

STATE OF HAWAII
DEPARTMENT OF HEALTH

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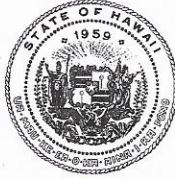
**Testimony COMMENTING on HB 2234
RELATING TO FOOD DONATION**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: 1/30/2020

Room Number: 329

- 1 **Fiscal Implications:** None
- 2 **Department Testimony:** The department respectfully opposes this measure as the Food Safety
- 3 Branch has already distributed guidelines to food establishments regarding foods that are still
- 4 appear wholesome but are being distributed beyond the stated expiration date, and has also
- 5 distributed guidelines concerning the management of foods that require temperature controls for
- 6 safety. Copies of these documents have been included with this testimony.
- 7 In addition, Section 1.(3), page 3, line 4 of the measure requires the department's food safety
- 8 specialists to educate food establishments about food donation liability protections. The
- 9 department's food safety specialists are regulatory agents of the Department of Health and
- 10 should not be required to provide any legal advice or education regarding the liability that any
- 11 food establishment or other businesses may incur if lawsuits are filed against them.
- 12 Thank you for the opportunity to testify on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
SANITATION BRANCH
99-945 Halawa Valley Street
Aiea, Hawaii 96701

In reply, please refer to:
File:

February 13, 2018

TO: STATE OF HAWAII, DOH FOOD ESTABLISHMENT PERMIT HOLDERS

FROM: PETER OSHIRO, PROGRAM MANAGER, SANITATION BRANCH

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

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

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

Examples of commonly used phrases:

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

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

*Infant formula is required to have a "Use By" date on the product label for food safety. Consumption of infant formula by this date ensures that the formula contains the amount of nutrients described on the label. Also, infant formula must maintain an acceptable quality to pass through an ordinary bottle nipple. The only other food products that cannot be distributed past the pull date are fluid milk products. Infant formula and fluid milk products which are beyond the "Use By" date must not be distributed and should be discarded. Fluid milk products may be frozen before the expiration date prior to distribution.

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

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

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

Any questions? – Call us at 586-8000 or visit our web site at: www.health.hawaii.gov/san/



HAWAII STATE
DEPARTMENT
OF HEALTH

July 17, 2019

FOOD DONATION GUIDELINES FOR DOH PERMIT HOLDERS

Food Donations made by restaurants are protected from liability under the Bill Emerson Good Samaritan Food Donation Act of 1996 and section §145D-2, Hawaii Revised Statutes, which states that any donor of food products, who donates in good faith for distribution or use by a charitable, religious, or nonprofit organization to needy persons is generally protected from liability.

- 1) Donations of pre-packaged foods that were manufactured in a licensed facility and do not require refrigeration, are exempt from Department of Health (DOH) permit requirements.
- 2) Donation of refrigerated, pre-packaged foods, that are temperature control for safety (TCS), must always be held at 41°F or below. DOH Food Establishment Permit required for the distributor. These include cold cuts, milk, yogurts, eggs, etc.
- 3) Donation of refrigerated, ready-to-eat foods must always be held at or below 41°F. These include sandwiches, pre-made salads, dips, etc. DOH Food Establishment Permit required for the distributor.
- 4) Donation of ready-to-eat, TCS, hot foods must be:
 - a. From an operator with a valid DOH Food Establishment permit;
 - b. Held continuously at 135°F or greater at the permitted food establishment, during transport, and at the donation site (there is no time limit for food service if the food is held continuously at or above 135°F);
 - c. If time is being used as the food safety control, the food **MUST** be labeled with a discard time of no more than 4 hours from the time the internal temperature of the food falls below 135°F. You may not refrigerate the food for future service once the food is held between 135°F and 41°F. **IT MUST BE DISCARDED AFTER 4 HOURS!!**;
 - d. Distribution site must have accurate thermometers available to record temperature of the food upon receipt and labels for discard time if needed; and
 - e. If ready-to-eat foods are to be served from bulk pans at the distribution site, temporary hand-wash sinks must be available immediately adjacent to the serving area.
- 5) All DOH Food establishment permit and plan review fees are waived for operators that exclusively feed the homeless.

Please contact our web-site at www.doh.hawaii.gov/san/ for food safety information, or please contact us at (808) 586-8000.

HB-2234

Submitted on: 1/29/2020 1:14:08 PM

Testimony for HLT on 1/30/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexandra Kahn	Surfrider Oahu	Support	No

Comments:



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Executive Officers

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

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

FROM: HAWAII FOOD INDUSTRY ASSOCIATION
Lauren Zirbel, Executive Director

DATE: January 30, 2020
TIME: 9am
PLACE: Conference Room 329

RE: HB2234 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 commonsense 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.

HB-2234

Submitted on: 1/29/2020 7:44:22 AM

Testimony for HLT on 1/30/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gaison Ontai	Aloha Harvest	Support	No

Comments:

In Hawai'i, about 1 in 7 people are food insecure and yet 474 million pounds of food is wasted annually. Aloha Harvest is the only nonprofit in Hawai'i that does large-scale food rescue and redistribution, getting quality excess food into stomachs instead of landfills. Free of charge and free of liability, we pick up excess food from 250+ donors and deliver it to 175+ social service agencies feeding the hungry. Now in our 20th year, we have rescued and redistributed over 23 million pounds of food that would have otherwise been wasted. This bill will help further the mission of Aloha Harvest.

HB-2234

Submitted on: 1/28/2020 10:38:14 PM

Testimony for HLT on 1/30/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
"Phil" Augustus Acosta	Aloha Harvest	Support	Yes

Comments:

Aloha Chair Mizuno. WE at Aloha Harvest are in strong support of HB2234. As the the only large-scale food rescue organization in the State, this bill would be a tremendous help to expanding our operations and further our mission to rescue quality excess food to feed the needy, hungry, and homeless in Hawaii. Last year, we rescued and diverted over 1.8 million pounds of food from the waste stream and redistributed it throughout the community to those in need. Yet we are only scratching the surface. We believe that with this bill and help from our legislators, we can quadruple the amount of food rescued in the coming years. Thank you for your continued support.

-"Phil" Augustus Acosta

Aloha Harvest, Executive Director

HB-2234

Submitted on: 1/28/2020 8:52:16 AM

Testimony for HLT on 1/30/2020 9:00:00 AM

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

Comments:

HB-2234

Submitted on: 1/28/2020 8:30:59 PM

Testimony for HLT on 1/30/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lee Buenconsejo-Lum	Individual	Support	No

Comments:

LATE

January 29, 2020

Aloha, Chair Mizuno, Vice Chair Kobayashi, and HLT 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 because 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 from food safety certified kitchens.
- 3) Provide liability protection to agricultural 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

LATE

HB-2234

Submitted on: 1/30/2020 6:57:55 AM

Testimony for HLT on 1/30/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Pyo	Individual	Support	No

Comments:

Food waste is at an insane level, especially considering how much food we import. This bill is a no-brainer.