



Harvard

Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

KEEPING FOOD OUT OF THE LANDFILL

POLICY IDEAS FOR STATES & LOCALITIES

November 30, 2016



Harvard

Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

- **Serve clients**
- **Train students**
- **4 Main Policy Areas:**
 - **Community Empowerment**
 - **Sustainable Food Production**
 - **Food Access & Obesity Prevention**
 - **Reducing Food Waste**



Work with Clients – Govt Agencies & Organizations



Legal Fact Sheet for Massachusetts Food Donation: Liability Protections - July 2015



Legal Fact Sheet for Massachusetts Food Donation: Tax Incentives for Businesses – January 2016



Legal Fact Sheet for Massachusetts Food Donation: Date Labeling Laws - July 2015

Date labels are the dates on food packaging that are accompanied by phrases such as “use by,” “best before,” “sell by,” “enjoy by,” and “expires on.” Date labels can lead to food waste because they are misleading to consumers and result in safe, wholesome food being needlessly thrown away. Furthermore, date labels impact food donation in Massachusetts, because Massachusetts state law sets additional conditions on the sale or donation of any food once the labeled date has passed.

Federal Law on Date Labels

There currently is no federal law regulating date labels.¹ Congress has, however, passed legislation delegating general authority to the FDA and the USDA to ensure food safety and protect consumers from deceptive or misleading food labeling.² Unfortunately, the FDA and the USDA have not interpreted this authority to allow them to regulate date labels, thus:

- The FDA does not require date labels on foods, other than infant formula.³
- The USDA does not require date labels on foods under its purview, including meats, poultry, and egg products.⁴ If, however, USDA-regulated foods are dated, either as required under state law (see below) or voluntarily, they must include: (1) a day and month (and year for frozen or shelf-stable products) and (2) an explanatory phrase, such as “sell by” or “use before.”⁵

Massachusetts State Law on Date Labels

Because federal law is so limited, states have broad discretion to regulate date labels. As a result, inconsistent date labeling laws exist across the country.⁶ What has been consistent, however, is food manufacturers’ practice of

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General (non the amount of value of the pro than 10% of the sole proprietor year.¹⁰

Enhanced tax twice the basis expected profit market value).¹¹ donations.¹²

Convene Meetings & Conferences

- 1-day workshop for Food Recovery Entrepreneurs
- 2-day conference, cosponsored by US EPA and Mass DEP



Publish Reports & Guides



LEFTOVERS FOR LIVESTOCK:

A Legal Guide for Using Food Scraps as Animal Feed



August 2016



NRDC REPORT

SEPTEMBER 2013
R-13-09-A

The Dating Game:

How Confusing Food Date Labels Lead to Food Waste in America



Keeping Food Out of the Landfill:

Policy Ideas for States and Localities

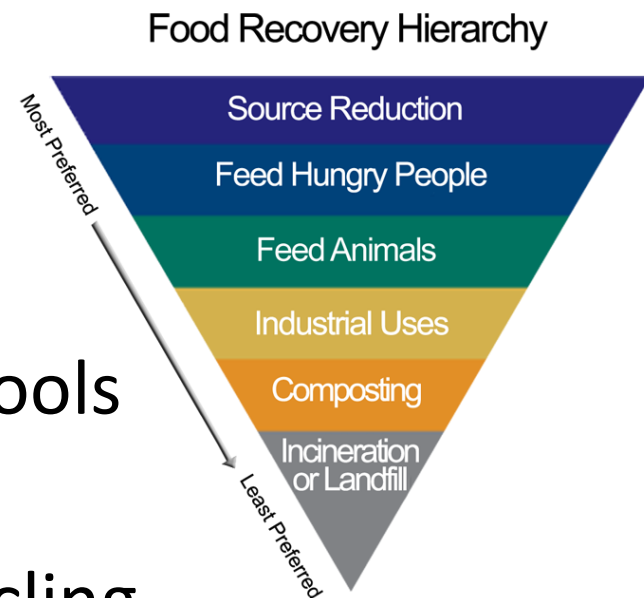


October 2016



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8. Government Support for Food Waste Reduction



Liability Protection for Food Donations

- Liability fear prevents food donation
- Federal Emerson Good Samaritan Act
 - Federal baseline of civil and criminal liability protections
 - Some ways to strengthen this, but generally pretty strong
- State Liability Protections
 - In all 50 states

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SEPTEMBER 2016
FS-16-08-C

FACT SHEET

RECOMMENDATIONS TO STRENGTHEN THE BILL EMERSON GOOD SAMARITAN ACT

Food donation provides a critical link between organizations with wholesome, surplus foods and the 42 million Americans who are food insecure today. Unfortunately, many food manufacturers, retailers, and restaurants cite fear of liability as a primary deterrent to donating food. A 2016 survey by the Food Waste Reduction Alliance, a joint food industry task force, found that 44 percent of manufacturers, 41 percent of restaurants, and 25 percent of retailers identified liability concerns as a barrier to donation.¹ There are strong federal and state liability protections for food donations, but some small changes could help extend and strengthen those protections.

