

SB379 SD1

Measure Title: RELATING TO FOOD.

Report Title: Homemade Food; Cottage Food

Description: Expands and creates new categories for homemade food processing for sale to the public. Takes effect on 1/1/2016. (SD1)

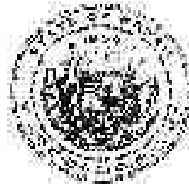
Companion: [HB1233](#)

Package: Local Food Caucus

Current Referral: HTH/AGL, CPN

Introducer(s): RUDERMAN, CHUN OAKLAND, ESPERO, GABBARD, GREEN, HARIMOTO, IHARA, KEITH-AGARAN, RIVIERE, SHIMABUKURO, Slom, L. Thielen

<u>Sort by Date</u>		Status Text
1/23/2015	S	Introduced.
1/26/2015	S	Passed First Reading.
1/26/2015	S	Referred to HTH/AGL/PSM, CPN/WAM.
1/29/2015	S	Re-Referred to HTH/AGL, CPN.
2/6/2015	S	The committee(s) on HTH/AGL has scheduled a public hearing on 02-12-15 3:40PM in conference room 414.
2/13/2015	S	The committee(s) on HTH recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in HTH were as follows: 5 Aye(s): Senator(s) Green, Wakai, Gabbard, Riviere, Ruderman; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Baker, Slom.
2/13/2015	S	The committee(s) on AGL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in AGL were as follows: 4 Aye(s): Senator(s) Ruderman, Riviere, Chun Oakland, Wakai; Aye(s) with reservations: none ; 0 No(es): none; and 3 Excused: Senator(s) Taniguchi, L. Thielen, Slom.
2/20/2015	S	Reported from HTH/AGL (Stand. Com. Rep. No. 370) with recommendation of passage on Second Reading, as amended (SD 1) and referral to CPN.
2/20/2015	S	Report adopted; Passed Second Reading, as amended (SD 1) and referred to CPN.
2/20/2015	S	The committee(s) on CPN will hold a public decision making on 02-24-15 9:30AM in conference room 229.



**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, SD1
RELATING TO FOOD**

SENATOR ROSALYN H. BAKER, CHAIR

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: February 24, 2015

Room Number: 229

Time: 9:30 AM

1 **Fiscal Implications:** This bill has significant fiscal implications that would require resources not provided
2 in the Executive budget

3 **Department Testimony:** The department opposes this bill as a comprehensive food safety regulation
4 was recently adopted that incorporates the most current science in controlling risk factors known to
5 cause foodborne illness. The measure amends HRS 328 and conflicts with and creates confusion with
6 existing Hawaii Administrative Rules (HAR) which currently regulates the food industry. HAR Chapter 50,
7 Food Safety Code already provides the Home-Made food industry the opportunity to produce non-
8 potentially hazardous foods (i.e., cookies, breads, jams, etc.) from their homes for direct sales to
9 consumers. This bill is contrary to HAR Chapter 50 as well as The FDA Model Food Code, which is the
10 national standard for regulating the food industry. The bill introduces the concept of “self-certification,”
11 and requires the department to issue permits but is explicitly prohibited from conducting initial and
12 routine inspections, and limits the frequency of governmental inspections. It also includes unnecessary
13 complexities such as multiple classes of “Cottage Foods” and the implementation of an approval process
14 to add or delete foods for each class of cottage foods. This bill does not address legal and constitutional
15 issues regarding governmental entry and inspection of a person’s domicile and the possible need for
16 search warrants when inspections are refused or interfered with by the operator.

17 Pursuant to legislative resolution SCR 97 (2014), the department has been an integral part of the “Home
18 Made” food industry working group which was tasked to address “Cottage Food Industry” issues and will
19 be making recommendations to this legislature regarding the progress made. The department is willing
20 to amend existing Administrative Rules, as long as it does not increase the possibility of food illness risk-
21 factors known to cause foodborne illness.

22 Thank you for the opportunity to testify.

23 **Offered Amendments:** None.

From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: micah@hfbf.org
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 9:37:33 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

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.

