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## A BILL FOR AN ACT

RELATING TO THE DONATION OF FOOD.

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

1           SECTION 1. Chapter 321, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§321-           Promotion of food donation. In implementing  
5 this chapter, registered sanitarians or food and drug inspectors  
6 shall promote the recovery of food fit for human consumption  
7 during their normal, routine inspections. Promotion shall  
8 include but not be limited to newsletters, bulletins, and  
9 handouts that inform food establishment operators about the  
10 protections from civil and criminal liability when donating  
11 food."

12           SECTION 2. Chapter 328, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15           "§328-           Food donation permitted. (a) A person or  
16 gleaner engaged in the business of processing, distributing, or  
17 selling a food product may donate, free of charge, a food



1 product that is in a condition that may be used as food for  
2 human consumption to a charitable, religious, or nonprofit  
3 organization or food bank within the State.

4 (b) A person, gleaner, or food facility may donate, free  
5 of charge, food that is fit for human consumption:

6 (1) Directly to end recipients for consumption; or

7 (2) To a charitable, religious, or nonprofit organization  
8 or food bank.

9 (c) A person, gleaner, or food facility that donates food  
10 as permitted by this section shall not be subject to civil or  
11 criminal liability for violation of any laws, regulations, or  
12 ordinances regulating the labeling or packaging of the donated  
13 food or, with respect to any other laws, regulations, or  
14 ordinances, for a violation occurring after the time of the  
15 donation.

16 (d) A person, gleaner, or food facility may donate  
17 perishable or nonperishable food that is fit for human  
18 consumption but has exceeded the labeled shelf life date  
19 recommended by the manufacturer; provided that the person that  
20 distributes the perishable food to the end recipient makes a  
21 good faith evaluation that the food to be donated is wholesome.



1       (e) To assist in accomplishing the purposes of this  
2 section, the director may divert food products to organizations  
3 or food banks operating pursuant to this section.

4       (f) For the purposes of this section:  
5       "Charitable, religious, or nonprofit organization" shall  
6 have the same meaning as in section 145D-1.

7       "Food bank" shall have the same meaning as in section 145D-  
8 1.

9       "Food facility" shall have the same meaning as in section  
10 145D-1.

11       "Food product" means any fowl, seafood, animal, vegetable,  
12 or other stuff, product, or article that is customary food fit  
13 for human consumption, including prepared, canned, milk, dairy,  
14 and farm products.

15       "Gleaner" shall have the same meaning as in section 145D-1.

16       "Person" shall have the same meaning as in section 145D-1."

17       SECTION 3. Section 145D-1, Hawaii Revised Statutes, is  
18 amended to read as follows:

19       "**§145D-1 Definitions.** Whenever used in this chapter  
20 unless the context otherwise requires:



1 "Charitable, religious, or nonprofit organization" means  
2 any organization [~~which~~] that was organized and is operating in  
3 the State for charitable or religious purposes or to promote  
4 social welfare, which is exempt from income taxation under  
5 chapter 235, and which distributes food [~~products~~] at no cost to  
6 the needy [~~persons~~].

7 "Commercial food processing establishment" means any room,  
8 building, or place or portion thereof, maintained, used, or  
9 operated for the purpose of commercially storing, packaging,  
10 making, cooking, mixing, processing, bottling, canning, packing,  
11 slaughtering, or otherwise preparing or handling food.

12 "Commercial food processing establishments" do not include  
13 restaurants.

14 "Community care facility" means any facility, place, or  
15 building that is maintained and operated by an individual,  
16 organization, or agency for the purpose of providing supportive  
17 and protective care to a disabled or aged person or providing  
18 care to children, including but not limited to adult day care  
19 centers, developmental disabilities domiciliary homes, and  
20 developmentally disabled adult foster homes licensed by the  
21 department of health and child care facilities, child caring



1 institutions, or resource family homes licensed, registered, or  
2 regulated by the department of human services.

