

Liability Exemptions When Donating Food to Hunger Relief Organizations 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. However, a general misunderstanding by donors of any potential **liability** for donating food is believed to be a barrier to the previously listed organizations from donating food at all (Food Waste Reduction Alliance, 2014).

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 **liability** protections to individuals and entities donating food (food donors) if they donate in **good faith** to a nonprofit organization for distribution to people in need or directly to people in need as a **qualified direct donor**. The specific types of food, donors, and situations where a donor would not be liable under these circumstances are detailed in Table 1.

This publication is meant to highlight the **liability** protections which exist for food donors to promote food donation. 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 specific legal questions should be directed to a qualified professional.

Where can I donate my food?

For statutory **liability** protections to apply, your donation needs to go to a **food bank**, **food bank** member organization, and/or similar **501(c)(3) charitable organization**. Connect with your regional **food bank** or local **hunger relief organization** to ask if they are accepting donations, if they are seeking any particular foods, and how you can donate foods to them. Find your regional **food bank** [here](#).

What foods should I donate?

You should only donate food that you have determined, after conducting due diligence, is safe for human consumption. We recommend that you reach out to your local or regional hunger relief organization to ascertain their capacity to accept donations. If they are accepting donations, have a conversation with them about the foods you would be able to donate and whether or not that matches with their needs. If so, work with them to find a good time to drop off your donations and what you can expect when you arrive. If they do not have the capacity to take more donations, or that what you have does not match with their need, you may consider asking if they know of any other charitable organizations to which you could donate.

Table 1. **Liability** exemptions when donating food as defined in the United States and Virginia Codes

Legal Citation	Who Is Protected?	Liability Exemptions
42 U.S.C. § 1791	Individual, corporation, nonprofit, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital	<p>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 person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals at no cost or at a good Samaritan reduced price.</p> <p>A qualified direct donor is 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 they donate in good faith to a needy individual at no cost.</p> <p>Exemptions do <i>not</i> apply to injury or death resulting from an act of omission constituting gross negligence or intentional misconduct.</p>
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	<p>Exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food.</p> <p>Exempt from criminal or civil liability from 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</p> <p>To be exempt, food service establishments and restaurants shall comply with relevant food handling regulations from the Board of Health</p> <p>Exemptions do <i>not</i> apply to injury directly resulting from a donor or food organization's gross negligence or intentional act.</p>
VA Code § 35.1-14.2	<p>Any restaurant licensed by the 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 when donating unserved excess foods.</p> <p>Nonprofit homeless shelters and hunger prevention programs</p>	<p>Exempt from civil liability in accordance with VA Code § 3.2-5144</p> <p>Exempt from criminal or civil liability from donating or receiving:</p> <ul style="list-style-type: none"> ● commercially processed food past the best-buy or sell-by date as long as the food meets all labeling and date requirements or ● 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. <p>Exemptions do <i>not</i> apply to injuries directly resulting from a donor's gross negligence or intentional misconduct of donor or donee.</p>

When could I still be liable?

You could still be **liable** in cases of an injury or death due to **negligence, intentional misconduct**, or an **act of omission** from the donor, or if your donation is deemed to not be in **good faith**. An example of this would include knowingly donating food that is unfit for human consumption (i.e., adulterated, contaminated, and/or improperly handled).

What about gleaners?

Gleaners are people who recover unharvested foods from a farm for **hunger relief organizations**. Farmers are exempt from **civil liability** when there is injury or death resulting from the nature or condition of land or nature, age, or condition of a crop when a farmer allows **gleaners** onto their land to **glean** except if such injury or death directly results from the **gross negligence** or intentional act of the farmer. (VA Code § 3.2-5144).

A farmer would still be liable in the case of any injury or death of a **gleaner** coming onto a farm or other facility, and that injury or death is due to **negligence, intentional misconduct**, or an **act of omission** (VA Code § 3.2-5144).

What if I have more questions?

Reach out to your regional **food bank**, 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.

Legal Disclaimer

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

[501\(c\)\(3\) charitable organization](#) - An organization which has met the criteria to be exempt from taxation. “Charitable” is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged.

[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 gleanes.

[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, often times 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.

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

References

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Wex Legal Dictionary. (2022). Accessed April 19, 2023. <https://www.law.cornell.edu/wex>

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 Donors - Public Health Law Center at William Mitchell College of Law](#)

[Federation of Virginia Food Banks.](#)

- 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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