

Legislative Analysis



FOOD DONATION LIABILITY

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House Bill 4017 (reported from committee as H-1)

Sponsor: Rep. Jeff Farrington

Committee: Agriculture

Complete to 3-20-15

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as PA 41 of 2015)

BRIEF SUMMARY: House Bill 4017 would amend the Food Law to provide immunity from criminal and civil liability to certain persons donating food to nonprofit organizations for distribution, and to nonprofits distributing food. The bill would add a new section, Section 5104, to the Food Law.

FISCAL IMPACT: Providing immunity from liability would not appear to have a significant fiscal impact on the state or local units of government. It would restrict private lawsuits.

THE APPARENT PROBLEM:

According to testimony given during committee, restaurants and grocery stores are hesitant to donate perishable food because they are worried about potential lawsuits that may arise from their donation.

THE CONTENT OF THE BILL:

Under the bill, a retail food establishment, farmer, wholesaler, wholesale processor, distributor, or other person who donates food for use or distribution by a nonprofit organization or nonprofit corporation would not be subject to any criminal or civil liability resulting from the nature, age, condition, or packaging of the food, unless the donor knew, or reasonably should have known, when the food was donated that the food was adulterated or not fit for human consumption.

Similarly, a nonprofit organization or nonprofit corporation that collects donated food and distributes that food to another nonprofit organization or nonprofit corporation free of charge or for a nominal fee would not be subject to any criminal or civil liability resulting from the nature, age, condition, or packaging of the food, unless the organization knew, or reasonably should have known, when the food was distributed that the food was adulterated or not fit for human consumption.

The bill also would require that a nonprofit organization or nonprofit corporation that serves food donated by a retail food establishment, farmer, wholesaler, wholesale processor, distributor, or other person have a food safety manager who is certified under a personnel certification program accredited by the American national standards institute.

Proposed MCL 289.5104

BACKGROUND INFORMATION:

Entities donating food for distribution are currently covered by two laws, one state and one federal.

The federal law, the Bill Emerson Good Samaritan Food Donation Act, was enacted in 1996 and provides both civil and criminal liability to donors and the distributing entity in matters arising from the "nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals."

The immunity does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct. However, the law also states that it does not supersede state and local health regulations.

The Michigan law, Public Act 136 of 1993, provides immunity from civil liability to some of the same entities that would be covered by HB 4017, though it uses a different standard for when immunity is not granted than that contained in HB 4297, and only covers perishable canned or farm food items.

The immunity under PA 136 applies to those donating perishable canned or farm food items or prepared food to a nonprofit corporation or charitable organization for distribution to needy or poor persons. The entity is not civilly liable "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."

Immunity does not apply in the following situations:

- That the illness or disease resulted from the willful, wanton, or reckless acts of the donor.
- That the illness or disease resulted from prepared food if both of the following apply:
 - The prepared food was a potentially hazardous food at the time it was donated.
 - 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.
- That the illness or disease resulted from food in hermetically sealed containers that was not prepared by a commercial processor.
- That 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.

HB 4017 would not provide immunity if "the donor knew, or reasonably should have known, when the food was donated, that the food was adulterated or not fit for human consumption."

ARGUMENTS:

For:

Proponents of the legislation say it will lead to increased donations of foods that would otherwise go to waste, allowing food banks to work with local stores and restaurants to save those foods.

Against:

Opponents of the legislation say that food donors are already adequately protected under existing laws.

POSITIONS:

Support: Michigan Restaurant Association (3-11-15)

Food Bank Council of Michigan (3-11-15)

Michigan Grocers Association (3-11-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.