

## THE BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT 42 U.S. Code § 1791



### Background Guide<sup>1</sup>:

**The federal Good Samaritan law protects businesses, volunteers and non-profit organizations from civil or criminal liability in the course of donating apparently fit and wholesome food or grocery products for distribution to people in need. The federal Good Samaritan Act is designed to encourage donations of food and grocery products by providing a uniform, national standard of liability for donations.**

On October 1, 1996, President Clinton signed into law the Bill Emerson Good Samaritan Food Donation Act, a new federal law to encourage the donation of food and grocery products to nonprofit charitable organizations for distribution to needy people.<sup>2</sup>

The Emerson Good Samaritan Act converts Title IV of the National and Community Service Act of 1990, from “model” legislation to permanent law, and transfers the Good Samaritan law to Section 22 of the Child Nutrition Act of 1966. The federal Good Samaritan Act preempts the various state Good Samaritan statutes with a single, federal standard of criminal and civil liability in the donation of food and grocery products.<sup>3</sup>

Civil and criminal liability protection is extended to donors, persons, gleaners, and nonprofit organizations arising from the nature, packaging, age, or condition of apparently wholesome food or apparently fit grocery products donated for distribution to needy people. Liability for donations is limited to acts of “gross negligence” or intentional misconduct, as defined by the Good Samaritan Act.

The Good Samaritan Act also stipulates that local and state health regulations and workers’ compensation laws are not altered or interfered with by the Act.



### **Liability Issues:**

*This law makes it easier to donate. Here's how:*

It protects donors from liability when donating to a non-profit organization and protects qualified direct donors from liability when donating at zero cost directly to individuals in need.

It standardizes donor liability exposure. Donors and their legal counsel no longer have to investigate liability laws in 50 states.

It protects donors from civil and criminal liability should the product donated in good faith later causes harm to the recipient in need.

Congress recognized that the provision of food close to recommended date of sale is, in and of itself, not grounds for finding gross negligence. For example, cereal can be donated if it is marked close to code date for retail sale.

It sets a liability floor of “gross negligence” or intentional misconduct for persons who donate grocery products. (See Act text for further definitions.)

<sup>1</sup> This background guide is provided for informational purposes only. No representation is made to the applicability of the Bill Emerson Good Samaritan Food Donation Act to the actions of any individual or organization. Donors and potential donors should consult legal counsel regarding the applicability of the statute to their activities.

<sup>2</sup> P.L.104-210,H.Rpt. 104-661.

<sup>3</sup> P.L.104-210 pre-empts state Good Samaritan food donation statutes. The doctrine of pre-emption proceeds from the U.S. Supreme Court which holds that certain matters are of such national, as opposed to local, character that federal law pre-empts state law.



**THE BILL EMERSON GOOD SAMARITAN  
FOOD DONATION ACT  
42 U.S. Code § 1791**

**(a) SHORT TITLE —** This section may be cited as the **"Good Samaritan Food Donation Act"**.

**(b) DEFINITIONS —** As used in this section:

**(1) APPARENTLY FIT GROCERY PRODUCT.** — The term "apparently fit grocery product" means a grocery product that meets a quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

**(2) APPARENTLY WHOLESOME FOOD.** — The term "apparently wholesome food" means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

**(3) DONATE.** — The term "donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required anything of monetary value or is charged a good Samaritan reduced price.

**(4) FOOD.** — The term "food" means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

**(5) GLEANER.** — The term "gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

**(6) GOOD SAMARITAN REDUCED PRICE.** — The term 'good Samaritan reduced price' means, with respect to the price of an apparently wholesome food or apparently fit grocery product, a price that is an amount not greater than the cost of handling, administering, harvesting, processing, packaging, transporting, and distributing the apparently wholesome food or apparently fit grocery product.

