
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:

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PART I

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SECTION 1. The purpose of this Act is to relocate from

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chapter 321, Hawaii Revised Statutes, the department of health's

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authority to regulate the manufacture, sale, holding for sale,

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and distribution of food, and transfer this same authority to

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chapter 328, Hawaii Revised Statutes, where duplicative

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authority currently resides, so that all relevant authority will

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be consolidated into one chapter. This will improve the safety

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of food, drugs, and cosmetics, and facilitate the development of

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food and related goods made and sold in the State by clarifying

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the department's legal authority pertaining to the regulation of

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food, drugs, and cosmetics as it relates to food safety and

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public health.

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To this end, conforming amendments are made to chapter 328,

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Hawaii Revised Statutes, including the addition of authority

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respecting the collection and disposition of fees and penalties,



1 and the 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- 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- 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- Public information monitoring system.** Within the
10 food safety consultative and education program under section
11 328- , the department shall investigate food handling
12 practices which appear to represent poor food safety techniques,
13 and shall develop ways in which the public can gain information
14 on food safety and can report practices that appear to represent
15 poor 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- 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- 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- 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 all moneys collected from fees for permits, licenses,
16 inspections, various certificates, variances, investigations,
17 and reviews, pursuant to this chapter.

18 (b) Moneys in the fund shall be expended by the department
19 to partially fund the operating costs of program activities and
20 functions authorized pursuant to this chapter to enhance the
21 capacity of food safety and environmental health programs to:



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



1 (d) The department shall submit a report to the
2 legislature no later than twenty days prior to the convening of
3 each regular session concerning the status of the food safety
4 and environmental health special fund, including:

5 (1) The amount of moneys taken in by and expended from the
6 fund; and

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

8 **§328- Audit of food safety and food and drug programs.**

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

12 (1) Fees collected;

13 (2) The number and results of inspections;

14 (3) The number of training seminars held; and

15 (4) The cost of training personnel in the food safety and
16 food and drug programs."

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

19 "**§321-11 Subjects of health rules, generally.** The
20 department of health, pursuant to chapter 91, may adopt rules



1 that it deems necessary for the public health and safety
2 respecting:

3 (1) Nuisances, foul or noxious odors, gases, vapors,
4 waters in which mosquitoes breed or may breed, sources
5 of filth, and causes of sickness or disease, within
6 the respective districts of the State, and on board
7 any vessel;

8 [~~(2)~~] ~~Adulteration and misbranding of food or drugs;~~

9 ~~(3)~~] (2) Location, air space, ventilation, sanitation,
10 drainage, sewage disposal, and other health conditions
11 of buildings, courts, construction projects,
12 excavations, pools, watercourses, areas, and alleys.
13 For purposes of this paragraph, "pool" means a
14 watertight artificial structure containing a body of
15 water that does not exchange water with any other body
16 of water, either naturally or mechanically, and is
17 used for swimming, diving, recreational bathing, or
18 therapy by humans;

19 [~~(4)~~] (3) Privy vaults and cesspools;

20 [~~(5)~~] (4) Fish and fishing;

21 [~~(6)~~] (5) Interments and dead bodies;



1 [~~7~~] (6) Disinterments of dead human bodies, including the
2 exposing, disturbing, or removing of these bodies from
3 their place of burial, or the opening, removing, or
4 disturbing after due interment of any receptacle,
5 coffin, or container holding human remains or a dead
6 human body or a part thereof and the issuance and
7 terms of permits for the aforesaid disinterments of
8 dead human bodies;

9 [~~8~~] (7) Cemeteries and burying grounds;

10 [~~9~~] (8) Laundries, and the laundering, sanitation, and
11 sterilization of articles including linen and uniforms
12 used by or in the following businesses and
13 professions: barber shops, manicure shops, beauty
14 parlors, electrology shops, restaurants, soda
15 fountains, hotels, rooming and boarding houses,
16 bakeries, butcher shops, public bathhouses, midwives,
17 masseurs, and others in similar calling, public or
18 private hospitals, and canneries and bottling works
19 where foods or beverages are canned or bottled for
20 public consumption or sale; provided that nothing in
21 this chapter shall be construed as authorizing the



1 prohibiting of laundering, sanitation, and
2 sterilization by those conducting any of these
3 businesses or professions where the laundering or
4 sterilization is done in an efficient and sanitary
5 manner;

