

BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT

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JULY 9, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

R E P O R T

[To accompany H.R. 2428]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 2428) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. 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 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”; and

(C) in subsection (c)—

(i) by striking “A person or gleaner” and inserting the following:

“(1) **LIABILITY OF PERSON OR GLEANER.**—A person or gleaner”;

(ii) by striking “needy individuals,” and inserting “needy individuals.”;

(iii) by inserting after “needy individuals.” (as added by clause (ii)) the following:

“(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.”; and (iv) by striking “except that this paragraph” and inserting the following:

“(3) EXCEPTION.—Paragraphs (1) and (2)”.

(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.

#### PURPOSE

The purpose of this bill is 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.

#### EXPLANATION OF AMENDMENT

The provisions of the amendment in the nature of a substitute are explained in this report.

#### COMMITTEE ACTION

On Friday, May 31, 1996, the Subcommittee on Postsecondary Education, Training and Life-Long Learning held a hearing on H.R. 2428, the Bill Emerson Good Samaritan Food Donation Act. Witnesses at the hearing included: Representative Bill Emerson (R-MO); Representative Pat Danner (D-MO); Christine Vladimiroff, President, Second Harvest National Food Bank Network; Henry Cohen, Legislative Attorney, Congressional Research Service; Christina Martin, Executive Director, Foodchain (The Network of prepared and Perishable Food Rescue Programs).

#### COMMITTEE VIEWS

##### A. BACKGROUND AND NEED FOR LEGISLATION

Section 401 of the National and Community Service Act of 1990 expresses the sense of Congress that each of the 50 states consider enactment of the Model Good Samaritan Food Donation Act. The central provision of the Model Good Samaritan Food Donation Act provides that a person or gleaner (a person who harvests for free distribution to the needy) 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 distributes in good faith to a non-profit organization for ultimate distribution to needy individuals. This immunity does 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.

All fifty states generally hold one who distributes food or any other defective product, the defective aspect of which causes injury, to be strictly liable, which means liable even in the absence of negligence. All fifty states, however, have exceptions to this general rule, including statutes that limit the liability of food donors. These

statutes were all originally enacted even before the 1990 federal Model Good Samaritan Food Donation Act. In introducing the Model Good Samaritan Food Donation Act, Senator Don Nickles noted that the state “statutes vary significantly in the degree of coverage which they provide,” and that many “potential food and grocery store donors are national in scope” (Congressional Record, March 1, 1990).

According to a “Summary of Good Samaritan Food Donation Statutes,” (prepared by the law firm of Winthrop, Stimson, Putnam and Roberts in 1992 for “Share our Strength,” a non-profit hunger relief organization), all fifty states and the District of Columbia have enacted various forms of Good Samaritan Food Donation Statutes. Thirty-three states and the District of Columbia protect the donor from civil and criminal liability, while seventeen states only protect the donor from civil liability. These laws do, however, vary with respect to the types of food covered and the definition of donor and good faith.

Some state statutes, such as the California Food and Agricultural Code, provide for liability only for gross negligence or intentional acts. Others, such as the Pennsylvania Statutes Annotated, retain liability for negligence and eliminate it only for lawsuits based solely on strict liability. New York Agriculture and Market law represents a third variation. It immunizes a donor from liability if the donor “reasonably inspects the food at the time of donation” and has no “actual or constructive knowledge” that the food is tainted. A donor in New York conceivably could comply with these conditions yet still be negligent in some other manner and avoid liability.

As a result of these varied laws, many potential donors hesitate to donate food. In her testimony before the Committee, Christina Vladimiroff, President and CEO of the Second Harvest National Food Bank Network, said, “Our experience is clear. There are companies that want to donate food and grocery products, but are fearful of contributing because of the varying state laws regarding their liability for what would otherwise be a generous act of donation.”

In his testimony, Representative Bill Emerson stated, “Private companies are too often faced with different state laws governing food donation. These differences can stand between a willing donor and a needy family. I urge this Subcommittee to lift this barrier so that this assistance can continue and perhaps grow, thereby helping needy families.”

Representative Pat Danner continued this sentiment by stating, “Currently there are individual good Samaritan laws in each state and the District of Columbia. This system of state laws, however, has required regional or national companies to devote sometimes scarce resources toward adopting donation plans and complying with various states’ statutes. Unfortunately, some businesses have cited this patchwork of laws as a reason for abandoning this valuable service that contributes to our people’s needs.”

Another witness before the Committee, the Executive Director of Foodchain, Christine Martin, said, “several national food companies were sympathetic to the idea of food rescue, but expressed deep concerns about liability. In effect, they sought one law that would cover all of their establishments coast to coast.”

It is the view of the Committee that providing the Bill Emerson Good Samaritan Food Donation Act the full force of federal law will provide the necessary consistency across the States to encourage the donation of food to help the needy.

#### B. PAYING TRIBUTE TO BILL EMERSON

The Committee believes that this bill will bring people together to promote the greater good for their communities. This is exactly what the career of our late, beloved colleague Bill Emerson was all about. That is why we have renamed this legislation the “Bill Emerson Food Donation Act,” as a tribute to this fine man and his commitment to the improving our nation’s nutrition programs. Bill Emerson was a true patriot, and great Member of Congress. He was a man of the highest character who devoted himself to the cause of reducing hunger and to making this country, and this House, a better place. He worked very hard to have this bill actively considered during the 104th Congress and it is a fitting tribute that this Act be named in his honor.

