
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 the high level of food insecurity, Hawaii
6 businesses and residents discard more than 237,000 tons of food
7 waste annually.

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 800,000,000 people worldwide
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, feed for livestock, 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
5 anthropogenic 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. 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.

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

18 (1) Clarifying and expanding liability protections for
19 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 educating owners, managers, or appropriate agents of food
14 establishments on the existence and operation of chapter 145D.
15 The department shall publish and distribute to food
16 establishments materials that include an explanation of the
17 exceptions to liability in section 145D-2."

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

20 "~~§~~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 for [~~such~~] damages [~~as may~~] that result from
10 the donor's gross negligence or wanton acts or omissions.

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

11 provided that the donor that donates, or the organization or
12 government entity that distributes, the food in good faith to
13 the needy person reasonably believes that the food is fit for
14 human consumption.

15 As used in this section, "farm produce" means all
16 agricultural, horticultural, and vegetable produce of the soil,
17 poultry, poultry products, livestock, and livestock products,
18 but shall not include timber or timber products."

19 SECTION 4. Section 663-10.6, Hawaii Revised Statutes, is
20 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 5. 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 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



H.B. NO. 1806

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

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INTRODUCED BY:

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JAN 16 2018



H.B. NO. 1806

Report Title:

Food Donation; 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 believes in good faith that the food remains fit for human consumption.

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