THE GLOBAL FOOD DONATION POLICY ATLAS

ISSUE BRIEF

PROMOTING FOOD DONATION: LIABILITY PROTECTION LAW AND POLICY

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit *atlas.foodbanking.org*.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit *chlpi.org/FLPC*.

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About The Global FoodBanking Network

The Global FoodBanking Network supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit *foodbanking.org*.

The Global FoodBanking Network®

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ABOUT THIS ISSUE BRIEF

Excessive food loss and waste (FLW) is a pressing challenge facing global food systems. FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs. International estimates predict that more than one-third—or 1.3 billion tons—of food produced is lost or wasted along the supply chain.[1] At the same time, current data indicate that between 720 and 811 million people were hungry in 2020[2] and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.[3] Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental cost of excess production and loss.

Food donation offers a solution to these parallel issues. Redirecting safe, surplus food to those who need it most both decreases FLW and increases food security. However, scaling food donation requires aligned incentives that motivate individuals and companies to donate rather than discard surplus food. A major concern for donors is that they will be found liable if a recipient becomes sick after consuming donated food. Many countries do not provide any liability protections for food donors or food recovery organizations, or they have unclear or fragmented policies to address this issue. In some cases, countries protect food donors but not food recovery organizations, meaning these charitable organizations must take on even more risk to provide a social good. Even in countries where protection does exist, donors and food recovery organizations are often uncertain about the level of fault at which they may lose liability protection for food donations. Lack of comprehensive or clear protections means that often donors discard safe, edible, surplus food instead of ensuring it reaches those in need. This issue brief informs governments and policymakers of best practices for adopting comprehensive liability protection laws to address these challenges; promote the donation of safe, surplus food; reduce food waste; and eliminate food insecurity.

This issue brief was developed as part of The Global Food Donation Policy Atlas project,[4] a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) that aims to promote strong food donation policies as global solutions to hunger and FLW.[5] Across key issue areas—including food safety, date labeling, liability protection, tax incentives and barriers, donation requirements or food waste penalties, and government grants and incentives—restrictive or inadequate laws and policies can undermine the efforts of food recovery organizations and create obstacles for businesses and other private-sector actors seeking to donate food. Such laws may also fail to properly incentivize socially beneficial behaviors. The Atlas project analyzes and compares these national laws and offers tailored recommendations to clarify and optimize the policy landscape for food donation.

RECOMMENDATIONS IN BRIEF

The recommendations presented in this brief provide a starting point for stakeholders across the globe to strengthen liability protection policy frameworks for food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as "food recovery organizations"), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. The recommendations are as follows:

To ease concerns about liability in case someone becomes sick after consuming donated food:

- **Provide liability protection to food donors and/or food recovery organizations, or otherwise help reduce the risk of liability due to food donations.**
  - Provide comprehensive liability protection for food donors and donation intermediaries, including food banks and food recovery organizations.
  - If not offering full protection for both food donors and food recovery organizations, at least offer protection for food donors alone.

To raise awareness about liability protections available to food donors and food recovery organizations:

- **Designate an agency or department to implement and raise awareness about existing liability protections and to provide guidance on defenses that actors can use to prevent liability.**

To encourage innovative food recovery models and increase the amount of food available for food donation:

- **Provide liability protection for donations made to food recovery organizations and other intermediaries that charge recipients a nominal fee for donated food.**
- **Provide liability protection to food donors that donate directly to individuals.**

To promote food safety and ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation , national governments or governments of a common economic region should:

- **Adopt a dual date labeling scheme, and permit food donation after the quality-based date.**
- **Provide guidance on applicable food safety requirements relevant to liability protection.**

BACKGROUND

Attention toward food loss and waste (FLW) has increased exponentially in the past decade, with the international community committing to halve FLW according to the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.[6] FLW occurs at every stage of the food system: during the initial harvest due to fluctuating market prices, high labor costs, inadequate infrastructure, and demand for flawless produce;[7] by grocery stores and restaurants that overestimate customer demands and misunderstand shelf life and product date labels;[8] and by consumers that engage in inefficient shopping and cooking practices.[9] These behaviors have significant environmental, economic, and social consequences. Food that is lost or wasted has a massive carbon footprint of 3.3 gigatons, using roughly 28% of agricultural land and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.[10] This damage is estimated at $700 billion in environmental costs and more than $900 billion in social costs per year.[11] This waste is expensive,[12] squanders natural resources, causes lasting environmental damage, and presents a missed opportunity to redistribute food to the more than 820 million people experiencing hunger.[13]

Food banks and other food recovery organizations can help mitigate unnecessary FLW by recovering and redistributing safe, surplus food through donation when policies enable and support such activities. In 2019 food banks in more than 70 countries recovered an estimated 3.75 million metric tons of safe, wholesome food. This helped avoid an estimated 12.39 billion kilograms of greenhouse gas emissions arising from unnecessary food waste in landfills and provided food access to 66.5 million food-insecure people.[14]

Despite the burgeoning efforts to address it, high levels of FLW persist and have been exacerbated by the COVID-19 pandemic. The pandemic disrupted fragile food supply chains, especially those that ordinarily rely on specific customers such as restaurants, hotels, and entertainment venues.[15] Food system actors encountered difficulty reaching alternative consumer markets, and many producers and manufacturers resorted to discarding wholesome food.[16] These costly breakdowns undermine the resilience, sustainability, and equity of food systems worldwide.

While FLW results in economic loss, food donation can generate sizeable economic gains. First, donation reduces the economic and environmental costs of producing food that otherwise goes uneaten[17] and curbs methane emissions caused by food decomposing in landfills.[18] Second, donation alleviates hunger, reducing health care expenses associated with malnutrition[19] and increasing productivity, educational fulfillment, and economic potential.[20] Third, food recovery operations create job opportunities at food banks and intermediaries and stimulate the economy by increasing the spending power of donation recipients. Indirect gains such as reduced hunger costs and more resilient supply chains that flow to society ultimately help build stronger communities. The spectrum of benefits cannot be realized, however, if food donors lack clarity or incentives to donate rather than discard surplus food.

