

JAN 17 2014

A BILL FOR AN ACT

RELATING TO COTTAGE FOODS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§46- Cottage food operations; permitted use in
5 residential areas. (a) For the purposes of zoning, a cottage
6 food operation shall be considered a residential use of property
7 and shall be a permitted use in all residentially designated
8 zones, including but not limited to zones for single-family
9 dwellings. No conditional use permit, variance, or special
10 exception shall be required for residences used as a cottage
11 food operation.

12 (b) For purposes of this section, "cottage food operation"
13 has the same meaning as defined in section 328-A."

14 SECTION 2. Chapter 328, Hawaii Revised Statutes, is
15 amended by adding a new part to be appropriately designated and
16 to read as follows:

17 "PART . COTTAGE FOOD OPERATIONS



1 **§328-A Definitions.** For purposes of this part, the
2 following definitions shall apply:

3 "Cottage food employee" means an individual, paid or
4 volunteer, who is involved in the preparation, packaging,
5 handling, and storage of a cottage food product, or who
6 otherwise works for the cottage food operation. A cottage food
7 employee does not include an immediate family member or
8 household member of the cottage food operator.

9 "Cottage food operation" means an enterprise that is
10 operated by a cottage food operator, has no more than one full-
11 time equivalent cottage food employee within the registered or
12 permitted area of a private home, and produces cottage food
13 products only in the home kitchen of the cottage food operator's
14 private home for sale to consumers pursuant to this part.

15 "Cottage food operator" means an individual who operates a
16 cottage food operation in the individual's private home and who
17 is the owner of the cottage food operation.

18 "Cottage food products" means non potentially hazardous
19 foods, including foods described in section 328-E and prepared
20 for sale in the home kitchen of a cottage food operation.

21 "Department" means the department of health.



1 "Direct sale" means a transaction between a cottage food
2 operator and a consumer, where the consumer purchases the
3 cottage food product directly from the cottage food operation.
4 The term includes but is not limited to transactions at holiday
5 bazaars, bake sales, food swaps, or other temporary events;
6 transactions at farm stands; farmers' markets; or transactions
7 occurring in person in the cottage food operation.

8 "Home kitchen" means a kitchen designed and intended for
9 use by the residents of a private home but also used by a
10 cottage food operator for the production of cottage food
11 products. A home kitchen may contain one or more stoves or
12 ovens designed for residential use but shall not include
13 commercial types of equipment typically used for large wholesale
14 manufacturing.

15 "Indirect sale" means an interaction between a cottage food
16 operator, a third-party retailer, and a consumer, where the
17 consumer purchases cottage food products made by the cottage
18 food operation from a third party who holds a food establishment
19 permit issued by the department. The term includes but is not
20 limited to sales made to retail shops or retail food
21 establishments where food may be immediately consumed on the
22 premises.



1 "Private home" means a dwelling, including an apartment or
2 other leased space, where individuals reside.

3 "Registered or permitted area" means the portion of a
4 private home that contains the private home's home kitchen used
5 for the preparation, packaging, storage, or handling of cottage
6 food products and related ingredients or equipment, or both, and
7 attached rooms within the home that are used exclusively for
8 storage.

9 **§328-B Requirements for cottage food operations.** (a) A
10 cottage food operation shall not be required to obtain a food
11 establishment permit from the department and shall not operate
12 as a food establishment or retail or wholesale food
13 manufacturer.

14 (b) A cottage food operation shall have no more than
15 \$50,000 in gross annual sales in each calendar year.

16 (c) A cottage food operation shall be registered a class A
17 cottage food operation, subject to the requirements under
18 section 328-C, or permitted as a class B cottage food operation,
19 subject to the requirements under section 328-D.

20 (d) A cottage food operation that is registered or has a
21 permit issued pursuant to this part shall be considered a
22 restricted food establishment and subject to rules relating to



1 food establishment sanitation as determined and adopted by the
2 department.

3 (e) The department shall establish requirements for the
4 self-certification checklist for cottage food operations,
5 including preparation, packaging, and handling of cottage food
6 products in the home kitchen; equipment and utensils; and
7 sanitation.

8 (f) A cottage food operator or cottage food employee who
9 prepares or packages cottage food products in a cottage food
10 operation shall complete a food safety workshop or class offered
11 by the department within four months of the cottage food
12 operation becoming registered or obtaining a permit.

13 (g) The department shall post the requirements for class A
14 and class B cottage food operations on its website.

15 **§328-C Class A cottage food operations; requirements.** (a)

16 A class A food operation may engage only in direct sales of
17 cottage food products from the cottage food operation or other
18 direct sales venues.

19 (b) The following requirements apply to class A cottage
20 food operations:

21 (1) A class A cottage food operation shall not be open for
22 business unless the class A cottage food operation has



1 registered with the department and has submitted a
2 completed self-certification checklist approved by the
3 department. The self-certification checklist shall
4 verify that the class A cottage food operation
5 conforms to this part and any rules adopted pursuant
6 to this part;

7 (2) Except as provided in section 328-F, a class A cottage
8 food operation shall not be subject to initial or
9 routine inspections; and

10 (3) The department shall issue a registration number to a
11 class A cottage food operation that meets the
12 requirements of this section.

13 **§328-D Class B cottage food operations; requirements.** (a)

14 A class B food operation may engage in direct sales and indirect
15 sales of cottage food products from the cottage food operation,
16 direct sales venues, or a food establishment with a valid permit
17 issued by the department.

