



**AB-1219 Food donations.** (2017-2018)

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## Assembly Bill No. 1219

### CHAPTER 619

An act to amend Section 1714.25 of the Civil Code, to amend Section 58502 of, and to repeal Section 58506 of, the Food and Agricultural Code, and to amend Sections 114432, 114433, and 114434 of, and to add Section 114435 to, the Health and Safety Code, relating to food donations.

[ Approved by Governor October 09, 2017. Filed with Secretary of State October 09, 2017. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1219, Eggman. Food donations.

Existing law specifies that a food facility that donates any food that is fit for human consumption at the time it was donated to a nonprofit charitable organization or a food bank is not liable for any damage or injury resulting from the consumption of the donated food, unless the injury resulted from negligence or a willful act in the preparation or handling of the donated food.

This bill, the California Good Samaritan Food Donation Act, **would expand these provisions to persons and gleaners who donate food,** as defined. The bill would narrow the exception to protection from liability to injury resulting from gross negligence or intentional misconduct. The bill would specify that the immunity from civil liability provided by these provisions applies to the donation of food that is fit for human consumption and that has exceeded the labeled shelf life date recommended by the manufacturer, provided, in instances of perishable food, the person that distributes the food to the end recipient makes a good faith evaluation that the food is wholesome. The bill would authorize food facilities to donate food directly to end recipients for consumption.

Existing law specifies that a nonprofit charitable organization or food bank is not liable for an injury or death from distributing food without charge that is fit for human consumption unless the injury or death is a direct result of negligence, recklessness, or intentional misconduct.

This bill would narrow the exception to protection from liability to injury or death as a direct result of gross negligence or intentional misconduct.

Existing law authorizes a person engaged in the business of processing, distributing, or selling an agricultural product to donate, free of charge, a product that is in a condition that it may be used as food for human beings, to a nonprofit charitable organization. Existing law limits the liability of a county, its agencies, and persons who donate agricultural products. Existing law provides that these provisions do not relieve any nonprofit charitable organization from any liability for any injury, including, but not limited to, injury resulting from the ingesting of an agricultural product, as a result of receiving, accepting, gathering, or removing any donated agricultural product.

This bill would expand this provision to include a gleaner and also authorize food facilities to donate food directly to end recipients for consumption. The bill would specify that these donations are protected under this act if the donated food has exceeded the labeled shelf life date recommended by the manufacturer, provided, in instances of perishable food, the person that distributes the food to the end recipient makes a good faith evaluation that the food is wholesome. The bill would repeal these provisions relating to not relieving nonprofit charitable organizations from liability for injuries.

Existing law authorizes a food facility to donate food to a food bank or to any other nonprofit charitable organization for distribution to persons free of charge. Existing law exempts a food facility that donates food from civil or criminal liability or penalty for violation of any laws, regulations, or ordinances regulating the labeling or packaging of the donated product or, with respect to any other laws, regulations, or ordinances, for a violation occurring after the time of the donation.

This bill would also authorize a person or gleaner to donate food to a food bank or to a nonprofit charitable organization and exempt the person or gleaner from civil or criminal liability relating to the donated food. The bill would also expand these provisions to include the donation of food by food facilities directly to end recipients. The bill would specify that the immunity from civil or criminal liability or penalty applies to the donation of food that has exceeded the labeled shelf life date recommended by the manufacturer, provided, in instances of perishable food, the person that distributes the food to the end recipient makes a good faith evaluation that the food is wholesome. The bill would require enforcement officers to promote the recovery of food fit for human consumption, as specified. Because the bill would require local officials to perform additional duties, the bill would impose a state-mandated local program. The bill would make other conforming and nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** This act shall be known, and may be cited, as the California Good Samaritan Food Donation Act.

**SEC. 2.** The Legislature finds and declares the following:

- (a) Existing federal and state laws protect good faith food donors, including individuals, businesses, and government entities, as well as gleaners and food recovery organizations, from civil and criminal liability.
- (b) Even with these protections in place, much of the edible, surplus, wholesome food in the state is discarded.
- (c) Many potential food donors cite fear of liability as one of the top barriers to donating to organizations that seek to redistribute food to individuals in need.
- (d) In a 2016 survey conducted by the Food Waste Reduction Alliance, a joint industry initiative comprised of leading companies and trade associations in the food, beverage, food service, and food retail industries, it was found that 44 percent of manufacturers, 25 percent of retailers and wholesalers, and 39 percent of restaurants identified liability concerns as a top barrier to donating food.
- (e) Clarifying and expanding existing protections will encourage increased donations of food that potential donors may currently be discarding.
- (f) Food is the single most prevalent item in the state's waste stream, and uneaten food and other organic waste releases more than 8.3 million tons of greenhouse gases each year in California.
- (g) Increasing food donations in the state will assist the state in meeting organic waste diversion and food recovery goals and mandates.
- (h) The state faces a hunger crisis affecting one in eight Californians, including one in four children, according to the United States Department of Agriculture.
- (i) California is blessed with globally leading industry sectors in agriculture, food processing, and retail that already are committed to the fight against hunger but often cite a lack of clear state protections for wholesome food donations.
- (j) It is the public policy of the state that food donations be highly encouraged.

