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Food Donation Liability in Kansas

A Guide for Donors and Distributors

Many families in the United States, and in Kansas, struggle with hunger and lack reliable access to nutritious food (this is known as “food insecurity”). In Kansas, it is estimated that almost 450,000 Kansans representing 183,000 households, or almost one out of every six households were food-insecure at least once in 2013.¹ Meanwhile, studies show that each year, more than 100 billion pounds of food,² or forty percent of food goes uneaten in the United States.³ Donating nutritious food to families in need diverts unused food from landfills⁴ and assists in reducing hunger and food insecurity in Kansas.

The purpose of this fact sheet is to explain the laws governing food donation in Kansas. Readers are encouraged to use this document in tandem with another Public Health Law Center resource on the national food donation law, [*Liability Protection for Food Donation*](#), for additional information about the federal food donation law.

Why don't more people donate food?

Potential food donors may be reluctant to donate unused food to the needy for a variety of reasons. Some may fear liability for an illness or injury caused by someone eating the donated food⁵ or



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This fact sheet explains:

- How to limit food donation liability under federal and Kansas law.
- How federal and Kansas law interact.
- How to understand Kansas' food date labels.
- How to find other relevant resources on food donation in Kansas.





have mistaken beliefs about the edibility of expired foods.⁶ Others may simply not know the channels through which food can be legally donated. This fact sheet will briefly address each of these issues in turn.

Are there laws that protect food donors from potential liability from injuries caused by donated food?

Yes. In 1977, states began passing laws that protected donors from potential liability from injuries caused by donated food, also known as “Good Samaritan” laws.⁷ Both the federal government and the state of Kansas have passed such laws.⁸ This guide will provide an overview of both the Kansas and federal Good Samaritan food donation laws.

What is liability?

In the law, to be held “liable” for something means to be held legally responsible for an injury that one’s action or inaction caused.⁹ A person can be found

liable under civil or criminal laws. This resource will primarily focus on civil liability. Typically, to be held civilly liable for someone else’s injuries, the injured person must prove that:

- 1 A legal responsibility (a “duty of care”) exists to protect others from harm;
- 2 Someone failed to meet (“breached”) the duty of care;
- 3 An individual is injured (“damaged”) in some way; and
- 4 The damage was caused by that breach in the duty of care (“causation”).

Some people or organizations may be afraid to donate food because they are afraid that they will be held liable if someone gets sick or is injured by eating it. For more information about civil liability, visit the Public Health Law Center’s [liability webpage](#).

Kansas Food Donation Laws

How does the Kansas law address liability protection for food donations?

Under Kansas law, both food donors and the not-for-profit organizations or charities that receive and distribute food (referred to here as “donee[s]”) are protected from criminal and civil liability for injuries that result from “the condition of” donated food.¹⁰ This liability protection applies unless the injury from the donated food is a direct result of a certain type of wrongful behavior, defined as “willful, wanton, malicious or intentional misconduct,” on the part of the donating or receiving organization.¹¹

Who does the Kansas law protect?

The Kansas law protects both “good faith donor[s]” and the organizations that receive and distribute donated food (“donee[s]”), including “bona fide charitable or not for profit organization[s].”¹² The expressions “bona fide” and “good faith” are generally viewed as synonymous terms, meaning “without fraud or deceit,” or “sincere [and] genuine.”¹³

What does “willful, wanton, malicious or intentional misconduct” mean?

These terms are not defined directly in the Kansas statute, but a general legal definition of “willful and wanton misconduct” is “conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger.”¹⁴

What types of food can be donated under the Kansas law?

The Kansas law covers both foods that have a long shelf life (“canned”)¹⁵ and foods that are only edible for a short time (“perishable”).¹⁶ (See Table 1 on page 5 for legal definitions.)

FIGURE 1: Acceptable Food Donation Practice under Kansas Law¹⁷



* For a food donation to be protected under the Kansas food donation law, the food must meet food quality standards and be fit for consumption.

Federal Food Donation Law

How does the federal law address liability protection for food donations?

As is the case with the Kansas law, the federal Bill Emerson Good Samaritan Food Donation Act (Good Samaritan Act) generally protects donors and donees from liability for injuries that come from donated food.¹⁸ Under this federal law, donors and donees can still be held liable when such injuries are related to their own “gross negligence or intentional misconduct.”¹⁹

Whom does the federal law protect?

