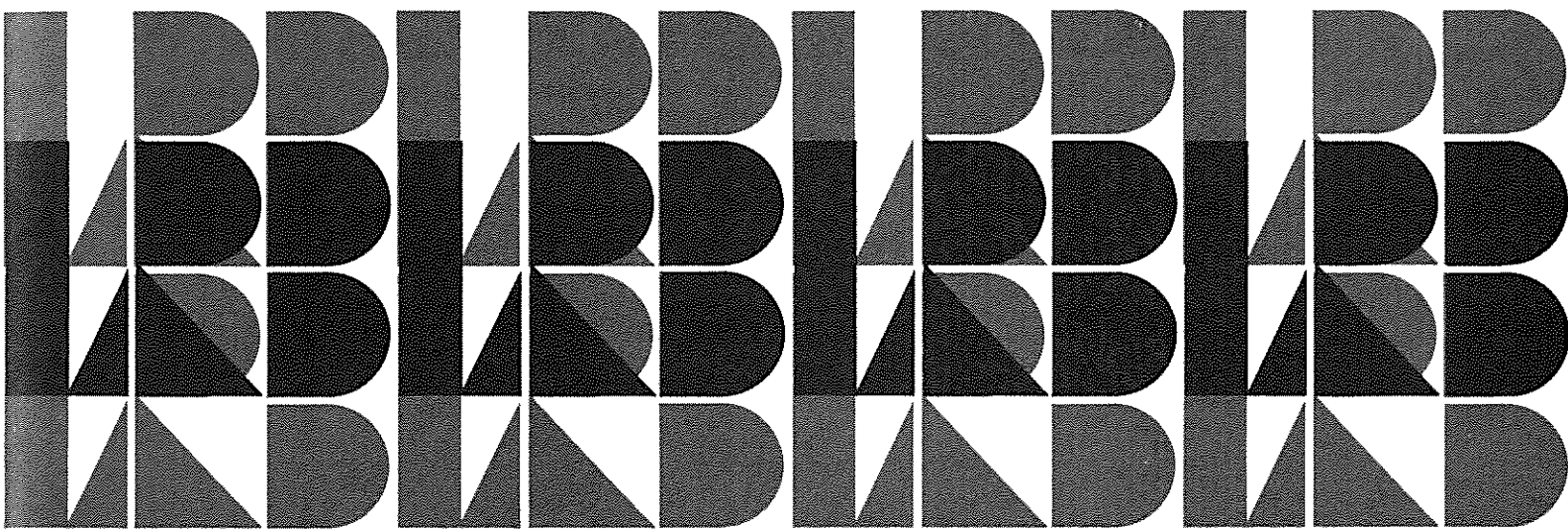


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# GOOD SAMARITAN FOOD DONATION STATUTES



LEGISLATIVE REFERENCE BUREAU / STATE OF HAWAII

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STATE OF HAWAII

GOOD SAMARITAN  
FOOD DONATION STATUTES

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Legislative Reference Bureau.  
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## FOREWORD

Not since the inception of sunset laws which began its spread from the mid-1970's has any legislation caught the attention of so many state legislatures in such a short period of time as good samaritan food donation legislation. First enacted in 1979, this concept has since been adopted by a total of twenty-four states as of the latter part of 1981.

Impetus for this legislation appears to have been given by such entities as Second Harvest, a national food bank network which distributes surplus inventories from national and multi-national food sources to a number of surplus food banks.

This report traces the history of the good samaritan concept, describes the provisions contained in the enacted good samaritan food donation statutes, and recommends provisions to be included if a statute is adopted in Hawaii.

We express sincere thanks to the government and private agencies who responded to our questionnaire and provided other pertinent materials and information.

It is hoped that the information provided herein will assist the Legislature in learning about and understanding the area of good samaritan food donation legislation, so that if Hawaii decides to adopt such a law, it will be as the result of an informed and reasoned choice.

Samuel B. K. Chang  
Director

October 1981

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CHAPTER 1  
INTRODUCTION

This is a report of a survey and study of other states' good samaritan statutes with particular focus upon their scope, and an analysis of the legal aspects of such statutes. It was conducted in response to H.R. No. 456, H.D. 1, adopted by the House of Representatives of the Eleventh Legislature of the State of Hawaii during its 1981 Regular Session.

**A. Objectives of the Study**

The objectives of the study were to:

- (1) Ascertain which states have enacted good samaritan and associated laws.
- (2) Analyze the statutes in terms of their scope and legal ramifications.
- (3) Identify and discuss the various components a good samaritan food donation statute could include if adopted for Hawaii.

**B. Study Methodology**

The preparation of the report encompassed approximately one technical person engaging in research activity from June through September, a period of four months. The principal data gathering activities consisted of the following:

- (1) Review of the literature including law review and other articles and legislation and attendant documents introduced or enacted in the United States Congress and the several states;
- (2) Survey by questionnaire of the several states on the enactment or proposed introduction of a good samaritan food donation statute;
- (3) Correspondence with organizations known to advocate enactment of good samaritan food donation statutes;
- (4) Review and examination of the Hawaii Revised Statutes and Hawaii case law on the concepts associated with a good samaritan law; and
- (5) Oral inquiries with government officials on the possible ramifications on their existing programs if a good samaritan food donation statute were enacted.

### C. Organization of the Report

The report is presented in four chapters and four appendices.

Chapter 1 presents an introduction to the study, including the objectives and methodology of the study, and the organization of the report.

Chapter 2 examines the evolution of the good samaritan concept including its Biblical beginnings, its common law development, and its statutory appearance in emergency medical aid statutes.

Chapter 3 presents the characteristics of good samaritan food donation statutes which have recently been enacted by almost one-half of the several states. The characteristics examined include type of food, possible donors, good faith, gleaners, possible donees, functions of the donee entities, the role of the government, and the degree of care required.

Chapter 4 presents findings and recommends the inclusion of certain provisions if a good samaritan food donation statute is adopted in Hawaii.

## CHAPTER 2

### THE GOOD SAMARITAN CONCEPT

#### A. Origins of the Concept

The good samaritan concept is an ancient one and may be traced to Biblical times.<sup>1</sup>

A certain man went down from Jerusalem to Jericho, and fell among robbers, who also stripped him and having wounded him went away leaving him half dead. And it chanced that a certain priest went down the same way; and seeing him, passed by. But a certain Samaritan being on his journey, came near him; and seeing him was moved with compassion.

Under the common law, a general rule developed whereby no legal obligation exists for one person to come to the aid of another human being who is in danger. Therefore, under the common law there is no duty on the part of a physician to come to the aid of a person who is dying and who, by the physician's intervention, might be saved. Likewise, an adult is under no legal duty to prevent a neighbor's child from playing with a dangerous explosive, or to remove a rock from a highway where it is a hazard to traffic, or an obstruction from a place where it blocks a fire engine on its way to save a house. Such failures to act are regarded merely as nonfeasance.<sup>2</sup>

When a person undertakes to do an act or perform a service for another, however, that person has the duty to exercise care, and is liable for injury resulting from failure to do so, although the undertaking was a purely voluntary one<sup>3</sup> and there was no obligation to do such act or perform such service,<sup>4</sup> or although it was completely gratuitous.<sup>5</sup>

This duty to exercise care exposes the good samaritan to liability for damages. On the other hand, the individual who looked the other way is protected from any lawsuit.

#### B. Types of Good Samaritan Statutes

To foster a more humanitarian outlook and to protect and thereby encourage good samaritans, all fifty states and the District of Columbia have adopted some form of a good samaritan statute. The thrust of these statutes is to exempt the volunteer from tort liability for ordinary negligence in rendering emergency aid to one in peril.<sup>6</sup>

The underlying rationale for these statutes is a desire to accommodate the common law's refusal to recognize a legal duty of a bystander to assist a stranger in peril with the requirement that once voluntary aid has begun, reasonable care must be exercised. The good samaritan statutes are premised

on the belief that by removing the fear of liability for negligence, doctors, nurses, and laypersons will be encouraged to aid persons who are in need of assistance.<sup>7</sup> These emergency assistance statutes focus primarily on the rendering of medical or first aid by chance bystanders.

