

**SENATE . . . . . No. 954**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Joanne M. Comerford***

*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:	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>2/19/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/19/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/22/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/24/2021</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>	<i>2/25/2021</i>
<i>John C. Velis</i>	<i>Second Hampden and Hampshire</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/1/2021</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/2/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>3/5/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>3/5/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/10/2021</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>3/12/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/23/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>4/4/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>4/4/2021</i>

**SENATE . . . . . No. 954**

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By Ms. Comerford, a petition (accompanied by bill, Senate, No. 954) of Joanne M. Comerford, Susannah M. Whipps, Jack Patrick Lewis, Hannah Kane and other members of the General Court for legislation relative to donations of food to persons in need. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 869 OF 2019-2020.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

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, or vegetables.

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, 2020, but before January 1, 2024,  
33 any business corporation engaged in the business of farming as defined under 26 C.F.R 1.175-3,  
34 or any restaurant or similar retail food establishment as defined under subsection (h) of section 6  
35 of chapter 64H, that donates food crops grown by the business corporation in the commonwealth  
36 or meals prepared for human consumption to a nonprofit food distribution organization shall be  
37 allowed a non-refundable credit from its net taxable income for the taxable year of the donation.  
38 The business corporation shall be allowed a credit in an amount equal to the fair market value of  
39 such food crops donated by the business corporation to a nonprofit food distribution organization  
40 during the taxable year but not to exceed an aggregate credit of \$2,000 for all such donations  
41 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.