**(7) GROCERY PRODUCT.** — The term "grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

**(8) GROSS NEGLIGENCE.** — The term "gross negligence" means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.

**(9) INTENTIONAL MISCONDUCT.** — The term "intentional misconduct" means conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

**(10) NONPROFIT ORGANIZATION.** — The term “nonprofit organization” means an incorporated or unincorporated entity that -

(A) is operating for religious, charitable, or educational purposes; and

(B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

**(11) PERSON.** — The term “person” means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

**(12) QUALIFIED DIRECT DONOR.** — The term ‘qualified direct donor’ means a retail grocer, wholesaler, agricultural producer, agricultural processor, agricultural distributor, restaurant, caterer, school food authority, and institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)).

**(c) LIABILITY FOR DAMAGES FROM DONATED FOOD AND GROCERY PRODUCTS** — A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

**(1) LIABILITY OF PERSON OR GLEANER.** — A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price.

**(2) LIABILITY OF NONPROFIT ORGANIZATION.** — A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price.

**(3) DIRECT DONATIONS TO NEEDY INDIVIDUALS.** — A qualified direct donor shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the qualified direct donor donates in good faith to a needy individual at zero cost.

**(4) EXCEPTION.** — Paragraphs (1) through (3) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

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**(d) COLLECTION OR GLEANING OF DONATIONS** — A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

**(e) PARTIAL COMPLIANCE** — If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products:

**(1)** is informed by the donor of the distressed or defective condition of the donated food or grocery products;

**(2)** agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

**(3)** is knowledgeable of the standards to properly recondition the donated food or grocery product.

**(f) CONSTRUCTION** — This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.<sup>1</sup>



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<sup>1</sup> (Pub. L. 89-642, § 22, formerly Pub. L. 101-610, title IV, § 402, Nov. 16, 1990, 104 Stat. 3183; renumbered § 22 and amended Pub. L. 104-210, § 1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012; Pub. L. 117-362, § 1, Jan. 5, 2023, 136 Stat. 6295.)



## Legislative History:

In 1990, model Good Samaritan legislation was enacted by the National and Community Service Act. At that time, Congress recognized the need to protect donors from liability, in order to increase private sector in-kind donations to charities serving the poor. The 1990 model legislation was used by several states in the drafting of their own Good Samaritan statutes. All 50 states enacted their own versions of the Good Samaritan legislation, with varying degrees of liability protection, coverage, types of food covered, definitions of donors and other standards.

From 1990 to 1996, the “patchwork” of varying state Good Samaritan statutes led some food manufacturers to either curtail donations of food, or limit the distribution of their donations to only certain states. Further proof of the problem was evidenced in a 1995 Market Potential Report commissioned by Second Harvest. The 1995 Report found that 83%, of more than 240 companies polled, cited “liability concerns” as the single greatest factor in determining whether or not a company would donate product.<sup>1</sup> For example, 33 states and D.C, protect the donor from civil and criminal liability, while 17 states protect the donor only from civil liability. As the House Committee on Economic and Educational Opportunities noted: “These laws...vary with respect to the types of food covered and the definition of donor and good faith.”<sup>2</sup>

Some companies, which are national in scope, were faced with the daunting task of determining their liability risk - and the varying definitions of “good faith” and duties to inspect - in each state before making a donation. The varying state standards of liability led some companies to destroy surplus food rather than donate for distribution to needy people. To ease donor concerns and increase in-kind donations to charitable organizations, Representatives Pat Danner and Bill Emerson introduced H.R. 2428, the Good Samaritan Food Donation Act. Their bill converted the model legislation into permanent law and, upon enactment, would supersede the varying 50 state statutes. The Good Samaritan legislation was amended to honor the deceased Congressman Bill Emerson, one of the bill’s original co-sponsors and a long-time advocate for hungry people.

The legislation passed both chambers of Congress, unanimously, and signed into law on October 1, 1996. President Clinton spoke to the importance of the legislation:

“Last October, I signed into law the Good Samaritan Food Donation Act. This law encourages private businesses, local governments and ordinary citizens to donate food by protecting them from lawsuits. This can make a real difference. Second Harvest, a national food bank network, estimates that the Good Samaritan law will result in approximately 25 million pounds of food next year.”<sup>3</sup>

To further expand liability protections granted by the Bill Emerson Good Samaritan Food Donation Act, on November 30, 2021, Senator Richard Blumenthal introduced the Food Donation Improvement Act of 2021 (S.3281) to the Senate. The bill was then referred to the Committee on Agriculture, Nutrition, and Forestry.

