

out “and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each breakfast for each student eligible for a free breakfast, and (2) the full cost of each breakfast, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price breakfast” after “this section”.

EFFECTIVE DATE

Section effective Oct. 1, 1978, and no provisions to be construed to impair or to prevent the taking of effect of any other Act providing for the transfer of the described functions to an executive department having responsibility for education, see section 1415 of Pub. L. 95-561, set out as a note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer to Secretary of Education of functions of Secretary of Defense and Department of Defense relating to operation of overseas schools for dependents of Department of Defense and under Defense Dependents' Education Act of 1978, 42 U.S.C. 921 et seq., see section 3442(a) of Title 20, Education.

§ 1790. Breastfeeding promotion program

(a) In general

The Secretary, from amounts received under subsection (d) of this section, shall establish a breastfeeding promotion program to promote breastfeeding as the best method of infant nutrition, foster wider public acceptance of breastfeeding in the United States, and assist in the distribution of breastfeeding equipment to breastfeeding women.

(b) Conduct of program

In carrying out the program described in subsection (a) of this section, the Secretary may—

- (1) develop or assist others to develop appropriate educational materials, including public service announcements, promotional publications, and press kits for the purpose of promoting breastfeeding;
- (2) distribute or assist others to distribute such materials to appropriate public and private individuals and entities; and
- (3) provide funds to public and private individuals and entities, including physicians, health professional organizations, hospitals, community based health organizations, and employers, for the purpose of assisting such entities in the distribution of breastpumps and similar equipment to breastfeeding women.

(c) Cooperative agreements

The Secretary is authorized to enter into cooperative agreements with Federal agencies, State and local governments, and other entities to carry out the program described in subsection (a) of this section.

(d) Gifts, bequests, and devises

(1) In general

The Secretary is authorized to solicit, accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of establishing and carrying out the program described in subsection (a) of this section. Gifts, bequests, or devises of money and proceeds from the sales of other property received as gifts, bequests,

or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Secretary.

(2) Criteria for acceptance

The Secretary shall establish criteria for determining whether to solicit and accept gifts, bequests, or devises under paragraph (1), including criteria that ensure that the acceptance of any gifts, bequests, or devises would not—

- (A) reflect unfavorably on the ability of the Secretary to carry out the Secretary's responsibilities in a fair and objective manner; or
- (B) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in the program.

(Pub. L. 89-642, §21, as added Pub. L. 102-342, title II, §201, Aug. 14, 1992, 106 Stat. 912.)

§ 1791. Bill Emerson Good Samaritan Food Donation Act

(a) Short title

This section may be cited as the “Bill Emerson Good Samaritan Food Donation Act”.

(b) Definitions

As used in this section:

(1) Apparently fit grocery product

The term “apparently fit grocery product” means 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.

(2) Apparently wholesome food

The term “apparently wholesome food” means 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.

(3) Donate

The term “donate” means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(4) Food

The term “food” means 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.

(5) Gleaner

The term “gleaner” means 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.

(6) Grocery product

The term “grocery product” means a non-food grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(7) Gross negligence

The term “gross negligence” means 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.

(8) Intentional misconduct

The term “intentional misconduct” means 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.

(9) Nonprofit organization

The term “nonprofit organization” means 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.

(10) Person

The term “person” means 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.

(c) Liability for damages from donated food and grocery products**(1) Liability of person or gleaner**

A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.

(2) Liability of nonprofit organization

A nonprofit organization shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.

(3) Exception

Paragraphs (1) and (2) shall not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the person, gleaner, or nonprofit organization, as applicable, con-

stituting gross negligence or intentional misconduct.

(d) Collection or gleaning of donations

A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals shall not be subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this paragraph shall not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(e) Partial compliance

If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by Federal, State, and local laws and regulations, the person or gleaner who donates the food and grocery products shall not be subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products—

(1) is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(2) agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(3) is knowledgeable of the standards to properly recondition the donated food or grocery product.

(f) Construction

This section shall not be construed to create any liability. Nothing in this section shall be construed to supercede State or local health regulations.

(Pub. L. 89-642, §22, formerly Pub. L. 101-610, title IV, §402, Nov. 16, 1990, 104 Stat. 3183; renumbered §22 and amended Pub. L. 104-210, §1(a)(2), (b), Oct. 1, 1996, 110 Stat. 3011, 3012.)

CODIFICATION

Section was formerly classified to section 12672 of this title prior to renumbering by Pub. L. 104-210.

AMENDMENTS

1996—Pub. L. 104-210, §1(a)(2)(A), substituted “Bill Emerson” for “Model” in section catchline.

