

**As Passed by the Senate**

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

**Am. 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, Harwood, Aslanides, Bacon, Boyd, Chandler, Collier,  
Core, DeBose, Dolan, Domenick, Gibbs, Hagan, J., Hottinger, Huffman,  
Hughes, Jones, Koziura, Mallory, Mandel, McGregor, R., Otterman, Patton,  
Sayre, Schindel, Schneider, Strahorn, Uecker, Wagoner, White, Wolpert,  
Zehringer**

**Senators Goodman, Buehrer, Amstutz, Kearney, Mason, Sawyer, Carey,  
Cates, Harris, Spada, Schuring, Schuler, Padgett, Niehaus, Clancy, Wilson,  
Roberts, Schaffer, Faber, Stivers**

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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  
and federal instrumentalities. 62

~~(9)~~(10) "Sale date" ~~has the same meaning as in section~~ 63  
~~3715.171 of the Revised Code~~ means the date by which the 64  
manufacturer, processor, or packager of a packaged food product 65  
recommends that the food product be sold for consumption based on 66  
the food product's quality assurance period. 67

~~(10)~~(11) "Tort action" means a civil action for damages for 68  
injury, death, or loss to person or property. "Tort action" 69  
includes a product liability claim that is subject to sections 70  
2307.71 to 2307.80 of the Revised Code but does not include a 71

civil action for a breach of contract or another agreement between 72  
persons. 73

(B) Notwithstanding Chapter 3715. of the Revised Code, a 74  
person who, in good faith, donates perishable food to an agency is 75  
not liable in damages in a tort action for harm that allegedly 76  
arises because that perishable food, when distributed by the 77  
agency or any other agency to a particular individual in need, is 78  
not fit for human consumption, if both of the following apply: 79

(1) Prior to the donation of the perishable food to the 80  
agency, the person determines that the perishable food will be fit 81  
for human consumption at the time of its donation. A presumption 82  
favoring liability does not arise because the perishable food is 83  
donated to an agency on or after an applicable sale date. 84

(2) The person does not make the determination that the 85  
perishable food will be fit for human consumption at the time of 86  
its donation to the agency in a manner that constitutes gross 87  
negligence or willful or wanton misconduct. 88

(C) A person who, in good faith, donates consumer goods to an 89  
agency is not liable in damages in a tort action for harm that 90  
allegedly arises because those consumer goods are not fit for use 91  
at the time the agency or any other agency distributes them to a 92  
particular individual in need, if both of the following apply: 93

(1) Prior to the donation of the consumer goods to the 94  
agency, the person determines that the consumer goods will be fit 95  
for use at the time of their donation. A presumption favoring 96  
liability does not arise because the consumer goods are in 97  
packaging that has been damaged. 98

(2) The person does not make the determination that the 99  
consumer goods will be fit for use at the time of their donation 100  
to the agency in a manner that constitutes gross negligence or 101  
willful or wanton misconduct. 102

(D) Notwithstanding Chapter 3715. of the Revised Code, 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 those consumer goods are not fit for use or that perishable food is not fit for human consumption if both of the following apply:

(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 its distribution. A presumption favoring liability does not arise because the consumer goods are in packaging that has been damaged or because 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.

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

(2) This section 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.

**Section 2.** That existing section 2305.37 of the Revised Code

is hereby repealed.

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