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OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

WEDNESDAY, FEBRUARY 20, 2013
3:00 P.M.

TESTIMONY ON HOUSE BILL NO. 376, HD1
RELATING TO FOOD.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND TO THE HONORABLE DEREK S.K. KAWAKAMI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on H.B. 376, HD 1, Relating to Food. My name is Bruce B. Kim and I am the Executive Director of OCP. **OCP takes no position on the merits of H.B. 376, HD1 but submits the following comments:**

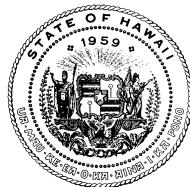
OCP agrees that contaminated food and dangerous merchandise could represent a significant health risk to residents of Hawaii and that timely public notice is an important component of the recall process. Hawaii Revised Statutes ("HRS") Chap.

487D addresses privacy issues surrounding the issuance and use of retail merchant club cards. OCP currently has no enforcement jurisdiction over Chap. 487D. H.B. 376, HD1 creates a food recall notification requirement in HRS Chap. 487D and makes the violation thereof an Unfair Deceptive Act or Practice pursuant to HRS § 480-2. OCP would then become responsible for an area of public health enforcement which does not fall within the scope of its jurisdiction under HRS Chap. 487.

OCP submits that the enforcement authority for such legislation should not be with OCP. OCP lacks the staff and requisite technical expertise to weigh in on matters related to public health and food product recalls. OCP does not receive food recall notices from either the FDA or from manufacturers and has no experience with the procedures and practices associated with food recalls or enforcement of such recalls. The Department of Health currently has jurisdiction over adulterated, impure, or unwholesome food or products based on HRS Chap. 328, Food, Drugs and Cosmetics.

OCP has had discussions with the proponents of this measure to address its concerns over the measure.

Thank you for the opportunity to testify on H.B. 376, HD 1. I will be happy to answer any questions that the members of the Committee may have.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Consumer Protection & Commerce

HB 376, HD1, RELATING TO FOOD

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

**February 20, 2013
3:00 p.m.**

1 **Department's Position:** The department strongly supports this bill.

2 **Fiscal Implications:** None.

3 **Purpose and Justification:** Modern technology now allows the tracking of sales and more rapid recall
4 notification. Businesses are required to notify consumers regarding products that have been recalled.
5 Class I recalls involve food products or merchandise that could cause serious adverse health
6 consequences or death. Requiring businesses to contact individual households that purchased recalled
7 products directly will help protect the public. This bill provides an avenue that is currently missing in
8 the recall process. The current recall process relies solely on the media and/or public service
9 announcements issued by the department.

10 Thank you for the opportunity to testify.



Testimony in Support of HB 376

February 19, 2013

ATTN: Committee on Consumer Protection and Commerce
Rep. Angus L.K. McKelvey, Chair
Rep. Derek S.K. Kawakami, Vice Chair

Hearing Date: Wednesday, February 20, 2013
Hearing Time: 3:00 pm
Place: House Conference Room 325, State Capitol

RE: HB 376, A Bill for an Act Relating to Food. Requires club card issuers to inform cardholders by email, text message, telephone, or regular mail in the event of a class I recall of any food, product, or merchandise sold by the club card issuer.

Dear Committee Members,

The Center for Science in the Public Interest (CSPI) strongly supports HB 376, a bill that will provide Hawaii's citizens with better notification of threats to their health from foodborne disease. CSPI is a non-profit consumer advocacy and education organization that focuses largely on food safety and nutrition issues. It is supported principally by the 900,000 subscribers to its *Nutrition Action Healthletter* and by foundation grants. We accept no government or industry funding.

Foodborne illness is a serious threat to public health that each year causes 48 million illnesses, 128,000 hospitalizations and 3,000 premature deaths nationally, according to the Centers for Disease Control and Prevention.¹ Based on that estimate, approximately 240,000 Hawaii citizens can expect to suffer from a foodborne disease this year.² At \$2,008 per case, Hawaiians face the highest cost per incidence of illness of any population in the United States.³ This means foodborne disease represents a \$480 million negative impact from healthcare costs, lost productivity and lost quality of life on the Hawaiian economy. While we believe prevention programs implemented at the supplier level offer the best promise for reducing the number of illnesses, consumer notice about recalls also plays a role.

