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TORTS

Donation and Receipt of Food for Charitable Distribution: Reduce Liability

CODE SECTION: O.C.G.A. § 51-1-31 (amended)
BILL NUMBER: HB 73
ACT NUMBER: 648
SUMMARY: The Act revises the law governing the liability of donors of food items for charitable distribution and the liability of charitable distributors by defining with specificity terms involved and by extending the previously enacted limited liability of donors to charitable distributors.
EFFECTIVE DATE: July 1, 1987

History

Prior law concerning tort liability for defects in donated food applied only to the donors of food for use in distribution by charities; it did not apply to the nonprofit organizations which distributed the food.¹ Prior law limited the donor's liability by mandating that there could be no criminal or civil liability for injuries "resulting from the nature, age, condition, or packaging of the donated food."² The distributor, however, could be held liable for injuries which resulted from any of these defects.³ Moreover, the previous law did not explain what was meant by such terms as "donor" or "food."⁴ This lack of specificity made the scope of the law uncertain.

HB 73

The Act amends O.C.G.A. § 51-1-31 and provides detailed definitions of the terms: "canned food,"⁵ "perishable food,"⁶ "donor"⁷ and

1. 1980 Ga. Laws 69 (previously found at O.C.G.A. § 51-1-31).

2. *Id.*

3. *Id.*

4. *Id.*

5. O.C.G.A. § 51-1-31(a)(1) (Supp. 1987) ("any food which has been commercially processed and prepared for human consumption and which has been commercially packaged in such a manner as to remain nonperishable").

6. O.C.G.A. § 51-1-31(a)(4) (Supp. 1987) ("any food that may spoil . . . because of its nature").

7. O.C.G.A. § 51-1-31(a)(2) (Supp. 1987) ("includes, but is not limited to, a farmer, processor, distributor, commercial food service operator, wholesaler, or retailer of food").

"gleaner."⁸ Thus, the new Act provides clearer guidelines for application and interpretation.

The Act also restricts the donor's immunity. The previous standard made a donor immune from injuries resulting from the "nature, age, condition, or packaging" of the food.⁹ Now the donor is only liable for injuries proximately caused by the condition of donated food resulting from donor recklessness or intentional misconduct.¹⁰ Legal standards of recklessness and intent require a high degree of awareness; either acting in the face of a known danger or intentionally harming another person.¹¹ Under prior law this awareness arguably was required in order to make the donor liable, but this standard was not expressly stated.

More significantly, the new Act broadens the immunity protection to include non-profit organizations which distribute the donated food.¹² Now the liability for distributors is limited in the same way as the liability of donors.¹³ HB 73 was sponsored at the request of a local manager of a food bank who pointed out that Florida had a similar statute which limited the liability of both donors and distributors. The intent of the bill is to protect charitable distributors from unlimited liability.¹⁴

The Act is substantially similar to the Florida law.¹⁵ The primary distinction is that the Georgia bill left out liability for gross negligence of either a donor or distributor.¹⁶ The House Judiciary Committee decided to drop liability for gross negligence, in effect making the statute broader than the Florida law.¹⁷

The Act expands the scope of limited liability. As a result of the legislation, limited liability for distributors is the same as that of donors. Both are held civilly or criminally liable for injury resulting from donated food only if such injury is caused by their intentional act or recklessness. It is believed that the Act "will encourage individuals and groups to donate

8. O.C.G.A. § 51-1-31(a)(3) (Supp. 1987) ("means a person who harvests for use or distribution an agricultural crop that has been donated by the owner").

9. O.C.G.A. § 51-1-31(a) (1982).

10. Compare *id.* with O.C.G.A. § 51-1-31(b) (Supp. 1987).

11. W. PROSSER & W. KEETON, *THE LAW OF TORTS* § 34, at 212-14 (5th ed. 1984) (comparing recklessness standard with intentional torts and gross negligence).

12. O.C.G.A. § 51-1-31(c) (Supp. 1987).

13. O.C.G.A. § 51-1-31(b), (c) (Supp. 1987).

14. Letter from Representative Walter E. Cox, House District No. 141, to T. Long, *Georgia State University Law Review* [hereinafter Cox letter] (also noting that the Act was sponsored at the request of a constituent manager of a food bank).

15. FLA. STAT. ANN. § 768.136 (1986).

16. Compare O.C.G.A. § 41-1-31(b), (c) (Supp. 1987) with FLA. STAT. ANN. § 768.136 (3) (1986).

17. Cox letter, *supra* note 14.

1987]

LEGISLATIVE REVIEW

515

their products and time to the distribution and donation of food items that otherwise would be destroyed or wasted."¹⁸

T. Long

18. *Id.*