

Senate File 359 - Introduced

SENATE FILE 359
BY DICKEY

A BILL FOR

1 An Act limiting liability for food dealers and owners of
2 commercial vehicles who donate food to an Iowa food bank
3 association.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. **190B.301 Definitions.**

2 As used in this subchapter, unless the context otherwise
3 requires:

4 1. "*Commercial vehicle*" means the same as defined in section
5 321.1.

6 2. a. "*Evidently safe food*" means food prepared and
7 distributed by a food dealer that a reasonable person would
8 consider safe to consume after considering all relevant
9 information regarding why the food could be considered unfit or
10 unmarketable for retail sale due to a failure to comply with
11 health and safety requirements described in any of the following:

12 (1) The health and safety labeling of a package or container
13 holding the food.

14 (2) The health and safety laws of this state or a local
15 government, including a city or county.

16 b. "*Evidently safe food*" does not include food that is any of
17 the following:

18 (1) Subject to regulation under chapter 123.

19 (2) Subject to a government-issued stop order, or a
20 court-issued order of injunctive relief, that prohibits the
21 preparation, distribution, or transportation of the food.

22 3. "*Food*" means the same as defined in section 137F.1.

23 4. "*Food dealer*" means any of the following:

24 a. A food establishment or food processing plant required to
25 operate pursuant to a license issued under 137F.4.

26 b. An establishment required to operate pursuant to a license
27 issued under section 189A.3.

28 c. A milk plant required to operate pursuant to a permit
29 issued under section 192.111 or 194.3A.

30 5. "*Iowa food bank association*" means the same as defined in
31 section 190B.201.

32 Sec. 2. NEW SECTION. **190B.302 Food dealers.**

33 1. Except as provided in subsection 2, a food dealer is not
34 liable for any act or omission causing injury, loss, or death by
35 the human consumption of evidently safe food, if the evidently

1 safe food was donated by the food dealer to an Iowa food bank
2 association, and the food dealer had no actual knowledge that the
3 food would likely cause injury, loss, or death if consumed in a
4 normal manner.

5 2. Subsection 1 does not apply to evidently safe food that is
6 any of the following:

7 a. (1) Prepared or distributed to an Iowa food bank
8 association by a food dealer not operating pursuant to a license
9 required to be issued under section 137F.4, a license required to
10 be issued under section 189A.3, or a permit required to be issued
11 under section 192.111 or 194.3A.

12 (2) Prepared or distributed to an Iowa food bank association
13 by a food dealer whose license or permit described in
14 subparagraph (1) has been suspended.

15 b. Prepared or distributed to an Iowa food bank association
16 by a food dealer in a manner that does not meet required time and
17 temperature controls for safety to limit pathogenic microorganism
18 growth or toxin formation.

19 c. Declared to be unsafe for human consumption by the food
20 dealer.

21 d. Intentionally falsely advertised to an Iowa food bank
22 association by the food dealer.

23 Sec. 3. NEW SECTION. **190B.303 Owners of commercial**
24 **vehicles.**

25 1. Except as provided in subsection 2, the owner of a
26 commercial vehicle is not liable for any act or omission causing
27 injury, loss, or death by the human consumption of evidently safe
28 food, if the costs of transporting the evidently safe food was
29 donated by the owner of the commercial vehicle to an Iowa food
30 bank association, and the owner of the commercial vehicle had no
31 actual knowledge that the food would likely cause injury, loss,
32 or death if consumed in a normal manner.

33 2. Subsection 1 does not apply to evidently safe food that is
34 any of the following:

35 a. (1) Transported to an Iowa food bank association by the

1 owner of a commercial vehicle not operating pursuant to the
2 applicable license required to be issued pursuant to chapter 321.

3 (2) Transported to an Iowa food bank association by the owner
4 of a commercial vehicle operating pursuant to a suspended license
5 issued pursuant to chapter 321.

6 b. Transported to an Iowa food bank association by a
7 commercial vehicle owner in a manner that does not meet required
8 time and temperature controls for safety to limit pathogenic
9 microorganism growth or toxin formation.

10 c. Declared unsafe for human consumption by the owner of the
11 commercial vehicle.

12 d. Intentionally falsely advertised to the Iowa food bank
13 association by the owner of the commercial vehicle.

14 Sec. 4. DIRECTIONS TO CODE EDITOR. The Code editor is
15 directed to arrange the following into a new subchapter in
16 chapter 190B:

17 Sections 190B.301 through 190B.303.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 GENERAL. Code chapter 190B currently consists of two
22 subchapters; subchapter I provides for the farm to food donation
23 tax credit and subchapter II provides for the Iowa emergency food
24 purchase program. This bill creates a new subchapter shielding
25 a food dealer or the owner of a commercial vehicle from civil
26 liability when donating food to an Iowa food bank association
27 (IFBA).

28 SHIELD FROM CIVIL LIABILITY. The shield from civil liability
29 applies to a food dealer when preparing or distributing the food
30 under the regulatory authority of the department of inspections,
31 appeals, and licensing (DIAL), or the department of agriculture
32 and land stewardship (DALSS). The shield also applies to the
33 owner of a commercial vehicle when transporting such food.
34 However, the shield only applies under certain circumstances.
35 The food dealer or owner must not have had actual knowledge that

1 the food would likely cause harm to an individual consuming the
2 food in a normal manner. The shield only applies to a food
3 dealer or to an owner of a commercial vehicle operating under
4 a valid license. In addition, the food dealer or commercial
5 vehicle owner must comply with required time and temperature
6 controls for safety to limit pathogenic microorganism growth or
7 toxin formation. The food dealer or owner cannot have declared
8 the evidently safe food to be unsafe, or intentionally falsely
9 advertised the evidently safe food to the IFBA.

10 EVIDENTLY SAFE FOOD. Evidently safe food is defined as food
11 that a reasonable person would consider to be safe to consume,
12 if such person had all information regarding why the food could
13 be considered unfit or unmarketable for retail sale due to a
14 failure to comply with health and safety requirements. Evidently
15 safe food does not include food that is regulated as alcohol,
16 or subject to a government-issued stop order or court-issued
17 injunction.

18 FOOD DEALER, OWNER, AND IFBA. A food dealer refers to a food
19 establishment or food processing plant regulated (licensed) by
20 DIAL under Code chapter 137F. A food establishment includes
21 an operation that stores, prepares, packages, serves, vends,
22 or otherwise provides food for human consumption (Code section
23 137F.1). A food processing plant is a commercial operation
24 that manufactures, packages, labels, or stores food for human
25 consumption but does not provide food directly to a consumer
26 (Code section 137F.1). A food dealer also includes a meat
27 and poultry slaughter and processing establishment regulated
28 (licensed) by DALS (Code section 189A.3), and a milk plant
29 also regulated (permitted) by DALS (Code sections 192.111 and
30 194.3A). An owner refers to the owner of a commercial vehicle
31 required to be regulated (licensed) by the state department of
32 transportation under Code chapter 321. A commercial vehicle
33 is a motor vehicle that has a gross weight of 10,001 or more
34 pounds (Code section 321.1), among other things. IFBA refers
35 to a nonprofit organization formed under Iowa law, exempt from

1 federal income taxation, whose members include food banks, or
2 affiliations of food banks, that together serve all counties in
3 this state, and whose principal office is located in this state
4 (Code section 190B.201).

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