Consumers' ability to protect themselves is burdened by the current recall system, which provides inadequate public notice of known threats. Traditionally, recall notices have been published on health department websites and through press releases. We know that such "broadcast" methods fail to reach the majority of consumers and certainly cannot target those who are actually affected by the recall. A study by Rutgers University found that only 15 percent of consumers have ever accessed a

¹ Elaine Scallan, et al., *Foodborne Illness Acquired in the United States – Unspecified Agents*, 17 *Emerg. Infect. Dis.* 16, 20 (2011).

² CSPI analysis using the rate of illness established by Scallan report applied to U.S. Census data on Hawaii's population for 2012.

³ Robert L. Scharff, *Health-Related Costs from Foodborne Illness in the United States*, Pew Charitable Trusts, Produce Safety Project 18 (2010).

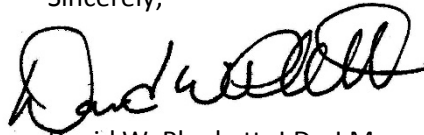
government website for food recall information, and only 6 percent sign up for government sponsored email alerts. Meanwhile, inconsistent reporting by the media compounded by personal news consumption habits limits the effectiveness of recall notices that rely on newspaper, radio or television. The same study found that 73 percent of consumers would want to receive personalized information about recalls of food products they purchased.⁴

Customer loyalty card programs provide a means of doing this. These programs collect information from individual shoppers that is then used to market products to them. Using that same information to provide shoppers with health warnings related to their purchases is reasonable. Indeed, many responsible retailers, including Costco, Giant, Harris Teeter, Price Chopper, Sam's Club, ShopRite, and Wegman's, do this voluntarily. Unfortunately, not all retailers follow this practice, meaning some Hawaiian consumers may suffer preventable illnesses simply because of their choice of grocery stores.

Timely notice of food recalls is essential for empowering consumers to protect themselves from foodborne disease. Traditional methods of notifying consumers are inadequate. Meanwhile, reliance on voluntary action by retailers leaves some consumers without any notice of actual threats to their health. HB 376 would address these shortcomings by leveraging consumer information grocery stores already collect to provide their shoppers with targeted information regarding food recalls. This is an appropriate action for Hawaii to take in order to better protect its citizens from foodborne diseases.

CSPI encourages the Committee on Consumer Protection and Commerce to report HB 376 favorably to the Hawaii House.

Sincerely,

A handwritten signature in black ink, appearing to read 'David W. Plunkett', written in a cursive style.

David W. Plunkett, J.D., J.M.
Senior Staff Attorney
Food Safety Department

⁴ William K. Hallman, et al., *Consumer Responses to Food Recalls: 2008 National Survey Report*, Food Policy Institute 10-13 (2009).

Representative Angus L. K. McKelvey, Chair
Representative Derek S. K. Kawakami, Vice Chair
Committee on Consumer Protection & Commerce



HEARING Wednesday, February 20, 2013
 3:00 PM
 Conference Room 325
 State Capitol, Honolulu, HI 96813

RE: HB376, HD1, Relating to Food

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

While we can appreciate the intent of this legislation, **RMH respectfully opposes HB376,HD1**, which requires club card issuers to inform cardholders by email, text message, telephone or regular mail in the event of a class I recall of any food, product and merchandise sold by the club card issuer.

The personal information retailers with customer or loyalty cards maintain varies with the merchants' policies. Our concerns:

- Businesses that don't collect the all the personal information such as email, telephone or physical addresses as required would have to do so, and further have to update constantly to assure its accuracy.
- The only way the retailer would be able to satisfy this requirement would be to require each customer to verify their personal information every time the customer goes through check-out.
- This collection and maintenance process, and the notification required, is adding yet another costly burden on the business.
- Considering federal and state privacy and security breach laws, retaining **less** information benefits both consumer and retailer.

Most importantly, Chapter 7, Recall Procedures, of the Regulatory Procedures Manual issued by the US Food & Drug Administration, details with specificity the rules and regulations governing recall procedures. Section 7-7, Notifications & Public Warnings, expressly addresses the steps both government and business must follow. While we do not profess to be expert in this area, we believe that FDA rules and guidelines are the standard with which we should adhere. Link: <http://www.fda.gov/ICECI/compliancemanuals/regulatoryproceduresmanual/default.htm>

For these reasons, we respectfully request that you hold SB376, HD1. Thank you for the opportunity to comment.

A handwritten signature in cursive script, appearing to read 'Carol Pregill'.

