



FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL

Food Donation Laws and Policies in Connecticut

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About Us

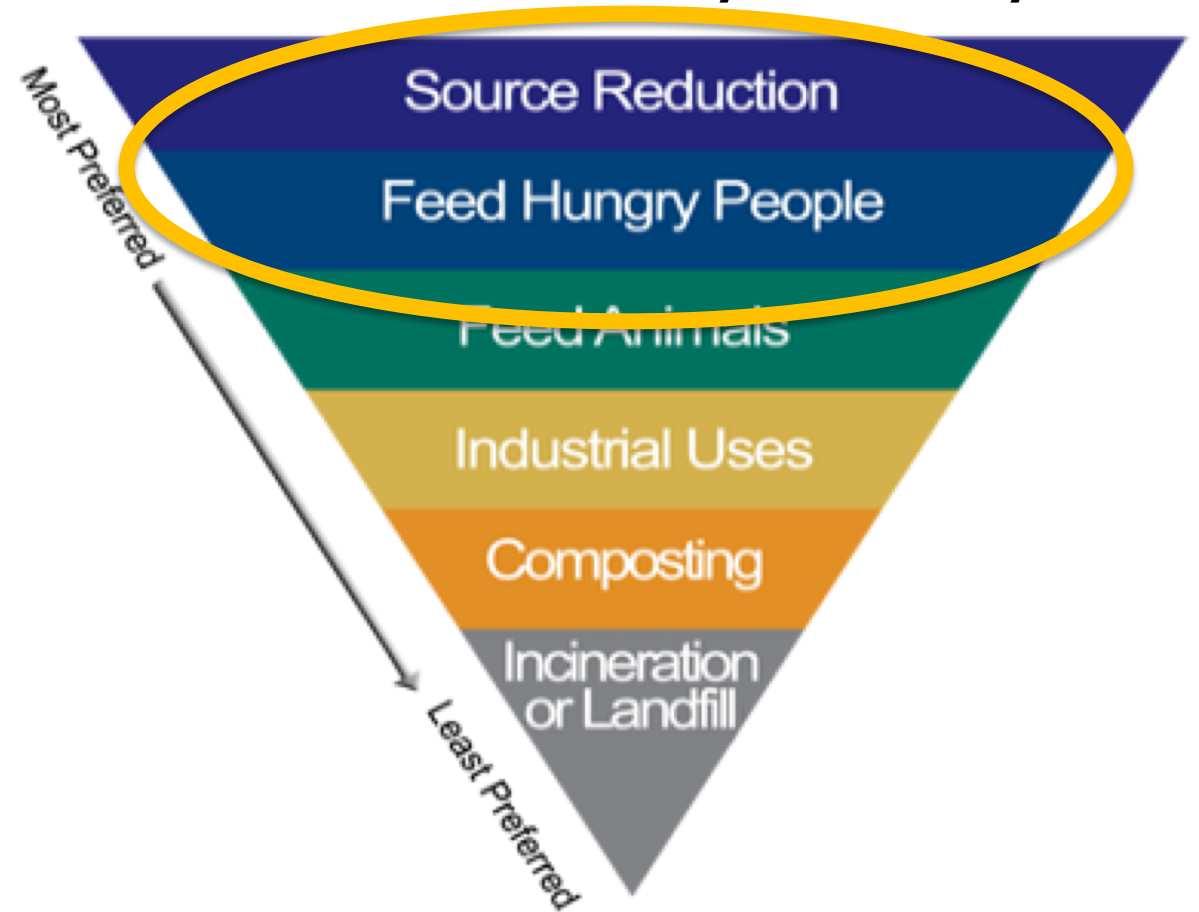
1. Provide **legal and policy advice** to nonprofits, government agencies, entrepreneurs, and other organizations on a range of food policy questions
2. **Educate students** about the role of law and policy in the food system





Which policies are we looking at?

