

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 9:40 AM
To: CPCtestimony
Cc: gailandgreg@mac.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

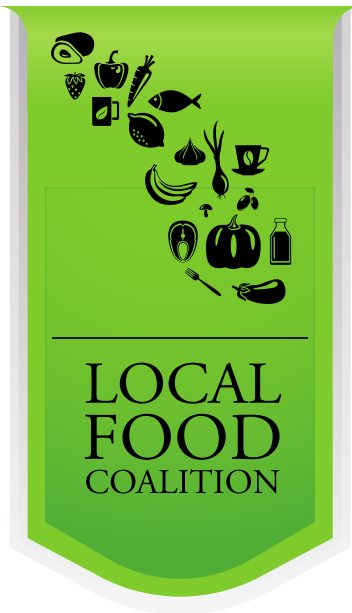
Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Greg Smith	Hawaii Farm Union United	Support	No

Comments: My name is Greg Smith, as an organic farmer on the big island the need for value added products from my farm is crucial to keeping the farm income flowing. I live out in the country, where finding someone to rent the kitchen is almost unheard of and if you find a kitchen it is expensive. My wife is a certified Master Canner and Preserver. She is so diligent with her canning safety measures for our CSA customers that her kitchen is cleaner than the certified one she uses for our farmers market sales. To be able to do everything in one location (at home) would be a step in right direction, please pass this bill for all of the creative value added folks in Hawaii.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
MARCH 30, 2015 – 2:00 PM – Room 325

RE: SB 379 SD2 HD1 - Relating to Food – In Strong Support

Aloha Chair McKelvey, Vice Chair Woodson and Members of the Committee:

The Local Food Coalition is in strong support of SB 379 SD2 HD1 which requires cottage food operators, who produce non-potentially hazardous food products in a home kitchen or farm kitchen for direct sale to consumers, to obtain a cottage food operation permit from the department of health, and establishes labeling requirements.

This bill clarifies the rules by creating an annual permit and a sample list of foods for homemade food production. Currently, cottage food operators apply for temporary food establishment permits, which allow homemade food producers to sell their products at a specific location for a maximum of 20 days of direct sales within a 120-day period. The permit does not cover multiple locations so if a homemade food producer wants to sell at different farmers markets, they have to apply for a permit for each location. The annual permit will authorize cottage food operators to engage in direct sale of their products at multiple locations. We are pleased that the HD1 also establishes labeling requirements. Almost all states with cottage food laws have labeling requirements.

Over 40 states have cottage food laws. The cottage food industry is a growing movement across the nation as consumers are looking for unique, locally produced, high-quality food products. It provides economic and community benefits. SB 379 SD2 HD1 will help increase the use of local foods in small-scale value-added production and allow for start-up operations that could grow. Communities benefit from greater access to locally produced foods.

The Local Food Coalition urges the committee to pass this bill. SB 379 SD2 HD1 addresses food safety, supports local farmers, and provides opportunity for small-scale food entrepreneurs. Thank you for the opportunity to provide testimony.

4 Ag Hawai'i

Hawai'i Aquaculture &
Aquaponics Association

Hawai'i Association of
Independent Schools

Hawai'i Cattlemen's Council

Hawai'i Farm Bureau
Federation

Hawai'i Farmers' Union
United

Hawai'i Food Industry
Association

Hawai'i Food
Manufacturers Association

Kohala Center

Malama Kaua'i

Maui School Garden
Network

Ulupono Initiative

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 8:36 AM
To: CPCtestimony
Cc: ken@mycoffee.net
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ken Love	Hawaii Tropical Fruit Growers	Support	No

Comments: Hawaii Tropical Fruit Growers is in full support of this bill as it empowers growers across the state and lets them be more self sustainable by enabling them to produce quality goods in home environments.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Monday, March 30, 2015 – 2:00PM – Room 325

RE: SB 379, SD2, HD1 - Relating to Food - In Strong Support

Dear Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

The Kohala Center strongly supports SB 379, SD2, HD1. The bill addresses important concerns of the cottage food industry and reflects the input of members of the Cottage Food Business Working Group organized from SCR 97 from the 2014 Legislative session, including Mark Ferguson, Chief Organic Officer, Down to Earth (O'ahu), Terri Langley, Ma'o Organic Farm (O'ahu), Ken Love, Executive Director, Hawai'i Master Food Preservers, and Executive Director, Hawai'i Tropical Fruit Growers (Hawai'i Island), Janine Lynne, Owner, Black Dog Farms (Kaua'i), Jamie Ronzello, Owner, Barking Deer Farm (Moloka'i), and Dr. Chris Speere, Maui Culinary Academy and 'Made on Maui' labeling (Maui). The Kohala Center served as facilitator for the Working Group and wrote the Hawai'i Cottage Food Business Working Group Report, 2014, attached hereto.

At present, the Hawai'i Department of Health (HDOH) allows limited sales of homemade non-potentially hazardous foods under its temporary food establishment (TFE) permit. However, local value-added food businesses producing non-potentially hazardous foods in a home kitchen face three primary difficulties under the TFE permit system:

1. **Unclear rules.** The TFE permit application explicitly states (in all capital letters): "NO HOME PREPARED FOOD." Aspiring cottage food operators may easily conclude that home-based food production is completely prohibited in Hawai'i based on the TFE permit application, which is housed on HDOH's website. The TFE permit application also requires producers to list the location of their "approved food establishment." Since HDOH prohibits home kitchens from being "approved food establishments," the permit application further sends the message that home prepared foods are prohibited in Hawai'i. Thus, only producers who are "in the know" would apply for a TFE permit to produce non-potentially hazardous foods in a home kitchen. In addition, HDOH's website includes a confusing link to Alaska's Cottage Food Fact Sheet, along with a note that Alaska's rules do not apply in Hawai'i.
2. **Onerous administrative burden.** The TFE permit is limited to 120 days, requiring food producers to submit permit applications 3 times per year. In addition, TFE permits are limited to selling at a single location, so producers have to obtain multiple TFE permits to sell at multiple farmers markets. Thus, producers have to apply for multiple TFE permits, 3 times per year, which is unnecessary to protect public health and especially burdensome for rural residents with limited internet access and who may reside many miles from an HDOH office.

EDUCATION. ENVIRONMENT. EMPOWERMENT.

3. **Arbitrary sales limitations.** The TFE permit limits sales of non-potentially hazardous foods to 20 sales days within the 120-day permit period. The 20-day limit on selling of non-potentially hazardous foods is unnecessary from a food safety perspective, and arbitrary.

SB 379, SD2, HD1 remedies some of these issues by:

1. **Clarifying the rules for homemade food production** by creating a cottage food permit and providing a sample list of foods for which a producer may apply for a permit; and
2. **Streamlining the administrative process** for cottage food operators and HDOH by creating an annual permit.

Over forty states have passed cottage food legislation. From our research, these states have not received reports of foodborne illness from registered cottage food operations. SB 379, SD2, HD1 protects public health by limiting sales to non-potentially hazardous foods, which are foods with a low risk of causing foodborne illness. In addition, the bill limits sales to direct-to-consumer sales, such as farmers market sales. Five of the ten most populous states in the nation allow their cottage food industries not only to make direct-to-consumer sales, but also to sell non-potentially hazardous foods to retailers such as restaurants and hotels (“indirect sales”). These states include California, New York, Pennsylvania, Ohio, and North Carolina. Massachusetts, Louisiana, Utah, Maine, and New Hampshire also allow indirect sales to retailers.

Local value-added food businesses offer an important economic opportunity for entrepreneurs in Hawai‘i, and an important economic opportunity for our state. These businesses provide a market for local produce, offer locally-made alternatives to national brands, create employment opportunities, and hold the potential to keep more dollars circulating within Hawai‘i’s economy and increase tax revenue. There are many talented, industrious food entrepreneurs in the state, but the high startup cost of acquiring a certified kitchen is a considerable barrier to entering the value-added food industry. SB 379, SD2, HD1 offers cottage food operations an opportunity to evolve into an established commercial food business that can afford a certified kitchen, while protecting consumer health.

HDOH previously submitted written testimony in opposition to the bill, containing the following concerns. Our responses are as follows:

HDOH Concern: The bill conflicts with comprehensive food safety regulation recently adopted by HDOH that incorporates the most current science in controlling risk factors known to cause foodborne illness.

Response: The recent updates to Hawai'i's Food Safety Code pertain to the new pass/fail inspection system for food establishments, such as restaurants. However, HDOH's temporary food establishment permit system for homemade food producers was developed by HDOH years ago. In the interim, numerous states have updated their laws for homemade food producers through cottage food legislation that aims to protect consumer health while supporting the development of small food businesses. The bill draws upon cottage food laws and regulations from across the nation.

HDOH Concern: HAR Chapter 50, Food Safety Code already provides the Home-Made food industry the opportunity to produce non-potentially hazardous foods (i.e., cookies, breads, jams, etc.) from their homes for direct sales to consumers.

Response: The Food Safety Code creates the temporary food establishment (TFE) permit, which HDOH offers to home-based food producers. However, as indicated above, the TFE permit application explicitly states: "NO HOME PREPARED FOOD."

HDOH Concern: This bill is contrary to The FDA Model Food Code, which is the national standard for regulating the food industry.

Response: The FDA Model Food Code is not law but a set of recommendations. Federal law does not prohibit the sale of foods produced in home kitchens. Instead, current FDA rules and regulations require that food producers adhere to certain processes and administrative requirements to ensure food safety. The bill follows suit, by requiring cottage food producers to obtain permits and produce only allowed foods.

The FDA Model Food Code does not consider a kitchen in a private home a food establishment unless only food that is not "time/temperature control for safety food" is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority.

Cottage food laws passed in the majority of states conflict with the FDA Model Food Code by allowing the sale of food produced in a home kitchen beyond the limited circumstances described in the paragraph above. From our research, these states have not experienced reports of foodborne illness from registered cottage food operations.

EDUCATION. ENVIRONMENT. EMPOWERMENT.

The Kohala Center is an equal opportunity provider and employer.

Thank you for your consideration of SB 379, SD2, HD1, and this opportunity to submit testimony.

Respectfully,



Anna-Lisa Okoye
on Behalf of The Kohala Center

Founded in the year 2000, The Kohala Center is an independent, community-based center for research, conservation, and education. We turn research and traditional knowledge into action, so that communities in Hawai'i and around the world can thrive – ecologically, economically, culturally, and socially. Our main areas of interest are energy self-reliance, food self-reliance, and ecosystem health.

EDUCATION. ENVIRONMENT. EMPOWERMENT.

The Kohala Center is an equal opportunity provider and employer.

Hawai'i Cottage Food Business Working Group Report, 2014

January 13, 2015

Prepared by: The Kohala Center

For Ulupono Initiative and the Cottage Food Business Working Group

INTRODUCTION

Pursuant to legislative mandate S.C.R. No. 97 (2014), Ulupono Initiative convened a Cottage Food Business Working Group comprised of representatives from the Hawai‘i Department of Health (HDOH) and the cottage food industry. A list of the members of the Working Group is included in **Appendix A**.

On October 15, 2014, representatives from the cottage food industry gathered in Honolulu to discuss the current regulatory framework governing the sale of homemade food in Hawai‘i, and to develop draft recommendations for a new legal framework to promote growth in Hawai‘i’s cottage food industry while protecting public health.