#### C. INCLUSION AS PART OF THE CHILD NUTRITION ACT

The Committee believes the enactment of this law will compliment existing federal nutrition programs in providing for the nutritional needs of low income individuals and their families. As such, we have removed the Bill Emerson Good Samaritan Food Donation Act from the National and Community Service Act and included it as a section of the Child Nutrition Act of 1966. The intent of this Act is more closely aligned with the intent of the Child Nutrition Act; i.e., addressing the nutritional needs of low income individuals.

#### D. COVERING THE DISTRIBUTORS OF DONATED FOOD

During his testimony before the Committee, Henry Cohen, Legislative Attorney, American Law Division, Congressional Research Service, stated, “The thing that H.R. 2428 would not do (because the model act does not address the matter) is to limit the liability of nonprofit organizations that distribute donated food. A majority, but not all, of the states limit the liability of such organizations.” The Committee believes that this is an issue which should be addressed and, therefore, has modified the Bill Emerson Good Samaritan Food Donation Act to limit the liability of nonprofit organizations that distribute donated food.

#### E. SETTING A LIABILITY FLOOR FOR GROSS NEGLIGENCE

The bill sets a liability floor of gross negligence for persons who donate food. Gross negligence is defined as “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.” Often food donations are made by grocery stores, food wholesalers, caterers, and the like, when the food has fallen below the donator’s quality or appearance standards but the food is still wholesome. It may also happen that processed food is donated at or near the “freshness date” or “code date” on the box or container. However, because donated food is reconditioned and

often used quickly after donation, many factors must be considered when determining what is and is not gross negligence.

The Committee recognizes that the provision of food that is close to the date of recommended retail sale in and of itself is not grounds for finding gross negligence. Instead, the gross negligence of a donator should depend upon many factors. A finding of gross negligence depends upon the type of food involved. For example, a box of cereal that is provided to a food pantry just before or even just after the date of retail sale would be perfectly safe for consumption, whereas a carton of milk or container of fresh poultry that is donated just beyond the retail sales date could be dangerous to a person's health. Similarly, fresh product ages differently than canned product.

The end user of the donated food must also be taken into account. Bruised fruit that is carefully prepared and used the day of donation at a soup kitchen is very different from produce put into take-home bags at the food pantry and consumed later by patrons. The Committee believes all of these factors must be considered when deciding whether or not a food donator is liable for gross negligence under the bill.

#### SUMMARY

The Bill Emerson Good Samaritan Food Donation Act requires States to adopt legislation to protect those who donate food in good faith from civil or criminal liability should such donated food later cause harm to recipients. It does not provide such protections in instances of gross negligence or intentional harm.

#### SECTION BY SECTION

SEC. 1. Converts the current model Good Samaritan Food Donation Act to permanent law and transfers the Act to the Child Nutrition Act of 1966. Renames the Model Good Samaritan Food Donation Act the "Bill Emerson Good Samaritan Food Donation Act." It amends the current model Act to provide protection to nonprofit organizations which distribute donated food.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

#### INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 2428 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

## GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(1)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2428.

## COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2428. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

## APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch. This bill is designed 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. This bill does not prohibit legislative branch employees from receiving the benefits of this legislation.

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget & Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office. See *infra*.

## BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(1)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(1)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2428 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 3, 1996.*

Hon. WILLIAM F. GOODLING,  
*Chairman, Committee on Economic and Educational Opportunities,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed H.R. 2428, the Bill Emerson Good Samaritan Food Donation Act. The bill was ordered reported by the Committee on

Economic and Educational Opportunities on June 26, 1996. It would limit the degree of liability individuals, companies, and non-profit organizations could face for damages from donated food and grocery products.

CBO estimates that enactment of H.R. 2428 would have no significant effect on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 2428 contains one mandate on state and local governments as defined in Public Law 104-4. The bill would preempt civil and criminal liability laws of state and local governments that deal with the donation of food and grocery products to nonprofit organizations. As a result of the preemption, states and localities could lose some income from civil and criminal penalties. However, based on information from the National Association of Attorneys General and Second Harvest, a national network of food banks, CBO estimates that any such losses would be negligible.

The bill contains no private-sector mandates as defined in Public Law 104-4.

If you wish further details on this estimate, we will be pleased to provide them. The CBO federal cost analyst is Dorothy Rosenbaum, the state and local cost analyst is John Patterson, and the private-sector cost analyst is Jay Noell.

Sincerely,

PAUL VAN DE WATER  
(For June E. O'Neill, Director).

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### NATIONAL AND COMMUNITY SERVICE ACT OF 1990

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### 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 offi-

cer 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 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 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, 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.—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 grocery 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.]

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**CHILD NUTRITION ACT OF 1966**

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**SEC. 22. 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 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, 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 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 grocery product.

*(f) CONSTRUCTION.—This section shall not be construed to create any liability.*

