

**[CHAPTER 328C]**  
**DONATION OF PHARMACEUTICALS AND HEALTH CARE SUPPLIES**

Section

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" **§328C-1 Definitions.** Whenever used in this chapter unless the context otherwise requires:

"Charitable, religious, or nonprofit organization" means any organization which was organized and is operating in the State for charitable or religious purposes or to promote social welfare, which is exempt from income taxation under chapter 235, and which distributes pharmaceuticals and health care supplies at no cost to needy persons.

"Institutional facility" means a:

- (1) Hospital;
- (2) Convalescent home;
- (3) Nursing home;
- (4) Extended care facility;
- (5) Mental institution;
- (6) Rehabilitation center;
- (7) Health maintenance organization;
- (8) Psychiatric center;
- (9) Intellectual disability center;
- (10) Penal institution; or
- (11) Any other organization whose primary purpose is to provide a physical environment for patients to obtain health care services or at-home care services, except those places where physicians, dentists, veterinarians, osteopaths, podiatrists, or other prescribers who are duly licensed, engage in private practice.

"Needy person" means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies, as determined by a practitioner at a Hawaii qualified health center, established under section 346-41.5, to be in need of service.

"Pharmaceuticals and health care supplies" means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item which is customarily fit for human consumption or external use, before the expiration date stamped on the product, if any. [L 1997, c 337, pt of §2; am L 2001, c 207, §1; am L 2004, c 190, §§4, 11; L 2011, c 220, §12]

" **§328C-2 Exceptions to liability.** (a) A charitable, religious, or nonprofit organization which in good faith receives pharmaceuticals or health care supplies, apparently fit for human consumption or external use, and distributes them to needy persons at no charge, shall not be liable for any civil

damages or criminal penalties resulting from the use of the pharmaceuticals or health care supplies donated to needy persons unless an injury or illness results to those needy persons as a result of that organization's gross negligence or wanton acts or omissions.

(b) Any pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner that in good faith provides pharmaceuticals, including previously dispensed prescription drugs, and health care supplies to needy persons without remuneration or expectation of remuneration, shall be exempt from civil liability for injuries and damages resulting from their acts or omissions in providing pharmaceuticals and health care supplies, except for gross negligence, or wanton acts or omissions on the part of the pharmacy, wholesale prescription drug distributor, pharmaceutical company, institutional facility, or practitioner.

(c) Any donated, previously dispensed, prescription drug:

- (1) Shall be in its dispensed, unopened, tamper-evident single user unit;
- (2) Shall have remained at all times in the control of a person trained and knowledgeable in the storage and administration of drugs in institutional facilities;
- (3) Shall not have been adulterated, misbranded, or stored under conditions contrary to standards established by the United States Pharmacopoeia or the product manufacturer; and
- (4) Shall be used before the expiration date on the unit.

(d) This section shall not relieve any organization from any other duty imposed upon it by law for the inspection of donated pharmaceuticals or health care supplies or for any provisions regarding the handling of those products, or relieve any health care provider from liability arising out of the prescription of such pharmaceuticals or health care supplies.

(e) For purposes of this section:

"Needy person" means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies as determined by a practitioner at a Hawaii qualified health center established under section 346-41.5, to be in need of service.

"Pharmaceutical company" means any company that manufactures pharmaceuticals and health care supplies.

"Pharmaceuticals and health care supplies" means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item that is

customarily fit for human consumption or external use, before the expiration date stamped on the product, if any.

"Pharmacy" is as defined in chapter 461. [L 1997, c 337, pt of §2; am L 2001, c 207, §2; am L 2004, c 190, §§7, 11]

" **[§328C-3] Sale of donated pharmaceuticals or health care supplies, prohibited; fines.** (a) No person or organization shall sell, or offer for sale, any pharmaceutical or health care supply donated or distributed under this chapter.

(b) Any violation of this section is punishable by a fine not to exceed \$1,000. [L 1997, c 337, pt of §2]

" **[§328C-4] Labeling of donated pharmaceuticals or health care supplies.** Any charitable, religious, or nonprofit organization which receives and distributes donated pharmaceuticals or health care supplies pursuant to this chapter shall affix a label upon those items stating that the items are donated and are not for resale and stating that they were fit for human consumption or use on the date that they left control of the charitable, religious, or nonprofit organization. [L 1997, c 337, pt of §2]

" **[§328C-5] Reserving the State's authority to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies.** Nothing in this chapter is intended to restrict the authority of any state department to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies for human consumption or use. Pharmaceuticals and health care supplies that are distributed by a charitable, religious, or nonprofit organization, and the activities associated with that distribution, shall comply with the applicable provisions of chapter 328, including part VII, which relates to prescription drug wholesalers. Any provisions to the contrary notwithstanding, all activities conducted by an organization under this chapter involving the distribution of prescription drugs to persons other than a consumer or patient shall be included within the definition of "wholesale distribution" as defined by section 328-112. [L 1997, c 337, pt of §2]

" **§§328C-6, 7 REPEALED.** L 2004, c 190, §11.