

Legal Fact Sheet for Food Donation in Tennessee: Liability Protections

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Businesses (including farms), non-profits and other entities that provide or receive 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 and the Tennessee Liability of Free Food Distributors statute provide liability protection to businesses and non-profits in Tennessee.

The Bill Emerson Good Samaritan Act

The 1996 Bill Emerson Good Samaritan Food Donation Act (the Emerson Act) provides a strong federal baseline of liability protection for food donors.¹ The Emerson Act covers individuals, businesses, non-profit organizations, and the officers of businesses and non-profit organizations. It also covers gleaners—individuals who harvest agricultural crops for donation to needy individuals or to a non-profit organization that distributes to the needy.² The Emerson Act protects most but not all donations of qualifying food. In order to receive protection, the following requirements must be met:

- 1) **Donation Recipient:** The donor must donate to a nonprofit organization that distributes the donated food to needy populations. Direct donations from the donor to needy individuals are not protected by the Act.³
- 2) **Good Faith:** The donations must be made in good faith.⁴
- 3) **Qualifying Foods:** The donor must donate qualifying foods, unless specific reconditioning steps have been taken. Qualifying foods are those that meet “all quality and labeling standards imposed by Federal, State, and local laws and regulations,” even if they are not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”⁵ State and local quality and labeling laws vary, and donors should be aware of requirements specific to their state or locality since the Emerson Act does not protect donations that are not in compliance with those laws.⁶
 - **Exception for Non-Qualifying Food:** If a food does not meet all applicable federal, state, and local standards, the donor can still be protected by the Emerson Act as long as (s)he follows all of the Act’s reconditioning procedures,⁷ which include:
 - The donor informs the nonprofit of the nonconforming nature of the product;
 - The nonprofit agrees to recondition the item so that it is compliant; and
 - The nonprofit knows the standards for reconditioning the item.⁸
- 4) **No Charge for Food:** The ultimate recipients cannot pay anything of monetary value for the donated food. However, if one nonprofit donates food to another nonprofit for distribution, the Act allows the first nonprofit to charge the distributing nonprofit a nominal fee to cover handling and processing costs.⁹

When are Donations not Covered by the Emerson Act: So long as the above criteria are met, the Emerson Act does not hold a donor liable unless the donor acts with gross negligence or intentional misconduct.¹⁰

- **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 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 Act does not specify the activities that qualify as gross negligence or intentional misconduct, and the House of Representatives Report associated with the Emerson Act indicates that each case must be analyzed individually.¹³ The lack of court cases interpreting the Emerson Act suggests how protective the Act is of donors; research does not turn up a single case related to food donation liability.¹⁴

Liability Protection for Food Donation in Tennessee

Tennessee state law governs liability protection for food donations in the following ways:

- **Indirectly Through the Emerson Act:** The Emerson Act indicates that donated food must meet all applicable state and local quality and labeling standards, in addition to federal requirements.¹⁵ This means that Tennessee’s laws regarding food labeling and safety must be followed for a food donor to receive protection under the federal Emerson Act.¹⁶
- **Directly Through State Law:** States are free to enact laws that are the same or more protective of donors than the federal Emerson Act, which sets a floor on liability protection.¹⁷ Where state laws are less protective of donors than the federal Emerson Act, the federal standard will apply.

Because the Tennessee liability protection law is for the most part less protective than the federal Emerson Act, the federal law will generally apply rather than Tennessee state law. Tennessee's liability protection law is less protective than the federal law because Tennessee law generally does not provide liability protection in cases of negligence.¹⁸ Thus, the stronger federal standard in the Emerson Act will generally apply to food donors and to nonprofits that receive and distribute the food. The less protective state standard will only apply where the state law provides protection for a donation that would not be protected under federal law. One such example is a donation made by a local education agency to a county jail, which is specifically protected in the Tennessee law.¹⁹

