



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in OPPOSITION to SB0244 SD1
RELATING TO FOOD DONATIONS**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Hearing Date: 2/23/2021 Room Number: CR 229 & VIDEO

1 **Fiscal Implications:** None

2 **Department Testimony:** The Department of Health (Department) respectfully opposes this
3 measure.

4 The Department acknowledges the importance of providing safe food to needy persons but the
5 Department's Food Safety Specialist (FSS) is not qualified to provide any legal advice on
6 liability protection to "potential donors" or any person in the State.

7 The Department respectfully takes the position that Section 2. of this measure is not necessary as
8 the Department's FSS already engage in distribution of a memorandum dated February 13, 2018
9 on the subject of donation/distribution/sale of food products beyond the expiration date. The
10 memorandum is currently distributed by the FSS to permitted food establishments as part of their
11 routine inspections.

12 The memorandum reads 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

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

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

8 Examples of commonly used phrases:

9 • “Best if Used By/Before” – indicates when a product will be of best flavor or quality. It is not a
10 purchase or safety date.

11 • “Sell By” – tells the store how long to display the product for sale for inventory management. It
12 is not a safety date.

13 • “Use By” – indicates the last date recommended for the use of the product while at peak
14 quality. It is not a safety date except for when used on *infant formula.

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

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

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

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

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

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

7 **Offered Amendments:** None

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



**Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, February 23, 2021; 9:30 a.m.
State Capitol, Conference Room 229
Via Videoconference**

RE: SENATE BILL NO. 0244, SENATE DRAFT 1, RELATING TO FOOD DONATION.

Chair Baker, Vice Chair Chang, and Members of the Joint Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** Senate Bill No. 0244, Senate Draft 1, RELATING TO FOOD DONATION.

The bill, as received by your Committee, would 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 food when the donor makes a good-faith judgment that the food is unspoiled; and
- (3) Allowing for the education of potential donors on reasonable and safe food donation protocols.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

Testimony on Senate Bill No. 0244, Senate Draft 1
Tuesday, February 23, 2021; 9:30 a.m.
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The COVID-19 pandemic has severely threatened the health and welfare of our citizens, especially Hawaii's underprivileged and rural communities. With so many people unemployed, entire families are struggling to put food on the table on a consistent basis. All one needs to do is visit one of our member FQHC's food distribution events and see the line of cars stretch for miles and people wait for hours to receive some surplus food. It is shocking yet uplifting to see that people do care for their fellow citizens.

The COVID-19 pandemic has greatly exacerbated the need for a program like this. As a network of nonprofits, FQHCs already are provided limited immunity from liability resulting from the distribution of donated food. What this bill will do is clarify and extend immunity to businesses and organizations that donate food to nonprofit organizations such as FQHCs for distribution to the community at large. Given the desperate need for food in our communities, this bill help go a long way to helping the most needy in our State.

The only way for us to protect ourselves from the next global pandemic is for Hawaii to diversify its economic base and become more self-sufficient.

We urge your favorable consideration of this bill.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



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e-mail info@hfbf.org; www.hfbf.org

February 23, 2021

HEARING BEFORE THE
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TESTIMONY ON SB 244, SD1
RELATING TO FOOD DONATION

Conference Room 229
9:30 AM

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau supports SB 244, SD1, which seeks to supply more food to Hawaii residents who are hungry, while reducing the huge amount of food that goes to waste in our State, overloading our landfills, and creating harmful greenhouse gas. Particularly now, when so many have lost their jobs and are unable to afford rent and food for their families, the passage of this bill will help.

We believe that this bill will expand and clarify current law to make it more likely that food will be donated and not wasted. Our farmers work hard to grow food for their communities and are heartbroken when it goes to waste. Allowing direct donations and educating food establishments about the opportunity to make donations and making them aware of the liability protections that safeguard them will alleviate concerns that prevent more food donations.

Thank you for the opportunity to provide our support on this measure.

SB-244-SD-1

Submitted on: 2/21/2021 1:30:40 PM

Testimony for CPN on 2/23/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ted Bohlen	Individual	Support	No

Comments:

Support to facilitate much needed food donations.

SB-244-SD-1

Submitted on: 2/22/2021 8:18:28 AM

Testimony for CPN on 2/23/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Milholen	Individual	Support	No

Comments:

Aloha, Chair Baker, Vice Chair Chang, and committee members. Mahalo for taking the time to hear this important bill. This will be, at least, the third year of attempting to clarify and expand protections for food donation in Hawai'i, and I am thrilled to see this necessary bill continue to move through the session.

