

HOUSE No. 4982

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, August 5, 2024.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 920) of Joanne M. Comerford, Mindy Domb, Susan Williams Gifford, Hannah Kane and other members of the General Court for legislation to encourage the donation of food to persons in need, the petition (accompanied by bill, Senate, No. 1016) of Edward J. Kennedy for legislation to encourage the donation of food to persons in need, and the petition (accompanied by bill, House, No. 1594) of Hannah Kane and others relative to liability for civil damages for injuries related to the donation of food to persons in need, reports recommending that the accompanying bill (House, No. 4982) ought to pass.

For the committee,

MICHAEL S. DAY.

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The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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. Chapter 63 of the General Laws is hereby amended by inserting after
2 section 38MM the following section:-

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

5 “Food business”, any entity located in the commonwealth that is engaged in the business
6 of farming as defined under section 1A of chapter 128 or meets the definition of a restaurant
7 under section 1 of chapter 138 or meets the definition of a food department or food store as both
8 are defined under section 184B of chapter 94.

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

13 (b) A food business, that donates food, meals or crops grown, manufactured, packaged or
14 prepared by the food business in the commonwealth to a nonprofit food distribution organization
15 shall be allowed a non-refundable credit from its net taxable income for the taxable year of the
16 donation. The credit shall be equal to the fair market value of the food, meals or crops donated
17 by the business during the taxable year but not to exceed an aggregate credit of \$25,000
18 annually.

19 (c) A credit shall be allowed under this section only if the donated food, meals or crops
20 are distributed or served by the donee nonprofit food distribution organization without charge or
21 at a charge sufficient only to cover the cost of handling such food; and are not (i) transferred for
22 use outside the commonwealth; (ii) used by the donee nonprofit food distribution organization as
23 consideration for services performed or personal property purchased; or (iii) sold by the donee
24 nonprofit food distribution organization at a charge in excess of the organization's cost of
25 handling the food, meals or crops.

26 (d) In order to claim any credit under this section, the donor business shall attach to the
27 business's income tax return a written certification prepared by the donee nonprofit food
28 distribution organization. The written certification prepared by the donee organization shall
29 identify the donee nonprofit food distribution organization, the business donating food, the date
30 of the donation, the number of pounds of food donated, and the fair market value of the food
31 donated. The certification shall also include a statement by the donee nonprofit food distribution
32 organization that its use and disposition of the food complies with the requirements under this
33 section.

34 (e) The commissioner shall promulgate regulations necessary for the implementation,
35 administration and enforcement of this section.

36 SECTION 2. Chapter 94 of the General Laws is hereby amended by striking section 328
37 and inserting in place thereof the following section:-

38 Section 328. (a) No person or any entity engaged in the business of farming as defined
39 under section 1A of chapter 128 or restaurant as defined under section 1 of chapter 138 or food
40 department or food store as both are defined under section 184B of chapter 94, who donates
41 food, including open-dated food whose date has passed, but not including alcoholic beverages,
42 marijuana products or dietary supplements, to either: (i) a nonprofit corporation for distribution
43 or serving by such nonprofit corporation without charge or at a charge sufficient only to cover
44 the cost of handling such food, or; (ii) any other person for consumption by that person, shall be
45 liable for civil damages for any injury arising out of the condition of such food.

46 (b) No nonprofit corporation which distributes or serves food donated pursuant to this
47 section without charge or at a charge sufficient only to cover the cost of handling such food,
48 including open-dated food whose date has passed, shall be liable for civil damages for any injury
49 arising out of the condition of such food. No food department or food store, as both are defined
50 in section 184B of chapter 94, which distributes or serves food, not including alcoholic
51 beverages, marijuana products or dietary supplements, without charge or at a charge sufficient
52 only to cover the cost of handling such food, including open-dated food whose date has passed,
53 shall be liable for civil damages for any injury arising out of the condition of such food. Any
54 such nonprofit corporation, food department or food store distributing or serving food under this
55 section must remain in compliance with all inspection or permit requirements of the department

56 of public health and the board of health in the city or town where the food is distributed or
57 served. No fee shall be required for any permit needed solely for the distribution or service of
58 food pursuant to this section.

59 (c) No license shall be required for the preparation of food in private homes for donation
60 to a nonprofit corporation for distribution or serving by such corporation without charge or at a
61 charge sufficient to cover the cost of handling such food. The department of public health shall
62 promulgate regulations relative to this section and shall provide advisory guidelines and
63 interpretations for the safe and sanitary preparation, handling, storage, distribution and service of
64 such food.

65 (d) This section shall not apply if the donated, distributed or served food: (i) is
66 misbranded or adulterated; (ii) was manufactured, processed, prepared, handled or stored in
67 violation of regulations of the department of public health; or (iii) causes an injury arising out of
68 the food's condition that is the result of gross negligence, recklessness or intentional misconduct
69 of the donating, distributing or serving person or entity or any person employed by or under the
70 control of the same.