In developing the recommendations, the industry group was guided by the following principles:

- Local food production is integral to Hawai‘i’s economic development and food security
- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai‘i’s “Increased Food Security and Food Self-Sufficiency Strategy,” which notes that “replacing just 10% of the food Hawai‘i currently imports would amount to approximately \$313 million dollars” remaining in the State’s economy (Office of Planning, Department of Business Economic Development & Tourism; http://files.hawaii.gov/dbedt/op/spb/INCREASED_FOOD_SECURITY_AND_FOOD_SELF_SUFFICIENCY_STRATEGY.pdf); and
- The United States Department of Agriculture’s allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

On October 16, 2014, members of the industry group met with HDOH to discuss the current rules regulating sales of homemade food and potential changes to the legal framework. HDOH noted that it has rulemaking authority to adopt a revised framework for homemade food operations, and requested that the industry group give HDOH an opportunity to review and respond to proposed recommendations before seeking new legislation. HDOH recognized that new legislation would be required to implement changes that HDOH is unwilling to implement through rule changes.

During November 2014, The Kohala Center solicited feedback on the draft recommendations from HDOH and the public. The original draft recommendations can be found in **Appendix B**, with HDOH’s response in **Appendix C**, and comments from the public in **Appendix D**.

After reviewing the feedback from HDOH and the public, the industry group developed revised recommendations, outlined below.

CURRENT LEGAL FRAMEWORK

Hawai'i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai'i Department of Health has adopted the "Food Safety Code" (Hawai'i Administrative Rules, Chapter 11-50), which requires "food establishments" and "temporary food establishments" to undergo a permitting process for the sale of food to the public.

Food Establishments

HDOH defines "food establishments" as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

Temporary Food Establishments ("TFE")

HDOH defines "temporary food establishments" as any food establishment that operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole produce, cut fruit (except for cantaloupes, melons, and tomatoes), cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

Limitations of Current Regulatory Framework

The current regulatory framework creates several challenges for value-added food producers in Hawai'i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH's requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai'i, especially in rural areas. For example, Hawai'i Island's Puna and Kona Districts lack any certified

community kitchens, and the entire island of Kaua‘i lacks any certified community kitchens, although one is currently under construction on the north shore.

For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and insufficient space for storage and refrigeration, which restricts the types and quantities of products that may be produced. Low population density in rural areas often means that certified community kitchens, if available, are many miles away. With gas prices in Hawai‘i being the highest in the nation, traveling long distances can be cost prohibitive for small businesses.

RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I

In order to mitigate the challenges facing value-added food producers in Hawai‘i while protecting public health, the industry group proposes the following recommendations for a new legal framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Laws applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements to minimize the risk of foodborne illness:

- A. Food Safety Training;
- B. Safe Food Handling Guidelines;
- C. Product Labeling;
- D. Limiting the Types of Allowable Foods for Home Production; and
- E. Permits.

A. FOOD SAFETY TRAINING

Recommendation:

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at www.hifoodhandlers.com; or
2. ServSafe® Food Handler Program, offered online at www.servsafe.com/ss/foodhandler; or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

Rationale:

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.

Instead, the industry group recommends that in addition to offering a free Food Safety Certification Workshop, the State should accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, hifoodhandlers.com offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while proof of course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens, time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

B. SAFE FOOD HANDLING GUIDELINES

Recommendation:

Homemade food operations must comply with the safe food handling guidelines taught in an approved food safety training course, as well as the following requirements:

1. No [homemade] food preparation, packaging, or handling may occur in the home kitchen concurrent with any other domestic activities, such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment.
2. No infants or pets may be in the home kitchen during the preparation, packaging, or handling of any [homemade] food products.
3. Kitchen equipment and utensils used to produce [homemade] food products shall be clean and maintained in a good state of repair.
4. All food contact surfaces, equipment, and utensils used for the preparation, packaging, or handling of any [homemade] food products shall be washed, rinsed, and sanitized before each use.
5. All food preparation, and food and equipment storage areas shall be maintained free of rodents and insects.
6. Smoking shall be prohibited in the portion of a private home used for the preparation, packaging, storage, or handling of [homemade] food products and related ingredients or equipment, or both, while [homemade] food products are being prepared, packaged, stored, or handled.¹

Rationale:

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with safe food handling guidelines.

¹ California Homemade Food Act (California Health and Safety Code, Section 114365(a)(1)(A)), available at http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1601-1650/ab_1616_bill_20120921_chaptered.html.

The above-listed requirements are consistent with the requirements of the California Homemade Food Act.

C. LABELING

Recommendation:

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen that has not been inspected by the Hawai‘i Department of Health,” along with the name and address of the producer and an ingredient list by weight.

Homemade food operations selling acidified foods must also comply with United States Food & Drug Administration (FDA) labeling requirements.

Rationale:

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

D. ALLOWABLE FOODS FOR HOME PRODUCTION

Recommendation:

Homemade food operators may produce and sell non-potentially hazardous foods, based on water activity (A_w) and pH, as defined in the Food Safety Code (see below).

Non-potentially hazardous foods include, but are not limited to:

1. Baked goods, such as breads, biscuits, churros, cookies, pastries, and tortillas
2. Candy, such as brittle and toffee
3. Chocolate-covered nonperishable foods, such as nuts and dried fruit
4. Jams, jellies, preserves, chutneys, and fruit butters
5. Whole produce
6. Cut fruit (except for cantaloupe, melon, and tomatoes)
7. Cotton candy
8. Shave ice
9. Doughnuts, andagi, mochi
10. Dried fruit
11. Dried pasta
12. Dry baking mixes
13. Dry herbs, herb blends, and seasoning blends and rubs
14. Fruit pies
15. Nuts
16. Granola, dry cereal, and trail mixes
17. Nut mixes and nut butters
18. Popcorn
19. Roasted coffee and dried tea
20. Vinegar and mustard
21. Waffle cones and pizelles
22. Fresh fruit juice made from fruits other than cantaloupe, melon, and tomatoes

23. Hand-pounded poi
24. Some sauces and liquids/beverages
25. Pickles and acidified foods
26. Fermented foods

With respect to items 24-26, HDOH shall require homemade food operators to submit these items to a process authority – a qualified person recognized by HDOH as having expert knowledge acquired through appropriate training and experience in the processing of such foods – for product testing and production process review and recommendations.

In addition, homemade food operators must comply with FDA acidified food regulations (21 CFR 114), including the completion of an approved food processing course.² Producers of acidified foods shall acidify foods to the Hawai'i Master Food Preservers accepted pH range of 3.5-4.0 for acidified foods produced in the tropics.

Homemade potentially hazardous foods may not be sold to the public. Such foods include, but are not limited to:

1. Low-acid canned foods
2. Refrigerated foods
3. Frozen foods
4. Dairy products
5. Seafood products
6. Dried meats and fish

Rationale:

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that, because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-potentially hazardous food by the HDOH.

² Dr. Aurora A. Saulo, Extension Specialist in Food Technology, College of Tropical Agriculture & Human Resources (CTAHR) University of Hawai'i at Mānoa Cooperative Extension Service Food Technology Program offers a “Better Process Control School For Managers and Supervisors of Food Processing Operations” (<http://manoa.hawaii.edu/ctahr/pacific-afsp/wp-content/uploads/2012/06/Brochure-Aug6-9-20132.pdf>), which meets FDA training requirements for the production of acidified foods. North Carolina State University has developed an “Acidified Foods Manufacturing School” program, comprised of an online segment and an in-person segment (<http://foodsafety.ncsu.edu/acidified-foods-manufacturing-school-ncsu/>), which meets the FDA training requirement for the production of acidified foods. Fletcher Arritt, Ph.D., the developer of the North Carolina State University course and the director of the Entrepreneurial Initiative for Food Program within North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program, designed the course so that other universities, such as the University of Hawai'i, could offer the in-person segment. In addition, University of California, Division of Agriculture and Natural Resources, offers an online Better Process Control School, which meets FDA requirements (http://www.fruitandvegetable.ucdavis.edu/Cooperative_Extension_Short_Courses/Better_Process_Control_School_Online/).

Hawai'i's Food Safety Code designates foods with the following pH and A_w values as non-potentially hazardous (PHF):

1. Heat treated foods:

A_w values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
≤0.92	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

2. Non-heat treated foods or heat-treated but not packaged foods

A_w values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

HDOH currently considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

Acidified Foods

Foods to which an additive, such as vinegar, is added as a method of preservation or reducing pH to render the food non-potentially hazardous are called “acidified foods” and are subject to specific state and federal rules. Under HDOH rules, a producer must apply to HDOH for a variance to produce an acidified food product. HDOH may grant a variance by modifying or waiving the requirements of the Hawai'i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous and prohibits the sale of homemade acidified foods.

Registered home food processors in Pennsylvania, Maine, and North Carolina have been safely producing homemade acidified foods for decades. See **Appendix E** for a letter from Sheri L. Morris, Food Program Manager with the Pennsylvania Department of Agriculture, Bureau of Food Safety and Laboratory Sciences, indicating a lack of foodborne illness outbreaks associated with any registered home food processor in the state. During phone conversations, North Carolina's Department of Agriculture and Consumer Services (NCDA&CS) Food & Drug Protection Division and North Carolina State University's Department of Food, Bioprocessing and Nutrition Sciences Extension Program (which conducts product testing for NCDA&CS) have indicated a lack of awareness of foodborne illness outbreaks associated with registered home food processors making acidified foods in the state.

In Pennsylvania:

“Limited Food Establishment Producers may only “can” food products that reach a pH of 4.6 or less upon completion of the recipe (a combination of pH (acid level) and Available Water (Aw) may also be tested). Examples of [t]ypes of food products that might be approved include: salsa, chow-[c]how, pickled beets, pickled vegetables, hot sauces, and barbeque sauce. Producers of Acidified Foods must have written recipes/formulas and procedures. You will need to provide a Process Flow for your products and have it approved by your Sanitarian prior to registration and sale of your product. This does not apply to Acid or Fermented Foods. If you are unsure if your product is considered an Acidified Food, please discuss with your Sanitarian.”³

Similarly, NCDA&CS, Food & Drug Protection Division, allows sales of homemade acidified foods following:

1. Submission of an application for home processing inspection (<http://www.ncagr.gov/fooddrug/food/documents/homeprocessor8.pdf>);
2. A satisfactory home inspection;
3. Successful completion of the North Carolina State University Acidified Foods School for Entrepreneurs or an equivalent FDA certified course;
4. Product testing by a process authority, such as the Department of Food, Bioprocessing and Nutrition Sciences, North Carolina State University (http://fbns.ncsu.edu/extension_program/food_product_testing.html); and
5. Receipt of a process authority letter for submission to the FDA.

Maine and Mississippi also allow the sale of homemade acidified foods following product testing, and Kentucky allows sales of homemade acidified foods produced by farmers (called “home-based microprocessors”). In addition, Alaska considers acidified foods, fermented foods, and certain sauces and liquids to be non-potentially hazardous and permits sales of these homemade items following product testing. A complete list of allowed foods in Alaska can be found at: http://dec.alaska.gov/eh/fss/Food/Docs/Cottage_Food_Exemptions.pdf.

³ Pennsylvania Department of Agriculture, Bureau of Food Safety & Laboratory Sciences, Letter to Limited Food Establishment Applicants, available at http://www.agriculture.state.pa.us/portal/server.pt/gateway/PTARGS_0_2_24476_10297_0_43/agwebsite/Files/Forms/APPLICATION%20PACKET%20-%20LIMITED%20FOOD%20ESTABLISHMENT%2006-2014.pdf

The FDA does not prohibit the sale of acidified foods⁴ produced in a home kitchen. Under FDA rules, commercial processors, including home processors, of acidified foods are required to:

- Register with the FDA on Form FDA 2541.
- File a scheduled process with the FDA on Form FDA 2541a demonstrating that the acidified food is made pursuant to a scheduled process established by “a qualified person who has expert knowledge acquired through appropriate training and experience in the acidification and processing of acidified foods” (21 CFR 114.83)
- Operate under the supervision “of a person who has attended a school approved by the Commissioner for giving instruction in food-handling techniques, food-protection principles, personal hygiene and plant sanitation practices, pH controls and critical factors in acidification, and who has been identified by that school as having satisfactorily completed the prescribed course of instruction (21 CFR 114.10).
- Test and examine containers often enough to ensure that the container suitably protects the food from leakage or contamination (21 CFR 114.80(a)).
- Mark each container or product with an identifying code permanently visible to the naked eye. The code shall specify the establishment where the product was packed, the product contained therein, and the year, day, and period during which it was packed (21 CFR 114.80(b)).