EPA Food Recovery Hierarchy

- **Liability Protection**
- Date Labels
- Animal Feed



Liability Protection (Federal)

SEPTEMBER 2016
 FS-16-08-C

FACT SHEET

RECOMMENDATIONS TO STRENGTHEN THE BILL EMERSON GOOD SAMARITAN ACT

Food donation provides a critical link between organizations with wholesome, surplus foods and the 42 million Americans who are food insecure today. Unfortunately, many food manufacturers, retailers, and restaurants cite fear of liability as a primary deterrent to donating food. A 2016 survey by the Food Waste Reduction Alliance, a joint food industry task force, found that 44 percent of manufacturers, 41 percent of restaurants, and 25 percent of retailers identified liability concerns as a barrier to donation.¹ There are strong federal and state liability protections for food donations, but some small changes could help extend and strengthen those protections.

THE EMERSON ACT
 In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act (Emerson Act), which provides a federal floor of civil and criminal liability protection to food donors and nonprofit organizations that receive food donations and distribute those donations to those in need.² The Emerson Act protects a broad range of food donors, including individuals, businesses, and government entities, as well as gleaners (an individual or entity that harvests donated agricultural crops) and food recovery organizations. The Emerson Act protects donors and nonprofit recipients from civil and criminal liability for injury caused by the donated food unless either acts with gross negligence or intentional misconduct. Donors and distributors must meet the following four requirements to receive protection under the Act:

1. The food must be donated to a nonprofit organization in good faith.
2. The food must meet all federal, state, and local quality and labeling requirements; if all quality and labeling requirements are not met, the food must be reconditioned to meet all quality and labeling requirements before it can be donated.
3. The donated food must be distributed by the receiving nonprofit to needy individuals.
4. The needy individuals receiving the food may not pay for it.

This broad base of liability protection was intended to encourage food donations, yet donors are often unaware of it. Further, several provisions in the Act should be broadened to better align with the current food recovery landscape. Clarifying the Emerson Act's coverage and expanding its protections, as described below, can boost more food donations. Most of our suggestions would require Congressional action to modify the Act's language. However, a federal agency can take action immediately to clarify the Emerson Act by providing interpretive guidance.

1. AN EXECUTIVE AGENCY SHOULD BE RESPONSIBLE FOR IMPLEMENTING AND INTERPRETING THE EMERSON ACT
 Unlike many statutes which delegate power to an agency to interpret and enforce them, Congress never assigned the Emerson Act to a particular federal agency for interpretation and enforcement. Thus, no agency is responsible for providing federal guidance or raising awareness of the Act. Further, the Emerson Act has not been challenged in court, so there are no judicial interpretations of it. Given the dearth of judicial or administrative interpretations, potential donors can only refer to the 1996 statutory language to determine whether or not they are protected. As a result, donors do not know how to interpret some of the Act's more ambiguous terms, such as "apparently wholesome," "needy individual" and "gross negligence" and are unclear on the Act's requirements.

For more information, please contact:
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- Federal Law: **Bill Emerson Good Samaritan Act (42 U.S.C. 1791)** protects donors, nonprofits, volunteers, gleaners from civil and criminal liability *unless* they act with gross negligence or intentional misconduct
 - Food must be donated to a **nonprofit** in **good faith**
 - Food must meet all federal/state/local **quality and labeling requirements** (or be reconditioned to meet them)
 - Donated food must be distributed by the nonprofit to **needy individuals**
 - Needy individuals receiving the food **must not pay for it**
- States also have protections; some go above federal

Liability Protection (Connecticut)

- CT provides civil and criminal liability protection to:
 - Individual and organizational donors
 - Nonprofit or “political subdivision of the state” that receives donated food
- Goes *beyond* federal protections by extending protection to **nonprofit distribution of food “for a nominal fee”**
- Donors and donees are **NOT** protected if:
 - They knew or had “reasonable grounds to believe” food was adulterated or otherwise unfit for human consumption



