

promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and assist in the distribution of breastfeeding equipment to breastfeeding women.

**(b) Conduct of program**

In carrying out the program described in subsection (a), the Secretary may—

(1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;

(2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and

(3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

**(c) Cooperative agreements**

The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a).

**(d) Gifts, bequests, and devises**

**(1) In general**

The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a). Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

**(2) Criteria for acceptance**

The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

(A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or

(B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

(Pub. L. 89-642, §21, as added Pub. L. 102-342, title II, §201, Aug. 14, 1992, 106 Stat. 912.)

**§ 1791. Bill Emerson Good Samaritan Food Donation Act**

**(a) Short title**

This section may be cited as the “Bill Emerson Good Samaritan Food Donation Act”.

**(b) Definitions**

As used in this section:

**(1) Apparently fit grocery product**

The term “apparently fit grocery product” means 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.

**(2) Apparently wholesome food**

The term “apparently wholesome food” means 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.

**(3) Donate**

The term “donate” means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value or is charged a good Samaritan reduced price.

**(4) Food**

The term “food” means any raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

**(5) Gleaner**

The term “gleaner” means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

**(6) Good Samaritan reduced price**

The term “good Samaritan reduced price” means, 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.

**(7) Grocery product**

The term “grocery product” means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

**(8) Gross negligence**

The term “gross negligence” means 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.

**(9) Intentional misconduct**

The term “intentional misconduct” means 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.

**(10) Nonprofit organization**

The term “nonprofit organization” means 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.

**(11) Person**

The term “person” means 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. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

**(12) Qualified direct donor**

The term “qualified direct donor” means a retail grocer, wholesaler, agricultural producer, agricultural processor, agricultural distributor, restaurant, caterer, school food authority, or institution of higher education (as defined in section 1002 of title 20).

**(c) Liability for damages from donated food and grocery products**

**(1) Liability of person or gleaner**

A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals at zero cost or at a good Samaritan reduced price.

**(2) Liability of nonprofit organization**

A nonprofit organization shall not be subject to 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.

**(3) Direct donations to needy individuals**

A qualified direct donor shall not be subject to 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.

**(4) Exception**

Paragraphs (1), (2), and (3) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that re-

sults from an act or omission of the person, gleaner, or nonprofit organization, as applicable, constituting gross negligence or intentional misconduct.

**(d) Collection or gleaning of donations**

A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

**(e) Partial compliance**

If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) 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.

**(f) Construction**

This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.

(Pub. L. 89-642, §22, formerly Pub. L. 101-610, title IV, §402, Nov. 16, 1990, 104 Stat. 3183; renumbered §22 and amended Pub. L. 104-210, §1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012; Pub. L. 117-362, §1, Jan. 5, 2023, 136 Stat. 6295.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 12672 of this title prior to renumbering by Pub. L. 104-210.

**AMENDMENTS**

2023—Subsec. (b)(3). Pub. L. 117-362, §1(1)(A), inserted “or is charged a good Samaritan reduced price” before period at end.

Subsec. (b)(6) to (11). Pub. L. 117-362, §1(1)(B), (C), added par. (6) and redesignated former pars. (6) to (10) as (7) to (11), respectively.

Subsec. (b)(12). Pub. L. 117-362, §1(1)(D), added par. (12).

Subsec. (c)(1), (2). Pub. L. 117-362, §1(2)(A), inserted “at zero cost or at a good Samaritan reduced price” after “needy individuals”.

Subsec. (c)(3). Pub. L. 117-362, §1(2)(C), added par. (3). Former par. (3) redesignated (4).

Subsec. (c)(4). Pub. L. 117-362, §1(2)(B), (D), redesignated par. (3) as (4) and substituted “, (2), and (3)” for “and (2)”.

1996—Pub. L. 104-210, §1(a)(2)(A), substituted “Bill Emerson” for “Model” in section catchline.

Subsec. (a). Pub. L. 104-210, §1(a)(2)(B), inserted “Bill Emerson” before “Good”.

Subsec. (b)(7). Pub. L. 104-210, §1(a)(2)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘gross negligence’ means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.”

Subsec. (c). Pub. L. 104-210, §1(a)(2)(D), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.”

Subsec. (f). Pub. L. 104-210, §1(a)(2)(E), inserted at end “Nothing in this section shall be construed to supercede State or local health regulations.”

## § 1792. Promoting Federal food donation

### (a) In general

Not later than 180 days after June 20, 2008, the Federal Acquisition Regulation issued in accordance with section 1303 of title 41 shall be revised to provide that all contracts above \$25,000 for the provision, service, or sale of food in the United States, or for the lease or rental of Federal property to a private entity for events at which food is provided in the United States, shall include a clause that—

- (1) encourages the donation of excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States; and
- (2) states the terms and conditions described in subsection (b).

### (b) Terms and conditions

#### (1) Costs

In any case in which a contractor enters into a contract with an executive agency under which apparently wholesome food is donated to food-insecure people in the United States, the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States under this section.

#### (2) Liability

An executive agency (including an executive agency that enters into a contract with a contractor) and any contractor making donations pursuant to this section shall be exempt from civil and criminal liability to the extent provided under section 1791 of this title.

(Pub. L. 110-247, § 4, June 20, 2008, 122 Stat. 2314.)

### Editorial Notes

#### REFERENCES IN TEXT

This section, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 110-247, June 20,

2008, 122 Stat. 2314, which enacted this section and provisions set out as notes under this section and section 1771 of this title. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 1771 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Federal Food Donation Act of 2008, and not as part of the Child Nutrition Act of 1966 which comprises this chapter.

In subsec. (a), “section 1303 of title 41” substituted for “section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

### Statutory Notes and Related Subsidiaries

#### PURPOSE

Pub. L. 110-247, §2, June 20, 2008, 122 Stat. 2314, provided that: “The purpose of this Act [enacting this section and provisions set out as notes under this section and section 1771 of this title] is to encourage executive agencies and contractors of executive agencies, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to feed food-insecure people in the United States.”

#### DEFINITIONS

Pub. L. 110-247, §3, June 20, 2008, 122 Stat. 2314, provided that: “In this Act [enacting this section and provisions set out as notes under this section and section 1771 of this title]:

“(1) APPARENTLY WHOLESOME FOOD.—The term ‘apparently wholesome food’ has the meaning given the term in section 2(b) [probably means subsec. (b)] of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)).

“(2) EXCESS.—The term ‘excess’, when applied to food, means food that—

“(A) is not required to meet the needs of executive agencies; and

“(B) would otherwise be discarded.

“(3) FOOD-INSECURE.—The term ‘food-insecure’ means inconsistent access to sufficient, safe, and nutritious food.

“(4) NONPROFIT ORGANIZATION.—The term ‘nonprofit organization’ means any organization that is—

“(A) described in section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)]; and

“(B) exempt from tax under section 501(a) of that Code [26 U.S.C. 501(a)].”

## § 1793. Grants for expansion of school breakfast programs

### (a) Definition of qualifying school

In this section, the term “qualifying school” means a school in severe need, as described in section 1773(d)(1) of this title.

### (b) Establishment

Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section, the Secretary shall establish a program under which the Secretary shall provide grants, on a competitive basis, to State educational agencies for the purpose of providing subgrants to local educational agencies for qualifying schools to establish, maintain, or expand the school breakfast program in accordance with this section.

### (c) Grants to State educational agencies

#### (1) Application

To be eligible to receive a grant under this section, a State educational agency shall sub-