

The Good Samaritan Food Donation Act

Increasing food donations to charitable organizations is one of the best ways restaurants can reduce food waste and divert material from landfills. However, some restaurants are reluctant to donate their excess food due to fear of liability exposure if that food were to cause a foodborne illness.

Fortunately, federal law provides liability protection for food donated in good faith. In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act that provides civil and criminal liability protection to businesses that donate food. The Act protects donors as long as they meet the following requirements:

1. The food must be donated to a *nonprofit organization* in *good faith*.
2. The donated items must be *apparently wholesome food*.
3. The food must be distributed by the nonprofit to needy individuals who may not pay for it.
4. The food must meet all federal, state, and local quality and labeling requirements; if labeling requirements are not met, the food must be reconditioned to meet them before donation.

What's Good Faith?

While the statute does not specifically address what constitutes good faith, this familiar legal concept embraces conduct that is motivated by a sincere and honest intention to deal fairly with others and that the donor believes the food to be safe for consumption.

What's Apparently Wholesome Food?

Food that meets all federal, state, & local quality and labeling standards even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Are there any exceptions?

Under the Act, as long as the donor has not acted with gross negligence or intentional misconduct, there are no exceptions: the company is not liable for damage that might be incurred as the result of illness.

Does this conflict with state laws?

The Act provides federal protection and preempts all state laws that provide **less liability** protection than the Bill Emerson Act. States are of course free to provide greater liability protection than the federal law. In the past, a patchwork of state laws essentially required a comprehensive survey of the law in all states and the adoption of jurisdiction-specific recovery practices. Now, food donors need only seek protection under one law and do not need to investigate liability laws, nor pursue protection in 50 states.

Has anyone been sued for a foodborne illness?

Millions of pounds of food are donated daily and not a single case involving food donation-related liability has been reported. The absence of litigation demonstrates that fear of lawsuits or other negative publicity related to mishaps with donated food are overstated and largely illusory barriers to food recovery.

State and Local Health Regulations

The Act does not waive state and local health regulations. All restaurants donating food must still comply with all state and local health regulations, which are typically no different from those required for retail sale.

Source: Legal Guide to the Bill Emerson Good Samaritan Food Donation Act, University of Arkansas, <http://media.law.uark.edu/arklawnotes/2013/08/08/the-legal-guide-to-the-bill-emerson-good-samaritan-food-donation-act/#note-1448-168>