence among~~  
15 ~~sanitation and environmental health staff and~~  
16 ~~administrators; and~~

17 ~~(5) Conduct program activities and functions of the~~  
18 ~~sanitation branch, including permit issuance,~~  
19 ~~inspections, and enforcement and the hiring of~~  
20 ~~additional inspectors;~~



1 ~~provided that for environmental health programs, not more than~~  
2 ~~\$140,000 of the fund may be used during any fiscal year for fund~~  
3 ~~administration, including the hiring of not more than two full-~~  
4 ~~time equivalent personnel, and the purchase of office and~~  
5 ~~electronic equipment.~~

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

8 ~~(d) The department of health shall submit a report to the~~  
9 ~~legislature concerning the status of the sanitation and~~  
10 ~~environmental health special fund, including:~~

11 ~~(1) The amount of moneys taken in by and expended from the~~  
12 ~~fund; and~~

13 ~~(2) The sources of receipts and uses of expenditures, not~~  
14 ~~less than twenty days prior to the convening of each~~  
15 ~~regular session." ]~~

16 SECTION 26. Section 321-27.5, Hawaii Revised Statutes, is  
17 repealed.

18 ~~["~~[§321-27.5] Audit of sanitation branch.~~ The department~~  
19 ~~shall perform annual audits of the sanitation branch to be~~  
20 ~~completed by November 30 of each year, and shall include an~~  
21 ~~audit of:~~





**Report Title:**

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

**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. Makes conforming amendments. (HD1)

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

