SENATE DOCKET, NO. 263   FILED ON: 1/12/2023

SENATE . . . . No. 920

The Commonwealth of Massachusetts

PRESENTED BY:

Joanne M. Comerford

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:	
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	
Mindy Domb	*3rd Hampshire*	*1/18/2023*
Susan Williams Gifford	*2nd Plymouth*	*1/27/2023*
Hannah Kane	*11th Worcester*	*1/27/2023*
Michael O. Moore	*Second Worcester*	*2/2/2023*
Anne M. Gobi	*Worcester and Hampshire*	*2/6/2023*
Thomas M. Stanley	*9th Middlesex*	*2/8/2023*
Vanna Howard	*17th Middlesex*	*2/15/2023*
Brian M. Ashe	*2nd Hampden*	*2/15/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/20/2023*
Adam Gomez	*Hampden*	*2/21/2023*
Walter F. Timilty	*Norfolk, Plymouth and Bristol*	*2/21/2023*
Sal N. DiDomenico	*Middlesex and Suffolk*	*3/10/2023*
Joan B. Lovely	*Second Essex*	*4/12/2023*
Julian Cyr	*Cape and Islands*	*7/21/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*7/21/2023*

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By Ms. Comerford, a 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 Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *954* 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:

SECTION 1. Section 328 of chapter 94 of the General Laws is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

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

SECTION 2. Said section 328 of said chapter 94 is hereby further amended by inserting after the third paragraph the following paragraph:-

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

SECTION 3. Chapter 63 of the General Laws is hereby amended by inserting after section 38HH the following section:-

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

“Food crops”, grains, fruits, nuts, vegetables, meat, dairy, or seafood.

“Nonprofit food distribution organization”, means an entity located in the commonwealth 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, 2034, any business corporation engaged in the business of farming as defined under section 1A of chapter 128, or any restaurant or similar retail food establishment as defined under subsection (h) of section 6 of chapter 64H, that donates food crops grown by the business corporation in the commonwealth or meals prepared for human consumption to a nonprofit food distribution organization shall be allowed a non-refundable credit from its net taxable income for the taxable year of the donation. The business corporation shall be allowed a credit 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 credit of $5,000 for all such donations made by the business corporation during such year.

(3) A credit 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 credit 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 donation, the number of pounds of food crops donated, and the fair market value of the food crops donated. The certification shall also include a statement by the donee nonprofit food distribution organization that its use and disposition of the food crops complies with the requirements under paragraph 3.

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

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