



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

**Testimony COMMENTING on HB 2706  
RELATING TO THE DONATION OF FOOD**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date: 2/6/2020

Room Number: 329

- 1 **Fiscal Implications:** None
- 2 **Department Testimony:** The Department of Health (Department) respectfully takes the
- 3 position that Section 1. of this measure is not necessary as our Food Safety Specialists are
- 4 already engaged in the distribution of handouts to food establishments that inform them of their
- 5 protection from civil liability under the Bill Emerson Good Samaritan Food Donation Act of
- 6 1996 and section §145 D-2, HRS. The DOH has no problem issuing these handouts, but the
- 7 Department's regulatory staff should not be required to provide any legal advice or education
- 8 regarding the liability that any food establishment or other businesses may incur if lawsuits are
- 9 filed against them. The department acknowledges the importance of providing safe food for the
- 10 needy, but the promotion of food donation and providing legal advice on possible negative
- 11 impacts relating to food donation is not within the mission of the Food Safety Branch.
- 12 Thank you for the opportunity to testify on this measure.



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/](http://www.doh.hawaii.gov/san/) for food safety information, or please contact us at (808) 586-8000.



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To:      Rep. John M. Mizuno, Chair  
          Rep. Bertrand Kobayashi. Vice Chair  
          Members of the Committee on Health

From:    Victor Lim, Legislative Lead  
          Hawaii Restaurant Association

Subj:    HB 2706 Relating to the Donation of Food

Date:    February 4, 2020

The Hawaii Restaurant Association representing over 3,500 restaurants here in Hawaii supports the intent of HB 2706 that promotes food donation and expands the liability protection for this cause.

Many of our members are already working with organizations like the Aloha Harvest and Food Bank here in Honolulu and also on the neighbor islands with food left over from banquets and buffets. Our concern has always been for food safety during transport of these leftover prepared food.

We will defer to the Health Department on their take on this issue and thank you for giving us this opportunity to share our view on this.

**Allied Members:**

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**HB-2706**

Submitted on: 2/4/2020 10:51:01 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
"Phil" Augustus Acosta	Aloha Harvest	Support	No

Comments:

**TESTIMONY OF NAHELANI WEBSTER FOR THE HAWAII ASSOCIATION  
FOR JUSTICE (HAJ) REGARDING H.B. 2706**

February 6, 2020  
8:45 a.m.  
Room 329

**LATE**

To: Chair Mizuno and Members of the House Committee on Health

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. 2706, Relating to the Donation of Food.

H.B. 2706 seeks to discourage food waste and encourage food donation. We are in support of not wasting food and want to highlight the existing language in statute already provides the necessary protections. What is needed is more education to donors to encourage them to exercise the already existing protections in statute and information on how to donate in a reasonable and safe manner.

We support the language directing the Department of Health (DOH) to promote information on the current exceptions to liability by publishing and distributing food materials to food establishments. However, we oppose the amendments to the liability exception as it unnecessarily broadens the current statute and places the health and safety of the recipients of the donated food at risk.

**HRS §145 D – 2 Exceptions to liability**, already provides the necessary protections, which this bill is intending to achieve.

(a) **Any donor of food products**, who in good faith **donates** the food for the use or distribution by a charitable, religious, or nonprofit organization **to needy persons shall not be liable for any civil damages or criminal penalties for any injuries or illnesses** including, but not limited to injuries or illnesses resulting from the nature, age, condition, packaging, or handling of the donated food products, except for such damages as may

result from the donor's gross negligence or wanton acts or omissions.

(b) A charitable, religious, or nonprofit organization which in good faith receives food, apparently fit for human consumption, and distributes it to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the condition of the food unless an injury or illness results from its gross negligence, or wanton acts or omissions.

(c) This section shall not relieve any organization from any other duty imposed upon them by law for the inspection of donated food products or for any provisions regarding the handling of such products. [L 1982, c 260, pt of §2]

In addition, there are concerns with placing such a broad exception to liability to all forms of perishable or nonperishable food and further discussion should be had in order to determine if packaged and unpackaged foods should be differentiated along with removing poultry and livestock products from the meaning of "food product" in order to provide a basic level of protection to the recipients in need. Therefore, we ask that these concerns be addressed in the discussion as the bill progresses.

Health inspectors are used for the purpose of ensuring health and safety standards are met so that food is safe for public consumption. Those in need should still be afforded the same protections that the rest of the public enjoy. Therefore, our suggestion is rather than mandating health inspectors to educate donors on exceptions to liability, it would be more appropriate for them to educate potential donors on how to donate food in a reasonable and safe manner. Enhanced immunity could subject consumers to substandard health measures defeating the purpose of this bill.

Thank you for allowing us to testify regarding this measure. Please feel free to contact either of us should you have any questions or desire additional information.





1050 Bishop St. PMB 235 | Honolulu, HI 96813  
P: 808-533-1292 | e: info@hawaiiifood.com

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**Toby Taniguchi**, KTA Superstores, *Advisor*

**LATE**

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 6, 2020  
TIME: 8:45am  
PLACE: Conference Room 329

RE: HB2706 Relating to the Donation of Food

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-2706**

Submitted on: 2/4/2020 2:52:59 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
STEFFANIE M. SOBITZ	Individual	Support	No

Comments:

As a child, I watched my restaurant-owning parents bag up and throw away food every single night in a city with a large homeless and needy population. I once asked why they were not donating the food, and they explained the liability issues. Responsible restaurant owners should not have to worry about being sued for trying to help feed people in their community. This bill would help alleviate those sorts of concerns for business owners by expanding protections.

