

**LATE**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



DIRECTOR OF HEALTH

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

In reply, please refer to:  
File:

**Committee on Commerce and Consumer Protection  
Committee on Ways and Means**

**SB 2561 S.D.1, RELATING TO COTTAGE FOODS**

**Testimony of Gary L. Gill  
Deputy Director, Environmental Health Administration**

**February 26, 2014  
10:20 a.m.**

1 **Department's Position:** The department opposes this bill because it already has necessary  
2 permitting and enforcement authority and procedures.

3 **Fiscal Implications:** Passage of this measure would require resources that the department has not  
4 planned for and would affect other program priorities. The bill also requires the promulgation of new  
5 administrative rules governing cottage foods which the department has just completed.

6 **Purpose and Justification:** The department opposes this bill as it is unnecessary. Current Hawaii  
7 Administrative Rules (HAR) Title 11, Chapter 50, Food Code, which governs food safety already allows  
8 for non-potentially hazardous foods (Non-PHF) to be produced in a home kitchen and sold directly only  
9 to consumers.

10 Hawaii Administrative Rule, Title 11, Chapter 50 was just signed into law on February 13, 2014,  
11 which adopts the 2009 FDA Model Food Code nearly in its entirety and represents the most current  
12 science-based model to protect food safety. The new rule already protects public health by requiring  
13 most of the measures being introduced by this bill, such as the completion of an application to allow the  
14 department to conduct an assessment of the foods being manufactured and sold and to determine its  
15 safety and whether or not it meets the definition of being non-potentially hazardous. The proposal  
16 would also conflict with the both past and newly adopted rules, which prevent permitted food

*Promoting Lifelong Health & Wellness*

1 establishments from purchasing any food items from unapproved sources. All foods originating from  
2 residential kitchens are considered to be unapproved sources for permitted food establishments within  
3 the state.

4 The restriction that only allows the “cottage foods” to be sold for a maximum of 20 days of sale  
5 in any 120 day window at a specific location also reduces the public health risk of food illness or the  
6 consumption of possibly adulterated foods by reducing the volume that can be sold. It is a generally  
7 held principle in food safety that adverse risk increases with increased volume of food distributed.

8 The department already has the necessary enforcement powers under current law to order  
9 operators to cease and desist the sale of foods as the result of any food illness investigation or suspected  
10 adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or  
11 distribution. The department may also seize or embargo the food products of necessary.

12 The department is currently approving the following types of foods that originate from home  
13 kitchens: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton  
14 candy, dry herbs, nuts, rubs, spices, re-packing of arare and other non-hazardous snacks, etc.

15 At present, the department reviews and approves an average of 106 non-potentially hazardous  
16 Temporary Food Establishment (TFE) permits a month (Cottage Food Businesses) for which the  
17 department does not charge any fees and another 418 potentially hazardous food (PHF) TFE permits  
18 monthly that we currently charge \$50-\$100 for 1 to 20 days of sale. The department’s food safety  
19 program generates over \$125K annually from these TFE permits. Potentially hazardous TFE are  
20 required to prepare all foods in a DOH permitted kitchen. No PHF foods are allowed to be produced for  
21 sale in a home kitchen.

22 The maintenance and constant updating of a list of food products whose future permutations are  
23 infinite will also waste valuable government resources for food products already defined under newly  
24 passed HAR.

25 The department may also not be able to conduct inspections in residences, if entry is denied by  
26 the homeowner. The department may be required to obtain search warrants for entry into private homes.  
27 The department would also have to craft separate cost estimates for the costs associated with enforcing  
28 violations of this proposal.

29 Passage of this bill would also create confusion as the recently passed HAR already regulates  
30 this activity. Hawaii has had an active cottage food industry for decades which has been successfully  
31 regulated by the department and the requirements remain basically unchanged under the newly adopted  
32 HAR governing food sales of this type. The current proposal is also confusing as it requires and does

1 not require inspections by the department. The bill also does not require permits in some sections, then  
2 requires registration numbers, self certification check lists, and permit issuance in other sections.

3 The department respectfully request that the legislature does not engage in administrative rule  
4 writing through the passage of HRS if a concerted effort to change HAR or departmental policies has  
5 not been looked into. Public hearings on the new HAR recently adopted received no comments or  
6 suggestions that the department change how it regulates these cottage foods.

7 Even though the newly adopted HAR is a complete paradigm shift on how we regulate the food  
8 service industry, it will not change the regulatory landscape at all with regards to how cottage foods are  
9 already regulated and will not affect the industrys growth negatively.

