



STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. BOX 3378
HONOLULU, HI 96801-3378
doh.testimony@doh.hawaii.gov

In reply, please refer to:
File:

**Testimony in OPPOSITION to HB1591
RELATING TO MICROENTERPRISE KITCHENS**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESS
REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Hearing Date: 2/13/2024 Room Number: 329 & VIDEO CONF

- 1 **Fiscal Implications:** This measure will impact the priorities identified in the Governor's
2 Executive Budget Request for the Department of Health's (Department) appropriations and
3 personnel priorities.
- 4 **Department Testimony:** The Department of Health OPPOSES this measure.
- 5 The department opposes this bill. In 2014, the department amended our food rules to allow a
6 robust homemade food industry to operate in Hawaii that allows foods that do not require
7 temperature controls for safety (TCS) or non-potentially hazardous foods, to be made in a home
8 and sold directly to consumers. These are classified as "Homemade Food Operations" in HAR
9 Title 11, Chapter 50, Food Safety Code (HAR 11-50). These foods are already required to be
10 labeled properly indicating that they are not made in a DOH inspected facility. The operators of
11 these "homemade food operations" are also required by HAR 11-50 to have a basic Food
12 Handlers Certificate issued by the DOH or various third-party vendors that the DOH recognizes
13 as valid.
- 14 The department will oppose any attempt to expand "cottage foods", "homemade foods", or
15 "microenterprise kitchens", to include foods that require temperature controls to prevent or
16 eliminate the growth of pathogenic bacteria that are known to cause food illnesses. Current HAR
17 11-50 adopted the 2013 Version of the FDA model food code that does not allow home kitchens
18 to be used for the commercial preparation of food. These would include beef, pork, poultry,
19 seafood, cooked starches including cooked plant products which become TCS when cooked,
20 fermented, pickled, canned, and or dried products.
- 21 The measure allows the use of home kitchens to produce TCS foods, which would be dangerous
22 to public health for the following reasons:
- 23
- 24 1) A study published in the Journal of Food Protection stated that despite education efforts,
25 consumers often practice unsafe food handling and storage behaviors. The purpose of the
26 study was to characterize microbial contamination and foodborne pathogens found in

1 home kitchens. Swab samples were collected from food contact and food preparation
2 surfaces in homes. The samples were tested for fecal coliforms, E. coli, Staph. Aureus,
3 Salmonella, Campylobacter and Listeria. Fecal coliforms were found in 44% of homes
4 and E. coli was present in 15% of homes. Nearly half – 45% of the homes had tested
5 positive for a foodborne pathogen and 12% had multiple pathogens present in the kitchen.
6 S. aureus was isolated in 39% of homes most often from countertops and refrigerator
7 door handles. Listeria was found in 15% of homes, most often from in samples from
8 refrigerator meat drawers. Contamination with Listeria was significantly associated with
9 higher refrigerator temperatures. The contamination of surfaces with fecal coliform and
10 Staph was significantly associated with a lack of cleaning materials: dish soap, and paper
11 or cloth towels in the kitchen, and any type of towel in the nearest bathroom. The
12 contamination of a sponge or dishcloth with either fecal coliform or Staph was predictive
13 of other surfaces in the kitchen having the same contamination, indicating that sponges
14 and dishcloths are both reservoir and vectors for pathogens in the kitchen.

- 15 2) Home kitchen may contain persons with communicable diseases. Existing HAR requires
16 permitted food establishments (FE) owners and operators to restrict all persons with
17 gastrointestinal or other communicable diseases from the food establishment. This is not
18 likely to happen in an environment where infected occupants cannot be restricted from
19 their homes.
- 20 3) Private homes are not suitable for a FE as it cannot be always inspected during operation
21 as required by current law as a home is now potentially a 24/7/365 FE operation.
- 22 4) The FSB Food Safety Specialists (FSS) may enter any food establishment at any time
23 during their operating hours and, as regulatory officers, they are equipped to inspect
24 commercial spaces. Currently, it is very easy for the FSS to simply walk up to any FE
25 and identify themselves and can determine if they are open and available for an
26 unscheduled routine or complaint inspection. It would be difficult if not impossible to
27 conduct a routine, unannounced inspection at a “cottage food” facility that is someone’s
28 private home.
- 29 5) ALL routine food safety inspections are unannounced, unscheduled, and never re-
30 scheduled if the FE is open for business and conducting commerce.
- 31 6) If the homeowner refuses inspection, this places a DOH inspector in a potentially
32 confrontational situation that will inevitably delay food disease outbreak investigations
33 that may lead to serious illnesses or death.
- 34 7) The Food Safety Branch (FSB) inspection staff and Supervisors are well over 50%
35 female, and it would not be safe sending them into people’s private homes. Nor would it
36 be wise to send my male food safety specialists into private homes. The FSB does not
37 have the requisite staffing to conduct inspections in pairs to prevent any inferences of
38 misconduct or to prevent harassment as inspections have become increasingly
39 confrontational with the current anti-government rhetoric, we now live with.

