

JAN 17 2020

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# 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 Food Donation Act was  
7 passed by the United States Congress in 1996 to protect good-  
8 faith food donors from civil and criminal liability and to  
9 encourage the donation of food that would otherwise go to waste.  
10 Despite these protections, much of the wholesome surplus food in  
11 Hawaii and in other states is discarded instead of donated. A  
12 California survey found that forty-four per cent of  
13 manufacturers, forty-one per cent of restaurants, and twenty-  
14 five per cent of retailers identified fear of liability as their  
15 primary barrier to donating surplus food, in spite of existing  
16 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 expired food when the donor  
 2 makes a good-faith judgment that the food is  
 3 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 these  
 7 provisions.

8 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
 9 amended by adding a new section to part I to be appropriately  
 10 designated 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 food establishment owners, managers, or appropriate  
 14 agents regarding the existence and operation of chapter 145D.  
 15 The department shall publish and distribute to food  
 16 establishments materials that explain exceptions to liability  
 17 provided in section 145D-2."

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

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



1       (1) Directly; or

2       (2) For the use or distribution by a charitable,  
3             religious, or nonprofit organization, or government  
4             entity;

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

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

19       (c) This section shall not relieve any organization or  
20 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 the donated food; provided that the good-faith donor  
11 or distributor reasonably believes that the food is  
12 fit for human consumption.

13 For the 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 that  
17 donates 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  
20 having passed all food safety inspections.



1        "Farm produce" means all agricultural, horticultural, and  
2 vegetable produce of the soil, but shall not include poultry,  
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."

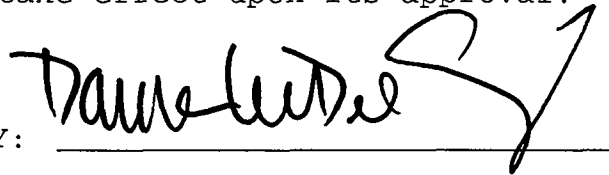
4 SECTION 5. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

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.

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INTRODUCED BY:

  
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# S.B. NO. 2285

**Report Title:**

Food Donation; Charitable Donations; Liability Protection

**Description:**

Expands liability protection for donors to include donations of food and similar donations made directly to needy persons. Authorizes the donation of expired food when the donor reasonably believes in good faith that the food remains fit for human consumption.

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