A significant barrier to the donation of safe, surplus, and wholesome food is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Due to this fear, many donors choose to throw away food rather than donate it.[21] Many countries do not provide any liability protections, or they have unclear or fragmented policies to address this issue. As a result, many food donors and food recovery organizations are uncertain about whether they are eligible for liability protection, what actions are required to maintain the protection, and what limits, if any, apply to the protection. Providing food donors and food recovery organizations with comprehensive liability protection is a powerful way to encourage food donation. Such protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm caused by donated food, provided they act in accordance with relevant food safety laws.

OVERVIEW OF LIABILITY PROTECTION LAWS IN ATLAS PARTICIPATING COUNTRIES

Country	Provides liability protection for donors	Provides protection for food recovery organizations	Raises awareness and provides guidance about liability protection	Protects organizations that charge a nominal fee for donated food	Protects donations directly to individuals	Atlas policy ranking
Argentina	YES	YES	YES	NO	NO	Strong Policy
Canada[22]	YES	YES	NO	NO	NO	Moderate Policy
Chile	NO	NO	NO	NO	NO	No Policy
Colombia	YES	NO	NO	NO	NO	Limited Policy
Costa Rica	NO	NO	NO	NO	NO	No Policy
Dominican Republic	NO	NO	NO	NO	NO	No Policy
Guatemala	NO	NO	NO	NO	NO	No Policy
India	NO	NO	NO	NO	NO	No Policy
Mexico	YES	NO	NO	NO	NO	Limited Policy
Peru	YES	NO[23]	NO	NO	NO	Moderate Policy
Singapore	NO	NO	NO	NO	NO	No Policy
South Africa	NO	NO	NO	NO	NO	No Policy
United Kingdom	NO	NO	NO	NO	NO	No Policy
United States	YES	YES	YES[24]	NO	NO	Strong Policy

KEY ISSUES

A significant barrier to the donation of safe, surplus, wholesome food is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Many donors are afraid of being sued and thus choose to discard food as the less risky option.[25] At the same time, businesses are also concerned about reduced food quality and how that would impact their brands.[26] Around the world there are no notable lawsuits resulting from donated food. Even in the United States, a notably litigious country, there have never been any lawsuits related to donated food.[27] However, many donors will simply not take the risk. Fear is particularly heightened when the applicable law provides that cases of foodborne illness will be reviewed under a "strict liability" standard. For most products, courts use a standard of "negligence" to determine fault, but in some countries the applicable laws require a "strict liability" standard for certain products, including food products.

In a strict liability system, the defendant need not have intent or negligence to be held liable for harm caused.[28] For example, in South Africa the Consumer Protection Act establishes a strict liability scheme for all consumer products, including food, holding all supply chain actors legally responsible for damages regardless of whether they were negligent.[29] Similarly, the United Kingdom provides for strict liability for all harm that results from the consumption of unsafe food.[30] In the United States courts generally apply a "strict liability" standard when dealing with food products, which means the company would be presumed liable so long as the plaintiff proves that they consumed the product and suffered an illness or injury.[31] In countries that use strict liability as the standard for food-related injuries, a food donor or food recovery organization that did not act maliciously or even negligently may still be held legally and financially responsible for any resulting damage if a beneficiary is harmed. By contrast, under a negligence standard, it means the party failed to act in a manner that most people would have acted in the same circumstance, so the person filing the claim must show an unreasonable action on the part of the food donor or food recovery organization.[32]

Most countries lack liability protection for food donors and food recovery organizations, although the passage of such laws has increased in recent years. Under The Global Food Donation Policy Atlas project, 8 out of 14 countries researched so far—Chile,[33] Costa Rica,[34] the Dominican Republic,[35] Guatemala,[36] India,[37] Singapore,[38] South Africa,[39] and the United Kingdom[40]—provide no liability protection in national or state/provincial laws for either food donors or food recovery organizations. Even though cases are nonexistent, lack of liability protection still exposes food donors and food recovery organizations to liability for harm resulting from donated food. This certainly causes fear amongst donors, potential donors, and food recovery organizations.

In addition, where liability protection exists, the extent to which it covers food donors or food recovery organizations may vary. Some countries offer protection only to food donors, but do not offer protection to food recovery organizations. For example, Colombia's Law 1990/2019 offers limited protection to food donors and no protection for food recovery organizations.[41] Liability protection laws that only protect food donors may hinder the development of robust food donation programs because few food recovery organizations may be willing to take on the legal risk associated with food donations.

Without comprehensive liability protection laws, businesses do not have any financial incentive to donate food since the potential costs associated with the legal risks are not offset by income, as they are with food sales.[42] Further, food businesses may not think food charities or food recovery organizations are as trustworthy in handling food. They may believe—rightly or wrongly—that donating food for distribution by these organizations is riskier than the sale of such food. Food recovery organizations or other charitable food organizations may also perceive heightened risk when receiving and distributing donated food to beneficiaries, as opposed to purchasing food to distribute. This limits opportunities to recover safe, edible food and distribute it to those in need.

In several countries, many food donors and food recovery organizations are uncertain about whether they are eligible for liability protection, what actions are required to maintain the protection, and what limits, if any,

apply. Also, in many countries where liability protections exist, food donors and food recovery organizations have limited knowledge of the law and protections provided therein. Limited knowledge may be due to the lack of a designated implementing department or agency within the government, and limited resources for raising awareness.[43] In the United States no government agency has been mandated by Congress to provide guidance or resources to support the implementation of liability protection for food donors,[44] contributing to limited awareness of the law.[45] Ultimately, irrespective of the type or level of liability protection offered in a country, many questions about liability arise. Even in countries without liability protection laws, some defenses may be available under existing laws. Yet questions about liability that could be answered by governments continue to linger. An opportunity exists for governments to expand or thoughtfully craft their liability protection laws to allow for innovation in food donation that may be stymied without them.

The myriad challenges presented by a lack of liability protection law or unclear or fragmented laws can be ameliorated, and best practices are available as models. The next section discusses in greater detail seven recommendations for achieving a strong and comprehensive national liability protection policy, using examples from select countries. A country that adopts liability protection policy incorporating these practices will increase the opportunity for safe, surplus food donations and reduced food waste.

RECOMMENDATIONS

1. PROVIDE LIABILITY PROTECTION TO FOOD DONORS AND/OR FOOD RECOVERY ORGANIZATIONS, OR OTHERWISE HELP REDUCE THE RISK OF LIABILITY DUE TO FOOD DONATIONS.

