

Legal Fact Sheet

Connecticut Food Donations: Liability Protections

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Businesses (including farms) and nonprofits that donate or distribute donated food are generally well-protected by laws designed to provide immunity from liability related to such donations. The federal Bill Emerson Good Samaritan Food Donation Act provides the basis for liability protection for food donors and nonprofit organizations that distribute donated food.¹ In 2022, the Food Donation Improvement Act expanded upon and clarified these protections. Additionally, Connecticut state law provides liability protection to food donors and distributors. Consequently, the risk of liability for food donation is very low; research does not turn up a single court case related to food donation liability.

The Bill Emerson Good Samaritan Act

The Bill Emerson Good Samaritan Food Donation Act, as amended by the Food Donation Improvement Act² (together referred to as the Emerson Act), provides a federal baseline of liability protection to encourage food donations to individuals experiencing food insecurity.³ The Emerson Act covers individuals, government entities, schools,⁴ businesses, nonprofit organizations, and the officers of businesses and nonprofit organizations. It also covers gleaners—individuals that harvest donated agricultural crops for nonprofit organizations that distribute to the needy.⁵ These individuals and entities are protected so long as the following four requirements are met:

- 1) **Qualifying Foods and Grocery Products:** The donor must donate “apparently wholesome food” or an “apparently fit grocery product” that meets “all quality and labeling standards imposed by Federal, State, and local laws and regulations,” even if the food or grocery product is not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”⁶
 - **Exception for Reconditioned Items:** Even if a food or grocery product does not meet all applicable standards, donors can still be protected by the Emerson Act if the donor follows all the Act’s reconditioning procedures,⁷ which include:
 1. The donor informs the nonprofit of the nonconforming nature of the product;
 2. The nonprofit agrees to recondition the item so that it is compliant; and
 3. The nonprofit knows the standards for reconditioning the item.
- 2) **Direct Donations or Donations Through Non-Profits:** Unless the donor is a “qualified direct donor” all donations must be made through a nonprofit organization, such as a food bank or food recovery organization, to needy individuals.⁸ A “qualified direct donor” may donate through a nonprofit organization or directly to needy individuals.

Organizations that qualify as direct donors are retail grocers; wholesalers; agricultural producers, processors, and distributors; restaurants, caterers, school food authorities, and higher educational institutions.⁹

- 3) **Free or Good Samaritan Reduced Price:** When donors donate food or grocery products to a nonprofit organization, the nonprofit must offer the items to needy individuals for free or at a “Good Samaritan Reduced Price,” which is a price not greater than the cost of handling and distributing the items.¹² When a “qualified direct donor” donates directly to individuals, the donation must be provided at no cost.¹³
- 4) **Good Faith:** Donations must be made and distributed in “good faith.”¹⁰ While “good faith” is not defined in the Emerson Act, it will likely be satisfied if all other elements of the Act are met, including the donation meeting the requirements for an “apparently wholesome food” or “apparently fit grocery product” and the absence of acts or omissions constituting “gross negligence” or “intentional misconduct.”
 - **Gross Negligence** involves “voluntary and conscious conduct (including a failure to act)” by a person or organization that knew when the donation was made that the donated food was likely to have harmful health impacts.¹¹
 - **Intentional Misconduct** is when a person or organization donates “with knowledge . . . that the conduct is harmful to the health or well-being of another person.”¹²

In other words, one should not donate or facilitate the distribution of donated food that one knows is likely to be harmful or dangerous. The Emerson Act gives little guidance on what activities qualify as gross negligence or intentional misconduct.¹³

So long as these criteria are met, the Emerson Act is quite protective of donors and nonprofit organizations.¹⁴

Liability Protection for Food Donation in Connecticut

In addition to the federal liability protections, there are two ways in which Connecticut’s state law is relevant to liability protection for food donations.


- **The Emerson Act:** The Emerson Act indicates that donated food must meet all applicable state and local food quality and labeling standards in addition to federal requirements.¹⁵ Therefore, state laws regarding labeling and safety must be followed for a food donor to receive protection under the federal Emerson Act.¹⁶
 - **State Authority:** States are free to enact laws that are more protective of donors and nonprofit organizations than the federal Emerson Act, which sets a floor on liability protection.¹⁷
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Overview of Connecticut State Liability Protection Law

Connecticut's food donation liability protection law, which has been in place since 1983 (with subsequent amendments), protects donors from liability when they donate food to nonprofit organizations, nonprofit corporations, senior centers, and local government entities that distribute food for free or a nominal fee (e.g., covering handling and distribution).¹⁸ The Emerson Act supplements Connecticut's state liability protections for food donation by explicitly protecting the donation of nonfood grocery products—such as disposable paper or plastic products, cleaning products, and miscellaneous household items.¹⁹ In addition, the Emerson Act expands the types of organizations that are protected from liability when they distribute donations directly to individuals.²⁰ Connecticut law explicitly protects direct donations to needy individuals when the donor is a food relief organization or supermarket.²¹ Under the Emerson Act, any donor that is a "qualified direct donor" under federal law is also protected, and qualified direct donors include retail grocers; wholesalers; agricultural producers, processors, and distributors; restaurants; caterers; school food authorities; and higher educational institutions.²² Thus, donors in Connecticut are protected from liability, against state and federal claims, when they donate food or nonfood grocery products. In addition, all organizations included in the Emerson Act's list of "qualified direct donors" are protected from liability even when donating directly to individuals rather than through nonprofit organizations.