6 [~~(10)~~] (9) Hospitals, freestanding surgical outpatient
7 facilities, skilled nursing facilities, intermediate
8 care facilities, adult residential care homes, adult
9 foster homes, assisted living facilities, special
10 treatment facilities and programs, home health
11 agencies, home care agencies, hospices, freestanding
12 birthing facilities, adult day health centers,
13 independent group residences, and therapeutic living
14 programs, but excluding youth shelter facilities
15 unless clinical treatment of mental, emotional, or
16 physical disease or handicap is a part of the routine
17 program or constitutes the main purpose of the
18 facility, as defined in section 346-16 under "child
19 caring institution". For the purpose of this
20 paragraph, "adult foster home" has the same meaning as
21 provided in section 321-11.2;



- 1 ~~(11)~~ (10) Hotels, rooming houses, lodging houses,
2 apartment houses, tenements, and residences for
3 persons with developmental disabilities including
4 those built under federal funding;
- 5 ~~(12)~~ (11) Laboratories;
- 6 ~~(13)~~ (12) Any place or building where noisome or noxious
7 trades or manufacturing is carried on, or intended to
8 be carried on;
- 9 ~~(14)~~ Milk;
- 10 ~~(15)~~ (13) Poisons and hazardous substances, the latter
11 term including any substance or mixture of substances
12 that:
- 13 (A) Is corrosive;
- 14 (B) Is an irritant;
- 15 (C) Is a strong sensitizer;
- 16 (D) Is inflammable; or
- 17 (E) Generates pressure through decomposition, heat,
18 or other means,
- 19 if the substance or mixture of substances may cause
20 substantial personal injury or substantial illness
21 during or as a proximate result of any customary or



- 1 reasonably foreseeable handling or use, including
2 reasonably foreseeable ingestion by children;
- 3 ~~[(16)]~~ (14) Pig and duck ranches;
- 4 ~~[(17)]~~ (15) Places of business, industry, employment, and
5 commerce, and the processes, materials, tools,
6 machinery, and methods of work done therein; and
7 places of public gathering, recreation, or
8 entertainment;
- 9 ~~[(18)]~~ ~~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 ~~(19)~~ ~~Foods, drugs, and cosmetics, and the manufacture,~~
16 ~~compounding, processing, extracting, preparing,~~
17 ~~storing, selling, and offering for sale, consumption,~~
18 ~~or use of any food, drug, or cosmetic;~~
- 19 ~~(20)]~~ (16) Device as defined in section 328-1;
- 20 ~~[(21)]~~ (17) Sources of ionizing radiation;



1 ~~(+22)~~ (18) Medical examination, vaccination, revaccination,
2 and immunization of school children. No child shall
3 be subjected to medical examination, vaccination,
4 revaccination, or immunization, whose parent or
5 guardian objects in writing thereto on grounds that
6 the requirements are not in accordance with the
7 religious tenets of an established church of which the
8 parent or guardian is a member or adherent, but no
9 objection shall be recognized when, in the opinion of
10 the department, there is danger of an epidemic from
11 any communicable disease;

12 ~~(+23)~~ (19) Disinsectization of aircraft entering or within
13 the State as may be necessary to prevent the
14 introduction, transmission, or spread of disease or
15 the introduction or spread of any insect or other
16 vector of significance to health;

17 ~~(+24)~~ (20) Fumigation, including the process by which
18 substances emit or liberate gases, fumes, or vapors
19 that may be used for the destruction or control of
20 insects, vermin, rodents, or other pests, which, in



1 the opinion of the department, may be lethal,
2 poisonous, noxious, or dangerous to human life;
3 ~~[+25]~~ (21) Ambulances and ambulance equipment;
4 ~~[+26]~~ (22) Development, review, approval, or disapproval of
5 management plans submitted pursuant to the Asbestos
6 Hazard Emergency Response Act of 1986, Public Law
7 99-519; and
8 ~~[+27]~~ (23) Development, review, approval, or disapproval of
9 an accreditation program for specially trained persons
10 pursuant to the Residential Lead-Based Paint Hazard
11 Reduction Act of 1992, Public Law 102-550.

12 The department of health may require any certificates,
13 permits, or licenses that it may deem necessary to adequately
14 regulate the conditions or businesses referred to in this
15 section."

