

CHAPTER 64**(HB 68)**

AN ACT relating to the donation of food.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 217.127 is amended to read as follows:

- (1) The secretary shall adopt regulations for the effective administration and enforcement of KRS 217.005 to 217.215.
- (2) The secretary shall adopt a state retail food code which shall include, among other things, provisions for regulating the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout including plumbing, lighting, ventilation, water supply, sewage disposal, and other facilities; food supply source and protection; health, disease control and cleanliness of personnel; design, construction, installation, and cleanliness of equipment and utensils; toilet and hand-washing facilities; solid waste disposal and vermin control; and any other matters deemed necessary to insure a safe and sanitary operation of a retail food establishment. Standards for construction, plumbing, lighting, and ventilation of fixed retail food establishments shall be effective only if they are approved by the Board of Housing, Buildings and Construction and are included in the Uniform State Building Code, or if they conform to the State Plumbing Code in the case of plumbing fixtures. Any review of plans for construction, plumbing, lighting, and ventilation required before construction of a fixed retail food establishment shall be conducted by the Office of Housing, Buildings and Construction or authorized local building official pursuant to KRS Chapter 198B.
- (3) ***The donation of safe and apparently wholesome food by a retail food establishment or any other entity regulated under subsections (1) and (2) of this section shall be exempt from any further inspection or regulation if the donated food has been inspected under subsections (1) and (2) of this section.***

SECTION 2. A NEW SECTION OF KRS CHAPTER 217 IS CREATED TO READ AS FOLLOWS:

Nothing in this chapter shall be construed to prohibit or regulate the donation of safe and apparently wholesome food by a retail food establishment.

Section 3. KRS 413.248 is amended to read as follows:

- (1) A person, ***including an individual, corporation, partnership, organization, association, or retail food establishment***, who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the donor which constitutes gross negligence, recklessness, or intentional misconduct.
- (2) A nonprofit organization that distributes apparently wholesome food to the needy at no charge and that substantially complies with applicable local, county, state, and federal laws and regulations regarding the storage and handling of food for distribution to the public is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.
- (3) This section does not create any liability.

Section 4. KRS 139.480 is amended to read as follows:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage, or other consumption of:

- (1) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for the direct operation of locomotives and trains, used or to be used in interstate commerce;
- (2) Coal for the manufacture of electricity;
- (3) All energy or energy-producing fuels used in the course of manufacturing, processing, mining, or refining and any related distribution, transmission, and transportation services for this energy that are billed to the user, to the extent that the cost of the energy or energy-producing fuels used, and related distribution, transmission,

and transportation services for this energy that are billed to the user exceed three percent (3%) of the cost of production. Cost of production shall be computed on the basis of plant facilities which shall mean all permanent structures affixed to real property at one (1) location;

- (4) Livestock of a kind the products of which ordinarily constitute food for human consumption, provided the sales are made for breeding or dairy purposes and by or to a person regularly engaged in the business of farming;
- (5) Poultry for use in breeding or egg production;
- (6) Farm work stock for use in farming operations;
- (7) Seeds, the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business, and commercial fertilizer to be applied on land, the products from which are to be used for food for human consumption or are to be sold in the regular course of business; provided such sales are made to farmers who are regularly engaged in the occupation of tilling and cultivating the soil for the production of crops as a business, or who are regularly engaged in the occupation of raising and feeding livestock or poultry or producing milk for sale; and provided further that tangible personal property so sold is to be used only by those persons designated above who are so purchasing;
- (8) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals to be used in the production of crops as a business, or in the raising and feeding of livestock or poultry, the products of which ordinarily constitute food for human consumption;
- (9) Feed, including pre-mixes and feed additives, for livestock or poultry of a kind the products of which ordinarily constitute food for human consumption;
- (10) Machinery for new and expanded industry;
- (11) Farm machinery. As used in this section, the term "farm machinery" means machinery used exclusively and directly in the occupation of tilling the soil for the production of crops as a business, or in the occupation of raising and feeding livestock or poultry or of producing milk for sale. The term "farm machinery," as used in this section includes machinery, attachments, and replacements therefor, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used; but this exemption shall not include automobiles, trucks, trailers, and truck-trailer combinations;
- (12) Property which has been certified as a pollution control facility as defined in KRS 224.01-300, and all materials, supplies, and repair and replacement parts purchased for use in the operation or maintenance of the facilities used specifically in the steel-making process. The exemption provided in this subsection for materials, supplies, and repair and replacement parts purchased for use in the operation of pollution control facilities shall be effective for sales made through June 30, 1994;
- (13) Tombstones and other memorial grave markers;
- (14) On-farm facilities used exclusively for grain or soybean storing, drying, processing, or handling. The exemption applies to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (15) On-farm facilities used exclusively for raising poultry or livestock. The exemption shall apply to the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply but not be limited to vent board equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (16) Gasoline, special fuels, liquefied petroleum gas, and natural gas used exclusively and directly to:
 - (a) Operate farm machinery as defined in subsection (11) of this section;
 - (b) Operate on-farm grain or soybean drying facilities as defined in subsection (14) of this section;
 - (c) Operate on-farm poultry or livestock facilities defined in subsection (15) of this section;

