



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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**Testimony in SUPPORT of HB 854**  
**RELATING TO FOOD DONATION**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 14, 2019

Room Number: 329

1 **Fiscal Implications:** None

2 **Department Testimony:** The department supports this bill.

3 The department has no objections to food inspection staff issuing a handout which contains the  
4 provisions of HRS §145D-2, relating to liability exceptions for the donation of food products.

5  
6 The DOH will also continue to issue the following memo dated February 13, 2018, which assists  
7 food establishments in clarifying the various industry terms used to indicate that a food product  
8 has “expired” beyond the quality control date. re: “DONATION/DISTRIBUTION/SALE OF  
9 FOOD PRODUCTS BEYOND THE EXPIRATION DATE”, to all food establishment as part of  
10 their routine inspection.

11

12 The subject memo was as follows:

13 TO: STATE OF HAWAII, DOH FOOD ESTABLISHMENT PERMIT HOLDERS

14 FROM: PETER OSHIRO, PROGRAM MANAGER, SANITATION BRANCH

15 SUBJECT: DONATION/DISTRIBUTION/SALE OF FOOD PRODUCTS BEYOND THE  
16 EXPIRATION DATE

17 Confusion over the meaning of dates applied to food products can result in consumers and  
18 retailers discarding wholesome food. Many commercial food products are labeled with dates  
19 preceded by “best if used by,” “sell by,” “use by,” “expires on,” etc. These dates are voluntarily  
20 provided by manufacturers to guarantee product quality and should not be used to determine  
21 product safety.

22 There are no uniform descriptions used on food date labeling by manufacturers. As a result, there  
23 are a wide variety of phrases used on labels to describe quality dates.

24 Examples of commonly used phrases:

- 1 • • **“Best if Used By/Before”** – indicates when a product will be of best flavor or quality. It  
2 is not a purchase or safety date.
- 3 • • **“Sell By”** – tells the store how long to display the product for sale for inventory  
4 management. It is not a safety date.
- 5 • • **“Use By”** – indicates the last date recommended for the use of the product while at peak  
6 quality. It is not a safety date except for when used on \*infant formula.

7  
8 If a food product has been handled properly, it should still be safe and wholesome after its  
9 product date label has passed until spoilage characteristics are evident. Spoiled foods will  
10 develop an off odor, off flavor or off texture. If a food has developed such spoilage  
11 characteristics, it should not be eaten and should be discarded.

12 \*Infant formula is required to have a “Use By” date on the product label for food safety.

13 Consumption of infant formula by this date ensures that the formula contains the amount of  
14 nutrients described on the label. Also, infant formula must maintain an acceptable quality to pass  
15 through an ordinary bottle nipple. The only other food products that cannot be distributed past  
16 the pull date are fluid milk products. Infant formula and fluid milk products which are beyond  
17 the “Use By” date must not be distributed and should be discarded. Fluid milk products may be  
18 frozen before the expiration date prior to distribution.

19 To reduce food waste, it is important that consumers understand that the dates applied to food are  
20 for quality and not for safety.

21 **It is not a violation of DOH rules if food establishments choose to donate or distribute**  
22 **wholesome food products beyond the expiration date.**

23 Regardless of the expiration date, consumers should always check the quality of any food  
24 product before consuming it.

25

26 Thank you for the opportunity to testify on this measure.



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#### **Executive Officers**

**Toby Taniguchi**, KTA Superstores, *Chair*  
**Joe Carter**, Coca-Cola Bottling of Hawaii, *Vice Chair*  
**Charlie Gustafson**, Tamura Super Market, *Secretary/Treas.*  
**Lauren Zirbel**, HFIA, *Executive Director*  
**Beau Oshiro**, C&S Wholesale Grocers, *Past Chair*  
**Stan Brown**, Acosta Sales & Marketing, *Advisor*  
**Paul Kosasa**, ABC Stores, *Advisor*  
**Barry Taniguchi**, KTA Superstores, *Advisor*  
**Derek Kurisu**, KTA Superstores, *Advisor*

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TO:  
Committee on Health  
Rep. John M. Mizuno, Chair  
Rep. Bertrand Kobayashi, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION  
Lauren Zirbel, Executive Director

DATE: February 14, 2019  
TIME: 9:31am  
PLACE: Conference Room 329

RE: HB854 Relating to Food Donation

Position: Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers, and distributors of food and beverage related products in the State of Hawaii.

This is a common sense measure with a range of benefits for our state. Most importantly food donations help direct good food into the hands of people who need it. Donating food also makes sure that it doesn't unnecessarily take up space in our state's waste stream. Educating eligible businesses about food donations, and making sure that we have strong liability protections in place for those that do donate food are important ways to support and grow food donations in Hawaii. We ask that you approve this measure and we thank you for the opportunity to testify.

Aloha, Chair Mizuno, Vice Chair Kobayashi, and committee members. Mahalo for taking the time to hear this important bill.

Despite existing food donation protections, much of the wholesome surplus food in the state is discarded. A survey conducted by the Waste Reduction Alliance found that 44% of manufacturers, 41% of restaurants and 25% of retailers identified fear of liability as their primary barrier to food donation. 14% of Hawaiian residents are food insecure and wasted food in landfills accounts for methane production; a greenhouse gas 84 times more potent than carbon dioxide. Current law lacks clarity in some provisions and is limited in scope. There are limitations in the federal Good Samaritan Act and in Hawaii law. Passing this bill addresses the needs of Hawai'i's hungry and its environmental imperatives.