Hawaii enacted its first good samaritan statute in 1969. This statute protects any person from tort liability for ordinary negligence in rendering emergency care at the scene of an accident or emergency.<sup>8</sup> In 1973, the law relating to boating accidents was amended by adding a provision to exempt any person from tort liability for ordinary negligence in rendering assistance at the scene of a boating accident.<sup>9</sup>

Generally, good samaritan statutes concerning emergency medical aid include the following elements:

- (1) The act must be voluntary (there is no duty to help);
- (2) The volunteer must aid someone in need (emergency situation);
- (3) The volunteer must act in good faith;
- (4) The volunteer must act gratuitously (no compensation or expectation of compensation); and
- (5) The volunteer is qualifiedly immune (may be liable in tort if grossly negligent, reckless, wanton, or wilful).

Several legal commentators have recognized areas of deficiency in the emergency aid good samaritan statutes. Certain of these problem areas may be analogized to similar elements found in food surplus good samaritan statutes.

The degree of misconduct protected in paragraphs (3) and (5) above appears to be particularly important:<sup>10</sup>

Most of the current good-samaritan statutes use the phrase "good-faith" in characterizing the nature of the conduct that will be immune from civil liability. In attempting to apply these statutes, a court might well wonder whether the legislature intended to exempt all misconduct except that accompanied by an intention to inflict harm, or whether it meant to protect only misconduct amounting to ordinary negligence. A further possibility involves the drawing of lines somewhere along the hazy and questionable distinctions between gross negligence, wantonness, and wilful misconduct. A definition concerning the degree of misconduct protected from liability by good-samaritan statutes is a basic and extremely important requirement that has, in the majority of the acts, been neglected.

### C. Federal Aid to the Needy

The good samaritan concept as applied to food donations links what has been discussed in the prior section on the voluntary furnishing of assistance to one in need to specifically facilitate the furnishing of food to the needy.

Government involvement in distribution of food to the needy first occurred in the form of surplus food programs during the depression years of the 1930's. The surplus food programs steadily expanded between 1936 and 1941, but came to a halt during World War II as the surplus disappeared and wartime rationing was instituted.

After the war, the federal Department of Agriculture once again undertook programs of donating surplus food for state distribution to needy persons and institutions who qualified. The Agricultural Act of 1949 authorized the Commodity Credit Corporation:<sup>11</sup>

...to donate such [surplus] commodities to the Bureau of Indian Affairs and to such State, Federal or private agencies as may be designated by the proper State or Federal authority and approved the Secretary [of Agriculture], for use in the United States in non-profit school-lunch programs, in nonprofit summer camps for children, in the assistance of needy persons, and in charitable institutions, including hospitals, to the extent that needy persons are served...

## CHAPTER 3

### THE GOOD SAMARITAN CONCEPT AS APPLIED TO FOOD DONATIONS

#### A. A Recent and Growing Trend

Since 1979, twenty-four states<sup>1</sup> have enacted various forms of good samaritan food donation statutes. The reasons most often cited for the adoption of the statutes were to aid the needy (thirteen states)<sup>2</sup> and to promote non-wastage of surplus goods (twelve states).<sup>3</sup> Other reasons for the passage of the laws included protection of the donor from tort liability<sup>4</sup> and the provision of tax advantages to the donor.<sup>5</sup>

#### B. Characteristics of Good Samaritan Food Donation Laws

##### 1. Type of Food.

Thirteen of the states which have enacted good samaritan food donation statutes apply the law to "perishable food".<sup>6</sup> Maine's definition of "perishable food" is representative.<sup>7</sup>

"Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. It includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.

Seven states<sup>8</sup> apply the law to "canned food" which is typically defined as "any food commercially processed and prepared for human consumption."<sup>9</sup> New York's definition is more specific and expressly excludes canned goods that are rusted, leaking, swollen, or otherwise defective.<sup>10</sup> Texas' definition of "apparently wholesome food" specifically excludes canned goods which are leaking, swollen, dented on a seam, or no longer airtight.<sup>11</sup>

Six states do not specify what kind of food is included under the statutes. The word "food" or words "item of food" are used without definition.<sup>12</sup> One state uses the word "food" and defines it as "any item which may be ingested as a normal part of the human diet".<sup>13</sup>

Two states apply the law to "prepared foods",<sup>14</sup> and one state applies the law to "nonperishable food".<sup>15</sup>

Two states apply the law to "agricultural products".<sup>16</sup>

Finally, there are four states which have unique names for their categories of food and define what is included in the categories: "Apparently

wholesome food";<sup>17</sup> "Distressed food";<sup>18</sup> "Farm products";<sup>19</sup> and "Raw agricultural products".<sup>20</sup>

An examination of the definitions given for each category of food reveals a broad range of coverage. Generally, any food which is normally consumed by humans and is apparently fit for human consumption at the time it is donated is a proper donation.

Many states also provide that food which is not readily marketable due to appearance, freshness, grade, surplus supply, or other conditions is also covered under the statute. Thus, stated another way, any item of food which reasonably appears to be fit for human consumption is a proper donation.

## 2. Possible Donors.

Generally, the categories of possible donors are broad. There are chiefly three classes of donors: those which include any person, those which include only individuals or entities in food-related industries, and a third class which is a combination of the first two.

The broadest possible category, found in nine states, allows donations by any "donor" without describing who may be a donor.<sup>21</sup>

Three states allow donations by any "person", without specifically defining the term in the good samaritan statute.<sup>22</sup>

Two states allow donations by any individual, corporation, partnership, or association.<sup>23</sup> Other states allow donations by any processor, distributor, or seller;<sup>24</sup> by any producer, processor, seller, or distributor;<sup>25</sup> by any food manufacturer, processor, person, or distributor;<sup>26</sup> or by any person, including but not limited to, any farmer, processor, distributor, seller, wholesaler, or retailer.<sup>27</sup>

Four states allow donations by any person, including but not limited to any farmer, processor, distributor, wholesaler, or retailer,<sup>28</sup> while two states allow donations by any farmer, processor, distributor, wholesaler, or retailer.<sup>29</sup>

## 3. Good Faith.

A large majority (eighteen out of twenty-four) of the states require the donor to give in good faith.<sup>30</sup> The other states are silent on the manner of donation.<sup>31</sup>

None of the eighteen states, however, define the requirement of "good faith". Good faith is open to two conflicting interpretations. It can either refer exclusively to a subjective state of mind and honesty of purpose notwithstanding facts indicating misconduct,<sup>32</sup> or it can require objective standards of behavior to avoid granting a "carte blanche to recklessness or to wholly unnecessary disregard of life, limb and property".<sup>33</sup>

This deficiency in good samaritan food donor statutes reflects the identical deficiency found in good samaritan statutes relating to emergency medical care. According to one commentator, "[t]he statutory conditions placed upon the grant of immunity [in the emergency-care statutes] are vague and ill-defined; they leave a great many factual questions to be decided by a jury, thereby encouraging the emergency patients to bring actions for malpractice."<sup>34</sup>

At common law, the general rule was that guilty knowledge or criminal intent was an essential element of the criminal offense of selling unwholesome food for human consumption, so that, if the accused did not know or could not have known by the exercise of reasonable care that the food was unwholesome, and acted in good faith, the accused could not be convicted.<sup>35</sup>

Six states protect the donee charitable or nonprofit organization which in good faith receive and distributes, free of charge, food which appears to be fit for human consumption at the time it is distributed, from civil or criminal liability arising from an injury due to the condition of the food.<sup>36</sup>

Two states protect the donee charitable or nonprofit organization only from civil liability;<sup>37</sup> one affords protection from any injury;<sup>38</sup> and one protects only against civil or criminal liability for violation of unfair trade practices.<sup>39</sup>

#### 4. Gleaners.

A gleaner is a person who harvests for free distribution, an agricultural crop or perishable food that has been donated by the owner. Florida, Idaho, Montana, New Mexico, Oregon, South Dakota, Tennessee, and Utah have provisions which exempt gleaners from criminal penalty or civil damages arising from the condition of food which is apparently fit for human consumption, and is distributed free of charge.

