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Bill Analysis
Legislative Service Commission

Am. H.B. 89

127th General Assembly
(As Passed by the House)

Reps. Coley, Wachtmann, Garrison, Fessler, J. McGregor, Healy, Evans, Wagner, Seitz, Stebelton, Setzer, Latta, Combs, Adams, Hite, Webster, Blessing, Harwood, Aslanides, Bacon, Boyd, Chandler, Collier, Core, DeBose, Dolan, Domenick, Gibbs, J. Hagan, Hottinger, Huffman, Hughes, Jones, Koziura, Mallory, Mandel, R. McGregor, Otterman, Patton, Sayre, Schindel, Schneider, Strahorn, Uecker, Wagoner, White, Wolpert, Zehringer

BILL SUMMARY

- Grants immunity from civil liability to persons who in good faith donate consumer goods to an agency for distribution to individuals in need if the person prior to the donation determines that the consumer goods will be fit for use at the time of the donation and the person does not make that determination in a manner that constitutes gross negligence or willful or wanton misconduct.
- Modifies existing law's grant of immunity from civil liability to persons who in good faith donate perishable food to an agency for distribution to individuals in need so that it applies if the person does not make the determination that the perishable food will be fit for human consumption at the time of its donation in a manner that constitutes gross negligence, instead of simple negligence, or willful or wanton misconduct.
- Grants to certain nonprofit or charitable nonprofit agencies that in good faith distribute consumer goods or perishable food to individuals in need qualified civil immunity for harm that allegedly arises because the consumer goods are not fit for use or the perishable food is not fit for human consumption if prior to the distribution of the consumer goods or perishable food to the individual, the agency determines that the goods will be fit for use or the food will be fit for human consumption at the time of distribution and the agency does not make that determination in a

manner that constitutes gross negligence or willful or wanton misconduct.

CONTENT AND OPERATION

Qualified civil immunity for donating perishable food for distribution to needy individuals

Existing law

Existing law provides that notwithstanding R.C. Chapter 3715. (Pure Food and Drug Law), a "person" who, in good faith, donates "perishable food" to an "agency" is not liable in damages in a "tort action" for "harm" that allegedly arises because that perishable food, when distributed by the agency or any other agency to a particular "individual in need," is not fit for human consumption, if both of the following conditions apply (R.C. 2305.37(B); see "Definitions," below, for definitions of the terms in quotation marks):

(1) Prior to the donation of the perishable food to the agency, the person determines that the perishable food will be fit for human consumption at the time of its donation. A presumption favoring liability does not arise because the perishable food is donated to an agency on or after an applicable "sale date."

(2) The person does not make the determination that the perishable food will be fit for human consumption at the time of its donation to the agency in a manner that constitutes *negligence* or willful or wanton misconduct.

The above provisions in existing law do not create a new cause of action or substantive legal right against persons who donate perishable food to an agency and do not affect any immunities from or defenses to tort liability established by another section of the Revised Code or available at common law to which persons who donate perishable food other than to agencies may be entitled (R.C. 2305.37(C)).

Operation of the bill

With respect to the conditions for the grant of civil immunity for the donation of perishable food as described in "Existing law," above, the bill modifies the condition described in paragraph (2) to provide that the person does not make the determination that the perishable food will be fit for human consumption at the time of its donation to the agency in a manner that constitutes *gross* (added by the bill) negligence or willful or wanton misconduct (R.C. 2305.37(B)(2)).

Qualified civil immunity for donating consumer goods for distribution to needy individuals

The bill expands existing law's qualified civil immunity for donations to an agency for distribution to individuals in need to include donations of consumer goods. It provides that a person who, in good faith, donates "consumer goods" to an "agency" is not liable in damages in a "tort action" for "harm" that allegedly arises because those consumer goods are not fit for use at the time the agency or any other agency distributes them to a particular "individual in need," if both of the following apply (R.C. 2305.37(C); see "Definitions," below, for definitions of terms in quotation marks):

(1) Prior to the donation of the consumer goods to the agency, the person determines that the consumer goods will be fit for use at the time of their donation. A presumption favoring liability does not arise because the consumer goods are donated to an agency on or after an applicable "sale date" or because the consumer goods are in packaging that has been damaged.

(2) The person does not make the determination that the consumer goods will be fit for use at the time of their donation to the agency in a manner that constitutes gross negligence or willful or wanton misconduct.

The above provisions in the bill do not create a new cause of action or substantive legal right against persons who donate consumer goods to an agency and do not affect any immunities from or defenses to tort liability established by another section of the Revised Code or available at common law to which persons who donate consumer goods other than to agencies may be entitled (R.C. 2305.37(D)).

