

# SENATE . . . . . No. 1016

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Edward J. Kennedy*

*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>Edward J. Kennedy</i>	<i>First Middlesex</i>	
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/14/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>6/29/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>7/10/2023</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>7/26/2023</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>7/26/2023</i>

# SENATE . . . . . No. 1016

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By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 1016) of Edward J. Kennedy for legislation to encourage the donation of food to persons in need. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1063 OF 2021-2022.]

## 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. Section 328 of Chapter 94 of the General Laws, as appearing in the 2020  
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 2020 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

or renumbered, and organized with a principal purpose of providing food to the needy or selling food at a charge sufficient only to cover the cost of handling such food.

(2) For taxable years beginning on or after January 1, 2024, but before January 1, 2030, any business corporation engaged in the business of farming as defined under 26 C.F.R 1.175-3 that donates food crops grown by the business corporation in the commonwealth to a nonprofit food distribution organization shall be allowed a deduction from its net taxable income for the taxable year of the donation. The business corporation shall be allowed a deduction in an amount equal to the fair market value of such food crops donated by the business corporation to a nonprofit food distribution organization during the taxable year but not to exceed an aggregate deduction of \$2,000 for all such donations made by the business corporation during such year.

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

(4) In order to claim any deduction under this section, the business corporation making the donation shall attach to the business's income tax return a written certification prepared by the donee nonprofit food distribution organization. The written certification prepared by the donee nonprofit food distribution organization shall identify the donee nonprofit food 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.