

United States legal liability issues for food donations

The Federal Bill Emerson Good Samaritan Food Donation Act protects the donor and the recipient agency against liability, excepting only gross negligence and/or intentional misconduct. In addition, each state has passed Good Samaritan Laws that provide liability protection to good faith donors. Each of the Harvest Programs we coordinate have established procedures to ensure that safe food handling and storage is built into their donation program.

Federal Law: The Bill Emerson Good Samaritan Food Donation Act

In 1996, President Clinton signed into law The Bill Emerson Good Samaritan Food Donation Act.

Why the Emerson Act is important

Each year, 14 billion pounds of food are sent to landfills. Meanwhile, nearly 30 million Americans, including 12 million children, are at risk of hunger. Potential donors most often cite fear of liability as the reason they refuse to donate to feeding programs. Before passage of the national law, all 50 states and the District of Columbia had adopted laws protecting donors. Yet, differences in language and applicability between states often discouraged national and regional companies from donating. With the national law in place, regional and national donors have the uniform language that protects them from civil and criminal liability.

What does the law do?

The law protects good faith food donors from civil and criminal liability, should the product later cause harm to its recipient. The Emerson Act gives uniform federal protection to donors who may cross state lines.

Who is protected?

The law protects food donors, including individuals, and nonprofit feeding programs who act in good faith. While exceptions are made for gross negligence, the law states that test groups will not be subject to civil or criminal liability. More specifically, the law protects individuals, corporations, partnerships, organizations, associations, governmental entities, wholesalers, retailers, restaurateurs, caterers, farmers, gleaners, nonprofit agencies, and more.

What sort of food is protected?

The Emerson Act provides protection for food and grocery products that meet 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."

APPENDIX C:

Text of Emerson Good Samaritan Food Donation Act

PUBLIC LAW 104-210

An Act: To encourage the donation of food and grocery products to [nonprofit organizations](#) for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

- (a) Conversion to Permanent Law.--Title IV of the National and Community Service Act of 1990 is amended--
- (1) by striking the title heading and sections 401 and 403 (42 U.S.C. 12671 and 12673); and
 - (2) in section 402 (42 U.S.C.12672)--
 - (A) in the section heading, by striking ``model'' and inserting ``Bill Emerson'';
 - (B) in subsection (a), by striking ``Good Samaritan'' and inserting ``Bill Emerson Good Samaritan'';
 - (C) in subsection (b) (7), to read as follows:
``(7) Gross negligence.--The term `gross negligence' means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.'';
 - (D) by striking subsection (c) and inserting the following:
 - (c) Liability for Damages From Donated Food and Grocery Products.--
 - (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 non-profit organization for ultimate distribution to needy individuals.
 - (2) Liability of non-profit organization.--A non-profit 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 non-profit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.
 - (3) Exception.--Paragraphs (1) and (2) 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 non-profit organization, as applicable, constituting gross negligence or intentional misconduct.''; and
 - (E) in subsection (f), by adding at the end the following:
``Nothing in this section shall be construed to supersede State or local health regulations.''.
 - (b) Transfer to Child Nutrition Act of 1966.--Section 402 of the National and Community Service Act of 1990 (42 U.S.C.12672) (as amended by subsection (a))--
 - (1) is transferred from the National and Community Service Act of 1990 to the Child Nutrition Act of 1966;
 - (2) is redesignated as section 22 of the Child Nutrition Act of 1966; and
 - (3) is added at the end of such Act.
 - (c) Conforming Amendment.--The table of contents for the National and Community Service Act of 1990 is amended by striking the items relating to title IV.

SECTION 1.

CONVERSION TO PERMANENT LAW OF MODEL GOOD SAMARITAN FOOD DONATION ACT AND TRANSFER OF THAT ACT TO CHILD NUTRITION ACT OF 1966.

SECTION OF THE NATIONAL AND COMMUNITY SERVICE ACT OF 1990 THAT WAS AMENDED BY THE EMERSON GOOD SAMARITAN FOOD DONATION ACT:

Public Law No. 101-610, 104 Stat. 3183 (codified at 42 U.S.C. 12671-12673) (1990)

TITLE IV- FOOD DONATIONS

SEC. 401. SENSE OF CONGRESS CONCERNING ENACTMENT OF GOOD SAMARITAN FOOD DONATION ACT.