To ensure that the fear of potential liability does not deter food donation, countries should provide comprehensive liability protections to food donors and food recovery organizations at the national level. In the alternative, if it is not politically feasible to enact liability protection for both food donors and food recovery organizations, countries may instead pass laws or regulations clarifying that liability follows possession, at least protecting food donors but not offering such protection to food recovery organizations.

1a. PROVIDE COMPREHENSIVE LIABILITY PROTECTION FOR FOOD DONORS AND DONATION INTERMEDIARIES, INCLUDING FOOD BANKS AND FOOD RECOVERY ORGANIZATIONS.

Countries should adopt and implement comprehensive liability protections for both food donors and food recovery organizations at the national level. Providing food donors and food recovery organizations with comprehensive liability protection encourages donation of surplus, wholesome food. Otherwise, donors worry that they will be found liable if someone becomes sick after consuming donated food.[46]

Based on research for The Global Food Donation Policy Atlas project, a few countries offer best practices for national liability protection laws. For example, in the United States the Bill Emerson Good Samaritan Food Donation Act (Emerson Act) enacted in 1996 provides comprehensive civil and criminal liability protection for food donors and nonprofit organizations that distribute food donations and nonfood grocery products to those in need as long as they act in good faith and without gross negligence or intentional misconduct.[47] The Emerson Act protects individuals, businesses, nonprofit food recovery organizations, volunteers, the officers of businesses and nonprofit organizations, and gleaners (individuals who harvest donated agricultural crops for a nonprofit organization that distributes the food to needy individuals).[48] Similarly, in Argentina a 2018 amendment to the Food Donation Law "*Régimen Especial para la Donación de Alimentos*" established comprehensive national liability protection for food donors and food recovery organizations so long as those actors are not negligent.[49] The liability protection law covers food donors and food recovery organizations that

offer food free of charge and presumes good faith on the part of the donors and intermediaries.[50] Israel's Food Donation Act provides food donors and intermediary organizations with criminal and civil liability protection, provided they comply with applicable laws and are not negligent.[51]

A strong liability protection law should also include a presumption of good faith on the part of the donor. Acting in good faith means "behaving honestly and frankly, without any intent to defraud or to seek an unconscionable advantage."[52] In the food donation context, a presumption of good faith assumes that the food donor or food recovery organization donated or distributed food in honesty without intention to cause harm to a beneficiary. For example, Argentina's Food Donation Law includes a presumption of good faith on the part of donors and food recovery organizations, shifting the burden of proof to plaintiffs.[53] Courts will presume that donors and food recovery organizations complied with all provisions of existing law (i.e., the donor or food recovery organization acted in good faith). The burden to prove that a donor or food recovery organization did not act in good faith would fall on the individual who alleges any wrongdoing. A food donor or food recovery organization would only be held liable if the court determines that it did not act in good faith.

Nevertheless, liability protection should not be absolute. Liability protection for donors and food recovery organizations should still ensure that beneficiaries have legal recourse in the event of injury arising from consuming donated food that was adulterated, unsafe, or donated recklessly.[54] Countries could clearly state that food donors are not shielded from protection if they act with gross negligence, recklessness, intentional misconduct, or disregard for safety when handling the donated food prior to distribution.

Generally under common law, to be held liable for harm or injury, there are four levels of culpability: intent, knowledge, recklessness, and negligence.[55] *Intent* refers to one's state of mind, actually resolving to do harm or commit an offense.[56] *Knowledge* refers to one's "awareness or understanding of a fact or circumstance."[57] *Recklessness* is a "state of mind in which a person does not care about the consequences of his or her actions."[58] *Negligence* is a failure to "protect others against unreasonable risk of harm."[59] In many countries that offer liability protection, food donors and food recovery organizations are protected for anything less than general negligence. In other countries protection is offered up to gross negligence or recklessness.[60] For example, under the Emerson Act in the United States, food donors and food recovery organizations would not be protected in the case of gross negligence or willful misconduct.[61] Because the law has yet to be litigated in court, the actions constituting "gross negligence" in relation to food donation are unclear.[62] In Argentina, the Food Donation Law provides comprehensive liability protection for food donors, but any evidence of negligence or willful misconduct on the part of the food donor or intermediary may result in liability for subsequent harm.[63] Similarly, while Canada has not enacted liability protection laws at the national level, each province as well as the Northwest Territories and Yukon Territory has enacted liability protection. Yet for each of these, acting with reckless disregard or intent to injure will negate that protection.[64]

Countries should determine the level of protection for donors and food recovery organizations based on existing liability laws. If the liability baseline for food products is strict liability, then countries need to protect at least up to general negligence. If the liability baseline is general negligence, then countries need to protect at least up to gross negligence for the protection to have an effect. Overall, protecting donors and food recovery organizations up to gross negligence is the best practice, but offering protection up to general negligence would be helpful in countries where it would otherwise be strict liability.

In summary, countries should offer comprehensive liability protection to donors and food recovery organizations, include a presumption of good faith on the part of donors and food recovery organizations, and offer protection up to gross negligence—or at least to general negligence, depending on the country's liability scheme—to encourage the donation of wholesome, surplus food.

1b. IF NOT OFFERING FULL PROTECTION FOR BOTH FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS, AT LEAST OFFER PROTECTION FOR FOOD DONORS ALONE.

As a second-best alternative, in the absence of a Good Samaritan law protecting all well-intentioned parties involved in food donation as suggested in best practice 1(a) above, countries should offer liability protection for food donors alone.

Countries have enacted such protections in two ways, both with similar impacts. One way countries have done this is by simply enacting liability protection laws that cover only food donors and not food recovery organizations. For example, Italy's Law No. 166/2016 offers liability protection for only food businesses that donate surplus food[65] and for farmers in relation to gleaning activities on their farms.[66] The law does not offer protection to food recovery organizations or intermediaries.