18 (b) The following requirements apply to class B cottage
19 food operations:

20 (1) A class B cottage food operation shall not be open for
21 business unless it obtains a permit from the
22 department to engage in the direct and indirect sales



1 of cottage food products and has submitted a completed
2 self-certification checklist approved by the
3 department. The self-certification checklist shall
4 verify that the class B cottage food operation
5 conforms to this part and any rules adopted pursuant
6 to this part;

7 (2) The department shall issue a permit after an initial
8 inspection has determined that the proposed class B
9 cottage food operation and its method of operation
10 conform to this part; provided that access to the
11 private home for the initial inspection under this
12 paragraph is limited to the proposed registered or
13 permitted area and solely for the purpose of ensuring
14 conformity to this part;

15 (3) Except as provided in section 328-H, a class B cottage
16 food operation shall not be subject to more than one
17 inspection per year by the department; and

18 (4) A class B cottage food operation shall be authorized
19 to engage in the indirect sales of cottage food
20 products within the county in which the class B
21 cottage food operation is permitted.



1 **§328-E Approved cottage food products.** (a) The
2 department shall adopt and post on its website a list of non
3 potentially hazardous foods and their variations that are
4 approved for sale by a cottage food operation.

5 (b) The list of non potentially hazardous foods shall be
6 known as the approved cottage food products list and shall
7 include but not be limited to:

8 (1) Baked goods without cream, custard, or meat fillings;

9 (2) Candy;

10 (3) Chocolate-covered nonperishable foods, such as nuts
11 and dried fruit;

12 (4) Dried fruit;

13 (5) Dried pasta;

14 (6) Dry baking mixes;

15 (7) Dry herbs, herb blends, and seasoning blends;

16 (8) Fruit pies;

17 (9) Granola, dry cereal, and trail mixes;

18 (10) Honey from a home-based agricultural producer of
19 honey;

20 (11) Jams, jellies, preserves, and fruit butter that comply
21 with the standard described in 21 C.F.R. Part 150;

22 (12) Nut mixes and nut butters;

1 (13) Popcorn;

2 (14) Roasted coffee and dried tea;

3 (15) Vinegar and mustard; and

4 (16) Waffle cones and pizelles.

5 (c) The department may add or delete food products to or
6 from the approved cottage food products list described in
7 subsection (b). Notice of any change to the approved cottage
8 food products list shall be posted on the department's website.
9 Any change to the approved cottage food products list shall
10 become effective thirty days after the notice is posted. The
11 notice shall state the reason for the change, the authority for
12 the change, and the nature of the change. The notice shall
13 allow at least twenty days for comments to be submitted and
14 shall indicate the physical address or electronic mail address
15 to which comments are to be submitted and the deadline by which
16 the comments are required to be received by the department. The
17 department shall consider all comments submitted before the due
18 date. The department may withdraw the proposed change at any
19 time by notification on the department's website or through
20 notification by other electronic means. The approved cottage
21 food products list and any updates shall not be subject to the
22 requirements of chapter 91.



1 §328-F Labeling requirements for cottage food operations.

2 (a) A cottage food operation shall label each cottage food
3 product and include on the label the following:

4 (1) The words "Made in a Home Kitchen" in at least twelve
5 point type, displayed in a conspicuous place on the
6 principal display area of the packaging or container;

7 (2) The common name of the cottage food product;

8 (3) The name and address of the cottage food operation
9 that produced the cottage food product;

10 (4) The ingredients of the cottage food product, in
11 descending order of predominance by weight, if the
12 product contains two or more ingredients;

13 (5) The net weight or net volume of the cottage food
14 product;

15 (6) Allergen information, if required, as specified in
16 section 403 of the federal Food, Drug, and Cosmetic
17 Act (21 U.S.C. 343); and

18 (7) Nutrition labeling, if required, as specified in 21
19 C.F.R. Part 101.

20 (b) Cottage food products identified and labeled pursuant
21 to subsection (a) are acceptable cottage food products that may



1 be sold by a class B cottage food operation in an indirect sale
2 via a retail shop or retail food establishment.

3 **§328-G Prohibitions.** A cottage food operation shall not
4 process acidified foods, low acid canned foods, or potentially
5 hazardous foods; offer for sale adulterated or misbranded food;
6 refuse an inspection or the taking of samples as authorized by
7 section 328-H or by rule; produce or sell food items not
8 appearing on the approved cottage food products list; or sell
9 cottage food products outside the State of Hawaii.

10 **§328-H Inspections; food sampling.** (a) If the department
11 receives a consumer complaint about a cottage food operation or
12 cottage food product, the department may access, for inspection
13 purposes, the registered or permitted area of a private home
14 where a cottage food operation is located to determine if the
15 cottage food product is misbranded or adulterated or if the
16 cottage food operation is in violation of this part.

17 (b) The department may conduct food sampling of the
18 cottage food product as part of the inspection.

19 (c) Access to the private home under this section is
20 limited to the registered or permitted area and solely for the
21 purpose of enforcing or administering this part.



1 (d) The department may seek recovery from a cottage food
 2 operation of an amount not to exceed the department's reasonable
 3 costs of inspecting the cottage food operation if the cottage
 4 food operation is found to be in violation of this part.

5 (e) The department shall adopt rules establishing
 6 procedures for the inspection of cottage food operations and
 7 standards for food sampling of cottage food products."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Clarence K. Krishikere
 Hanna Thul

Praveen Prasad
J. Kalani Goh
~~Deborah Goh~~
Matt R
John M
Erzanne Cruz Oakland

Will Egan
Madeline J

S.B. NO. 2561

Report Title:

Cottage Food; Cottage Food Operations; Permits; Registration

Description:

Permits the cottage food industry in Hawaii. Establishes requirements for cottage food operators, cottage food operations, and cottage food products. Permits class A cottage food operations to engage in direct sales of cottage food products and permits class B cottage food operations to engage in direct and indirect sales of cottage food products.

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