Carol Pregill, President

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 16, 2013 3:35 PM
To: CPCtestimony
Cc: tabraham08@gmail.com
Subject: *Submitted testimony for HB376 on Feb 20, 2013 15:00PM*

HB376

Submitted on: 2/16/2013

Testimony for CPC on Feb 20, 2013 15:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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GRANDE LAW OFFICES

1164 BISHOP STREET

SUITE 124-24

HONOLULU, HAWAII 96813

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February 19, 2013

Rep. Angus L.K. McKelvey, Chair
Committee on Consumer Protection & Commerce
House of Representatives
Hawai'i State Legislature

Testimony in Support of HB 276, HD1, Relating to Food

Date: Wednesday, February 20, 2013
Time: 3:00 p.m.
Place: Conference Room 325
State Capitol
415 Beretania Street

Chair McKelvey and Members of the Committee:

My name is Tom Grande. I am testifying today as an individual.

I strongly urge the Committee to pass HB 376, HD1, which requires businesses with club card programs that track individual consumer purchases to notify consumers in the event of a Class 1 recall of dangerous products or contaminated foods that are likely to cause serious injury or death.

I have attached a background fact sheet to this testimony to provide more detailed information about food-borne illnesses and the need for this legislation.

This proposed legislation uniquely benefits consumers, the state, and the club card retailers.

- Consumers are benefitted because they will receive direct notification when they have purchased a product that may cause serious injury or death.
- The state is benefitted by the potential reduction in food-borne illnesses and its consequent social and health costs.
- The club card retailers are benefitted because they may avoid potential liability for food-borne illnesses by prompt notification of recalls.

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Testimony in Support of HB 376, HD1

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I would like to suggest a clarifying amendment based upon the testimony previously given on this bill.

The Retail Merchants of Hawai'i objected that the bill would require all businesses to collect private information to provide recall notices and objected that all customers would receive the notice, even if the customer did not purchase a recalled item.

The Hawai'i Food Industry Association objected that the bill would impose a burden on retailers that may have club cards but who do not keep track of all purchases.

Both of these concerns are legitimate. The bill is intended only to apply to those retail organizations that have club card programs that keep track of consumer purchases and requires that notices only be sent to those customers who have purchased the recalled items.

Although I believe that the bill as currently drafted takes those concerns into account, I suggest that the following language be added to Section 2 of the bill (proposed additional language in **bold**):

In the event of a class I recall of any food, product, or merchandise sold by a club card issuer, the club card issuer shall contact each cardholder who purchased the food, product, or merchandise subject to the class I recall and inform the cardholder of the class I recall. Cardholders shall be contacted by email, text message, telephone, or regular mail, and contact shall be initiated within two days from when the club card issuer receives notice that it sold the recalled food, product, or merchandise. **This requirement shall apply only to club card issuers who track purchases of individual consumer goods.**

In addition, my office has surveyed the members of the Retail Merchants of Hawai'i and the members of the Hawai'i Food Industry to determine which businesses would be impacted by the bill. Our research has indicated that only the following merchants would be subject to the bill's provisions:

Best Buy
Costco
Longs
Safeway
Sam's Club
Sears
Walgreens

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Testimony in Support of HB 376, HD1

Page 3

This bill would not affect merchants such as Foodland, which has a customer card program, but does not track individual consumer purchases.

Implementation of this system should not impose extra costs on these businesses. Existing club card data systems have the ability to individually identify consumer purchases of dangerous products and foods. If there are any incidental cost increases, these amounts are paid by the manufacturer that recalled the products or food.

The use of personal private information by businesses generates hundreds of billions of dollars in profit each year. The possession and use of personal information by business for profit also comes with a responsibility to the consumer who provides the information.

The House Health Committee defected the implementation date of this measure to 2050. Please change that provision to implement the bill upon approval.

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1164 BISHOP STREET

SUITE 124-24

HONOLULU, HAWAII 96813

MEMORANDUM

Date: January 28, 2013

From: Thomas Grande

Re: Hawai'i State Legislature
27th Legislature, 2013

SB 493

HB 376

Measure Title:	Relating to Food
Report title:	Food, Product, and Merchandise Safety Recall Notices
Description:	Requires businesses with customer card programs to notify customers in the event of a class I food, product and merchandise recall; makes a violation an unfair or deceptive act or practice

This Memorandum is written as background information in support of SB 493 and HB 376. These bills will require businesses with customer card programs to notify customers in the event of a Class I food, product or merchandise recall, i.e. with the potential to cause serious adverse health consequences or death.

