



Representative Della Au Belatti, Chair  
Representative Dee Morikawa, Vice Chair  
Committee on Health  
State Capitol, Honolulu, HI 96813

HEARING      Wednesday, January 30, 2013  
                  8:30 am  
                  Conference Room 329

**RE:      HB376, Relating to Food**

Chair Au Belatti, Vice Chair Morikawa, 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.

**RMH opposes HB376**, which requires businesses with customer card programs to notify customers in the event of a class I food, product and merchandise recall and makes a violation an unfair or deceptive act or practice.

The personal information retailers with customer or loyalty cards maintain varies with the merchants' policies. This mandate would require those businesses that don't collect private information such as mailing or email addresses to do so, and to assure that the information is current. Considering federal and state privacy laws, retaining less information benefits both consumer and retailer.

Additionally, sending a blast notice to all customers enrolled in a card program whether or not they purchased the recalled item, would be considered an intrusion and an annoyance.

We respectfully request that you hold SB376. Thank you for the opportunity to comment.

Carol Pregill, President

# GRANDE LAW OFFICES

1164 BISHOP STREET

SUITE 124-24

HONOLULU, HAWAII 96813

THOMAS R. GRANDE  
tgrande@GrandeLawOffices.com

TELEPHONE: (808) 521-7500  
Fax: (888) 722-5575

Rep. Della Au Bellati, Chair  
Committee on Health  
House of Representatives  
Hawai'i State Legislature

## **Testimony in Support of HB 376, Relating to Food**

**Date:** Wednesday, January 30, 2013  
**Time:** 8:30 a.m.  
**Place:** Conference Room 329  
State Capitol  
415 Beretania Street

Chair Bellati 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, which requires businesses with club card programs 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.

Implementation of this system should not impose extra cost on these businesses. Existing club card data systems have the ability to individually identify consumer purchases of dangerous

# GRANDE LAW OFFICES

Rep. Della Au Bellati, Chair  
Committee on Health  
House of Representatives  
Hawai'i State Legislature  
January 28, 2013  
Page 2

products and foods. If there are any incidental cost increases, these amounts are paid by the manufacturer which 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.

# GRANDE LAW OFFICES

1164 BISHOP STREET

SUITE 124-24

HONOLULU, HAWAII 96813

## MEMORANDUM

Date: January 28, 2013

From: Thomas Grande

Re: Hawai'i State Legislature  
27<sup>th</sup> 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, recalls<sup>1</sup> 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."<sup>2</sup>

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.<sup>3</sup>

---

<sup>1</sup> "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](http://www.fsis.usda.gov/Fact_Sheets/FSIS_Food_Recalls/index.asp)

<sup>2</sup> Section 7.3(m)(1) of Title 21 Code of Federal Regulations.

<sup>3</sup> 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.

# GRANDE LAW OFFICES

Approximately 48 million foodborne illnesses occur each year in the United States, causing more than 128,000 hospitalizations and 3,000 deaths.<sup>4</sup> Every year, approximately 40,000 cases of salmonellosis are reported in the United States<sup>5</sup> and 300<sup>6</sup> cases of salmonellosis are reported in Hawai'i. Each year, approximately 93,000 E. coli O157 infections are reported in the United States<sup>7</sup> and an average of 19<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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.

---

<sup>4</sup> 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>

<sup>5</sup> [www.cdc.gov/nczved/divisions/dfbmd/diseases/salmonellosis/#how\\_common](http://www.cdc.gov/nczved/divisions/dfbmd/diseases/salmonellosis/#how_common).

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

<sup>7</sup> [www.cdc.gov/about/grand-rounds/archives/2009/download/GR-121709.pdf](http://www.cdc.gov/about/grand-rounds/archives/2009/download/GR-121709.pdf)

<sup>8</sup> *Id.*

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

<sup>10</sup> Hallman & Cuite at 3.

<sup>11</sup> Hallman & Cuite at 14.