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February 23, 2015

TESTIMONY OF KIPUKAI KUALII
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 379, SD 1, RELATING TO FOOD
Senate Committee on Commerce and Consumer Protection
Tuesday, February 24, 2015
9:30 a.m.
Conference Room 229

Dear Chair Baker and Members of the Committee:

Thank you for this opportunity to submit testimony in strong support of SB 379, SD 1, Relating to Food. My testimony is submitted in my capacity as the Economic Development & Intergovernmental Relations Committee Chair and as an individual Councilmember on the Kaua'i County Council.

SB 379, SD 1 expands and creates new categories for homemade food processing for sale to the public. This endeavor is much needed as the State deals with local food issues which are increasingly becoming more challenging each day. I believe this Bill assists in promoting local food sustainability which provides a boost to the local agriculture community and provides an additional source of fresh, healthy food for our people. As the Economic Development & Intergovernmental Relations Committee Chair, I support all efforts to boost economic development on Kaua'i especially if it warrants a win-win situation for our local fishermen, farmers, ranchers, other agricultural producers, and consumers.

For the reasons stated above, I strongly encourage the Senate Committee on Commerce and Consumer Protection to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII
Councilmember, Kaua'i County Council



SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Tuesday, February 24, 2015 – 9:30AM – Room 229

The Kohala Center Strongly Supports SB 379, SD1, Relating to Food

Dear Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Kohala Center strongly supports SB 379, SD1. 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'ō 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 the heart of SB 379, SD1, is one primary goal: to allow cottage food operations to sell non-potentially hazardous foods to retailers, such as hotels, cafes, and restaurants. Such sales are referred to as "indirect sales." Current regulations promulgated by the Hawai'i Department of Health (HDOH) allow direct-to-consumer sales only and prohibit indirect sales of non-potentially hazardous foods made by cottage food operations.

HDOH prohibits indirect sales of non-potentially hazardous foods despite the fact that:

1. non-potentially hazardous food are foods with a low risk of causing foodborne illness; and
2. five of the ten most populous states in the nation allow their cottage food industries to sell low risk foods to retailers; namely, California, New York, Pennsylvania, Ohio, and North Carolina. In addition, Massachusetts, Louisiana, Utah, Maine, and New Hampshire also allow sales to retailers. From our research, these states have not received reports of foodborne illness from registered cottage food operations.

HDOH has stated that their reluctance to allow indirect sales stems from the generally held principle in food safety that adverse risk increases with increased volume of food distributed. However, when discussing risk mitigation, it is important to consider the degree of risk associated with the proposed activity. Non-potentially hazardous foods are by definition low risk foods – foods that do not require time or temperature controls to limit pathogenic microorganism growth or toxin formation because of its pH or water activity values, or interaction of pH and water activity values. Prohibitions on low-risk

activities are unnecessary for protecting consumer health when alternative risk mitigation measures exist.

Laws should be narrowly tailored to achieve a goal or interest, and should represent the least restrictive means for achieving such goal or interest. An outright ban on indirect sales is unnecessary from a food safety perspective and fails to consider effective, alternative means of mitigating risk. SB 379, SD1, proposes several food safety measures designed to mitigate risk and protect consumer health, including food handler training, certification of compliance with safe food handling practices, inspections by HDOH, and for certain foods, product testing. These proposed measures exceed HDOH's current requirements for homemade food producers under the temporary food establishment permit, and create an alternative framework for mitigating risk other than an outright ban on indirect sales.

HDOH's position also unnecessarily deprives Hawai'i's economy of an important economic opportunity. Local value-added food 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, SD1, offers cottage food operations an opportunity to evolve into an established commercial food business that can afford a certified kitchen, while providing substantial means of mitigating risk and protecting consumer health that exceed current HDOH requirements.

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

HDOH Concern #1: The bill has significant fiscal implications that would require resources not provided in the Executive budget.

Response: The bill, in proposed §328-I(e), states that HDOH may charge a reasonable permit fee for class B cottage food operations which takes into account costs of inspection and related administrative costs.

HDOH Concern #2: 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

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draws upon cottage food laws and regulations from across the nation, and incorporates measures to control risk factors known to cause foodborne illness by recommending food safety training, product testing, kitchen inspections, and food handling rules.

