WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

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ENROLLED
Com. Sub. for
HOUSE BILL No. 2167

(By Del. Glenjar & White)

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Passed April 8, 1989
In Effect July 1, 1989
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.

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

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

ARTICLE 8. CHARITY FOOD BANKS.

§9-8-1. Purpose.

The purpose of this article is to address the widespread and growing problem of hunger in this state by improving the distribution of food to the hungry, providing a means of funding agencies which distribute food on an emergency basis, gathering and disseminating information related to the problem of hunger, assuring that distribution activities are responsive to the needs of local charity food banks, facilitating the creation of charity food banks and ensuring maximum access to food banks.

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

Any person who makes a good faith donation of
prepared or perishable food which appears to be fit for
human consumption at the time it is donated to a
charitable or nonprofit organization is not liable for
damages in any civil action or subject to criminal
prosecution for any injury or death due to the condition
of such food unless the injury or death is a direct result
of the gross negligence, recklessness or intentional
misconduct of the donor.

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

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

§9-8-3. Definitions.

In this article, unless the context otherwise requires:

“Agri-cultural product” means any fowl, animal,
vegetable or other item, product or article which is
customary food or which is proper food for human
consumption.

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

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

§9-8-4. Authorization of donations; diversion of products
by directors to organizations.
A person engaged in the business of processing, distributing or selling any agricultural product may donate, free of charge, any agricultural product to a charity food bank.

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

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

The department of agriculture shall establish and publicize the services of an information and food collection center for receiving and transmitting information concerning available agricultural products; or what organization desires or needs donated agricultural products to be donated; and for collecting, receiving, handling, storing and distributing donated agricultural products. A nonprofit charitable organization which regularly needs agricultural products may be listed with a food collection center to be notified if agricultural products are available.

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

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

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

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

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

(d) Demonstrate the availability of adequate liability insurance to cover the activities conducted pursuant to
(e) Show local support through funding sources, letters of endorsement and a board of directors which reflects the community and population to be served.

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

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

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

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

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

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

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

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

The committee shall consist of three members who have been active members of a food bank, one food industry representative and one member who is actively engaged in agriculture. The committee shall select a chairman and vice chairman. The committee shall meet at the call of the chairman, but at least four times a
year. The initial meeting shall be called by the governor within sixty days after the committee has been appointed.

The committee shall:

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

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

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

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

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

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

A charity food bank assistance fund is established which shall consist of moneys provided by appropriation. A charity food bank which meets the minimum standards for food banks may qualify, subject to available moneys, for assistance from this fund for any of its operations.

Assistance granted pursuant to this article shall be administered by the commissioner of the department of human services. No more than five percent of the assistance granted to a charity food bank pursuant to this article may be used for administrative purposes.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
Governor

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