

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 89

Representative Coley

**Cosponsors: Representatives Wachtmann, Garrison, Fessler, McGregor, J.,
Healy, Evans, Wagner, Seitz, Stebelton, Setzer, Latta, Combs, Adams, Hite,
Webster, Blessing**

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A B I L L

To amend section 2305.37 of the Revised Code to 1
provide persons who donate consumer goods to a 2
charitable agency with qualified immunity from 3
civil liability for harm that allegedly arises 4
because the consumer goods are not fit for use and 5
to establish a qualified immunity from civil 6
liability for certain charitable agencies that 7
distribute perishable food or consumer goods free 8
of charge to individuals in need. 9

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

Section 1. That section 2305.37 of the Revised Code be 10
amended to read as follows: 11

Sec. 2305.37. (A) As used in this section: 12

(1) "Agency" means any nonhospital, charitable nonprofit 13
corporation that is organized and operated pursuant to Chapter 14
1702. of the Revised Code and that satisfies both of the 15
following, or any nonhospital, charitable association, group, 16
institution, organization, or society that is not organized and 17

not operated for profit and that satisfies both of the following: 18

(a) It distributes consumer goods or perishable food, 19
directly or indirectly, to individuals in need. 20

(b) It does not charge or accept any form of compensation 21
from the individuals in need for the distribution of the consumer 22
goods or perishable food to them. 23

(2) "Consumer goods" means items of tangible personal 24
property other than food that are used primarily for personal, 25
family, or household purposes. 26

(3) "Food service operation" has the same meaning as in 27
section 3717.01 of the Revised Code. 28

~~(3)~~(4) "Food that is gleaned" means perishable food that 29
remains on a farm or other real property and that the owner, 30
lessee, renter, or operator of the property permits one or more 31
persons to salvage free-of-charge for subsequent donation to one 32
or more agencies. 33

~~(4)~~(5) "Harm" means injury, death, or loss to person or 34
property. 35

~~(5)~~(6) "Hospital" has the same meaning as in section 2108.01, 36
3701.01, or 5122.01 of the Revised Code. 37

~~(6)~~(7) "Individuals in need" means those persons who an 38
agency determines are eligible to receive free distributions of 39
consumer goods or perishable food because of poverty, illness, 40
disability, infancy, or other conditions or circumstances that may 41
result in persons having a need to receive free distributions of 42
consumer goods or perishable food. 43

~~(7)~~(8) "Perishable food" means any food that may spoil or 44
otherwise become unfit for human consumption because of its 45
nature, age, or physical condition. "Perishable food" includes, 46
but is not limited to, fresh meats, processed meats, poultry, fish 47

and other seafood, dairy products, bakery products, eggs in the 48
shell, fresh fruits, fresh vegetables, food that is gleaned, food 49
that is packaged, refrigerated, or frozen, food that is canned, 50
and prepared or other food that has not been served by a 51
restaurant, cafeteria, hospital, hotel, caterer, or other food 52
service operation to any customer, patient, or other person in the 53
ordinary course of business, by a public or private school, 54
college, university, or other educational institution to a student 55
or another person on the premises in the ordinary course of the 56
operation of the institution, or by a fraternal, veteran's, or 57
other organization to its members or other persons on the premises 58
in the ordinary course of the operation of the organization. 59

~~(8)~~(9) "Person" has the same meaning as in section 1.59 of 60
the Revised Code and additionally includes governmental entities. 61

~~(9)~~(10) "Sale date" has the same meaning as in section 62
3715.171 of the Revised Code. 63

~~(10)~~(11) "Tort action" means a civil action for damages for 64
injury, death, or loss to person or property. "Tort action" 65
includes a product liability claim that is subject to sections 66
2307.71 to 2307.80 of the Revised Code but does not include a 67
civil action for a breach of contract or another agreement between 68
persons. 69

(B) Notwithstanding Chapter 3715. of the Revised Code, a 70
person who, in good faith, donates perishable food to an agency is 71
not liable in damages in a tort action for harm that allegedly 72
arises because that perishable food, when distributed by the 73
agency or any other agency to a particular individual in need, is 74
not fit for human consumption, if both of the following apply: 75

(1) Prior to the donation of the perishable food to the 76
agency, the person determines that the perishable food will be fit 77
for human consumption at the time of its donation. A presumption 78

favoring liability does not arise because the perishable food is 79
donated to an agency on or after an applicable sale date. 80

(2) The person does not make the determination that the 81
perishable food will be fit for human consumption at the time of 82
its donation to the agency in a manner that constitutes gross 83
negligence or willful or wanton misconduct. 84

(C) A person who, in good faith, donates consumer goods to an 85
agency is not liable in damages in a tort action for harm that 86
allegedly arises because those consumer goods are not fit for use 87
at the time the agency or any other agency distributes them to a 88
particular individual in need, if both of the following apply: 89

(1) Prior to the donation of the consumer goods to the 90
agency, the person determines that the consumer goods will be fit 91
for use at the time of their donation. A presumption favoring 92
liability does not arise because the consumer goods are in 93
packaging that has been damaged. 94

(2) The person does not make the determination that the 95
consumer goods will be fit for use at the time of their donation 96
to the agency in a manner that constitutes gross negligence or 97
willful or wanton misconduct. 98

(D) Notwithstanding Chapter 3715. of the Revised Code, an 99
agency that, in good faith, distributes consumer goods or 100
perishable food to a particular individual in need is not liable 101
in damages in a tort action for harm that allegedly arises because 102
those consumer goods are not fit for use or that perishable food 103
is not fit for human consumption if both of the following apply: 104

(1) Prior to the distribution of the consumer goods or 105
perishable food to the individual, the agency determines that the 106
consumer goods will be fit for use or the perishable food will be 107
fit for human consumption at the time of its distribution. A 108
presumption favoring liability does not arise because the consumer 109

goods are in packaging that has been damaged or because the 110
perishable food is distributed to an individual on or after an 111
applicable sale date. 112

(2) The agency does not make the determination that the 113
consumer goods will be fit for use or the perishable food will be 114
fit for human consumption at the time of its distribution to the 115
individual in a manner that constitutes gross negligence or 116
willful or wanton misconduct. 117

(E)(1) This section does not create a new cause of action or 118
substantive legal right against persons who donate consumer goods 119
or perishable food to an agency or against agencies that 120
distribute consumer goods or perishable food to an individual in 121
need. 122

(2) This section does not affect any immunities from or 123
defenses to tort liability established by another section of the 124
Revised Code or available at common law to which persons who 125
donate consumer goods or perishable food other than to agencies, 126
or to which agencies that distribute consumer goods or perishable 127
food other than to individuals in need, may be entitled. 128

Section 2. That existing section 2305.37 of the Revised Code 129
is hereby repealed. 130