



Two recent developments at the federal level are intended to encourage more food donations. First, President Biden [signed](#) the Food Donation Improvement Act (FDIA), which expands [Good Samaritan liability](#) protections. Second, the U.S. Food and Drug Administration (FDA) [announced](#) its 2022 Food Code, which clarifies that food in compliance with applicable law may be offered for donations.

### **Addressing Food Waste and Hunger**

Food donations tackle the dual issues of food waste and hunger. An estimated [30% to 40%](#) of the nation's food supply goes to waste every year. According to the FDA, wasted food is the single largest category of material in municipal landfills. Meanwhile, unused food represents nourishment that could have gone to feed those in need. The FDA's action was taken as part of the Biden administration's [National Strategy on Hunger, Nutrition, and Health](#), which provides a set of actions the federal government is taking to address diet-related disease and hunger.

## **New Federal Law Encouraging Food Donation**

President Biden recently signed the FDIA, a bipartisan measure to encourage food donations. Food donations are already subject to liability protections under the 1996 Bill Emerson Good Samaritan Food Donation Act, 42 USC § 1791. This existing law is critical for individuals and nonprofit organizations that donate food, as it protects these entities from civil or criminal liability arising from the donation of apparently wholesome food in good faith, absent gross negligence or intentional misconduct.

The new FDIA law expands liability protections available to food donors in two ways. First, the law provides liability protections for retail grocers, wholesalers, agricultural producers, agricultural processors and distributors, restaurants, caterers, school food authorities, and institutions of higher education that donate surplus food directly to needy individuals. The 1996 law previously applied these liability protections to food donations through intermediary nonprofit organizations.

Second, the FDIA allows for liability protections when the donated food is sold at a reduced price no greater than the cost of handling, administering, and distributing the food. This new provision expands the 1996 liability protections, which were previously available only to those providing the surplus food for free.

Both these provisions are intended to incentivize food donation rather than allowing usable food to go to landfills or compost facilities. According to [one commentator](#), the FDIA was designed to overcome barriers that have led to the waste of staggering amounts of usable food and to "ease the burden of liability so that qualified private donors that already have safety checks in place aren't held legally responsible for food quality or spoilage."

Sen. Richard Blumenthal (D-Conn.), a proponent of the bill, [stated](#) that the FDIA aimed to "eliminate legal roadblocks that discourage food donations by restaurants, retailers, and others." Rep. Jim McGovern (D-Mass.) [noted](#) that the FDIA "has a simple goal: Make it easier for people with extra food to donate it to people in need," as the bill expands "protections to increase the quantity and efficiency of food donation efforts."

## **Changes to the FDA Food Code**

The [FDA Food Code](#) is a nonbinding set of model regulations issued by the FDA. The FDA updates the Food Code periodically, typically every four years. The agency released the 2022 Food Code on December 28, 2022.

The FDA calls the Food Code the agency's "best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service." The model Food Code is not binding unless and until it is adopted by a state or local government as part of that jurisdiction's law governing retail food establishments. According to the FDA, as of 2021, 49 of the 50 states have adopted some version of the FDA Food Code in whole or in part, ranging from the 1995 to the 2017 versions. California, the sole outlier, does not have a state agency that has adopted the FDA Food Code and maintains its own [California Retail Food Code](#).

In the latest edition of the FDA Food Code, the agency clarified for the first time that food donations from retail food establishments are acceptable as long as proper food safety practices are followed. The FDA also noted that the agency encourages donation of food that is stored, prepared, packaged, displayed, and labeled according to applicable provisions contained in the Food Code or local, state, and federal statutes, regulations, and ordinances. According to the FDA, "donation of food within communities is a long standing and important societal practice and is a critical component of reducing food loss and waste." By clarifying these standards, the agency aims to "reduce barriers to food donations."

## Takeaways

The newly passed FDIA statute and recently updated FDA Food Code provide new protections for those looking to donate food. Together, these new provisions give individuals and organizations further incentive to donate unused food rather than dispose of it.

© 2023 Perkins Coie LLP

## Authors



### [Lawrence Reichman](#)

Partner

[LReichman@perkinscoie.com](mailto:LReichman@perkinscoie.com) [503.727.2019](tel:503.727.2019)



## **Thomas (Tommy) Tobin**

Counsel

[TTobin@perkinscoie.com](mailto:TTobin@perkinscoie.com) [206.359.3157](tel:206.359.3157)

### **Explore more in**

[Food & Beverage](#) [Food & Consumer Packaged Goods Litigation](#)

### **Related insights**

Update

#### **FERC Meeting Agenda Summaries for October 2024**

Update

#### **New White House Requirements for Government Procurement of AI Technologies: Key Considerations for Contractors**