Similarly, some countries use a chain of custody approach that clearly states that liability for donated food follows the possession of the food itself.[67] Once a business or individual hands off wholesome food to the food recovery organization, their potential liability transfers to the food recovery organization, and the food donor is no longer responsible if someone falls ill. For example, in Colombia Article 18 of Law 1990 provides a limitation of liability establishing a duty over donated food based on its chain of custody.[68] Under Article 18, food recovery organizations are responsible for the receipt, storage, and quality of the donated food to be delivered to beneficiaries.[69] This means that food donors may not be held liable for any resulting harm. Similarly, Article 199-Bis of Mexico's General Health Law provides that persons or institutions that distribute donated food are exclusively responsible for the supply of food that has spoiled and therefore causes damage to human health.[70] Since the responsibility lies with the food recovery organization, food donors may be shielded from liability in the event a beneficiary is harmed. Peru's Food Donation Law also limits the scope of liability based on the chain of custody.[71] The burden of responsibility shifts to the food recovery organization once it assumes possession of the donation, and the food recovery organization retains the responsibility for the donated food until it is distributed to the subsequent intermediary or final beneficiary. Food donors are only held civilly or criminally liable for damages if there is proof of gross negligence or fraud associated with the delivery of the donated food.[72] Peru's law also provides that food recovery organizations will be protected (absent proof of gross negligence or fraud) if they then pass the food to a subsequent intermediary for distribution to end recipients.[73]

In summary, even if countries are not offering protection for food recovery organizations, it is worthwhile for countries to protect food donors as a first step, either through a chain of custody approach or liability protection for only food donors. Offering these baseline protections to donors can help food donation take hold as a beneficial social, environmental, and economic approach by ensuring that donors are ready and willing to start donating.

2. DESIGNATE AN AGENCY OR DEPARTMENT TO IMPLEMENT AND RAISE AWARENESS ABOUT EXISTING LIABILITY PROTECTIONS AND TO PROVIDE GUIDANCE ON DEFENSES THAT ACTORS CAN USE TO PREVENT LIABILITY.

Countries should designate an agency or department to implement liability protection laws, provide additional guidance and resources, and, where applicable, enumerate explicit defenses for food donations. Countries offer varied liability protection, and donors and food recovery organizations are uncertain of what protections exist and at which level of fault they may lose liability protection. In the United States, despite the existence of long-standing liability protection via the Emerson Act, a 2016 survey conducted by the Food Waste Reduction Alliance found that 50% of food manufacturers, 25% of retailers and wholesalers, and 39% of restaurants cite liability as a barrier to food donation.[74] Governments should designate a responsible ministry or agency to implement and raise awareness about available liability protection laws.

Raising awareness may take the form of public-private partnerships and entail publicity campaigns, web conferences, or the distribution of informational pamphlets explaining the scope of liability protection. For example, in 2018 in the United States, because of lack of awareness about the Emerson Act, Congress mandated that the United States Department of Agriculture (USDA) establish a Food Loss and Waste Liaison that would "raise awareness of the liability protections afforded under the Emerson Act."[75] The Food Loss and Waste Liaison publishes information about the protections offered in the Emerson Act.[76]

Moreover, in almost all countries there are no litigated cases related to food donation. Providing defenses to the imposition of liability for food donation would encourage increased food donations. For example, in the United Kingdom food donors may rely on numerous defenses and may not be held liable if they demonstrate compliance with a food safety plan that accounts for and protects against the harm that occurred.[77] South African law also includes several defenses that may help shield food donors from liability,[78] although no official guidance clarifies how these defenses would apply to food donation. In such instances, the responsible agency or department should provide guidance on defenses that donors or food recovery organizations can use to prevent liability.

To encourage the donation of safe, surplus, wholesome food, countries with liability protection laws or regulations should raise awareness, provide clarifying guidance, and enumerate applicable defenses. In countries without existing liability protections, illustrating or providing guidance to answer any questions regarding liability protection would also encourage increased food donations.

3. PROVIDE LIABILITY PROTECTION FOR DONATIONS MADE TO FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES THAT CHARGE RECIPIENTS A NOMINAL FEE FOR DONATED FOOD.

To encourage innovative food recovery models such as social supermarkets and boost food donation, comprehensive liability protections should be extended to donations made to food recovery organizations that provide food to recipients at a nominal fee to cover the cost of food handling. Based on the research of The Global Food Donation Policy Atlas project to date, many liability protection laws and regulations only cover food donors and food recovery organizations if food is provided to the final recipients free of charge. For example, in Argentina, the Food Donation Law "*Régimen Especial para la Donación de Alimentos*" contains a "no charge" requirement (i.e., food donation intermediaries would lose liability protection if they charge final recipients a fee for the donated food, and food donors to these intermediaries also would not receive protection).[79] Under Colombia's Law 1990/2019, food donors are covered if they donate food to food recovery organizations whose purpose is to distribute food free of charge to those in need.[80] Similarly, in the United States the Emerson Act only protects donors and food recovery organizations when the food recovery organization gives food away for no monetary charge.[81]

In Europe social supermarkets allow qualifying low-income individuals and families to purchase food at heavy discounts, sourcing the food from donations and purchases.[82] The European Union published *EU Guidelines on Food Donation*, which recognize food redistribution models like social supermarkets.[83] However, in many European countries there is no liability protection for donations made to social supermarkets. For example, in Germany and Switzerland no liability protection covers social supermarkets redistributing food.[84] In Austria many social supermarkets sign contracts with food donors stating that they accept total liability after receiving the food in a bid to encourage food donations in the absence of liability protection laws.[85] Without any liability protections, a donor to a social supermarket would potentially be liable in the event that a beneficiary is harmed after consuming donated food. Such models help reduce waste and improve access to food in a more economically sustainable way, though they do not operate as traditional food banks that often offer food at no cost.

Food recovery organizations need resources to cover labor, transportation, administration, and other costs related to the recovery, processing, and distribution of surplus food. Innovative food recovery models such as social supermarkets can provide an alternative for low-income customers who cannot or do not utilize food pantries or are looking for ways to supplement their pantry use. Restrictions that hinder food recovery and donation by not allowing food to be sold at a nominal fee increase the burden on food recovery organizations, which must perpetually seek donated food to distribute and financial donations to support their day-to-day operations. Further, offering protection only when the donation goes through a nonprofit organization would ensure that revenues are fed back into the organization's operations and would support maintenance or expansion of its charitable work.[86]

No country included in The Global Food Donation Policy Atlas to date offers liability protection to food donors and food recovery organizations when they offer food at a low cost or nominal fee. However, in the United States several states have added language to their liability protection laws extending protection to food provided to beneficiaries at a nominal fee. For example, Oregon offers liability protection to food donors and food recovery organizations when food is distributed to the consumer "on a scale reflecting ability to pay or only requiring a shared maintenance contribution."[87] New Hampshire offers liability protection even when the recipient pays for the food if the fee "covers the cost of handling and administering such food and the distribution thereof."[88] Michigan also offers liability protection to food donors and distributors even if the food is provided for a nominal fee.[89] Similarly, Massachusetts offers liability protection to food donors and nonprofit organizations that offer food to end recipients "without charge or at a charge sufficient only to cover the cost of handling such food."[90]