3 "Food bank" means a surplus food collection and  
4 distribution system operated and established to assist in  
5 bringing donated food to charitable, religious, or nonprofit  
6 organizations and individuals for the purposes of reducing  
7 hunger and supplying nutritional needs.

8 "Food facility" means an operation that stores, prepares,  
9 packages, serves, vends, or otherwise provides food for human  
10 consumption at the retail level, including but not limited to:

11 (1) An operation where food is consumed on or off the  
12 premises, regardless of whether there is a charge for  
13 the food; or

14 (2) Storage facilities for food-related utensils,  
15 equipment, and materials.

16 "Food facility" includes permanent and nonpermanent facilities,  
17 including but not limited to public and private school  
18 cafeterias, licensed health care facilities, mobile food  
19 facilities, vending machines, farmers' markets, farm stands,  
20 mobile markets, fish markets, or catering operations. "Food  
21 facility" does not include any of the following:



- 1       (1) A cooperative arrangement wherein no permanent  
2       facilities are used for storing or handling food;
- 3       (2) A private home when used for private, noncommercial  
4       purposes;
- 5       (3) A church, private club, or other nonprofit association  
6       that gives or sells food to its members and guests,  
7       and not to the general public, at an event that occurs  
8       not more than three days in any ninety-day period;
- 9       (4) A for-profit entity that gives or sells food at an  
10       event that occurs not more than three days in a  
11       ninety-day period for the benefit of a nonprofit  
12       association, if the for-profit entity receives no  
13       monetary benefit, other than that resulting from  
14       recognition from participating in an event;
- 15       (5) Premises set aside for wine tasting or by a beer  
16       manufacturer, regardless of whether there is a charge  
17       for the wine or beer tasting, if no other beverage,  
18       except for bottles of wine or beer and prepackaged  
19       nonpotentially hazardous beverages, is offered for  
20       sale or for onsite consumption and no food, except for  
21       crackers, pretzels, or prepackaged food that is not



1           potentially hazardous food is offered for sale or for  
2           onsite consumption;

3           (6) An outlet or location, including but not limited to  
4           premises, operated by a producer, selling or offering  
5           for sale only whole produce grown by the producer or  
6           shell eggs, or both; provided that the sales are  
7           conducted at an outlet or location controlled by the  
8           producer;

9           (7) A commercial food processing establishment;

10          (8) A community care facility; or

11          (9) A community food producer.

12          "Gleaner" means a person who harvests for free distribution  
13 to the needy, or for donation to a charitable, religious, or  
14 nonprofit organization or food bank for ultimate distribution to  
15 the needy, an agricultural crop that has been donated by the  
16 owner.

17          ~~["Donor" means any person, partnership, corporation,~~  
18 ~~company, or association engaged in the farming, processing,~~  
19 ~~distribution, wholesaling, or retailing of food products who~~  
20 ~~donates such products, without remuneration, to a charitable,~~  
21 ~~religious, or nonprofit organization.~~



1       ~~"Food product" means any fowl, seafood, animal, vegetable,~~  
2       ~~or other stuff, product, or article which is customary food fit~~  
3       ~~for human consumption, including prepared, canned, milk, dairy,~~  
4       ~~and farm products, before or after the expiration date stamped~~  
5       ~~on the products, if any.~~

6       ~~"Needy person" means any person who lacks adequate or~~  
7       ~~proper means of subsistence.]~~

8       "Person" means an individual, school, corporation,  
9       partnership, limited liability company, organization,  
10       association, or governmental entity, including a retail food  
11       establishment, retail grocer, wholesaler, hotel, motel,  
12       manufacturer, restaurant, caterer, farmer, and nonprofit food  
13       distributor or hospital. In the case of a corporation,  
14       partnership, organization, association, or governmental entity,  
15       the term "person" includes an officer, director, partner,  
16       manager or managing member, deacon, trustee, council member, or  
17       other elected or appointed individual responsible for the  
18       governance of the entity.

19       "Producer" means a person or entity who produces shell eggs  
20       or edible plants by practice of the agricultural arts upon land  
21       that the person or entity controls."





