

State and Federal Liability Protections for Food Donations and Gleaning

N.J.S.A. 24:4:10-25.2d requires the Department of Agriculture to publish this guidance document on the State and Federal liability protections for food donations, gleaning, and other related activities available to farmers, foodbanks, donors, nonprofit organizations, and other persons.

A. STATE PROTECTION

[N.J.S.A. 24:4A-2](#), [24:4A-3](#), and [24:4A-3.1](#) is a New Jersey law that provides protection against liability for damages in a civil action or criminal prosecution for those participating in food donations, gleaning, and other related activities.

Who is protected?

Each of the parties below is protected against liability for damages in any civil action or criminal prosecution for any injury or death due to the condition of food, unless the injury or death is a direct result of gross negligence, recklessness, or knowing misconduct.

- A **donor** (includes, but is not limited to, a farmer, processor, distributor, or wholesaler or retailer of perishable or prepared food, a public or nonpublic school, or an institution of higher education) or **gleaner** that donates food to a nonprofit organization or any other person.
- A **food bank, nonprofit organization, or their agent** that receives and distributes food.
- An **owner of agricultural food** who gives permission to a gleaner to enter upon his/her land for the purpose of harvesting donated food for distribution.

What is protected?

Good faith donations of prepared, perishable or agricultural food which appears to be fit for human consumption at the time of donation, including donations which are not readily marketable due to appearance, freshness, grade, passage of the “best by” or other open date, surplus supply, or other conditions which do not affect its fitness for consumption.

How are donors and distributors protected?

Food donors and distributors are not liable for damages in any civil action or subject to criminal prosecution for injury or death due to condition of donated food unless it is the direct result of gross negligence, recklessness or knowing misconduct.

How are owners of agricultural food protected?

Owners of agricultural food are not liable for damages in a civil action due to the presence of a gleaner on the land, and they are not liable for damages in a civil action or subject to criminal prosecution resulting from the consumption of the food gleaned or donated.

How are gleaners protected?

Nonprofit organizers that collect or glean food for ultimate distribution to needy individuals are not liable for damages in a civil action due to the presence or activity of the organization or volunteers on land unless the damage is a direct result of gross negligence, recklessness, or knowing misconduct of the organization or volunteer.

B. FEDERAL PROTECTION

[The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. section 1791](#) (the “Act”) is a federal law that provides protection against liability for damages arising out the donation of food. While the Act provides the same protections for the donation of nonfood grocery products, the summary below pertains to food donations.

Who is protected?

Each of the parties below is protected against criminal or civil liability arising from the nature, age, packaging or condition of an apparently wholesome food, unless there is an injury or death of an ultimate user or recipient of the food that results from gross negligence or intentional misconduct.

- A **person** (including an individual, corporation, partnership, organization, association, governmental entity, retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, nonprofit food distributor, or hospital) or **gleaner** that donates food to a nonprofit organization for ultimate distribution to needy individuals.
- A **nonprofit organization** that receives food from a person or gleaner for the ultimate distribution to needy individuals.

What is protected?

Good faith donations to a nonprofit organization of food that meets 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 and other conditions. The donation must be distributed to needy individuals and ultimate recipients cannot pay for the donated food.

If some or all the donated food does not meet all quality and labeling requirements, in order to avoid criminal or civil liability:

- i) the donor must inform the recipient nonprofit organization of the distressed or defective condition of the donated food;
- ii) the nonprofit organization must agree to recondition the donated food to comply with all quality and labeling standards before distribution; and
- iii) the nonprofit organization must be knowledgeable of the standards to properly recondition the donated food.

How are donors and distributors protected?

Food donors and distributors are protected against criminal or civil liability arising from the nature, age, packaging or condition of an apparently wholesome food, unless there is an injury or death of an ultimate user or recipient of the food that results from gross negligence or intentional misconduct.

How are land owners protected?

Land owners who allow the collection or gleaning of donations on property owned or occupied by them by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals, is protected against civil or criminal liability arising from injury or death of the gleaner or representative, unless the injury or death results from gross negligence or intentional misconduct.