#### 5. Possible Donees.

All but one of the twenty-four states require donees to be some form of charitable organization, nonprofit organization, or both.

Only Virginia requires that the donee be a food bank which is exempt from tax under federal statute and which maintains a food storage facility certified by the State Department of Agriculture, and where required by local ordinance, by the State Department of Health.

Eleven states require the donee to be a bona fide charitable or nonprofit organization.<sup>40</sup>

Two states require the donee to be a charitable or nonprofit organization;<sup>41</sup> two require it to be a nonprofit charitable organization;<sup>42</sup> two require it to be a charitable entity;<sup>43</sup> six require it to be a nonprofit organization.<sup>44</sup>

Only nine states define the donee classification.<sup>45</sup> The two major requirements are organization and operation for a charitable purpose, and exemption from federal taxes, state taxes, or both.

## 6. Functions of the Donee Entities.

In the majority of states, the charitable or nonprofit organization acts as an intermediary who distributes the food to the needy recipients. Only seven states allow the charitable or nonprofit organization to use the food itself.<sup>46</sup> One state expressly prohibits the use of consumption of donated food by the donee organization.<sup>47</sup> Eleven states simply allow the donee organization to distribute the food;<sup>48</sup> nine states specify that the donee organization distribute the food free of charge.<sup>49</sup>

One state allows the donee organization to distribute the food at a nominal cost;<sup>50</sup> while one prohibits the sale or transfer of food out of state.<sup>51</sup>

Three states prohibit offers to sell as well as the sale of food.<sup>52</sup> Of these three states, one provides that such action is a misdemeanor.<sup>53</sup>

Two states require the donee organization label donated food. Nebraska's statute requires the donee to affix a label upon the food or the packaging of the food stating that the food is not for resale and stating that pursuant to state law, the donee shall not be liable in any civil action based on strict liability in tort for any injury or death because of the condition of such food, and that violation of the labeling requirement is a misdemeanor. Virginia's statute requires that the donee clearly affix to each item of food a stamp or label containing the word "donated" or the words "not for resale".

One state is silent as to what the donee can and cannot do.<sup>54</sup>

## 7. The Role of the Government.

The topic of governmental regulation regarding food donations may be divided into three categories: broad provisions reserving governmental authority to act, narrow provisions prescribing or allowing specific activities, and the absence of any provision relating to the role of governmental agencies regarding food donations.

The majority of states with good samaritan food donor statutes do not charge governmental agencies with specific duties or responsibilities regarding food donations.

Colorado's provision is representative of the thirteen states<sup>55</sup> which reserve the authority of a governmental agency to act.<sup>56</sup>

Nothing in this section is intended to restrict the authority of any appropriate agency to regulate or ban the use of such donated foods for human consumption.

Two states reserve governmental authority in specific agencies. Arizona's statute provides that the director of health may enforce the food

donation statute in any way not specifically prohibited. Nebraska's statute provides that the director of agriculture may adopt rules and regulations necessary to carry out the food donation statute.

Six states have enacted narrower provisions which identify specific governmental powers, duties, or both.<sup>57</sup>

**California.** California's statute provides that any county "may establish and publicize the availability of, a surplus food collection and distribution system, consisting of an inventory of storage facilities and refrigeration equipment that are available in the county for such purposes and a 24-hour information and food collection center for receiving and transmitting information as to where agricultural products are available or what organization desires or needs donated agricultural products, and for collecting, receiving, handling, storing, and distributing donated agricultural products."<sup>58</sup>

California's statute also provides that in the operation of an information and food collection center, any county (through its board of supervisors) shall provide for the screening of donees to assure that agricultural products which are distributed at public expense are not donated to organizations that are capable of purchasing them.<sup>59</sup>

Finally, California's statute allows the county health officers to inspect agricultural products, upon request of the donee, prior to delivery by the donor to determine which products may be used as food for human beings.<sup>60</sup>

**Georgia.** Georgia's statute provides that the department of agriculture shall maintain an information and referral service for persons and organizations which have notified the department of their desire to donate food to nonprofit organizations. The statute also authorizes appropriate state and local departments and agencies to inspect donated food for wholesomeness and allows them to establish procedures for the handling of the food items.<sup>61</sup>

**Maryland.** Maryland's statute allows the state departments of agriculture and health and mental hygiene to inspect donated food for wholesomeness and to establish procedures for handling of food.<sup>62</sup>

**North Carolina.** North Carolina's statute allows the department of agriculture to maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization.<sup>63</sup> It also authorizes the department to inspect food for compliance with state regulations, and allows the department to establish procedures for handling of food.<sup>64</sup> Finally, the statute provides that the department may apply to state court for injunctive relief restraining the violation of the food donor law.<sup>65</sup>

**Utah.** Utah's statute is similar to California's, although not as elaborate. Like California, Utah provides that any county may establish and publicize the availability of a surplus food collection and distribution system and may provide information to possible donees and donors;<sup>66</sup> also, county health officers may inspect donated agricultural products upon the request of

the donee nonprofit charitable organization to determine the product's fitness for human consumption.<sup>67</sup>

**Washington.** Washington's statutory provisions relating to governmental regulations are almost identical to those of Georgia.<sup>68</sup>

Three states have no provisions relating to the role of governmental agencies regarding food donations.<sup>69</sup>

## 8. The Degree of Care Required.

There are many variations in the good samaritan food donor statutes as to what degree of care is required in case there is any injury or death due to the condition of the donated food.

**Donor Liability.** Eight states preclude the donor's immunity from civil liability or civil and criminal liability when there has been gross negligence, recklessness, or intentional misconduct.<sup>70</sup> Three states vary this standard by using the phrase "intentional conduct" rather than "intentional misconduct".<sup>71</sup>

Virginia precludes immunity where there has been gross negligence or an intentional act; California, where there has been gross negligence or a wilful act; and Maryland, where there has been gross negligence or wilful and wanton misconduct.

Colorado precludes immunity where there has been wilful, wanton, or reckless acts; Indiana, where there has been intentional, knowing, or reckless misconduct.

Three states apply an ordinary negligence standard. Missouri precludes immunity where there has been negligent, reckless, or intentional misconduct; New Mexico and Tennessee, where there has been negligent, reckless, or intentional conduct.

Two states sidestep the traditional terms used in tort law to describe different standards of conduct. New York provides immunity unless the donor had actual or constructive knowledge that the food was adulterated, tainted, contaminated or harmful, and grants immunity so long as the donor made a reasonable inspection at the time of the donation and found the food apparently fit for human consumption. Likewise, North Carolina provides immunity unless the donor knew or had reasonable grounds to believe that the food was adulterated at the time of making the gift.

Two states, Georgia and Washington, appear to grant absolute immunity from civil or criminal liability so long as the donor acted with good faith.

**Gleaner Liability.** All eight states with gleaner provisions protect the gleaner from liability under the same standards that are applied to donors.