HDOH Concern #3: 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 bill goes beyond the current Food Safety Code and creates a system for cottage food producers to sell non-potentially hazardous foods, including acidified foods, to retailers, such as restaurants and hotels, provided that producers consent to kitchen inspections, undergo sufficient training, and for certain foods, submit their products for testing.

HDOH Concern #4: 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, including acidified foods made 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, submit to inspections, undergo training, present products for testing, 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.

HDOH Concern #5: The bill introduces the concept of “self-certification.”

Response: The bill includes a self-certification provision not only to ensure that cottage food producers are aware of safe food handling practices, but also to obtain agreement from producers that they will follow these practices. The current temporary food establishment permit does not have a mechanism for ensuring that food producers are aware of safe food handling practices. The self-certification requirement is consistent with HDOH’s mandate to minimize the risk of foodborne illness.

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HDOH Concern #6: The bill requires the department to issue permits but is explicitly prohibited from conducting initial and routine inspections, and limits the frequency of governmental inspections.

Response: The bill allows routine annual inspections for class B cottage food operations, and allows inspections of any cottage food operation for which HDOH has received a complaint.

The bill does not include routine inspections for class A permits because class A permits allow only direct sales of non-potentially hazardous foods, similar to HDOH's current temporary food establishment permit for which HDOH does not conduct inspections.

The industry members of the Hawai'i Cottage Food Business Working Group recommended inspections despite HDOH's significant concerns with conducting inspections of private property due to the additional administrative work involved, and the possible risk of harm and/or liability from conducting inspections of private property. The industry members of the Hawai'i Cottage Food Business Working Group, as well as members of the public that responded to The Kohala Center's request for public comment on the initial proposed recommendations, indicated a willingness to submit to HDOH inspections conducted at a reasonable frequency.

HDOH Concern #7: The bill includes unnecessary complexities such as multiple classes of "Cottage Foods."

Response: The bill proposes multiple classes of cottage food permits in order to create a system that limits administrative requirements to specific measures that are necessary to protect consumer health.

Class A does not require routine inspections or product testing because the permit only allows direct sales of non-potentially hazardous foods, similar to the current temporary food establishment permit for which HDOH does not conduct inspections or product testing.

Class B requires inspections because it allows indirect sales of non-potentially hazardous foods. The additional inspection requirement is meant to more closely monitor producers seeking to sell to a broader market.

The production of acidified foods and fermented foods requires product testing and advanced training because these foods may be safely made at home by producers that are adequately trained and whose product and production process have been verified by a "process authority." This approach is consistent with the FDA's requirements for the production of acidified foods.

The bill states that HDOH may set reasonable permit fees for class B cottage food operations to cover costs of inspection and related administrative costs. The industry

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members of the Hawai'i Cottage Food Business Working Group, as well as members of the public that responded to The Kohala Center's request for public comment on the initial proposed recommendations, indicated a willingness to pay reasonable permit fees.

HDOH Concern #8: The bill includes unnecessary complexities such as the implementation of an approval process to add or delete foods for each class of cottage foods.

Response: The bill includes an approved list of foods that may be produced by a cottage food operation in order to facilitate transparency with the public and to ensure that all HDOH sanitariums on all of the islands understand what is allowed. An approved list should be considered a time saving measure that prevents sanitariums from having to spend time explaining to the public what foods may and may not be produced in a home kitchen.

The bill outlines a process to add and delete items from the approved list so that HDOH can be responsive to trends. It provides a process for adding items so that HDOH can be responsive to developments in food safety and food science. It provides a process for deleting items so that HDOH can take steps to mitigate risk. It allows for public comments to allow for transparency, dialogue and civic engagement.

HDOH Concern #9: This bill does not address legal and constitutional issues regarding governmental entry and inspection of a person's domicile and the possible need for search warrants when inspections are refused or interfered with by the operator.

Response: Many government agencies in Hawai'i and nationwide inspect private property. Like these agencies, HDOH will have to comply with federal and state law if refused entry.

