

HB854 HD2

Measure Title:	RELATING TO FOOD DONATION.
Report Title:	Food Donation; Charitable Donations; Liability Protection
Description:	Exempts donations of perishable and nonperishable food from institutions that comply with commercial food safety requirements when the donor believes in good faith that the food remains fit for human consumption from liability risk. Includes education about exemption from food donation liability in the health inspection process. (HB854 HD2)
Companion:	
Package:	None
Current Referral:	CPH, JDC/WAM
Introducer(s):	LOWEN, BELATTI, BROWER, DECOITE, GATES, JOHANSON, KITAGAWA, B. KOBAYASHI, C. LEE, MIZUNO, QUINLAN, SAIKI, SAN BUENAVENTURA



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TO:

Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

FROM: HAWAII FOOD INDUSTRY ASSOCIATION

Lauren Zirbel, Executive Director

DATE: March 13, 2019
TIME: 9am
PLACE: Conference Room 229

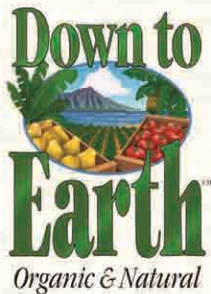
RE: HB854 HD2 Relating to Food Donation

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.

Love Life!



HB 854 HD2 RELATING TO FOOD DONATION
Senate Committee on Commerce, Consumer Protection, and Health
February 13, 2019, 9:00am State Capitol

Aloha Sen. Rosalyn H. Baker, Chair, Sen. Stanley Chang, Vice Chair, and Committee Members,

Down to Earth Organic and Natural testifies in support of HB 854 HD2

Down to Earth Organic and Natural has six locations on Oahu and Maui. Since our founding in 1977 Down to Earth has supported the living of a healthy lifestyle and protection of the environment by our selling local, fresh, organic and natural products, and by promoting the eating of natural and organic products and the following of a plant-based vegetarian diet.

We are in support of HB 854 HD2 to reduce our waste and enable us to provide excess food to the needy.

This is an opportunity that our stores would welcome. Eliminating the concern for civil liability resulting from the donation of food that is expired or slightly damaged and cannot be sold, but is still nutritious and edible, is a win-win for all parties.

Thank you for the opportunity to comment on this bill.

Alison Riggs
Public Policy & Government Relations Manager
Down to Earth

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LATE

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Subject: HB854 HD2 relating to food donation

LATE

Testimony for 3/13/19 9am hearing in CPH

Aloha, Chair Baker, Vice Chair Chang, and esteemed committee members. Mahalo for taking the time to hear HB854 HD2. This is an issue near and dear to my heart as the Waste Reduction Coordinator for Kōkua Hawai'i Foundation, a local environmental education non-profit. As mentioned in this bill's preamble, rampant food insecurity and wasted quality food are linked issues that we have in our power to address with common sense measures. The original draft of this bill included language replicating California's own successfully-passed food donation protections. California's approach included:

- (1) Clarifying and expanding liability protections for good-faith food donors;
- (2) Allowing the donation of expired food when the donor makes a good-faith judgment that the food is unspoiled; and

(3) Requiring that education about food donation liability protections be made a part of the health inspection process so that food establishments are aware of these provisions.

These expansions were thoroughly debated, researched, and vetted with legal organizations and other stakeholders before passage. It was our hope that their efforts could be utilized and reproduced here. Unfortunately, in the last committee, the majority of the liability clarifications and expansions were stripped from the bill following recommendations from the Hawai'i Association for Justice (HAJ).

The concerns raised by HAJ were not unreasonable, however, the recommendations to remove all but one provision of the original bill has created a measure that may be anemic, redundant and ineffectual in its original intent. I believe that there is room for compromise in addressing raised legal concerns without completely stripping the original bill of its effective provisions. I have outlined my recommendations below, and appreciate your considerations:

The following sections are recommended for edit and re-inclusion to HB854:

**1) For re-inclusion and amendment
{End of Section 1 - reference HB854 HD1}**

"The purpose of this Act is to discourage food waste and encourage food donation to needy recipients by:

(1) Clarifying and expanding liability protections for good-faith food donors;

(2) Allowing the donation of "expired" or past the "sell-by-date" food when the donor makes a good-faith judgment that the food is unspoiled; and

(3) Requiring that education about food donation liability protections be made a part of the health inspection process so that food establishments are aware of these provisions."

2) Recommended re-inclusion under section {"~~§145D-2~~ Exceptions to liability.}

"~~§145D-2~~ Exceptions to liability. (a) Any donor of food products, who in good faith donates the food ~~for~~:

(1) Directly; or

The stated objections for removing this section from HB854 HD1 were the broad liability exemptions. To address stated concerns that "donors" may not have the expertise to judge the quality and fitness for sale of food products, I

recommend that in this section a definition for "donor" be included and read as follows (ref: HB854 HD2)

"Donor" for the purpose of direct food donation is defined as "institution(s) that comply with commercial food safety requirements; provided that the good-faith donor or distributor reasonably believes that the food is fit for human consumption."

Limiting those who are protected for direct food donation to those who are producing the food in a regulated facility should address stated concerns over ability to judge fitness for consumption.

3) Recommended re-inclusion of sub-sections (c) and (d) under section {"[[§145D-2]] Exceptions to liability.}

Stated objections in this section were, again, direct donation and the broad definition of "farm produce." Instead of scrapping the entire section and weakening this bill, I recommend that the following edits (amendment of "farm produce" definition and reference to "direct donor" definition) be made to address stated concerns:

(c) This section shall not relieve any organization or government entity 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]~~ those products.

(d) The exceptions to liability specified in subsection (a) shall include:

(1) The donation of perishable or nonperishable food that has exceeded the labeled shelf life date recommended by the manufacturer by "donors" as defined in Section (a);

(2) The donation of farm produce, including where the needy person is directly involved in the harvest of the donated food; and

(3) The donation of perishable or nonperishable food from institutions that comply with commercial food safety requirements; provided that the good-faith donor or distributor reasonably believes that the food is fit for human consumption.

As used in this section, "farm produce" means all agricultural, horticultural, and vegetable produce of the soil, ~~poultry, poultry products, livestock, and livestock products,~~ but shall not include timber or timber products."

It is my belief that these amendments represent a compromise between reasonable litigation concerns and common sense desires to rescue quality foods from being trashed and wasted while so many go hungry.

Mahalo for your time and I am happy to provide additional resources created by California advocates on their food donation measures and vetting process, as well as answer any additional questions.

Jennifer Milholen

HB-854-HD-2

Submitted on: 3/12/2019 6:00:48 PM

Testimony for CPH on 3/13/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Melekaufusi Latu	Testifying for Aloha Harvest	Support	No

Comments:

Aloha,

As the state's only food rescue program, we heavily rely on this bill to help educate and encourage business and organizations to donate any excess foods that they have to a non-profit organization. We currently work with 276 active food donors and have rescued over 1.6 million pounds of food just this past year. We partnered with 173 agencies who received these food donations free of charge. Programs vary from shelters, housing, pantries, youth and elderly programs. We are in support of this bill because we know that there are a lot of establishments who are still throwing away perfectly good food that can be feed to someone in need of a meal. The clearer and precise language of the bill I believe will make all the difference in getting the next Store Manager or Executive Chef to call our number to find how they can be a part of this.

Mele Pepa Latu