In addition, food donation laws should explicitly allow intermediary organizations to charge one another for logistic costs related to handling food. Allowing such charges would help the organizations recover any donation-related expenses and lower their overall operation costs. For example, in the United States the Emerson Act allows a nonprofit to charge a second nonprofit that distributes food a nominal fee to cover handling and processing costs.[91]

Extending liability protection to donors and food recovery organizations charging a nominal fee will provide an alternative source of income for organizations that rely solely on fundraising, enabling them to sustainably serve more people. Of course, nonprofit organizations do not have to charge a fee, and many food recovery organizations do not follow that strategy. However, this flexibility allows for different models, which can better address the needs of both food recovery organizations and end recipients. Extending liability protection to these nontraditional food distribution models will treat food as the valuable resource it is and encourage more creativity in food redistribution.

4. PROVIDE LIABILITY PROTECTION TO FOOD DONORS THAT DONATE DIRECTLY TO INDIVIDUALS.

Countries should provide liability protection for direct food donations to those in need. Generally, food donations are made by donors to charitable organizations. In some instances, however, that process may be difficult (e.g., with smaller quantities of food or perishable food). Some countries only provide liability protection if food is distributed through an intermediary organization, which means that donors providing food directly to individuals do not receive liability protection.[92] For example, in the United States, the Emerson Act only protects donations made to a nonprofit organization that then distributes the food to those in need.[93] Limiting protections to only predetermined distribution methods might pose an additional barrier to donation.

Liability protection laws should protect donors that provide both indirect donations to food recovery organizations and direct donations to individuals. For example, Argentina's Food Donation Act protects donors in three categories, including those that give directly to families and populations in need.[94] In the United States at the state level, New Hampshire's liability protection law extends liability protection to food donors

giving to "needy individuals or individuals."[95] Providing liability protection for direct and indirect donations can reduce the cost of food recovery, increasing the amount of food available for food donation and making it easier to donate perishable food. In some cases, direct donations allow individuals in need to receive food from more accessible locations right at the source such as farms, restaurants, grocery stores, and schools. For example, farmers can donate low-risk foods such as surplus produce to their communities. Restaurants and schools that are already licensed and required to undergo food safety training can also donate to neighbors in need. If there is concern that a food donor might not know about food safety, governments could limit liability protection to licensed food businesses or donors providing low-risk foods.

5. PROVIDE GUIDANCE ON APPLICABLE FOOD SAFETY REQUIREMENTS RELEVANT TO LIABILITY PROTECTION.

All donated food should be safe for consumption and comply with the applicable food safety laws and regulations. However, a key barrier to food donation is the absence of knowledge or readily available guidance regarding safety procedures. Differentiating which food safety regulations apply specifically to donated food can be confusing and burdensome for food donors and other stakeholders. For example, often food is discarded because it has a flaw in labeling that makes it illegal to offer for sale. However, such food is wholesome, edible, and still safe to consume. As a result, food donors may discard safe food due to uncertainty whether they have met food safety requirements.[96]

To address this, governments should clarify food safety requirements, either directly in relevant food safety laws and regulations or through guidelines and other official supplemental information regarding food safety laws. In most countries, liability protection is linked only to food donations that meet all safety laws, so clear understanding of how those laws apply to donated food is vital. In the United States the USDA Food Safety and Inspection Service published in 2021 detailed "Guidelines to Assist with the Donation of Eligible Meat & Poultry Products to Nonprofit Organizations."[97] The guidelines address issues related to food donation such as products eligible for donation, the labeling of donated products, and the donation of past-date food.[98] In the United Kingdom the Waste and Resources Action Programme (WRAP), the Food Standards Agency (FSA), and the Department for Environment, Food & Rural Affairs (Defra) published donation and redistribution guidance.[99] Similarly, Singapore's National Environment Agency (NEA) issued a report titled *Guidelines on Food Donation* to clarify food safety standards for the procurement, processing, and distribution of donated food.[100] India published Surplus Food Regulations, setting standards for leftover food that may be donated.[101] The Food Safety and Standards Authority of India also launched a Save Food, Share Food website with additional guidance for food donations.[102]

In countries where liability protection is offered, food donors and food recovery organizations are required to comply with relevant food safety laws or regulations in order to be protected. As such, it is imperative that these entities are aware of the applicable food safety laws. Countries should clarify the applicable food safety requirements within food safety laws or regulations or publish guidance to alleviate concerns.

6. ADOPT A DUAL DATE LABELING SCHEME, AND PERMIT FOOD DONATION AFTER THE QUALITY-BASED DATE.

Countries should adopt standardized date labels[103] to simplify understanding of date labels among food donors, food recovery organizations, and consumers. In addition, countries should explicitly permit food donation after the quality-based date as discussed in The Global Food Donation Policy Atlas issue brief "Promoting Food Donation: Date Labeling Law and Policy."[104] It is not always clear to food businesses, consumers, and regulators whether the date label accompanied by language such as "sell by," "expires on," or "best by" relates to quality or food safety. Many food donors interpret date labels affixed to food products as indicators of safety and will

therefore throw away food once the date has passed. Food recovery organizations may also refuse to accept donated food after this date, thinking the food product is unfit for human consumption. In general, date labels are intended to reflect freshness or quality rather than food safety for most foods.

The ***Codex Alimentarius*** endorses a dual date labeling scheme in the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, which provides for only a quality-based or safety-based label.[105] A dual date labeling scheme entails the use of a "best before" label on foods that are labeled to indicate quality and a "use by" or "expiration date" on foods that might increase in food safety risk past the date.[106] While food may be consumed and marketable after the "best before" quality-based date, the "use by" safety-based date is intended to convey the last date on which the product should not be sold or consumed due to safety and quality reasons.[107]

Research for The Global Food Donation Policy Atlas project shows that, in most countries, liability protection laws do not explicitly cover the donation of past-date food or do not clearly indicate whether donation of past-date food will be protected.[108] Countries should adopt policies that expressly permit the sale and donation of food after the quality-based date. If this is already allowed, countries should designate appropriate agencies or departments to issue clarifying guidance to that effect. For example, while it does not offer liability protection for any food donations, the United Kingdom expressly permits food donation past the quality date.[109] In 2020 the United Kingdom published updated guidance on date labels in the context of donation and redistribution.[110] Countries may still restrict the past-date sale or donation of food bearing a safety-based label, as such a label communicates that a food item should be discarded due to risks that increase past the date.[111]

Countries should adopt a dual date labeling scheme and protect the past-date donation of clearly safe food to encourage the donation of surplus food that is safe for human consumption and reduce food waste.