**SEC. 3.** Section 1714.25 of the Civil Code is amended to read:

**1714.25.** (a) Except for injury resulting from gross negligence or intentional misconduct in the preparation or handling of donated food, no person, gleaner, or food facility that donates food that is fit for human consumption at the time it was donated to a nonprofit charitable organization or food bank shall be liable for any damage or

**injury resulting from the consumption of the donated food. Food facilities may donate food directly to end recipients for consumption.**

The immunity from civil liability provided by this subdivision applies regardless of compliance with any laws, regulations, or ordinances regulating the packaging or labeling of food, and regardless of compliance with any laws, regulations, or ordinances regulating the storage or handling of the food by the donee after the donation of the food. The donation of nonperishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act. The donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act if the person that distributes the food to the end recipient makes a good faith evaluation that the food to be donated is wholesome.

**(b) A nonprofit charitable organization or a food bank that, in good faith, receives and distributes food without charge that is fit for human consumption at the time it was distributed is not liable for an injury or death due to the food unless the injury or death is a direct result of the gross negligence or intentional misconduct of the organization.**

(c) Nothing in this chapter shall be construed to limit the ability of a person, gleaner, or food facility to donate food.

(d) For the purposes of this section:

(1) "Food bank" has the same meaning as defined in Section 113783 of the Health and Safety Code.

(2) "Food facility" has the same meaning as defined in Section 113789 of the Health and Safety Code.

(3) "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.

(4) "Nonprofit charitable organization" has the same meaning as defined in Section 113841 of the Health and Safety Code.

(5) "Person" means an individual, school, local educational agency as defined in Section 421 of the Education Code, corporation, partnership, limited liability company, 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, manager or managing member, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.

**SEC. 4.** Section 58502 of the Food and Agricultural Code is amended to read:

**58502.** (a) **A person or gleaner engaged in the business of processing, distributing, or selling an agricultural product may donate, free of charge, a product that is in a condition that it may be used as food for human consumption to a nonprofit charitable organization within the state. Food facilities may donate food directly to end recipients for consumption. The donation of nonperishable food that is fit for human consumption, but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act. The donation of perishable food that is fit for human consumption, but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act if the person that distributes the food to the end recipient makes a good faith evaluation that the food to be donated is wholesome.**

(b) To assist in accomplishing the purposes of this section, the director may divert agricultural products to organizations operating pursuant to this chapter.

**SEC. 5.** Section 58506 of the Food and Agricultural Code is repealed.

**SEC. 6.** Section 114432 of the Health and Safety Code is amended to read:

**114432.** (a) A person, gleaner, or food facility may donate food to a food bank or to any other nonprofit charitable organization for distribution to persons free of charge. Food facilities may donate food directly to end recipients for consumption.

(b) For purposes of this section, "person" has the same meaning as defined in Section 1714.25 of the Civil Code.

(c) For purposes of this section "gleaner" has the same meaning as defined in Section 1714.25 of the Civil Code.

**SEC. 7.** Section 114433 of the Health and Safety Code is amended to read:

**114433.** A person, gleaner, or food facility that donates food as permitted by Section 114432 shall not be subject to civil or criminal liability or penalty for violation of any laws, regulations, or ordinances regulating the labeling or packaging of the donated product or, with respect to any other laws, regulations, or ordinances, for a violation occurring after the time of the donation. The donation of nonperishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act. The donation of perishable food that is fit for human consumption but that has exceeded the labeled shelf life date recommended by the manufacturer is protected under the California Good Samaritan Food Donation Act if the person that distributes the food to the end recipient makes a good faith evaluation that the food to be donated is wholesome.

**SEC. 8.** Section 114434 of the Health and Safety Code is amended to read:

**114434.** The immunities provided in Section 114433 and by Section 1714.25 of the Civil Code, the California Good Samaritan Food Donation Act, are in addition to any other immunities provided by law, including those provided by Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code.

**SEC. 9.** Section 114435 is added to the Health and Safety Code, to read:

**114435.** In implementing this article, enforcement officers shall promote the recovery of food fit for human consumption during their normal, routine inspections. Promotion shall include, but not be limited to, newsletters, bulletins, and handouts that inform retail food facility operators about the protections from civil and criminal liability when donating food.

**SEC. 10.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.