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HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 27

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO IMMUNITY FOR DONATED FOOD.

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

Section 1. 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 2. Further 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

As used in 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 gleanes 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; and 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 the State. “State agency” does not include political subdivisions of this State, and their agencies, and other public agencies not specifically contained in the definition of “state agency” which exist by virtue of the law of this State and whose jurisdiction either is limited to a political subdivision of this State, or to a portion thereof, or extends beyond the boundaries of this State.

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

a. Game animals, as defined by § 701 of Title 7.

b. Game birds, as defined by § 702 of Title 7.

c. Game fish, as defined by § 906 of Title 7.

d. Shellfish, as defined by § 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.

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

56 (c) This section does not apply if the nonprofit organization sells or offers for sale the donated food to a person
57 other than another nonprofit organization that will ultimately distribute the donated food without charge.

58 § 6823. Immunity of a nonprofit organization from liability.

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

63 (b) This section does not apply if the nonprofit organization sells or offers for sale the donated food to a person
64 other than another nonprofit organization that will ultimately distribute the donated food without charge.

65 § 6824. Authority of the Division of Public Health and the Department of Agriculture.

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

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

71 Section 3. The Division of Public Health shall do all of the following:

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

74 (2) After its review of such regulations and within 1 year of the enactment of this Act, report to the Governor and
75 the members of the General Assembly its findings summarizing each regulation reviewed and what action the Division is
76 taking as to retaining, modifying, or terminating each such regulation.

SYNOPSIS

Subchapter III, Chapter 68, Title 7 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 make 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.

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