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HOUSE BILL NO. 1711

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 26, 2009)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend and reenact §§ 3.2-5144 and 35.1-14.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-220.1:5, relating to civil immunity for charitable food donations and distributions.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5144 and 35.1-14.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-220.1:5 as follows:

§ 3.2-5144. Exemption from civil liability in certain cases.

A. Any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food, including a grocery, convenience, or other store selling food or food products, who donates food to any food bank or any second harvest certified food bank or food bank member charity that is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the Department and, where required by ordinance, by the State Department of Health, for use or distribution by the organization shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. The exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with the regulations of the Board of Health with respect to the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, pursuant to the provisions of § 35.1-14.

B. Any farmer who gratuitously allows persons to enter upon his own land for purposes of removing any crops remaining in his fields following the harvesting thereof, shall be exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such crop. The exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the farmer.

§ 8.01-220.1:5. Civil immunity for charitable food donors and distributors.

A. Any charitable organization that is exempt from taxation under 26 U.S.C. § 501 (c) (3) and engaged in a food distribution program for needy persons shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the distributed food. The exemption of this subsection shall not apply if the injury or death directly results from the gross negligence, recklessness, or intentional act of the organization.

B. Any restaurant and any processor, distributor, wholesaler, or retailer of food, including, but not limited to, a grocery, convenience, or other store selling food or food products, that donates unserved excess foods to any charitable organization pursuant to subsection A of § 35.1-14.2 shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. The exemption of this subsection shall not apply if the injury or death directly results from the gross negligence, recklessness, or intentional act of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with the regulations of the Board of Health with respect to the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, pursuant to the provisions of § 35.1-14.

C. Any volunteer who donates food that is accepted by a charitable organization engaged in a food distribution program for needy persons pursuant to subsection B of § 35.1-14.2 shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. The exemption of this subsection shall not apply if the injury or death directly results from the gross negligence, recklessness, or intentional act of the volunteer.

D. Any person, farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food, including a grocery, convenience, or other store selling food or food products, who donates food to any food bank or any second harvest certified food bank or food bank member charity that is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the Department and, where required by ordinance, by the State Department of Health, for use or distribution by the organization shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. The exemption of this subsection shall not apply if the injury or death directly results from the gross negligence, recklessness, or intentional act of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with the regulations of the Board of Health with respect to the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, pursuant to

60 *the provisions of § 35.1-14.*

61 § 35.1-14.2. Donations of food to charitable organizations.

62 A. Any restaurant, licensed by the Department of Health pursuant to this title and any processor,
63 distributor, wholesaler or retailer of food, including, but not limited to, a grocery, convenience, or other
64 store selling food or food products, may donate unserved excess foods to any ~~charity~~ *charitable*
65 organization that is exempt from taxation under 26 U.S.C. § 501 (c) (3), and to political subdivisions for
66 distribution to needy persons. Charitable organizations engaged in food distribution programs for needy
67 persons shall notify the local political subdivision of their programs. Upon the notification of such food
68 distribution programs by such charitable organizations, the local political subdivision shall provide a list
69 of such charitable organizations within its jurisdiction to those restaurants and other food suppliers who
70 request such information. ~~Organizations engaged in such food distribution programs shall be exempt~~
71 ~~from civil liability as provided in § 3.1-418.1 for the donors of the food.~~

72 B. Charitable organizations engaged in food distribution programs for needy persons shall be deemed
73 exempt from state and local regulations and local ordinances that govern food service and preparation.
74 In addition to accepting donations of food as provided in subsection A, such organizations may accept
75 food prepared by their employees or volunteers in private homes or in facilities not otherwise licensed
76 as provided in this chapter.

77 For the purposes of this subsection, "charitable organizations" shall include nonprofit homeless
78 shelters and hunger prevention programs.

79 C. The Board may issue advisory standards for the safe preparation, handling, protection, and
80 preservation of food by the organizations exempted in subsection B.