

HOUSE BILL No. 5949

June 18, 1998, Introduced by Rep. Law and referred to the Committee on Judiciary.

A bill to amend 1993 PA 136, entitled

"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 acts and parts of acts,"

by amending the title and sections 1, 2, and 3 (MCL 691.1571, 691.1572, and 691.1573).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to provide immunity from civil liability to persons

3

who donate food, DRUGS, OR MEDICAL SUPPLIES for use or distribu-

4

tion by certain nonprofit or charitable corporations, organiza-

5

tions, or associations; TO PROVIDE CERTAIN LIMITED IMMUNITY FROM

6

LIABILITY; and to repeal ~~certain~~ acts and parts of acts.

7

Sec. 1. As used in this act:

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

3 (b) "Charitable organization" means a benevolent, education-
4 al, philanthropic, humane, patriotic, religious, or eleemosynary
5 organization of persons organized for any lawful purpose or pur-
6 poses not involving pecuniary profit or gain for its officers or
7 members.

8 (c) "Commercial processor" means a person licensed pursuant
9 to the food processing act of 1977, ~~Act No. 328 of the Public~~
10 ~~Acts of 1978, being sections 289.801 to 289.810 of the Michigan~~
11 ~~Compiled Laws~~ 1978 PA 328, MCL 289.801 TO 289.810, or a person
12 licensed pursuant to a law of another jurisdiction substantially
13 corresponding to ~~Act No. 328 of the Public Acts of 1978~~ THAT
14 ACT.

15 (d) "Commercially processed" means processed in a manner
16 adequate to protect the public health and in accordance with cur-
17 rent good manufacturing practices applicable to facilities,
18 methods, practices, and controls used by a commercial processor
19 in the manufacture, processing, or packing of low-acid foods in
20 hermetically sealed containers.

21 (E) "DRUG" MEANS 1 OR MORE OF THE FOLLOWING:

22 (i) A SUBSTANCE RECOGNIZED OR FOR WHICH THE STANDARDS OR
23 SPECIFICATIONS ARE PRESCRIBED IN AN OFFICIAL COMPENDIUM.

24 (ii) A SUBSTANCE INTENDED FOR USE IN THE DIAGNOSIS, CURE,
25 MITIGATION, TREATMENT, OR PREVENTION OF DISEASE IN A HUMAN BEING
26 OR OTHER ANIMAL.

1 (*iii*) A SUBSTANCE, OTHER THAN FOOD, INTENDED TO AFFECT THE
2 STRUCTURE OR A FUNCTION OF THE BODY OF A HUMAN BEING OR OTHER
3 ANIMAL.

4 (*iv*) A SUBSTANCE INTENDED FOR USE AS A COMPONENT OF A SUB-
5 STANCE SPECIFIED IN SUBPARAGRAPH (*i*), (*ii*), OR (*iii*), BUT NOT
6 INCLUDING MEDICAL SUPPLIES.

7 (F) ~~(e)~~ "Farm product" means an agricultural, dairy, or
8 horticultural product or a product designed or intended for human
9 consumption or prepared principally from agricultural, dairy, or
10 horticultural produce.

11 (G) ~~(f)~~ "Food" means articles used for food or drink for
12 human consumption.

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

15 (I) ~~(h)~~ "Gleaner" means a person that harvests a donated
16 agricultural crop for free distribution or nominal-cost
17 distribution.

18 (J) ~~(i)~~ "Hermetically sealed container" means a container
19 that is designed and intended to prevent the entry of microorgan-
20 isms and to maintain the commercial sterility of its content
21 after processing.

22 (K) "MEDICAL SUPPLY" MEANS AN INSTRUMENT, APPARATUS, IMPLE-
23 MENT, CONTRIVANCE, IMPLANT, IN VITRO REAGENT, OR OTHER SIMILAR OR
24 RELATED ARTICLE INCLUDING A COMPONENT, PART, OR ACCESSORY THAT IS
25 1 OR MORE OF THE FOLLOWING:

26 (*i*) RECOGNIZED IN AN OFFICIAL COMPENDIUM.