The federal law protects both donors and donees, just like the Kansas food donation statute.²⁰ Under federal law, however, donors are described as “persons,” which can include individuals and some larger organizations,²¹ as well as “gleaners.”²²

Donees, on the other hand, are classified as “nonprofit organizations.”²³ More complete definitions of each of these terms are available in Table 1 on page 5.

GLEANER

A person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.²⁴

No food establishment license required for some food pantries and soup kitchens in Kansas

Under Kansas law, an individual must have a license to operate a food establishment.²⁵ However, Kansas law has exempted nonprofit food donation distributors from obtaining a license (such as soup kitchens).²⁶

FIGURE 2: Acceptable Food Donation Practice under Federal Law²⁷



* For a food donation to be protected under the Federal food donation law, the food or grocery products must meet food quality and labeling standards.

What type of food is covered under the federal law?

In addition to general “food” products,²⁸ inedible household products (“grocery products”), such as plastic utensils, are also covered under the federal law.²⁹ (See table below for definitions.)

How does the federal law impact the Kansas food donation law?

According to the U.S. Department of Justice, the federal food donation law trumps state laws that have a lower liability protection standard.³⁰ However, states may offer donors and donees more protection than the federal government allows.

The federal law has established its liability protection ceiling at “gross negligence or intentional misconduct.”³¹ This means that organizations that behave in a way that they know will likely harm

someone else could be held liable under the federal law.³² In contrast, the Kansas law protects donors and donees unless they are engaged in “willful, wanton, malicious or intentional misconduct.”³³ The use of this strong language in the Kansas law might provide greater protection to donors and donees, but this distinction as applied to the Kansas donation liability has not yet been interpreted by Kansas courts.

Other federal or state laws may also be relevant to food donation in certain situations. For example, federal law allows schools that participate in the federal school lunch program to donate food to charities and food banks that have 501(c)(3) tax exempt status.³⁴ In addition, federal law grants liability protection to contractors working with executive agencies involved in food donation.³⁵

TABLE 1: Comparing Food Donation Liability Protection under Kansas and Federal Law		
Who the law protects	Kansas	<p>Donor: “Good faith donor.”³⁶</p> <p>Donee: “Bona fide charitable or not for profit organization[s].”³⁷</p>
	Federal	<p>Donor:³⁸</p> <ul style="list-style-type: none"> ■ Person: “an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member, or other elected or appointed individual responsible for the governance of the entity.”³⁹ ■ Gleaner: “a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.”⁴⁰ <p>Donee: “Nonprofit organization,” which is “an incorporated or unincorporated entity that (A) is operating for religious, charitable, or educational purposes; and (B) does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.”⁴¹</p>

(continued)

TABLE 1: Comparing Food Donation Liability Protection under Kansas and Federal Law (continued)

Type of product protected	Kansas	<p>Canned food: “any food commercially processed and prepared for human consumption.”⁴²</p> <p>Perishable food: “any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.”⁴³</p>
	Federal	<p>Food: “any raw, cooked, processed, or prepared edible substance, ice, beverage or ingredient used or intended for use in whole or in part for human consumption.”⁴⁴</p> <p>Grocery product: “a nonfood grocery product including a disposable paper or plastic product, household cleaning product, or miscellaneous household item.”⁴⁵</p>
Food quality standard	Kansas	<p>When donation accepted by donee: must comply with the Kansas Food Code and other food safety laws.⁴⁶</p> <p>When ultimately distributed: “fit for human consumption.”⁴⁷</p>
	Federal	<p>Apparently fit grocery product: “a grocery product that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”⁴⁸</p> <p>Apparently wholesome food: “food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”⁴⁹</p> <p>(See discussion on page 7 regarding impact of food date labeling on food donations.)</p>
Type of liability	Kansas	Protects against civil and criminal liability ⁵⁰
	Federal	Protects against civil and criminal liability ⁵¹
Liability threshold	Kansas	<p>“[U]nless ... injury or death is a direct result of ... willful, wanton, malicious or intentional misconduct”⁵²</p> <p>Kansas law does not define “willful, wanton, malicious or intentional misconduct” as applied to food donation.</p>
	Federal	<p>Gross negligence: “voluntary and conscious conduct (including a failure to act) by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person”⁵³ or</p> <p>Intentional misconduct: “conduct by a person with knowledge (at the time of the conduct) that the conduct is harmful to the health or well-being of another person”⁵⁴</p>

What do date labels on food and food packaging mean for food donations?