Subsec. (a). Pub. L. 104-210, §1(a)(2)(B), inserted “Bill Emerson” before “Good”.

Subsec. (b)(7). Pub. L. 104-210, §1(a)(2)(C), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘gross negligence’ means voluntary and conscious conduct by a person with knowledge (at the time of the conduct) that the conduct is likely to be harmful to the health or well-being of another person.”

Subsec. (c). Pub. L. 104-210, §1(a)(2)(D), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “A person or gleaner shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this paragraph shall not apply to an injury to or death of an ultimate user or re-

recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.”

Subsec. (f). Pub. L. 104-210, §1(a)(2)(E), inserted at end “Nothing in this section shall be construed to supercede State or local health regulations.”

§ 1792. Promoting Federal food donation

(a) In general

Not later than 180 days after June 20, 2008, the Federal Acquisition Regulation issued in accordance with section 1303 of title 41 shall be revised to provide that all contracts above \$25,000 for the provision, service, or sale of food in the United States, or for the lease or rental of Federal property to a private entity for events at which food is provided in the United States, shall include a clause that—

- (1) encourages the donation of excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States; and
- (2) states the terms and conditions described in subsection (b).

(b) Terms and conditions

(1) Costs

In any case in which a contractor enters into a contract with an executive agency under which apparently wholesome food is donated to food-insecure people in the United States, the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States under this section.

(2) Liability

An executive agency (including an executive agency that enters into a contract with a contractor) and any contractor making donations pursuant to this section shall be exempt from civil and criminal liability to the extent provided under section 1791 of this title.

(Pub. L. 110-247, §4, June 20, 2008, 122 Stat. 2314.)

REFERENCES IN TEXT

This section, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 110-247, June 20, 2008, 122 Stat. 2314, which enacted this section and provisions set out as notes under this section and section 1771 of this title. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 1771 of this title and Tables.

CODIFICATION

Section was enacted as part of the Federal Food Donation Act of 2008, and not as part of the Child Nutrition Act of 1966 which comprises this chapter.

In subsec. (a), “section 1303 of title 41” substituted for “section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PURPOSE

Pub. L. 110-247, §2, June 20, 2008, 122 Stat. 2314, provided that: “The purpose of this Act [enacting this section and provisions set out as notes under this section and section 1771 of this title] is to encourage executive agencies and contractors of executive agencies, to the maximum extent practicable and safe, to donate ex-

cess, apparently wholesome food to feed food-insecure people in the United States.”

DEFINITIONS

Pub. L. 110-247, §3, June 20, 2008, 122 Stat. 2314, provided that: “In this Act [enacting this section and provisions set out as notes under this section and section 1771 of this title]:

“(1) APPARENTLY WHOLESOME FOOD.—The term ‘apparently wholesome food’ has the meaning given the term in section 2(b) [probably means subsec. (b)] of the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791(b)).

“(2) EXCESS.—The term ‘excess’, when applied to food, means food that—

- “(A) is not required to meet the needs of executive agencies; and
- “(B) would otherwise be discarded.

“(3) FOOD-INSECURE.—The term ‘food-insecure’ means inconsistent access to sufficient, safe, and nutritious food.

“(4) NONPROFIT ORGANIZATION.—The term ‘nonprofit organization’ means any organization that is—

- “(A) described in section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)]; and
- “(B) exempt from tax under section 501(a) of that Code [26 U.S.C. 501(a)].”

§ 1793. Grants for expansion of school breakfast programs

(a) Definition of qualifying school

In this section, the term “qualifying school” means a school in severe need, as described in section 1773(d)(1) of this title.

(b) Establishment

Subject to the availability of appropriations provided in advance in an appropriations Act specifically for the purpose of carrying out this section, the Secretary shall establish a program under which the Secretary shall provide grants, on a competitive basis, to State educational agencies for the purpose of providing subgrants to local educational agencies for qualifying schools to establish, maintain, or expand the school breakfast program in accordance with this section.

(c) Grants to State educational agencies

(1) Application

To be eligible to receive a grant under this section, a State educational agency shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) Administration

In carrying out this section, the Secretary shall—

- (A) develop an appropriate competitive application process; and
- (B) make information available to State educational agencies concerning the availability of funds under this section.

(3) Allocation

The amount of grants provided by the Secretary to State educational agencies for a fiscal year under this section shall not exceed the lesser of—

- (A) the product obtained by multiplying—
 - (i) the number of qualifying schools receiving subgrants or other benefits under subsection (d) for the fiscal year; and