HDOH’s blanket prohibition on the sale of homemade acidified foods (except for jams and jellies) is unnecessary under FDA rules and does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes and comply with FDA rules.

The FDA does not consider fermented foods to be an acidified food, and has noted that it “could not find reports of cases of botulism caused by commercially processed fermented foods (44 FR 16204 at 16204; 44 FR 16230 at 16231).”⁵

⁴ Under federal law (21 CFR 114.3), the term “acidified foods” is defined as “low-acid foods to which acid(s) or acid food(s) are added; these foods include, but are not limited to, beans, cucumbers, cabbage, artichokes, cauliflower, puddings, peppers, tropical fruits, and fish, singly or in any combination. They have a water activity (a_w) greater than 0.85 and have a finished equilibrium pH of 4.6 or below. These foods may be called, or may purport to be, “pickles” or “pickled ____.” Carbonated beverages, jams, jellies, preserves, acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid food(s) and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration are excluded from the coverage of this part.”

The following foods are not subject to the FDA’s acidified food regulations:

1. Acid foods (natural or normal pH equal to 4.6 or below)
2. Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.
3. Alcoholic beverages
4. Carbonated beverages
5. Fermented foods
6. Foods with water activity (A_w) of 0.85 or below
7. Jams, jellies, or preserves covered by 21 CFR 150

⁵ FDA Draft Guidance for Industry: Acidified Foods, September 2010, available at <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm222618.htm#III-C>.

E. PERMITS

Recommendation:

Homemade food operations must apply for an annual “Homemade Food Operation Permit” from HDOH.

The Homemade Food Operation Permit shall be available in two classes:

- Class A, which allows direct-to-consumer sales of items 1-23 on the list of allowed foods, above.
- Class B, which allows direct-to-consumer sales and wholesaling of items 1-26 on the list of allowed foods, above. In order to receive a Class B permit, homemade food operations shall submit to and pass an inspection by HDOH and must successfully complete advanced food safety training, such as the ServSafe® Manager Course, available online for \$125 (online exams must be proctored) (<http://www.servsafe.com/manager/food-safety-training-and-certification>). Homemade food produced under a Class B permit shall be an approved source for food establishments in the state. Sales to distributors shall not be permitted.

Homemade Food Operation Permits will be issued to homemade food operations that:

1. are producing allowable foods;
2. operating in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located;
3. have complied with product testing and process verification requirements for the production of items 24-26 on the list of allowed foods, above,
4. have passed inspection (for Class B permits only); and
5. for which the operator has completed all required training.

Homemade food operations seeking to sell food outside of the state must comply with federal regulations, including labeling, ingredients, preparation and handling requirements, as well as the state and local laws of the jurisdiction to which the food is sent.

HDOH shall charge a reasonable permit fee for Class B permits, which fee shall take into account HDOH staff time required to complete inspections and execute other administrative requirements.

Rationale:

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers’ market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

In August and September of 2014, HDOH received 1,027 TFE applications (approximately 513 per month). Of these applications, approximately 850 were for the production of potentially hazardous foods and required a certified kitchen (approximately 425 per month). Approximately 177 TFE applications were for the production of non-potentially hazardous foods (approximately 88 per month), and, of these, about 79 were to produce food at home (approximately 39 applications per month). Of the 79 homemade food TFE permits, 11 entities accounted for 46 of the applications. The other 33 applications were various entities with some overlap. The most prevalent homemade food items for sale were:

- kettle corn/popcorn;
- baked goods (cookies, cakes, cupcakes, and breads);
- shave ice;
- jams, jellies, chutneys;
- doughnuts, andagi, mochi (deep fried foods);
- cotton candy; and
- coffee products.

The proposed Homemade Food Operation Permit would differ from the TFE permit in the following ways:

	Homemade Food Operation Permit, Class A	Homemade Food Operation Permit, Class B	TFE Permit
Period	Annual	Annual	120 days
Applicable Area	Home or farm kitchen	Home or farm kitchen	Sales location (<i>e.g.</i> , farmers' market)
Sales Limit	None	None	20 days of sale within a 120-day period per sales location
Allowed Sales	Direct-to-consumer only	Direct-to-consumer and wholesaling (no sales to distributors)	Direct-to-consumer only
Food Safety Training	Basic training required	Advanced training required, plus FDA-approved food processing course for sale of acidified foods	Not required
Inspection	None	Pre-permit inspection required	None

The Homemade Food Operation Permit would ensure that:

1. Homemade food operators have completed required training, are producing allowable foods in a safe manner, and are aware of safe food handling guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, refer products for testing when appropriate, and stay apprised of homemade food operations.

Wholesaling

Under a Homemade Food Operation Permit, Class B, producers would be allowed to wholesale their products; however, sales to distributors would not be permitted. This rule is consistent with the approach in 10 states, which allow wholesaling of homemade food products either explicitly or implicitly, including California, Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Pennsylvania and Utah.

HDOH's rationale for restricting homemade food operations to direct-to-consumer sales, even when products are non-potentially hazardous, is that the limitation lessens the risk of harm to the public by reducing the quantity of product that a homemade food producer may sell. However, the risk to public health from homemade food is substantially limited by restricting sales of homemade food products to low-risk foods made by producers that have completed advanced food safety training and in some cases

food preservation training. These education requirements exceed the requirements imposed on producers manufacturing food in a certified kitchen.

Internet Sales

Internet sales should be allowed under the Homemade Food Operation Permit consistent with the class of permit received. Thus, a Class A permit would allow direct-to-consumer internet sales, while a Class B permit would allow direct-to-consumer sales and wholesaling (other than sales to distributors) via the internet.

Inspections

HDOH currently has 50 staff positions for food establishment inspectors, of which 8 positions are vacant. HDOH expects to fill these vacancies in the coming months. There are currently 10,093 food establishments within the state, which HDOH divides into three risk categories depending on the technical complexity of the food operation and its associated risk. Although there is no legally mandated inspection frequency, HDOH is striving to meet the following inspection schedule for food establishments:

- Category 1 (highest risk) – 3 times per year
- Category 2 (medium risk) – 2 times per year
- Category 3 (low risk) – annually

Category 1 generally includes full-service restaurants (raw-prep-cook-cool-reheat-serve operations), such as L&L Hawaiian Barbeque, 3660 on the Rise, and school kitchens. Category 2 generally includes fast foods restaurants (raw meats-cook-serve operations), such as McDonald's and Burger King. Category 3 generally includes ice cream shops, cookie shops, mom and pop package stores (minimal cook/prep-serve operations). Almost all homemade food operations would be in Category 3 – a low risk facility in regards to food safety.

HDOH currently has the right to investigate reports of foodborne illness from foods produced in any kitchen, and may “order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.”⁶

Risk can be further mitigated by requiring HDOH to inspect Class B homemade food operations prior to permitting. In California, a cottage food business may apply for a Class B permit that allows wholesaling and subjects the business to an initial inspection by the local enforcement agency. In North Carolina, home-based food businesses seeking to sell acidified foods must submit an “Application for Home Processor Inspection” and submit to and pass an inspection by NCDA&CS, Food and Drug Protection Division. Delaware, Georgia, New Hampshire, New Mexico, New York, Maine, Massachusetts, Oregon, Pennsylvania, Tennessee, Vermont, and Washington also conduct home inspections.

HDOH has expressed reservations about entering residences to conduct inspections due to fears that a disgruntled homemade food operator may physically harm an inspector or unjustly accuse an inspector of impropriety. HDOH is currently willing to enter residences to permit a kitchen, so long as the kitchen is in an area with a separate entrance, such as a garage. In addition, several governmental agencies in Hawai'i conduct home inspections, including the Hawai'i County Public Works Building Division, which

⁶ Testimony of Gary L. Gill, Deputy Director, Environmental Health Administration, Hawai'i Department of Health, to the Hawai'i State Senate Committee on Commerce and Consumer Protection, Committee on Ways and Means (February 26, 2014), available at http://www.capitol.hawaii.gov/Session2014/Testimony/SB2561_SD1_TESTIMONY_CPN-WAM_02-26-14_LATE.PDF

conducts inspections in connection with building permits, and the Hawai‘i Department of Human Services, which conducts home inspections for family child care homes and foster homes.

Section 5-14 of the Hawai‘i County Building Code states:

“Upon presentation of proper credentials, the administrative authority or such person’s assistants may enter at reasonable times any building or premises in the County to perform any duty imposed by this code, provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession. An order of a court authorizing such entry shall be obtained in the event such entry is denied or resisted.”

Chapter 17-891.1-3 of the Hawai‘i Administrative Rules states:

- (a) “In exercising its authority to register family child care homes or renew, suspend, or revoke the certificate of registration, the [Department of Human Services] shall analyze the qualifications of the providers of child care, review the home’s written policies and program provisions, and inspect the home. Authorized representatives of the department and parents and guardians of children in care may visit a family child care operation for purpose of observing, monitoring, and inspecting the facilities, activities, staffing, and other aspects of the child care home. The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies’ authorized fields.
- (b) The applicant or registrant shall cooperate with the department by providing access to its facilities, records, and staff. Failure to cooperate with reasonable requests may constitute grounds for denial, suspension, or revocation of the certificate of registration.”

HDOH’s safety and liability concerns could be ameliorated by any of the following: (1) implementing a buddy system for inspectors, (2) providing homemade food operators with a pre-inspection checklist so that expectations are clear, (3) reserving feedback and decisions for written communications to be shared with the operation following the inspection, and/or (4) allowing inspectors to wear body cameras to document an inspection.

To facilitate transparency with the public, HDOH shall maintain online a list of homemade food operations for which permits have been suspended and revoked.

F. ADDITIONAL CONSIDERATIONS

Zoning

For the purposes of zoning, a homemade food operation shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as a homemade food operation.

Nuisance Complaints

HDOH has a duty to respond to complaints alleging food borne illness, but not to investigate complaints that are not related to food safety (*e.g.*, noise, odor, traffic).

Potable Water

Homemade food operations shall use potable water.

Grease

Homemade food operations shall not discard cooking oil or grease into the kitchen sink or the toilet bowl, and shall not use hot water and soap to wash grease down the drain. Instead, homemade food operations shall place cooled cooking oil in sealed non-recyclable containers and discard such containers with the regular garbage, and shall use paper towels to wipe off residual grease or oil from dishes, pots and pans prior to washing.