In the United States, it is not uncommon to see food items with a “sell by” or “best before” date label. While those dates may help a store determine how long to display a certain food product, those dates do not necessarily have a scientific or legal relationship to the edibility of the food product in question.⁵⁵ Likewise, date labels stamped on food items often do not reflect any legal restrictions against donating or selling foods past the date stamped on the food. This means that many food items past their sold or eaten by date are still safe for consumption and donation and do not break any food safety laws at either the state or federal level.

Who regulates date labels on food and food products?

In the United States, a few food products, such as baby formula and some food additives, are required by federal law to have a date label.⁵⁶ However, food labeling requirements are also created by state governments.⁵⁷ As a result, many state governments have determined different schemes for labeling dates — some states do not require the use of date labeling at all, while other states have only required certain food products to have date labels.⁵⁸ Therefore, there is no single standard for determining a date label.⁵⁹

How does Kansas state law regulate the labeling of dates on food?

Kansas state law regulates date labels on very few food items. Under Kansas law, eggs must be labeled with an expiration, sell by, or use by date.⁶⁰ Kansas law also regulates expiration date labels of certain other non-food products, including dietary supplements such as Amygdalin products, also called Laetrile or Vitamin B17.⁶¹ However, there is no Kansas law prohibiting the donation of food that has gone past its expiration date. In fact, Kansas law specifically extends liability protection to good faith donors even if the donated food is “not readily marketable due to appearance [or] freshness.”⁶²

For more information on date labeling of food, see [*The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*](#), a report produced by the Harvard Food and Policy Clinic and the Natural Resources Defense Council.

Donating unused food to families in need is an effective means of addressing hunger and food insecurity in Kansas. Thanks to state and federal “Good Samaritan” laws, food donors and donees in Kansas are protected from liability in their good faith efforts to donate food so that more families in Kansas can have reliable access to wholesome food.

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Endnotes

- ¹ BARBARA J. LACLAIR ET AL., KANSAS HEALTH INSTITUTE, FOOD INSECURITY IN KANSAS: TECHNICAL REPORT 1 (2015), http://www.khi.org/assets/uploads/news/14013/hungerinsecurity_jt_nov15_final.pdf.
- ² U.S. DEP'T OF AGRIC., LET'S GLEAN! UNITED WE SERVE TOOLKIT 2 (2010), http://www.usda.gov/documents/usda_gleaning_toolkit.pdf.
- ³ DANA GUNDERS, NATURAL RESOURCES DEFENSE COUNCIL, WASTED: HOW AMERICA IS LOSING UP TO 40 PERCENT OF ITS FOOD FROM FARM TO FORK TO LANDFILL 4 (2012), <https://www.nrdc.org/sites/default/files/wasted-food-IP.pdf>.
- ⁴ U.S. DEP'T OF AGRIC., *Recovery/Donations*, <http://www.usda.gov/oce/foodwaste/resources/donations.htm> (last visited June 16, 2016).
- ⁵ See David. L. Morenoff, *Lost Food and Liability: The Good Samaritan Food Donation Law Story*, 57 FOOD & DRUG L.J. 107, 2002, at 116-17.
- ⁶ Emily Broad Leib et al., *The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*, 2013 HARVARD FOOD L. & POL'Y CLINIC & NAT'L RESOURCES DEFENSE COUNCIL 1, 17-19.
- ⁷ Morenoff, *supra* note 5, at 108.
- ⁸ *Id.*
- ⁹ *Liability*, PUBLIC HEALTH LAW CENTER, <http://publichealthlawcenter.org/topics/healthy-eating/liability> (last visited June 3, 2016).
- ¹⁰ KAN. STAT. ANN. § 65-687(b)-(c) (2016).
- ¹¹ KAN. STAT. ANN. § 65-687(b)-(c) (2016).
- ¹² KAN. STAT. ANN. § 65-687(b)-(c).
- ¹³ BLACK'S LAW DICTIONARY (10th ed. 2014) (under "bona fide").
- ¹⁴ BLACK'S LAW DICTIONARY (10th ed. 2014) (under "misconduct").
- ¹⁵ KAN. STAT. ANN. § 65-687(a)(1), (b).
- ¹⁶ KAN. STAT. ANN. § 65-687(a)(1-2), (b).
- ¹⁷ KAN. STAT. ANN. § 65-687.
- ¹⁸ 42 U.S.C. § 1791 (2016).
- ¹⁹ 42 U.S.C. § 1791(c)(3).
- ²⁰ 42 U.S.C. § 1791(c)(1)-(2).
- ²¹ 42 U.S.C. § 1791(b)(10).
- ²² 42 U.S.C. § 1791(b)(5).
- ²³ 42 U.S.C. § 1791(c)(2).
- ²⁴ 42 U.S.C. § 1791(b)(5).
- ²⁵ KAN. STAT. ANN. § 65-689(a).
- ²⁶ KAN. STAT. ANN. § 65-689(d)(2).
- ²⁷ 42 U.S.C. § 1791.
- ²⁸ 42 U.S.C. § 1791(b)(4).
- ²⁹ 42 U.S.C. § 1791(b)(6).
- ³⁰ *Preemptive Effect of the Bill Emerson Good Samaritan Food Donation Act*, 21 OP. OFF. LEGAL COUNSEL 55, 55 (1997), <https://www.justice.gov/sites/default/files/olc/opinions/1997/03/31/op-olc-v021-p0055.pdf>.
- ³¹ 42 U.S.C. § 1791(c)(3).
- ³² 42 U.S.C. § 1791(b)(7)-(8).
- ³³ KAN. STAT. ANN. § 65-687(b)-(c).

