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RH/CL

P.L. 2017, CHAPTER 311, *approved January 16, 2018*

Senate, No. 3026 (*Second Reprint*)

1 AN ACT concerning liability for food donations and gleaning
2 activities, amending and supplementing P.L.1982, c.178, and
3 supplementing Title 4 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 2 of P.L.1982, c.178 (C.24:4A-2) is amended to read
9 as follows:

10 2. As used in this act:

11 “Donate” means to provide food free of charge or for a fee
12 sufficient only to cover the cost of storing, transporting, or
13 otherwise handling the food.

14 **[a.]** “Donor” includes, but is not limited to, any farmer,
15 processor, distributor, ¹or¹ wholesaler or retailer of perishable or
16 prepared food, a public or nonpublic school, or an institution of
17 higher education in this State **[:]**.

18 **[b.]** “Food” means articles used for food or drink for humans
19 and articles used for components of any such article **[:]**.

20 ²“Food bank” means a nonprofit organization that collects,
21 stores, and distributes donated surplus food either to nonprofit
22 organizations that feed the needy or directly to needy individuals.]

23 “Food bank” means a nonprofit food clearinghouse that solicits,
24 stores, and distributes donations of edible but unmarketable surplus
25 food. The food is distributed to nonprofit organizations that feed the
26 needy.²

27 **[c.]** “Gleaner” means a person who harvests for distribution an
28 agricultural food that has been donated by the owner **[:]**.

29 **[d.]** “Nonprofit organization” means an organization
30 incorporated under the provisions of Title 15 or Title 16 of the
31 Revised Statutes of New Jersey, an organization exempt from
32 taxation under section 501(c)(3) of the Internal Revenue Code or an
33 entity to which a charitable contribution as defined under
34 subsection (c) of section 170 of the Internal Revenue Code is
35 deductible under section 170 **[:]**.

36 **[e.]** “Perishable food” means any food that may spoil or
37 otherwise become unfit for human consumption because of its

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 underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted March 13, 2017.

²Assembly AAN committee amendments adopted June 5, 2017.

1 nature, type or physical condition. Perishable food includes, but is
2 not limited to, fresh or processed meats, poultry, seafood, dairy
3 products, bakery products, eggs in the shell, fresh fruits or
4 vegetables and foods that have been canned or otherwise processed
5 and packaged and which may or may not require refrigeration or
6 freezing [;] .

7 [f.] “Prepared food” means food commercially processed and
8 prepared for human consumption [;] .

9 [g. “Food bank” means a nonprofit food clearinghouse that
10 solicits, stores, and distributes donations of edible but unmarketable
11 surplus food. The food is distributed to nonprofit organizations that
12 feed the needy.]

13 (cf: P.L.2012, c.68, s.1)

14

15 2. Section 3 of P.L.1982, c.178 (C.24:4A-3) is amended to read
16 as follows:

17 3. a. Any donor of prepared or perishable food or any gleaner
18 of agricultural food, which food appears to be fit for human
19 consumption at the time it is donated to a nonprofit organization or
20 any other person, shall not be liable for damages in any civil action
21 or subject to criminal prosecution for any injury or death due to the
22 condition of the food, unless the injury or death is a direct result of
23 the gross negligence, recklessness or knowing misconduct of the
24 donor or gleaner.

25 b. A food bank, nonprofit organization, or their agents [which
26 or] who in good faith receive and distribute prepared or perishable
27 food which appears to be fit for human consumption at the time it is
28 distributed shall not be liable for damages in any civil action or
29 subject to criminal prosecution for any injury or death due to the
30 condition of the food, unless the injury or death is a direct result of
31 the gross negligence, recklessness or knowing misconduct of the
32 organization or an agent of the organization.

33 c. An owner of agricultural food who gives permission to a
34 gleaner to enter upon his land for the purpose of harvesting donated
35 agricultural food for distribution shall not be liable for damages in
36 any civil action due to the presence of the gleaner on the land and
37 shall not be liable for damages in any civil action or subject to
38 criminal prosecution resulting from the consumption of the food
39 gleaned or donated.

