



United States Department of Agriculture

Frequently Asked Questions about the Bill Emerson Good Samaritan Food Donation Act

The [Bill Emerson Food Donation Act](#) establishes Federal protection from civil and criminal liability for persons involved in the donation and distribution of food and grocery products to needy individuals when certain criteria are met. In order to receive protection under the Act, a person or gleaner must donate in good faith apparently wholesome food or apparently fit grocery products to a nonprofit organization for ultimate distribution to needy individuals. The Act also provides protection against civil and criminal liability to the nonprofit organizations that receive such donated items in good faith.

The protection under the Act does not apply to acts or omissions constituting gross negligence or intentional misconduct.

The U.S. Department of Agriculture (USDA) offers the following responses to frequently asked questions about the Bill Emerson Good Samaritan Food Donation Act to raise awareness of the liability protection afforded by the act, in accordance with Section 12504 of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill).

The information presented is not a guidance document and does not constitute legal advice or create an attorney-client relationship.

What can be donated?

1. What are the food quality and labeling standards that must be met to comply with the Act?

The Act protects persons who donate food and grocery products that meet all quality and labeling standards imposed by Federal, State, and local laws and regulations. The Act also extends liability protections to donors of food and grocery products that do not meet all quality and labeling standards if the donor informs the nonprofit organization that receives the items, the nonprofit organization agrees to recondition the items to meet all quality and labeling standards, and the nonprofit organization is knowledgeable of the standards to do so properly.

The law does not waive or override any State or local health regulations.

2. What are the definitions of “apparently wholesome food” and “apparently fit grocery items”?

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.

The term “apparently fit grocery product” means a grocery product that meets all 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.



United States Department of Agriculture

3. Are there foods that are not explicitly covered, such as vacuum-sealed foods?

The Act does not address specific types of food or packaging methods. To be covered by the Act, food must meet all quality and labeling standards imposed by Federal, state, and local laws. Nothing in the Act overrides state or local health regulations.

By whom?

1. Are schools covered by the Act if they donate?

The Act covers donations by school food authorities and institutions of higher education. These entities are expressly included in the definition of “qualified direct donors” in the Emergency Food Assistance Act of 1983, as amended by the 2018 Farm Bill.

2. Are farmers covered? Gleaners?

The Act expressly covers both farmers and gleaners.

3. Are food banks covered?

The Act expressly covers donations by nonprofit food distributors.

4. Are restaurants, food service, grocers and food manufacturers covered?

The Act expressly covers donations by restaurants, retail grocers and manufacturers. Donations by a food service company also would be covered under the broad definition of “person,” which includes corporations, partnerships, organizations, and associations.

5. Does the Act extend to caterers, food trucks?

The Act’s definition of “person” expressly covers donations by caterers. Donations by a food truck also would be covered under the broad definition of “person,” which includes corporations, partnerships, organizations, and associations.

6. How about kitchens that create meals from donated food and then sell the meals at extremely low prices in underserved neighborhoods?

No, for a donation to be covered by the Act, the ultimate recipients of the food or grocery items must not be required to give anything of value.



United States Department of Agriculture

To whom?

1. Are direct donations to needy individuals or families covered?

The Act applies to donations to nonprofit organizations for ultimate distribution to needy individuals. It does not cover direct donations to needy individuals or families.

2. Are there explicit or suggested restrictions on the types of venues at which donated food may be served, such as restrictions on serving donated food at outdoor venues?

The Act does not address the venues or settings where donated food may be served. State or local laws and regulations may apply.

General

1. How is this law different than state liability protection and what is the interplay between state liability protection and federal? How would a donor find out what is required in their state?

The Department of Justice (DOJ) Office of Legal Counsel has interpreted the Act as preempting state laws that provide less liability protection to donors.¹ Under the DOJ's interpretation, state laws may provide greater protection against liability, but not less.

2. What is meant by the term “good faith?” Is there a way to better define this in terms of food safety, and are there specific food safety resources that should be utilized when referring to “in good faith?” How does this term align with similar terms used in Child Nutrition Act?

The Act covers donations made and received in “good faith,” but it does not define “good faith.” This term is not defined elsewhere in the Child Nutrition Act.

¹ Preemptive Effect of the Bill Emerson Good Samaritan Food Donation Act, 21 Op. O.L.C. 55 (March 10, 1997), available at https://www.justice.gov/sites/default/files/olc/opinions/1997/03/31/op-olc-v021-p0055_0.pdf.