The bill allows for automatic revocation of a cottage food permit if a cottage food operator wilfully denies access to HDOH. To ensure that buyers can stay apprised of the status of a cottage food operation's permit, The bill requires that HDOH maintain on its website a list of cottage food operations whose permits have been revoked.

SB 379, SD1, proposes a new legal framework for cottage food operations – one that achieves the dual purpose of protecting consumer health and expanding economic opportunity for small food businesses. As demonstrated by California, New York, Pennsylvania, Ohio, North Carolina, Massachusetts, Louisiana, Utah, Maine, and New Hampshire, achieving both goals is possible.

Thank you for your consideration of SB 379, SD1, 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.

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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*

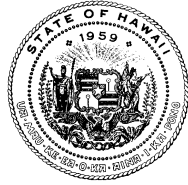
*HDOH may order operators to cease and desist the sale of foods as the result of any food illness investigation or suspected adulteration that may have or has caused injuries as a result of consuming foods being offered for sale or distribution.

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.

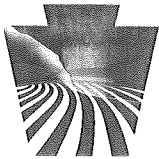
Comments:

- 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."

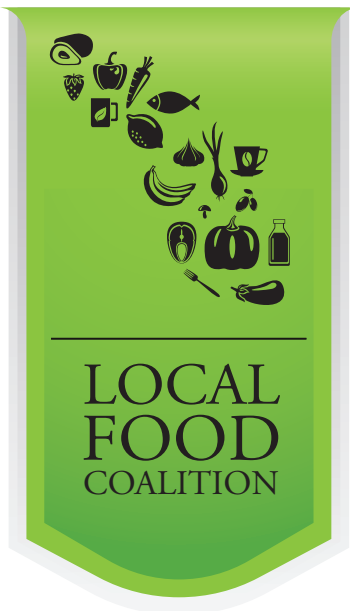
The Commonwealth has had outbreaks associated with unregistered home food processors, typically related to illegal processing of low-acid canned foods or other potentially hazardous foods just as catering meals.

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



SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION
Tuesday, February 24, 2015 — 9:30 a.m. — Room 229

The Local Food Coalition Strongly Supports SB 379 SD 1, Relating to Food

Dear Chair Green, Vice Chair Wakai, Chair Ruderman, Vice Chair Riviere, and Members of the Committees:

The Local Food Coalition strongly supports SB 379 SD 1, which is comprised of the recommendations of the Cottage Food Working Group organized from SCR 97 from the 2014 Legislative session. Last session, the Legislature passed S.C.R 97, requesting that the Local Food Coalition convene a task force including the Department of Health, Department of Agriculture, national experts on cottage food regulation, and local agricultural stakeholders. This bill is based on the recommendations of the task force.

Legislative action is necessary because the critical task force recommendation is for a new more efficient regulatory framework that creates three permit classes that are appropriate to the scale of scope of the cottage food endeavor. This cannot be achieved by the departmental rulemaking and represents an opportunity to both significantly improve the efficiency of government operations and allow the cottage food industry to grow. This legislative approach is modeled from the California Cottage Food law.

We believe we have DOH concurrence on the food safety training, sanitary guidelines, labeling and list of approved cottage food products (Sections B, E, F, and G).

This permit approach (Sections C, D, and H) updates the existing regulatory framework to meet the needs of a growing industry that can provide residents with increased local foods and local economic development, especially in rural areas of the state. The working group kept public safety in mind and attempted to find a balance between supporting local food consumption and public health. The framework has been design to streamline the onerous burden that the current Temporary Food Establishment approach places on the small cottage food operator. *There has been no single instance of illness associated with legally permitted homemade food sales both within Hawai'i and other states.*

This bill adds two classes for cottage food operations and defines their regulatory requirements. This includes Class A: direct sales only and Class B: direct and indirect sales not including acidified and fermented foods. The Class A permit approach would be streamlined to self-certification and training requirements.

The Local Food Coalition Supports All Forms of Agriculture.

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

While cottage food operators are currently allowed to sell directly to consumers under the temporary food establishment permit, we believe indirect sales should be allowed. In a world where transactions are conducted remotely through shipping, this would allow for increased opportunities for consumers in Hawai'i, but not conveniently located near the producer to obtain delicious local homemade products. Ironically, residents of Hawai'i can and do purchase cottage food products from California. Furthermore, allowing sales to restaurants, distributors, and retail shops will also allow these home businesses to be able to grow into economically viable businesses and provide consumers with increased local food options.