**Donee Liability.** Six states provide that the donee charitable or nonprofit organization is immune from civil or criminal liability unless there

has been gross negligence, recklessness, or intentional conduct or misconduct.<sup>72</sup>

One state provides immunity unless there has been gross negligence or intentional misconduct.<sup>72</sup>

Three states provide immunity unless there has been negligent, reckless, or intentional conduct or misconduct.<sup>74</sup>

Only two states, Indiana and Texas, define the degree of misconduct protected against. Indiana confers immunity from civil damages upon good faith donors unless the damages are the result of intentional, knowing, or reckless misconduct as defined in Title 35, Criminal Law and Procedure, of the Indiana Code:<sup>75</sup>

(a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

Texas precludes donor immunity from civil and criminal liability where there has been gross negligence, recklessness, or intentional misconduct. Only "intentional misconduct" is defined by the statute, as conduct which the person acting knows is harmful to the health or well-being of another person.<sup>76</sup> Another section of the law states "[t]his act does not create any liability."<sup>77</sup>

### C. PROVISIONS OF GOOD SAMARITAN FOOD DONATION STATUTES

State*	Type of Food	Donor	Donor Must Act in Good Faith	Donor Must Act Without Negligence	Donee* Functions	Government Activities Required	Gleaner Provisions
Arizona	1, 9	a	X	A	1		
Arkansas	1, 2	d	X	A	1		
California	4	b		A	3		
Colorado	3	d		A	1, 3		
Florida	1, 2	d	X	A	1		X
Georgia	3	a, b	X	A	1, 3	*	
Idaho	1, 10	b	X	A	1		X
Indiana	3	a, c	X	A	1		
Maine	1, 2	d	X	A	1		
Maryland	3	a	X	A	1, 3		
Minnesota	5	a, b		A	1		
Missouri	1, 2	d	X	B	1		
Montana	1, 2, 9	a, b	X	A	1		X
Nebraska	1, 6, 9	a	X	A	1, 2		
New Mexico	1, 2	d	X	B	1		X
New York	1, 2, 8	d	X	C	1		
North Carolina	3	a, b		D	1, 3		
Oregon	1	d	X	A	1		X
South Dakota	1	d	X	A	1		X
Tennessee	1	d	X	B	1		X
Texas	7	a, c		A	1		
Utah	4	b	X	A	1, 2, 3		X
Virginia	3	b		A	1, 2, 3	*	
Washington	3	a, b	X		1, 3		

\*Statutory Citation (see chp. 3, fn. 1)

1. Perishable
2. Canned
3. "Food" or "item of food"
4. Agricultural product
5. Distressed food
6. Raw agricultural product
7. Apparently whole-some food
8. Farm products
9. Prepared food
10. Non-perishable food

- a. Any person
- b. Merchant, farmer, or both
- c. Corporation, partnership, or other association
- d. No specific provision ("Donor")

- A. Without gross negligence or other form of aggravated negligence or intentional misconduct.
- B. Without ordinary negligence or intentional misconduct.
- C. Immune from civil or criminal liability unless had actual or constructive knowledge that food is adulterated or harmful.
- D. Immune from civil or criminal liability unless knew or had reasonable grounds to know food was adulterated when given.

- \*All states require the donee to be a charitable or non-profit organization, except Virginia, which requires a donee food bank.
1. Distribution
  2. Label food before distribution
  3. Use

\*Information and referral service

## CHAPTER 4

### FINDINGS AND RECOMMENDATIONS

#### A. Findings

##### 1. Because Good Samaritan Food Donation Statutes Are So Recent of Adoption Their Effectiveness Has Not Yet Been Determined.

The good samaritan concept as applied to food donations is relatively new. The first good samaritan food donation statutes were enacted in 1979. Consequently, the effectiveness and extensiveness of use of such statutes is yet to be documented.

Our survey questionnaire, a copy of which is contained in the Appendix, revealed that it is too early to tell how extensively the good samaritan food donation statutes are being utilized.

California and Colorado use the laws "moderately", while Virginia and Washington use the laws "rarely". According to the Washington State Department of Agriculture, which maintains an information and referral service for persons and organizations seeking information about the good samaritan food donation program, very few requests have been received in the two years the law has been in effect, and no requests for information have been received since July, 1979.

One state, Oregon, reports that the law is being used "extensively". According to an Oregon newspaper article, a community gleaning project initiated in 1980 benefited 352 low-income families, handicapped persons, and senior citizens. The project is being implemented again in 1981. The low-income families glean local farmers' fields after harvest and share the yield with the handicapped and senior citizens. They are taught by the Oregon State University Extension Service how to preserve their harvest.<sup>1</sup>

##### 2. The legal protection of a person rendering good faith, gratuitous aid to another in need is not new, except as applied to food donations.

The good samaritan concept dates back to Biblical times. Its statutory history began in 1959, when California passed the first good samaritan statute. This statute relieved certain medical personnel from civil liability for treatment rendered at the scene of an emergency.

Since 1979, good samaritan food donation statutes have been enacted in twenty-four states.

Good samaritan food donation statutes may be compared to good samaritan emergency aid statutes. These two types of good samaritan statutes are similar in that generally, they both protect a person who renders good faith voluntary aid to someone in need from ordinary negligence. A basic difference is that although the food donation is a gratuitous one, made without compensation or expectation of compensation, the donor may enjoy the

benefit of an income tax deduction for a charitable contribution.<sup>2</sup> There appears to be no such ancillary benefit to one who renders emergency aid.

3. The phrase "good faith" and the varying degrees of care are not defined by statute, nor is it possible to do so.

The phrase "good faith" is not defined by statute in any of the other states which have enacted good samaritan food donation statutes. Nor is it defined in Hawaii's two good samaritan statutes, although the emergency aid statute provides that:<sup>3</sup>

[f]or the purpose of this section, "good faith" is used to include, but is not limited to, a reasonable opinion that the immediacy of the situation is such that the rendering of care should not be postponed.

However, such a qualification would be inapplicable in the case of donations of food.

Some commentators have criticized the good samaritan emergency aid statutes because of the absence of a definition of good faith since the concept can refer to either a subjective state of mind or an objective standard of behavior.<sup>4</sup>

Likewise, the statutes have been criticized for not defining such terms as "gross negligence", "wilful and wanton misconduct", and "recklessness".

The idea of "degrees of negligence" has been rejected at common law by nearly all courts, except in the case of bailments, as a "vague and impracticable" distinction.<sup>5</sup> However, legislative bodies continue to pass statutes utilizing various degrees of negligence:<sup>6</sup>

Nevertheless, the idea of degrees of negligence, or at least some kind of aggravated negligence which will result in liability where ordinary negligence will not, has been adopted in a number of statutes, which have forced the courts, however reluctantly, to attempt to do again, what they have declared that they could not do, and to make such efforts as are possible to supply a definition for the undefinable.

In construing Hawaii's negligent homicide statute, the Supreme Court of Hawaii, in State v. Bunn,<sup>7</sup> found that an act done "in a grossly negligent manner" is encompassed within the meaning of an act done "in a careless, reckless or negligent manner, but not wilfully or wantonly".<sup>8</sup> The court found that gross negligence is an aggravated form of negligence, which differs from ordinary negligency only in degree and not in kind, and that it falls short of recklessness which is not wilful or wanton.<sup>9</sup>

Most of the statutes which attempt to codify the various degrees of negligence are automobile guest statutes. These statutes provide that the driver of an automobile is liable to one who is riding as a gratuitous guest,

only for some form of aggravated misconduct.<sup>10</sup> The underlying theory of these acts is that one who receives a gratuitous favor, the free ride, has no right to demand that the driver exercise ordinary care so as not to cause injury to the rider.<sup>11</sup>

This common element of a gratuitous act links the automobile guest statutes to good samaritan food donation statutes. Perhaps the good samaritan statutes are an outgrowth of the automobile guest statutes, and encompass the same rationale; that is, one who receives free food should not expect the donor to exercise ordinary care so as to prevent injury to the ultimate donee.

## B. Recommendations

If Hawaii enacts a good samaritan food donation statute, the provisions of the statute should reflect the purposes the statute is to accomplish. The means to accomplish the objectives of the statute should be reasonable.

Other states which have enacted such statutes have indicated that the reasons for passage of the laws were to aid the needy, promote non-wastage of surplus goods, protect the donor from tort liability, and provide tax advantages to the donor.

Under other states' statutory provisions as a basis, the Bureau recommends that if a good samaritan food donation statute is adopted in Hawaii, it include the following provisions:

### 1. A Provision Defining What Types of Food are Covered by the Statute.

Under section 328-1, Hawaii Revised Statutes, relating to the Hawaii Food, Drug, and Cosmetic Act, food is defined as:<sup>12</sup>

...(A) articles used for food or drink for man or animals,  
(B) chewing gum, and (C) articles used for components of  
any such article;

This definition of food would not be suitable for the purposes of a good samaritan food donation statute since it includes food or drink used for animals.

