

ACT 337

S.B. NO. 165

A Bill for an Act Relating to Donation of Pharmaceuticals and Health Care Supplies.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that it is in the best interests of the State to extend to the donation of pharmaceuticals and health care supplies protections currently extended to the donation of food under chapter 145D, Hawaii Revised Statutes. This so-called “good samaritan” law has provided defined protection from liability on donated foods for such well-known Hawaii organizations as the Hawaii Food Bank, which works very hard as a nonprofit institution to help feed Hawaii’s hungry.

The State now finds that there is a significant number of medically needy persons in Hawaii who do not have access to required medications, including the uninsured, and others whose health insurance does not cover pharmaceuticals or health care supplies, or who simply are unable to afford the cost of these items. QUEST, Hawaii’s medicaid managed care waiver demonstration plan, covers needed medications. However, due to local financial conditions and recently passed federal legislation, the State has been forced to tighten eligibility requirements. An estimated 30,000 low-income people have lost their QUEST coverage.

A survey conducted by the Hawaii State Primary Care Association in September 1996, underscored the urgent need for more sources of free or very low-cost pharmaceutical supplies. Medicines associated with diabetes, asthma, and heart conditions were noted as needed for patients with these chronic conditions. But the medical directors at the community health centers also reported needs for antibiotics, topical cortisone skin creams for children and adults, and other more basic pharmaceuticals and health care supplies. All cited severe shortages of crucial medicines for patients unable to buy their own. Without health coverage and without needed medicines, community health centers see many of their patients failing to make

successful recoveries from their illnesses. Too often, without therapeutic medicines, their conditions worsen, threatening their health and that of others, as well as requiring much more costly hospitalization.

Presently, the Hawaii State Primary Care Association, a not-for-profit organization, is seeking to establish a new donated pharmaceuticals and health care supplies project, titled "La'au Makana" (Gift Medicines). The Hawaii State Primary Care Association is the organization which represents and advocates for Hawaii Qualified Health Centers. The project would collect donated pharmaceuticals and health care supplies and distribute them to the Hawaii Qualified Health Centers for dispensing by a physician. Hawaii Qualified Health Centers are not-for-profit community health centers, which are located in underserved areas, serve medically underserved populations including the homeless, are community-oriented, are accessible to all in need of care regardless of ability to pay, are culturally acceptable, and provide the full range of primary and preventive health care. They are uniquely capable of serving this needy population.

Like the FoodBank which is protected from liability with respect to the donation of food, the Hawaii State Primary Care Association, as the organization responsible for the La'au Makana project, seeks relief from liability for itself and other similar organizations regarding the collection and distribution of donated pharmaceuticals and health care supplies. Accordingly, the purpose of this Act is to promote the donation of pharmaceuticals and health care supplies by providing an exception to liability for charitable, religious, and nonprofit organizations that distribute these donated supplies.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
DONATION OF PHARMACEUTICALS AND HEALTH CARE
SUPPLIES**

§ -1 **Definitions.** Whenever used in this chapter unless the context otherwise requires:

“Charitable, religious, or nonprofit organization” means any organization which was organized and is operating in the State for charitable or religious purposes or to promote social welfare, which is exempt from income taxation under chapter 235, and which distributes pharmaceuticals and health care supplies at no cost to needy persons.

“Needy person” means any natural person who lacks the means to obtain adequate or proper pharmaceuticals or health care supplies, as determined by a practitioner at a Hawaii qualified health center, established under section 346-41.5, to be in need of service.

“Pharmaceuticals and health care supplies” means any medicine (prescription or nonprescription, excluding all controlled substances listed in chapter 329) or health care supplies such as soap, personal sanitary products, baby formula, dietary supplement, health care aids such as thermometers, surgical gloves, or bandages, or any other item which is customarily fit for human consumption or external use, before the expiration date stamped on the product, if any.

§ -2 **Exceptions to liability.** (a) A charitable, religious, or nonprofit organization which in good faith receives pharmaceuticals or health care supplies, apparently fit for human consumption or external use, and distributes them to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the use of the pharmaceuticals or health care supplies donated to

needy persons unless an injury or illness results to those needy persons as a result of that organization's gross negligence or wanton acts or omissions.

(b) This section shall not relieve any organization from any other duty imposed upon it by law for the inspection of donated pharmaceuticals or health care supplies or for any provisions regarding the handling of those products, nor relieve any health care provider from liability arising out of the prescription of such pharmaceuticals or health care supplies.

§ -3 Sale of donated pharmaceuticals or health care supplies, prohibited; fines. (a) No person or organization shall sell, or offer for sale, any pharmaceutical or health care supply donated or distributed under this chapter.

(b) Any violation of this section is punishable by a fine not to exceed \$1,000.

§ -4 Labeling of donated pharmaceuticals or health care supplies. Any charitable, religious, or nonprofit organization which receives and distributes donated pharmaceuticals or health care supplies pursuant to this chapter shall affix a label upon those items stating that the items are donated and are not for resale and stating that they were fit for human consumption or use on the date that they left control of the charitable, religious, or nonprofit organization.

§ -5 Reserving the State's authority to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies. Nothing in this chapter is intended to restrict the authority of any state department to regulate, inspect, or ban the use of donated pharmaceuticals or health care supplies for human consumption or use. Pharmaceuticals and health care supplies that are distributed by a charitable, religious, or nonprofit organization, and the activities associated with that distribution, shall comply with the applicable provisions of chapter 328, including part VII, which relates to prescription drug wholesalers. Any provisions to the contrary notwithstanding, all activities conducted by an organization under this chapter involving the distribution of prescription drugs to persons other than a consumer or patient shall be included within the definition of "wholesale distribution" as defined by section 328-112."

SECTION 3. This Act shall take effect upon its approval.

(Approved July 2, 1997.)