- 1 8) Private homes typically will contain many household chemicals and cleaners not
2 approved for use in DOH permitted FE's, which also include prescription and OTC
3 medications that are never allowed in FE's and possibly illegal drugs which may
4 accidentally adulterate whatever food product they are producing.
- 5 9) Pets, birds, rodent pets, rodent not pets, illegal venomous animals in homes.
- 6 10) Scope of inspection in a permitted FE means everything within the facility to check for
7 storage of illegal food sources supplements or ingredients, this would be very
8 problematic. FSS staff will open all cabinets, drawers, cupboards, and rooms, in a FE
9 during a routine inspection. Especially those under lock and key – raises eyebrows in a
10 food facility. All FE's do comply and willingly allow inspection protocol as a condition
11 of their FE permit to protect public health.
- 12 11) The department ordinarily prefers that the no changes be made to existing sections of the
13 Hawaii Revised Statutes (HRS) when the department has already adopted a
14 comprehensive chapter of rules because the impact of the amendments to the statute
15 sometimes result in unanticipated consequences, including the creation of
16 inconsistencies. Much of the proposal is in direct conflict with existing HAR and HRS
17 designed to protect public health.
- 18 12) The departments' FSB has a long history of working with industry and other community
19 members in utilizing the public hearings process in updating and changing rules to be
20 more progressive. The FSB codified the current allowance for foods that are not TCS to
21 be made at home and sold directly to the consumer back in 2014. We prefer that the
22 legislature allow us to continue this practice for any changes to HAR 11-50, but we will
23 not consider allowing private homes to produce TCS foods unless the above issues can be
24 standardized and addressed and the FDA adopts such "microenterprise kitchen" or
25 "Cottage Food" control measures in the FDA Model Food Code, which the State of
26 Hawaii uses primarily to regulate the food industry in Hawaii.
- 27 13) The following link is a recent study from the International Journal of Environmental
28 Research and Public Health entitled "Food Safety in Home Kitchens: A Synthesis of the
29 literature. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3799528/> The article explains
30 why the DOH currently does not want to increase the risk of transmitting serious illness
31 and even causing deaths to allow personal economic gain from an environment not
32 conducive to safe food preparation.

33 Mahalo for allowing the department to testify on this measure.

34

35 **Offered Amendments:** None

Feb. 13, 2024, 2:00 p.m.
Hawaii State Capitol
Conference Room 329 and Videoconference

To: House Committee on Health & Homelessness

Rep. Della Au Belatti, Chair
Rep. Jenna Takenouchi, Vice-Chair

House Committee on Consumer Protection & Commerce

Rep. Mark M. Nakashima, Chair
Rep. Jackson D. Sayama, Vice-Chair

From: Grassroot Institute of Hawaii

Ted Kefalas, Director of Strategic Campaigns

RE: COMMENTS IN SUPPORT OF HB1591 — RELATING TO MICROENTERPRISE KITCHENS

Aloha Chairs Belatti and Nakashima, Vice-Chairs and Committee Members,

The Grassroot Institute of Hawaii would like to offer its support for [HB1591](#), which would allow Hawaii residents to open small-scale food operations via the creation of microenterprise kitchens.

The bill further provides that these microenterprise home kitchen operations (MEHKOs) would be subject to permit and inspection requirements administered by the state Department of Health.

If enacted, this bill would put Hawaii on the forefront of states that have legalized MEHKOs in order to advance food freedom and allow entrepreneurs to launch home cooking operations.

MEHKOs are a smart small-business response to the high entry costs of opening a restaurant or food truck. They are also adaptable, making them a viable solution for chefs and cooks looking to start a new part-time business.

MEHKOs may be especially beneficial to individuals who face financial or practical barriers that make it difficult to launch a food business. Polling from the COOK Alliance, which supports the expansion of MEHKOs in

California, found that 84% of those participating in this informal food economy are women, while 36% have an annual household income under \$45,000.¹

Concerns over the safety of MEHKOs are addressed by the bill's permitting requirements, which allow for Department of Health inspections and compliance with comprehensive food safety rules.

