

I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

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Bill No. 40 (LS)

Introduced by:

E. J. B. Calvo
Ray Tenorio
I.V. Espaldon

AN ACT TO ADD A NEW SECTION 105 TO
CHAPTER 38, DIVISION 2, TITLE 10 GUAM
CODE ANNOTATED RELATIVE TO SEEKING
TO PRECLUDE FROM CIVIL AND CRIMINAL
LIABILITY ANY PERSON INVOLVED WITH
THE DONATION AND DISTRIBUTION OF
FOOD DELIVERED IN GOOD FAITH FOR
SHARING WITH THE NEEDY TO BE KNOWN
AS "THE GOOD SAMARITAN FOOD
DONATION ACT OF GUAM."

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Intent.** *I Liheslaturan Guahan* finds that in
3 order to encourage the donation of food and grocery products to nonprofit
4 organizations for distribution to those most in need in our community, this
5 Act is necessary in order to preclude from any civil and criminal liability
6 any Person donating food or grocery products in good faith to serve those
7 in need. This Act *shall not* provide such protection from liability for
8 Persons in cases of gross negligence or intentional misconduct. *I*
9 *Liheslaturan Guahan* commends local companies involved in the giving to

1 those less fortunate and applauds their efforts to prevent good food from
2 going to waste. Under this Act, *I Liheslaturan Guahan* seeks to protect such
3 Persons and companies from liability surrounding their donations and
4 contributions to the well being of the needy. Patterned after the “Bill
5 Emerson Good Samaritan Food Donation Act,” this Act shall serve to
6 promote giving year round as a theme consistent with the cultural and
7 moral fabric of those who call Guam home.

8 **Section 2. A New Section 105, “The Good Samaritan Food**
9 **Donation Act of Guam” is hereby *added* to Chapter 38, Division 2 of**
10 **Title 10 Guam Code Annotated to read as follows: Definitions.** As
11 used in this Act:

12 **(a) Apparently fit grocery product.** The term “apparently fit grocery
13 product” means a grocery product that meets all quality and labeling
14 standards imposed by Federal, State, and local laws and regulations even
15 though the product may not be readily marketable due to appearance, age,
16 freshness, grade, size, surplus, or other conditions.

17 **(b) Apparently wholesome food.** The term “apparently wholesome
18 food” means food that meets all quality and labeling standards imposed by
19 Federal, State, and local laws and regulations even though the food may
20 not be readily marketable due to appearance, age, freshness, grade, size,
21 surplus, or other conditions.

22 **(c) Donate.** The term “donate” means to give without requiring
23 anything of monetary value from the recipient, except that the term shall

1 include giving by a nonprofit organization to another nonprofit
2 organization, notwithstanding that the donor organization has charged a
3 nominal fee to the donee organization, if the ultimate recipient or user is
4 not required to give anything of monetary value.

5 **(d) Food.** The term “food” means any raw, cooked, processed, or
6 prepared edible substance, ice, beverage, or ingredient used or intended for
7 use in whole or in part for human consumption.

8 **(e) Gleaner.** The term “gleaner” means a person who harvests for
9 free distribution to the needy or for donation to a nonprofit organization
10 for ultimate distribution to the needy, an agricultural crop that has been
11 donated by the owner.

12 **(f) Grocery product.** The term “grocery product” means a nonfood
13 grocery product, including a disposable paper or plastic product,
14 household cleaning product, laundry detergent, cleaning product, or
15 miscellaneous household item.

16 **(g) Gross negligence.** The term “gross negligence” means voluntary
17 and conscious conduct (including a failure to act) by a person who, at the
18 time of the conduct, knew that the conduct was likely to be harmful to the
19 health or well-being of another person.

20 **(h) Intentional misconduct.** The term “intentional misconduct”
21 means conduct by a person with knowledge (at the time of the conduct)
22 that the conduct is harmful to the health or well-being of another person.

1 **(i) Nonprofit organization.** The term “nonprofit organization”
2 means an incorporated or unincorporated entity that: **(1)** is operating for
3 religious, charitable, or educational purposes; and
4 **(2)** does not provide net earnings to, or operate in any other manner that
5 inures to the benefit of, any officer, employee, or shareholder of the entity.

6 **(j) Person.** The term “person” means an individual, corporation,
7 partnership, organization, association, or governmental entity, including a
8 retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer,
9 farmer, and nonprofit food distributor or hospital. In the case of a
10 corporation, partnership, organization, association, or governmental entity,
11 the term includes an officer, director, partner, deacon, trustee, council
12 member, or other elected or appointed individual responsible for the
13 governance of the entity.

14 **Section 3. Liability for damages from donated food and grocery**
15 **products.**

16 **(1) Liability of person or gleaner.** A person or gleaner shall
17 not be subject to civil or criminal liability arising from the nature, age,
18 packaging, or condition of apparently wholesome food or an
19 apparently fit grocery product that the person or gleaner donates in
20 good faith to a nonprofit organization for ultimate distribution to
21 needy individuals.

22 **(2) Liability of nonprofit organization.** A nonprofit
23 organization shall not be subject to civil or criminal liability arising

1 from the nature, age, packaging, or condition of apparently
2 wholesome food or an apparently fit grocery product that the
3 nonprofit organization received as a donation in good faith from a
4 person or gleaner for ultimate distribution to needy individuals.

5 **(3) Exception.** Paragraphs (1) and (2) shall not apply to an
6 injury to or death of an ultimate user or recipient of the food or
7 grocery product that results from an act or omission of the person,
8 gleaner, or nonprofit organization, as applicable, constituting gross
9 negligence or intentional misconduct.

10 **Section 4. Collection or gleaning of donations.** A person who
11 allows the collection or gleaning of donations on property owned or
12 occupied by the person by gleaners, or paid or unpaid representatives of a
13 nonprofit organization, for ultimate distribution to individuals most in
14 need shall not be subject to civil or criminal liability that arises due to the
15 injury or death of the gleaner or representative, except that this paragraph
16 shall not apply to an injury or death that results from an act or omission of
17 the person constituting gross negligence or intentional misconduct.

18 **Section 5. Partial compliance.** If some or all of the donated food and
19 grocery products do not meet all quality and labeling standards imposed
20 by Federal, State, and local laws and regulations, the person or gleaner who
21 donates the food and grocery products shall not be subject to civil or
22 criminal liability in accordance with this section if the nonprofit
23 organization that receives the donated food or grocery products:

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

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

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

8 **Section 6. Severability.** If any provision of this Act *or* its application
9 to any person *or* circumstance is found to be invalid *or* contrary to law,
10 such invalidity *shall not* affect other provisions *or* applications of this Act
11 which can be given effect without the invalid provisions *or* application, and
12 to this end the provisions of this Act are severable.