CONCLUSION

Strong liability protection exists when a law provides for comprehensive liability protections—meaning a reduced risk of liability over what is used for normal business operations—for both food donors and food recovery organizations at the national level. Strong liability protection entails:

- Providing protection to both food donors and food recovery organizations or at least to food donors as a start,
- Designating an agency to implement and raise awareness about liability protections or provide guidance on defenses that actors can use to prevent liability,
- Providing protection to organizations charging a nominal fee for donated food,
- Allowing and providing liability protection for direct donations to individuals,
- Clarifying applicable food safety laws that must be met for donated foods to maintain liability protection, and
- Permitting the donation of safe food past the quality-based date.

Such robust and meaningful protections can support greater food donation. This issue brief provides a starting point from which policymakers, private-sector actors, and civil society may engage in a dialogue about FLW prevention and the opportunities to develop liability protection laws to support food donation. Policymakers should consider the multitude of issues and best practices discussed in this brief to encourage the adoption of comprehensive liability protections for food donations.

APPENDIX: SAMPLE LAWS

This section provides excerpts of liability protection legislation for Argentina and the United States—the two best practices to date identified in the Atlas project.

Argentina

English [Unofficial translation]

LAW 25,989 – Special Regime for the Donation of Food

Creates the said Regime with the goal of satisfying the food needs of the most economically vulnerable population.

Sanctioned: December 16, 2004

Partially promulgated: December 29, 2004

The Senate and the Chamber of Deputies of the Nation of Argentina gathered in Congress, etc., sanction with force of Law:

SPECIAL REGIME FOR THE DONATION OF FOOD

Article 1 – The Special Regime for the Donation of Food in Good Condition is hereby created, the purpose of which is to contribute to meeting the food needs of the most economically vulnerable population.

Article 2 – Pursuant to Article 1 of this law, the donation of all food products that comply with the bromatological and food-safety regulations contained in the Argentine Food Code corresponding to the type of product is permitted.

Article 3 – Any physical person or legal entity may donate food products in good condition to public or private institutions of public welfare which are legally incorporated in the country or to human groups or individual persons to be distributed equitably among families or needy population sectors.

Article 4 – Donated products must be distributed with the speed necessary in order to prevent the decomposition or the expiration of the food products and to alleviate the urgent needs of the recipients in the shortest possible time.

Article 5 – Donor companies, when they determine it convenient from a commercial point of view, may remove the product's mark (or brand) so long as they keep the information that identifies the product's description and the expiration date thereof. They must also maintain a control system that specifies:

a) Date and description of the donated food;

b) Donee to whom the products were given;

c) Signature of the receiving authority, date, and stamp of the institution in question.

Article 6 – The donees who receive the products cannot market them under any circumstances or assign them to a different destination other than the one established in Article 3 of the present law.

Article 7 – Monitoring enforcement of the requirements of Article 2 of the present law with respect to the food products will be the responsibility of the respective provincial or municipal health authority, and the national

health authority may intervene for the same purpose.

The authority in charge of monitoring enforcement must keep a Donor Registry which incorporates the control-system report referred to in subparagraphs a), b), and c) of Article 5.

Article 8 – It is forbidden for donees to exploit the donated food products for their own advantage or encourage their improper use to the detriment of merchants and producers.

Article 9 – The good faith of the donor and donee is presumed. From the moment of delivery of the donated item to the donee, in compliance with the conditions required by Article 2, the donor remains free from all liability and will not be civilly or criminally liable for the damages caused by the donated item or the risk thereof, unless it is proven that willful misconduct (or malice) or fault is attributed (or imputable) to the donor, due to actions or omissions prior to delivery of the item.

(Article incorporated by Article 6 of Law N° 27.454 B.O. 29/10/2018)

Article 10 – Communicated to the Executive Power.

GIVEN IN THE SESSION OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE SIXTEENTH DAY OF DECEMBER IN THE YEAR 2004.

—Registered Under N° 25.989—

EDUARDO O. CAMAÑO. — MARCELO A. GUINLE. — Eduardo D. Rollano. — Juan H. Estrada.

Regulatory background:

Article 9 observed by Article 1 of the Decree 2011/2004 B.O. 06/01/2005.

Español

REGIMEN ESPECIAL PARA LA DONACION DE ALIMENTOS - DONAL[112]

Ley 25.989

Créase el mencionado Régimen con el fin de satisfacer las necesidades alimentarias de la población económicamente más vulnerable.

Sancionada: Diciembre 16 de 2004

Promulgada Parcialmente: Diciembre 29 de 2004

El Senado y Cámara de Diputados de la Nación Argentina reunidos en Congreso, etc. sancionan con fuerza de Ley:

REGIMEN ESPECIAL PARA LA DONACION DE ALIMENTOS - DONAL

ARTICULO 1° — Créase el Régimen Especial para la Donación de Alimentos en Buen Estado, el que tendrá por objeto contribuir a satisfacer las necesidades alimentarias de la población económicamente más vulnerable.

ARTICULO 2° — Podrán ser objeto de donación, según el articulo 1° de la presente, todos aquellos

productos alimenticios que cumplan con las exigencias bromatológicas y de inocuidad contenidas en el Código Alimentario Argentino, para el tipo de producto correspondiente.

ARTICULO 3° — Toda persona de existencia física o ideal podrá donar productos alimenticios en buen estado a instituciones públicas o privadas de bien público, legalmente constituidas en el país o a grupos humanos o personas individuales, para ser equitativamente distribuidos entre familias o sectores poblacionales necesitados.

ARTICULO 4° — Los productos donados deberán ser distribuidos con la celeridad necesaria a los efectos de impedir la descomposición o vencimiento de los alimentos y de paliar las urgentes necesidades de los destinatarios en el plazo más breve posible.