40 d. This section applies to good faith donations of perishable or
41 prepared food which is not readily marketable due to appearance,
42 freshness, grade, passage of the “best by” or other open date,
43 surplus supply, or other conditions which do not affect its fitness
44 for human consumption. The protections provided in this section
45 shall apply regardless of compliance with any laws, rules,
46 regulations, or ordinances regulating the quality or labeling of food.

47 (cf: P.L.1982, c.178, s.3)

1 3. (New section) A nonprofit organization that organizes or
2 hosts volunteers on agricultural land for the purpose of collecting or
3 gleaning agricultural food from the land for ultimate distribution to
4 needy individuals shall not be liable for damages in any civil action
5 due to the presence or activity of the organization or volunteers on
6 the land, unless the damage is a direct result of the gross
7 negligence, recklessness, or knowing misconduct of the nonprofit
8 organization or volunteer.

9
10 4. (New section) Within 90 days after the effective date of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 the Department of Agriculture shall prepare and publish on its
13 Internet website a guidance document that provides information to
14 farmers, food banks, donors, nonprofit organizations, and other
15 persons on the State and federal liability protections available for
16 food donations, gleaning, and other related activities.

17
18 5. This act shall take effect immediately.

19

20

21

22

23 Clarifies and expands liability protections for food donations and
24 gleaning activities.

SENATE, No. 3026

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 27, 2017

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:

Senators Bateman and Diegnan

SYNOPSIS

Clarifies and expands liability protections for food donations and gleaning activities.

CURRENT VERSION OF TEXT

As introduced.



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2 activities, amending and supplementing P.L.1982, c.178, and
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15 processor, distributor, wholesaler or retailer of perishable or
16 prepared food, a public or nonpublic school, or an institution of
17 higher education in this State **[:]**.

18 **[b.]** “Food” means articles used for food or drink for humans
19 and articles used for components of any such article **[:]**.

20 “Food bank” means a nonprofit organization that collects, stores,
21 and distributes donated surplus food either to nonprofit
22 organizations that feed the needy or directly to needy individuals.

23 **[c.]** “Gleaner” means a person who harvests for distribution an
24 agricultural food that has been donated by the owner **[:]**.

25 **[d.]** “Nonprofit organization” means an organization
26 incorporated under the provisions of Title 15 or Title 16 of the
27 Revised Statutes of New Jersey, an organization exempt from
28 taxation under section 501(c)(3) of the Internal Revenue Code or an
29 entity to which a charitable contribution as defined under
30 subsection (c) of section 170 of the Internal Revenue Code is
31 deductible under section 170 **[:]**.

32 **[e.]** “Perishable food” means any food that may spoil or
33 otherwise become unfit for human consumption because of its
34 nature, type or physical condition. Perishable food includes, but is
35 not limited to, fresh or processed meats, poultry, seafood, dairy
36 products, bakery products, eggs in the shell, fresh fruits or
37 vegetables and foods that have been canned or otherwise processed
38 and packaged and which may or may not require refrigeration or
39 freezing **[:]**.

40 **[f.]** “Prepared food” means food commercially processed and
41 prepared for human consumption **[:]**

42 **[g.]** “Food bank” means a nonprofit food clearinghouse that
43 solicits, stores, and distributes donations of edible but unmarketable

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 underlined thus is new matter.

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7 3. a. Any donor of prepared or perishable food or any gleaner
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10 any other person, shall not be liable for damages in any civil action
11 or subject to criminal prosecution for any injury or death due to the
12 condition of the food, unless the injury or death is a direct result of
13 the gross negligence, recklessness or knowing misconduct of the
14 donor or gleaner.

15 b. A food bank, nonprofit organization, or their agents 【which
16 or】 who in good faith receive and distribute prepared or perishable
17 food which appears to be fit for human consumption at the time it is
18 distributed shall not be liable for damages in any civil action or
19 subject to criminal prosecution for any injury or death due to the
20 condition of the food, unless the injury or death is a direct result of
21 the gross negligence, recklessness or knowing misconduct of the
22 organization or an agent of the organization.

