



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## DONATED FOOD: LIABILITY

House Bill 4532 as enrolled  
Second Analysis (2-9-94)

Sponsor: Rep. Lyn Bankes  
House Committee: Judiciary  
Senate Committee: Judiciary

### ***THE APPARENT PROBLEM:***

Food banks and soup kitchens rely in part on donated food and organized gleaning efforts to help feed the needy. Several years ago liability concerns expressed by food distributors and would-be food contributors led to a change in the law. The law at that time provided some protection against civil liability for people who in good faith exercised reasonable care in donating food, but did not offer similar protection to those who gleaned, processed, or distributed it. Liability concerns apparently prompted some pantries to forego purchasing food in bulk quantities for later repackaging and distribution; pantries feared charges of contamination or misrepresentation. In addition, concerns about liability made some farmers and processors reluctant to donate food to charity. To prevent such fears from affecting the availability of food for the needy, Public Act 207 of 1989 strengthened immunity provisions and extended them to farmers, food processors, gleaners, and distributors of food. Those provisions were scheduled to expire July 1, 1993, at which time the earlier provisions would again have taken effect. The Food Bank Council of Michigan credited the 1989 revision with increasing food donations, and feared a decline in donations should the new provisions expire as scheduled. As the sunset date of July 1, 1993 approached, the council and others urged that the "sunset" on Public Act 207 of 1989 be eliminated.

In response, Senate Bill 382 and House Bill 4532 were introduced to preserve the 1989 liability protections; both saw legislative action early in 1993. One of the bills, Senate Bill 382, was enacted, but not until July 13, nearly two weeks after the sunset date had passed. To remove any doubt over what version of the law is in effect, it has been proposed that House Bill 4532 be used to re-enact the act as amended by Senate Bill 382 (and an earlier version of House Bill 4532).

### ***THE CONTENT OF THE BILL:***

The bill would create a new public act that would repeal Public Act 339 of 1982, which provides immunity from civil liability for people who in good faith donate or distribute food to the needy, and which was amended by Public Act 77 of 1993 (enrolled Senate Bill 382) to preserve amendments made by Public Act 207 of 1989. Those 1989 amendments broadened previously existing protections, and had been scheduled to expire July 1, 1993.

### ***FISCAL IMPLICATIONS:***

With regard to a virtually identical version of Senate Bill 382, the Senate Fiscal Agency said that the bill would have no fiscal impact on state or local government. (2-25-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would resolve concerns about the effectiveness of Senate Bill 382, that thereby in effect allow the stronger immunity provisions of 1989 to continue, rather than be replaced by the weaker provisions that preceded them. Those previous provisions were widely viewed as inadequate to ease the liability concerns of potential food contributors. The 1989 protections, on the other hand, have been emphasized in food bank solicitations and have been credited with increasing food donations. Without the bill, past fears about potential liability could return and hinder the collection and distribution of food to the needy.

#### ***Against:***

Many believe that it is generally a bad idea to excuse people from the consequences of their own carelessness. Liability may make some people hesitant to donate food, but it also helps to ensure that proper care is taken; the threat of liability helps to prevent negligent acts. Further, when a person

is harmed by the negligent act of another, he or she should be permitted to press for compensation from the responsible party--something that would continue to be precluded under the bill unless the act was more than merely negligent.