

# SENATE BILL No. 665

December 17, 1991, Introduced by Senators DINGELL, KELLY, BARCIA, KOIVISTO and MC MANUS and referred to the Committee on Judiciary.

A bill to amend the title and sections 4, 5, and 6 of Act No. 339 of the Public Acts of 1982, entitled as amended

"An act to provide immunity from civil liability to persons who donate food for use or distribution by certain nonprofit or charitable corporations, organizations, or associations; and to repeal certain parts of this act on specific dates,"

sections 4, 5, and 6 as added by Act No. 207 of the Public Acts of 1989, being sections 691.1534, 691.1535, and 691.1536 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. The title and sections 4, 5, and 6 of Act
- 2 No. 339 of the Public Acts of 1982, sections 4, 5, and 6 as added
- 3 by Act No. 207 of the Public Acts of 1989, being sections
- 4 691.1534, 691.1535, and 691.1536 of the Michigan Compiled Laws,
- 5 are amended to read as follows:

## 1 TITLE

2 An act to provide immunity from civil liability to persons  
3 who donate food for use or distribution by certain nonprofit or  
4 charitable corporations, organizations, or associations. ~~and~~  
5 ~~to repeal certain parts of this act on specific dates.~~

6 Sec. 4. ~~(1)~~ As used in this section and sections 5 and  
7 6:

8 (a) "Canned food" means food that is commercially processed  
9 in hermetically sealed containers by a commercial processor.

10 (b) "Charitable organization" means a benevolent, education-  
11 al, philanthropic, humane, patriotic, religious, or eleemosynary  
12 organization of persons organized for any lawful purpose or pur-  
13 poses not involving pecuniary profit or gain for its officers or  
14 members.

15 (c) "Commercial processor" means a person licensed pursuant  
16 to the food processing act of 1977, Act No. 328 of the Public  
17 Acts of 1978, being sections 289.801 to 289.810 of the Michigan  
18 Compiled Laws, or a person licensed pursuant to a law of another  
19 jurisdiction substantially corresponding to Act No. 328 of the  
20 Public Acts of 1978.

21 (d) "Commercially processed" means processed in accordance  
22 with criteria of current good manufacturing practice as apply to  
23 facilities, methods, practices, and controls used by a commercial  
24 processor in the manufacture, processing, or packing of low-acid  
25 foods in hermetically sealed containers in a manner adequate to  
26 protect the public health.

1 (e) "Farm product" means any agricultural, dairy, or  
2 horticultural product or any product designed or intended for  
3 human consumption or prepared principally from agricultural,  
4 dairy, or horticultural produce.

5 (f) "Food" means articles used for food or drink for human  
6 consumption.

7 (g) "Food producer" includes, but is not limited to, restau-  
8 rants, bakeries, cafeterias, caterers, and delicatessens.

9 (h) "Gleaner" means a person that harvests for free or nomi-  
10 nal cost distribution an agricultural crop that has been donated  
11 by the owner.

12 (i) "Hermetically sealed container" means a container that  
13 is designed and intended to be secure against the entry of micro-  
14 organisms and to maintain the commercial sterility of its content  
15 after processing.

16 (j) "Nonprofit corporation" means that term as defined in  
17 section 108 of the nonprofit corporation act, Act No. 162 of the  
18 Public Acts of 1982, being section 450.2108 of the Michigan  
19 Compiled Laws.

20 (k) "Person" means an individual, organization, group, asso-  
21 ciation, partnership, corporation, trust, or any combination of  
22 these, including persons licensed pursuant to part 129 of the  
23 public health code, Act No. 368 of the Public Acts of 1978, being  
24 sections 333.12901 to 333.12922 of the Michigan Compiled Laws, or  
25 licensed pursuant to the food processing act of 1977, Act No. 328  
26 of the Public Acts of 1978. ~~—, being sections 289.801 to 289.810~~  
27 ~~of the Michigan Compiled Laws.~~

1 (1) "Potentially hazardous food" means either or both of the  
2 following:

3 (i) A "potentially hazardous food or beverage" as that term  
4 is defined in section 12901(1)(c)(xi) of the public health code,  
5 Act No. 368 of the Public Acts of 1978, being section 333.12901  
6 of the Michigan Compiled Laws.