APPENDIX A

MEMBERS OF THE COTTAGE FOOD BUSINESS WORKING GROUP

- Scott Enright, Chairperson, Hawai‘i Department of Agriculture
- Senator Russell Ruderman, Hawai‘i State Senator (Puna) and Owner, Island Naturals
- Peter Oshiro, Environmental Health Program Manager, Sanitation/Food and Drug/Vector Control, Hawai‘i Department of Health
- Kyle Datta, General Partner, Ulupono Initiative (O‘ahu)
- Mark Ferguson, Chief Organic Officer, Down to Earth (O‘ahu)
- Terri Langley, MA‘O Organic Farm (O‘ahu)
- Brandon Lee, Investment Associate, Ulupono Initiative (O‘ahu)
- Ken Love, Executive Director, Hawai‘i Master Food Preservers, and Executive Director, Hawai‘i Tropical Fruit Growers (Hawai‘i Island)
- Janine Lynne, Owner, Black Dog Farms (Kaua‘i)
- Nicole Milne, Associate Vice President for Programs, The Kohala Center (Hawai‘i Island)
- Christina Oatfield, Policy Director, The Sustainable Economies Law Center (California)
- Anna-Lisa Okoye, The Kohala Center (Hawai‘i Island)
- Jamie Ronzello, Owner, Barking Deer Farm (Moloka‘i)
- Dr. Chris Speere, Maui Culinary Academy & ‘Made on Maui’ labeling (Maui)

APPENDIX B

RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I

Report 5
Recommendations on Homemade Food Operations in Hawai‘i

October 24, 2014

Prepared by: The Kohala Center
For Ulupono Initiative and the Cottage Food Industry Working Group

INTRODUCTION

The following recommendations on homemade food operations in Hawai'i were developed by several members of the Hawai'i cottage food industry group on October 15, 2014, in response to legislative mandate S.C.R. No. 97 (2014). These recommendations propose a new regulatory framework for homemade food operations. We invite the Hawai'i Department of Health ("HDOH") and the public to provide feedback on the pros and cons of the recommendations.

In developing the recommendations, the industry group was guided by the following principles:

- Food safety is essential
- Education and training are important means of achieving food safety
- Proper product labeling is necessary
- Permits can help promote regulatory compliance
- Local food production is integral to Hawai'i's economic development and food security
- HDOH requires sufficient resources to implement laws and regulations

The industry group also acknowledged state and federal mandates to increase local food production, including:

- Hawai'i's "Increased Food Security and Food Self-Sufficiency Strategy," which notes that replacing just 10% of the food Hawai'i currently imports would amount to approximately \$313 million dollars remaining in the State's economy (Office of Planning, Department of Business Economic Development & Tourism); and
- The United States Department of Agriculture's allocation of \$27 million in competitive grants to support local food efforts such as food hubs and local processors.

The industry group designed the following recommendations to minimize the risk of foodborne illness through the following efforts:

- Training
- Sanitary guidelines
- Proper product labeling
- Permits

CURRENT LEGAL FRAMEWORK

Hawai'i Revised Statutes Section 328-11 provides HDOH with the authority to prescribe regulations providing for the issuance of permits for the manufacturing, processing, and packing of foods that may pose a health risk to consumers by reason of contamination with microorganisms. Pursuant to this authority, the Hawai'i Department of Health has adopted the "Food Safety Code" (Hawai'i Administrative Rules, Chapter 11-50), which requires "food establishments" and "temporary food establishments" to undergo a permitting process for the sale of food to the public.

Food Establishments

HDOH defines "food establishments" as any place used for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, or otherwise handling food at the retail or wholesale level, and any operation where food is provided to the public, with or without charge. Food establishments include restaurants, cafes, coffee shops, and grocery stores. All food establishments must operate with a valid permit from HDOH, with exceptions including establishments selling only whole uncut fruits and vegetables and establishments selling only prepackaged, shelf-stable foods.

The Food Safety Code requires food establishment kitchens and facilities to receive certification from HDOH. The requirements for certified kitchens include a number of specific equipment and building parameters.

The Food Safety Code prohibits food establishments from selling food made in a private kitchen.

Temporary Food Establishments ("TFE")

HDOH defines "temporary food establishments" as any food establishment which operates at a fixed location for a limited period of time and does not exceed 20 days in any 120-day period and does not sell products to other food establishments. Temporary food establishments include farmers markets and community events such as fairs, sporting events, and bake sales.

HDOH allows the sale of homemade, non-potentially hazardous foods at temporary food establishments, including cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices. However, such foods may only be sold directly to consumers and may not be sold to other food establishments. Potentially hazardous foods (foods that require temperature controls to limit bacterial growth) sold at temporary food establishments must be produced in a certified kitchen.

Limitations of Current Regulatory Framework

The current regulatory framework creates several challenges for value-added food producers in Hawai'i, including:

1. Restricting sales of homemade food to direct-to-consumer sales, even when products are non-potentially hazardous.
2. Restricting sales of homemade food to 20 days within any 120-day period (per temporary food establishment location), even when products are non-potentially hazardous.

In order to overcome these challenges, producers of non-potentially hazardous foods must produce food in a certified kitchen that adheres to HDOH's requirements. Acquiring land and building a commercial kitchen is an expensive endeavor that is unaffordable for many new and small businesses. With respect to leasing certified kitchen space, there are very few certified kitchens available for rent in Hawai'i, especially in rural areas. For example, Hawai'i Island's Puna and Kona Districts lack any certified community kitchens, and the entire island of Kaua'i lacks any certified community kitchens, although one is currently under construction on the north shore.

For the few certified community kitchens that are available, use of these facilities is unfeasible for many producers. Hourly rental rates quickly become cost prohibitive for small food businesses, especially for those who make foods with long processing times, such as dried fruit. In addition, many community kitchens have limited equipment and storage and refrigeration space, which restricts the types and quantities of products that may be produced. And low population density in rural areas often means that certified community kitchens, if available, are many miles away. With average gas prices in Hawai'i averaging over \$4 per gallon, traveling long distances can be cost prohibitive for small businesses.

RECOMMENDATIONS FOR HOMEMADE FOOD OPERATIONS IN HAWAI‘I

In order to mitigate the challenges facing value-added food producers in Hawai‘i, the industry group proposes the following recommendations for a new regulatory framework for homemade food operations in Hawai‘i, defined as an enterprise that produces – in a home or farm kitchen that conforms to the building code of the county in which the kitchen is located – allowable foods for sale to the public. Regulations applicable to homemade food operations would not apply to temporary food establishments.

The proposed regulatory framework draws upon cottage food laws adopted by forty-one states and includes the following elements:

- A. Food Safety Training
- B. Sanitary Guidelines
- C. Labeling
- D. Allowable Foods for Home Production
- E. Permits

A. FOOD SAFETY TRAINING

Recommendation:

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at www.hifoodhandlers.com; or
2. ServSafe® Food Handler Program, offered online at www.servsafe.com/ss/foodhandler; or
3. HDOH’s two-day Food Safety Certification Workshop, offered in person.

Rationale:

It is well established that certain food-handling practices can prevent or reduce the risk of foodborne illness. Under current rules and regulations, Hawai‘i encourages but does not require food handler training. The industry group recommends that homemade food operations complete basic food handler training to ensure that these operations understand common foodborne illnesses and key food handling practices.

HDOH currently offers a voluntary two-day Food Safety Certification Workshop at no cost. However, requiring all homemade food operations to take this course would require HDOH to increase the availability of these workshops, at a significant cost to HDOH.

Instead, the industry group recommends that the State accept one or more online food safety courses as proof of adequate training for homemade food operations. Online food safety courses are easily accessible, affordable, and currently accepted as adequate food safety training by numerous jurisdictions across the country that mandate food safety training for food handlers.

For example, hifoodhandlers.com offers the eFoodHandlers™ Basic Food Safety Course, a 90-minute online course offering core training for food servers, handlers, and preparers, followed by a test. California, Texas, Illinois, Arizona, and Oregon accept the eFoodHandlers™ online Basic Food Safety Course as adequate food handler training. The eFoodHandlers™ course and test are free, while a food handler certificate indicating course completion costs \$10.

In addition, the National Restaurant Association offers the ServSafe® Food Handler Program, a 90-minute online course on basic food safety covering personal hygiene, cross-contamination and allergens,

time and temperature controls, and cleaning and sanitation, followed by a test. California, Alaska, Oregon, Illinois, and Florida, as well as numerous counties across the country, accept the ServSafe® online Food Handler Program as adequate food handler training. The ServSafe® Food Handler Program costs \$15.

B. SANITARY GUIDELINES

Recommendation:

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

Rationale:

As indicated above, it is well established that certain food handling practices can prevent or reduce the risk of foodborne illness. To protect public health, homemade food operations should be required to comply with standard industry sanitary guidelines for the production of allowable foods.

C. LABELING

Recommendation:

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

Rationale:

Notifying consumers that the product was made in a home kitchen allows consumers to differentiate between products processed in a commercial kitchen that is routinely inspected by HDOH and products made in a home or farm kitchen. Requiring the name and address of the producer allows HDOH to contact homemade food operators in the event of a consumer complaint. Ingredient lists inform consumers and HDOH of the content of the product to ensure that the product is an allowable food for homemade production.

D. ALLOWABLE FOODS FOR HOME PRODUCTION

Recommendation:

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”) may be produced in a home kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

Rationale:

At present, HDOH considers the following foods to be non-potentially hazardous: cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.

Under current HDOH rules, “potentially hazardous food” means a food that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation. Potentially hazardous food does not include a food that because of its pH or water activity (A_w) value, or interaction of A_w and pH values, is designated as a non-potentially hazardous food by the HDOH.

Current rules designate foods with the following pH and A_w values as non-potentially hazardous (PHF):

- Heat treated foods:

A_w values	pH values		
	4.6 or less	> 4.6 to 5.6	> 5.6
≤ 0.92	non-PHF	non-PHF	non-PHF
>0.92 to 0.95	non-PHF	non-PHF	Product Assessment Required
>0.95	non-PHF	Product Assessment Required	Product Assessment Required

- Non-heat treated foods or heat-treated but not packaged foods

A_w values	pH values			
	< 4.2	4.2 to 4.6	> 4.6 to 5.0	> 5.0
<0.88	non-PHF	non-PHF	non-PHF	non-PHF
0.88 to 0.90	non-PHF	non-PHF	non-PHF	Product Assessment Required
>0.90 to 0.92	non-PHF	non-PHF	Product Assessment Required	Product Assessment Required
>0.92	non-PHF	Product Assessment Required	Product Assessment Required	Product Assessment Required

If a food’s pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous (“acidified foods”), current HDOH rules require processors to apply to HDOH for a variance in order to sell the acidified food. HDOH may grant a variance by modifying or waiving the requirements of the Hawai’i Food Safety Code if in the opinion of HDOH a health hazard or nuisance will not result from the variance. Other than jams and jellies, HDOH currently considers all acidified foods to be potentially hazardous, prohibits the sale of homemade acidified foods, and refers acidified products for product testing, in accordance with US Food and Drug Administration (FDA) rules.

A blanket prohibition on the sale of homemade acidified foods does not consider that some acidified foods may be safely produced in a home kitchen by experienced and knowledgeable food producers that adhere to proven and consistent processes. In addition, some acidified foods are exempt from the FDA’s acidified food regulations, including:

- Acid foods (natural or normal pH equal to 4.6 or below)
- Acid foods (including such foods as standardized and non-standardized food dressings and condiment sauces) that contain small amounts of low-acid foods and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid food. If there

is a question about whether a product is covered under the regulations, the FDA requires producers to describe the product, submit a quantitative formula, list pH ranges for each ingredient, and submit pH data on finished product from several production lots.

- Alcoholic beverages
- Carbonated beverages
- Fermented foods
- Foods with water activity (A_w) of 0.85 or below
- Jams, jellies, or preserves covered by 21 CFR 150.

E. PERMITS

Recommendation:

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

Rationale:

HDOH currently allows home-based production of non-potentially hazardous foods under a temporary food establishment (“TFE”) permit. TFE permits allow homemade food producers to sell their products at a specific location, such as a farmers market or bake sale, for a maximum of 20 days of sale in any 120-day window at that location. A producer may hold multiple TFE permits to sell at multiple locations, and permits may be renewed. The TFE permit allows direct sales to consumers only. The TFE permit does not allow homemade food producers to sell their products to food establishments that have received a permit from HDOH, such as a supermarket or a restaurant, since HDOH considers residential kitchens to be an unapproved food source for permitted food establishments within the state.