A definition of food limited to that which is normally consumed by humans would be more consistent with the focus of the statute. The definition of food should also specifically exclude food which is apparently unfit for human consumption, to protect the ultimate consumer from adulterated foods. This could be done by expressly excluding adulterated food items.

New York's definitions of food which may be donated appears to meet all of the desirable attributes discussed above:<sup>13</sup>

1. "Perishable foods" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen.

2. "Canned foods" means any canned food that has been hermetically sealed and commercially processed and prepared for human consumption, including canned or preserved fruits, vegetables or other articles of food. There is specifically excluded for purposes of this section canned goods that are rusted, leaking, swollen or canned goods that are defective or cannot be otherwise offered for sale to members of the general public.

3. "Farm products" means any agricultural, dairy or horticultural product or any product designed or intended for human consumption or prepared principally from an agricultural, dairy or horticultural product.

## **2. A Provision Allowing a Donor to be "Any Person, Corporation, Partnership, Association or Other Organization".**

Hawaii's two good samaritan statutes allow "any person" to render assistance at the scene of a boating accident or emergency.<sup>14</sup>

This broad category of "any person" could be utilized in a good samaritan food donation statute, since there is no rational basis for limiting the class of donors. No special qualifications should be required other than the desire to give, so long as the statute provides sufficient safeguards, such as the requirement of good faith and the absence of gross negligence.

Good samaritan food donation statutes, however, differ from the emergency aid statutes since normally, only human beings can render emergency assistance to other human beings, whereas any entity has the capacity to donate food. Because of this difference, it would be desirable to include as donors, any corporation, partnership, association, or other organization.

Allowing any person, corporation, partnership, association, or other organization to donate food best accomplishes the objectives of aiding the needy and promoting the non-wastage of surplus food by including under the statute the broadest possible category of donors.

## **3. Provisions Requiring the Donee to be a Charitable Organization; Requiring Certain Labeling of Donated Food Before Distribution.**

Every state with a good samaritan food donation statute provides that the donor give the food to a charitable or nonprofit organization, or to a food bank. Normally, the donated food is then channeled through the organization

to the needy recipients. The charitable organization thus usually acts merely as a conduit through which the donated food must pass.<sup>15</sup>

It appears desirable to funnel the food donations through a charitable organization for several reasons. First, the fair market value of the food donated may be deducted from the donor's income as a charitable deduction. If food was given directly to the needy, the donation may not qualify for an income tax deduction as a charitable contribution. Moreover, the act of giving may present problems of proof. Donating food through a charitable organization thus accomplishes the objective of providing tax advantages to the donor, encourages individuals and other entities to donate and also sets up an administrative mechanism of sorts to confirm that donations were, in fact, made.

Second, the charitable organizations would have greater access to, and familiarity with, groups of people who are needy than an ordinary person or other entity would possess. This specialized knowledge of the charitable organizations should be used.

The charitable organization, for purposes of the good samaritan food donation statute, should be defined as one which is exempt from income taxation under the Internal Revenue Code, section 501(c). This will guarantee that the food is used for charitable purposes.

It may be desirable that the charitable organizations distributing the food should be required to label the food, indicating that the food (1) is donated and not for resale, and (2) was fit for human consumption at the time it left control of the charitable organization.

The first labeling requirement is desirable because it furthers the objective of aiding the needy by identifying the food as donated and providing visible identification that the donated food is not intended for resale. The second requirement affords some protection to the charitable organizations from claims that the food was adulterated.

A labeling requirement does not appear to be too onerous a burden upon the charitable organizations, considering that the labels would protect the needy as well as the organizations themselves.

#### **4. A Provision Reserving the Government's Authority to Regulate, Inspect, or Ban the Use of Donated Foods.**

A provision reserving the government's authority to regulate or ban the use of donated foods for human consumption is desirable. Such a provision will make it clear that the government's authority to act is not restricted or surrendered.

The department of health has the general charge, oversight, and care of the health and lives of the people of the State. The department of agriculture has the power and expertise of food inspection. Thus, it would be appropriate to name either or both of these departments in the statute. The provision might read as follows:

Nothing in this Act is intended to restrict the authority of the department of health or the department of agriculture of this State to regulate, inspect, or ban the use of such donated foods for human consumption.

**5. A Provision Requiring the State Department of Taxation to Monitor the Amount of Food Donated.**

A provision requiring the department of taxation to monitor the amount of food donated would serve the important function of determining how widespread the use of the law is and the magnitude of donations. This information can be later used to determine whether more tax breaks are needed to further encourage giving and to ascertain the possible tax revenue losses of doing so. The department of taxation is the most logical branch of government to handle the task since it has access to the information, or can most easily gather the information, since such donations can be deducted from income as charitable contributions.

**6. A Provision Requiring the Donor to Give in "Good Faith".**

The concept of good faith is synonymous with the concept of a good samaritan. The phrase "good faith" is traditionally used to describe that state of mind denoting honesty of purpose and freedom from intention to defraud.<sup>16</sup> It is an intangible and abstract quality with neither technical meaning nor statutory definition, which encompasses an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage.<sup>17</sup>

Thus, a good samaritan food donation statute should require the donor to give in good faith. This requirement would be consistent with Hawaii's other two good samaritan statutes which direct the actor to render aid in good faith.

Definition of the notion of "good faith" should be left to the courts. Given a set of facts, a court will determine whether a person acted in good faith in that particular circumstance.

It would be an insurmountable task to codify the totality of facts and circumstances which encompass a good faith act.

**7. A Provision Which Excepts From Tort Liability a Donor Who Acts Without "Gross Negligence or Wanton Acts or Omissions".**

Such a provision would be consistent with Hawaii's two existing good samaritan statutes relating to boating and other accidents and emergencies.

The Supreme Court of Hawaii, in Geremia v. State,<sup>18</sup> discussed the general principle of tort liability which requires that "one who gratuitously acts so as to expose another person to danger must observe ordinary care in so doing, notwithstanding that he would have been wholly free from obligation if he had refrained from acting."<sup>19</sup> In that case, two boys drowned in a

stream when its current suddenly increased. They had not seen the warning sign posted by the Kauai Fire Chief.

The court's following of this rule of tort law indicates that a donor might be liable for acts of ordinary negligence in the absence of a statute. Since good samaritan statutes aim to encourage the rendering of gratuitous aid, a greater degree of protection should be granted.

Definition of the phrase "gross negligence or wanton acts or omissions" should be left to the courts. As in the case of "good faith", a court can best determine whether a person was grossly negligent or wanton by examining the totality of facts and circumstances in a particular case.

## FOOTNOTES

### CHAPTER 2

1. Luke 10:30-31, 33.
2. Poole, "The Good Samaritan and the Law," 32 *Tenn. L. Rev.* 287, 288 (1965); citing PROSSER, *TORTS* 336 (3d ed. 1964).
3. 65 C.J.S. *Negligence*, sec. 4(4) (1966); citing *Blaber v. U.S.*, 332 F.2d 629 (1964).
4. *Ibid.*, citing *Salvati v. Salvati*, 123 N.Y.S.2d 678 (1953).
5. *Ibid.*, citing *U.S. v. Lawter*, 219 F.2d 559 (1955).
6. Wortley, "First Aid to Passengers: Good Samaritan Statutes and Contractual Releases from Liability," 31 *Sw. L. J.* 695, 703 (1977).
7. *Ibid.*
8. *Hawaii Rev. Stat.*, sec. 663-1.5.
9. 1973 Haw. Sess. Law, Act 125 (*Hawaii Rev. Stat.*, sec. 267-8).
10. Vilhauer, "Negligence--Medical Malpractice--Criticism of Existing Good-Samaritan Statutes," 42 *Or. L. Rev.* 328, 333-334 (1963).
11. South Dakota, Legislative Research Council, *Report to the 1964 South Dakota Legislature*, Volume III, November, 1963, p. 26.

