

Protections for Food Donations to Non-Profit Organizations Distributing to Those in Need

What about a lawsuit, if someone who receives donated food becomes ill?

Donors often fear that they will be held legally responsible if recipients of donated food become ill, and this fear discourages them from donating. However, as explained below, there are federal and California laws that protect food donors from liability. Food donors should be aware of these strong legal protections, which deter lawsuits. ***A thorough search revealed no legal cases on record in which a donor or recipient organization trying to help feed the hungry has ever been sued by a recipient made sick by donated food.***

Are there legal protections for food donors?

Both Californiaⁱ and U.S. laws provide strong protection to food donors and food donation recipient organizations. The federal law, the **Bill Emerson Good Samaritan Food Donation Act (the Good Samaritan Act)**,ⁱⁱ sets a nationwide minimum standard of protection. California laws may supplement the Good Samaritan Act and offer greater, additional protections, but they may not mandate lesser protections.

Who is protected by the Good Samaritan Act?ⁱⁱⁱ

Persons or gleaners making good faith donations of food or grocery products to non-profit charitable organizations are protected. A “gleaner” is someone who harvests donated agricultural crops.^{iv}

Non-profit organizations that receive the donated food, and ultimately distribute the donations to those in need are also covered.

What is protected by the Good Samaritan Act?

Good faith donations, made to non-profit organizations, ultimately going to those in need are protected. The donations must be:

- (1) “Apparently wholesome” food.
- (2) “Apparently fit” grocery products.^v

These items meet Federal, State and local labeling and quality standards but may not be readily marketable because of factors like age, appearance, freshness, grade, or size.

Slightly flawed **partially complying donations**, made in good faith, are also protected if:

- (1) The **donor informs** the non-profit of the item’s condition;
- (2) The **non-profit knows the standards** required to make the item conform;
- (3) The **non-profit agrees to recondition** the item to meet those standards.^{vi}

These flaws can include broken packaging or missing labels, or items needing washing or trimming before distribution. Acceptance of such items helps use edible food that might otherwise be thrown away due to a technicality.

How are donors protected?

If the donation is made in good faith (honestly and with sincere intentions), the Good Samaritan Act exempts those donors from civil or criminal liability which might arise from the donation’s nature, age, packaging or condition.^{vii} California law also adds that there is no civil liability for donors of food that is “fit for human consumption,” regardless of compliance with food labeling/ packaging laws and storage/handling by the recipients.^{viii}

When are donors not protected?^{ix}

Liability arises if a food donor or recipient organization *knows* that their actions will harm or are likely to harm the recipient, and

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consciously acts anyway – i.e., gross negligence or intentional misconduct.

Under the Good Samaritan Act, **gross negligence** is a much higher standard than ordinary negligence. Gross negligence means that a donor (or recipient organization) knew when it acted that that its conduct was likely to harm someone else, and consciously acted (or failed to act), regardless of that knowledge.

Under the Good Samaritan Act, **Intentional misconduct** means a donor (or recipient organization) deliberately acted with knowledge that its actions would be harmful to others.

Why donate?

Donation of surplus food connects those in need with edible food that would otherwise be sent to landfills. 28% of San Francisco residents fall below 200% of the federally recognized poverty level and 7350 people in San Francisco are homeless.^x These people are part of the city's population that does not have sufficient access or resources available to obtain and consume enough nutritious food to support a healthy life. In the U.S., 40% of food goes uneaten,^{xi} and much of that contributes to the over 35 million tons of food that ends up rotting in landfills.^{xii} Connecting hungry people with available food helps combat both of these critical problems.

Donations also create savings for donors by lowering the costs of food disposal and the opportunity for charitable food donation tax deductions.

Why Food Runners?

Food Runners makes the surplus food donation process easy, by picking up and transporting food and grocery item donations to the places

and programs that need them. This helps valuable programs stretch their limited budgets during a time of decreasing government and foundation funding, keeps edible food out of landfills, and most importantly, helps hungry people have better access to a nutritious meal.

Considering the nationwide protections offered by the Good Samaritan Act, the valuable incentives for reducing hunger and wasting food, and the ease Food Runners brings to that process, there is no reason not to donate.

ⁱ Cal. Civ. Code § 1714.25; Cal. Food & Agric. Code § 58505.

ⁱⁱ 42 U.S.C.A. § 1791.

ⁱⁱⁱ 42 U.S.C.A. § 1791(c).

^{iv} 42 U.S.C.A. § 1791(b)(5).

^v 42 U.S.C.A. § 1791(c).

^{vi} 42 U.S.C.A. § 1791(e).

^{vii} 42 U.S.C.A. § 1791(c).

^{viii} Cal. Civ. Code § 1714.25

^{ix} 42 U.S.C.A. § 1791(c).

^x Statistics taken from "Assessment of Food Security in San Francisco" (2013), San Francisco Food Security Task Force. Available at: <https://www.sfdph.org/dph/files/sfchip/FSTF-AssessmentOfFoodSecurityInSF-2013.pdf>.

^{xi} "Wasted: How America is Losing Up to 40 Percent of Its Food from Farm to Fork to Landfill," D. Gunders, NRDC Issue Paper (Aug. 2012). Available at: <http://www.nrdc.org/food/files/wasted-food-ip.pdf>.

^{xii} "Advancing Sustainable Materials Management: 2013 Fact Sheet," US EPA (June 2015). Available at: http://www.epa.gov/osw/nonhaz/municipal/pubs/2013_advncng_smm_fs.pdf.

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