WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 2605
(By Delegates Beach, Kelley, Cann and Amores)

Passed March 14, 1998
In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2605
(BY DELEGATES BEACH, KELLEY, CANN AND AMORES)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to repeal section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article seven-d, relating to liability for damages claimed for the consumption or use of donated food items or grocery products; legislative findings; definitions; limiting liability for persons, gleaners and nonprofit corporations under certain circumstances; exceptions.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article seven-d, to read as follows:

ARTICLE 7D. GOOD SAMARITAN FOOD DONATION ACT.

§55-7D-1. Legislative findings.

1 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.

§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, 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.
§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.

§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.
§55-7D-5. Construction.

1 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.
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 ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.

[Signature]
Governor