

LAWS OF DELAWARE
VOLUME 83
CHAPTER 196
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 226
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 10 AND 16 OF THE DELAWARE CODE RELATING TO IMMUNITY FROM LIABILITY FOR DONATED FOOD.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8130, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 8130. Exemption from liability for donation of prepared food. —(a) Any person, business or institution who makes a good faith donation of prepared or left-over perishable food which appears to be fit for human consumption at the time it is donated to a charitable organization serving free meals to the needy public shall not be liable for damages in any civil action or subject to criminal prosecution for any illness, injury or death due to the condition of such food. —(b) A charitable organization which receives, prepares and serves to the needy public free food which appears to be fit for human consumption at the time it is served shall not be liable for damages in any civil action or subject to criminal prosecution for any illness, injury or death due to the condition of such food unless the condition is a direct result of the gross negligence, recklessness or intentional misconduct of employees of the organization.~~

Section 2. Amend Subchapter III, Chapter 68, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Immunity for ~~Food Donors~~ Donated Food.

~~§ 6820. Food donors exempt from liability.~~

~~A person, including a farmer, processor, distributor, wholesaler or retailer of food, who, in good faith, donates an item of food for use or distribution by a nonprofit organization shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition or packaging of the donated food. This section does not apply if the nonprofit organization sells or offers for sale the donated items of food. Nothing in this section is intended to limit any liability on the part of the donee nonprofit organizations accepting food items under this section. The Division of Public Health is authorized to inspect donated food items upon the request of the donee nonprofit organization.~~

Section 3. Amend Subchapter III, Chapter 68, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6821. Definitions.

For purposes of this subchapter:

(1) “Food” means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended to be used in whole or part for human consumption that is apparently fit for human consumption. “Food” includes nonperishable food, perishable food, and wild game.

(2) “Gleaner” means a person who gleans an agricultural crop that has been donated by the owner of the agricultural crop.

(3) “Gleans” or “gleaned” means to gather an agricultural crop leftover after a harvest.

(4) “Nonperishable food” means any food that has been commercially processed, prepared, and packaged for human consumption and that is intended to remain fit for human consumption without refrigeration for a reasonable length of time.

(5) “Nonprofit organization” means an incorporated or unincorporated entity that is operating for religious, charitable, or educational purposes and does not provide net earnings to, or operate in any other way that inures to the benefit of, any officer, employee, or shareholder of the entity.

(6) “Perishable food” means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. “Perishable food” includes all of the following:

- a. Fresh and processed meats, poultry, seafood, dairy products, or bakery products.
- b. Eggs in the shell.
- c. Fresh fruits and vegetables.

(7) “Person” means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. “Person” does not include a government; governmental subdivision, agency, or instrumentality; or a public corporation.

(8) “State agency” means any office, department, board, commission, committee, court, school district, board of education, or other instrumentality of the government of this State existing by virtue of an act of the General Assembly or of the Constitution of this State.

(9) “Wild game” means any of the following that are legally taken under the laws of this State:

- a. Game animals under § 701 of Title 7.
- b. Game birds under § 702 of Title 7.
- c. Game fish under § 906 of Title 7.
- d. Shellfish under § 1901 of Title 7.

§ 6822. Immunity of a person or gleaner from liability.

(a) A person or gleaner who, in good faith, donates food for ultimate distribution without charge by a nonprofit organization or a state agency is not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless an injury or death is caused by the gross negligence, recklessness, or intentional misconduct of the person or gleaner.

(b) A person who, in good faith, provides services related to the processing of wild game that is donated to a nonprofit organization or a state agency for ultimate distribution without charge by the nonprofit organization or the state agency is not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless an injury or death is caused by the gross negligence, recklessness, or intentional misconduct of the person.

§ 6823. Immunity of a nonprofit organization from liability.

(a) A nonprofit organization that, in good faith, accepts donated food for ultimate distribution without charge is not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, unless an injury or death is caused by the gross negligence, recklessness, or intentional misconduct of the nonprofit organization.

§ 6824. Authority of the Division of Public Health and the Department of Agriculture.

(a) This subchapter does not restrict or preempt the authority granted to the Division of Public Health or the Department of Agriculture by other law to inspect, regulate, or ban food.

Section 4. The General Assembly directs the Division of Public Health to do all of the following.

(1) Review any of its regulations that have the effect of limiting the use of donated or gleaned food, with the goal of eliminating unnecessary regulations and increasing the supply of usable donated or gleaned food while protecting public health.

(2) After its review of its regulations and no later than 1 year after the enactment of this Act, report to the Governor and the members of the General Assembly its findings summarizing each regulation reviewed and what action the Division is taking as to retaining, modifying, or terminating each regulation.

Approved September 17, 2021