We recognize that indirect sales require greater scrutiny, and therefore the bill calls for more stringent certification and training requirements, as well as an annual inspection requirement. We believe inspection could be accomplished either directly by department personnel or through the department's certification of third party inspectors. We note that certified third party inspectors are already in use for food safety inspections for agricultural producers and processors, and this trend is likely to continue with under the expected approach of the Food Safety Modernization Act.

Economic Benefits of Cottage Food Industry

We support this bill because it will increase consumption of local foods and increase Hawai'i's food self-sufficiency. It is anticipated that the ability to work in home kitchens will increase the use of local foods in small-scale value-added production and allow for start-up operations that could grow.

The cottage food industry, which sells non-hazardous food products prepared in a home kitchen, is a growing movement across the nation as consumers are looking for unique high-quality food products. More than 30 states have laws or regulations permitting direct-to-consumer sales of cottage foods. The Department of Health noted that they issue about ~1,300 non-potentially hazardous temporary food establishment permits a year. Based upon the survey conducted during the working group process from the Kohala Center, the annual revenue for a cottage food operator is between \$1,000 to \$35,000. With less restrictions, the majority of respondents indicated they could increase their revenue by ~\$5,000, although some believe they can increase sales by 30% to 50%. We roughly estimate the current size of the cottage food market to be \$20 million.

Through the working group meetings and discussions with Department of Health, we were able to identify training classes for cottage food operators, requirements for permitting, labeling criteria, and a process for identifying approved cottage food products. We believe these increased processes will help grow the cottage food industry in a safe and transparent manner.

The Local Food Coalition members came together with one common goal: to promote the local production of food in a sustainable and economically sound manner to benefit Hawai'i's people through the revitalization and expansion of our state's agricultural sector.

We believe that by collaborating we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Kyle Datta
On Behalf of the Local Food Coalition



**Sustainable
Economies
Law Center**

**Education, research, advice, and advocacy for just and resilient local economies.
2323 Broadway, Oakland, CA 94612 | www.theSELC.org**

RE: Support for SB 379

February 22, 2015

Dear Legislators,

I am writing to urge you to support the Hawaii Homemade Food Act, SB 379, the "cottage food bill."

My organization has been carefully researching similar laws in other states, and in 2012 we successfully advocated for the California Homemade Food Act. **In just its first year in effect**, the California Homemade Food Act enabled the creation of well over 2,000 small, local food businesses in our state, and this number continues to grow.

Here are the reasons you should pass this legislation in Hawaii right away:

- They key components of this bill are **nearly identical to laws that have been enacted in over 40 U.S. states.**
- Similar laws in other states have not been linked to any food-borne illness outbreaks or caused significant burdens to regulatory agencies.
- Countless middle class and low-income individuals, including many women, take advantage of these laws to supplement their family's income while working from home.
- This is a critical opportunity to increase the economic viability of sustainable agriculture. Countless small-scale farmers who do not live near commercial kitchens (and often couldn't afford to rent them anyway) are anxiously awaiting the enactment of this legislation so they can provide local consumers with higher margin, value-added products.
- This legislation was written under the direction of the Cottage Food Industry Working Group, which convened last year and met with the Hawaii Department of Health to discuss the features of cottage food laws from around the nation to distill the specific policy features that best meet the needs and concerns of the people of Hawaii.

Thank you for considering my perspective on the success of cottage food legislation nationally. I hope you will seize this opportunity to promote local food economies in Hawaii by voting in support of SB 379.

Sincerely,

Christina Oatfield, Policy Director

christina@theselc.org

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



Testimony in support of SB 379 and proposed amendments

To whom it may concern,

I'm writing to recommend that SB 379 include a small revision to differentiate between fermented foods and acidified foods (i.e. canned vinegar pickles) per the FDA's own guidance. The bill as it stands now is in conflict with the FDA's recommendation (see link below) and groups low-risk fermented foods in with certain high-risk acidified foods, such as low-acid canned foods.