23 c. An owner of agricultural food who gives permission to a
24 gleaner to enter upon his land for the purpose of harvesting donated
25 agricultural food for distribution shall not be liable for damages in
26 any civil action due to the presence of the gleaner on the land and
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28 criminal prosecution resulting from the consumption of the food
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35 shall apply regardless of compliance with any laws, rules,
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37 (cf: P.L.1982, c.178, s.3)

38

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40 hosts volunteers on agricultural land for the purpose of collecting or
41 gleaning agricultural food from the land for ultimate distribution to
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44 the land, unless the damage is a direct result of the gross
45 negligence, recklessness, or knowing misconduct of the nonprofit
46 organization or volunteer.

47 4. (New section) Within 90 days after the effective date of
48 P.L. , c. (C.) (pending before the Legislature as this bill),

1 the Department of Agriculture shall prepare and publish on its
2 Internet website a guidance document that provides information to
3 farmers, food banks, donors, nonprofit organizations, and other
4 persons on the State and federal liability protections available for
5 food donations, gleaning, and other related activities.

6
7 5. This act shall take effect immediately.
8
9

10 STATEMENT
11

12 This bill would clarify and expand liability protections for food
13 donations and gleaning activities.

14 Under the federal “Bill Emerson Good Samaritan Food Donation
15 Act,” (42 U.S.C. s.1791) and existing State law, P.L.1982, c.178
16 (C.24:4A-1 et seq.), donors of food and organizations that receive
17 and distribute the food to needy individuals are immune from civil
18 and criminal liability arising from the food, provided certain
19 requirements are met. These laws also provide liability protection
20 to farmers who permit the collection or gleaning of agricultural
21 food on their land. While these laws provide a good baseline of
22 liability protection, some concern over liability still exists due to
23 ambiguities in the federal and State laws. Additionally, individuals,
24 farmers, and organizations may be unaware of the liability
25 protections that exist for food donations, gleaning, and other related
26 activities.

27 This bill would define the term “donate” in existing State law to
28 mean “to provide food free of charge or for a fee sufficient only to
29 cover the cost of storing, transporting, or otherwise handling the
30 food.” This provision would, in effect, permit nonprofit
31 organizations to recover the cost of handling donated food and
32 perhaps allow for innovative approaches to sell surplus food at
33 deeply reduced prices, such as “social supermarkets.” The bill
34 would provide liability protections to public and nonpublic schools
35 donating food. The bill would also clarify that a donor or gleaner of
36 food may donate the food directly to needy individuals, as opposed
37 to just nonprofit organizations. This measure would increase
38 efficiency and enable the timely use of perishable food.

39 The bill would specify that the State’s liability protections apply
40 to food that is past its “best by” or other open date, but is still fit for
41 human consumption. Current federal and State laws are silent as to
42 whether post-date food is eligible for liability protection, and
43 clarifying that it is eligible would ensure that less food goes to
44 waste. The bill would also specify that State liability protections
45 apply regardless of compliance with any laws, rules, regulations, or
46 ordinances regulating the quality or labeling of food. The federal
47 liability protection law requires donated food to meet these

1 requirements, imposing extra and unnecessary burdens on donors
2 and nonprofit food recovery organizations.

3 The bill also would establish new liability protections for
4 nonprofit organizations that organize or host volunteers on
5 agricultural land for the purpose of collecting or gleaning
6 agricultural food from the land for ultimate distribution to needy
7 individuals. Lastly, in order to increase awareness of these
8 protections, the bill would require the Department of Agriculture to
9 prepare and publish on its Internet website a guidance document
10 that provides information on the State and federal liability
11 protections available for food donations, gleaning, and other related
12 activities.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 3026

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 13, 2017

The Senate Environment and Energy Committee favorably reports Senate Bill No. 3026 with committee amendments.

This bill would clarify and expand liability protections for food donations and gleaning activities.