Qualified civil immunity for distribution of consumer goods or perishable food to needy individuals

The bill expands current law by providing qualified civil immunity to the *agencies* that distribute perishable food or consumer goods to individuals in need. It provides that notwithstanding the Pure Food and Drug Law, an "agency" that, in good faith, distributes "consumer goods" or "perishable food" to a particular "individual in need" is not liable in damages in a "tort action" for "harm" that allegedly arises because the consumer goods are not fit for use or the perishable food is not fit for human consumption if both of the following apply (R.C. 2305.37(C) (see "Definitions," below, for definitions of terms in quotation marks):

(1) Prior to the distribution of the consumer goods or perishable food to the individual, the agency determines that the consumer goods will be fit for use or the perishable food will be fit for human consumption at the time of distribution. A

presumption favoring liability does not arise because the consumer goods are in packaging that has been damaged or the perishable food is distributed to an individual on or after an applicable "sale date."

(2) The agency does not make the determination that the consumer goods will be fit for use or the perishable food will be fit for human consumption at the time of its distribution to the individual in a manner that constitutes gross negligence or willful or wanton misconduct.

The bill's qualified immunity provision does not create a new cause of action or substantive legal right against agencies that distribute consumer goods or perishable food to an individual in need. The provision does not affect any immunities from or defenses to tort liability established by another section of the Revised Code or available at common law to which persons who donate consumer goods or perishable food other than to agencies or to which agencies that distribute consumer goods or perishable food other than to individuals in need may be entitled. (R.C. 2305.37(D).)

Definitions

With respect to its provisions granting qualified civil immunity for donations or distributions of consumer goods, the bill defines "consumer goods" as items of tangible personal property other than food that are used primarily for personal, family, or household purposes (R.C. 2305.37(A)(2)).

Existing law defines the following terms, as modified by the bill (in italics) (R.C. 2305.37(A)(1), (5), (7), (8), (9), (10), and (11)):

"Agency" means any nonhospital, charitable nonprofit corporation that is organized and operated pursuant to R.C. Chapter 1702. (Nonprofit Corporation Law) and that satisfies both of the following, or any nonhospital, charitable association, group, institution, organization, or society that is not organized and not operated for profit and that satisfies both of the following: (1) it distributes *consumer goods or* perishable food, directly or indirectly, to individuals in need, and (2) it does not charge or accept any form of compensation from the individuals in need for the distribution of the *consumer goods or* perishable food to them.

"Harm" means injury, death, or loss to person or property.

"Individuals in need" means those persons who an agency determines are eligible to receive free distributions of *consumer goods or* perishable food because of poverty, illness, disability, infancy, or other conditions or circumstances that may result in persons having a need to receive free distributions of *consumer goods or* perishable food.

"Perishable food" means any food that may spoil or otherwise become unfit for human consumption because of its nature, age, or physical condition. "Perishable food" includes, but is not limited to, fresh meats, processed meats, poultry, fish and other seafood, dairy products, bakery products, eggs in the shell, fresh fruits, fresh vegetables, food that is gleaned, food that is packaged, refrigerated, or frozen, food that is canned, and prepared or other food that has not been served by a restaurant, cafeteria, hospital, hotel, caterer, or other food service operation to any customer, patient, or other person in the ordinary course of business, by a public or private school, college, university, or other educational institution to a student or another person on the premises in the ordinary course of the operation of the institution, or by a fraternal, veteran's, or other organization to its members or other persons on the premises in the ordinary course of the operation of the organization.

"Person" includes an individual, corporation, business trust, estate, trust, partnership, and association and additionally includes governmental entities and *federal instrumentalities* (R.C. 2305.37(A)(9) and by reference to R.C. 1.59, not in the bill).

"Sale date" means the date by which the manufacturer, processor, or packager of a packaged food product recommends that the food product be sold for consumption based on the food product's quality assurance period.¹ (The bill replaces the reference in existing law to R.C. 3715.171 with the actual definition set forth in that section.)

"Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a product liability claim that is subject to R.C. 2307.71 to 2307.80 but does not include a civil action for a breach of contract or another agreement between persons.

¹ "Quality assurance period" means the period of time following the completion of normal manufacturing, processing, and packaging procedures during which a food product subjected to normal conditions of exposure will maintain conformity with all of the characteristics normally associated with the food product and will provide the benefits for which the food product is normally purchased. Food product characteristics include, but are not limited to, taste, texture, smell, nutritional value, and reaction value with other food products if used as an ingredient with other food products. (R.C. 3715.171--not in the bill.)

HISTORY

ACTION	DATE
Introduced	03-06-07
Reported, H. Judiciary	05-10-07
Passed House (92-6)	05-22-07

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