The proposed homemade food operation permit would differ from the TFE permit in the following ways:

	Homemade Food Operation Permit	TFE Permit
Period	Annual	120 days
Applicable Area	Home or farm kitchen	Sales location (<i>e.g.</i> , farmers market)
Sales Limit	None	20 days of sale within a 120-day period per sales location
Sales	Direct and wholesale	Direct only
Food Safety Training	Required	Not required
Inspection	Allowed with 24 hours notice	None*

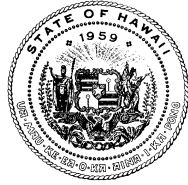
*HDOH may order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.

The homemade food operation permit would ensure that:

1. Homemade food operators have completed adequate food safety training, are producing allowable foods, and are aware of sanitary guidelines and labeling requirements; and
2. HDOH can provide guidance on allowable foods, stay apprised of homemade food operations, and inspect such operations at its discretion.

APPENDIX C

HAWAI‘I DEPARTMENT OF HEALTH COMMENTS ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”



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

In reply, please refer to:
File:

November 28, 2014

Nicole Milne
Homemade Food Operations Working Group

SUBJECT: DOH Comments to “*Recommendations for Homemade Food Operations in Hawaii*” Survey.

A. Food Safety Training

The DOH concurs that training and food safety knowledge is one of the key elements to prevent food illnesses or adulteration of food. The three examples given are all acceptable as basic food training for food industry personnel.

B. Sanitary Guidelines

This sounds good, but standard industry sanitary guidelines precludes the use of residential kitchens to manufacture or prepare food in any shape or manner. The FDA Model Food Code expressly prohibits the manufacture or preparation of food in home kitchens due to the fact that the great majority of home kitchens do not have the basic and necessary infrastructure to ensure food safety at the commercial level. Basic equipment and infrastructure such as restricted hand wash sinks, 3 compartment sinks or commercial grade dishwashers for proper sanitizing, lack of commercial exhaust hoods with air pollution and fire suppression devices, and restricted work areas, restricted food storage, commercial grade refrigerators to ensure temperature control, proper restricting of chemicals, access to licensed pest control operators, are just a few of the things that are required as standard industry sanitary guidelines and are lacking in most households. These are the basic reasons that food safety regulatory personnel do not allow phf's and other items out of home kitchens, and why we only allow direct to consumer sales of non-phf's.

C. Labeling

DOH would like the label changed to “Made In a Home Kitchen that has not inspected by the Department of Health”. This is critical as the public must be informed that the home kitchens are not inspected. Other than that we concur with the intent of this section.

D. Allowable Foods for Home Production

I think there may be some semantic issues with this section. Acid foods that have a “natural” or “normal” pH and Aw according to the Time/Temperature Control for Safety (TCS) matrix shown MAY be considered (currently not allowed from home kitchens except jams/jellies) by DOH. DOH will need to look more closely at this, but will not provide a blanket exemption for these foods at this time.

Any bottled food has the potential to cause serious injury or death due to the modified atmosphere conditions created. Demonstration of controls to prevent C. botulinum is extremely difficult for expert commercial food processors much less home canners/bottlers.

If a food must be acidified by adding acid, because the natural or normal pH is above 4.6, then the FDA has complete jurisdiction over the product, and it will not be allowed to be produced in a home kitchen under any condition.

We will also not allow any dried meats/fish to be done in home kitchens regardless of the finished Aw. The drying process for these types of products must be closely monitored to ensure that the product does not stay in the 41°F to 135°F range for more than 4 hours throughout the drying process.

E. Permits

The DOH will not permit home kitchens, especially if prior notification is required. This is one of the most difficult arenas for enforcement. The home-made industry requests that they have the same ability to prepare foods at any scale, but is unable to meet the burden of having totally unannounced inspections, which is the cornerstone of our inspection program to insure the integrity of the inspection and to provide public confidence that a true snap shot of the food prep conditions were represented, and the operator did not have a chance to “clean-up” their operation prior to the inspection.

DOH is looking at the possibility of relaxing the 20/120 rule if the legislature/working group can address the following DOH concerns;

- 1) Community complaints regarding odors, noise, and traffic as a result of 24/7/365 food operations in residential areas MUST be addressed from the standpoint that DOH will not investigate into these complaints. Any rule change will require that these issues be exempt from DOH/Gov’t regulatory control and that the legislature alone will address these complaints. This would be similar to exemptions from smoke nuisances resulting from outdoor cooking of food for personal use. State Gov’t currently does not regulate backyard BBQ’s or residential chimney smoke for home heating in residential areas, but commercial cooking would need to be addressed.
- 2) City and County plumbing requirements (Grease Trap) concerns will need to be addressed for those homes hooked into sanitary sewers.

- 3) DOH Wastewater Branch (WWB) concerns (if any) regarding potential generation of commercial volumes of wastewater into Individual wastewater systems (IWS)'s.. These are homes with cesspools/septic tanks or multi-family units (townhome/condo) on small WW package plants condo. WWB stated that a check-off box on an application with an IWS would need to be signed off by WWB for any permit. WWB will evaluate potential volume of wastewater generated on a case-by-case basis.
- 4) Water supply must comply with DOH Safe Drinking Water Branch standards as provided for by Hawaii Administrative Rules (HAR) Chapter 11-20, Public Water Systems for all commercial ventures.
- 5) DOH will not agree with allowing wholesaling and "internet" sales of homemade food products. We will allow direct sales to consumers only. Current State and federal rules prohibit permitted or licensed food establishment from receiving ANY foods from unapproved sources. All homemade foods are considered to be an unapproved source by law.
- 6) At this time the DOH does not plan to create rules/guidelines to allow for inspections of private residential or farm home kitchens, unless we can address transparency of the inspection. I do not want to have regulatory personnel in what may result in potentially explosive or litigious situations resulting from disagreements with inspectional findings or direction given to food producers while in someone's private home.

The comments provided are meant to be preliminary only and the DOH position provided by myself are subject to change as we progress towards the start of the new legislative session and formal submittal of your report pursuant to SCR 97. As you know, the Director of Health will no longer serve as of this year, and Governor elect Ige has not yet appointed key administrative positions that may impact the direction and focus of my responses. Our Deputy AG will also need to review final drafts of DOH comments that may result in changes to HRS or HAR.

The DOH appreciates the opportunity to participate with your working group and we really appreciate the hard and diligent work done by yourself and your Group.

Mahalo For your Interest in Public Health,

Peter Oshiro
Env. Health Program Manager
Sanitation/Food and Drug/Vector Control Branch

APPENDIX D

PUBLIC COMMENT ON “RECOMMENDATIONS ON HOMEMADE FOOD OPERATIONS IN HAWAI‘I”

During November 2014, The Kohala Center solicited public comment on the “Recommendations on Homemade Food Operations in Hawai‘i,” and included the following survey questions:

1. Do you process food for sale to the public in your home?
2. Are you processing any food that you grow?
3. What gross sales (*i.e.*, sales before expenses) do you generate on an annual basis from selling homemade food?
4. In what city or town do you produce homemade food?
5. On which island do you produce homemade food?
6. What is your occupation?
7. Where do you sell your homemade food products?
8. How many days per week do you sell homemade food products?
9. Currently, the Hawai‘i Department of Health restricts homemade food sales to direct sales to consumers and prohibits wholesale sales. In order to receive a permit to make wholesale sales of homemade food, would you be willing to:
 - a. Pay a higher permit fee than required for direct sales only;
 - b. Consent to random home inspections with 24 hours’ notice; and/or
 - c. Complete advanced food safety and/or food preservation training?
10. What is the biggest limiting factor on your sales of homemade food products?
11. Do you aspire to build a full-time food production business and generate all of your income from such business?

Forty-seven people responded to the solicitation. Of the 47, a total of 18 respondents indicated that they process food in their home for sale to the public. Of these 18 homemade food producers:

- All process food that they grow.
- 2 live on O‘ahu, 9 live on Hawai‘i Island, 2 live on Maui, 1 lives on Kaua‘i, and 3 live on Moloka‘i.
- 11 are farmers, along with a beekeeper, a poi processor, a janitor, a substance abuse counselor, a homemaker, a contractor/consultant, a retiree, a chef, and a social worker.
- 10 sell at farmers markets, 8 at special events, 3 to friends and family, 3 to restaurants/cafes, 3 to other retail outlets, 2 to grocers, 2 to community supported agriculture programs, 1 online, 1 at church, 1 at a road side stand, and 1 on a food truck.
- 7 sell homemade food 1 day a week, 6 sell 2 days a week, 1 sells 7 days a week, and 1 sells a half day per week.
- Annual gross sales ranged from \$500 - \$30,000, with an average of \$9,800.
- In response to the question, “What is the biggest limiting factor on your sales of homemade food products?”
 - 12 indicated being limited to direct sales only;

- 10 indicated being limited to 20 sales days per 120 days (per location) under the temporary food establishment permit;
- 7 indicated costs of production (e.g., food, energy, labor costs, etc.); and
- 4 indicated the size of their home kitchen
- In order to receive a permit to wholesale homemade food:
 - 18 would be willing to complete advanced food safety and/or food preservation training;
 - 12 would be willing to consent to random home inspections with 24 hours' notice; and
 - 7 would be willing to pay a higher permit fee than required for direct sales only;
- 11 aspire to build a full-time food production business and generate all of their income from such business.

Twenty-five respondents provided the following comments on the recommendations:

Recommendation:

Homemade food operations must demonstrate adequate food safety training by completing one of the following training courses and passing the accompanying food safety test:

1. eFoodHandlers™ Basic Food Safety Course, offered online at www.hifoodhandlers.com; or
2. ServSafe® Food Handler Program, offered online at www.servsafe.com/ss/foodhandler; or
3. HDOH's two-day Food Safety Certification Workshop, offered in person.

Comments:

- I agree with the proposal that online classes/training be accepted as proof of adequate training for homemade food operations.
- I totally support this recommendation. It provides a win-win solution to addressing food safety issues for both home producers and the general public. It removes one of the barriers (food safety concerns) for home production, and minimizes the additional expense anticipated by an online option. I appreciate the research done to come up with this recommendation that encourages home businesses without jeopardizing food safety for the consumer.
- What about 'Hawai'i County Hawai'i: Training Course for Food Safety Certification' and the multitude of other online options available? Why not give more options? People love choices.
- Anyone selling food to the public should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Already have done the HDOH's two-day Food Safety Certification Workshop, offered in person. We'd love to be able to process our chili peppers on the farm and then ship direct to the kitchen for bottling.
- Food safety classes should be attended in person not online. One of the values of these classes is to get to know your inspectors to establish a working relationship and to answer pertinent questions that always arise. There is potential for abuse of online tests. Let's not compromise the safety of our food supply for convenience!
- Online courses are not proctored, therefore one could easily cheat. Especially if English is not their first language.
- I support the industry group recommendations.

- I think the online food safety course options would be sufficient for most food operations.
- That sounds totally reasonable.
- I think these allowances are a long time overdue. If implemented, they will increase our economy and allow small food businesses the opportunity to start small and grow into larger enterprises.
- I feel the value of a live class is worth the expense for strengthening understanding and value of good handling practices. The two day could be shortened to a 6 hour class, with better understanding and fuller application discussed. Worth the expense.
- Sound like excellent ideas.
- Agree. Food safety takes common sense and basic training that can be handled online. California allows an online self-certification checklist for their cottage food industry.
- These courses are a must if someone intends on selling homemade foods, but they won't keep anyone safe if food handling practices are not followed by the food handlers. Consumer beware.
- This seems to be reasonable.
- HDOH should include in its budget funds for food safety certification workshop so they could increase availability of the workshop. This is very important because not everyone is computer literate or has a computer. If the government is serious in implementing its mandate of increased food sustainability and food security strategy, it has to provide the necessary funding to do so. You do not want to develop an industry that creates discrimination.
- Training is always a good idea and if it can be done cheaply as well as effectively (*i.e.*, e-training) than by all means, that should be supported.
- An online course seems fine. If there is concern about cheating, there could be an in-person proctored exam of some sort that would not take as much HDOH resources as the full workshop.
- Funds could be found to cover any increased costs by HDOH in offering more classes.
- Yes.