Back in the early 1990s, when my parents still owned their place, they decided to close the restaurant for sales one night a week and serve full meals to anyone who walked in the door - no questions asked. This was a sort of direct-donation, which strengthened their relations within the community, as well as providing much needed sustenance to hundreds of people per week.

As someone who has volunteered countless hours feeding the homeless and volunteering at food banks, I can tell you that many items with expiration dates passed are usable and desired by people who need this help. By authorizing direct donations and including some expired items, more people will gain access to more foodstuffs. Direct donation also allows business owners to interact directly with the most vulnerable and needy in their communities. This increased interaction and action will help build and reinforce strong relationships.

The requirement for the DOH to promote food donation during routine inspections is important because many restaurant owners are not aware of how to go about donating their leftover/throwaway foodstuffs. DOH could not only explain how and where to donate, but can also explain the importance of doing so.



**HB-2706**

Submitted on: 2/4/2020 7:52:38 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

Aloha Chair Mizuno, Vice Chair Kobayashi, and members of the Health Committee,

Thank you for the opportunity to submit testimony. I strongly urge the legislature to pass this bill.

**HB-2706**

Submitted on: 2/4/2020 10:32:03 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

**HB-2706**

Submitted on: 2/5/2020 9:15:38 AM

Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

**HB-2706**

Submitted on: 2/5/2020 9:31:35 AM

Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

**HB-2706**

Submitted on: 2/5/2020 10:46:50 AM

Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

**LATE**

**HB-2706**

Submitted on: 2/5/2020 1:58:07 PM  
Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

I support this bill to provide food and nourishment to people and families less fortunate. There is so much waste and it is simply a win-win situation to give perfectly acceptable food that is going to be thrown away as long as there are health regulations in place. It is the humanitarian thing to do.

**LATE**

**HB-2706**

Submitted on: 2/5/2020 4:46:49 PM  
Testimony for HLT on 2/6/2020 8:45:00 AM

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

Comments:

This will help food security in our communities. It will also limit food waste. This should be a no-brainer bill!



**LATE**

**HB-2706**

Submitted on: 2/5/2020 10:15:39 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kim Coco Iwamoto	Individual	Support	No

Comments:

Thank you for having the compassion to write and pass a bill that seeks to feed the hungry while curbing waste.

**HB-2706**

Submitted on: 2/6/2020 12:32:44 AM

Testimony for HLT on 2/6/2020 8:45:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Kirra Simonson	Individual	Support	No

Comments:

I am testifying in **strong support** of HB2706. I have worked at numerous restaurants over the past 5 years and I have witnessed how much good food goes to waste at the end of the workday. It is honestly quite baffling and such a shame that the food doesn't go to those in need, rather than ending up in the trash. I also have multiple family members who work in the restaurant industry, and they too echo this concern. One of my family members works at a restaurant where even the employees are not allowed to eat or take home leftover/unsold food. All leftover and unsold food goes directly into the trash, the majority of which is in perfectly good condition. The problem is that restaurant owners are afraid that if someone eats donated food and gets sick, they will be sued by the individual or an organization. A lawsuit of this kind has never been filed in U.S. history. Additionally, restaurant owners are not aware of current liability protections for food donors, food donation pickup services, or organizations that accept donated food. This bill will directly solve all of these issues. I strongly urge you to support and push this bill through legislation as this bill will help solve an important need, and help Hawaii in its efforts to become a more sustainable state.

**LATE**

Edward Thompson, III

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From: Taichi Desir <taichidesir@gmail.com>  
Sent: Thursday, February 6, 2020 12:43 AM  
To: HLTtestimony  
Subject: Testimony for HB2706

Aloha,

I am writing to submit testimony in strong support of HB2706. As a restaurant worker on Oahu for the past ten years, I am aware of how much food gets thrown away. I would argue that most of this food is in good condition and could go to much better causes, such as being donated to those in need. Most restaurants are afraid to do this because they think they will get sued if someone gets sick, or they simply aren't aware that donating food is an option. This bill will address both of these issues and help restaurants contribute to a more sustainable and eco-friendly Hawaii, while also providing an important need. Please support this much needed bill, it is long overdue.

Mahalo,  
Taichi Desir

**LATE**

Edward Thompson, III

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From: Mark Simonson <simo59@me.com>  
Sent: Wednesday, February 5, 2020 8:46 PM  
To: HLTtestimony  
Subject: HB2706

I am emailing in support of this bill to encourage and facilitate the distribution of food resources to needing citizens, at the same time, diminishing the waste of these resources.

Mark Simonson, MD

Sent from my iPhone

**LATE**

Edward Thompson, III

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From: Mira Simonson <mojai58@me.com>  
Sent: Wednesday, February 5, 2020 8:34 PM  
To: HLTtestimony  
Subject: HB 2706

My name is Mira Simonson and I am writing in support of HB2706.

I am related to a few restaurant workers with stories of food waste. It sickens me to hear of all the good food that is thrown away especially with the many hungry people we have here in our islands. I am excited to have the chance to support this bill that will decrease food waste and also supported our Hawaii homeless and hungry.

Mira Simonson

Sent from my iPhone