(a) IN GENERAL.—It is the sense of Congress that each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States should

(1) encourage the donation of apparently wholesome food or grocery products to nonprofit organizations for distribution to needy individuals; and

(2) consider the model Good Samaritan Food Donation Act (provided in section 402) as a means of encouraging the donation of food and grocery products.

(b) DISTRIBUTION OF COPIES. -The Archivist of the United States shall distribute a copy of this title to the chief executive officer of each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 402. MODEL GOOD SAMARITAN FOOD DONATION ACT.

(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.

(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) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(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.

(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.

SEC. 403. EFFECT OF SECTION. 402

The model Good Samaritan Food Donation Act (provided in section 402) is intended only to serve as a model law for enactment by the States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States. The enactment of section 402 shall have no force or effect in law.

Federal Regulations on Food Dating

What is dating?

"Open Dating" (use of a calendar date as opposed to a code) on a food product is a date stamped on a product's package to help the store determine how long to display the product for sale. It can also help the purchaser to know the time limit to purchase or use the product at its best quality. It is not a safety date. After the date passes, while not of best quality, the product should still be safe if handled properly and kept at 40 °F or below for the recommended storage times listed on the chart (see below). If product has a "use-by" date, follow that date. If product has a "sell-by" date or no date, cook or freeze the product by the times on the chart below.

Is dating required by federal law?

Except for infant formula ([see below](#)), product dating is **not** generally required by Federal regulations. However, if a calendar date is used, it must express both the month and day of the month (and the year, in the case of shelf-stable and frozen products). If a calendar date is shown, immediately adjacent to the date must be a phrase explaining the meaning of that date such as "sell-by" or "use before."

There is no uniform or universally accepted system used for food dating in the United States. Although dating of some foods is required by more than 20 states, there are areas of the country where much of the food supply has some type of open date and other areas where almost no food is dated.

What types of food are dated?

Open dating is found primarily on perishable foods such as meat, poultry, eggs and dairy products. "Closed" or "coded" dating might appear on shelf-stable products such as cans and boxes of food.

Types of Dates

- A **"Sell-By"** date tells the store how long to display the product for sale. You should buy the product before the date expires.
- A **"Best if Used By (or Before)"** date is recommended for best flavor or quality. It is not a purchase or safety date.
- A **"Use-By"** date is the last date recommended for the use of the product while at peak quality. The date has been determined by the manufacturer of the product.
- **"Closed or coded dates"** are packing numbers for use by the manufacturer.

Safety After Date Expires

Except for "use-by" dates, product dates don't always refer to home storage and use after purchase. "Use-by" dates usually refer to best quality and are not safety dates. But even if the date expires during home storage, a product should be safe, wholesome and of good quality if handled properly and kept at 40 °F or below. See the accompanying refrigerator charts for storage times of dated products. If product has a "use-by" date, follow that date. If product has a "sell-by" date or no date, cook or freeze the product by the times on the chart below.

Foods can develop an off odor, flavor or appearance due to spoilage bacteria. If a food has developed such characteristics, you should not use it for quality reasons.

If foods are mishandled, however, foodborne bacteria can grow and cause foodborne illness — before or after the date on the package. For example, if hot dogs are taken to a picnic and left out several hours, they might not be safe if used thereafter, even if the date hasn't expired.

Other examples of potential mishandling are products that have been: defrosted at room temperature more than two hours; cross contaminated; or handled by people who don't practice sanitation. Make sure to follow the handling and preparation instructions on the label to ensure top quality and safety.

Dating Infant Formula

Federal regulations require a "use-by" date on the product label of infant formula under FDA inspection. If consumed by that date, the formula or food must contain not less than the quantity of each nutrient as described on the label. Formula must maintain an acceptable quality to pass through an ordinary bottle nipple. If stored too long, formula can separate and clog the nipple.

The "use-by" date is selected by the manufacturer, packer or distributor of the product on the basis of product analysis throughout its shelf life, tests, or other information. It is also based on the conditions of handling, storage, preparation, and use printed on the label. Do not buy or use baby formula after its "use-by" date.