

UPDATE ON USA'S FOOD DONATION POLICY LANDSCAPE

The Food Donation Improvement Act of 2021 expands and clarifies the 1996 Bill Emerson Good Samaritan Food Donation Act,¹ adding protection for more variations of food donation for businesses and nonprofits.² The updated law introduces new liability protections, explicitly protects the sale of donated food at a reduced cost and includes protection for direct donations to individuals by certain food businesses. By addressing previous barriers, the law aims to increase food recovery efforts across the supply chain, from farmers and retailers to restaurants and schools.

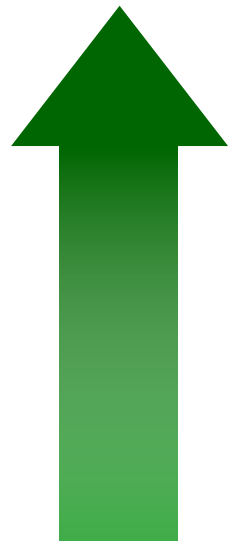
SYNOPSIS OF PRIOR FOOD DONATION LIABILITY PROTECTION POLICY

The Bill Emerson Good Samaritan Food Donation Act protected businesses and nonprofits from civil and criminal liability when donating “apparently wholesome” food in good faith to charitable organizations for redistribution.³ However, the law had several limitations that discouraged potential donors. First, it did not protect the sale of donated food at a minimal cost, making it difficult for nonprofit organizations with social enterprise models to recover handling and distribution expenses. Second, liability protections only applied when donations were made to intermediary nonprofits, meaning direct donations from businesses to individuals lacked legal protection. This discouraged retailers, restaurants, and institutions from donating surplus food directly to people in need.

DETAILS OF THE UPDATED LAW

The revised law builds on the existing Emerson Act and expands legal protections to donations made to nonprofit organizations that distribute food at a “Good Samaritan reduced price”, meaning they distribute food at a price that recovers the costs of handling, distributing, and administering donations.⁴ Previously, all donations had to be completely free to qualify for legal protection. This change makes it easier for food recovery organizations to sustain operations and experiment with other distribution models, such as social supermarkets, where they charge small handling fees while still keeping food accessible to those in need.

CURRENT
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POLICY**



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Additionally, the new law extends protection to certain direct donations to individuals. In particular, the law says that direct donations from the following entities directly to those in need without using an intermediary nonprofit will be protected: retail grocers, wholesalers, agricultural producers, restaurants, caterers, schools, and universities.⁵ This eliminates bureaucratic hurdles that previously required food to pass through a nonprofit organization before reaching recipients in order to receive protection, streamlining food recovery efforts for businesses that already have food safety certifications or that handle low risk foods, so that such food can be available for immediate distribution, where needed. Any donations made but these or other entities through a nonprofit intermediary continues to be protected under the original Emerson Act as well.⁶

CONCLUSION

The *Food Donation Improvement Act of 2021* removes key barriers that previously discouraged food donation by expanding liability protections, protecting food donation at a reduced price, and protecting direct donations from certain businesses to individuals. These changes make food donation more practical, scalable, and financially sustainable, ensuring that more surplus food reaches people in need instead of ending up in landfills.

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For more best practices related to liability protection for food donation, please see FLPC's [Liability Protection Issue Brief](#).

Endnotes

- ¹ 42 USC 1791: Bill Emerson Good Samaritan Food Donation Act [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:1791%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:1791%20edition:prelim)).
- ² Food Donation Improvement Act of 2021, Pub. L. No. 117-362, § 1(c), 136 Stat. 5412 (2021).
- ³ Bill Emerson Good Samaritan Food Donation Act, *Supra* Note 1.
- ⁴ Food Donation Improvement Act, *Supra* note 2.
- ⁵ *Id.* § 1(d), 2(c)(3).
- ⁶ Bill Emerson Good Samaritan Food Donation Act, *Supra* Note 1.