- (d) Operate on-farm ratite facilities defined in subsection (24) of this section;
 - (e) Operate on-farm llama or alpaca facilities as defined in subsection (26) of this section; or
 - (f) Operate on-farm dairy facilities;
- (17) Textbooks, including related workbooks and other course materials, purchased for use in a course of study conducted by an institution which qualifies as a nonprofit educational institution under KRS 139.495. The term "course materials" means only those items specifically required of all students for a particular course but shall not include notebooks, paper, pencils, calculators, tape recorders, or similar student aids;
- (18) Any property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (19) Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;
- (20) Any property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;
- (21) Any property to be incorporated into the construction, rebuilding, modification, or expansion of a blast furnace or any of its components or appurtenant equipment or structures. The exemption provided in this subsection shall be effective for sales made through June 30, 1994;
- (22) Beginning on October 1, 1986, food or food products purchased for human consumption with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977, as amended, and required to be exempted by the Food Security Act of 1985 in order for the Commonwealth to continue participation in the federal food stamp program;
- (23) Machinery or equipment purchased or leased by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes;
- (24) Ratite birds and eggs to be used in an agricultural pursuit for the breeding and production of ratite birds, feathers, hides, breeding stock, eggs, meat, and ratite by-products, and the following items used in this agricultural pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to incubation systems, egg processing equipment, waterer and feeding systems, brooding systems, ventilation systems, alarm systems, and curtain systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (25) Embryos and semen that are used in the reproduction of livestock, if the products of these embryos and semen ordinarily constitute food for human consumption, and if the sale is made to a person engaged in the business of farming;
- (26) Llamas and alpacas to be used as beasts of burden or in an agricultural pursuit for the breeding and production of hides, breeding stock, fiber and wool products, meat, and llama and alpaca by-products, and the following items used in this pursuit:
- (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; and
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate

into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;

- (27) Baling twine and baling wire for the baling of hay and straw;
- (28) Water sold to a person regularly engaged in the business of farming and used in the:
 - (a) Production of crops;
 - (b) Production of milk for sale; or
 - (c) Raising and feeding of:
 - 1. Livestock or poultry, the products of which ordinarily constitute food for human consumption; or
 - 2. Ratites, llamas, alpacas, buffalo, cervids or aquatic organisms;
- (29) Buffalos to be used as beasts of burden or in an agricultural pursuit for the production of hides, breeding stock, meat, and buffalo by-products, and the following items used in this pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals;
 - (c) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. The exemption shall apply to waterer and feeding systems, ventilation systems, and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (30) Aquatic organisms sold directly to or raised by a person regularly engaged in the business of producing products of aquaculture, as defined in KRS 260.960, for sale, and the following items used in this pursuit:
 - (a) Feed and feed additives;
 - (b) Water;
 - (c) Insecticides, fungicides, herbicides, rodenticides, and other farm chemicals; and
 - (d) On-farm facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities and, any gasoline, special fuels, liquefied petroleum gas, or natural gas used to operate the facilities. The exemption shall apply, but not be limited to: waterer and feeding systems; ventilation, aeration, and heating systems; processing and storage systems; production systems such as ponds, tanks, and raceways; harvest and transport equipment and systems; and alarm systems. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (31) Members of the genus cervidae permitted by KRS Chapter 150 that are used for the production of hides, breeding stock, meat, and cervid by-products, and the following items used in this pursuit:
 - (a) Feed and feed additives;
 - (b) Insecticides, fungicides, herbicides, rodenticides, and other chemicals; and
 - (c) On-site facilities, including equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities. In addition, the exemption shall apply whether or not the seller is under contract to deliver, assemble, and incorporate into real estate the equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of the facilities;
- (32) (a) Repair or replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property or passengers for hire, provided the motor vehicle is licensed for use on the highway and its declared gross vehicle

weight with any towed unit is forty-four thousand and one (44,001) pounds or greater. Nominal intrastate use shall not subject the property to the taxes imposed by this chapter;~~and~~

- (b) Repair or replacement parts for the direct operation and maintenance of a motor vehicle operating under a charter bus certificate issued by the Transportation Cabinet under KRS Chapter 281, or under similar authority granted by the United States Department of Transportation.
 - (c) For the purposes of this subsection, "repair and replacement parts" means tires, brakes, engines, transmissions, drive trains, chassis, body parts, and their components. "Repair and replacement parts" shall not include fuel, machine oils, hydraulic fluid, brake fluid, grease, supplies, or accessories not essential to the operation of the motor vehicle itself, except when sold as part of the assembled unit, such as cigarette lighters, radios, lighting fixtures not otherwise required by the manufacturer for operation of the vehicle, or tool or utility boxes; *and*
- (33) *Food donated by a retail food establishment or any other entity regulated under Section 1 of this Act to a nonprofit organization for distribution to the needy.*

Approved March 28, 2006.