

# Good Samaritan Laws

## Federal and New York State Laws to Address Food Donation

### The Bill Emerson Food Donation Act

PUBLIC LAW 104-210—OCT. 1, 1996

110 STAT. 3011

104th Congress

An Act

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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 the title heading and 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:”

(C) in subsection (b)(7), to read as follows:

“(7) GROSS NEGLIGENCE. — The term ‘gross negligence’ means voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.”;

(D) by striking subsection (c) and inserting the following:

“(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 person, gleaner or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.”; and

(E) in subsection (f), by adding at the end the following: “Nothing in this section shall be construed to supersede State or local health regulations.”.

(b) TRANSFER TO CHILD NUTRITION ACT OF 1966. — Section 402 of the National and Community Service Act of 1990 (42 U.S.C. 12762) (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.

(c) CONFORMING AMENDMENT. — The table of contents for the National and Community Service Act of 1990 is amended by striking the items relating to title IV.

Approved October 1, 1996.

### New York State Law

#### Enacted 1981, Article 4-D, Section 71-2

*71-Z Liability for canned, perishable food or farm products distributed free of charge*

1. Notwithstanding any other provision of law, a good faith donor of any canned or perishable food or farm product, apparently for human consumption, to a bona fide charitable or nonprofit organization, for free distribution shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently for human consumption and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food.
2. The second section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other consideration, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.