Date Labels (Federal)

- Date labels are generally suggestions of peak quality
- Most consumers (~ 90%) think dates are safety-related
- No federal definition or requirement for expiration dates
 - FDA
 - Only requires date labels on infant formula
 - As of May 2019, recommends “Best if used by” for quality label
 - USDA
 - As of December 2016 recommends “best if used by” for quality label
- Many U.S. states regulate date labels and past-date sales
- In the U.S., GMA-FMI adopted **voluntary** standard





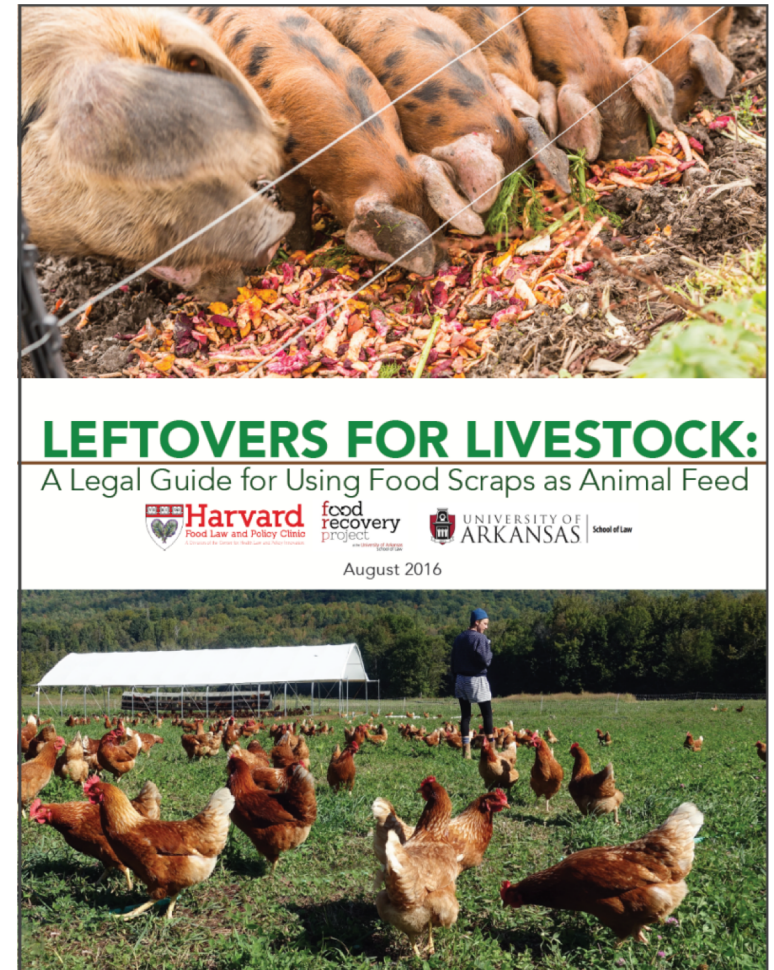
Date Labels (Connecticut)



- Last sale date required for:
 - Dairy
- **Sale or donation after date not restricted**
- CT has adopted a voluntary version of the Uniform Open Dating Regulation
 - “Sell by” OR “Best if used by”

Animal Feed (Federal)

- The Federal Swine Health Protection Act (SHPA)
- Transmissible Spongiform Encephalopathy (TSE)/Ruminant Feed Ban Rule
- The Preventive Controls Rule for Animal Food in the Food Safety Modernization Act (FSMA)
- The Food, Drug, & Cosmetic Act (FDCA)



Animal Feed (Connecticut)

- CT regulations only pertain to swine
- Mirrors SHPA; animal-derived food waste must be:
 - Heat-treated
 - Fed by licensed facility
 - Certain exceptions apply
- **Liability concerns:** CT and federal law do not provide liability protection for donating food scraps for animal feed





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