

# SB 493

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.  
Companion: HB376  
Package: None  
Current Referral: CPN  
Introducer(s): BAKER, CHUN OAKLAND, Gabbard, Green, Ihara, Nishihara, Solomon

<u>Sort by</u> <u>Date</u>		<b>Status Text</b>
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to CPN.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-14-13 9:00AM in conference room 229.



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

In reply, please refer to:  
File:

**Senate Committee on Commerce and Consumer Protection**

**SB 493, RELATING TO FOOD**

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

**February 14, 2013  
9:00 a.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 to the Senate Committee on Commerce and Consumer Protection  
Thursday, February 14, 2013 at 9:00 A.M.  
Conference Room 229, State Capitol**

**RE: SENATE BILL 493 RELATING TO FOOD**

Chair Baker, Vice Chair Galuteria, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 493 Relating to Food.

The Chamber is the largest business organization in Hawaii, representing over 1000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We appreciate the intent of the bill to protect consumers and their families. However, this will place another cost burden on business and consumers. While some club card systems do track what you buy, they may not keep them stored for long periods of time. Also, there is an additional cost to mining the data to find the products recalled and the consumers who purchased them and then the cost notification.

We believe that notification via the news media is adequate and presently provides sufficient consumer notice.

Thank you for the opportunity to testify.



## HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

1050 Bishop St. PMB 235

Honolulu, HI 96813

Fax : 808-791-0702

Telephone : 808-533-1292

**TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**Sen. Rosalyn H. Baker, Chair**

**Sen. Brickwood Galuteria, Vice Chair**

**FROM: HAWAII FOOD INDUSTRY ASSOCIATION**

**Lauren Zirbel, Executive Director**

**DATE: Thursday, February 14, 2013**

**TIME: 9:00 A.M.**

**PLACE: Conference Room 229**

**RE: SB 493 RELATING TO FOOD**

**Position: Strong Opposition**

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

**While we appreciate the intent of this bill we have serious concerns about the unanticipated effect of this measure on retailers who may have club cards but do not keep track of all purchases made by club card members. This measure would put an unreasonable and unmanageable mandatory notification program in place, which many retailers simply do not have the capability to abide by.**

This measure would essentially mandate a very expensive and complicated club card tracking program which most retailers do not currently have.

Many consumers have multiple club cards and would end up receiving multiple messages about food recalls which would amount to spam mail. This may also deter individuals from signing up for club cards. The media finds out about class 1 food recalls at about the same time as retailers, so the need for additional email, text message, telephone or regular mail notification is not necessary.

If retailers are unable to contact their customers due to the fact that consumers changed their email or phone number they may be considered liable under this measure for not contacting the individual to inform them of the food recall. Likewise, if the retailer is unable to contact the consumer in a timely manner because they were not informed of the food recall or they do not have the necessary contact or purchase information, they will be penalized. This measure places smaller companies at a disadvantage and would prohibit them from having a club card at all.

We strongly oppose this measure which amends second 487D of HRS to state that, "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. Any person who violates this section shall be deemed to have engaged in an unfair or deceptive act or practice pursuant to section 480-2."

Thank you for the opportunity to testify.



Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair  
Committee on Commerce and Consumer Protection

HEARING      Thursday, February 14, 2013  
                  9:00 am  
                  Conference Room 229  
                  State Capitol, Honolulu, Hawaii 96813

RE:      **SB493, Relating to Food**

Chair Baker, Vice Chair Galuteria, 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 SB493**, 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. We do understand and share your concerns with food-and product-safety issues; however, we have serious concerns with the implementation of this mandate.

The personal information that 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 constantly monitor the accuracy of this information. Considering federal and state privacy laws, retaining less information benefits both consumer and retailer.

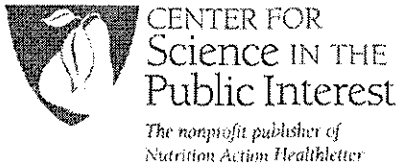
Additionally, sending a blast notice to all customers enrolled in a card program whether or not they purchased the recalled item, would be considered an intrusion and an annoyance.

We respectfully request that you hold SB493. Thank you for the opportunity to comment.

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

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202



## Testimony in Support of SB 493

February 13, 2013

**ATTN: Committee on Commerce and Consumer Protection**  
**Sen. Rosalyn H. Baker, Chair**  
**Sen. Brickwood Galuteria, Vice Chair**

Hearing Date: Thursday, February 14, 2013  
Hearing Time: 9:00 am  
Place: Senate Conference Room 229, State Capitol

**RE: SB 493, A Bill for an Act Relating to Food. 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.**

Dear Committee Members,

The Center for Science in the Public Interest (CSPI) strongly supports SB 493, 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.<sup>1</sup> Based on that estimate, approximately 240,000 Hawaii citizens can expect to suffer from a foodborne disease this year.<sup>2</sup> At \$2,008 per case, Hawaiians face the highest cost per incidence of illness of any population in the United States.<sup>3</sup> 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 responsibility 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

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

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

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

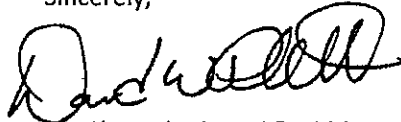
government website for food recall information, and only 6 percent sign up for government sponsored email alerts. Meanwhile, inconsistent reporting by the media compounded by personal news consumption habits limits the effectiveness of recall notices that rely on newspaper, radio or television. The same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

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. SB 493 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 Commerce and Consumer Protection to report SB 493 favorably to the Hawaii Senate.

Sincerely,



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

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



# GRANDE LAW OFFICES

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February 12, 2013

Senator Rosalyn Baker, Chair  
Senate Committee on Commerce and Consumer Protection  
Hawai'i State Legislature

## **Testimony in Support of SB 493, Relating to Food**

**Date:** Thursday, January 14, 2013  
**Time:** 9:00 a.m.  
**Place:** Conference Room 229  
State Capitol  
415 Beretania Street

Chair Baker and Members of the Committee:

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

I strongly urge the Committee to pass SB 493, 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.

I would like to suggest a clarifying amendment based upon the testimony previously given on HB 376, the House companion bill.

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## Testimony in Support of SB 493

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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 SB 493**

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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.

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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

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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>

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<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.

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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.<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.

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<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.

SB493

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No
Troy Abraham	Individual	Support	No