

HOUSE No. 1594

The Commonwealth of Massachusetts

PRESENTED BY:

Hannah Kane

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act encouraging the donation of food to persons in need.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>1/10/2023</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/18/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/24/2023</i>
<i>Smitty Pignatelli</i>	<i>3rd Berkshire</i>	<i>1/26/2023</i>
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/26/2023</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/26/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>1/26/2023</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>1/26/2023</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>1/26/2023</i>
<i>Marcus S. Vaughn</i>	<i>9th Norfolk</i>	<i>1/27/2023</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>1/27/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/29/2023</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>1/30/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/30/2023</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>1/30/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>1/30/2023</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/1/2023</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/1/2023</i>

<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/6/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/7/2023</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/7/2023</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/8/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/8/2023</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/8/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/8/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/10/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/10/2023</i>
<i>Jennifer Balinsky Armini</i>	<i>8th Essex</i>	<i>2/12/2023</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/13/2023</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>2/13/2023</i>
<i>Priscila S. Sousa</i>	<i>6th Middlesex</i>	<i>2/14/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/16/2023</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>2/21/2023</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/23/2023</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Hampden</i>	<i>2/24/2023</i>
<i>Samantha Montaña</i>	<i>15th Suffolk</i>	<i>2/26/2023</i>

HOUSE No. 1594

By Representative Kane of Shrewsbury, a petition (accompanied by bill, House, No. 1594) of Hannah Kane and others relative to liability for civil damages for injuries related to the donation of food to persons in need. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act encouraging the donation of food to persons in need.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 328 of chapter 94 of the General Laws is hereby amended by
2 striking out the first paragraph and inserting in place thereof the following paragraph:-

3 No person who donates food, including open-dated food whose date has passed, to a
4 nonprofit corporation for distribution or serving by such nonprofit corporation without charge or
5 at a charge sufficient only to cover the cost of handling such food, or to any other person, shall
6 be liable for civil damages for any injury arising out of the condition of such food; provided,
7 however, that at the time of donation such food is not misbranded and is not adulterated and has
8 not been manufactured, processed, prepared, handled or stored in violation of applicable
9 regulations of the department of public health; and provided, further, that such injury is not the
10 result of gross negligence, recklessness or intentional misconduct of the donor or any person
11 employed by or under the control of the donor.

12 SECTION 2. Said section 328 of said chapter 94 is hereby further amended by inserting
13 after the third paragraph the following paragraph:-

14 No food establishment, as defined in 105 CMR 590 et seq., which distributes or serves
15 food without charge or at a charge sufficient only to cover the cost of handling such food,
16 including open-dated food whose date has passed, shall be liable for civil damages for any injury
17 arising out of the condition of such food; provided, however, that at the time of distribution or
18 serving such food is not misbranded or adulterated or has not been manufactured, processed,
19 prepared, handled or stored in violation of applicable regulations of the department of public
20 health, and provided, further, that such injury is not the result of gross negligence, recklessness
21 or intentional misconduct of the food establishment or any person employed by or under the
22 control of the food establishment.

23 SECTION 3. Chapter 63 of the General Laws is hereby amended by inserting after
24 section 38HH the following section:-

25 Section 38II. (a) As used in this section, the following words shall, unless the context
26 clearly requires otherwise, have the following meanings:

27 “Food crops”, grains, fruits, nuts, vegetables, meat, dairy, or seafood.

28 “Nonprofit food distribution organization”, means an entity located in the commonwealth
29 that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, as amended
30 or renumbered, and organized with a principal purpose of providing food to the needy or selling
31 food at a charge sufficient only to cover the cost of handling such food.

32 (2) For taxable years beginning on or after January 1, 2024, but before January 1, 2034,
33 any business corporation engaged in the business of farming as defined under section 1A of
34 chapter 128, or any restaurant or similar retail food establishment as defined under subsection (h)
35 of section 6 of chapter 64H, that donates food crops grown by the business corporation in the
36 commonwealth or meals prepared for human consumption to a nonprofit food distribution
37 organization shall be allowed a non-refundable credit from its net taxable income for the taxable
38 year of the donation. The business corporation shall be allowed a credit in an amount equal to the
39 fair market value of such food crops donated by the business corporation to a nonprofit food
40 distribution organization during the taxable year but not to exceed an aggregate credit of \$5,000
41 for all such donations made by the business corporation during such year.

42 (3) A credit shall be allowed under this section only if (i) the use of the donated food
43 crops by the donee nonprofit food distribution organization is related to providing food to the
44 needy, (ii) the donated food crops are not transferred for use outside the commonwealth or used
45 by the donee nonprofit food distribution organization as consideration for services performed or
46 personal property purchased, and (iii) the donated food crops, if sold by the donee nonprofit food
47 distribution organization, are sold at a charge sufficient only to cover the cost of handling such
48 food.

49 (4) In order to claim any credit under this section, the business corporation making the
50 donation shall attach to the business's income tax return a written certification prepared by the
51 donee nonprofit food distribution organization. The written certification prepared by the donee
52 nonprofit food distribution organization shall identify the donee nonprofit food distribution
53 organization, the business corporation donating food crops to it, the date of the donation, the
54 number of pounds of food crops donated, and the fair market value of the food crops donated.

55 The certification shall also include a statement by the donee nonprofit food distribution
56 organization that its use and disposition of the food crops complies with the requirements under
57 paragraph 3.

58 (6) Credits claimed by a partnership shall be allocated to the individual partners in
59 proportion to their ownership or interest in such business entity.

60 (7) The commissioner shall develop guidelines implementing the provisions of this
61 section.