



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony in OPPOSITION to HCR 72  
URGING THE DEPARTMENT OF HEALTH TO VIGOROUSLY ENFORCE LAWS  
REGARDING THE LABELING OF PREVIOUSLY FROZEN FISH**

REPRESENTATIVE DELLA AU BELATTI, CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date: March 18, 2016  
Time: 9:00 am

Room Number: 329

1 **Fiscal Implications:** This resolution has the potential for significant fiscal implications for the  
2 department.

3  
4 **Department Testimony:** The department opposes this bill as it places an unnecessary burden  
5 on the regulatory program to litigate every instance of mislabeling of previously frozen fish.  
6 The introduction of a new paradigm in regulating the food industry, Hawaii Administrative  
7 Rules, Chapter 11-50, Food Safety Code was formerly adopted in February 2014 and  
8 implemented in July of the same year. The food safety program is now keenly focused on  
9 reducing the occurrence of food illness risk factors that occur in food establishments. Food  
10 illness risk factors are considered by the CDC and the FDA to be the direct cause of nearly all  
11 food illnesses in the U.S. These risk factors are those identified as major violations that now  
12 dictate the "stoplight" placard posting program of a Green -PASS, Yellow - CONDITIONAL  
13 PASS, or red - CLOSED which began in July of 2014. The purpose and focus of the placarding  
14 program is to obtain rapid, voluntary compliance with food safety regulations. This is critical to  
15 the efficiencies of running a food safety regulatory program.

16 The mislabeling of previously frozen fish is NOT recognized as a food illness risk factor by the  
17 CDC or FDA as the use of carbon monoxide (CO) is an approved food additive if the product is  
18 properly labeled with a consumer advisory stating that CO has been used and if the fish was  
19 previously frozen. It is more of a commerce, truth in labeling and a quality control issue rather  
20 than a food safety issue. The department's food safety program statewide, however, investigates  
21 100% of all food facility complaint allegations (1002 complaints FY15 legislative audit)  
22 including mislabeling within 48 hours of receipt. Food illness complaints (238 in FY15  
23 legislative audit) are usually responded to the day it is received but no later than 24 hours. If  
24 violations are found during the inspection, DOH will require correction in all instances and this  
25 practice has not and will not change in the future. The department does not maintain statistics on  
26 the number of fish mislabeling complaints, but it is probably not more than a handful a year.

1 The proposed resolution would ask the department to enter into a costly, time consuming  
2 litigation, to arrange and conduct formal Administrative Hearings in contested cases, and  
3 possibly going to circuit court if respondent chooses to challenge the outcome of the  
4 Administrative Hearing. The DOH may also end up in circuit court to continue this litigation if  
5 the fine is unpaid and is forced into collections proceedings.

6 Our new paradigm shift has produced significant results in that of the 2372 (20%) Yellow  
7 Placards issued for multiple major violations since July 2014 (9548 Green), only 3 have led to  
8 formal enforcement through the issuance of Red Cards. This indicates the program has obtained  
9 a 99.8% compliance rate in the voluntary reduction of food illness risk factors. The great  
10 majority of which are done within 48 hours with only one follow-up inspection required. This is  
11 also a great testament of the support and due diligence of our local food industry to recognize the  
12 importance of food safety in protecting residents and visitors to the State.

13 If the DOH were to implement the resolution it would divert critical resources from the mission  
14 of protecting public health to focusing the program on commerce and truth-in-labeling issues. If  
15 our program had unlimited resources we would be able to achieve what the resolution desires,  
16 but the department strongly feels that it would not be a prudent use of taxpayer monies to litigate  
17 every labeling violation without giving industry the opportunity for rapid, voluntary compliance  
18 which they have clearly shown they are capable of 99.8% of the time since July 2014. The  
19 current program is already extremely cost effective compared to any litigation or legal challenges  
20 which automatic fines will likely produce.

21 **Offered Amendments:** No amendments offered.

22 Thank you for the opportunity to testify.