

THE BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT: PROTECTING AMERICA'S FOOD DONATIONS

THE LEGISLATION

The Purpose of the Act: To encourage the donation of food to nonprofit organizations for distribution to those in need and remove concerns around liabilities.

WHO IS PROTECTED?

The Bill Emerson Good Samaritan Food Donation Act, or “Good Samaritan Act”, is federal legislation that **protects both donors and recipients** against liability as long as there has been no gross negligence and/or intentional misconduct.

Protection applies to all **financial structures** (individuals, corporations, partnerships, organizations, associations, non-profits, and government entities) as well as **all sectors of the food industry** (wholesalers, retailers, restaurateurs, manufacturers, farmers) .

WHAT IS PROTECTED?

The Act protects products that meet all quality and labeling standards imposed by federal, state and local laws and regulations even though the food may not be "readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions".

This includes:



Dry, Refrigerated and Frozen Food



Fresh Produce



Grocery Products (i.e. paper towels, dish soap)



Prepared Foods & Perishable Goods (i.e. excess food prepared for a banquet, but not served -- like trays of lasagna or pots of soup)



Health and Beauty Aids (i.e. shampoo)



Semi-finished Product (i.e. Misshapen meat patties for frozen meals, bulk ingredients like excess cereal for granola bars, or undersized frozen vegetables)



Over-the-Counter items (i.e. first aid supplies like bandages)

In 2010 alone, FWRA estimates that around **70 billion pounds of food waste** was generated in the U.S., of which nearly **40 million tons went to landfill**. But, much of this food isn't actually waste at all, rather, it is safe to eat and nutritious.

With nearly **50 million** Americans, including **16 million children**, considered food insecure, this food can be donated to food banks and other anti-hunger organizations, keeping it out of landfills while helping those in need.

BENEFITS

The 1976 Tax Reform Act (Section 2135) made inventory donation to charities more advantageous for business taxpayers by increasing the allowable income tax deduction by 50% of the difference between costs of goods sold and the fair market value of the goods not to exceed two times the cost.

In 2015, Congress passed the PATH Act, which includes several important improvements to tax incentives allowable for food donation.

These include:

- 1** Allowing **all donors regardless of size** to take an enhanced tax deduction and allowing a carryforward of the deduction for **up to five years**. Prior to 2015, only C corporations (large companies) could always take an enhanced tax deduction when donating food to a nonprofit; the law was expanded in 2006 to include non-C corporations (generally smaller companies) but the expansion was temporary until passage of the PATH Act;
- 2** Allowing farmers and other "cash method" accounting taxpayers to consider **25% of the fair market value (FMV)** of the donated food as the cost to produce the food;
- 3** Increasing the **10% cap of allowable charitable contributions to 15%** for donated food; and,
- 4** Codifying an important Tax Court ruling, *Lucky Stores, Inc. v. Commissioner of Internal Revenue* which opens **more opportunities** overall.



*For more details on the Good Samaritan Act and to access materials used to compile the above information please see *Contributions of Food Inventory: What You Need to Know* and *Feeding America's 2016 Changes to Food Donation Tax Incentives*. For the full text of the Bill Emerson Good Samaritan Food Donation Act, visit the Feeding America website or the U.S. Government Publishing Office.*