ARTICULO 5° — Las empresas donantes de alimentos, cuando lo estimen conveniente desde el punto de vista comercial, podrán suprimir la marca del producto debiendo conservar los datos que identifiquen su descripción y la fecha de vencimiento de los mismos. Además deberán llevar un sistema de control que especifique:
a) Fecha y descripción de los alimentos donados;
b) Donatario al que fueren entregados los productos;
c) Firma de la autoridad receptora, fecha y sello de la institución de que se trate.

ARTICULO 6° — Los donatarios que reciban los productos no podrán comercializarlos bajo ningún motivo ni asignarles un destino diferente al establecido en el artículo 3° de la presente ley.

ARTICULO 7° — La fiscalización del cumplimiento, en los productos alimenticios, de los requerimientos del artículo 2° de la presente ley, estará a cargo de la autoridad sanitaria provincial o municipal, según corresponda, pudiendo concurrir la autoridad sanitaria nacional a los mismos fines.
La autoridad de fiscalización deberá llevar un Registro de donantes al cual se agregará el informe contemplado en los incisos a), b) y c) del artículo 5°.

ARTICULO 8° — Queda prohibido a los donatarios destinar para su aprovechamiento los productos alimenticios donados o propiciar su uso indebido en perjuicio de comerciantes y productores.

ARTICULO 9° — Una vez entregadas al donatario las cosas donadas en las condiciones exigidas por el artículo 2°, el donante queda liberado de responsabilidad por los daños y perjuicios que pudieran producirse con ellas o por el riesgo de las mismas, salvo que se tratare de hechos u omisiones que degeneren en delitos de derecho criminal.

ARTICULO 10° — Comuníquese al Poder Ejecutivo.

DADA EN LA SALA DE SESIONES DEL CONGRESO ARGENTINO, EN BUENOS AIRES, A LOS DIECISEIS DIAS DEL MES DE DICIEMBRE DEL AÑO DOS MIL CUATRO.

— REGISTRADA BAJO EL N° 25.989—

EDUARDO O. CAMAÑO. — MARCELO A. GUINLE. — Eduardo D. Rollano. — Juan H. Estrada.

NOTA: El texto en negrita fue observado.

United States of America

Bill Emerson Good Samaritan Food Donation Act[113]

(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.

(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) 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.

(7) 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.

(8) 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.

(9) 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.

(10) **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.

(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.

(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.

(3) **Exception**

Paragraphs (1) and (2) 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 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 supersede 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.)

ENDNOTES

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3 *Id.* Projections indicate that more than 840 million will be hungry by 2030 if current trends continue.

4 *See* FLPC & Glob. FoodBanking Network [GFN], *The Global Food Donation Policy Atlas*, https://atlas.foodbanking.org/atlas.html (last visited Oct. 22, 2021).

5 The Global Food Donation Policy Atlas was made possible through the funding of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The findings, conclusions, and recommendations presented in this project and issue brief are those of the Harvard Law School Food Law and Policy Clinic. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.

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7 *See* U.N. Environmental Programme [UNEP], UNEP Food Waste Index Report 2021 8 (2021), https://www.unep.org/resources/report/unep-food-waste-index-report-2021; FLPC, Keeping Food Out of the Landfill: Policy Ideas for States and Localities 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf [https://perma.cc/PYS5-AW37].

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9 *Id.*

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20 *See, e.g.*, FLPC, The Global Food Donation Policy Atlas Argentina Legal Guide: Food Donation Law and Policy 1 (2020), https://www.foodbanking.org/wp-content/uploads/2020/06/Argentina-Legal-Guide.pdf [https://perma.cc/X9ER-BY6R] [hereinafter Atlas Argentina Legal Guide]; FLPC, The Global Food Donation Policy Atlas Canada Legal Guide: Food Donation Law and Policy 1 (2020), https://www.foodbanking.org/wp-content/uploads/2020/06/Canada-Legal-Guide.pdf [https://perma.cc/T7T5-87QV] [hereinafter Atlas Canada Legal Guide]; FLPC, The Global Food Donation Policy Atlas Colombia Legal Guide: Food Donation Law and Policy 1 (2020), https://www.foodbanking.org/wp-content/uploads/2021/01/Colombia-Legal-Guide.pdf [https://perma.cc/Y9J3-TM6K]; *see* Seth A. Berkowitz et al., *Food Insecurity and Health Care Expenditures in the United States, 2011–2013*, 53 Health Servs. Rsch. 1600, 1600–01 (June 2018), https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.12730 (last visited Oct. 22, 2021) (finding that food insecurity is associated with preventable yet costly medical problems such as obesity, type 2 diabetes, and hypertension); *see* Haley Swartz, *Visualizing State and County Healthcare Costs of Food Insecurity*, Feeding Am. Hunger & Health Blog (Aug. 5, 2019), https://hungerandhealth.feedingamerica.org/2019/08/visualizing-state-county-healthcare-costs-food-insecurity [https://perma.cc/E9BP-F5LP].

21 *See* David L. Morenhoff, *Lost Food and Liability: The Good Samaritan Food Donation Law Story*, 57 Food Drug L.J. 107, 107 (2002).

22 Canada has not enacted liability protection for food donation at the national level. However, each province, as well as the Northwest Territories and Yukon Territory, has passed laws to protect donor companies and food recovery organizations from civil liability.

23 A food recovery organization can be protected when they donate food to a second intermediary organization, but the final food recovery organization is liable for any harm resulting from the donated food.

[24] *See* Agriculture Improvement Act, H.R. 2, 115th Cong. § 12504(e)(1) (2018); U.S. Dep't of Agric., *Good Samaritan Act Provide Liability Protection for Food Donations*, (Mar. 9, 2021), https://www.usda.gov/media/blog/2020/08/13/good-samaritan-act-provides-liability-protection-food-donations; Harv. Food L. & Pol'y Clinic, *Webinar Review: "Exploring the Role of Liability Protection in Facilitating Increased Food Donation,"* Mar. 15, 2021, https://www.chlpi.org/webinar-review-exploring-the-role-of-liability-protection-in-facilitating-increased-food-donation/.

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[26] See FAO, *supra* note 25.

[27] *See* David L. Morenhoff*, supra* note 21; Legal Fact Sheet: The Bill Emerson Good Samaritan Food Donation Act, Harvard Food Law & Pol'y Clinic, https://www.chlpi.org/wp-content/uploads/2013/12/ Emerson-Act-Legal-Fact-Sheet.pdf.

