

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4544 (Substitute H-2 as reported without amendment)

Sponsor: Representative Richard Bandstra

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 10-10-89

**RATIONALE**

Food banks and soup kitchens rely on donated food and organized gleaning efforts to help feed the needy. Both those who distribute food and those who would donate food, however, are concerned about potential liability if someone became ill from donated food, even though the food appeared wholesome at the time it was donated. The law currently provides some liability protection for people who in good faith exercise reasonable care in donating food, but does not offer similar protection to those who glean, process, and distribute it. Reportedly, the lack of protection from liability has affected insurance rates and availability for food providers, as well as the providers' ability to meet as many needs as possible. Liability concerns apparently have led some pantries to forego purchasing food in bulk quantities for later repackaging and distribution, reportedly for fear of contamination or misrepresentation. In addition, concerns about liability have made some farmers, processors, and restaurateurs reluctant to donate food to charity. To prevent liability fears from affecting the availability of food for the needy, some feel that liability protections should be strengthened and extended to farmers, food processors, gleaners, and distributors of food.

**CONTENT**

The bill would amend Public Act 339 of 1982, which excuses from liability those who donate food for use or distribution by a nonprofit organization if reasonable standards of care are exercised, to extend immunity from liability to farmers, food processors, and gleaners who donate food, and to nonprofit corporations and

charitable organizations that distribute food for free or nominal costs. The proposed new provisions would replace the Act's current liability provisions until July 1, 1993, when the current provisions would be re-enacted and the new provisions repealed.

Under the bill's new provisions, an individual farmer, food producer, processor, distributor, wholesaler, retailer, or gleaner of food would not be liable in any civil action "based on the theory of warranty, negligence, or strict liability in tort" for damages that resulted from illness or disease contracted due to the nature, age, condition or packaging of perishable, canned, or farm food items that he or she donated in good faith to a nonprofit corporation or charitable organization for distribution to needy or poor persons. In addition, a nonprofit corporation or charitable organization that distributed donated food items would be immune from such liability if it inspected the food at the time of donation and found the food apparently fit for human consumption. The immunity would not apply, however, if the illness or disease resulted from willful, wanton, or reckless acts of the donor, nonprofit corporation, or charitable organization, or if the donor, nonprofit corporation, or charitable organization had actual or constructive knowledge that the food was tainted or harmful.

The provisions that would be repealed and then re-enacted on July 1, 1993, specify that a person who donates food in good faith for use or distribution by a nonprofit organization "is not liable for civil damages as a result of an act or omission affecting the nature, age, condition, or packaging of the donated food if

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standards of reasonable care are exercised". Those provisions also require that "donated food...be in sound condition, free from spoilage, filth, or other contamination", that it be safe for human consumption, and that it be obtained from sources in compliance with laws relating to wholesomeness of food. Finally, the repealed and re-enacted provisions provide that, in a civil action for damages against a food donor, there is a rebuttable presumption that a person who complied with the Act exercised reasonable care. (MCL 691.1531-691.1533)

Proposed MCL 691.1531a, et al.

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

### **ARGUMENTS**

#### **Supporting Argument**

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

#### **Supporting Argument**

The bill's proposed liability protections would be temporary. The protections could be evaluated later to determine whether they contributed to increased food supply as hoped, or whether they made it unfairly difficult for legitimate damage suits to be pursued.

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