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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 226

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:

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

3 § 8130. ~~Exemption from liability for donation of prepared food.~~—(a) Any person, business or institution who
4 makes a good faith donation of prepared or left over perishable food which appears to be fit for human consumption at the
5 time it is donated to a charitable organization serving free meals to the needy public shall not be liable for damages in any
6 civil action or subject to criminal prosecution for any illness, injury or death due to the condition of such food.—(b) A
7 charitable organization which receives, prepares and serves to the needy public free food which appears to be fit for human
8 consumption at the time it is served shall not be liable for damages in any civil action or subject to criminal prosecution for
9 any illness, injury or death due to the condition of such food unless the condition is a direct result of the gross negligence,
10 recklessness or intentional misconduct of employees of the organization.

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

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

14 § 6820. ~~Food donors exempt from liability.~~

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

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

23 § 6821. Definitions.

24 For purposes of this subchapter:

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

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

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

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

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

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

39 a. Fresh and processed meats, poultry, seafood, dairy products, or bakery products.

40 b. Eggs in the shell.

41 c. Fresh fruits and vegetables.

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

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

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

49 a. Game animals under § 701 of Title 7.

50 b. Game birds under § 702 of Title 7.

51 c. Game fish under § 906 of Title 7.

52 d. Shellfish under § 1901 of Title 7.

53 § 6822. Immunity of a person or gleaner from liability.

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

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

63 § 6823. Immunity of a nonprofit organization from liability.

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

68 § 6824. Authority of the Division of Public Health and the Department of Agriculture.

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

71 (b) The Division of Public Health and the Department of Agriculture each may, in accordance with its respective
72 authority, inspect an item of donated or gleaned food on the request of a nonprofit organization accepting donated or
73 gleaned food.

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

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

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

SYNOPSIS

Subchapter III, Chapter 68, Title 16 of the Delaware Code (“Subchapter III”) was originally enacted in 1982. In 1996, President Clinton signed the Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (“Bill Emerson Act”). The Bill Emerson Act preempts Subchapter III to the extent of any conflict, known as “partial preemption”.

This Act makes Subchapter III consistent with the Bill Emerson Act by protecting a “gleaner” from civil or criminal liability as it relates to their donation of the gleaned food.

Since the Bill Emerson Act only partially preempts state law on this subject, the State is free to provide greater protection than the Bill Emerson Act. Therefore, this Act does all of the following:

1. Extends to those who, in good faith, donate food to state agencies the same immunity from civil or criminal liability that is granted to those who, in good faith, donate food to nonprofit organizations.

2. Specifically includes within the definition of “food” both perishable food and wild game to makes it clear that food, in all of its forms, is covered by this Act. Thus, under this Act, those donating deer to the Division of Fish and Wildlife’s Sportsmen Against Hunger program would be immune from civil or criminal liability as it relates to the donation.

3. Protects a person who, in good faith, provides services to a nonprofit organization or state agency related to the processing of wild game that is donated to a nonprofit organization or a state agency.

This Act removes the exemption from liability for donation of prepared food from Title 10 so that the exemption no longer appears in both Title 10 and Title 16.

The Act also clarifies the authority of Division of Public Health and Department of Agriculture relating to donated food.