[28] *Crime,* Black's Law Dictionary (11th ed. 2019). [See definition of "strict liability."]

[29] Consumer Protection Act 68 of 2008 § 61 (S. Afr.)

[30] Consumer Protection Act 1987 c. 43 §§1–3 (U.K.).

[31] *See* Neal D. Fortin, Food Regulation: Law, Science, Policy, and Practice 606–07 (2009). *See also* Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 7 (Am. Law Inst. 2005).; Restatement (Second) of Torts § 402A (Am. Law Inst. 1964); 63 Am. Jur. 2d *Products Liability* §§ 506, 515 (2019) (noting that Delaware, Virginia, Massachusetts, Michigan, and North Carolina have rejected strict liability). A consumer harmed by foodborne illness may also sue under a contractual claim of breach of implied warranty, which is largely analogous to a strict liability claim. See U.C.C. §§ 2-314, 2-315 (Am. Law Inst. & Nat'l Conference of Comm'rs on Unif. State Laws 2012); Neal D. Fortin, Food Regulation: Law, Science, Policy, and Practice 608 (2009).

[32] *Negligence*, Black's Law Dictionary (11th ed. 2019) (Defining negligence as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of others' rights.")

[33] The Global Food Donation Policy Atlas, Chile Legal Guide: Food Donation Law and Policy 6 (2021), https://www.foodbanking.org/wp-content/uploads/2021/03/Chile-Legal-Guide.pdf.

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[35] The Global Food Donation Policy Atlas, Dominican Republic Legal Guide: Food Donation Law and Policy 9 (2021), https://www.foodbanking.org/wp-content/uploads/2021/03/Dominican-Republic-Legal-Guide-v2.pdf. Note, however, that the Food Waste Bill would provide such protection. *Id.* at 10.

[36] The Global Food Donation Policy Atlas, Guatemala Legal Guide: Food Donation Law and Policy 9–10 (2021), https://www.foodbanking.org/wp-content/uploads/2021/03/Guatemala-Legal-Guide-V2.pdf.

[37] The Global Food Donation Policy Atlas, India Legal Guide: Food Donation Law and Policy 9 (2021), https://www.foodbanking.org/wp-content/uploads/2020/06/india-legal-guide.pdf.

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[41] L. 1990/2019, agosto 2, 2019, art. 18, Diario Oficial [D.O.] (Colom.).

[42] *See* Assaf Jacob, Alon Klement & Yuval Procaccia, *In-Kind Transfers and the Law of Torts* 47, J. of Legal Stud., (2018).

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[45] *Id;* Harv. Food L. & Pol'y Clinic, *Webinar Review, supra* note 24.

[46] *See* David L. Morenhoff*, supra* note 21.

[47] *See* 42 U.S.C.A. § 1791(b)(9), 42 U.S.C.A. § 1791 (6). Under the Emerson Act "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.; The Global Food Donation Atlas, United States Legal Guide: Food Donation and Policy 4 (June 2021), https://www.foodbanking.org/wp-content/uploads/2020/06/USA-Legal-Guide.pdf (citing 42 U.S.C.A. § 1791).

[48] *Id.* at § 1791.

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[50] *See* National Plan for the Reduction of Food Loss and Waste, Art. 6 (Law No. 27454) amending Food Donation Law, Art. 9 (Law No. 25989) (Arg.).

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[61] 42 U.S.C.A. § 1791.
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[66] *Id.*
[67] *See Chain of custody*, Black's Law Dictionary (11th ed. 2019) [Defining chain of custody]; The Global Food Donation Policy Atlas, India Recommendations: Food Donation Law & Policy, 9 Legal Guide, https://www.foodbanking.org/wp-content/uploads/2020/06/India-Recommendations.pdf
[68] L. 1990/2019, agosto 2, 2019, art. 18, Diario Oficial [D.O.] (Colom.).
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[70] *See* General Health Law, art. 199-bis.
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[72] *Id.*
[73] The Global Food Donation Policy Atlas, Peru Legal Guide Food Donation Law and Policy 10, https://www.foodbanking.org/wp-content/uploads/2021/01/Peru-Legal-Guide.pdf
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[80] *See* L. 1190/2019, *supra* note 41; *FAO in Colombia: Programs in Colombia*, Food & Agric. Org. of the U.N. (2019), http://www.fao.org/colombia/programas-y-proyectos/programa/en.
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[82] *See, e.g.*, Jay Rayner, *The rise of social supermarkets: 'It's not about selling cheap food, but building strong communities'*, The Guardian, May 19, 2019, https://www.theguardian.com/society/2019/may/19/social-supermarkets-food-poverty-jay-rayner.
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[84] Fusions EU, Advancing Social Supermarkets Across Europe 30, 34 (2015), http://www.eu-fusions.org/phocadownload/feasibility-studies/Supermarkets/Advancing%20social%20supermarkets%20report.pdf.
[85] *Id. at* 2.
[86] See, e.g., Mass. Gen. Laws ch. 94 § 328 (West 2016); Or. Rev. Stat. Ann. § 30.890 (West 2016); European Commission*, supra* note 83. (Under the scope, social supermarkets are recognized as one of the entities that may engage in food redistribution, as long as they are involved in nonprofit activities.)
[87] Or. Rev. Stat. § 30.980 (1989).
[88] N.H. Rev. Stat. § 508:15 (II).
[89] See Mich. Comp. Laws Ann. § 691.1573 (1) 1993.
[90] Mass. Gen. Laws ch. 94, § 328.
[91] 42 U.S.C.A. § 1791 (b)(3).
[92] *See*, e.g., 42 U.S.C. § 1791.
[93] *See* 42 U.S.C.A. § 1791(c)(1); U.S. Dep't of Agric., *supra* note 76.
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[95] N.H. Rev. Stat. § 508:15 (II).
[96] *See* generally, the Global Food Donation Policy Atlas, *supra* note 4.
[97] U.S. Dep't of Agric., FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Nonprofit Organizations December 2020, https://www.fsis.usda.gov/sites/default/files/media_file/2021-01/FSIS-Guideline-Food-Donation.pdf.
[98] *Id.*

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[108] *See* generally, the Global Food Donation Policy Atlas, *supra* note 4.

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[112] Food Donation Law (Law. No.25989) (Arg.).

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