



**House
Legislative
Analysis
Section**

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DONATED FOOD: LIABILITY

House Bill 4544 as passed by the House
Second Analysis (7-19-89)

Sponsor: Rep. Richard Bandstra
Committee: Judiciary

THE APPARENT PROBLEM:

Food banks and soup kitchens rely not only on cash contributions, but also on donated food to help feed the needy. Organized gleaning efforts also supplement the food supply. However, both those who distribute food and those who would donate food are concerned about potential liability should someone later become ill and sue even though the food was wholesome at the time it was given away. The law already provides some liability protection for people who in good faith exercise reasonable care in donating food, but does not similarly protect those who would distribute it. The lack of protection against lawsuits is reported to have affected insurance rates and availability for food providers, and also to have affected the ability of food providers to meet as many needs as possible. For example, liability concerns apparently have led some pantries to forego purchasing food in bulk quantities for later repackaging and distribution; charges of contamination or misrepresentation are feared. As one organization put it, "one lawsuit could jeopardize the food bank program and the financial stability of our agency." In addition, concerns about liability have made some farmers and processors reluctant to donate food to charity. To prevent liability fears from unduly affecting the availability of food for the needy, amendments are suggested for the act providing liability protection for those who donate food to charitable organizations.

THE CONTENT OF THE BILL:

Under Public Act 339 of 1982, a person who donates food for use or distribution by a nonprofit organization is not liable for civil damages relating to the donated food, as long as reasonable standards of care were exercised. Reasonable care is presumed if the donated food was in sound condition; free from spoilage, filth, or other contamination; safe for human consumption; and obtained from sources that comply with all laws relating to wholesomeness of food. Home-canned items are not protected.

The bill would temporarily replace existing provisions with new ones. Under the bill, an individual, farmer, processor, distributor, or gleaner of food who in good faith donated perishable, canned, or farm food items or prepared food to a charitable organization for distribution to the needy would not be liable in any civil action based on the theory of warranty, negligence, or strict liability in tort for damages resulting from any illness or disease contracted by the ultimate users or recipients of the food due to the nature, age, condition, or packaging of the food.

The same immunity would be granted to a charitable organization that in good faith received food for free distribution, reasonably inspected the food at the time of donation, and found the food apparently fit for human consumption.

Immunity granted by the bill would not apply when the donor or distributor had been reckless, or when the donor

or distributor had knowledge that the food was tainted or harmful to the well-being of the recipient of the donated food.

New provisions being enacted by the bill would be repealed effective July 1993, at which time the current provisions would again apply.

MCL 691.1531 et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (6-7-89)

ARGUMENTS:

For:

Fears about possible liability affect the amount of food available for distribution to the needy. Even though current law protects food donors against undue liability, commercial processors and farmers are reluctant to donate to food banks and soup kitchens because of lingering apprehensions about possible liability. Food banks find themselves vulnerable to liability concerns that affect packaging decisions and insurance rates. By providing comprehensive and explicit protections in statute, the bill should alleviate liability fears that affect the collection and distribution of food to the needy, and consequently enable more people to be fed with wholesome food that otherwise would go to waste.

Against:

It is generally a bad idea to excuse people from the consequences of their own carelessness. Liability may make some people hesitant to donate food, but it also helps to ensure that proper care is taken; the threat of liability helps to prevent negligent acts. Further, when a person is harmed by the negligent act of another, he or she should be permitted to press for compensation from the responsible party.

Response: The bill's proposed liability protections would be temporary. The protections can later be evaluated to see whether they increased the food supply as hoped, and whether they made it unfairly difficult for legitimate damage suits to be pressed.

POSITIONS:

The Food and Nutrition Advisory Council within the Department of Public Health supports the bill. (5-23-89)

The Food Bank Council of Michigan supports the bill. (5-23-89)

The Michigan Trial Lawyers Association cannot support any bill that exempts people from liability for all but wanton, willful, and reckless conduct. (5-9-89)

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