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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

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OFFICE OF THE CLERK
STATE OF WEST VIRGINIA

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article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article seven-d, to read as follows: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
- 2 distributors, shipping terminals and other establishments
- 3 across the state are disposing of food that could be made

4 available to those in need. However, many potential food
5 donors are discouraged from donating this food because
6 of potential liability. The United States Congress has
7 recognized the need to encourage food distributors to
8 make otherwise disposed-of food products available to
9 those in need and has adopted Title 42 United States Code
10 § 1791 entitled the "Bill Emerson Good Samaritan Food
11 Donation Act." This federal law encourages state and
12 local governments to enact good samaritan or donor
13 liability limitation laws to encourage private cooperative
14 efforts to provide food for hungry people within their
15 respective jurisdictions. The Legislature finds that this is a
16 worthy goal, and therefore it is appropriate for the state to
17 encourage participation in food donation programs by
18 providing a statutory framework to protect food donors
19 from liability for their good faith efforts.

§55-7D-2. Definitions.

1 As used in this section:

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

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

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

21 (d) "Food" means any raw, cooked, processed or

22 prepared edible substance, ice, beverage or ingredient used
23 or intended for use, in whole or in part, for human
24 consumption.

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

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

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

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

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

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

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

49 (j) "Person" means an individual, corporation,
50 partnership, organization, association or governmental
51 entity, including a retail grocer, wholesaler, hotel, motel,
52 manufacturer, restaurant, caterer, farmer, nonprofit food
53 distributor or hospital. In the case of a corporation,
54 partnership, organization, association or governmental
55 entity, the term includes an officer, director, partner,
56 deacon, trustee, council member or other elected or
57 appointed individual responsible for the governance of the
58 entity.

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

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

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

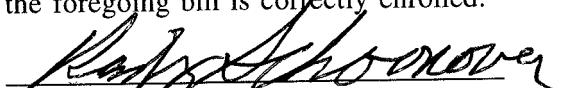
§55-7D-4. Limitation of liability for landowners or occupiers who allow collection or gleaning of donations; exceptions.

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

§55-7D-5. Construction.

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

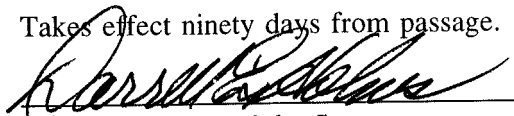
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

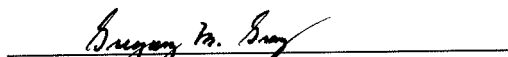

Chairman Senate Committee

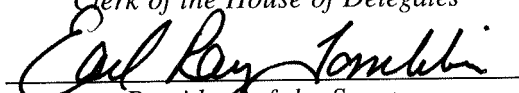

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

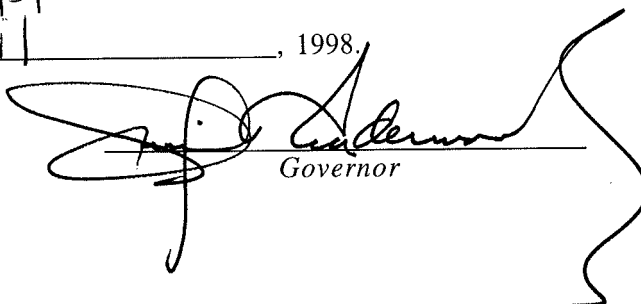

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

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


Governor

PRESENTED TO THE

GOVERNOR

Date

3/31/98

Time

11:05 am