In addition, the bill limits MEHKOs to small-scale and low-risk cooking processes, such as same-day preparation and service; curtails on-site consumption of food; and bars sales to third-party retailers or wholesalers.

Finally, this bill deserves praise for not including an artificial cap on MEHKO sales, as under California law. Given the financial challenges of operating a business in Hawaii, taking a "light touch" approach to regulation of a budding MEHKO program is the best way to help the industry grow.

Encouraging the creation of small food enterprises through HB1591 would be good for the economy and good for Hawaii's entrepreneurs.

The bill also would also further Hawaii's goal of producing more food in the state and boosting its food sovereignty.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii

¹ ["Understanding Microenterprise Home Kitchens,"](#) COOK Alliance, 2020.



Food+ Policy Internship 2024

food@purplemaia.org

February 12, 2024

Subject: *H.B. 1591, Relating to Microenterprise Kitchens*

Aloha Chair Belatti, Vice Chair Takenoichi, and Members of the House Committee on Health and Homelessness, Chair Nakashima, Vice Chair Sayama, and Members of the House Committee on Consumer Protection and Commerce,

The Hawaii Food+ Policy is in full support of HB 1591. Our Intern, Nanea Kellii, is an organic farmer, produce-related processing facility manager, and current student at UH West Oahu pursuing the Sustainable Community Food Systems program. A limiting factor for the many small businesses in Hawaii is their processing and storage capacity and access to food safe, permitted facilities. Creating accessibility for small businesses to operate out of home kitchens essentially “changes the game” for those who cannot afford to start a brick-and-mortar. This is even more so for the other islands who do not have access to facilities and infrastructure compared to Oahu; operating out of home kitchens would also cut waiting time or scheduling conflicts for commonly-used facilities.

Micro Enterprise Home Kitchen Operations (MEHKOs) have found great success in California since 2019. What stands out in California’s MEHKO requirements is how they are essentially no different in the policies for home kitchens and approved facilities. After reading the proposed bill (HB 1591), we believe these rigorous policies are very thorough and this bill could help to inject new life in Hawaii’s economy and food-related, small businesses as well.

Mahalo,
Hawaii Food+ Plus Policy

The Food+ Policy internship develops student advocates who learn work skills while increasing civic engagement to become emerging leaders. We focus on good food systems policy because we see the importance and potential of the food system in combating climate change and increasing the health, equity, and resiliency of Hawai’i communities.

In 2024, the cohort of interns are undergrads and graduate students from throughout the UH System. They are a mix of traditional and nontraditional students, including parents and veterans, who have backgrounds in education, farming, public health, nutrition, and Hawaiian culture.



MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON HEALTH & HOMELESSNESS AND THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 329
Tuesday, February 13, 2024 AT 2:00 P.M.**

To The Honorable Representative Della Au Belatti, Chair
The Honorable Representative Jenna Takenouchi, Vice Chair
Members of the Committee on Health & Homelessness

To The Honorable Representative Mark M. Nakashima, Chair
The Honorable Representative Jackson D. Sayama, Vice Chair
Members of the Committee on Consumer Protection & Commerce

SUPPORT FOR HB1591 RELATING TO MICROENTERPRISE KITCHENS

The Maui Chamber of Commerce **SUPPORTS HB1591.**

For generations, microenterprise home kitchens were where innovations and new products were made. For example, one of our Maui chefs, Bev Gannon, started in her home kitchen, which then expanded to multiple restaurants on island. By allowing microenterprise home kitchens, it offers an alternative to renting a certified commercial kitchen where they will need to drive to the location depending on the kitchen availability (sometimes at inconvenient hours), bring in and pack out all items (as there is often no storage), and possibly clean up after the previous tenant. Microenterprise kitchens alleviate significant time and expense from our small food manufacturers and may help to spur this industry.

We appreciate the inclusion of rules and management by the Department of Health as that will provide an appropriate level of safety and oversight.

Mahalo for the opportunity to **SUPPORT HB1591.**

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-1591

Submitted on: 2/10/2024 2:32:18 PM

Testimony for HLT on 2/13/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Shizuma	Individual	Support	Written Testimony Only

Comments:

Aloha Chair, Vice Chair, and members of the committee,

I stand in support of HB1591.

It seems like a great way for folks to start businesses and takes into account requirements to ensure that the food is safe for business operations and distribution. I appreciate this type of creative thinking in helping our people become financially independent and successful. This addresses the need of those who want to start a business and does not have access to a commercial kitchen. This is good for our economy and residents of Hawaii.

Mahalo for your time and consideration.

Keoni Shizuma