On December 20, 2022, Senator Blumenthal introduced S.5329, a bill related to the Food Donation Improvement Act of 2021, to the Senate. The bill passed unanimously in the Senate before passing in the House of Representatives on December 21, 2022. The bill was then signed into law by President Joe Biden on January 5, 2023 (P.L.117-362). The law amends the Bill Emerson Good Samaritan Food Donation Act to include liability protections for donations for which the recipient is charged a good Samaritan reduced price and donations made at zero cost by qualified direct donors to needy individuals (see Bill Emerson Good Samaritan Food Donations Act text for definitions).

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<sup>1</sup> 1995 Market Potential Report for Feeding America (formerly Second Harvest); Angell Research Group, Inc.; 1995. The Angell Group was asked to poll the food and grocery industry with the purpose of “determining the extent to which Feeding America is maximizing potential in obtaining donations, and determining what actions or efforts would be most beneficial in maximizing donor contributions in the future.” As stated, among both current donors and potential donors, concerns over donated product liability were cited by respondents as the single greatest factor influencing their decision whether or not to donate.<sup>2</sup> House Report 104-661, page 3; Committee on Economic and Educational Opportunities, July 9, 1996.<sup>3</sup> Radio Address of the President to the Nation, November 23, 1996; Port Douglas, Australia.

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## Chronological Summary:

**Sept. 29, 1995:** The Good Samaritan Food Donation Act introduced by Representative Pat Danner, (H.R. 2428); referred to the House Committee on Economic and Educational Opportunities.

**Oct. 13, 1995:** H.R. 2428 referred to Subcommittee.

**May 31, 1996:** Subcommittee hearing held. Christine Vladimiroff, President and CEO of Second Harvest testifies in support of the legislation.

**June 26, 1996:** Subcommittee discharge, Committee consideration and Mark-up session. Bill reported by voice vote.

**July 9, 1996:** Reported to House, amended by the Committee on Economic and Educational Opportunities. Placed on Union Calendar. House Report 104-661 to accompany H.R. 2428.

**July 12, 1996:** Called up by House under suspension of the rules, Passed House (amended) by voice vote. Unanimous.

**Aug. 2, 1996:** Received in the Senate, read twice and held at the desk. Senate companion legislation introduced by Senator Bond (S.1938).

**Sept. 4, 1996:** Measure (H.R. 2428) laid before the Senate. Amended (SP5148 - Santorum/Leahy and SP5149 Santorum/Kennedy); passed (as amended) by Unanimous Consent. Message on Senate action sent to the House.

**Sept. 5, 1996:** On motion that the House agree to the Senate amendments, House Agreed without objection. Unanimous. H.R. 2428 cleared for the White House.

**October 1, 1996:** President signed H.R. 2428, became P.L.104-210.

**November 11, 2021:** Senator Richard Blumenthal introduced the Food Donation Improvement Act of 2021 (S.3281) to the Senate. Read twice and referred to the Committee on Agriculture, Nutrition, and Forestry.

**December 13, 2021:** Representative James McGovern introduced H.R. 6251, the identical House version of S.3281, to the House of Representatives. The Bill was referred to the House Committee on Education and Labor.

**December 20, 2022:** S.5329, a bill to amend the Bill Emerson Good Samaritan Food Donation Act to improve the program, and for other purposes, related to the Food Donation Improvement Act of 2021, was introduced in the Senate by Senator Richard Blumenthal, read twice, considered, read the third time, and passed without amendment by Unanimous Consent.

**December 21, 2022:** Passed/agreed to in House: On motion to suspend the rules and pass the bill Agreed to by voice vote.

**January 5, 2023:** President signed S.5329, became P.L.117-362.

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