

**TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 13A - CHILD NUTRITION**

§ 1791. Bill Emerson Good Samaritan Food Donation Act

(a) Short title

This section may be cited as the “Bill Emerson 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 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.

(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 to give 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 (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.

(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

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

(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, and 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

(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.

(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 grocery product.

(f) Construction

This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.

(Pub. L. 89–642, § 22, formerly Pub. L. 101–610, title IV, § 402, Nov. 16, 1990, 104 Stat. 3183; renumbered § 22 and amended Pub. L. 104–210, § 1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012.)

Codification

Section was formerly classified to section 12672 of this title prior to renumbering by Pub. L. 104–210.

Amendments

1996—Pub. L. 104–210, § 1(a)(2)(A), substituted “Bill Emerson” for “Model” in section catchline.

Subsec. (a). Pub. L. 104–210, § 1(a)(2)(B), inserted “Bill Emerson” before “Good”.

Subsec. (b)(7). Pub. L. 104–210, § 1(a)(2)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “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.”

Subsec. (c). Pub. L. 104–210, § 1(a)(2)(D), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “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.”

Subsec. (f). Pub. L. 104–210, § 1(a)(2)(E), inserted at end “Nothing in this section shall be construed to supercede State or local health regulations.”