### CHAPTER 3

1. Arizona, *Ariz. Rev. Stat.*, sec. 36-916; Arkansas, *Ark. Stat. Ann.*, secs. 82-998.1 - .3; California, *Cal. Food and Agric. Code*, secs. 58501-58508 (Deering); Colorado, *Colo. Rev. Stat.*, sec. 13-21-113; Florida, *Fla. Stat.*, sec. 768.136; Georgia, *Ga. Code Ann.*, sec. 105-1106; Idaho, *Idaho Code*, secs. 6-1301 - 1302; Indiana, *Ind. Code*, sec. 34-4-12.5; Maine, *Me. Rev. Stat.*, tit. 14, sec. 166; Maryland, *Md. Ann. Code*, art. 43, sec. 132C; Minnesota, *Minn. Stat.*, sec. 31.50; Missouri, 1981 *Mo. Laws* (H.B. No. 113); Montana, 1981 *Mont. Laws* (H.B. No. 220); Nebraska, L.B. No. 38 (1981); New Mexico, 1981 *N.M. Laws* (Chap. 100); New York, 1980 *N.Y. Laws* (Chap. 869); North Carolina, *N.C. Gen. Stat.*, secs. 99B-10, 106-21.2, 106-141.1; Oregon, *Or. Rev. Stat.*, sec. 30.890; South Dakota, *S.D. Compiled Laws Ann.*, secs. 39-4-22 - 25; Tennessee, *Tenn. Code Ann.*, secs. 52-1601 - 1605; Texas, 1981 *Tex. Gen. Laws* (H.B. No. 1629); Utah, 1981 *Utah Laws* (Chap. 10); Virginia, *Va. Code Ann.*, sec. 3.1-418.1; Washington, *Wash. Rev. Code*, sec. 69.04.385.
2. According to the results of our questionnaire: California, Colorado, Florida, Georgia, Maine, Minnesota, New Mexico, New York, North Carolina, Oregon, South Dakota, Virginia, Washington.
3. According to the results of our questionnaire: California, Colorado, Florida, Maine, Maryland, Minnesota, New York, North Carolina, Oregon, South Dakota, Virginia, Washington.
4. According to the results of our questionnaire: Nebraska, New Mexico, Texas, Washington.
5. According to the results of our questionnaire: California, Florida, Minnesota, North Carolina, Virginia.
6. Arizona, Arkansas, Florida, Idaho, Maine, Missouri, Montana, Nebraska, New Mexico, New York, Oregon, South Dakota, Tennessee.
7. *Me. Rev. Stat.* title 14, sec. 166(1)(B).
8. Arkansas, Florida, Maine, Missouri, Montana, New Mexico, New York.
9. *Me. Rev. Stat.* title 14, sec. 166(1)(A).
10. 1980 *N.Y. Laws* (Chap. 869, Art. 4-D, sec. 71-y(2)).
11. 1981 *Tex. Gen. Laws* (H.B. No. 1629).
12. Colorado, Georgia, Maryland, North Carolina, Virginia, Washington.
13. Indiana.
14. Arizona, Nebraska.
15. Idaho.
16. California, Utah.
17. Texas.
18. Minnesota.
19. New York.
20. Nebraska.
21. Arkansas, Florida, Maine, Missouri, New Mexico, New York, Oregon, South Dakota, Tennessee.
22. Arizona, Maryland, Nebraska.
23. Indiana, Texas.
24. California.
25. Utah.
26. Minnesota.
27. North Carolina.
28. Georgia, Idaho, Montana, Washington.
29. Colorado, Virginia.
30. Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Maine, Maryland, Missouri, Montana, Nebraska, New Mexico, New York, Oregon, South Dakota, Tennessee, Utah, Washington.
31. California, Colorado, Minnesota, North Carolina, Texas, Virginia.

32. "Good Samaritans and Liability for Medical Malpractice", 64 *Colum. L. Rev.* 1301 (1964), citing *Folotti v. Flemming*, 277 F.2d 864, 868 (2d Cir. 1960) (dismissing as unimportant that a more prudent course was possible); *Siano v. Helvering*, 13 F. Supp. 776, 780 (D.N.J. 1936) (contrasting the "subjective" and "objective" meanings for the term); *People v. Nunn*, 46 Cal. 2d 460, 468, 296 P.2d 813, 818 (1956).
33. *Ibid.*, citing *Jankowski v. Welch*, 135 N.J.L. 437, 440, 52 A.2d 771, 773 (1947); see *Field v. Serpico*, 24 N.J. Misc. 289, 49 A.2d 21 (Dist. Ct. 1946) (linking gross negligence with lack of good faith).
34. *Ibid.* at 1311-1312.
35. 35 AM. JUR. 2d 865, *Food*, sec. 77. *Intent as element of offense*, citing *Commonwealth ex rel. Allegheny County v. Weiss*, 139 Pa. 247, 21 A. 10 (1891).
36. Arizona, Missouri, Montana, New Mexico, Oregon, South Dakota.
37. Maine, Nebraska.
38. Minnesota.
39. Tennessee.
40. Arkansas, Florida, Idaho, Maine, Missouri, Montana, New Mexico, New York, Oregon, South Dakota, Tennessee.
41. Arizona, Nebraska.
42. California, Utah.
43. Indiana, Minnesota.
44. Colorado, Georgia, Maryland, North Carolina, Texas, Washington.
45. California, Colorado, Indiana, Minnesota, Missouri, New Mexico, New York, Texas, Utah.
46. California, Colorado, Georgia, Maryland, North Carolina, Virginia, Washington.
47. Utah.
48. Colorado, Georgia, Maryland, Missouri, Nebraska, New Mexico, New York, North Carolina, Oregon, Virginia, Washington.
49. Arizona, Arkansas, Florida, Idaho, Maine, Minnesota, South Dakota, Tennessee, Texas.
50. Arkansas.
51. California.
52. Colorado, Nebraska, Utah.
53. Nebraska.
54. Indiana.
55. Arkansas, Colorado, Florida, Idaho, Maine, Minnesota, Missouri, Montana, New Mexico, New York, Oregon, South Dakota, Tennessee.

56. *Colo. Rev. Stat.*, sec. 13-21-113(4).
57. California, Georgia, Maryland, North Carolina, Utah, Washington.
58. *Cal. Food and Agric. Code*, sec. 58503 (Deering).
59. *Ibid.* at 58508.
60. *Ibid.* at 58504.
61. *Ga. Code Ann.*, sec. 105-1106(c),(d).
62. *Md. Ann. Code*, art. 43, sec. 132C(c).
63. *N.C. Gen. Stat.*, sec. 106-21.2.
64. *Ibid.* at sec. 106-141.1(a).
65. *Ibid.* at sec. 106-141.1(b).
66. *Utah Code Ann.*, sec. 4-34-3.
67. *Ibid.* at sec. 4-34-4.
68. *Wash. Rev. Code*, sec. 69.04.385(3),(4).
69. Indiana, Texas, Virginia.
70. Arizona, Arkansas, Florida, Idaho, Maine, Minnesota, Nebraska, Texas.
71. Oregon, South Dakota, Utah.
72. Arizona, Maine, Minnesota, Oregon, South Dakota, Texas.
73. Montana.
74. Missouri, New Mexico, Tennessee.
75. *Ind. Code*, sec. 35-41-2-2.
76. 1981 *Tex. Gen. Laws* (H.B. No. 1629, sec. 2(3)).
77. *Ibid.* at sec. 3(c).

#### CHAPTER 4

1. Oregon Statesman-Journal, Salem, Oregon, May 27, 1981.
2. A charitable contribution is allowed for those who itemize deductions under I.R.C. secs. 41, 170, 218, 642, 664, 673, 1011; *Hawaii Rev. Stat.*, secs. 235-2.3, 235-7. For tax years beginning in 1982, for federal purposes individuals who do not itemize their personal deductions will be permitted to deduct a portion of their charitable contributions directly from gross income. Twenty-five per cent of the first \$100 of charitable contributions made during the tax year in question-- up to a maximum deduction of \$25 for each year.
3. *Hawaii Rev. Stat.*, sec. 663-1.5(c).
4. "Good Samaritans and Liability for Medical Malpractice", 64 *Colum. L. Rev.* 1301 (1964).
5. PROSSER, TORTS, sec. 34, p. 182 (4th ed. 1971).

