

**As Reported by the Senate Government Oversight and Reform Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**S. B. No. 333**

**Senator Wilson**

**Cosponsors: Senators Roegner, Schaffer**

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**A BILL**

To amend section 2305.37 of the Revised Code to 1  
alter the law governing immunity from liability 2  
for donations of perishable food. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2305.37 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 2305.37.** (A) As used in this section: 6

(1) "Agency" means any nonhospital, charitable nonprofit 7  
corporation that is organized and operated pursuant to Chapter 8  
1702. of the Revised Code and that satisfies ~~both~~all of the 9  
following, or any nonhospital, charitable association, group, 10  
institution, organization, or society that is not organized and 11  
not operated for profit and that satisfies ~~both~~all of the 12  
following: 13

(a) It distributes consumer goods or perishable food, 14  
directly or indirectly, to individuals in need. 15

(b) It does not charge or accept any form of compensation 16  
from the individuals in need for the distribution of the 17

consumer goods ~~or to them.~~ 18

(c) It does not charge for the distribution of perishable 19  
food to individuals in need, or it does not charge individuals 20  
in need more than an amount sufficient to cover the cost of 21  
handling the perishable food distributed to them. 22

(2) "At-cost" means the perishable food handling costs 23  
incurred by an agency. 24

(3) "Consumer goods" means items of tangible personal 25  
property other than food that are used primarily for personal, 26  
family, or household purposes. 27

~~(3)~~ (4) "Food service operation" has the same meaning as 28  
in section 3717.01 of the Revised Code. 29

~~(4)~~ (5) "Food that is gleaned" means perishable food that 30  
remains on a farm or other real property and that the owner, 31  
lessee, renter, or operator of the property permits one or more 32  
persons to salvage free-of-charge for subsequent donation to one 33  
or more agencies. 34

~~(5)~~ (6) "Harm" means injury, death, or loss to person or 35  
property. 36

~~(6)~~ (7) "Hospital" has the same meaning as in section 37  
3701.01, 3727.01, or 5122.01 of the Revised Code. 38

~~(7)~~ (8) "Individuals in need" means those persons who an 39  
agency determines are eligible to receive free distributions of 40  
consumer goods or free or at-cost distributions of perishable 41  
food because of poverty, illness, disability, infancy, or other 42  
conditions or circumstances that may result in persons having a 43  
need to receive ~~free such distributions of consumer goods or~~ 44  
~~perishable food.~~ 45

~~(8)~~ (9) "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.

~~(9)~~ (10) "Person" has the same meaning as in section 1.59 of the Revised Code and additionally includes governmental entities and federal instrumentalities.

~~(10)~~ (11) "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.

~~(11)~~ (12) "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 sections 2307.71 to 2307.80 of the Revised Code but does not include a civil action for a breach of contract or another agreement between persons.

(B) Notwithstanding Chapter 3715. of the Revised Code, a 76  
person who, in good faith, donates perishable food to an agency 77  
is not liable in damages in a tort action for harm that 78  
allegedly arises because that perishable food, when distributed 79  
by the agency or any other agency to a particular individual in 80  
need, is not fit for human consumption, if both of the following 81  
apply: 82

(1) Prior to the donation of the perishable food to the 83  
agency, the person determines that the perishable food will be 84  
fit for human consumption at the time of its donation. A 85  
presumption favoring liability does not arise because the 86  
perishable food is donated to an agency on or after an 87  
applicable sale date. 88

(2) The person does not make the determination that the 89  
perishable food will be fit for human consumption at the time of 90  
its donation to the agency in a manner that constitutes gross 91  
negligence or willful or wanton misconduct. 92

(C) A person who, in good faith, donates consumer goods to 93  
an agency is not liable in damages in a tort action for harm 94  
that allegedly arises because those consumer goods are not fit 95  
for use at the time the agency or any other agency distributes 96  
them to a particular individual in need, if both of the 97  
following apply: 98

(1) Prior to the donation of the consumer goods to the 99  
agency, the person determines that the consumer goods will be 100  
fit for use at the time of their donation. A presumption 101  
favoring liability does not arise because the consumer goods are 102  
in packaging that has been damaged. 103

(2) The person does not make the determination that the 104

consumer goods will be fit for use at the time of their donation 105  
to the agency in a manner that constitutes gross negligence or 106  
willful or wanton misconduct. 107

(D) Notwithstanding Chapter 3715. of the Revised Code, an 108  
agency that, in good faith, distributes consumer goods or 109  
perishable food to a particular individual in need is not liable 110  
in damages in a tort action for harm that allegedly arises 111  
because those consumer goods are not fit for use or that 112  
perishable food is not fit for human consumption if both of the 113  
following apply: 114

(1) Prior to the distribution of the consumer goods or 115  
perishable food to the individual, the agency determines that 116  
the consumer goods will be fit for use or the perishable food 117  
will be fit for human consumption at the time of its 118  
distribution. A presumption favoring liability does not arise 119  
because the consumer goods are in packaging that has been 120  
damaged or because the perishable food is distributed to an 121  
individual on or after an applicable sale date. 122

(2) The agency does not make the determination that the 123  
consumer goods will be fit for use or the perishable food will 124  
be fit for human consumption at the time of its distribution to 125  
the individual in a manner that constitutes gross negligence or 126  
willful or wanton misconduct. 127

(E) (1) This section does not create a new cause of action 128  
or substantive legal right against persons who donate consumer 129  
goods or perishable food to an agency or against agencies that 130  
distribute consumer goods or perishable food to an individual in 131  
need. 132

(2) This section does not affect any immunities from or 133

defenses to tort liability established by another section of the 134  
Revised Code or available at common law to which persons who 135  
donate consumer goods or perishable food other than to agencies, 136  
or to which agencies that distribute consumer goods or 137  
perishable food other than to individuals in need, may be 138  
entitled. 139

**Section 2.** That existing section 2305.37 of the Revised 140  
Code is hereby repealed. 141