



America's Second Harvest
Ending Hunger

The Bill Emerson Good Samaritan Food Donation Act
P. L. 104-210

Background Guide¹

On October 1, 1996, President Clinton signed into law the Bill Emerson Good Samaritan Food Donation Act, a new federal law to encourage the donation of food and grocery products to non-profit charitable organizations for distribution to needy people.²

The new federal Good Samaritan law protects businesses, volunteers and non-profit organizations from civil or criminal liability in the course of donating apparently fit and wholesome food or grocery products for distribution to needy people. The federal Good Samaritan Act is designed to encourage donations of food and grocery products by providing a uniform, national standard of liability for donations.

The Emerson Good Samaritan Act converts Title IV of the National and Community Service Act of 1990, from “model” legislation to permanent law, and transfers the Good Samaritan law to Section 22 of the Child Nutrition Act of 1966. The federal Good Samaritan Act preempts the various state Good Samaritan statutes with a single, federal standard of criminal and civil liability in the donation of food and grocery products.³ Civil and criminal liability protection is extended to donors, persons, gleaners, and non-profit organizations arising from the nature, packaging, age, or condition of apparently wholesome food or apparently fit grocery products donated for distribution to needy people. Liability for donations is limited to acts of “gross negligence” or intentional misconduct, as defined by the Good Samaritan Act. The Good Samaritan Act also stipulates that local and state health regulations and workers’ compensation laws are not altered or interfered with by the Act.

¹ This background guide is provided for informational purposes only. No representation is made to the applicability of the Bill Emerson Good Samaritan Food Donation Act to the actions of any individual or organization. Donors and potential donors should consult legal counsel regarding the applicability of the statute to their activities.

² P.L. 104-210, H.Rpt. 104-661.

³ P.L.104-210 pre-empts state Good Samaritan food donation statutes. The doctrine of pre-emption precedes from the U.S. Supreme Court which holds that certain matters are of such national, as opposed to local, character that federal law pre-empts state law.

Brief Legislative History

In 1990, model Good Samaritan legislation was enacted the National and Community Service Act. At that time, Congress recognized the need to protect donors from liability, in order to increase private sector in-kind donations to charities serving the poor. The 1990 model legislation was used by several states in the drafting of their own Good Samaritan statutes. All 50 states enacted their own versions of the Good Samaritan legislation, with varying degrees of liability protection, coverage, types of food covered, definitions of donors and other standards.

From 1990 to 1996, the “patchwork” of varying state Good Samaritan statutes led some food manufacturers to either curtail donations of food, or limit the distribution of their donations to only certain states. Further proof of the problem was evidenced in a 1995 Market Potential Report commissioned by Second Harvest. The 1995 Report found that 83%, of more than 240 companies polled, cited “liability concerns” as the single greatest factor in determining whether or not a company would donate product.⁴ For example, 33 states and D.C, protect the donor from civil and criminal liability, while 17 states protect the donor only from civil liability. As the House Committee on Economic and Educational Opportunities noted: “These laws ... vary with respect to the types of food covered and the definition of donor and good faith.”⁵ Some companies, which are national in scope, were faced with the daunting task of determining their liability risk -- and the varying definitions of “good faith” and duties to inspect -- in each state before making a donation. The varying state standards of liability led some companies to destroy surplus food rather than donate for distribution to needy people.

To ease donor concerns and increase in-kind donations to charitable organizations, Representatives Pat Danner and Bill Emerson introduced H.R.2428, the Good Samaritan Food Donation Act. Their bill converted the model legislation into permanent law and, upon enactment, would supersede the varying 50 state statues. The Good Samaritan legislation was amended to honor the deceased Congressman Bill Emerson, one of the bill’s original co-sponsors and a long-time advocate for hungry people. The legislation passed both chambers of Congress, unanimously, and signed into law on October 1, 1996.

President Clinton spoke to the importance of the legislation:

“Last October, I signed into law the good Samaritan Food Donation Act. This law encourages private businesses, local governments and ordinary citizens to donate food by protecting them from lawsuits. This can make a real difference. Second Harvest, a national food bank network, estimates that the Good Samaritan law will result in approximately 25 million pounds of food next year.”⁶

⁴ 1995 Market Potential Report for Second Harvest; Angell Research Group, Inc.; 1995. The Angell Group was asked to poll the food and grocery industry with the purpose of “determining the extent to which Second Harvest is maximizing potential in obtaining donations, and determining what actions or efforts would be most beneficial in maximizing donor contributions in the future.” As stated, among both current donors and potential donors, concerns over donated product liability were cited by respondents as the single greatest factor influencing their decision whether or not to donate.

⁵ House Report 104-661, page 3; Committee on Economic and Educational Opportunities, July 9, 1996.

⁶ Radio Address of the President to the Nation, November 23, 1996; Port Douglas, Australia.

For legislative intent, please see the House Report (#104-661) which accompanies the Good Samaritan legislation.

Chronology of Emerson Good Samaritan Food Donation Act

Sept. 29, 1995: The Good Samaritan Food Donation Act introduced by Representative Pat Danner, (H.R. 2428); referred to the House Committee on Economic and Educational Opportunities.

Oct. 13, 1995: H.R. 2428 referred to Subcommittee.

May 31, 1996: Subcommittee hearing held. Christine Vladimiroff, President and CEO of Second Harvest testifies in support of the legislation.

June 26, 1996: Subcommittee discharge, Committee consideration and Mark-up session. Bill reported by voice vote.

July 9, 1996: Reported to House, amended by the Committee on Economic and Educational Opportunities. Placed on Union Calendar. House Report 104-661 to accompany H.R.2428.

July 12, 1996: Called up by House under suspension of the rules, Passed House (amended) by voice vote. Unanimous.

Aug. 2, 1996: Received in the Senate, read twice and held at the desk. Senate companion legislation introduced by Senator Bond (S.1938).

Sept. 4, 1996: Measure (H.R.2428) laid before the Senate. Amended (SP5148 - Santorum/Leahy and SP5149 Santorum/Kennedy); passed (as amended) by Unanimous Consent. Message on Senate action sent to the House.

Sept. 5, 1996: On motion that the House agree to the Senate amendments, House Agreed without objection. Unanimous. H.R. 2428 cleared for the White House.

October 1, 1996: President signed H.R.2428, became P.L.104-210.

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