6. *Ibid.*
7. 50 Haw. 351 (1968).
8. *Ibid.* at 358.
9. *Ibid.*
10. PROSSER, TORTS, sec. 34, p. 186 (4th ed. 1971).
11. *Ibid.* at 187.
12. *Hawaii Rev. Stat.*, sec 328-1(3).
13. 1980 *N.Y. Laws* (Chap. 869, sec. 71-y(1),(2),(3)).
14. *Hawaii Rev. Stat.*, sec. 663-1.5, also includes special provisions relating to rescue teams and physicians.
15. The receipt of food donations from charitable organizations is not taken into consideration when determining eligibility for food stamps, cash assistance, or other entitlements. Telephone interview with Christina Lam, state food stamp coordinator, department of social services and housing, September 21, 1981.
16. *People v. Bowman*, 156 *Cal. App. 2d* 784, 320 P.2d 70 (1958).
17. *Doyle v. Gordon*, 158 *N.Y.S. 2d* 248 (1954).
18. 58 Haw. 502 (1977).
19. *Ibid.* at 506, 507.

(To be made one and ten copies)

HOUSE OF REPRESENTATIVES  
 ELEVENTH LEGISLATURE, 19 81  
 STATE OF HAWAII

H. R. NO. 456  
 H. D. 1

# HOUSE RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY OF OTHER STATES' "GOOD SAMARITAN" STATUTES AND OF THE IMPACT OF "GOOD SAMARITAN" STATUTES ON THE STATE OF HAWAII, AND TO REPORT THEIR FINDINGS TO THE 1982 LEGISLATIVE SESSION

WHEREAS, over the past several years, spiraling food costs have had an adverse effect on the budget of all consumers, especially those in lower income brackets; and

WHEREAS, although the food stamp program serves approximately ninety thousand of Hawaii's people, there are still an estimated eighty to ninety thousand people who are either hungry or malnourished; and

WHEREAS, a "Good Samaritan" donation of food legislation would enable farmers, processors, distributors, wholesalers and retailers of food to donate surplus food products to eligible non-profit organizations providing assistance to "needy persons"; and

WHEREAS, such donors and eligible non-profit organizations may be held to various degrees of liability for any injury resulting from the ingesting of such donated food products; and

WHEREAS, presently, in Hawaii there is no existing State statute that would permit the above, thus, donors are reluctant and may be unwilling to donate their surplus food products; and

WHEREAS, other States have enacted some type of "Good Samaritan" legislation, including California, Oregon, Washington, Idaho, and Colorado; and

WHEREAS, the language and substance of these various statutes differ from State to State; and

WHEREAS, a study conducted to analyze the scope of these statutes and the legal impact of such statutes upon the State of Hawaii will be instrumental in determining the provisions of Hawaii's "Good Samaritan" law, now, therefore,

JUD (027570)

BE IT RESOLVED by the House of Representatives of the Eleventh Legislature of the State of Hawaii Regular Session of 1981, that the Legislative Reference Bureau is requested to conduct a study of other states' "Good Samaritan" statutes; and

BE IT FURTHER RESOLVED that this study include an analysis of the legal ramifications in the State of Hawaii should a "Good Samaritan" statute be enacted; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report their findings to the Legislature 20 days prior to the convening of the 1982 Legislative Session; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Hawaii Farm Bureau Federation, the Hawaii Food Industry Association, and the Legislative Reference Bureau.

JUD (027569)

APPENDIX B

GOOD SAMARITAN/FOOD BANK LAW SURVEY

1. (Name of State)
  - a. \_\_\_\_\_ DOES NOT--  
have a good Samaritan/Food Bank Type Law.
  - b. \_\_\_\_\_ DOES--
  
2. The statutory citation for our law is \_\_\_\_\_.
  
3. Our law has been used:
  - a. \_\_\_\_\_ Not at all
  - b. \_\_\_\_\_ Rarely
  - c. \_\_\_\_\_ Moderately
  - d. \_\_\_\_\_ Extensively
  - e. \_\_\_\_\_ Too early to tell
  
4. The reasons for adopting this law in our state was (check all applicable):
  - a. Tax advantages to donors \_\_\_\_\_
  - b. Non-wastage of surplus goods \_\_\_\_\_
  - c. Help the needy \_\_\_\_\_
  - d. Other (please specify) \_\_\_\_\_  
\_\_\_\_\_

Based on our information, your State adopted a Good Samaritan Food Bank Law in \_\_\_\_\_, Bill No. \_\_\_\_\_.

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CALIFORNIA

CHAPTER 5. DONATION OF FOOD

58501. For purposes of this chapter:

(a) "Agricultural product" means any fowl, animal, vegetable, or other stuff, product, or article which is customary food, or which is proper for food for human beings.

(b) "Nonprofit charitable organization" means any organization which was organized and is operating for charitable purposes and meets the requirements set forth in Section 214 of the Revenue and Taxation Code.

58502. Any person engaged in the business of processing, distributing, or selling any agricultural product may donate, free of charge, any such product which is in a condition that it may be used as food for human beings, to a nonprofit charitable organization within the state.

58503. To assist in accomplishing the purposes of Section 58502, the board of supervisors of any county may establish, and publicize the availability of, a surplus food collection and distribution system, consisting of an inventory of storage facilities and refrigeration equipment that are available in the county for such purposes and a 24-hour information and food collection center for receiving and transmitting information as to where agricultural products are available or what organization desires or needs donated agricultural products, and for collecting, receiving, handling, storing, and distributing donated agricultural products. Any nonprofit charitable organization regularly needing agricultural products in its operations may be listed with such center for the purpose of being notified whenever such products are available.

58504. The board of supervisors may provide for the inspection of such products by the county health officer, upon request of the donee, prior to delivery by the donor to determine whether such products may be used as food for human beings.

58505. Except for any injury resulting from gross negligence or willful act, no county or agency of a county established pursuant to this chapter and no person who donates any agricultural product shall be liable for any injury, including, but not limited to, injury resulting from the ingesting of such agricultural product, as a result of any act, or the omission of any act, in connection with donating any product pursuant to this chapter.

58506. Nothing in this chapter shall relieve any nonprofit charitable organization from any liability for any injury, including, but not limited to, injury resulting from the ingesting of such agricultural product, as a result of receiving, accepting, gathering, or removing any agricultural product donated under this chapter.

58507. (a) Any nonprofit charitable organization, that receives any agricultural product pursuant to this chapter, shall not sell or offer to sell any such agricultural product nor move or transfer such product out of the state, provided that any product that does not comply with the requirements of Division 17 (commencing with Section 42501) which is received by a charitable organization situated in this state may be shipped out of the state by such organization in accordance with regulations of the director to assure compliance with the purposes of this chapter.

This subdivision does not apply to agricultural products which comply with all maturity, quality, size, standard pack, container and labeling requirements of Division 17 (commencing with Section 42501).

(b) No person and no employee of a public agency shall sell, offer for sale, use, or consume any agricultural product donated or distributed pursuant to this chapter, except the recipient of an agricultural product provided as charitable assistance by a nonprofit charitable organization who shall use or consume the agricultural product provided.

(c) Any violation of this section is punishable by a fine not exceeding one thousand dollars (\$1,000).

58508. In operating an information and food collection center pursuant to this chapter, the board of supervisors shall provide for the screening of donees to assure that agricultural products which are distributed at public expense are not donated to organizations that are capable of purchasing them.

SECTION 1. Section 17202.4 of the Revenue and Taxation Code is amended to read:

17202.4. In addition to the deduction allowed for trade or business expenses and any other deductions allowed by this part, a taxpayer who donates agricultural products under Chapter 5 (commencing with Section 58501), Part 1, Division 21 of the Food and Agricultural Code shall be allowed as a deduction an amount equal to the cost of any such products.