B. SANITARY GUIDELINES

Recommendation:

Homemade food operations must comply with standard industry sanitary guidelines for the production of allowable foods.

Comments:

- I agree with the above proposal.
- Another logical recommendation that encourages home businesses without jeopardizing public health and food safety.
- Anyone selling food to the public, no matter where the food is produced, should be required by law to complete one of the above courses and show evidence of completion whenever and wherever they are selling food to the public. Food should also be clearly labeled in accordance with HDOH food safety guidelines. This should include any/all food sales at garage sales, farmers markets, concert venues, roadside food stands, benefit or fundraising events, etc.
- Agree.
- Waste water is a key issue. Food processing kitchens need to comply with the federal Clean Water Act that the state is tasked with enforcing.
- In reality yes, but not sure how realistic it would be. Would a 3 compartment sink be required? A separate hand-washing facility (or will a restroom on the premises suffice?). If renovations are required, this would hinder the cottage industry.
Sanitary standards must be maintained at current / legal acceptable standards.

- Yes, this makes sense for low risk food items.
- Sounds fine as long as I know what “standard industry sanitary guidelines” are.
- Definitely important.
- Good. Clear understanding of HI requirements is important.
- Agree.
- Only makes sense if you educate producers and consumers.
- I don’t see that this recommendation is effective if the very root of the problem is not addressed. By reading all the bulleted issues presented, the issue of adequate number of “certified” food preparation facility is not being addressed. Only certified kitchen is mentioned and the current challenges to access such facility. Unless you have adequate certified food preparation facility this project will not take off. HDOH should establish separate guidelines to allow for “certified home kitchens” for food that are not potentially hazardous.
- I agree. Standard sanitary guidelines should be followed.
- Restaurants are now being inspected and required to post a sign that says whether they passed. Is something similar possible for homemade food operations? Could you start with a voluntary inspection that allows you to post it on the label or website?
- Yes.
- Absolutely!
- I would have to read the guidelines. Do you have the guidelines? It should be on this survey. Mahalo.
- Since HDOH has limited staff capability, to take on inspections of Cottage Food kitchens seems impossible. Cottage Food kitchens would require a thorough initial inspection before being permitted and frequent inspections to affirm compliance with food safety regulations. All the requirements mentioned such as taking a course, permitting, labeling etc. are simple compared to making sure that the cottage food producer is compliant in their kitchen. I read through the CA Homemade Food Act and the regulations cover all issues. Example, no home food preparation or entertainment while making the product. No children or pets in the kitchen areas. No pests. I like the idea of promoting the cottage food industry, but doubt whether HDOH is capable to making sure home kitchens and operators are compliant.

C. LABELING

Recommendation:

All homemade food products produced and sold pursuant to a homemade food operation permit must include a label indicating that the product was “Made in a home kitchen,” along with the name and address of the producer and an ingredient list.

Comments:

- I agree with the above recommendation.
- I support this recommendation as well. It informs the public with information to identify the home product from a commercially processed product before purchase is made.
- I'm in favor of leading the trend for transparency when it comes to labeling of ingredients; therefore including whether or not there are genetically modified organisms in the ingredients. It is also important to state whether there are peanuts (or other common allergens) being processed in the home (or any other) kitchen.
- The label must also state the date and time the food was made "in the home" and be restricted to non-perishable items such as baked goods, cookies, breads, jams, jellies, candies, chocolates, whole uncut fruits and produce, cotton candy, dry herbs, nuts, rubs, and spices.
- Agree.

- This would be helpful to the buyer. Buyer will probably expect a "better price" since the seller does not have the usual overhead like "regular" manufacturers. Will the seller need to purchase liability insurance? Wouldn't the seller need to register with the Hawai'i Department of Commerce and Consumer Affairs? Catchment water okay?
- I support the industry recommendation.
- I agree with the labeling rationale.
- Agree.
- Good. We should all be able to make personal decisions based on knowledge.
- I think the labeling requirement could be waived for certain direct-to-consumer, face-to-face sales. For all other sales, I think the label as described is essential, and should also include a contact phone number and a permit number.
- Agree.
- Well there should be some way to contact the producer, but really, do I need to have my home address on every label? And of course all the ingredients again for safety for the consumer.
- In addition to "made in a home kitchen" and the name and address of the producer and an ingredient list, I would hope that either a "prepared on date" or an "expiration date" would be required. (e.g. I oftentimes want to buy salsa made here on the island but if there is no date, I do not.) Some products may not have a definitive expiration date (e.g. coffee, jams, jellies) so a "prepared on or roasted on date" may be the only guideline.
- Reasonable requirement.
- You have to be careful that this requirement will not raise negative perception to consumers, *i.e.*, caution to the consumers that this product is potentially hazardous to your health.
- Keep it simple please.
- Acceptable, reasonable.
- This is a great idea, but will producers of homemade food products feel it is an invasion of privacy? What if they move and the labels become out of date? Could there be a sort of online registry that records the home address and issues an identifying number? That way the home address could be updated online but the number would be the same on the label. A trade association of homemade food producers could maintain the online registry.
- Listing a home address on a product might raise flags, rather maybe a PO Box or just having addresses on file for inspection in case of a problem.
- Yes.
- Sounds reasonable.
- If this becomes a law, only the address should be required. "Made in a home kitchen" should be optional.
- Does HDOH have the manpower to check on compliance? Are the funds available to support HDOH if these regulations are passed?

D. ALLOWABLE FOODS FOR HOME PRODUCTION

Recommendation:

Any non-potentially hazardous food (based on pH) may be produced in a home kitchen. HDOH shall create and publish online a sample list of non-potentially hazardous foods to act as a guideline for home-based producers. The Department shall make it clear that the sample list is not exhaustive but only a reference point to make it easier for producers to understand some common non-potentially hazardous foods.

Foods for which the pH has been lowered by adding food additives or components such as vinegar to render the food so that it is non-potentially hazardous ("acidified foods") may be produced in a home

kitchen if the final product pH is 3.5 or below and if the producer completes advanced food preservation training. HDOH shall provide approved recipes and procedures for producing acidified foods. Commonly acidified foods include pickles, relishes, salsas, hot sauces, and salad dressings.

Comments:

- Definitely support this recommendation as it safely allows for the expansion of potential home-based products. Hawai'i government needs to support expanding entrepreneurship opportunities and this is a way to do so while ensuring safe production.
- Who is going to police and check on the pH content of added-value foods being produced either in home or in a certified kitchen? Pickled fruits & vegetables? Kim Chee? Dried meats?
- We produce hot sauce with a PH below 4 and as low as 2.8. We wholeheartedly hope these new laws pass. It would allow us to do small batch value added specialty sauces.
- Must consider proper refrigeration per HDOH regulations for ingredients that are used to make non-potentially hazardous foods. Refrigeration should be used only for the product produced and not mixed with home use foods.
- I have seen jams and jellies that do not meet 21 CFR 150. Not only from a soluble solids level but also from a standard of identity standpoint. And this should be "easy" compared to many other products.
- I am uncertain which particular foods meet the above restrictions.
- I disagree with a blanket prohibition and feel that many acidified foods can be safely produce in a home kitchen.
- Agree.
- Pretty limiting, and somewhat unnecessarily so. However, the above list and requirements are a good start. I hope not the last word.
- Agree that fermented foods such as kimchi, sauerkraut, and tempeh should remain allowed in home kitchen operations. Even the FDA states that there have been no documented cases of illness for non-canned fermented foods: <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryinformation/AcidifiedLACF/ucm222618.htm#III-C>
- Proper education and maybe master food preserve certification classes available statewide for those who want to sell acidified foods.
- Since some beverages are banned, then beverages must be included somewhere. I am 99.9% certain coffee is considered a non-hazardous food item but I don't see it listed. I sell roasted coffee. I have a certified coffee kitchen but have received a note from the health department that they will not be issuing further certifications since coffee is considered non-hazardous. Or something like that. So where do coffee roasters fall these days - there are a whole lot of us so please don't forget about us. Also, if I have visitors to the farm I sometimes provide samples of brewed coffee. What are the regulations on that?
- Ask for the revision of the list to include those that you see fit to be included.
- Again, keep it simple and cheap. \$50 is not cheap.
- My eyes glazed over on this part. What do you want the state to do? Instead of having its own definition, follow FDA rules?
- Please add to the food list: kalo (taro), taro leaf, ulu (breadfruit) to food lists.
- Sounds great!
- Let's make it easier for Hawai'i residents to make a living at home. Cost to live in Hawai'i is outrageous! I don't know how my child will be able to live in Hawai'i if we don't be creative.

E. PERMITS

Recommendation:

Homemade food operations must apply for an annual “homemade food operation permit” from HDOH (suggested fee: \$50). Permits will be issued to homemade food operators that have completed adequate food safety training and are producing allowable foods. The permit allows a homemade food operation to produce allowable foods in a designated home or farm kitchen that conforms to the building code of the county in which the kitchen is located, and allows HDOH the option to inspect homemade food operations, as long as HDOH provides the homemade food operator with at least 24 hours’ notice of the inspection. Refusing entry may constitute grounds for denial, suspension, or revocation of the permit.

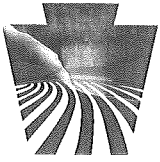
Comments:

- I agree with the permit for reason #1 above. However, I do not agree with the need to inspect the facility. If that is the case then you are back at using a certified kitchen. What would be the parameters of a qualified home or farm kitchen? An oven? two sinks? Spic and span Mr. Clean kitchen? The approved courses along with labeling of the product with its ingredients, when it was made AND a notation MADE IN A HOME OR FARM KITCHEN should be enough for the consumer to decide for themselves whether to purchase it or not.
- Current rules are o.k. for fundraising efforts of non-profits but way too restrictive for home businesses. Our government needs to make these changes to encourage home businesses while assuring the safety and health of the consumers. It is also clear to me that the general public is very much desiring home-made products as evidenced by the success of farmers markets and food and craft fairs.
- Applying for permits annually can be too costly for small-time produces whose profit margins are already, often, extremely minimal. I suggest the renewal time be every 2 years and not to exceed \$25, annually.
- The food safety requirements for the TFE permit should be exactly the same as the Homemade Food Operation permit if direct sales are allowed under both. And inspections should be allowed to both with the same 24 hours’ notice.
- Agreed.
- The 24 hour notice defeats the purpose of allowing HDOH access to the facility to see what is really going on. This is a good thing! Food processors must be held accountable for their operations. If they have nothing to hide then they won't mind spot inspections. Food inspections should be as much about prevention as cleaning up after an incident. People die from foodborne illnesses, let's not dumb down our food safety laws because people are too lazy or cannot afford the proper facilities and equipment. Our standards should be kept high. The current requirements of HDOH are all doable and are good common sense, we should not lower our standards. These proposed changes will require a big increase in funding to HDOH which already cannot keep up with required inspections. Food processing facilities at a home location are already allowed under current law and are permitted as a commercial use of all zoning (with permits and certain restrictions). Allowing unlimited sales in areas not zoned for commercial use can set up potential problems with roads, parking and other issues. Food processing facilities established at a home location should be used only for the commercial use stated in the permit and should not be mixed with home use. Most homes have pets that have free run of the house and this poses a threat to food safety. Also, homes have a lot of people going in and out that aren't part of the processing that will be occurring and pose a threat of contamination. Mixing foods that are for home use and eating and cooking utensils in an area that is to be used for commercial production of foods poses a threat of contamination. Keeping the requirement for direct sales only will help in the tracking in case there is contamination of foods produced in the proposed home kitchens. I must confess, I think your proposed changes are not a good idea. I am a farmer and a food processor and nothing in the current regulations has prevented us from being successful at both for two decades.

