

24:4A-1 to 24:4A-5

LEGISLATIVE HISTORY CHECKLIST

"Food Bank Good Samaritan Act"
(Immunity of persons and organizations
concerned with donation of food for
distribution)

NJSA 24:4A-1 to 24:4A-5

LAWS 1982

CHAPTER 178

Bill No. A664

Sponsor(s) Kalik and Costa

Date Introduced Feb. 8, 1982

Committee: Assembly State Govt., Civil Service, Elections, Pensions & Veterans Affairs

Senate Institutions, Health & Welfare

Amended during passage Yes ~~No~~ Amendments denoted by asterisks

according to Governor's recommendations:
Date of Passage: Assembly May 3, 1982

Re-enacted 9-30-82

Senate June 28, 1982

Re-enacted 11-6-82

Date of approval Nov. 12, 1982

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note Yes ~~No~~

Veto Message Yes ~~No~~

Message on signing Yes ~~No~~

Following were printed:

Reports Yes ~~No~~

Hearings Yes ~~No~~

Legislation in other states:

Arizona §36-916 (L.1980, ch.190, §4)

California Agric. S8501 et seq. (1977 ch. 977)

Idaho § 6-1301 and 6-1302 (L.1980, c.93)

Maryland H-Eg4-107 (L.1982, ch.240)

6/22/81 New York (Agricultural and Markets) §71y and 71z (L.1980, ch.868 & 869)

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 664

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1982

By Assemblywomen KALIK and COSTA

Referred to Committee on State Government, Civil Service,
Elections, Pensions and Veterans Affairs

AN ACT providing immunity to certain persons and organizations
concerned with the donation of food for distribution.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Food Bank
2 Good Samaritan Act."

1 2. As used in this act:

2 a. "Donor" includes, but is not limited to, any farmer, processor,
3 distributor, wholesaler or retailer of perishable or prepared food;

4 b. "Food" means articles used for food or drink for humans
5 and articles used for components of any such article;

6 c. "Gleaner" means a person who harvests for distribution an
7 agricultural food that has been donated by the owner;

8 d. "Nonprofit organization" means an organization incorporated
9 under the provisions of Title 15 or Title 16 of the Revised Statutes
10 of New Jersey, an organization exempt from taxation under section
11 501 (c)(3) of the Internal Revenue Code or an entity to which a
12 charitable contribution as defined under subsection (c) of section
13 170 of the Internal Revenue Code is deductible under section 170;

14 e. "Perishable food" means any food that may spoil or other-
15 wise become unfit for human consumption because of its nature,
16 type or physical conditions. Perishable food includes, but is not
17 limited to, fresh or processed meats, poultry, seafood, dairy pro-
18 ducts, bakery products, eggs in the shell, fresh fruits or vegetables
19 and foods that have been canned or otherwise processed and

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted March 15, 1982.**

****—Senate committee amendments adopted June 21, 1982.**

20 packaged and which may or may not require refrigeration or
21 freezing;

22 f. "Prepared food" means food commercially processed and pre-
23 pared for human consumption.

1 3. a. Any donor of prepared or perishable food or any gleaner
2 of agricultural food, which food appears to be fit for human con-
3 sumption at the time it is donated to a nonprofit organization, shall
4 not be liable for damages in any civil action or subject to criminal
5 prosecution for any injury or death due to the condition of the food
6 unless the injury or death is a direct result of the gross negligence,
7 recklessness or knowing misconduct ***[with purpose]*** of the donor
8 or gleaner.

9 b. A nonprofit organization or its agent which or who in good
10 faith receives and distributes prepared or perishable food which
11 appears to be fit for human consumption at the time it is distributed
12 shall not be liable for damages in any civil action or subject to
13 criminal prosecution for any injury or death due to the condition
14 of the food unless the injury or death is a direct result of the gross
15 negligence, recklessness or knowing misconduct or misconduct
16 ***[with purpose]*** of the organization or an agent of the organiza-
16a tion.