Regarding concerns of litigation, in the history of these federal donation protections, there have been ZERO reported cases of vendors being sued by recipients. To my knowledge, there have also been no cases of donated foods causing illness to recipients. This is likely that the protected vendors donating are all already required to adhere to strict food safety regulations. Additionally, every island has organizations specializing in distributing prepared food donations ready to receive any increases in donated food, as well as plenty of grateful bellies to fill.

This bill will:

- 1) explicitly state that donated food which has exceeded the sell-by date is subject to liability protection.
- 2) Provide liability protection for donations made directly to end-users.
- 3) Provide liability protection to gleaners.
- 4) Make education of available protections a requirement in communications with vendors. In order to provide education and awareness, Environmental Health Officers will be required to promote Good Samaritan laws through newsletters, bulletins, and handouts. By having DOH officials explicitly stating what kinds of food donations are currently protected under Good Samaritan laws, many potential donors will feel reassured that they are, in fact, protected.

Mahalo for your consideration.

Jennifer Milholen  
Waste Reduction Coordinator  
Kōkua Hawai'i Foundation

**HB-854**

Submitted on: 2/13/2019 8:43:35 AM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Natalie McKinney	Kokua Hawaii Foundation	Support	No

Comments:

Aloha,

Kā• kua Hawai'i Foundation supports HB854.

More than ten percent of Hawaii residents, including tens of thousands of children and seniors, are food insecure and receive food assistance through nonprofit organizations and government programs. Despite high levels of food insecurity, Hawaii businesses and residents discard more than 237,000 tons of food waste per year.

Approximately twenty-six percent of food grown in or imported to Hawaii is thrown away, amounting to approximately \$1,000,000,000 in annual food waste.

In the decades that these protections have been in place there have been ZERO filed suits against those that donate foods.

Food waste entering landfills creates methane gas, a greenhouse gas that is eighty four times more potent than carbon dioxide. Worldwide, wasted food accounts for approximately eight percent of all human based greenhouse gas emissions.

A California survey found that forty-four percent of manufacturers, forty-one percent of restaurants, and twenty-five per cent of retailers identified fear of liability as their primary barrier to donating surplus food.

Let's remove that barrier and get excess food to the people in Hawai'i who are in need and hungry!

Mahalo,

Natalie McKinney

Executive Director

KĀ• kua Hawai'i Foundation

**HB-854**

Submitted on: 2/12/2019 8:22:23 PM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Mulinix	Our Revolution Hawaii	Support	No

Comments:



# HAWAII APPLESEED

## CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of Hawai'i Appleseed Center for Law and Economic Justice  
Supporting HB 854 – Relating to Food Donation  
House Committee on Health  
Thursday, February 14, 2019, 9:31AM, conference room 329

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Dear Chair Mizuno, Vice Chair Kobayashi, and members of the Committee:

Thank you for the opportunity to provide testimony in **SUPPORT of HB 854**, which would expand liability protections for food donors and expressly allow the donation of food beyond the labeling date.

The Bill Emerson Good Samaritan Act is widely used to expand liability protections for charitable food distribution organizations in Hawai'i as well as nationally. However, the Emerson Act does not explicitly exempt donors from liability on the donation of past-date food. While it is not currently a violation of Department of Health rules to distribute food after the expiration date, having this explicitly stated in the law would strengthen the current rules and provide additional protections that would encourage the donation of usable past-date food.

In addition, The Emerson Act does not explicitly provide protections to donors of wholesome food directly from a donor to an individual in need. Extending protections to direct donations can help to increase efficiency, reduce costs, and enable timely use of perishable food.

We recommend that this provision is limited in the bill to businesses and institutions that provide low-risk food, such as produce straight from the farm (as is already listed in the bill language), or institutions that comply with commercial food safety requirements, thus ensuring that these direct donations will be made safely.

We appreciate your consideration of this testimony.

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*The Hawai'i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai'i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.*



**HB-854**

Submitted on: 2/13/2019 11:02:54 PM

Testimony for HLT on 2/14/2019 9:31:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

**HB-854**

Submitted on: 2/13/2019 10:34:11 AM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joe Wat	Individual	Support	No

Comments:

The amount of food that is wasted in the United States is deplorable. Decreasing the liabilities involved while diverting this food waste is an important part of increasing food security and food availability. The involvement of inspectors is a valuable fail-safe that will facilitate the usage of much of our food supply.

**HB-854**

Submitted on: 2/12/2019 6:30:26 PM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joy Marshall	Individual	Support	No

Comments:

**HB-854**

Submitted on: 2/12/2019 5:28:30 PM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alex Miller	Individual	Support	No

Comments:

Thank you for reading this testimony. More than ten percent of Hawaii residents, including tens of thousands of children and seniors, are food insecure and receive food assistance through nonprofit organizations and government programs. Despite high levels of food insecurity, Hawaii businesses and residents discard more than 237,000 tons of food waste per year.

Approximately twenty-six percent of food grown in or imported to Hawaii is thrown away, amounting to approximately \$1,000,000,000 in annual food waste.

Food waste entering landfills creates methane gas, a greenhouse gas that is eighty four times more potent than carbon dioxide. Worldwide, wasted food accounts for approximately eight percent of all human based greenhouse gas emissions.

A California survey found that forty-four percent of manufacturers, forty-one percent of restaurants, and twenty-five per cent of retailers identified fear of liability as their primary barrier to donating surplus food.

**HB-854**

Submitted on: 2/13/2019 8:19:53 AM

Testimony for HLT on 2/14/2019 9:31:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sally	Individual	Support	No

Comments: