

NO. 2167

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2167

(By ~~the~~ Del. Flanagan + White)

— ● —

Passed April 8, 1989

In Effect July 1, 1989 ~~Passage~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2167
(By DELEGATES FLANIGAN AND WHITE)

[Passed April 8, 1989; in effect July 1, 1989.]

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to establishment of a charity food bank advisory committee and assistance fund; requiring local human services offices and the department of human services to provide information and referral service; giving exemption from civil and criminal liability; directing division of state surplus food to food banks; establishing collection and distribution centers; setting minimum standards for food banks; directing use of state surplus buildings and equipment for food banks; providing that nonprofit organizations and food stamp programs not be affected; establishing food bank advisory committee and setting method of appointment and terms of members; setting duties of committee; and establishing food bank assistance fund.

Be it enacted by the Legislature of West Virginia:

That article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section

eight; and that said chapter be further amended by adding thereto a new article, designated article eight, all to read as follows:

**ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE
OF COMMISSIONER OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

§9-2-8. Information and referral services.

1 (a) Each local human services office shall compile,
2 maintain and post a current list of charity food banks
3 and other emergency food providers in the area served
4 by the local food stamp office and refer individuals who
5 need food to local programs that may be able to provide
6 assistance.

7 (b) The department shall utilize its existing statewide
8 toll free telephone number to provide emergency food
9 information and to refer needy individuals to local
10 programs that may be able to provide assistance. The
11 department shall publish the telephone number for
12 referrals in the emergency telephone numbers section of
13 local telephone books. The department shall display this
14 telephone number in all its offices that issue food
15 stamps.

ARTICLE 8. CHARITY FOOD BANKS.

§9-8-1. Purpose.

1 The purpose of this article is to address the wide-
2 spread and growing problem of hunger in this state by
3 improving the distribution of food to the hungry,
4 providing a means of funding agencies which distribute
5 food on an emergency basis, gathering and disseminat-
6 ing information related to the problem of hunger,
7 assuring that distribution activities are responsive to the
8 needs of local charity food banks, facilitating the
9 creation of charity food banks and ensuring maximum
10 access to food banks.

**§9-8-2. Donation of food items; exemption from civil and
criminal liability.**

1 Any person who makes a good faith donation of

2 prepared or perishable food which appears to be fit for
3 human consumption at the time it is donated to a
4 charitable or nonprofit organization is not liable for
5 damages in any civil action or subject to criminal
6 prosecution for any injury or death due to the condition
7 of such food unless the injury or death is a direct result
8 of the gross negligence, recklessness or intentional
9 misconduct of the donor.

10 A charitable or nonprofit organization or an officer,
11 employee or volunteer of such an organization that in
12 good faith receives and distributes, without charge, food
13 which appears to be fit for human consumption at the
14 time it is distributed is not liable for damages in any
15 civil action or subject to criminal prosecution for any
16 injury or death due to the condition of such food unless
17 the injury or death is a direct result of the gross
18 negligence, recklessness or intentional misconduct of the
19 organization or its officers, employees or volunteer
20 workers.

21 This section applies to all good faith donations of
22 perishable food which is not readily marketable due to
23 appearance, freshness, grade, surplus supply or other
24 conditions.

§9-8-3. Definitions.

1 In this article, unless the context otherwise requires:

2 “Agricultural product” means any fowl, animal,
3 vegetable or other item, product or article which is
4 customary food or which is proper food for human
5 consumption.

6 “Charity food bank” means a nonprofit organization
7 that solicits, stores, or redistributes food products to
8 charitable organizations and individuals for the purpose
9 of feeding needy families and individuals.

10 “Nonprofit charitable organization” means an organ-
11 ization which is organized and operates for a charitable
12 purpose.

**§9-8-4. Authorization of donations; diversion of products
by directors to organizations.**

1 A person engaged in the business of processing,
2 distributing or selling any agricultural product may
3 donate, free of charge, any agricultural product to a
4 charity food bank.

5 To assist in accomplishing the purposes of this section,
6 the director of each department of state government
7 shall divert, whenever possible, surplus agricultural
8 products to organizations operating pursuant to this
9 article.

§9-8-5. Surplus food collection and distribution centers.

1 The department of agriculture shall establish and
2 publicize the services of an information and food
3 collection center for receiving and transmitting infor-
4 mation concerning available agricultural products; or
5 what organization desires or needs donated agricultural
6 products to be donated; and for collecting, receiving,
7 handling, storing and distributing donated agricultural
8 products. A nonprofit charitable organization which
9 regularly needs agricultural products may be listed
10 with a food collection center to be notified if agricultural
11 products are available.

§9-8-6. Minimum standards for food banks.

1 In order to qualify as a charity food bank, an
2 organization shall meet all of the following minimum
3 standards:

4 (a) Have access to storage facilities and refrigeration
5 equipment for the purpose of collecting, receiving,
6 handling, storing and distributing donated agricultural
7 products;

8 (b) Be incorporated as a nonprofit tax exempt organ-
9 ization and eligible as a charitable organization under
10 the Internal Revenue Code (26 United States code
11 section 501 (c) (3)) or affiliated with a qualified
12 organization;

13 (c) Maintain records for the proper control of
14 inventory;

15 (d) Demonstrate the availability of adequate liability
16 insurance to cover the activities conducted pursuant to

17 this article; and

18 (e) Show local support through funding sources,
19 letters of endorsement and a board of directors which
20 reflects the community and population to be served.

§9-8-7. State surplus buildings and equipment; availability to charity food banks.

1 The commissioner of the department of finance and
2 administration shall assist a food bank by locating and
3 providing available state surplus buildings or equipment
4 necessary for the operation of a charity food bank
5 for use without charge.

§9-8-8. Effect of article on other nonprofit organizations.

1 Nothing in this article may restrict or limit the
2 operation of any other nonprofit organization which is
3 engaged in the distribution of agricultural products to
4 nonprofit charitable organizations.

§9-8-9. Application of article to food stamp act.

1 Consonant with 7 C.F.R. 273.9(c)(1), programs operated
2 in accordance with this article shall complement
3 and not in any way lessen assistance to families and
4 individuals pursuant to the Food Stamp Act of 1977 as
5 amended, (7 U.S.C. 2011 through 7 U.S.C. 2026).

§9-8-10. Charity food bank advisory committee; terms; compensation; officers; duties.

1 A charity food bank advisory committee is established.
2 The members shall be appointed by the governor
3 with the advice and consent of the Senate. The committee
4 shall consist of five members who shall serve
5 staggered three year terms. Vacancies occurring shall
6 be filled in the same manner for the balance of the
7 unexpired term.

8 The committee shall consist of three members who
9 have been active members of a food bank, one food
10 industry representative and one member who is actively
11 engaged in agriculture. The committee shall select a
12 chairman and vice chairman. The committee shall meet
13 at the call of the chairman, but at least four times a

14 year. The initial meeting shall be called by the governor
15 within sixty days after the committee has been
16 appointed.

17 The committee shall:

18 (a) Provide information to the citizens of this state
19 regarding food bank programs;

20 (b) Review procedures that assure that storage,
21 transportation and distribution activities conducted
22 under the authority of this article are efficiently carried
23 out and are responsive to the needs of local food banks
24 and community organizations involved in food
25 distribution;

26 (c) Review procedures that assure maximum access
27 for food banks and community organizations involved in
28 food distribution to all available federal, state, county
29 and city surplus food, supplies and equipment and to all
30 potential private contributions;

31 (d) Review procedures that assure that necessary
32 technical assistance is available to facilitate the creation
33 of food banks in areas of this state in which they are
34 needed and to facilitate food banks and community
35 organizations in obtaining and effectively utilizing
36 surplus agricultural commodities; and

37 (e) Submit an annual report to the governor, speaker
38 of the House of Delegates and president of the Senate
39 on or before the first day of January of each year.

§9-8-11. Charity food bank assistance fund; restriction.

1 A charity food bank assistance fund is established
2 which shall consist of moneys provided by appropria-
3 tion. A charity food bank which meets the minimum
4 standards for food banks may qualify, subject to
5 available moneys, for assistance from this fund for any
6 of its operations.

7 Assistance granted pursuant to this article shall be
8 administered by the commissioner of the department of
9 human services. No more than five percent of the
10 assistance granted to a charity food bank pursuant to
11 this article may be used for administrative purposes.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick L. Parmis
Chairman Senate Committee

J. L. Latta
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

Isabel C. Smith
Clerk of the Senate

Donald T. Fogg
Clerk of the House of Delegates

Paul D. Tuckman
President of the Senate

Robert M. Bell
Speaker of the House of Delegates

The within *is* approved this the *27th*
day of *April*, 1989.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

4/20/89

Time

10:00