17 c. An owner of agricultural food who gives permission to a
18 gleaner to enter upon his land for the purpose of harvesting donated
19 agricultural food for distribution shall not be liable for damages
20 in any civil action due to the presence of the gleaner on the land
21 and shall not be liable for damages in any civil action or subject
22 to criminal prosecution resulting from the consumption of the food
23 gleaned or donated.

24 d. This section applies to good faith donations of perishable or
25 prepared food which is not readily marketable due to appearance,
26 freshness, grade, surplus supply or other conditions which do not
27 affect its fitness for human consumption.

1 ****4. a. Any nonprofit organization known as a food bank which**
2 **receives and distributes prepared or perishable food in accordance**
3 **with this act shall obtain a license from the Department of Health**
4 **to distribute such food.**

5 **b. The Department of Health shall establish procedures to license**
6 **and regulate nonprofit organizations which receive and distribute**
7 **food and are known as food banks. The purpose of the licensure**
8 **and regulation is to ensure the quality of the distributed food.**

1 **5. The Department of Health shall promulgate rules and regula-**
2 **tions necessary to carry out the purposes of this act.****

1 ****[4.]** **6.** This act shall take effect ****[immediately]** **90**
2 **days following enactment**.****

20 packaged and which may or may not require refrigeration or
21 freezing;

22 f. "Prepared food" means food commercially processed and pre-
23 pared for human consumption.

1 3. a. Any donor of prepared or perishable food or any gleaner
2 of agricultural food, which food appears to be fit for human con-
3 sumption at the time it is donated to a nonprofit organization, shall
4 not be liable for damages in any civil action or subject to criminal
5 prosecution for any injury or death due to the condition of the food
6 unless the injury or death is a direct result of the gross negligence,
7 recklessness or knowing misconduct with purpose of the donor or
8 gleaner.

9 b. A nonprofit organization or its agent which or who in good
10 faith receives and distributes prepared or perishable food which
11 appears to be fit for human consumption at the time it is distributed
12 shall not be liable for damages in any civil action or subject to
13 criminal prosecution for any injury or death due to the condition
14 of the food unless the injury or death is a direct result of the gross
15 negligence, recklessness or knowing misconduct or misconduct with
16 purpose of the organization or an agent of the organization.

17 c. An owner of agricultural food who gives permission to a
18 gleaner to enter upon his land for the purpose of harvesting donated
19 agricultural food for distribution shall not be liable for damages
20 in any civil action due to the presence of the gleaner on the land
21 and shall not be liable for damages in any civil action or subject
22 to criminal prosecution resulting from the consumption of the food
23 gleaned or donated.

24 d. This section applies to good faith donations of perishable or
25 prepared food which is not readily marketable due to appearance,
26 freshness, grade, surplus supply or other conditions which do not
27 affect its fitness for human consumption.

1 4. This act shall take effect immediately.

STATEMENT

This bill provides immunity to donors and gatherers (gleaners) of food given to nonprofit charitable organizations for the purpose of distribution. The bill also provides immunity to the nonprofit charitable organization which receives and distributes the donated foods. The immunity applies to civil and criminal actions unless the injury is the direct result of gross negligence, recklessness or intentional misconduct of the donor, gatherer or nonprofit organization or its agent.

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The purpose of the immunity provided in the bill is to encourage the establishment of food banks for the distribution of nutritious food that would otherwise go to waste.

Arizona, California, Idaho, Maryland and New York are among those States that have adopted or proposed similar legislation.

The bill is designated the "Food Bank Good Samaritan Act" to distinguish it from other statutes in New Jersey providing immunity from liability.

**SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE**

STATEMENT TO
ASSEMBLY, No. 664

[OFFICIAL COPY REPRINT]

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 1982

This bill is designated the "Food Bank Good Samaritan Act." As amended by the committee, the bill provides immunity to donors and gatherers (gleaners) of food given to nonprofit charitable organizations for the purpose of distribution and to the nonprofit charitable organization which receives and distributes the donated food. The immunity applies to civil and criminal actions unless the injury is the direct result of gross negligence, recklessness or intentional misconduct of the donor, gatherer or nonprofit organization or its agent. The bill also requires that all food banks be licensed and subject to regulation by the Department of Health.