I operate a small batch fermented foods company that makes kimchi and sauerkraut from locally grown produce. As the public becomes more aware of the health benefits of fermented foods, I hear a lot of questions about what the difference is between a "fermented" and "pickled" food. It's a common confusion to group fermented foods and pickles together in the same risk category. While they might look the same, the FDA concurs that they have very different risk factors and should be regulated differently.

Pickles are acidified foods and more broadly refer to include fermented foods as well as foods acidified by using vinegar in a pasteurized, canned environment. In this latter pickling technique, all bacteria are killed by heating/pasteurizing the canning jars and sealing them to hopefully keep *any* bacteria out. However, if the food was improperly canned, it's possible for the "bad" bacteria, such as *C. botulinum*, to take over in this anaerobic environment and cause botulism. The FDA considers these low-acid canned foods to be risky business.

On the other hand, a fermented food has a more precise definition and a very different risk assessment by the FDA. Fermented foods, like kimchi and sauerkraut, are transformed by "good" bacteria, such as *lactobacillus*. Fermented foods are not pasteurized or canned, but rather prepared in an aerobic environment where these good bacteria can thrive and botulism cannot.

The FDA states that they "could not find reports of cases of botulism caused by commercially processed fermented foods" and that "in the absence of known illnesses or deaths from commercially prepared fermented foods, the regulation should apply only to

acidified foods.” In other words, the FDA deems fermented foods like our kimchi/sauerkraut to be non-risk foods and to not require special considerations.

The FDA also states that they "do not require processors of fermented foods to register their establishment(s) and foods they process....[They] also do not require such processors to provide us with information on scheduled processes for their foods..." (See <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/AcidifiedLACF/ucm222618.htm> for entire guiding document.)

Essentially, the FDA recommends to not apply any special regulation to fermented foods, only acidified foods, such as low-acid canned foods where improper canning technique can result in botulism risk. Therefore, I suggest the following amendments to be inline with FDA guidance and so that we allow our fermented cottage foods industry to thrive and provide healthy, delicious, safe foods for Hawai'i:

- **§328-A:** Add "'Fermented foods' mean low-acid foods (such as some kinds of sauerkraut, cucumber pickles, and green olives) subjected to the action of acid-producing microorganisms to reduce the pH of the food to 4.6 or below."
- **§328-A:** Add "'Low-acid canned foods' mean thermally processed low-acid foods packaged in hermetically sealed containers."
- **§328-D:** Remove " or fermented"
- **§328-E(b)(28):** Remove " and"
- **§328-E(b)(29):** Change to "Sauces, low-acid canned foods, and other acidified foods that have an equilibrium pH of 4.6 or less as verified and approved through the process described in section 328-I."
- **§328-E(b):** Insert new item after (28) "fermented foods such as sauerkraut and kimchi; and"
- **§328-I:** Rename section to "Sauces, low-acid canned foods, and acidified foods."
- **§328-I(a):** Change to "(29)" to "(30)"
- **§328-I(b):** Remove "fermented and "

I'd encourage you amend SB 379 to follow the FDA's recommendation and not conflate fermented foods with pickles/acidified foods. But, let's still ensure that high-risk low-acid canned foods and other acidified foods are produced in a safe manner.

Thanks,

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



Email: info@tastingkauai.com

Senate Commerce & Consumer Protection committee
Tuesday, February 24, 9:30 a.m.

Tasting Kaua'i Strongly Supports SB379 Relating to the Cottage Food Bill

My name is Marta Lane and I am an author and the founder of Tasting Kaua'i, a Hawai'i-based company that offers experiential learning and publications to people who want to connect with the island's culture through food. We believe that self-sufficiency includes growing food in backyard gardens, shopping at farmers markets, supporting those who use locally grown ingredients when making value added products and dining at restaurants who source ingredients from local fishermen, farmers and ranchers.

Tasting Kaua'i strongly supports SB379, because it aligns with our goal of providing more locally produced food. As Hawai'i's local food issues become more complex and challenging, organizations need additional resources and support to address and overcome them. We appreciate this committee's efforts to look at solutions in assisting local food production.

