



Regulatory and Liability Exemptions for Organizations Distributing Donated Food in Virginia

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While 119 billion pounds of food in the United States is estimated to go to waste, there are also an estimated 34 million people in the United States who experience hunger as a result of food insecurity (Feeding America, 2023b). People who experience food insecurity can face challenges in obtaining enough food to meet their needs, and so they may seek food and other basic supplies from their regional or local hunger relief organizations. These organizations distribute food donated by community members, farmers, food processors, grocery stores, restaurants, schools, colleges, universities, hotels, and other organizations.

To support hunger relief work, and to keep safe, quality food from ending up in a landfill, the Code of Virginia (§§ 3.2-5144 and 35.1-14.2) and U.S. Code (42 U.S.C. § 1791) provides certain regulatory exemptions and liability protections to organizations which distribute donated food to people who need it. This includes nonprofit organizations and qualified direct donors. The specific types of food, organizations, and situations where they may not be liable are detailed in Table 2.

This publication is meant to highlight the regulatory exemptions and liability protections which exist for organizations which distribute donated foods. This publication also includes a glossary of terms. The words which are included in bold are defined in the publication's glossary. This publication does not contain legal advice, and any legal questions should be directed to a qualified legal professional.

Where can donations come from?

Table 1. Donors which are provided certain liability exemptions by Federal law (“United States Code” or “U.S.C.”) and Virginia law (“Virginia Code” or “VA Code”)

Legal Citation	Protected Donors
42 U.S.C. § 1791	An individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital
VA Code § 3.2-5144	An individual, farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food, including a grocery, convenience, or other store selling food or food products
VA Code § 35.1-14.2	Any restaurant licensed by the Virginia Department of Health, processor, distributor, wholesaler or retailer of food, including, but not limited to a grocery, convenience, or other store selling food or food products

What organizations have exemptions?

Table 2. Exemptions for hunger relief organizations as defined in the United States Code and Virginia Code.

Legal Citation	Who Is Protected?	Regulatory and Liability Exemptions	Liability Exemptions Exceptions
42 U.S.C. § 1791	A nonprofit organization	Exempt from 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 at zero cost or at a good Samaritan reduced price .	For injury or death resulting from an act or omission constituting gross negligence or intentional misconduct .
	A qualified direct donor	Exempt from civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the qualified direct donor donates in good faith to a needy individual at zero cost.	For injury or death resulting from an act or omission constituting gross negligence or intentional misconduct .
VA Code § 3.2-5144	Food organizations, meaning a food bank or any Feeding America certified food bank or food bank member charity that is exempt from taxation under § 501(c)(3) of the Internal Revenue Code that maintains a food storage facility certified by the Department and, where required by ordinance, by the State Department of Health	Exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. Exempt from criminal or civil liability for donating or receiving food past the best-by date as long as all parties are informed and the food is labeled as not meeting all labeling and date requirements.	For injury or death directly resulting from the gross negligence or intentional act of the donor.
VA Code § 35.1-14.2	Charitable organizations engaged in food distribution programs for needy persons, including nonprofit homeless shelters and hunger prevention programs	Exempt from state and local regulations and local ordinances that govern food service and preparation. Exempt from civil liability as provided in § <u>3.2-5144</u> for the donors of the food. Exempt from criminal or civil liability for receiving (i) commercially processed food past the best-by or sell-by date as long as the food meets all labeling and date requirements or (ii) date-marked prepared foods not past the marked disposition date, when the marked date does not exceed seven calendar days from the date of preparation, and the day of preparation is counted as day one.	For injury or death directly resulting from the gross negligence or intentional misconduct of the donor or donee.

When could an organization still be liable?

An organization could still be **liable** in cases of an injury or death due to **negligence**, **intentional misconduct**, or an **act of omission** from the organization. An example of this would include knowingly donating food that is unfit for human consumption (i.e., adulterated, contaminated, and/or improperly handled). Organizations should only distribute food they have determined, after conducting **due diligence**, is safe for human consumption.

May donated food be reconditioned?