Despite existing food donation protections, much of the wholesome surplus food in the state is discarded. A survey conducted by the Waste Reduction Alliance (CA) 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 excessive methane production; a greenhouse gas 84 times more potent than carbon dioxide. Current federal and state law lacks clarity in some provisions and is limited in scope. Passing this bill acknowledges and 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 or best-by date is subject to liability protection.
2. Provide liability protection for donations made directly to end-users.
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.

DOH officials explicitly stating what kinds of food donations are currently protected under federal and local Good Samaritan laws, will make many potential donors feel reassured that they are, in fact, protected and increase donations.

Mahalo for your consideration.

Jennifer Milholen - Waste Reduction Coordinator - KĀ• kua Hawai'i Foundation



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Garret Sugai
Kaiser Permanente

Date: February 22, 2021

To: Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair
Members of the Commerce and Consumer Protection
Committee

Re: Support for SB 244, SD1, Relating to Food Donation
Hrg: February 23, 2021 at 9:30 AM via videoconference

The Hawai'i Public Health Instituteⁱ is in **Support of SB 244, SD1**, which expands liability protection for food donations and allows the donation of expired food when the donor reasonably believes in good faith that the food remains fit for human consumption.

Expanding liability protections may encourage more businesses to donate food and reduce food waste. Due to the pandemic, Hawai'i's tourism-dependent economy has been devastated, with the highest rate of unemployment in the nation at 9.3% in December 2020ⁱⁱ. This has also led to an increased need for food assistance. There are currently over 189,000 SNAP recipients in the state, a 20% increase from the year beforeⁱⁱⁱ. Studies have found that a lack of food security is associated with diet-related chronic disease such as diabetes and high blood pressure^{iv}.

Mahalo for the opportunity to submit testimony in **support of SB 244, SD1**.

Mahalo,

A handwritten signature in blue ink that reads 'Jessica Yamauchi'.

Jessica Yamauchi
Executive Director

ⁱ Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.

ⁱⁱ U.S. Department of Labor. (2021, January 26). State Employment and Unemployment – December 2020. Retrieved from <https://www.bls.gov/news.release/pdf/laus.pdf>

ⁱⁱⁱ Hawaii State Department of Human Services. Supplemental Nutrition Assistance Program. Retrieved from <https://humanservices.hawaii.gov/bessd/snap/>.

^{iv} Seligman, H. K., Laraia, B. A., & Kushel, M. B. (2010). Food insecurity is associated with chronic disease among low-income NHANES participants. *The Journal of nutrition*, 140(2), 304–310. doi:10.3945/jn.109.112573

LATE

Tuesday, February 23, 2021 at 9:30 AM
Via Video Conference

Senate Committee on Commerce and Consumer Protection

To: Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: **Testimony in Support of SB 244, SD1
Relating to Food Donation**

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

HPH writes in support of 244, SD1 which expands liability protection for donors to include donations of food and similar donations made directly to needy persons, and authorizes the donation of expired food when the donor reasonably believes in good faith that the food remains fit for human consumption.

HPH recognizes the profound impact of access to food and health and wellness. HPH has prioritized responding to this need and we are currently engaged in efforts to facilitate food rescue both within our hospital system and with community partners. More than ten per cent of Hawai'i 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, Hawai'i businesses and residents discard more than 237,000 tons of food waste per year. Approximately twenty-six per cent of food grown in or imported to Hawai'i is thrown away.

The Bill Emerson Good Samaritan Food Donation Act was passed by the United States Congress in 1996 to protect good-faith food donors from civil and criminal liability and to encourage the donation of food that would otherwise go to waste. Despite these protections, much of the wholesome surplus food in Hawai'i and in other states is discarded instead of donated.

This measure would have a meaningful impact on providing food to those in need and reduce unnecessary waste. Thank you for the opportunity to testify.

SB-244-SD-1

Submitted on: 2/22/2021 9:07:28 AM

Testimony for CPN on 2/23/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Becky Gardner	Individual	Support	No

Comments:

I strongly support this bill.

I have worked with organizations and individuals who have held back on their efforts to provide surplus food to those in need because of their fear of liability. This fear has created a very tangible chilling effect on the contributions of well-intentioned people to provide greater food security with perfectly fine, nutritious food. It's a shame all these efforts, intentions, and nourishment has gone to waste - all based on a vague, uncertain fear. This bill will help remove unnecessary barriers and fill a great need that has only been exacerbated by the pandemic.

Truly, it starts with food. And if we can ensure everyone in our community is fed, we can avoid so many other public health concerns and social ills - that are ultimately more costly to taxpayers in the longrun.

It also allows and encourages greater compassion from those in a position to give.

LATE

SB-244-SD-1

Submitted on: 2/23/2021 12:05:14 AM

Testimony for CPN on 2/23/2021 9:30:00 AM

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

Comments:

Support