

Act No. 77
Public Acts of 1993
Approved by the Governor
July 08, 1993
Filed with the Secretary of State
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senators Dingell, Dunaskiss, Berryman, Conroy, Stabenow and McManus

ENROLLED SENATE BILL No. 382

AN ACT 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; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. The title and sections 4, 5, and 6 of Act No. 339 of the Public Acts of 1982, 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, are amended to read as follows:

TITLE

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.

Sec. 4. As used in this section and sections 5 and 6:

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

(b) "Charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, religious, or eleemosynary organization of persons organized for any lawful purpose or purposes not involving pecuniary profit or gain for its officers or members.

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

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

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

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

(g) "Food producer" includes, but is not limited to, restaurants, bakeries, cafeterias, caterers, and delicatessens.

(h) "Gleaner" means a person that harvests for free or nominal cost distribution an agricultural crop that has been donated by the owner.

(i) "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.

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

(k) "Person" means an individual, organization, group, association, partnership, corporation, trust, or any combination of these, including persons licensed pursuant to part 129 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.12901 to 333.12922 of the Michigan Compiled Laws, or licensed pursuant to the food processing act of 1977, Act No. 328 of the Public Acts of 1978.

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

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

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

(m) "Prepared food" means food that has been sliced, assembled, formed, mixed, cooked, or has been subjected to other procedures to make it ready for serving.

Sec. 5. (1) Except as provided in subsection (2), an individual, farmer, food producer, processor, distributor, wholesaler, retailer, gleaner, or other person who in good faith donates perishable canned or farm food items or prepared food to a nonprofit corporation or charitable organization for distribution to needy or poor persons is not liable in any civil action based on the theory of warranty, negligence, or strict liability in tort for damages incurred 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.

(2) The immunity provided in subsection (1) does not apply if 1 of the following occurs:

(a) The illness or disease resulted from the willful, wanton, or reckless acts of the donor.

(b) The illness or disease resulted from prepared food if both of the following apply:

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

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

(c) The illness or disease resulted from food in hermetically sealed containers that was not prepared by a commercial processor.

(d) The donor had actual or constructive knowledge that the food was tainted, contaminated, or harmful to the health or well-being of the recipient of the donated food.

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

(2) The immunity provided in subsection (1) does not apply if 1 of the following occurs:

(a) The illness or disease resulted from the willful, wanton, or reckless acts of the nonprofit corporation or charitable organization.

(b) The illness or disease resulted from prepared food if both of the following apply:

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

(ii) A law of this state or a rule promulgated by an agency or department of this state concerning the preparation, transportation, storage, or serving of the prepared food was violated at any time before the ultimate user or recipient of the food actually received the food.

(c) The illness or disease resulted from food in hermetically sealed containers that was not prepared by a commercial processor.

(d) The corporation or organization had actual or constructive knowledge that the food was tainted, contaminated, or harmful to the health or well-being of the recipient of the donated food.

Section 2. Sections 1a, 2a, and 3a of Act No. 339 of the Public Acts of 1982, being sections 691.1531a, 691.1532a, and 691.1533a of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.