Connecticut law provides explicit protections for class 3 and class 4 food establishments—food establishments that have hot prepared foods on the premises²³—when they donate perishable food to temporary emergency shelters.²⁴ This protection applies during governor-declared states of emergency in which an electrical outage has occurred and is projected to continue for longer than the period prescribed by the Department of Public Health or local health department for the safe handling of perishable food.²⁵ The food must be donated before the safe handling period ends, and the donor must provide its insurer with documentation of the time of donation.²⁶ Food establishments are not protected if they knew or had reason to believe that the food was adulterated or unfit for human consumption, or if the donor knew or had reason to believe that the food had been 1) adulterated, 2) unfit for human consumption, or 3) ordered destroyed by a public health agency.²⁷ This limitation on liability protection is consistent with the Emerson Act which requires that donations must be made in "good faith" and does not protect acts or omissions that are grossly negligent or constitute intentional misconduct.

Conclusion



Federal and Connecticut state laws provide ample liability protections for food donors and distributors, so long as the donated food or nonfood grocery product complies with federal and state safety rules and is donated or distributed in good faith and without gross negligence or intentional misconduct. The Emerson Act protects against both federal and state law claims and creates a liability protection floor for food donation. Connecticut law enhances the protections provided to food

donors in the Emerson Act by articulating explicit liability protections for the donation of perishable foods during a state of emergency.

¹ For more information on the Bill Emerson Good Samaritan Food Donation Act see the Harvard Food Law and Policy Clinic’s Federal Liability Protection for Food Donation Legal Fact Sheet available at <https://chlp.org/wp-content/uploads/2023/03/Emerson-Fact-Sheet.pdf>.

² Food Donation Improvement Act of 2021, Pub. L. No. 117-362 (extending liability protection to donations offered at a Good Samaritan reduced price—a price that is not more than the cost of handling, transporting, and distributing the food, and to direct donations to needy individuals by certain food businesses—those that are already required to comply with food safety requirements.)

³ 42 U.S.C. § 1791.

⁴ 42 U.S.C. § 1758 (I)(3) (providing that any “school or local educational agency making donations pursuant to this subsection shall be exempt from civil and criminal liability to the extent provided under section 1791 of this title.”)

⁵ 42 U.S.C. § 1791(c)(I); 42 U.S.C. § 1791(b)(5).

⁶ 42 U.S.C. § 1791(c)(I); 42 U.S.C. § 1791(c)(4) (Outlining an exception for mislabeled food products that are “not readily marketable,” which can also be protected if the donor explains the mislabeling to the recipient, and the recipient has sufficient knowledge to and does recondition the product to meet applicable standards.)

⁷ 42 U.S.C. § 1791(e).

⁸ The Act defines a non-profit as an incorporated or unincorporated entity that satisfies these requirements: (1) operates “for religious, charitable, or educational purposes” and (2) “does not provide net warnings to, or operate in any other manner for the benefit of any officer, employee, or shareholder.” 42 U.S.C. § 1791(b)(10).

⁹ 42 U.S.C. § 1791(b)(12); Food Donation Improvement Act of 2021, Pub. L. No. 117-362.

¹⁰ 42 U.S.C. § 1791(c)(1).

¹¹ 42 U.S.C. § 1791(b)(8).

¹² 42 U.S.C. § 1791(b)(9).

¹³ Legal guide to Food recovery, U. ARK. L.L.M. DEP’T OF AGRIC. & FOOD LAW 10 (2013), available at <https://law.uark.edu/documents/2013/06/Legal-Guide-To-Food-Recovery.pdf>. The House of Representatives Report associated with the Emerson Act has indicated that each case must be analyzed individually, and that, for example, donating food past the sell-by date generally will not impact liability protections because such labeling is not federally required and generally does not correspond to food safety.

¹⁴ 42 U.S.C. § 1791(c)(3). Legal guide to Food recovery, U. ARK. L.L.M. DEP’T OF AGRIC. & FOOD LAW 10 (2013), available at <https://law.uark.edu/documents/2013/06/Legal-Guide-To-Food-Recovery.pdf>.

¹⁵ 42 U.S.C. § 1791(c); 42 U.S.C. § 1791(b)(1-2).

¹⁶ For dairy products that have not been manufactured, packaged, or heat treated in a manner that makes them safe to store at room temperature, Connecticut requires a “last sale date.” Conn. Gen. Stat. Ann. § 22-197B; Conn. Agencies Regs. § 22-133-131; Conn. Agencies Regs. § 22-133-123.

¹⁷ See Preemptive Effect of the Bill Emerson Good Samaritan Food Donation Act, 21 Op. O.L.C. 55 (construing the Emerson Act to preempt state statutes that provide less protection than the federal law in a non-binding advisory opinion by the United States Attorney General).

¹⁸ Conn. Gen. Stat. Ann. § 52-5571(a).

¹⁹ 42 U.S.C. § 1791(b)(7).

²⁰ 42 U.S.C. § 1791(b)(12); Food Donation Improvement Act of 2021, Pub. L. No. 117-362.

²¹ Conn. Gen. Stat. Ann. § 52-5571(c).

²² 42 U.S.C. § 1791(b)(12); Food Donation Improvement Act of 2021, Pub. L. No. 117-362.

²³ Conn. Agencies Regs. § 19a-36g(5)-(6).

²⁴ Conn. Gen. Stat. Ann. § 52-5571(b).

²⁵ Conn. Gen. Stat. Ann. § 52-5571(b); Conn. Agencies Regs. § 38a-313b(a)(1).

²⁶ Conn. Gen. Stat. Ann. § 52-5571(b); Conn. Agencies Regs. § 38a-313b(a)(1).

²⁷ Conn. Gen. Stat. Ann. § 52-5571(b).