16 SECTION 5. Section 328-8, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§328-8 Regulations to be prescribed.** (a) Whenever in
19 the judgment of the department such action will promote honesty
20 and fair dealing in the interest of consumers, the department
21 shall prescribe regulations fixing and establishing for any food



1 or class of food a reasonable definition and standard of
2 identity, or reasonable standard of quality or fill of
3 container. In prescribing a definition and standard of identity
4 for any food or class of food in which optional ingredients are
5 permitted, the department shall, for the purpose of promoting
6 honesty and fair dealing in the interest of consumers, designate
7 the optional ingredients which shall be named on the label. The
8 definitions and standards so prescribed shall conform so far as
9 practicable to the definitions and standards promulgated under
10 authority of the Federal Act.

11 (b) ~~[Temporary permits now or hereafter granted for~~
12 ~~interstate shipment of experimental packs of food varying from~~
13 ~~the requirements of federal definitions and standards of~~
14 ~~identity are automatically effective in this State under the~~
15 ~~conditions provided in such permits. In addition, the director~~
16 ~~may issue additional permits where they are necessary to the~~
17 ~~completion or conclusiveness of an otherwise adequate~~
18 ~~investigation and where the interests of consumers are~~
19 ~~safeguarded.] No person shall manufacture, produce, process,~~
20 ~~package, offer, distribute, or hold for sale any food without a~~
21 ~~permit or variance issued by the department, which shall remain~~



1 valid for a period of one year unless suspended by the
2 department, after which they shall expire unless renewed, except
3 that no permit or variance shall be required for a producer of
4 hand-pounded poi who sells directly to consumers, producers of
5 homemade food products, or producers of non-time/temperature
6 control for safety foods, as those may be defined by department
7 rules. [~~Such~~] The permits and variances shall be subject to
8 [~~such~~] terms and conditions as the director may prescribe.

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

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



1 "**§328-21 Rules and regulations, hearings.** (a) Subject to
2 chapter 91 the director may adopt and enforce [~~such~~] rules or
3 regulations as the director may deem necessary for the efficient
4 enforcement of this part. The director may make the rules or
5 regulations prescribed under this part conform insofar as
6 practicable with those promulgated under the Federal Act.

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

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

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

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

19 (4) Milk; and

20 (5) Shellfish.



- 1 used for or in furtherance of the exempt activities of
2 such religious, charitable, or educational corporation
3 or association;
- 4 (4) Living accommodations for persons in the military on
5 permanent duty assignment to Hawaii, including the
6 furnishing of transient accommodations to those
7 military personnel who receive temporary lodging
8 allowances while seeking accommodations in Hawaii or
9 while awaiting reassignment to new duty stations
10 outside the State;
- 11 (5) Low-income renters receiving rental subsistence from
12 the state or federal governments and whose rental
13 periods are for durations shorter than sixty days;
- 14 (6) Operators of transient accommodations who furnish
15 accommodations to full-time students enrolled in an
16 institution offering post-secondary education. The
17 director of taxation shall determine what shall be
18 deemed acceptable proof of full-time enrollment. This
19 exemption shall also apply to operators who furnish
20 transient accommodations to students during summer
21 employment;



- 1 (7) Accommodations furnished without charge such as, but
2 not limited to, complimentary accommodations,
3 accommodations furnished to contract personnel such as
4 physicians, golf or tennis professionals, swimming and
5 dancing instructors, and other personnel to whom no
6 salary is paid or to employees who receive room and
7 board as part of their salary or compensation; and
8 (8) Accommodations furnished to foreign diplomats and
9 consular officials who are holding cards issued or
10 authorized by the United States Department of State
11 granting them an exemption from state taxes."

12 SECTION 8. Section 321-11.9, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~f~~]**§321-11.9[~~f~~]** **Dental health facilities; health care**
15 **facilities; use of latex gloves.** All personnel working in
16 dental health facilities or health care facilities, including
17 all facilities listed in section [~~321-11(10)~~], 321-11(9), shall
18 be prohibited from using latex gloves for patient care where the
19 patient is unconscious or otherwise physically unable to
20 communicate. Where the patient is conscious and physically able



1 to communicate, latex gloves may be used if the patient
2 affirmatively states that the patient is not allergic to latex."

3 SECTION 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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;
- 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 18. 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 19. 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 20. 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 21. Section 321-10.5, Hawaii Revised Statutes, is
6 repealed.

7 ~~["**S321-10.5** **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 22. Section 321-11.51, Hawaii Revised Statutes, is
9 repealed.

10 ~~["**~~S321-11.51~~** 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 23. Section 321-27, Hawaii Revised Statutes, is
16 repealed.

17 ~~["**~~S321-27~~** 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(c)~~
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 24. 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:~~



S.B. NO. 3137
S.D. 1

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 amends. (SD1)

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