- Recommend direct sales only since unfair competition for "legal" businesses. Will wholesaler require liability insurance? Couldn't the wholesaler in turn sell it to a retailer, restaurant, etc.?
- I support the HDOH require food handling safety training. I believe the permitting process should include mandatory site inspection prior to the issue of the permit, as well as inspections at the discretion of the HDOH after the permit is issued.
- How about the fee for a permit is \$25.00? More folks would be willing to work within the guidelines if the permit fee were more reasonable.
- These proposals make sense.
- The homemade food operations permit is safer for the consumer and better for the homemade food producers. Love it!
- Good.
- I'm not sure why a TFE permit holder should be exempt from food safety training.
- Great!
- Looks clear, simple and enforceable.
- To protect the homemade food operations and "buy local" and our struggling ag industry, it seems to me that people should have to prove they have insurance before they receive their permit. If a tourist or anyone should get sick from any of our locally produced/home cooked food items it would wreck it for everyone. At least if it happens then both parties are protected.
- I provide non potentially hazardous food from my home kitchen under the TFE permit. I am not charged a fee. I believe that the proposed rule change would change this and increase my costs. Perhaps you could have a waiver under the permit for non-potentially hazardous foods prepared in a home kitchen.
- Keep it simple and cheap please. Look where you live, and if you don't, you'll pay for it. More will be on EBT.
- Sounds good. Might also emphasize that the purpose of the permits vary, but both promote food independence in Hawai'i, local entrepreneurship, and the public health.
- Yes
- Sounds reasonable.
- In other states, it is very flexible to do cooking at home and selling items. Laws should be flexible. The state of Hawai'i has to learn to be business friendly so we can encourage more farmers to farm and really make Hawai'i island become the hub of agriculture. With the many different climates we have, we can grow almost everything.
- All allowable foods must be permitted. New products cannot be sold without a permit. Inspections do not require notice. Limit \$ sales of product for the year.

APPENDIX E

PENNSYLVANIA REGULATOR LETTER



pennsylvania
DEPARTMENT OF AGRICULTURE

BUREAU OF FOOD SAFETY & LABORATORY SERVICES

June 25, 2012

Mr. Stambler:

In response to your inquiry regarding the Commonwealth of Pennsylvania's food safety program with respect to "Home Food Processors," I offer the following:

Pennsylvania registers home food processors under our Food Safety Act – the same statute that applies to all other food processors / manufacturers in the state.

Pennsylvania has been registering 'home food processors' since the 1970's.

Home Food Processors are required to meet certain criteria to register with the Department. Guidelines can be found on our website at www.EatSafePA.com. Key criteria include: 1) no pets in the home, 2) only preparation of non-potentially hazardous foods, 3) water testing on non-public water sources, 4) appropriate labeling of foods, 5) separation of ingredients for business use and personal use, and 6) compliance with routine inspections by the Department of Agriculture.

Currently there are approximately 1500 registered home food processors in the Commonwealth of PA.

In my 15 years working with the Department, I am not aware of any foodborne illness outbreaks associated with any Commonwealth registered "home food processors."

The Commonwealth has had outbreaks associated with unregistered home food processors, typically related to illegal processing of low-acid canned foods or other potentially hazardous foods just as catering meals.

If you have further questions, or I can be of other assistance, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheri L. Morris".

Sheri L. Morris
Food Program Manager

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 6:58 PM
To: CPCtestimony
Cc: teahawaii@gmail.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Eva Lee	Tea Hawaii & Company	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



Barking Deer Farm

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Monday, March 30, 2015 — 2 P.M. — Conference Room 325

Barking Deer Farm strongly supports SB 379 SD2 HD1 Relating to Food

Dear Chair McKelvey, Vice Chair Woodson, and Members of the Committee:

My name is Jamie Ronzello and I am the owner and operator of Barking Deer Farm on the island of Molokai. We grow a variety of organic vegetables that we offered to our local markets, as well as, a line of gourmet value-added products including a spiced coffee rubs, jams, mustards, and herbal teas.

Barking Deer Farm strongly supports SB 379 SD2 HD1 because it aligns with our farm mission of providing more locally produced food and food products. As a farmer on Molokai I see the ongoing challenges many of us face as farmers in rural areas where there are limited markets in these economically challenging times. In fact, many farmers are discouraged by the economics of farming and looking for other means to support their families. I feel that this bill would bring hope and will encourage more producers to look at diversifying their farming operations to incorporate value-added product as another avenue for revenue. This can help ensure the sustainability of these agricultural operations in Hawaii, as well as, increase local economic viability.

This bill allows sales of only non-potentially hazardous foods and lays out the rules for an annual permit, as well a clear sample list of foods that are allowed in homemade food production. This legislation is strongly needed because the Department of Health's current rules for homemade food production under the temporary food establishment (TFE) is too restrictive and unclear. The current TFE permit lasts only 120 days and allows only 20 days of direct sales within that period for a single location. This bill would allow cottage food producers to sell 365 days at multiple locations.

SB 379 SD2 HD1 keeps in strong consideration the safety of public health by limiting sales to direct-to-consumer sales, such as farmers market sales and clearly providing guidelines or what foods can be safely manufactured. The cottage food industry has been successfully growing all over the nation with 40 states having a vigorous and safe industry where operators sell directly to consumers year round. In fact, there has been no single instance of illness associated with legally permitted homemade food sales both within Hawaii and other states. Furthermore, by providing clear labeling laws the bill clearly educates the consumer that the product was made in the operator's kitchen under specific guidelines.



I believe that SB 379 SD2 HD1 provides many economic advantages for our state. It will help encourage new local food producers, as well as, support the growth of already existing small scale value-added producers. I strongly urge the committee to pass this bill. Thank you.

Respectfully,

Jamie Ronzello

Owner
Barking Deer Farm
P.O. Box 170
Maunaloa, HI 96770
Barkingdeerfarm@gmail.com

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 1:15 PM
To: CPCtestimony
Cc: Janine@blackdogkauai.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Janine Lynne	Black Dog Farms Kauai	Support	No

Comments: Aloha Chair Angus McKelvey and Vice Chair Justin Woodson and members of the Consumer Protection and Commerce Committee, I am writing in strong support of SB379 SD2 HD1, and first, please remember this bill only addresses the ability to preserve non hazardous foods, foods that by definition are not at risk to cause food borne illnesses. We need to safely increase the amount of food grown and produced locally. Many individuals, families and small businesses need additional income, have access to locally grown food 365 days a year, and would like to learn how they can safely maneuver the process. With many islands having local, community farmers markets 6-7 days per week, this bill can be a wonderful piece of the food security puzzle we need to build across our state. Over 40 states have cottage law bills with zero known food borne illness outbreaks among registered food operators. Our health department updated their rules last year, yet the process and support for cottage food producers remain unclear and confusing. This simple bill streamlines the process making it more transparent, more easily navigated, gives the community more information on the foods that would be allowed, and gives consumers more confidence in what is allowed through the labeling requirements. Thank you for your time and consideration for this bill. As small as it is, it can make a big difference for small businesses and consumers! Sincerely, Janine Lynne Black Dog Farms Kauai

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 1:49 PM
To: CPCtestimony
Cc: aipohaku@hotmail.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Vince Kana`i Dodge	`Ai Pohaku	Support	No

Comments: Aloha Representatives, we r writing in full support of SB379 relating to cottage food production- i.e. the production of foods in the home kitchen that r in the class of non-potentially hazardous foods. This legislation is sensible, and will benefit our local economy. The guidelines r clear and enforceable. It is nothing new- over 40 States have passed similar legislation supporting the cottage food industry. For the betterment of our island economy and people plz pass SB379. aloha nui, Vince Dodge 4 `Ai pohaku- The Stone Eaters.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 9:19 AM
To: CPCtestimony
Cc: amybrinker@mac.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 10:24 AM
To: CPCtestimony
Cc: kaloli.pt@gmail.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ann Strong	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 11:11 AM
To: CPCtestimony
Cc: debbie.leejackson@gmail.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Debbie Lee-Jackson	Individual	Support	No

Comments: I support local farmers and local food producers. This bill will give a positive boost to the local economy. Please pass this bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 10:59 AM
To: CPCtestimony
Cc: harvest@kauai-vacations-realty.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Harvest Edmonds	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 9:52 AM
To: CPCtestimony
Cc: hilo_mama@yahoo.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Karin	Individual	Comments Only	No

Comments: Aloha, I support this measure as it will affect and impact in a positive way the growth of safe 'at home' food preparation for both the consumer and the producer. As someone personally interested in developing a product for native foods grown on my property I can see the value in passing this bill. Thank You.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 8:49 AM
To: CPCtestimony
Cc: ken@mycoffee.net
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ken Love	Individual	Support	No

Comments: This bill is essential for small farm sustainability and empowers value added produce producers with training and a realistic permitting process that enables them to safely produce a wider range of products to sell at farmers markets etc. Please pass this bill on behalf of all farmers and small producers around the state.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 10:37 PM
To: CPCtestimony
Cc: lakimura@hotmail.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lance Kimura	Individual	Support	No

Comments: I am writing my testimony in support of this bill. This will have a positive impact on locally made products. This will create less dependency on imported. Please support this bill.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 12:36 PM
To: CPCtestimony
Cc: 1bagpoe@gmail.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
LORNA POE	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 4:56 AM
To: CPCtestimony
Cc: ravenhanna@gmail.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
rebecca hanna	Individual	Support	No

Comments: Cottage industry is good for business and the community. In Hawai'i, where we are actively reducing our dependance on shipped-in food, people with the knowledge and inspiration to transform our agriculture products into easy parts of meals should be appreciated and supported, not just allowed, As a farmer's market shopper, I love to see the innovation of cottage industry sellers. I trust buying from the home producers, with whom I have a relationship, more than I trust food on grocery store shelves. I am concerned about Hawai'i's food future and environment, and therefore support home food processors. Please pass this bill. Mahalo!

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 9:32 AM
To: CPCtestimony
Cc: cubanwahine@hawaii.rr.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sonia R. Martinez	Individual	Support	No

Comments: Our state has long been known as a very hard place to start a small business and as we all know, it is quite expensive as a whole to live here. Many people don't stand a chance. The livelihood of many individuals and families would improve considerably if this bill is passed. Hawaii'i needs to join the rest of the states (40 to date) who already have approved cottage food legislation. Passing the bill would send a strong message that the Legislature supports local farmers and local food producers. The bill is good for agriculture and good for economic development. We need to rely on more than just tourism to improve our economy!

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 28, 2015 2:15 PM
To: CPCtestimony
Cc: suzanne@punapono.com
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM

SB379

Submitted on: 3/28/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Wakelin	Individual	Support	No

Comments: Aloha, This testimony is in SUPPORT of SB379. This Cottage Food bill provides a framework for local food producers to reach consumers with their locally produced food products. Availability of locally grown and produced foods is of key importance to the sustainability of living in Hawai'i. This bill supports economic development and local agriculture. My family and I prefer to support local food producers. If this bill becomes law, at some point in the future I may also want to produce and sell foodstuffs at the farmers markets. The TFE (temporary food establishment) permitting process does not support this kind of economic development whereas a well-defined cottage food permitting process does. Please support this bill. Mahalo.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 1:22 PM
To: CPCtestimony
Cc: traceyschavone@gmail.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*

SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tracey Schavone	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 7:36 PM
To: CPCtestimony
Cc: micah@hfbf.org
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*



SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Farm Bureau	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

Rob Barreca
Owner/Operator
Counter Culture Food + Ferments
2757 Hipawai Place
Honolulu, HI 96822



Testimony in strong support of SB379 SD2 HD1

To whom it may concern,

I operate a small batch, fermented foods company called Counter Culture Food + Ferments. We make kimchi, sauerkraut, and tempeh from produce that we grow on O‘ahu. I’m writing in support of SB379 SD2 HD1.

