IMMUNITY OF FOOD DONORS FROM CIVIL LIABILITY
Act 136 of 1993

AN ACT to provide immunity from civil liability to persons who donate food for use or distribution by certain nonprofit or charitable corporations, organizations, or associations; and to repeal certain acts and parts of acts.

History: 1993, Act 136, Imd. Eff. Aug. 2, 1993.

The People of the State of Michigan enact:

691.1571 Definitions.

Sec. 1. As used in this act:

(a) "Canned food" means food that is commercially processed in hermetically sealed containers by a commercial processor.

(b) "Charitable organization" means a benevolent, educational, philanthropic, humane, patriotic, religious, or eleemosynary organization of persons organized for any lawful purpose or purposes not involving pecuniary profit or gain for its officers or members.

(c) "Commercial processor" means a person licensed pursuant to the food processing act of 1977, Act No. 328 of the Public Acts of 1978, being sections 289.801 to 289.810 of the Michigan Compiled Laws, or a person licensed pursuant to a law of another jurisdiction substantially corresponding to Act No. 328 of the Public Acts of 1978.

(d) "Commercially processed" means processed in a manner adequate to protect the public health and in accordance with current good manufacturing practices applicable to facilities, methods, practices, and controls used by a commercial processor in the manufacture, processing, or packing of low-acid foods in hermetically sealed containers.

(e) "Farm product" means an agricultural, dairy, or horticultural product or a product designed or intended for human consumption or prepared principally from agricultural, dairy, or horticultural produce.

(f) "Food" means articles used for food or drink for human consumption.

(g) "Food producer" includes, but is not limited to, restaurants, bakeries, cafeterias, caterers, and delicatessens.

(h) "Gleaner" means a person that harvests a donated agricultural crop for free distribution or nominal-cost distribution.

(i) "Hermetically sealed container" means a container that is designed and intended to prevent the entry of microorganisms and to maintain the commercial sterility of its content after processing.

(j) "Nonprofit corporation" means that term as defined in section 108 of the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being section 450.2108 of the Michigan Compiled Laws.

(k) "Person" means an individual, organization, group, association, partnership, corporation, trust, or any combination of these, including persons licensed pursuant to part 129 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.12901 to 333.12922 of the Michigan Compiled Laws, or licensed pursuant to the food processing act of 1977, Act No. 328 of the Public Acts of 1978, being sections 289.801 to 289.810 of the Michigan Compiled Laws.

(*l*) "Potentially hazardous food" means either or both of the following:

(*i*) A "potentially hazardous food or beverage" as that term is defined in section 12901(1)(c)(*xi*) of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12901 of the Michigan Compiled Laws.

(*ii*) A "potentially hazardous food and drink" as that term is defined in R 285.553.23 of the Michigan Administrative Code.

(m) "Prepared food" means food that has been sliced, assembled, formed, mixed, cooked, or subjected to other procedures to make it ready for serving.

History: 1993, Act 136, Imd. Eff. Aug. 2, 1993.

691.1572 Perishable or prepared food donations to nonprofit corporation or charitable organizations; civil liability; exceptions to immunity.

Sec. 2. (1) Except as provided in subsection (2), on or after July 1, 1993 an individual, farmer, food producer, processor, distributor, wholesaler, retailer, gleaner, or other person who in good faith donates perishable canned or farm food items or prepared food to a nonprofit corporation or charitable organization for distribution to needy or poor persons is not liable in any civil action based on the theory of warranty, negligence, or strict liability in tort for damages incurred resulting from any illness or disease contracted by

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the ultimate users or recipients of the food due to the nature, age, condition, or packaging of the food.

(2) The immunity provided in subsection (1) does not apply if 1 of the following is shown:

(a) That the illness or disease resulted from the willful, wanton, or reckless acts of the donor.

(b) That the illness or disease resulted from prepared food if both of the following apply:

(*i*) The prepared food was a potentially hazardous food at the time it was donated.

(*ii*) A law of this state or a rule promulgated by an agency or department of this state concerning the preparation, transportation, storage, or serving of the prepared food was violated at any time before the food was donated.

(c) That the illness or disease resulted from food in hermetically sealed containers that was not prepared by a commercial processor.

(d) That the donor had actual or constructive knowledge that the food was tainted, contaminated, or harmful to the health or well-being of the recipient of the donated food.

History: 1993, Act 136, Imd. Eff. Aug. 2, 1993.

691.1573 Inspection of food by nonprofit or charitable organization; civil liability; exceptions to immunity.

Sec. 3. (1) Except as provided in subsection (2), on or after July 1, 1993 a nonprofit corporation or charitable organization that in good faith receives food for free or nominal cost distribution and that reasonably inspects the food at the time of donation and finds the food apparently fit for human consumption is not liable in any civil action based on the theory of warranty, negligence, or strict liability in tort for damages incurred resulting from any illness or disease contracted by the ultimate users or recipients of the food due to the condition of the food.

(2) The immunity provided in subsection (1) does not apply if 1 of the following is shown:

(a) That the illness or disease resulted from the willful, wanton, or reckless acts of the nonprofit corporation or charitable organization.

(b) That the illness or disease resulted from prepared food if both of the following apply:

(*i*) The prepared food was a potentially hazardous food at the time it was donated.

(*ii*) A law of this state or a rule promulgated by an agency or department of this state concerning the preparation, transportation, storage, or serving of the prepared food was violated at any time before the ultimate user or recipient of the food actually received the food.

(c) That the illness or disease resulted from food in hermetically sealed containers that was not prepared by a commercial processor.

(d) That the corporation or organization had actual or constructive knowledge that the food was tainted, contaminated, or harmful to the health or well-being of the recipient of the donated food.

History: 1993, Act 136, Imd. Eff. Aug. 2, 1993.

691.1574 Repeal of act.

Sec. 4. Act No. 339 of the Public Acts of 1982 is repealed.

History: 1993, Act 136, Imd. Eff. Aug. 2, 1993.

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