Under the federal “Bill Emerson Good Samaritan Food Donation Act,” (42 U.S.C. s.1791) and existing State law, P.L.1982, c.178 (C.24:4A-1 et seq.), donors of food and organizations that receive and distribute the food to needy individuals are immune from civil and criminal liability arising from the food, provided certain requirements are met. These laws also provide liability protection to farmers who permit the collection or gleaning of agricultural food on their land. While these laws provide a good baseline of liability protection, some concern over liability still exists due to ambiguities in the federal and State laws. Additionally, individuals, farmers, and organizations may be unaware of the liability protections that exist for food donations, gleaning, and other related activities.

This bill would define the term “donate” in existing State law to mean “to provide food free of charge or for a fee sufficient only to cover the cost of storing, transporting, or otherwise handling the food.” This provision would, in effect, permit nonprofit organizations to recover the cost of handling donated food and perhaps allow for innovative approaches to sell surplus food at deeply reduced prices, such as “social supermarkets.” The bill would provide liability protections to public and nonpublic schools donating food. The bill would also clarify that a donor or gleaner of food may donate the food directly to needy individuals, as opposed to just nonprofit organizations. This measure would increase efficiency and enable the timely use of perishable food.

The bill would specify that the State’s liability protections apply to food that is past its “best by” or other open date, but is still fit for human consumption. Current federal and State laws are silent as to whether post-date food is eligible for liability protection, and clarifying that it is eligible would ensure that less food goes to waste. The bill would also specify that State liability protections apply regardless of compliance with any laws, rules, regulations, or ordinances regulating the quality or labeling of food. The federal

liability protection law requires donated food to meet these requirements, imposing extra and unnecessary burdens on donors and nonprofit food recovery organizations.

The bill also would establish new liability protections for nonprofit organizations that organize or host volunteers on agricultural land for the purpose of collecting or gleaning agricultural food from the land for ultimate distribution to needy individuals. Lastly, in order to increase awareness of these protections, the bill would require the Department of Agriculture to prepare and publish on its Internet website a guidance document that provides information on the State and federal liability protections available for food donations, gleaning, and other related activities.

The committee amendment is technical in nature.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3026

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2017

The Assembly Agriculture and Natural Resources Committee reports favorably, and with committee amendments, Senate Bill No. 3026 (1R).

This bill, as amended, would clarify and expand liability protections for food donations and gleaning activities.

Under the federal “Bill Emerson Good Samaritan Food Donation Act” (42 U.S.C. s.1791) and existing State law, P.L.1982, c.178 (C.24:4A-1 et seq.), donors of food and organizations that receive and distribute the food to needy individuals are immune from civil and criminal liability arising from the food, provided certain requirements are met. These laws also provide liability protection to farmers who permit the collection or gleaning of agricultural food on their land. While these laws provide a good baseline of liability protection, some concern over liability still exists due to ambiguities in the federal and State laws. Additionally, individuals, farmers, and organizations may be unaware of the liability protections that exist for food donations, gleaning, and other related activities.

This bill would define the term “donate” in existing State law to mean “to provide food free of charge or for a fee sufficient only to cover the cost of storing, transporting, or otherwise handling the food.” This provision would, in effect, permit nonprofit organizations to recover the cost of handling donated food and perhaps allow for innovative approaches to sell surplus food at deeply reduced prices, such as “social supermarkets.” The bill would provide liability protections to public and nonpublic schools donating food. The bill would also clarify that a donor or gleaner of food may donate the food directly to needy individuals, as opposed to just nonprofit organizations. This measure would increase efficiency and enable the timely use of perishable food.

The bill would specify that the State’s liability protections apply to food that is past its “best by” or other open date, but is still fit for human consumption. Current federal and State laws are silent as to whether post-date food is eligible for liability protection, clarifying

that it is eligible would ensure that less food goes to waste. The bill would also specify that State liability protections apply regardless of compliance with any laws, rules, regulations, or ordinances regulating the quality or labeling of food. The federal liability protection law requires donated food to meet these requirements, imposing extra and unnecessary burdens on donors and nonprofit food recovery organizations.