- ³⁴ 42 U.S.C. § 1758(l) (2016).
- ³⁵ 42 U.S.C. § 1792 (2016).
- ³⁶ KAN. STAT. ANN. § 65-687(b).
- ³⁷ KAN. STAT. ANN. § 65-687(b).
- ³⁸ 42 U.S.C. § 1791(c)(1).
- ³⁹ 42 U.S.C. § 1791(b)(10).
- ⁴⁰ 42 U.S.C. § 1791(b)(5).
- ⁴¹ 42 U.S.C. § 1791(b)(9), (c)(2).
- ⁴² KAN. STAT. ANN. § 65-687(a)(1).
- ⁴³ KAN. STAT. ANN. § 65-687(a)(2).
- ⁴⁴ 42 U.S.C. § 1791(b)(4).
- ⁴⁵ 42 U.S.C. § 1791(b)(6).
- ⁴⁶ KAN. STAT. ANN. § 65-687(c).
- ⁴⁷ KAN. STAT. ANN. § 65-687(c).
- ⁴⁸ 42 U.S.C. § 1791(b)(1).
- ⁴⁹ 42 U.S.C. § 1791(b)(2).
- ⁵⁰ KAN. STAT. ANN. § 65-687(b)-(c).
- ⁵¹ 42 U.S.C. § 1791(c)(1)-(2).
- ⁵² KAN. STAT. ANN. § 65-687(b)-(c).
- ⁵³ 42 U.S.C. § 1791(b)(7), (c)(3).
- ⁵⁴ 42 U.S.C. § 1791(b)(8), (c)(3).
- ⁵⁵ Emily Broad Leib et al., *The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*, 2013 HARVARD FOOD L. & POL'Y CLINIC & NAT'L RESOURCES DEFENSE COUNCIL 1, 17-19.
- ⁵⁶ For example, the federal government requires baby formula to be date-labeled. *See* 21 C.F.R. § 107.20(c); *Food Product Dating*, U.S. DEP'T AGRICULTURE, <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating> (last visited May 6, 2016); *see also* 21 C.F.R. § 573.685 (regarding date labeling of a food additive).
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ *Id.*
- ⁶⁰ Leib et al., *supra* note 55, at 32; KAN. STAT. ANN. § 2-2509 (2016).
- ⁶¹ Kan. Admin. Regs. § 28-21-260.
- ⁶² KAN. STAT. ANN. § 65-687(d).