There may be instances where the donated food does not meet all of the quality and labeling standards enforced by Federal, state, and local laws and regulations. According to the U.S. Code (42 U.S.C. § 1791), the organization is permitted to **recondition** the donated food so long as:

1. The organization is informed by the donor of the distressed or defective condition of the donated food or grocery products;
2. Agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and
3. Is knowledgeable of the standards to properly recondition the donated food or grocery product

What if I have more questions?

Reach out to your regional **food bank**, other local **hunger relief organizations**, Virginia Department of Health, Virginia Department of Agriculture and Consumer Services, Virginia Cooperative Extension, and/or your own legal counsel to discuss further.

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This publication is for educational purposes only and does not contain **legal advice**, legal opinions, or any other form of advice regarding any specific facts or circumstances. This publication is not a substitute for obtaining **legal advice** from a qualified legal professional.

Glossary

[Act of omission](#) - Not acting or disclosing information which may lead to injury or death as a result of someone consuming the food you donate. For example, donating perishable food which requires refrigeration that you know has not been properly refrigerated or donating food you know to be unfit for human consumption.

[Apparently fit grocery product](#) - a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

[Apparently wholesome food](#) - 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, or other conditions.

[Civil liability](#) - Being held legally responsible for something based on their own actions, their own inactions, or the actions of people/animals for which they are legally responsible.

[Criminal liability](#) - Being held legally responsible for committing a crime.

[Due Diligence](#) - A measure of caution, prudence, or activity expected from, and ordinarily exercised by, a reasonable person under similar circumstances.

[Food bank](#) - A non-profit organization that collects and distributes food to hunger-relief charities.

Glean/Gleaner - The act of collecting excess fresh foods from farms, gardens, farmers markets, grocers, restaurants, state/county fairs, or any other sources in order to provide it to those in need. A gleaner is someone who gleans.

Good Faith - A term that generally describes honest dealing. Depending on the exact setting, good faith may require an honest belief or purpose, faithful performance of duties, observance of fair dealing standards, or an absence of fraudulent intent.

Good Samaritan reduced price - With respect to the price of an apparently wholesome food or apparently fit grocery product, a price that is an amount not greater than the cost of handling, administering, harvesting, processing, packaging, transporting, and distributing the apparently wholesome food or apparently fit grocery product.

Gross negligence - 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.

Hunger relief organization - A non-profit organization which is working to address hunger in their community, oftentimes by making food available to people for free (i.e., a food bank, food pantry, meal kitchen).

Intentional misconduct - conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person.

Legal advice - Advice given by a lawyer or attorney on a legal matter.

Liability - See civil liability and criminal liability above.

Nonprofit organization - An incorporated or unincorporated entity that a) is operating for religious, charitable, or educational purposes; and b) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

Qualified direct donor - A retail grocer, wholesaler, agricultural producer, agricultural processor, agricultural distributor, restaurant, caterer, school food authority, or institution of higher education.

Recondition - To reprocess the food to comply with all the quality and labeling standards prior to distribution, for example by repackaging or re-labeling the food

Regulatory – Related to an official rule administered by the government

References

Bill Emerson Good Samaritan Food Donation Act. [U.S. Code 42 § 1791](#) (2023)

Donations of food to charitable organizations. Va. Code § [35.1-14.2](#) (2022)

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Additional Resources.

Food Packaging Dates. FST 422P. Available at:

https://www.pubs.ext.vt.edu/content/pubs_ext_vt_edu/en/FST/fst-422/fst-422.html

[Harvard Law School Food Law and Policy Clinic](#)

- [Federal Liability Protection for Food Donation: Legal Fact Sheet](#)

[University of Arkansas School of Law Food Recovery Project](#)

- [Food Recovery - A Legal Guide](#)

[Liability Protection for Food Donation - Public Health Law Center at William Mitchell College of Law](#)

[Federation of Virginia Food Banks.](#)

[Comprehensive Guidance for Food Recovery Programs - Conference for Food Protection](#)

Virginia's Regional Foods Banks:

- [Capital Area](#) Food Bank
- [Fredericksburg](#) Food Bank
- [FeedMore](#) (Central Virginia)
- [Feeding Southwest Virginia](#)
- [Blue Ridge Area](#) Food Bank
- [Virginia Peninsula](#) Food Bank
- Food Bank of [Southeastern Virginia and the Eastern Shore](#)

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