The bill also would establish new liability protections for nonprofit organizations that organize or host volunteers on agricultural land for the purpose of collecting or gleaning agricultural food from the land for ultimate distribution to needy individuals. Lastly, in order to increase awareness of these protections, the bill would require the Department of Agriculture to prepare and publish on its Internet website a guidance document that provides information on the State and federal liability protections available for food donations, gleaning, and other related activities.

As reported, this bill as amended is identical to Assembly Bill No. 4634 (1R) as reported by the committee the same day.

COMMITTEE AMENDMENTS

The committee amendments revise the definition of “food bank” to be identical to the definition of “food bank” in Assembly Bill No. 3056 (2R) (which, among other things, extends the “Food Bank Samaritan Act” immunity protections to public and nonpublic schools) which has passed both houses and is before the General Assembly on second reading for concurrence with the Senate amendments.

ASSEMBLY, No. 4634

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 27, 2017

Sponsored by:

Assemblywoman PAMELA R. LAMPITT

District 6 (Burlington and Camden)

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

SYNOPSIS

Clarifies and expands liability protections for food donations and gleaning activities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2017)

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A4634 LAMPITT, EUSTACE

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13 activities.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4634

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2017

The Assembly Agriculture and Natural Resources Committee reports favorably, and with committee amendments, Assembly Bill No. 4634.

This bill, as amended, would clarify and expand liability protections for food donations and gleaning activities.

Under the federal “Bill Emerson Good Samaritan Food Donation Act” (42 U.S.C. s.1791) and existing State law, P.L.1982, c.178 (C.24:4A-1 et seq.), donors of food and organizations that receive and distribute the food to needy individuals are immune from civil and criminal liability arising from the food, provided certain requirements are met. These laws also provide liability protection to farmers who permit the collection or gleaning of agricultural food on their land. While these laws provide a good baseline of liability protection, some concern over liability still exists due to ambiguities in the federal and State laws. Additionally, individuals, farmers, and organizations may be unaware of the liability protections that exist for food donations, gleaning, and other related activities.

This bill would define the term “donate” in existing State law to mean “to provide food free of charge or for a fee sufficient only to cover the cost of storing, transporting, or otherwise handling the food.” This provision would, in effect, permit nonprofit organizations to recover the cost of handling donated food and perhaps allow for innovative approaches to sell surplus food at deeply reduced prices, such as “social supermarkets.” The bill would provide liability protections to public and nonpublic schools donating food. The bill would also clarify that a donor or gleaner of food may donate the food directly to needy individuals, as opposed to just nonprofit organizations. This measure would increase efficiency and enable the timely use of perishable food.

The bill would specify that the State’s liability protections apply to food that is past its “best by” or other open date, but is still fit for human consumption. Current federal and State laws are silent as to whether post-date food is eligible for liability protection, and clarifying that it is eligible would ensure that less food goes to waste.

The bill would also specify that State liability protections apply regardless of compliance with any laws, rules, regulations, or ordinances regulating the quality or labeling of food. The federal liability protection law requires donated food to meet these requirements, imposing extra and unnecessary burdens on donors and nonprofit food recovery organizations.

The bill also would establish new liability protections for nonprofit organizations that organize or host volunteers on agricultural land for the purpose of collecting or gleaning agricultural food from the land for ultimate distribution to needy individuals. Lastly, in order to increase awareness of these protections, the bill would require the Department of Agriculture to prepare and publish on its Internet website a guidance document that provides information on the State and federal liability protections available for food donations, gleaning, and other related activities.

As reported, this bill as amended is identical to Senate Bill No. 3026 (2R) as reported by the committee the same day.

COMMITTEE AMENDMENTS

The committee amendments revise the definitions of “donor” and “food bank” to be identical to the definitions of “donor” and “food bank” in Assembly Bill No. 3056 (2R) (which, among other things, extends the “Food Bank Samaritan Act” immunity protections to public and nonpublic schools) which has passed both houses and is before the General Assembly on second reading for concurrence with the Senate amendments.