

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

The Bill Emerson Good Samaritan 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. These FAQs incorporate amendments passed on January 5, 2023 (Public Law 117-362) to the Bill Emerson Good Samaritan Act.

The Act defines “donate” as giving without requiring anything of monetary value from the recipient. An exception exists for nonprofit organizations that give to another nonprofit organization: the term ‘donate’ includes giving by a nonprofit donor organization that charged a nominal fee to the nonprofit donee organization, provided the ultimate recipient or user is not required to give anything of monetary value or is charged a good Samaritan reduced price.

Civil and Criminal liability protections are extended to three groups of entities under the Act:

- **Persons and Gleaners**, when donating in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price
 - a. “Person” is defined as 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
 - b. “Gleaner” is defined as 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.
- **Nonprofit Organizations** when receiving a donation in good faith for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price.
- **Qualified Direct Donors**, when donating in good faith directly to needy individuals at zero cost.
 - a. Qualified direct donors are defined as a retail grocer, wholesaler, agricultural producer, agricultural processor, agricultural distributor, restaurant, caterer, school food authority, or institution of higher education.

Note that only a subset of ‘persons,’ those defined as ‘qualified direct donors,’ also receive liability protections when donating in good faith directly to needy individuals at zero cost.

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.

3. Does the Act exclude certain food types, such as vacuum-sealed foods?

The Act does not address specific types of food or packaging methods. For donors to be covered by the Act, food donated 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 school food authorities and institutions of higher education as “Persons” provided they identify as one of the covered entities and they donate in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price. Liability protections are also extended to schools as “qualified direct donors” if they donate directly to needy individuals at zero cost.

2. Are gleaners and farmers covered? Agricultural producers and processors?

Yes, the Act expressly covers both farmers and gleaners under liability protections for “Persons and Gleaners” provided they donate in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price. Agricultural producers and

agricultural processors are covered under “Persons and Gleaners” when they identify as one of the covered entities; they also are covered under “Qualified Direct Donors” if they donate in good faith directly to needy individuals at no cost.

3. Are food banks covered?

The Act expressly covers nonprofit food distributors as “Persons and Gleaners”, as well as protections for nonprofit food banks receiving donations.

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

The Act expressly covers restaurants, retail grocers and manufacturers as “persons” when donating in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price. A food service company also would be covered under the broad definition of “person,” if the company identifies as a corporation, partnership, organization, or association. Restaurants and retail grocers are also covered under “Qualified Direct Donors” if they donate in good faith directly to needy individuals at no cost.

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

The Act’s definition of “person” expressly covers donations by caterers, provided they donate in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price. Food trucks also would be covered under the broad definition of “person,” if structured as a corporation, partnership, organization, or association.

6. Are non-profit soup kitchens covered that create meals from donated food and then sell the meals at extremely low prices in underserved neighborhoods?

Yes, on January 5, 2023, Public Law No: 117-362 expanded liability protections to include donations given by a nonprofit organization to needy individuals at a good Samaritan reduced price. A good Samaritan reduced price should not be greater than the cost of handling, administering, harvesting, processing, packaging, transporting and distributing the apparently wholesome food or fit grocery product.

7. Are grocery stores covered that charge an extremely low price to needy individuals, for surplus wholesome food or fit grocery products?

No. Public Law No: 117-362 expands liability protections for qualified direct donors to be protected from civil and criminal liability if donating directly to needy individuals at **zero cost**, not for a reduced fee.

8. Are non-profit food banks covered that charge a non-profit organization a small fee to receive surplus wholesome food intended for donation to needy individuals?

Yes, the Act covers non-profit donors that charge a nominal fee to a non-profit donee, if the ultimate recipient or user is not required to give anything of monetary value or is charged a good Samaritan reduced price.

To whom?

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

In some cases, yes. On January 5, 2023, Public Law No: 117-362 expanded liability protections for qualified direct donors which donate directly to needy individuals at zero cost. .

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.