Although the Tennessee state law will not apply in most cases, below is some additional detail on the protections under Tennessee law for interested readers. Tennessee law provides liability protections to food donors, including gleaners, deer hunters, deer meat inspectors, and processing facilities, that in good faith donate food, including deer meat, to a bona fide charitable or non-profit organization.²⁰ Tennessee law provides the same protections to the bona fide charitable or non-profit organization that receives and distributes the food.²¹ Food donors and charitable or non-profit organizations that receive and distribute the food are protected from civil liability, and from criminal liability in some circumstances, provided the following conditions are met:²²

- 1) The food meets all quality standards established by local, county, state and federal agricultural and health laws and regulations, even if the food is not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other condition.” Donations of canned goods that are leaking, swollen, dented on a seam, or no longer airtight are not protected.²³
- 2) The food is donated to a bona fide charitable or non-profit organization. The protection does not apply if the food is donated directly to an individual in need.²⁴ Tennessee law provides that restaurants and food service establishments in particular must donate to a bona fide charitable or non-profit organization that operates a food bank or on-site feeding program to combat poverty and hunger.²⁵
- 3) Donors are only protected if the donation is made to a bona fide charitable or non-profit organization “for free distribution.”²⁶
- 4) Any injury or illness resulting from the condition of the food donation was not the result of the donor’s or the organization’s negligence, recklessness, or intentional misconduct.²⁷

Conclusion

Federal law and Tennessee state law provide ample liability protection to food donors and the non-profits and charitable organizations to which they donate. Donors will generally be protected as long as they do not act with gross negligence or intentional misconduct,²⁸ and provided the food is donated and distributed in good faith to a bona fide charitable or non-profit organization.

¹ 42 U.S.C.A. §1791 (West 2018).

² *Id.* §1791(b)(5).

³ *Id.* § 1791(c)(1).

⁴ *Id.*

⁵ *Id.* §1791(b)(1)-(2).

⁶ *Id.*

⁷ *Id.* § 1791(e).

⁸ *Id.* § 1791(e)(1)-(3).

⁹ *Id.* § 1791(b)(3).

¹⁰ *Id.* § 1791(c)(3).

¹¹ *Id.* § 1791(b)(7).

¹² *Id.* § 1791(b)(8).

¹³ *Legal Guide to Food Recovery*, U. ARK. L.L.M. DEP’T OF AGRIC. & FOOD LAW 10 (2013), <https://law.uark.edu/service-outreach/food-recovery-project/Legal-Guide-To-Food-Recovery.pdf>.

¹⁴ *Id.*

¹⁵ 42 U.S.C.A. §1791(b)(1)-(2) (West 2018).

¹⁶ See, e.g., TENN. FOOD, DRUG, AND COSMETIC ACT, TENN. CODE ANN. § 53-1-101 et seq. (West 2018); TENN. RETAIL FOOD SAFETY ACT, TENN. CODE ANN. § 53-8-201 et seq. (West 2018).

¹⁷ *Legal Guide to Food Recovery*, *supra* note 13.

¹⁸ See TENN. CODE ANN. §§ 53-13-102, 103 (West 2018). For donations by restaurants, convention centers, and food service establishments, Tennessee provides protection unless they act with gross negligence, recklessness, or intentional conduct, which is akin to the standard under federal law. TENN. CODE ANN. § 53-13-102(c) (West 2018).

¹⁹ TENN. CODE ANN. §53-13-102(a)(2) (West 2018).

²⁰ See TENN. CODE ANN. § 53-13-102. Processing facilities must be acting in compliance with applicable standards, requirements, and procedures established pursuant to § 53-7-213(e). TENN. CODE ANN. § 53-13-102(b)(2).

²¹ See TENN. CODE ANN. § 53-13-103.

²² See TENN. CODE ANN. §§ 53-13-102, 103. Tennessee law provides protection from civil liability and from criminal penalty for unfair trade practices.

²³ TENN. CODE ANN. § 53-13-101.

²⁴ TENN. CODE ANN. § 53-13-102(a)-(c).

²⁵ TENN. CODE ANN. § 53-13-102(c).

²⁶ TENN. CODE ANN. § 53-13-102.

²⁷ TENN. CODE ANN. § 53-13-102, 103.

²⁸ With the exception of donations by local education agencies to county jails, which will be protected only where injury or illness does not result from negligence, recklessness, or intentional misconduct.