

# FEDERAL LIABILITY PROTECTION

Many food manufacturers, retailers, and wholesalers cite fear of liability as a primary deterrent to donating food. However, strong federal liability protections exist for businesses and nonprofits that receive donated food. In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act (<https://www.gpo.gov/fdsys/pkg/PLAW-104publ210/pdf/PLAW-104publ210.pdf>), which provides a federal floor of civil and criminal liability protection for food donors and the nonprofit organizations that receive and distribute food donations to those in need. It provides protection to a broad range of donors, including individuals, businesses, government entities, food recovery organizations, and gleaners.

Donors and distributors must meet the following four requirements to receive protection under the Act:

- 1. The donor donates to a nonprofit organization.**
- 2. The food must meet all federal, state, and local quality and labeling requirements, even if it is not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.” If all quality and labeling requirements are not met, the food must be reconditioned to meet all quality and labeling requirements before it can be donated, which include:**
  - **The donor informs the nonprofit of the nonconforming nature of the product;**
  - **The nonprofit agrees to recondition the item so that it is compliant; and**
  - **The nonprofit knows the standards for reconditioning the item.**
- 3. The nonprofit organization that receives the donated food must distribute it to needy individuals. Direct donations from the donor to needy individuals are not protected by the Act.**
- 4. The needy individuals receiving the food may not pay for it. However, if one nonprofit donates food to another nonprofit for distribution, the Act allows the first nonprofit to charge the distributing nonprofit a nominal fee to cover handling and processing costs.**

So long as these criteria are met, the Emerson Act is quite protective of donors, and does not hold a donor liable unless the donor acts with gross negligence or intentional misconduct. “Gross negligence” involves “voluntary and conscious conduct (including a failure to act)” by a person or organization that knew when the donation was made that the donated food was likely to have harmful health impacts. “Intentional misconduct” is when a person or organization donates “with knowledge . . . that the conduct is harmful to the health or well-being of another person.” In other words, one should not donate or facilitate the distribution of donated food that one knows is likely to be harmful or dangerous.

In addition to federal liability protections, states are free to enact state level liability protections that are more protective of food donors than the federal Emerson Act. Explore state liability protection laws. ([/tools/food-waste-policy-finder/state-policy?category=recovery\\_filters&filters=liability-protection\\_filters](/tools/food-waste-policy-finder/state-policy?category=recovery_filters&filters=liability-protection_filters))

**For a printable version and citations of these guidelines, download this fact sheet ([//d1qmdf3vop2l07.cloudfront.net/indigo-peafowl.cloudvent.net/compressed/83e930c59550e01bbebee80c54552255.pdf](http://d1qmdf3vop2l07.cloudfront.net/indigo-peafowl.cloudvent.net/compressed/83e930c59550e01bbebee80c54552255.pdf)) from Harvard Food, Law and Policy Clinic.**

## RECOMMENDATIONS FOR STRENGTHENING FEDERAL LIABILITY PROTECTION POLICY

The broad base of liability protection provided by the Emerson Act was intended to encourage food donations, yet donors are often unaware of it. Further, several provisions in the Act could be broadened to better align with the current food recovery landscape. Clarifying the Emerson Act's coverage and expanding its protections, as described below, can boost more food donations. Most of these suggestions, put forth by Natural Resources Defense Council and the Harvard Law School Food Law and Policy Clinic, would require Congressional action to modify the Act's language. However, a federal agency can take action immediately to clarify the Emerson Act by providing interpretive guidance.

- 1. An executive agency should be responsible for implementing and interpreting the Emerson Act, as well as raising awareness among businesses of its coverage.**
- 2. Congress should broaden the language of the Emerson Act to protect nonprofit organizations that sell food to end recipients at a reduced price and the donors that donate to these nonprofits.**
- 3. Congress should modify the language of the Emerson Act to include donations made by licensed food service establishments, such as restaurants and retailers, directly to individuals.**
- 4. Congress should modify the Emerson Act to cover food mislabeled in ways that are irrelevant to food safety. The executive agency designated to interpret the act should issue guidance on which labels are relevant to food safety.**
- 5. Congress should modify the language of the Emerson Act to explicitly provide protection to donations of past-date food.**

**For more details about these five recommendations, download this fact sheet (<http://www.chlpi.org/wp-content/uploads/2013/12/recommendations-bill-emerson-good-samaritan-act-fs.pdf>) from Harvard Food Law and Policy Clinic and NRDC.**

## RESOURCES

The Bill Emerson Good Samaritan Food Donation Act (<https://www.gpo.gov/fdsys/pkg/PLAW-104publ210/pdf/PLAW-104publ210.pdf>)

Legal Fact Sheet on Liability Protections for Food Donations (</downloads/Emerson-Act-Legal-Fact-Sheet.pdf>)