Each year, recalls¹ of contaminated food and dangerous merchandise and products are made in the State of Hawai'i. Recent Hawai'i Class I food recalls have included foods contaminated with e coli, botulism, salmonella, listeria, and other dangerous food-borne diseases. Class I recalls of food, products and merchandise by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA) are made where there is "a situation in which the recalled food, product or merchandise presents a reasonable probability that the use of, or exposure to, the food, product or merchandise will cause serious adverse health consequences or death."²

Food safety is high on the national agenda. Following highly publicized recalls of ground beef, spinach, peanut products, and other foods over the last several years, there have been increasing calls for government and industry action to improve the safety of the American food supply.³

¹ "A food recall is a voluntary action by a manufacturer or distributor to protect the public from products that may cause health problems or possible death. A recall is intended to remove food products from commerce when there is reason to believe the products may be adulterated or misbranded."

http://www.fsis.usda.gov/Fact_Sheets/FSIS_Food_Recalls/index.asp

² Section 7.3(m)(1) of Title 21 Code of Federal Regulations.

³ Hallman, W. K. & Cuite, C. L. (2010). Food Recalls and the American Public: Improving Communications. (Publication number RR-0310-020 New Brunswick, New Jersey: Rutgers, The State University of New Jersey, Food Policy Institute) at 1.

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Approximately 48 million foodborne illnesses occur each year in the United States, causing more than 128,000 hospitalizations and 3,000 deaths.⁴ Every year, approximately 40,000 cases of salmonellosis are reported in the United States⁵ and 300⁶ cases of salmonellosis are reported in Hawai'i. Each year, approximately 93,000 E. coli O157 infections are reported in the United States⁷ and an average of 19⁸ cases of E. coli O157 are reported in Hawai'i. Because many milder cases are not diagnosed or reported, the actual number of infections may be thirty or more times greater.⁹

Removal of contaminated foods and unsafe products and merchandise is vital to minimizing the adverse impact on consumers and public health, including reducing the size of associated foodborne illness outbreaks and the incidence of product and merchandise dangers. While retailers' actions are essential for rapid removal of recalled foods, products and merchandise from shelves, this does not address products that have already been sold.

The success of food recalls depends on getting individual consumers to take appropriate actions by alerting them to the fact that a recall exists for a product they purchased.¹⁰ Providing personalized recall messages to consumers notifying them of their previous purchases is the best way to make sure consumers know about the risk of consuming contaminated recalled food products and will not gamble on eating them despite the recall.¹¹

SB 493 and HB 376 provide a solution to better inform consumers about Class I recalled food, products and merchandise. Where retailers routinely collect consumer purchasing data, that information can identify consumers who may have recalled products still in their homes. Retailers should access purchasing data and the associated consumer contact information to alert consumers to their previous purchases of products that are later associated with a Class I Recall. Such personalized notice will help consumers identify recalled product at home, and will establish the retailer as a source of important public health information.

Several local retailers are already providing this service voluntarily, reducing the risk of harm to their own customers. Walmart, Sam's Club, and Costco (among others) all issue food safety alerts directly to consumers via mail and automated phone calls.

Club card retailers gain substantial monetary benefits by collecting and using product purchase information of their customers. This same information should be utilized to protect Hawai'i citizens from risk of disease and dangerous products by notifying them promptly through available technological means – email, text message, telephone call or mail.

⁴ Scallan E., Griffin P.M., Angulo F.J., Tauxe R.V., Hoekstra R.M. Foodborne illness acquired in the United States—unspecified agents. *Emerg Infect Dis.* 2011 Jan.

<http://dx.doi.org/10.3201/eid1701.P21101>

⁵ www.cdc.gov/nczved/divisions/dfbmd/diseases/salmonellosis/#how_common.

⁶ Hawaii State Department of Health, 10-Year Summary of Reported Cases of Notifiable Diseases, <http://hawaii.gov/health/about/about/pr/NETSS.html>.

⁷ www.cdc.gov/about/grand-rounds/archives/2009/download/GR-121709.pdf

⁸ *Id.*

⁹ <http://www.cdc.gov/ecoli/index.html>

¹⁰ Hallman & Cuite at 3.

¹¹ Hallman & Cuite at 14.