



HOUSE BILL No. 4532

March 23, 1993, Introduced by Reps. Bankes, McNutt, McBryde, Stille, Bullard, Dolan, Walberg, Middleton, Gire, Hill, Dalman, Rivers, Pitoniak, Brackenridge, Dobb, Bender, DeLange, Freeman and Nye 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; and to repeal certain parts of the act.

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:

TITLE

1
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. ~~(+)~~ 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 A MANNER
22 ADEQUATE TO PROTECT THE PUBLIC HEALTH AND in accordance with
23 ~~criteria of~~ current good manufacturing ~~practice as apply~~
24 PRACTICES APPLICABLE to facilities, methods, practices, and con-
25 trols used by a commercial processor in the manufacture, process-
26 ing, or packing of low-acid foods in hermetically sealed
27 containers. ~~in a manner adequate to protect the public health.~~

1 (e) "Farm product" means ~~any~~ AN agricultural, dairy, or
2 horticultural product or ~~any~~ A 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 A DONATED AGRI-
10 CULTURAL CROP for free DISTRIBUTION or nominal-cost
11 distribution. ~~an agricultural crop that has been donated by the~~
12 ~~owner.~~

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

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

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

1 of the Public Acts of 1978, being sections 289.801 to 289.810 of
2 the Michigan Compiled Laws.

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

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

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

11 (m) "Prepared food" means food that has been sliced, assem-
12 bled, formed, mixed, cooked, or ~~has been~~ subjected to other
13 procedures to make it ready for serving.

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) That the illness or disease resulted from the willful,
4 wanton, or reckless acts of the nonprofit corporation or charita-
5 ble organization.

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

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

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

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

18 (d) That the corporation or organization had actual or con-
19 structive knowledge that the food was tainted, contaminated, or
20 harmful to the health or well-being of the recipient of the
21 donated food.

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

23 Section 2. Sections 1a, 2a, and 3a of Act No. 339 of the
24 Public Acts of 1982, being sections 691.1531a, 691.1532a, and
25 691.1533a of the Michigan Compiled Laws, are repealed.