WEST VIRGINIA CODE CHAPTER 55 ARTICLE 7D

WV Legislature

§55-7D-1. Legislative findings.

The Legislature finds that wholesale and retail food distributors, shipping terminals and other establishments across the state are disposing of food that could be made available to those in need. However, many potential food donors are discouraged from donating this food because of potential liability. The United States Congress has recognized the need to encourage food distributors to make otherwise disposed-of food products available to those in need and has adopted Title 42 United States Code §1791 entitled the "Bill Emerson Good Samaritan Food Donation Act." This federal law encourages state and local governments to enact good samaritan or donor liability limitation laws to encourage private cooperative efforts to provide food for hungry people within their respective jurisdictions. The Legislature finds that this is a worthy goal, and therefore it is appropriate for the state to encourage participation in food donation programs by providing a statutory framework to protect food donators from liability for their good faith efforts.

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§55-7D-2. Definitions.

As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term includes donations by one nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means any raw, cooked, processed or prepared edible substance, ice, beverage or ingredient used or intended for use, in whole or in part, for human consumption.

(e) "Gleaner" means a person who harvests a donated agricultural crop for free distribution to the needy or for donation to a nonprofit organization for ultimate distribution to the needy.

(f) "Grocery product" means a nonfood grocery product, including disposable paper or plastic products, household cleaning supplies, laundry detergent or other household item.

(g) "Gross negligence" means voluntary and conscious conduct, including a failure to act, by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(1) Is operating for religious, charitable or educational purposes; and

(2) Does not provide net earnings to or operate in any other manner that inures to the benefit of, any officer, employee or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer,

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restaurant, caterer, farmer, nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member or other elected or appointed individual responsible for the governance of the entity.

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§55-7D-3. Limiting liability of persons or corporations who donate food or grocery products; exceptions.

(a) A person or gleaner is not subject to civil liability or criminal liability arising from the nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery product which the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution without profit or gain to needy individuals: Provided, That this limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product which results from an act or omission of the person or gleaner which constitutes gross negligence or intentional misconduct.

(b) A nonprofit organization is not subject to civil liability or criminal liability arising from the nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery product which the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution without profit or gain to needy individuals: Provided, That this limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product which results from an act or omission of the nonprofit organization which constitutes gross negligence or intentional misconduct.

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§55-7D-4. Limitation of liability for landowners or occupiers who allow collection or gleaning of donations; exceptions.

Any person who is a landowner or occupier and who allows the collection or gleaning of donations on his or her property by gleaners or representatives of a nonprofit organization, whether paid or unpaid, for ultimate donation without profit or gain to needy individuals is not subject to civil liability or criminal liability that arises due to the injury or death of the gleaner or representative while engaged in collecting or gleaning on the property: Provided, That this limitation on liability does not apply to an injury or death that results from an act or omission of the landowner or occupier which constitutes gross negligence or intentional misconduct.

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§55-7D-5. Construction.

Nothing in this article shall be construed to supersede state or local health regulations, nor to restrict the state department of health or any county or municipal health officer to regulate, inspect or ban the use of any donated food for human consumption.

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