

ACT 159

S.B. NO. 244

A Bill for an Act Relating to Food Donation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that more than ten per cent of Hawaii residents, including tens of thousands of children and seniors, are food insecure and receive food assistance through nonprofit organizations and government programs. Despite high levels of food insecurity, Hawaii businesses and residents discard more than 237,000 tons of food waste per year.

The legislature further finds that approximately twenty-six per cent of food grown in or imported to Hawaii is thrown away, amounting to approximately \$1,000,000,000 in annual food waste. Worldwide, an estimated one-third of the food raised or prepared goes to waste, despite more than eight hundred million people experiencing hunger.

The legislature recognizes that food production is a direct contributor to local and global climate change. Food production requires energy, fertilizer, irrigation, livestock feed, and other resources that contribute to greenhouse gas emissions and add pollutants to the environment. Food waste entering landfills creates methane gas, a greenhouse gas that is eighty-four times more potent than carbon dioxide. Worldwide, wasted food accounts for approximately eight per cent of all human-based greenhouse gas emissions.

The Bill Emerson Good Samaritan Food Donation Act was passed by the United States Congress in 1996 to protect good-faith food donors from civil and criminal liability and to encourage the donation of food that would otherwise go to waste. Despite these protections, much of the wholesome surplus food in Hawaii and in other states is discarded instead of donated. A California survey found that forty-four per cent of manufacturers, forty-one per cent of restaurants, and twenty-five per cent of retailers identified fear of liability as their primary barrier to donating surplus food, in spite of existing liability protections.

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

- (1) Clarifying and expanding liability protections for good-faith food donors; and
- (2) Allowing the donation of expired food when the donor makes a good-faith judgment that the food is unspoiled.

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

“~~§~~145D-2~~”~~ Exceptions to liability. (a) Any donor of food products, who in good faith donates the food for the use or distribution by a charitable, religious, or nonprofit organization to needy persons shall not be liable for any civil damages or criminal penalties for any injuries or illnesses, including~~[-]~~ but not limited to injuries or illnesses resulting from the nature, age, condition, packaging, or handling of the donated food products, except for ~~[such]~~ damages ~~[as may]~~ that result from the donor’s gross negligence or wanton acts or omissions.

(b) A charitable, religious, or nonprofit organization ~~[which in good faith receives]~~ that:

- (1) Receives food~~[-]~~ pursuant to subsection (a) that is apparently fit for human consumption~~[-]~~; and ~~[distributes it]~~
- (2) Distributes the food in good faith to needy persons at no charge, shall not be liable for any civil damages or criminal penalties resulting from the condition of the food unless an injury or illness results from its gross negligence, or wanton acts or omissions.

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

(d) The exceptions to liability specified in subsection (a) shall include:

- (1) The donation of perishable or nonperishable food that has exceeded the labeled shelf life date recommended by the manufacturer; and
- (2) The donation of farm produce; provided that the good-faith donor or distributor reasonably believes that the food is fit for human consumption.

(e) For the purposes of this section:

“Donor” means any individual, food vendor, food manufacturer, food distributor, grocery or convenience store, charitable or nonprofit organization, or government agency that donates food to needy persons where the food in question has been prepared and packaged in a facility meeting all relevant food safety guidelines, certifications, and requirements and has passed all food safety inspections.

“Farm produce” means all agricultural, horticultural, and vegetable produce of the soil, but does not include poultry, poultry products, livestock and livestock products, aquaculture and aquaculture products, and timber or timber products.”

SECTION 3. Section 663-10.6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

(b) Any ~~[person]~~ donor who donates goods, ~~[food,]~~ materials, or services to a charitable or nonprofit organization described in subsection (a) shall be exempt from civil liability for injuries and damages resulting from the donation, except for gross negligence or wanton acts or omissions.”

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved July 1, 2021.)