

Text of the **Bill Emerson Good Samaritan Food Donation Act** from the  
USDA publication  
A Citizen's Guide to Food Recovery  
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,

**SECTION I.**

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

- (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 nonprofit organization for ultimate distribution to needy individuals.
      - (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.
      - (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 nonprofit 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 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 standard 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, 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 grocer 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.