

**SENATE . . . . . No. 838**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Eileen M. Donoghue***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

**An Act encouraging the donation of food to persons in need.**

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Eileen M. Donoghue</i>	<i>First Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2017</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>1/25/2017</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/30/2017</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/31/2017</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>	<i>2/1/2017</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>	<i>2/1/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/2/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/2/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>2/2/2017</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>2/3/2017</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/3/2017</i>
<i>Keiko M. Orrall</i>	<i>12th Bristol</i>	<i>2/3/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/3/2017</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>2/3/2017</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/3/2017</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>2/3/2017</i>



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By Ms. Donoghue, a petition (accompanied by bill, Senate, No. 838) of Eileen M. Donoghue, Jason M. Lewis, James R. Miceli, John W. Scibak and other members of the General Court for legislation to encourage the donation of food to persons in need. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act encouraging the donation of food to persons in need.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 328 of chapter 94 of the General Laws, as appearing in the 2014  
2 Official Edition, is hereby amended by striking out the first paragraph and inserting in place  
3 thereof the following paragraph:-

4 “No person who donates food, including open-dated food whose date has passed, to a  
5 nonprofit corporation for distribution or serving by such nonprofit corporation without charge or  
6 at a charge sufficient only to cover the cost of handling such food, or to any other person, shall  
7 be liable for civil damages for any injury arising out of the condition of such food; provided,  
8 however, that at the time of donation such food is not misbranded and is not adulterated and has  
9 not been manufactured, processed, prepared, handled or stored in violation of applicable  
10 regulations of the department of public health; and provided, further, that such injury is not the  
11 result of gross negligence, recklessness or intentional misconduct of the donor or any person  
12 employed by or under the control of the donor.”

13 SECTION 2. Section 328 of chapter 94 of the General Laws, as appearing in the 2014  
14 Official Edition, is hereby amended by inserting after the third paragraph the following  
15 paragraph:-

16 “No food establishment, as defined in 105 CMR 590 et seq., which distributes or serves  
17 food without charge or at a charge sufficient only to cover the cost of handling such food,  
18 including open-dated food whose date has passed, shall be liable for civil damages for any injury  
19 arising out of the condition of such food; provided, however, that at the time of distribution or  
20 serving such food is not misbranded or adulterated or has not been manufactured, processed,  
21 prepared, handled or stored in violation of applicable regulations of the department of public  
22 health, and provided, further, that such injury is not the result of gross negligence, recklessness  
23 or intentional misconduct of the nonprofit corporation or any person employed by or under the  
24 control of the nonprofit corporation.”

25 SECTION 3. Chapter 63 of the General Laws, as appearing in the 2014 Official Edition,  
26 is hereby amended by inserting after section 38FF the following section:-

27 Section 38GG. (a) As used in this section, the following words shall, unless the context  
28 clearly requires otherwise, have the following meanings:

29 “Food crops”, grains, fruits, nuts, or vegetables.

30 “Nonprofit food distribution organization”, means an entity located in the commonwealth  
31 that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as amended  
32 or renumbered, and organized with a principal purpose of providing food to the needy or selling  
33 food at a charge sufficient only to cover the cost of handling such food.

34 (2) For taxable years beginning on or after January 1, 2018, but before January 1, 2024,  
35 any business corporation engaged in the business of farming as defined under 26 C.F.R 1.175-3  
36 that donates food crops grown by the business corporation in the commonwealth to a nonprofit  
37 food distribution organization shall be allowed a deduction from its net taxable income for the  
38 taxable year of the donation. The business corporation shall be allowed a deduction in an amount  
39 equal to the fair market value of such food crops donated by the business corporation to a  
40 nonprofit food distribution organization during the taxable year but not to exceed an aggregate  
41 deduction of \$2,000 for all such donations made by the business corporation during such year.

42 (3) A deduction shall be allowed under this section only if (i) the use of the donated food  
43 crops by the donee nonprofit food distribution organization is related to providing food to the  
44 needy, (ii) the donated food crops are not transferred for use outside the commonwealth or used  
45 by the donee nonprofit food distribution organization as consideration for services performed or  
46 personal property purchased, and (iii) the donated food crops, if sold by the donee nonprofit food  
47 distribution organization, are sold at a charge sufficient only to cover the cost of handling such  
48 food.

49 (4) In order to claim any deduction under this section, the business corporation making  
50 the donation shall attach to the business's income tax return a written certification prepared by  
51 the donee nonprofit food distribution organization. The written certification prepared by the  
52 donee nonprofit food distribution organization shall identify the donee nonprofit food  
53 distribution organization, the business corporation donating food crops to it, the date of the  
54 donation, the number of pounds of food crops donated, and the fair market value of the food  
55 crops donated. The certification shall also include a statement by the donee nonprofit food

56 distribution organization that its use and disposition of the food crops complies with the  
57 requirements under paragraph 3.

58 (6) Deductions claimed by a partnership shall be allocated to the individual partners in  
59 proportion to their ownership or interest in such business entity.

60 (7) The commissioner shall develop guidelines implementing the provisions of this  
61 section.