1 SECTION 4. Section 145D-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "~~[f]~~ §145D-2 ~~[f]~~ **Exceptions to liability.** (a) Any ~~[donor~~  
4 ~~of food products, who in good faith]~~ person, gleaner, or food  
5 facility that donates the food ~~[for the use or distribution by a~~  
6 ~~charitable, religious, or nonprofit organization to needy~~  
7 ~~persons]~~ that is fit for human consumption at the time it was  
8 donated:

- 9 (1) Directly to end recipients for consumption; or
- 10 (2) To a charitable, religious, or nonprofit organization  
11 or food bank;

12 shall not be liable for any civil damages or criminal penalties  
13 for any damages, injuries, or illnesses resulting from the  
14 consumption of the donated food including~~[7]~~ but not limited to  
15 damages, injuries, or illnesses resulting from the nature, age,  
16 condition, packaging, preparation, or handling of the donated  
17 food ~~[products]~~, except for such damages, injuries, or illnesses  
18 as may result from the ~~[donor's]~~ person's, gleaner's, or food  
19 facility's gross negligence, intentional misconduct, or wanton  
20 acts or omissions.



1        (b) The immunity from civil and criminal liability  
2 provided by subsection (a) applies regardless of compliance with  
3 any laws, regulations, or ordinances regulating:

4        (1) The labeling or packaging of food; or

5        (2) The storage or handling of the food by the donee after  
6        the donation of the food.

7        (c) The exceptions to liability specified in subsection  
8 (a) shall include the donation of perishable or nonperishable  
9 food that is fit for human consumption but has exceeded the  
10 labeled shelf life date recommended by the manufacturer;  
11 provided that the person that distributes the perishable food to  
12 the end recipient makes a good faith evaluation that the food to  
13 be donated is wholesome.

14        [~~(b)~~] (d) A charitable, religious, or nonprofit  
15 organization [~~which~~] or food bank that, in good faith, receives  
16 and distributes food [~~, apparently~~] without charge that is fit  
17 for human consumption [~~, and distributes it to needy persons at~~  
18 no charge,] at the time the food was distributed shall not be  
19 liable for any civil damages or criminal penalties resulting  
20 from [~~the condition of the food unless~~] an injury [~~or~~], illness  
21 [~~results from its~~], or death unless the injury, illness, or



1 death is a direct result of the gross negligence, intentional  
2 misconduct, or wanton acts or omissions[-] of the organization.

3 [~~e~~] (e) This section shall not relieve any organization  
4 from any other duty imposed upon them by law for the inspection  
5 of donated food products or for any provisions regarding the  
6 handling of such products.

7 (f) Nothing in this chapter shall be construed to limit  
8 the ability of a person, gleaner, or food facility to donate  
9 food."

10 SECTION 5. Section 145D-4, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~§~~145D-4[~~§~~] **Labeling of donated food.** Any charitable,  
13 religious, or nonprofit organization [~~which~~] or food bank that  
14 receives and distributes donated food pursuant to this chapter  
15 shall affix a label upon such food or upon the individual  
16 container or package of such food stating that the food is not  
17 for resale and stating that it was fit for human consumption at  
18 the date that it left control of the charitable, religious, or  
19 nonprofit organization[-] or food bank."

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



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

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

11           (1) Directly to a needy person; or

12           (2) To a charitable or nonprofit organization described in  
13           subsection (a);

14 shall be exempt from civil liability for injuries and damages  
15 resulting from the donation, except for gross negligence or  
16 wanton acts or omissions."

17           SECTION 7. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20           SECTION 8. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



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

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INTRODUCED BY:

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JAN 23 2020



# H.B. NO. 2706

**Report Title:**

Food Donation; DOH; Liability Protection; Charitable Donations

**Description:**

Requires the Department of Health to promote food donation during normal, routine inspections of food establishments. Permits the donation of food. Expands liability protection for the donation of food. Authorizes the donation of food directly to the needy and expired food under certain circumstances.

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