10 Thank you for the opportunity to testify.



**LATE**

February 25, 2014

To: Senate Committees on Commerce and Consumer Protection Ways and Means  
Chairs Baker and Ige, Vice Chairs Taniguchi and Kidani and Members of the  
Committees

From: Hawaii Food Manufacturers Association

Re: Testimony in SUPPORT of SB 2561 SD1 – Relating to Cottage Foods

The Hawaii Food Manufacturers Association and our over 120 members strongly support SB2561 SD1. This bill provides basic safeguards that would enable small farmers and home food processors to create value-added products from non-potentially hazardous foods for sale directly to consumers or to other food distributors.

The ability to work in home kitchens will increase the use of local foods in small-scale value-added production and allow for start-up operations that could grow into larger commercial ventures.

HFMA and our members believe that working together we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food.

Sincerely,

*Holly Kessler*

Holly Kessler  
Operations Manager  
Hawaii Food Manufacturers Association

Hearing SB2561 Wednesday, February 26, 2014

Sydney Morrow Testimony

Temporary Food Establishment (TFE) permits are invaluable for local entrepreneurship and the establishment of a local, sustainable food industry, which contributes to a thriving local economy. They make it possible to vend products produced in a residential kitchen directly to consumers at farmers markets, neighborhood bizzarres, festivals, etc. Required are a list of products, specific dates of events, and contact information in order to obtain a permit. The permit restricts the vender to doing business no more than 20 days in any 120 day period with the intention of limiting the amount of business a temporary vender can do. In order to continue after 120 days, another permit must be acquired. Although there is an appropriate circumstance for this rule, it is limiting inasmuch as it precludes the relative permanence of a home-business operation as a step toward permanent food establishment status. Consider the case of a jam maker at an outdoor market who is approached by a woman wanting to place a standing order, that is, a number of jars of jam made available directly to her on a regular basis. As a home-producer, perhaps there is no issue with establishing this connection and carrying on outside of the 4 events per month that the permit dictates, but on a personal, relatively un-businesslike level. A similar situation would be an invitation extended to the vendor at a public event to prepare products for a private gathering, such as a small art exhibition or a bridal shower. These examples indicate an absence in the existing laws for home-businesses which hope to build customer relationships and grow their business, continuously and contiguously, as an LLC or Sole Proprietorship. The sale and purchase of foods produced in a home kitchen ought to all be included on one ledger, whether in the context of a TFE or any other direct sale.

Many concerns for limiting the potential for sales of a home-produced product seem to be geared toward lessening the potential for competition with establishments which include commercial kitchens, and so pay for permits, rent or mortgage, etc. Without a limit for sales, it is implied that a home-producer could evolve from small-batch production to some semblance of full-scale manufacturing within the home in order to avoid these costs. Yet, without industrial appliances, such a process is impossible to accomplish in most any residential kitchen without significant and costly upgrades to the space. If these funds are available, the limitation which stalls would-be entrepreneurs would be assuaged. Most home-producers, however, do not have the resources to inflict anything resembling competition with a permanent food establishment.

Cited in the DOH testimony is the "generally held principle in food safety that adverse risk increases with increased volume of food distributed." There is a subtle point being made here, viz., that risk and production increase *in the case of non-manufactured foods*. Otherwise, the honey at Costco would be less safe than that gathered by a local, home-based apiarist. A common argument is that immense food production, the sort that allows for wholesale vending, because it is standardized and takes place in dedicated facilities, is more safe than small-scale production. This argument, however, depends more on the issue of liability than volume. There are whole batches, of which individual products may number hundreds or even thousands, which become contaminated, but this is only one batch among many successful ones. As a result, the company's insurance covers these occurrences without significant issue. On the other hand, one instance of contamination may put a home-producer out of business, and leave him with substantial debt as a result. Why is it assumed that the more volume a home-based business produces, the higher the likelihood for contamination, especially when it concerns only non-potentially hazardous foods? At the end of the day, the market decides which home producers succeed and which do not. Cleanliness, honesty, quality, presentation, and organization all contribute to the image of the product, and home producers have recourse only to these, as they lack the name recognition of more established, commercial products. Home producers realize that the bottom line is not to make a ludicrous profit because cutting costs on such a small production directly affects the quality of the product, and a low quality product simply will not sell. Furthermore, according to data collected in California in the

wake of passing their cottage food bill, there was no increase in reported cases of food-borne illness that can be attributed to non-hazardous foods produced in a home kitchen.<sup>1</sup>

Passing a cottage food bill in Hawaii will not create an entirely new entrepreneurial opportunity for its residents, as TFE permits have already laid the foundation for people to share their home produced creations. Hawaii can do more for its residents by expanding the context of home based businesses to include a variety of transaction types. Doing so not only invests in current small business entrepreneurship, but also encourages people to build their businesses, a step toward assuring a wealth of diversity and sustainability for Hawaii's future.

---

<sup>1</sup> <http://www.forbes.com/sites/instituteforjustice/2014/01/29/california-legalized-selling-food-made-at-home-and-created-over-a-thousand-local-businesses/>