*This section shall remain in effect only until January 1, 1984, and as of that date is repealed, unless prior to that date, a later chaptered statute deletes or extends such date.*

SEC. 2. Section 24343.7 of the Revenue and Taxation Code is amended to read:

24343.7. In addition to the deduction allowed for trade or business expenses and any other deductions allowed by this part, a taxpayer who donates agricultural products under Chapter 5 (commencing with Section 58501), Part 1, Division 21 of the Food and Agricultural Code shall be allowed as a deduction an amount equal to the cost of any such products.

*This section shall remain in effect only until January 1, 1984, and as of that date is repealed, unless prior to that date, a later chaptered statute deletes or extends such date.*

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall be applied in the computation of taxes for taxable years beginning on or after the first day of the calendar year in which this act becomes effective provided the effective date is more than 90 days prior to the last day of the calendar year. If the effective date is 90 days or less prior to the last day of the calendar year, the provisions of this act shall apply in the computation of taxes for taxable years beginning on or after the first day of the calendar year following the effective date.

APPENDIX D-2

NEBRASKA

AN ACT relating to food; to provide an exception to civil liability for certain donations; and to provide penalties.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) For the purposes of this section, the definitions provided in section 81-217.12 shall apply.

(2) Notwithstanding any other provisions of the law of this state, any person who makes a good faith donation to a charitable or nonprofit organization of prepared or perishable food or raw agricultural products which appear to be fit for human consumption at the time it is donated shall not be liable for damages in any civil action for any injury or death because of the condition of such food unless the injury or death is a direct result of the gross negligence, recklessness, or intentional misconduct of the donor.

(3) Notwithstanding any other provisions of the law of this state, a charitable or nonprofit organization which in good faith receives and distributes, without charge, food which the organization reasonably determines to be fit for human consumption at the time it is distributed shall not be liable for damages in any civil action based on the doctrine of strict liability in tort for any injury or death because of the condition of such food.

(4) This section shall apply to all good faith donations of perishable food or raw agricultural products which are not readily marketable because of appearance, freshness, grade, surplus supply, or other conditions.

Sec. 2. (1) Any charitable or nonprofit organization distributing food pursuant to this act shall affix a label upon such food or upon the individual container or package of such food stating that the food is not for resale and stating that pursuant to state law this organization shall not be liable in any civil action based on strict liability in tort for any injury or death because of the condition of such food.

(2) Violation of the provisions of subsection (1) of this section shall be a Class V misdemeanor.

Sec. 3. (1) It shall be unlawful for any person or charitable or nonprofit organization receiving food pursuant to this act to sell or offer to sell such food.

(2) Violation of the provisions of subsection (1) of this section shall be a Class V misdemeanor.

Sec. 4. The Director of Agriculture may adopt and promulgate rules and regulations necessary to carry out the provisions of this act.

NEW YORK

CHAPTER 869

An Act to amend the agriculture and markets law, in relation to exempting good faith donors of canned or perishable food or farm products to be distributed free of charge from liability in certain cases.

Approved July 1, 1980, effective as provided in section 2.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Article four-D of the agriculture and markets law, as added by a chapter of the laws of nineteen hundred eighty amending the agricultural law relating to exempting good faith donors of canned or perishable food to be distributed free of charge or gleaners of any perishable food apparently fit for human consumption from liability in certain cases as proposed in legislative bill number S.7289, A.8658,<sup>1</sup> is amended to read as follows:

ARTICLE 4-D—LIABILITY FOR CANNED OR PERISHABLE  
FOOD OR FARM PRODUCTS DISTRIBUTED  
FREE OF CHARGE

Sec.

71-y. Definitions.

71-z. Liability for canned or perishable food or farm products distributed free of charge.

Definitions

As used in this article:

1. "Perishable foods" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen.

2. "Canned foods" means any canned food that has been hermetically sealed and commercially processed and prepared for human consumption, including canned or preserved fruits, vegetables or other articles of food. There is specifically excluded for purposes of this section canned goods that are rusted, leaking, swollen or canned goods that are defective or cannot be otherwise offered for sale to members of the general public.

3. "Farm products" means any agricultural, dairy or horticultural product or any product designed or intended for human consumption or prepared principally from an agricultural, dairy or horticultural product.

4. "Charitable or nonprofit organization" means any organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell such donated items of food.

§ 71-z. Liability for canned or perishable foods or farm products distributed free of charge

1. Notwithstanding any other provision of law, a good-faith donor of any canned or perishable food or farm product, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently fit for human consumption and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food.

2. This section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.

<sup>1</sup> 1980 McKinney Session Laws, Ch. 868.

§ 2. This act shall take effect on the same date as such chapter of the laws of nineteen hundred eighty takes effect.

NORTH CAROLINA

H. B. 1565

CHAPTER 1188

AN ACT TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR CERTAIN PERSONS DONATING FOOD TO NONPROFIT ORGANIZATIONS, AND TO AUTHORIZE INFORMATION, REFERRAL, AND INSPECTION SERVICES FOR FOOD BANKS.

*The General Assembly of North Carolina enacts:*

Section 1. Chapter 99B of the General Statutes is amended by adding a new section to read:

"§ 99B-10. *Immunity for donated food.*—(a) Notwithstanding the provisions of Article 12 of Chapter 106 of the General Statutes, or any other provision of

law, any person, including but not limited to a seller, farmer, processor, distributor, wholesaler or retailer of food, who donates an item of food for use or distribution by a nonprofit organization or nonprofit corporation shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless it is established that the donor knew or had reasonable grounds to believe that the food was adulterated as defined in G.S. 106-129 at the time the donor made the gift.

(b) Nothing in this section limits the liability of the donee organization or corporation accepting the food."

Sec. 2. Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-21.2. *Food Bank information and referral service.*—The Department of Agriculture may maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization or a nonprofit corporation."

Sec. 3. Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-141.1. *Inspections of donated food.*—(a) The Department of Agriculture is authorized to inspect for compliance with the provisions of Article 12 of Chapter 106 of the North Carolina General Statutes, food items donated for use or distribution by nonprofit organizations or nonprofit corporations, and may establish procedures for the handling of the food items, including reporting procedures concerning the donation of food.

(b) The Department of Agriculture may apply to Superior Court for injunctive relief restraining the violation of this section.

(c) Nothing in this section shall limit the duties or responsibilities of the Commission for Health Services or the local boards of health."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 24th day of June, 1980.

## TEXAS

## AN ACT

relating to liability for damages resulting from the condition of certain donated food.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Good Faith Donor Act.

SECTION 2. In this Act:

(1) "Apparently wholesome food" means food that meets all quality standards of local, county, state, and federal agricultural and health laws and rules, even though the food is not readily marketable due to appearance, age, freshness, grade, size, surplus, or other condition, but does not include canned goods that are leaking, swollen, dented on a seam, or no longer airtight.

(2) "Nonprofit organization" means an incorporated or unincorporated organization that has been established and is operating for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(3) "Intentional misconduct" means conduct that the person acting knows is harmful to the health or well-being of another person.

(4) "Donate" means to give without requiring anything of monetary value from the donee.

(5) "Person" means an individual, corporation, partnership,

organization, or association.

SECTION 3. (a) A person who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the person that constitutes gross negligence, recklessness, or intentional misconduct.

(b) A nonprofit organization that distributes apparently wholesome food to the needy at no charge and that substantially complies with applicable local, county, state, and federal laws and rules regarding the storage and handling of food for distribution to the public is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

(c) This Act does not create any liability.

SECTION 4. This Act applies to liability for food donated on or after the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

VIRGINIA

**§ 3.1-418.1. Exemption from civil liability in certain cases.** — Any farmer, processor, distributor, wholesaler or retailer of food who donates food to any food bank which is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the State Department of Agriculture and where required by local ordinance, by the State Department of Health, and which clearly affixes to each item of food received by donation, a stamp or label containing the word "donated" or the words "not for resale," for use or distribution by the organization shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition or packaging of the donated food; provided that the exemption of this section shall not apply in the event that the injury or death directly results from the gross negligence or intentional act of the donor. Nothing contained herein shall limit liability on the part of any donee nonprofit charitable or religious organization which accepts items of food under this section. (1980, c. 516.)