

No. 1981-76

## AN ACT

## HB 643

Providing limited civil and criminal immunity to persons donating food to charitable or religious organizations for distribution to needy persons and imposing certain powers and duties on counties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

**Section 1. Short title.**

This act shall be known and may be cited as the "Donated Food Limited Liability Act."

**Section 2. Declaration of policy and legislative findings.**

The General Assembly, in order to promote the general welfare, hereby declares as public policy that the Commonwealth's abundance of food should be utilized to its utmost extent. The General Assembly hereby finds that the limited food purchasing power of low income households contributes to hunger and malnutrition. In an effort to alleviate such hunger and malnutrition and supplement other Federal and State food assistance programs, the provisions of this act are intended to stimulate the donation of food to charitable or religious organizations and thereby assist low income households in need.

**Section 3. Definitions.**

The following words and phrases as used in this act shall have the meanings given them in this section unless the context clearly indicates otherwise:

"Charitable organization." A charitable organization as defined in section 2 of the act of August 9, 1963 (P.L.628, No.337), known as the "Solicitation of Charitable Funds Act" and which has a current approved registration statement on file with the Department of State pursuant to the "Solicitation of Charitable Funds Act."

"Food." Any fowl, animal, vegetable or other stuff, product or article which is customary food or which is proper food for human beings. "Food" shall specifically exclude canned goods that are rusted, leaking or swollen, or canned goods that are defective or cannot, for health reasons, otherwise be offered for sale to members of the general public.

**Section 4. Donor immunity.**

(a) General rule.—Notwithstanding any other provision of law, any person who, in good faith, donates food to a charitable or religious organization for ultimate free distribution to needy individuals, shall not be subject to criminal or civil liability arising from the condition of such food, if the donor reasonably inspects the food at the time of donation and finds the food fit for human consumption. The immunity provided

by this subsection shall not extend to donors where damages result from the negligence, recklessness or intentional misconduct of the donor, or if the donor has, or should have had, actual or constructive knowledge that the food is tainted, contaminated or harmful to the health or well-being of the ultimate recipient.

(b) Condition of food.—The immunity provided by this section is applicable to the good faith donation of food not readily marketable due to considerations not effecting its fitness for human consumption including but not limited to appearance, freshness, grade or surplus, but shall not be deemed or construed to restrict the authority of any authorized agency to otherwise regulate or ban the use of such food for human consumption.

#### Section 5. Charitable or religious organization immunity.

Notwithstanding any other provision of law, any bona fide charitable or religious organization which receives, in good faith, donated food for ultimate distribution to needy individuals, either for free or for a nominal fee, shall not be subject to criminal or civil liability arising from the condition of such food, if the charitable or religious organization reasonably inspects the food, at the time of donation and at the time of distribution, and finds the food fit for human consumption. The immunity provided by this section shall not extend to charitable or religious organizations where damages result from the negligence, recklessness, or intentional misconduct of the charitable or religious organization, or if the charitable or religious organization has or should have had actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

#### Section 6. Penalty for sale of donated food.

Any person or any employee of or volunteer for a charitable or religious organization who sells, or offers to sell, for profit, food that such person knows to be donated pursuant to this act commits a misdemeanor of the third degree. The assessment of a nominal fee by the charitable or religious organization shall not be considered a sale.

#### Section 7. Inspection of food.

Charitable or religious organizations which regularly accept donated food for distribution pursuant to this act shall request the appropriate local health authorities to inspect the food at regular intervals.

#### Section 8. County information and referral system.

The governing body of each county may develop an informational and referral system to make prospective donors and charitable or religious organizations aware of each other and to make needy individuals aware of the existence of food donated in each county pursuant to this act. Under the provisions of this act the county shall be immune from all criminal and civil liability, unless damages result from the gross negligence, recklessness or intentional misconduct of the county or if the county has, or should have had, actual or constructive knowledge that the food is tainted, contaminated or harmful to the health or well-being of the ultimate recipient.

**Section 9. Effective date.**

This act shall take effect in 60 days.

**APPROVED—The 10th day of July, A. D. 1981.**

**DICK THORNBURGH**