All cottage food producers undoubtedly share the Department of Health’s concern of ensuring public health; we all are putting great care and love in creating small batch value-added products. However, the current temporary food establishment permit structure offered by the Department of Health is too restrictive and outdated. I have suggested modifications to the rules in contacting the Department of Health, but have not been successful in changing the current framework. I outline the restrictions below, and following those I comment on two aspects of the HD1 draft that will increase efficiency and economic development of the cottage food industry while not increasing the risk of foodborne illness.

Current issues with temporary food establishment permit (TFEP) framework:

1. We deliver a mixed produce basket to our customers’ homes every week. Customers reserve their basket on our website and we make the transaction in person in a direct sale. Under the TFEP framework, I cannot offer my non-potentially hazardous value-added products made in a home kitchen since the permit requires a “fixed location.” Offering these fermented foods in a delivery service would not increase risk in any way as I can sell these value-added fermented products at the farmers market under the current rules. Simply put, the TFEP is outdated and cannot accommodate this new way of doing business even though it doesn’t increase risk.
2. Sale day restriction is needlessly prohibitive. Right now the TFEP restricts a producer to 20 days out of 120 days, essentially one day per week. This assumes that you are doing all your sales at a farmers market or church event and the rule aims to reduce risk by limiting sale frequency. But, this prohibits the cottage food operator who is already limited by having a small kitchen. If I am baking sourdough bread at home, it takes a lot of time in one home kitchen oven. I would prefer to bake 10 loaves per day

every weekday allowing me to sell fresh bread Monday through Friday, but under the current framework I would need to bake 50 loaves throughout the week and sell a less fresh product at the farmers market just one day a week. No other states with cottage food laws restrict by sale day.

Two aspects of SB379 SD2 HD1 that solve the aforementioned issues:

1. HD1 allows for multiple locations. This fixes the outdated “brick and mortar” regulation of the HDOH’s TFEP framework. Times have changed and we should be able to flexibly sell value-added products in a CSA delivery service as it does not increase risk, but rather just makes it much clearer for new cottage food producers.
2. Both producers and the HDOH will benefit from an annual sale permit. Cottage food producers are already severely restricted by small kitchens and lack of labor. Today, producers on O’ahu can fill out a stack of TFEPs and go to a different farmers market each day of the week. So an annual permit doesn’t expand the risk potential, rather it just makes it easier, clearer, and less work for both the producer and the HDOH administration. An annual permit allows a bread baker to sell small amount of fresh bread Monday through Friday.

Mahalo nui loa for taking the time to consider my testimony in support of SB379 SD2 HD1.

Rob Barreca
Owner/Operator
Counter Culture Food + Ferments
rob@counterculturehawaii.com
808.224.1905

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 6:00 PM
To: CPCtestimony
Cc: waioli2@hawaiiantel.net
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM



SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
chris kobayashi	Individual	Support	No

Comments: Aloha Chair McKelvey , Vice Chair Woodson and Committee Members. Thank you for hearing this bill. I am in STRONG SUPPORT of SB379 SD2 HD1. I am a mixed vegetable/fruit/taro farmer and sell at the Kauai farmers markets. There are times of abundant harvests of vegetables, herbs and seasonal fruits. Recently farmers have been going home with lots. Sure we can eat, share and compost. But being able to process, when needed, would help us, as you well know that farm income is never guaranteed. I see this as the start of creating jobs and building the economic and social wellbeing and health of our communities. Mahalo nui for your STRONG SUPPORT.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 7:02 PM
To: CPCtestimony
Cc: jtrujill@hawaii.edu
Subject: Submitted testimony for SB379 on Mar 30, 2015 14:00PM



SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
james trujillo	Individual	Support	No

Comments: aloha, please accept this testimony in favor of passing sb 379. this bill will help to reduce redundancies & confusion regarding temporary food establishments and cottage food producers. This bill has the potential to increase the amount of local products available for local consumption and reduce our need for importing food stuff from out of state. Sb 379 can facilitate the production of value added products to help bring to market local products for local consumers which will only strengthen our local economy as well as build our food production infrastructure. mahalo for considering this testimony in favor of passing sb 379. with respect and aloha, james g trujillo po box 33 kapaa, HI

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 29, 2015 8:37 PM
To: CPCtestimony
Cc: blisshealthyfoods@hawaii.rr.com
Subject: *Submitted testimony for SB379 on Mar 30, 2015 14:00PM*



SB379

Submitted on: 3/29/2015

Testimony for CPC on Mar 30, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Langley	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

RE: Written Testimony, SB379 HD1 Cottage Food Operations

To the Committee on Consumer Protection and Commerce (CPC), The esteemed Representative Angus McKelvey, Chairman, Representative Justin Woodson, Vice Chair and other members of the CPC. I would like to express my testimony in support of this measure regarding the allowance and permitting of cottage industry food operations from a non-commercial location. In our collective efforts for our island State of Hawaii to be sustainable, reduce food imports, increase food security and keep our money circulating locally, instead of being exported to mainland corporations, it is vitally important for our community to have this ability to freely produce local food products without the burden of over-regulation, while at the same time, meet the nutritional needs of our fellow neighbors, community and citizens. I support all the paragraphs relating to this measure as of 3/30 and only would ask the committee to consider modifying section 328-C (b)(3) which currently limits the amount of days that a cottage food operator can sell their products to 120 days out of 365 day period – to remove said limits on the number of days. If the department permits the cottage food operations, then I see NO value in limiting the sale of the products produced to 1/3 of the year. If the permitted person is industrious to engage in this type of productive activity AND has a ready market for whatever he or she produces, then let the marketplace decide on the demand. There is simply no need for a government agency to have to monitor how many days is used in selling the goods produced under such a condition. The benefit to the State would actually benefit by dropping such a restriction – in the form of potentially higher General Excise Tax returns as a result of no restrictions regarding the sale of such produce. Thank you for your attention to this matter. Respectfully, Vanessa Lum, resident of Kapolei HI.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 379, S.D. 2, H.D. 1, RELATING TO FOOD.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday March 30, 2015

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Wade H. Hargrove III, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General has the following concerns.

This bill would (1) create a new “cottage food permit” under chapter 328, Hawaii Revised Statutes (HRS), for “cottage food operations,” legislatively creating an exemption to the Department of Health’s (DOH) current permitting structure for food establishments under existing chapter 11-50, Hawaii Administrative Rules (HAR); (2) restrict cottage food operations to “direct sales” but allow that activity 365 days per year (while remaining silent with respect to food manufacturing activities); (3) require food product labels with the words “Made in a Home or Farm Kitchen” and allergen information; and (4) provide a “sample list” of “approved cottage food products”.

This measure raises several questions about how the new permitting of cottage food operations can be effectively reconciled with the DOH's existing rules regulating food establishments more broadly and how the DOH will be able to implement these statutory changes in a way that is both consistent with, and equally protective of, public health. Generally speaking, a “cottage food operation” is by definition a “food establishment” for purposes of chapter 11-50, HAR (promulgated pursuant to the authority of chapter 321, HRS), and a “cottage food operator” is a person responsible as a seller of food as envisioned by chapter 328, HRS, which, in part, codifies the DOH's responsibility to address food adulteration. In either case, whether in view of the existing rules, or the DOH's existing approach to cases of food adulteration, it is uncertain what impact the exceptions created by this measure will have.

A summary of particular areas of concern follows.

1. Terminology. This measure uses the terms “Home Kitchen” and “Farm Kitchen” and provides definitions, but no clarification is given as to how they may operate differently from each other or what differences there may be with respect to how those kitchens are maintained and operated as compared to the DOH existing regulations with respect to existing good manufacturing practices [chapter 11-50, HAR] and food adulteration [existing chapter 328, HRS].

2. Permit requirements and rulemaking. Though this measure requires a permit for cottage food establishments, it creates no operational requirements and no criteria for what an application for such establishments must contain. Without any equipment, maintenance, or performance standards, it is unclear upon what basis, if any, the DOH will evaluate the applications and issue permits. The newly created sections 328-C and 328-D require only that the cottage food operation be “registered” (the purpose of which is unclear because the business must also be permitted); engage only in direct sales; and provide food labels that say “Made in a Home or Farm Kitchen” and contain allergen information. All three of these requirements are things that are accomplished, if at all, only after the business is permitted. Section 328-B of this measure requires the DOH post the requirements for cottage food operations on its website and make rules, but it is unclear in what way the legislature intends for the DOH to make rules that treat cottage food businesses differently than existing food operations. In any event, any such rules will inevitably conflict with the DOH’s existing rules in chapter 11-50 HAR.

3. Approved cottage food product list. It is unclear in what way the product list in section 328-E of this measure, to be created by the DOH and purporting to be “representative of the types of approved cottage food products”, is representative of a particular “type” of food and there is no criteria for, nor is clear authority given to, the DOH to modify this list.

4. Inspections and zoning. This measure is completely silent with respect to how the DOH is to enforce this new law in private homes that are “open for business” [see this measure’s section 328-C(b)] and in what way these new businesses selling food 365 days a year in private homes will conform or conflict with existing county zoning ordinances. The bill does not specifically address whether food manufacturing may occur year-round (in addition to sales), a matter of particular concern with respect to inspections and zoning.

We respectfully ask that the Committee consider our concerns.

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER,
M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in OPPOSITION to SB 379 SD2, HD1
RELATING TO FOOD

REPRESENTATIVE ANGUS L.K. MCKELVEY, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: March 30, 2015
Time: 2:00 pm

Room Number: 325

1 **Fiscal Implications:** This bill has fiscal implications.

2 **Department Testimony:** The department opposes this bill as a comprehensive food safety
3 regulation was recently adopted that incorporates the most current science in controlling risk
4 factors known to cause foodborne illness. The measure amends HRS 328 and creates confusion
5 and conflicts with existing Hawaii Administrative Rules (HAR) which currently regulates the
6 food industry. HAR Chapter 50, Food Safety Code already provides the Home-Made food
7 industry the opportunity to produce non-potentially hazardous foods (i.e., cookies, breads, jams,
8 etc.) from their homes for direct sales to consumers.

9 Pursuant to legislative resolution SCR 97 (2014), the department has been an integral part
10 of the "Home Made" food industry working group which was tasked to address "Cottage Food
11 Industry" issues and will be making recommendations to this legislature regarding the progress
12 made. The department opposes amending existing HAR with changes to statute as this often
13 creates conflicting and unnecessary laws. The department also objects to codifying a standing
14 list of approved "cottage foods" as each food item would also need to be legally defined, and the
15 possible permutations of these non-hazardous foods are limitless. The definition of a potentially
16 hazardous food is already defined through physical scientific parameters of water activity (less
17 than 0.85) and pH (less than 4.6) of the food in question in the existing rule. Any food outside of
18 those parameters are considered to be non-hazardous.

19 The department is willing to amend HAR, Title 11, Chapter 50, Food Safety Code, to
20 allow for annual permits for producers of non-potentially hazardous in home kitchens to sell their
21 food products for not more than 120 days within a 365 day window at any location allowed by
22 law. The proposed fee for this annual permit will be \$100/year. The department is also willing

1 to place a list of the most common non-potentially hazardous foods that can be produced in home
2 kitchens on our website. The list would be very similar to the one provided in the SD2 version
3 of this bill.

4 Thank you for the opportunity to testify.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20