The committee amended the bill to require Department of Health licensure and regulation. This amendment was added at the recommendation of the Department of Health in order to insure uniform standards and quality of the food that is distributed by the food banks.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 20, 1982

ASSEMBLY BILL NO. 664 (20CR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 664 (20CR) with my recommendations for reconsideration.

This bill, to be known as the "Food Bank Good Samaritan Act", provides immunity from liability to any donor or gatherer of prepared or perishable food who gives it to a non-profit organization. The immunity applies to any civil action or criminal prosecution for injury or death due to the condition of the food, unless the injury or death is the direct result of the gross negligence, recklessness, or knowing misconduct of the donor or gatherer. The immunity will apply as long as the food appeared to be fit for human consumption at the time it was donated to the non-profit organization. Immunity will also be given to a non-profit organization or its agent which in good faith receives and distributes the food, and to the owner of agricultural land who gives permission to someone to enter onto his land for the purpose of harvesting donated food for distribution. The purpose of this immunity is to encourage the distribution of food to the poor by non-profit organizations-- the belief being that fear of culpability, should an accident occur, might discourage such charitable ventures.

In addition, the bill provides that all food banks must be licensed and regulated by the Department of Health. This is to ensure that the food distributed by these non-profit organizations is suitable for human consumption.

I agree wholeheartedly with the general purpose of this bill. There is a technical flaw in the bill, however, and parts of the bill that might be misunderstood. I believe that these mistakes and ambiguities should be corrected and clarified.

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First of all, this bill, as presently drafted, sets up two standards of immunity for donors of prepared or perishable food on the one hand and the non-profit organization itself on the other. If the bill be read literally, the non-profit organization and its agents are not immune from suit if this culpability has arisen because of non-cognitive misconduct, whereas immunity would not attach to the others covered by the act only if the injury is a result of knowing misconduct, gross negligence or recklessness. These divergent standards appear to be inadvertent. To waive immunity in the case of simple misconduct would destroy much of the efficacy of the bill, and I have suggested deleting this language.

In addition, the bill might be read to require the licensure of local non-profit organizations distributing food directly to the needy. I do not believe this to be the intent of the bill. The Department of Health does not now license for profit retailers, only wholesalers. Retailers are subject to the oversight of local health departments instead. Similarly, it makes sense for the Department to license large non-profit food clearinghouses to ensure the public health and safety, but the monitoring of small local distributors is better left to localities. I have recommended amendments clarifying this dichotomy of responsibility.

Finally, some fear has been expressed that excessive licensure fees will discourage food banks. Thus, I have suggested language making it clear that such fees will remain minimal.

Accordingly, I herewith return Assembly Bill No. 664 (20CR) and recommend that it be amended as follows:

Page 2, Section 2, After Line 23: Insert new section g. as follows:

"g. 'Food bank' means a nonprofit food clearinghouse that solicits, stores, and distributes donations of edible but unmarketable surplus food. The food is distributed to nonprofit organizations that feed the needy."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 2, Section 3, Lines 9-10: Delete "nonprofit organization or its agent which or who in good faith receives and distributes" insert "food bank, nonprofit organization, or their agents which or who in good faith receive and distribute"

Page 2, Section 3, Line 15: After "misconduct" delete "or misconduct"

Page 2, Section 4, Line 4: After "." insert "The fee for licensure shall be equal to the lowest fee charged to food, drug, or cosmetic establishments regulated by the Department pursuant to L. 1971, c. 158 (C.24:15-13, 14)."

Respectfully,

/s/ Thomas H. Kean
GOVERNOR

[seal]

/s/ W. Cary Edwards
Chief Counsel to the Governor