

State and Federal Protections for Food Donors to Charitable Organizations		
	California Law¹	Federal Law: Bill Emerson Good Samaritan Food Donation Act²
Who is protected?	Food facilities, county agencies and individuals donating food to non-profit charitable organizations. Also non-profit organizations and food banks receiving and distributing those food donations. ³	Persons or gleaners donating food or grocery products to non-profit charitable organizations. Also non-profit organizations receiving and distributing those good faith donations to the needy. ⁴ Gleaners harvest donated agricultural crops. ⁵
What is protected?	Any food donation fit for human consumption at time of donation. ⁶ Also donated agricultural products. ⁷	Good faith donations, ultimately going to the needy, of: ⁸ (1) “Apparently wholesome” food. (2) “Apparently fit” grocery products. 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. ⁹
How are donors protected?	There is no civil liability, regardless of compliance with food labeling/ packaging laws, and storage/ handling by recipients, unless injury results directly from a willful or negligent act.	There is no civil or criminal liability for the nature, age, packaging or condition of good faith food and grocery product donations, unless there is intentional misconduct or gross negligence in making the donation.
Why donate?	To increase food donations to those in need and reduce the amount of food waste going into landfills. Donations also lower the costs of food disposal and there are tax deductions available to those who do so.	

In 2013, 28% of San Francisco residents fell below 200% of the federally recognized poverty level. In addition, 7350 people in San Francisco were homeless.¹⁰ These people were part of the city’s population that did not have sufficient access or resources available to obtain and consume enough nutritious food to support a healthy life. Numerous citywide programs work via food pantries, free dining rooms, shelter

¹ Cal. Civ. Code § 1714.25.

² 42 U.S.C.A. § 1791.

³ Cal. Civ. Code § 1714.25; Cal. Food & Agric. Code § 58505.

⁴ 42 U.S.C.A. § 1791(c).

⁵ 42 U.S.C.A. § 1791(b)(5).

⁶ Cal. Civ. Code § 1714.25(a).

⁷ Cal. Food & Agric. Code § 58505.

⁸ 42 U.S.C.A. § 1791(c).

⁹ 42 U.S.C.A. § 1791(b).

¹⁰ 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>.

meals, schools, youth centers and food delivery services to counteract the hunger faced daily by those in need. It is to programs like these to which Food Runners delivers more than 10 tons of food on a weekly basis. Food Runners donations help these programs stretch their limited budgets and save perishable and prepared food that would otherwise go to waste.

The Bill Emerson Good Samaritan Food Donation Act (“the Act”) works to further encourage these types of food donations by providing a minimum nationwide set of protections for charitable food donors and recipients. For multi-state and national organizations concerned with varying state liability laws surrounding food donation, states may provide greater donor protections than this Act, but they may not provide less. So long as food donations to a non-profit organization are made in good faith, the Act’s protections are triggered. Liability arises only when a donor or recipient organization knows that its action will harm or is likely to harm recipients, and consciously acts in disregard of that knowledge. These strong legal protections for food donors deter lawsuits, and a thorough search revealed no legal cases on record in which a food donor trying to help feed the hungry has ever been sued by a recipient made sick by donated food.

Donations should comply with existing federal, state and local health and safety regulations; but even those that do not may still be protected. Under the Act, items with slight flaws, such as broken packaging, missing labels or needing washing before distribution, may be donated if: (1) the donor informs the nonprofit of that item’s condition, (2) the non-profit knows what the standards are for making the item’s condition conform to required standards, and (3) the non-profit agrees to recondition the item to meet those standards.¹¹ This helps make use of edible food that might otherwise be thrown away due to a technicality.

To further encourage food donations, donors may also receive a tax deduction for charitable food donations. These deductions, in conjunction with money saved from reduced food disposal costs, provide another reason to donate food. And those savings are seen not only by donors, but also by the rest of the community—more people who need food are able to get it, less surplus food is wasted, and landfills are less full of wasted food. It is a system where all community members involved will benefit.

Considering the broad nationwide protections offered, the valuable incentives for alleviating hunger and preventing the waste of edible food, and the convenience Food Runners brings to the donation process, there is no reason not to help connect hungry people with available food.

This article is not offered as, and should not be relied on as, legal advice. You should consult an attorney for advice in specific situations.

¹¹ Partial compliance. 42 U.S.C.A. § 1791(e).