1 (ii) INTENDED FOR USE IN THE DIAGNOSIS OF HUMAN DISEASE OR
2 OTHER CONDITION OR IN THE CURE, MITIGATION, TREATMENT, OR
3 PREVENTION OF HUMAN DISEASE.

4 (iii) INTENDED TO AFFECT THE STRUCTURE OF A FUNCTION OF THE
5 HUMAN BODY, AND THAT DOES NOT ACHIEVE 1 OR MORE OF ITS PRINCIPAL
6 INTENDED PURPOSES THROUGH CHEMICAL ACTION WITHIN OR ON THE HUMAN
7 BODY AND THAT IS NOT DEPENDENT UPON BEING METABOLIZED FOR THE
8 ACHIEVEMENT OF 1 OR MORE OF ITS PRINCIPAL INTENDED PURPOSES.

9 (l) ~~(j)~~ "Nonprofit corporation" means that term as defined
10 in section 108 of the nonprofit corporation act, ~~Act No. 162 of~~
11 ~~the Public Acts of 1982, being section 450.2108 of the Michigan~~
12 ~~Compiled Laws~~ 1982 PA 162, MCL 450.2108.

13 (M) "OFFICIAL COMPENDIUM" MEANS THE UNITED STATES PHARMACO-
14 POEIA AND NATIONAL FORMULARY, HOMEOPATHIC PHARMACOPOEIA OF THE
15 UNITED STATES, OR A SUPPLEMENT OF 1 OF THOSE PUBLICATIONS.

16 (N) ~~(k)~~ "Person" means an individual, organization, group,
17 association, partnership, corporation, trust, or any combination
18 of these, including persons licensed pursuant to part 129 of the
19 public health code, ~~Act No. 368 of the Public Acts of 1978,~~
20 ~~being sections 333.12901 to 333.12922 of the Michigan Compiled~~
21 ~~Laws~~ 1978 PA 368, MCL 333.12901 TO 333.12922, or licensed pursu-
22 ant to the food processing act of 1977, ~~Act No. 328 of the~~
23 ~~Public Acts of 1978, being sections 289.801 to 289.810 of the~~
24 ~~Michigan Compiled Laws~~ 1978 PA 328, MCL 289.801 TO 289.810.

25 (O) ~~(i)~~ "Potentially hazardous food" means either or both
26 of the following:

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

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

7 (P) ~~(m)~~ "Prepared food" means food that has been sliced,
8 assembled, formed, mixed, cooked, or subjected to other proce-
9 dures to make it ready for serving.

10 Sec. 2. (1) Except as provided in subsection (2) AND
11 SUBJECT TO SUBSECTION (3), on or after July 1, 1993 an individu-
12 al, farmer, food producer, processor, distributor, wholesaler,
13 retailer, gleaner, or other person who in good faith donates per-
14 ishable canned or farm ~~food items or~~ PRODUCTS, prepared food,
15 DRUGS, OR MEDICAL SUPPLIES to a nonprofit corporation or charita-
16 ble organization for distribution to needy or poor persons is not
17 liable in ~~any~~ A civil action based on the theory of warranty,
18 negligence, or strict liability in tort for damages incurred
19 resulting from ~~any~~ AN illness or disease contracted by the
20 ultimate users or recipients of the FARM PRODUCTS, PREPARED food,
21 DRUGS, OR MEDICAL SUPPLIES due to the nature, age, condition, or
22 packaging of the FARM PRODUCTS, PREPARED food, DRUGS, OR MEDICAL
23 SUPPLIES.

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

1 (a) That the illness or disease resulted from the GROSS
2 NEGLIGENCE OR THE willful, wanton, or reckless acts of the
3 donor.

4 (b) That the illness or disease resulted from prepared food
5 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 food was donated.