THE EMERSON ACT
In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act (Emerson Act), which provides a federal floor of civil and criminal liability protection to food donors and nonprofit organizations that receive food donations and distribute those donations to those in need.² The Emerson Act protects a broad range of food donors, including individuals, businesses, and government entities, as well as gleaners (an individual or entity that harvests donated agricultural crops) and food recovery organizations. The Emerson Act protects donors and nonprofit recipients from civil and criminal liability for injury caused by the donated food unless either acts with gross negligence or intentional misconduct. Donors and distributors must meet the following four requirements to receive protection under the Act:

1. The food must be donated to a nonprofit organization in good faith.
2. The food must meet all federal, state, and local quality and labeling requirements; if all quality and labeling requirements are not met, the food must be reconditioned to meet all quality and labeling requirements before it can be donated.
3. The donated food must be distributed by the receiving nonprofit to needy individuals.
4. The needy individuals receiving the food may not pay for it.

This broad base of liability protection was intended to encourage food donations, yet donors are often unaware of it. Further, several provisions in the Act should be broadened to better align with the current food recovery landscape. Clarifying the Emerson Act's coverage and expanding its protections, as described below, can boost more food donations. Most of our suggestions would require Congressional action to modify the Act's language. However, a federal agency can take action immediately to clarify the Emerson Act by providing interpretive guidance.

1. AN EXECUTIVE AGENCY SHOULD BE RESPONSIBLE FOR IMPLEMENTING AND INTERPRETING THE EMERSON ACT
Unlike many statutes which delegate power to an agency to interpret and enforce them, Congress never assigned the Emerson Act to a particular federal agency for interpretation and enforcement. Thus, no agency is responsible for providing federal guidance or raising awareness of the Act. Further, the Emerson Act has not been challenged in court, so there are no judicial interpretations of it. Given the dearth of judicial or administrative interpretations, potential donors can only refer to the 1996 statutory language to determine whether or not they are protected. As a result, donors do not know how to interpret some of the Act's more ambiguous terms, such as "apparently wholesome," "needy individual," and "gross negligence" and are unclear on the Act's requirements.

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www.facebook.com/nrdc.org
www.twitter.com/nrdc

State Liability Protection Laws

- Each state has its own version of liability protection for food donors and distributing food recovery organizations

State	Citation	Type of Protection		Protections Apply When End Recipient Pays for the Donated Food	Protections Apply to Direct Donations
		Civil	Criminal		
Alabama	Ala. Code 1975 § 20-1-6	x	x		
Alaska	Alaska Stat. § 17.20.346	x	x	x	
Arizona	Ariz. Rev. Stat. Ann. § 36-916	x		x	x
Arkansas	Ark. Code Ann. § 20-57-103	x	x	x	
California	Cal. Civ. Code § 1714.25	x			
Colorado	Colo. Rev. Stat. § 13-21-113	x	x		
Connecticut	Conn. Gen. Stat. Ann. § 52-557L	x	x	x	
Delaware	Del. Code Ann. Tit. 10, § 8130	x	x		
District of Columbia	D.C. Code § 48-301	x	x		
Florida	Fla. Stat. Ann. § 768.136	x	x		
Georgia	Ga. Code Ann. § 51-1-31	x	x	x	
Hawaii	Haw. Rev. Stat. § 145D-1–D-5	x	x		
Idaho	Idaho Code Ann. § 6-1301–1302	x	x		
Illinois	745 Ill. Comp. Stat. 50/1–50/4	x			
Indiana	Ind. Code § 34-30-5-1–34-30-5-2	x			
Iowa	Iowa Code Ann. § 672.1	x	x	x	
Kansas	Kan. Stat. Ann. § 65-687	x	x		
Kentucky	Ky. Rev. Stat. § 413.247–248	x	x		
Louisiana	La. Rev. Stat. Ann. § 9:2799	x			Only wild game
Maine	Me. Rev. Stat. tit. 14, § 166	x			
Maryland	Md. Code Ann. Cts. & Jud. Proc. § 5-634 Md. Code Ann. Health–Gen. § 21-322	x			
Massachusetts	Mass. Gen. Laws Ann. Ch. 94, § 328; 105 Mass. Code Regs. 520.119	x		x	**
Michigan	Mich. Comp. Laws Ann. § 691.1572	x		x	
Minnesota	Minn. Stat. Ann. § 604A.10	x			x
Mississippi	Miss. Code Ann. § 95-7-1	x			

Recommendations for State Liability Protections

- Provide protection when nonprofit food recovery organizations charge final recipients for food (e.g., Massachusetts)
- Provide protection for food establishments and retail stores donating directly (e.g., Arizona & New Hampshire)
- Provide liability protection regardless of compliance with non-safety related labeling rules (e.g., Oregon & California)
- Clearly provide liability protection for the donation of past-date food (e.g., Massachusetts)

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