

JAN 22 2021

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;



(2) Allowing the donation of expired food when the donor makes a good-faith judgment that the food is unspoiled; and

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

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

"§321- Promotion of food donation. The inspection of food establishments pursuant to this chapter shall include education of food establishment owners, managers, or appropriate agents regarding the existence and operation of chapter 145D. The department shall publish and distribute to food establishments materials that explain exceptions to liability provided in section 145D-2."

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

"[~~f~~]§145D-2[~~f~~] **Exceptions to liability.** (a) Any donor of 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 receives]~~, or government entity that:

13 (1) Receives food[7] pursuant to subsection (a) that is
14 apparently fit for human consumption[7]; and
15 ~~[distributes it]~~

16 (2) Distributes the food in good faith to needy persons at
17 no charge,

18 shall not be liable for any civil damages or criminal penalties
19 resulting from the condition of the food unless an injury or
20 illness results from its gross negligence, or wanton acts or
21 omissions.



1 (c) This section shall not relieve any organization or
2 government entity from any other duty imposed [~~upon them~~] by law
3 for the inspection of donated food products or for any
4 provisions regarding the handling of [~~such~~] those products.

5 (d) The exceptions to liability specified in subsection

6 (a) shall include:

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

10 (2) The donation of farm produce, including where the
11 needy person is directly involved in the harvest of
12 the donated food; provided that the good-faith donor
13 or distributor reasonably believes that the food is
14 fit for human consumption.

15 For the purposes of this section:

16 "Donor" means any individual, food vendor, food
17 manufacturer, food distributor, grocery or convenience store,
18 charitable or nonprofit organization, or government agency that
19 donates food to hungry persons where the food in question has
20 been prepared and packaged in a facility meeting all relevant



1 food safety guidelines, certifications, and requirements and
2 having passed all food safety inspections.

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

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

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

17 (b) Any [~~person~~] donor who donates goods, [~~food,~~]
18 materials, or services [~~to~~]:

19 (1) Directly to a needy person; or

20 (2) To a charitable or nonprofit organization described in

21 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:





S.B. NO. 244

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.

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