12 (c) That the illness or disease resulted from food in her-
13 metically sealed containers that was not prepared by a commercial
14 processor.

15 (d) That the donor had actual or constructive knowledge that
16 the FARM PRODUCT, PREPARED food, DRUG, OR MEDICAL SUPPLY was
17 tainted, contaminated, or harmful to the health or well-being of
18 the recipient of the donated FARM PRODUCT, PREPARED food, DRUG,
19 OR MEDICAL SUPPLY.

20 (3) IF SOME OR ALL OF THE DRUGS OR MEDICAL SUPPLIES DONATED
21 AS DESCRIBED IN SUBSECTION (1) DO NOT MEET ALL QUALITY AND LABEL-
22 ING STANDARDS PRESCRIBED BY FEDERAL, STATE, AND LOCAL LAWS AND
23 REGULATIONS, THE PERSON WHO DONATES THE DRUG OR MEDICAL SUPPLY
24 HAS THE IMMUNITY FROM CIVIL LIABILITY PRESCRIBED IN SUBSECTION
25 (1) IF ALL OF THE FOLLOWING ARE MET:

1 (A) THE DONOR INFORMS THE NONPROFIT CORPORATION OR
2 CHARITABLE ORGANIZATION OF THE DISTRESSED OR DEFECTIVE CONDITION
3 OF THE DONATED DRUG OR MEDICAL SUPPLY.

4 (B) THE NONPROFIT CORPORATION OR CHARITABLE ORGANIZATION
5 AGREES TO TAKE THE NECESSARY MEASURES TO COMPLY WITH ALL RELEVANT
6 QUALITY STANDARDS PRESCRIBED BY FEDERAL, STATE, AND LOCAL LAWS
7 AND REGULATIONS BEFORE DISTRIBUTING THE DONATED DRUG OR MEDICAL
8 SUPPLY.

9 (C) THE DONOR INFORMS THE NONPROFIT CORPORATION OR CHARITA-
10 BLE ORGANIZATION OF THE APPLICABLE QUALITY STANDARDS PRESCRIBED
11 BY FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.

12 Sec. 3. (1) Except as provided in subsection (2), on or
13 after July 1, 1993 a nonprofit corporation or charitable organi-
14 zation that in good faith receives FARM PRODUCTS, PREPARED food,
15 DRUGS, OR MEDICAL SUPPLIES for free or nominal cost distribution
16 and that reasonably inspects the FARM PRODUCTS, PREPARED food,
17 DRUGS, OR MEDICAL SUPPLIES at the time of donation and finds the
18 FARM PRODUCTS, PREPARED food, DRUGS, OR MEDICAL SUPPLIES appar-
19 ently fit for human consumption OR USE is not liable in ~~any~~ A
20 civil action based on the theory of warranty, negligence, or
21 strict liability in tort for damages incurred resulting from
22 ~~any~~ AN illness or disease contracted by the ultimate users or
23 recipients of the FARM PRODUCTS, PREPARED food, DRUGS, OR MEDICAL
24 SUPPLIES due to the condition of the FARM PRODUCTS, PREPARED
25 food, DRUGS, OR MEDICAL SUPPLIES.

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

03739'97

1 (a) That the illness or disease resulted from the GROSS
2 NEGLIGENCE OR THE willful, wanton, or reckless acts of the non-
3 profit corporation or charitable organization.

4 (b) That the illness or disease resulted from prepared food
5 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 illness or disease resulted from food in her-
14 metically sealed containers that was not prepared by a commercial
15 processor.

16 (d) That the corporation or organization had actual or con-
17 structive knowledge that the FARM PRODUCT, PREPARED food, DRUG,
18 OR MEDICAL SUPPLY was tainted, contaminated, DEFECTIVE, or harm-
19 ful to the health or well-being of the recipient of the donated
20 FARM PRODUCT, PREPARED food, DRUG, OR MEDICAL SUPPLY.