

---

---

# A BILL FOR AN ACT

RELATING TO FOOD DONATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that more than ten per  
2 cent of Hawaii residents, including tens of thousands of  
3 children and seniors, are food insecure and receive food  
4 assistance through nonprofit organizations and government  
5 programs. Despite high levels of food insecurity, Hawaii  
6 businesses and residents discard more than 237,000 tons of food  
7 waste per year.

8           The legislature further finds that approximately twenty-six  
9 per cent of food grown in or imported to Hawaii is thrown away,  
10 amounting to approximately \$1,000,000,000 in annual food waste.  
11 Worldwide, an estimated one-third of the food raised or prepared  
12 goes to waste, despite more than eight hundred million people  
13 experiencing hunger.

14           The legislature recognizes that food production is a direct  
15 contributor to local and global climate change. Food production  
16 requires energy, fertilizer, irrigation, livestock feed, and  
17 other resources that contribute to greenhouse gas emissions and



1 add pollutants to the environment. Food waste entering  
2 landfills creates methane gas, a greenhouse gas that is eighty-  
3 four times more potent than carbon dioxide. Worldwide, wasted  
4 food accounts for approximately eight per cent of all human-  
5 based greenhouse gas emissions.

6 The Bill Emerson Good Samaritan Act was passed by the  
7 United States Congress in 1996 to protect good-faith food donors  
8 from civil and criminal liability and to encourage the donation  
9 of food that would otherwise go to waste. Despite these  
10 protections, much of the wholesome surplus food in Hawaii and in  
11 other states is discarded instead of donated due to ambiguities  
12 in the existing statutes. A California survey found that forty-  
13 four per cent of manufacturers, forty-one per cent of  
14 restaurants, and twenty-five per cent of retailers identified  
15 fear of liability as their primary barrier to donating surplus  
16 food, in spite of existing liability protections.

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

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



1 (2) Allowing the donation of food that has passed its  
2 sell-by and freshness dates when the donor makes a  
3 good-faith judgment that the food is unspoiled; and

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

8 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§321- Promotion of food donation. The inspection of  
12 food establishments pursuant to this chapter shall include  
13 education of the establishment's owners, managers, or  
14 appropriate agents on the existence and operation of chapter  
15 145D. The department shall publish and distribute materials to  
16 food establishments that explain the exceptions to civil and  
17 criminal liability for good faith food donations provided by  
18 section 145D-2."

19 SECTION 3. Section 145D-2, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "~~[†]~~ §145D-2 ~~[†]~~ **Exceptions to liability.** (a) Any donor of  
2 food products, who in good faith donates the food ~~[for]~~:

3           (1) Directly; or

4           (2) For the use or distribution by a charitable,  
5           religious, or nonprofit organization,

6 to needy persons shall not be liable for any civil damages or  
7 criminal penalties for any injuries or illnesses including, but  
8 not limited to, injuries or illnesses resulting from the nature,  
9 age, condition, packaging, or handling of the donated food  
10 products, except for ~~[such]~~ damages ~~[as may]~~ that result from  
11 the donor's gross negligence or wanton acts or omissions.

12           (b) A charitable, religious, or nonprofit organization  
13 ~~[which in good faith]~~ or government entity that receives food~~[r]~~  
14 pursuant to subsection (a) that is apparently fit for human  
15 consumption~~[r]~~ and distributes it in good faith to needy persons  
16 at no charge, shall not be liable for any civil damages or  
17 criminal penalties resulting from the condition of the food  
18 unless an injury or illness results from its gross negligence,  
19 or wanton acts or omissions.

20           (c) This section shall not relieve any organization or  
21 government entity from any other duty imposed ~~[upon them]~~ by law



1 for the inspection of donated food products or for any  
2 provisions regarding the handling of ~~[such]~~ those products.

3 (d) The exceptions to liability specified in subsection

4 (a) shall include:

5 (1) The donation of perishable or nonperishable food that  
6 has exceeded the labeled shelf life date recommended  
7 by the manufacturer; and

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

11 provided that the good faith donor or distributor reasonably  
12 believes that the food is fit for human consumption.

13 (e) For purposes of this section:

14 "Donor" means any individual, food vendor, food  
15 manufacturer, food distributor, grocery or convenience store,  
16 charitable or nonprofit organization, or government agency  
17 donating food to hungry persons where the food in question has  
18 been prepared and packaged in a facility meeting all relevant  
19 food safety guidelines, certifications, and requirements and has  
20 passed all food safety inspections.



1        "Farm produce" means all agricultural, horticultural, and  
2 vegetable produce of the soil, but shall not include poultry and  
3 poultry products, livestock and livestock products, aquaculture  
4 and aquaculture products, and timber or timber products."

5        SECTION 4. Section 663-10.6, Hawaii Revised Statutes, is  
6 amended by amending subsections (a) and (b) to read as follows:

7        "(a) Any charitable or nonprofit organization that in good  
8 faith provides shelter or proper means of subsistence to needy  
9 persons as part of its bona fide and customary charitable  
10 activities, rendered without remuneration or expectation of  
11 remuneration, shall be exempt from civil liability for injuries  
12 and damages resulting from the organization's acts or omissions  
13 in providing ~~such~~ the shelter or subsistence, except for gross  
14 negligence or wanton acts or omissions of the organization.

15        (b) Any ~~person~~ donor who donates goods, ~~feed,~~  
16 materials, or services ~~to~~ :

17        (1) Directly to a needy person; or

18        (2) To a charitable or nonprofit organization described in  
19        subsection (a),



1 shall be exempt from civil liability for injuries and damages  
2 resulting from the donation, except for gross negligence or  
3 wanton acts or omissions."

4 SECTION 5. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY

<u>B. K. Kozlowski</u>	<u>John R. [Signature]</u>
<u>[Signature]</u>	<u>Wade E. Lowen</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>
<u>[Signature]</u>	<u>[Signature]</u>



# H.B. NO. 2234

Gregory

David Carnes

Jim Ward

Tom Ben

Stahic

JAN 21 2020





# H.B. NO. 2234

**Report Title:**

Food Donation; Charitable Giving; Liability

**Description:**

Clarifies and expands exceptions for good-faith food donations to needy persons. Allows for the donation of expired food when the donor makes a good-faith judgment that the food is unspoiled. Requires DOH to provide educational materials about food donation to establishments as part of the health inspection process.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