We believe that by collaborating we can help produce more local food, support an economically strong homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Marta Lane
Owner

From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: kolokaiorganicfarm@gmail.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 9:33:09 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Colette Ferris	Kolo Kai Organic Farm LLC	Support	No

Comments: I am a small farmer who could benefit greatly from SB379 being passed.

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.

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: info@steelgrass.org
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Sunday, February 22, 2015 9:38:36 AM

SB379

Submitted on: 2/22/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Lydgate	Steelgrass Farm	Support	No

Comments: Our family farm on Kauai supports this bill. We urge you to facilitate its passage.

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: amybrinker@mac.com
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Sunday, February 22, 2015 6:33:46 PM

SB379

Submitted on: 2/22/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Brinker	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: waioli2@hawaiiantel.net
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 7:10:41 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

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

Comments: aloha mai.. If our goal and vision in Hawaii is truly to become more sustainable, part of that piece is to be able to grow the food and grow the cottage food industry, which in turn will build many thriving businesses and an economically healthier community. All agencies should be on board with this to achieve this vision: DOH and DOA. It is time to expand on the existing rules. I am a taro farmer and renting a certified kitchen space would raise the price of poi as it takes a long time to cook and process. Please support SB379 so that Hawaii can become more food independent. Mahalo!

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: mealaaloha@aol.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 8:20:20 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Daniel Bishop	Individual	Support	No

Comments: I am a small farmer and am in strong support

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: debbie.leejackson@gmail.com
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 8:31:16 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

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

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: erik@kauaikiss.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 8:08:22 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
ERIK COOPERSMITH	Individual	Support	No

Comments: Support local farming, non-GMO agriculture, and Hawaiian culture!

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: harvest@kauai-vacations-realty.com
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 10:23:13 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Harvest Edmonds	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: Janine@blackdogkauai.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Sunday, February 22, 2015 10:48:20 AM

SB379

Submitted on: 2/22/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Janine Lynne	Individual	Support	No

Comments: As a small farmer, small food based business owner and a member of the committee I strongly support this bill. For our local communities, for building more small businesses, for creating more food security throughout Hawaii.

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: hillstromjeremy@gmail.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 9:24:30 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Jeremy Hillstrom	Individual	Support	No

Comments: This bill is important because it promotes entrepreneurs to start up businesses thereby reducing unemployment. This bill if enacted will help reduce barriers to entering the food industry for individuals in the market place. It will also help with traffic because less drivers will be on the road going somewhere else to work.

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: kelika1@live.ca
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 9:10:44 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kelika Ranke	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: markluke@hawaii.edu
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 8:37:05 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Mark Alapaki Luke	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: psgegen@hotmail.com
Subject: Submitted testimony for SB379 on Feb 24, 2015 09:30AM
Date: Monday, February 23, 2015 8:39:41 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
pat gegen	Individual	Support	No

Comments: SB379 allows entrepreneurs to get started and build local sustainable businesses. I would much prefer purchasing my goods from local small vendors allowing me to help the local island economy. 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.

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From: mailinglist@capitol.hawaii.gov
To: [CPN Testimony](#)
Cc: hawaiianstyle@rocketmail.com
Subject: *Submitted testimony for SB379 on Feb 24, 2015 09:30AM*
Date: Monday, February 23, 2015 9:12:54 AM

SB379

Submitted on: 2/23/2015

Testimony for CPN on Feb 24, 2015 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Robert "Kealoha" Domingo	Individual	Support	No

Comments:

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From: [Rose Benzel](#)
To: [CPN Testimony](#)
Subject: SB379
Date: Monday, February 23, 2015 9:20:42 AM

I am writing in support of SB379. As a former owner of a small gourmet food company in CA, this bill will allow many small producers to bring their product to market easily. Obtaining a commercial kitchen for production is a huge obstacle, and this bill will ease this barrier.

Food is still my passion, and I hope to one day again create products from my family recipes and be able to market them again.

I urge you to support this bill and give food entrepreneurs an opportunity to follow their passion.

Mahalo!

Rose Ramos-Benzel
808-245-0133
360-318-3451