

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 257
Judiciary

(Delegate R. Lewis)

Civil Actions - Immunities - Donated Food

This bill establishes that a nonprofit corporation, organization, or association is not civilly liable for an act or omission that affects the nature, age, condition, or packaging of donated food if the entity prepares, serves, or dispenses donated food in good faith and without charge. The bill applies prospectively to any cause of action arising on or after the bill's October 1, 2019 effective date.

Fiscal Summary

State Effect: None.

Local Effect: None.

Small Business Effect: Minimal, as discussed below.

Analysis

Bill Summary: Exhibit 1 contains the limitations on liability under the bill.

Exhibit 1
Immunity from Liability Under the Bill

<u>Entity or Person</u>	<u>Limitation</u>
<p>Nonprofit corporation, organization, or association that:</p> <p>(1) donates food for distribution;</p> <p>(2) prepares donated food for use or distribution;</p> <p>(3) serves donated food; or</p> <p>(4) dispenses donated food</p>	<p>No civil liability for any act or omission that affects the nature, age, condition, or packaging of donated food if the entity does the following in good faith and without charge:</p> <p>(1) donates food for distribution;</p> <p>(2) prepares donated food for use or distribution;</p> <p>(3) serves donated food; or</p> <p>(4) dispenses donated food</p> <p>Exception: Gross negligence or willful and wanton misconduct</p>
<p>Person, including a nonprofit corporation, organization, or association</p>	<p>Person is not civilly liable for an act or omission that affects the nature, age, condition, or packaging of donated food if the person in good faith:</p> <p>(1) donates food for use or distribution by a nonprofit corporation, organization, or association;</p> <p>(2) prepares donated food for use or distribution by a nonprofit corporation, organization, or association;</p> <p>(3) serves donated food distributed by a nonprofit corporation, organization, or association; or</p> <p>(4) dispenses donated food distributed by a nonprofit corporation, organization, or association</p> <p>Exception: Gross negligence or willful and wanton misconduct</p>

Source: Department of Legislative Services

Current Law:

Person, Defined: Under § 1-114 of the General Provisions Article, unless otherwise specified in the Maryland Code, “person” is defined to include an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, corporation, partnership, business trust, statutory trust, limited liability company, firm,

association, or other nongovernmental entity. Furthermore, § 21-322 of the Health-General Article specifies that “person” includes a nonprofit corporation, organization, or association.

Immunity from Liability Under § 5-634 of the Courts and Judicial Proceedings Article: Unless the act or omission amounts to gross negligence or willful and wanton misconduct, a person, including a nonprofit corporation, organization, or association, is not civilly liable for any act or omission that affects the nature, age, condition, or packaging of the donated food if the person in good faith:

- donates food for use or distribution by a nonprofit corporation, organization, or association;
- prepares donated food for use or distribution by a nonprofit corporation, organization, or association;
- serves donated food distributed by a nonprofit corporation, organization, or association; or
- dispenses donated food distributed by a nonprofit corporation, organization, or association.

Exclusion from Immunity Under § 5-634: The immunity from liability described above does not apply to any person, including a nonprofit corporation, organization, or association, who donates food to, prepares food for use or distribution by, or serves donated food distributed by a nonprofit corporation, organization, or association that sells or offers for sale any donated food.

Inspection of Donated Food by State Agencies and Immunity from Liability: The Maryland Department of Health and the Maryland Department of Agriculture may (1) inspect for wholesomeness any food donated to a nonprofit corporation, organization, or association and (2) establish procedures for handling food donated to any nonprofit corporation, organization, or association. A person, including a nonprofit corporation, organization, or association, must have the immunity from liability granted by § 5-634 of the Courts and Judicial Proceedings Article for any act or omission that affects the nature, age, condition, or packaging of the donated food.

Small Business Effect: The bill has a minimal impact on small businesses to the extent small businesses that donate, prepare, or serve food are immune from liability as a result of the bill. While nonprofit organizations are not considered small businesses, the bill removes an existing exclusion from immunity that applies to any *person* who donates food to, prepares food for, or serves food distributed by a nonprofit corporation, organization, or association that sells or offers for sale any donated food.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2019
mm/kdm

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