7 (ii) A "potentially hazardous food and drink" as that term  
8 is defined in R 285.553.23 of the Michigan Administrative Code.

9 (m) "Prepared food" means food that has been sliced, assem-  
10 bled, formed, mixed, cooked, or has been subjected to other pro-  
11 cedures to make it ready for serving.

12 ~~(2) This section is repealed effective July 1, 1993.~~

13 Sec. 5. (1) Except as provided in subsection (2), an indi-  
14 vidual, farmer, food producer, processor, distributor, wholesal-  
15 er, retailer, gleaner, or other person who in good faith donates  
16 perishable canned or farm food items or prepared food to a non-  
17 profit corporation or charitable organization for distribution to  
18 needy or poor persons is not liable in any civil action based on  
19 the theory of warranty, negligence, or strict liability in tort  
20 for damages incurred resulting from any illness or disease con-  
21 tracted by the ultimate users or recipients of the food due to  
22 the nature, age, condition, or packaging of the food.

23 (2) The immunity provided in subsection (1) does not apply  
24 if 1 of the following ~~is shown~~ OCCURS:

25 (a) ~~That the~~ THE illness or disease resulted from the  
26 willful, wanton, or reckless acts of the donor.

1 (b) ~~That the~~ THE illness or disease resulted from prepared  
2 food if both of the following apply:

3 (i) The prepared food was a potentially hazardous food at  
4 the time it was donated.

5 (ii) A law of this state or a rule promulgated by an agency  
6 or department of this state concerning the preparation, transpor-  
7 tation, storage, or serving of the prepared food was violated at  
8 any time before the food was donated.

9 (c) ~~That the~~ THE illness or disease resulted from food in  
10 hermetically sealed containers that was not prepared by a commer-  
11 cial processor.

12 (d) ~~That the~~ THE donor had actual or constructive knowl-  
13 edge that the food was tainted, contaminated, or harmful to the  
14 health or well-being of the recipient of the donated food.

15 ~~(3) This section is repealed effective July 1, 1993.~~

16 Sec. 6. (1) Except as provided in subsection (2), a non-  
17 profit corporation or charitable organization that in good faith  
18 receives food for free or nominal cost distribution and that rea-  
19 sonably inspects the food at the time of donation and finds the  
20 food apparently fit for human consumption is not liable in any  
21 civil action based on the theory of warranty, negligence, or  
22 strict liability in tort for damages incurred resulting from any  
23 illness or disease contracted by the ultimate users or recipients  
24 of the food due to the condition of the food.

25 (2) The immunity provided in subsection (1) does not apply  
26 if 1 of the following ~~is shown~~ OCCURS:

1       (a) ~~That the~~ THE illness or disease resulted from the  
2 willful, wanton, or reckless acts of the nonprofit corporation or  
3 charitable organization.

4       (b) ~~That the~~ THE illness or disease resulted from prepared  
5 food if both of the following apply:

6       (i) The prepared food was a potentially hazardous food at  
7 the time it was donated.

8       (ii) A law of this state or a rule promulgated by an agency  
9 or department of this state concerning the preparation, transpor-  
10 tation, storage, or serving of the prepared food was violated at  
11 any time before the ultimate user or recipient of the food actu-  
12 ally received the food.

13       (c) ~~That the~~ THE illness or disease resulted from food in  
14 hermetically sealed containers that was not prepared by a commer-  
15 cial processor.

16       (d) ~~That the~~ THE corporation or organization had actual or  
17 constructive knowledge that the food was tainted, contaminated,  
18 or harmful to the health or well-being of the recipient of the  
19 donated food.

20       ~~(3) This section is repealed effective July 1, 1993.~~