

FoodRecoveryWorks

Heather Latino
May 2025



FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL



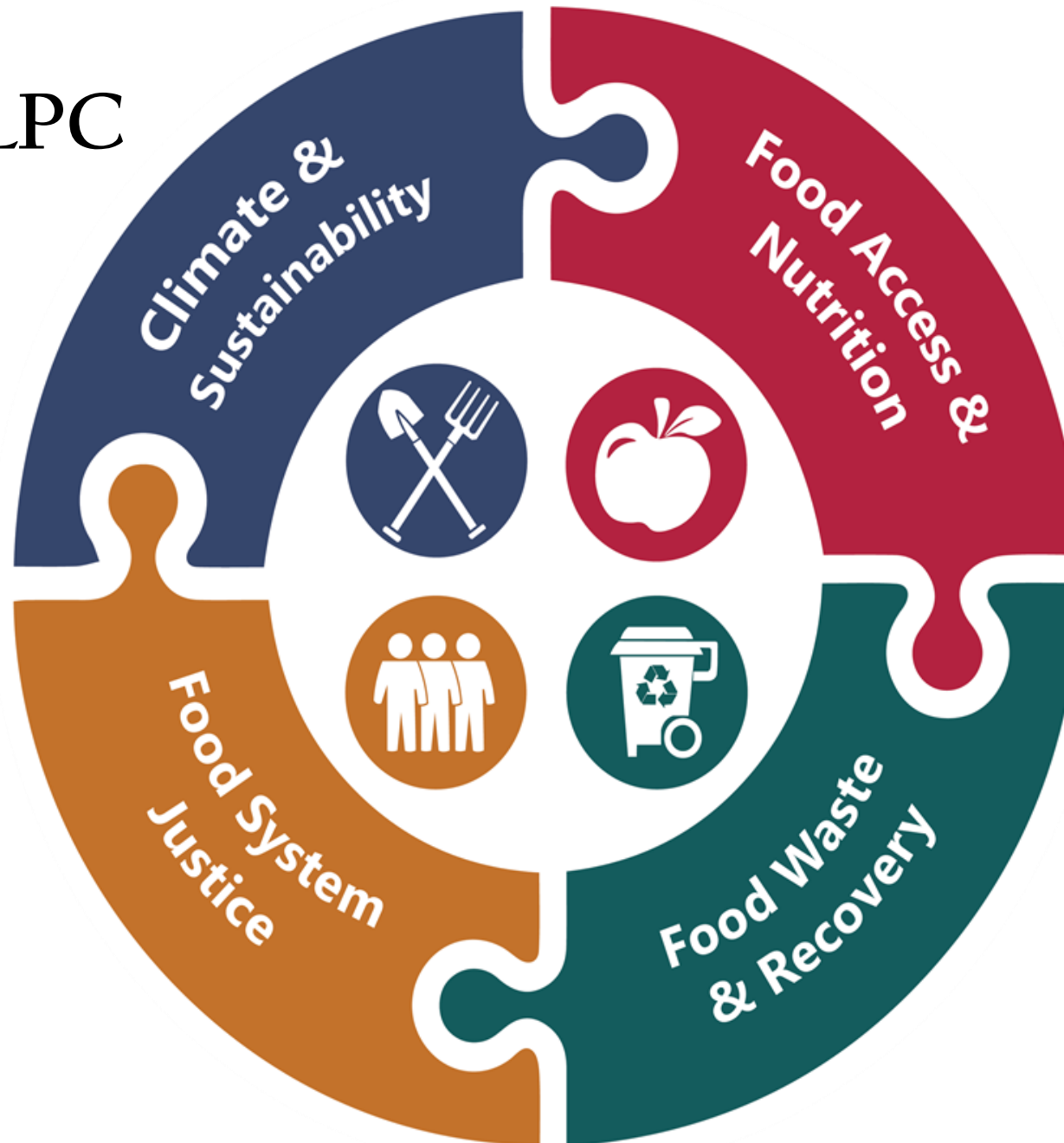


Today's Agenda

- Why donate?
- Liability Protections
- Tax Incentives
- Food Date Labels
- Food Safety

About FLPC

Provide **legal and policy advice** to nonprofits, government agencies, entrepreneurs, and other organizations on a range of food policy questions

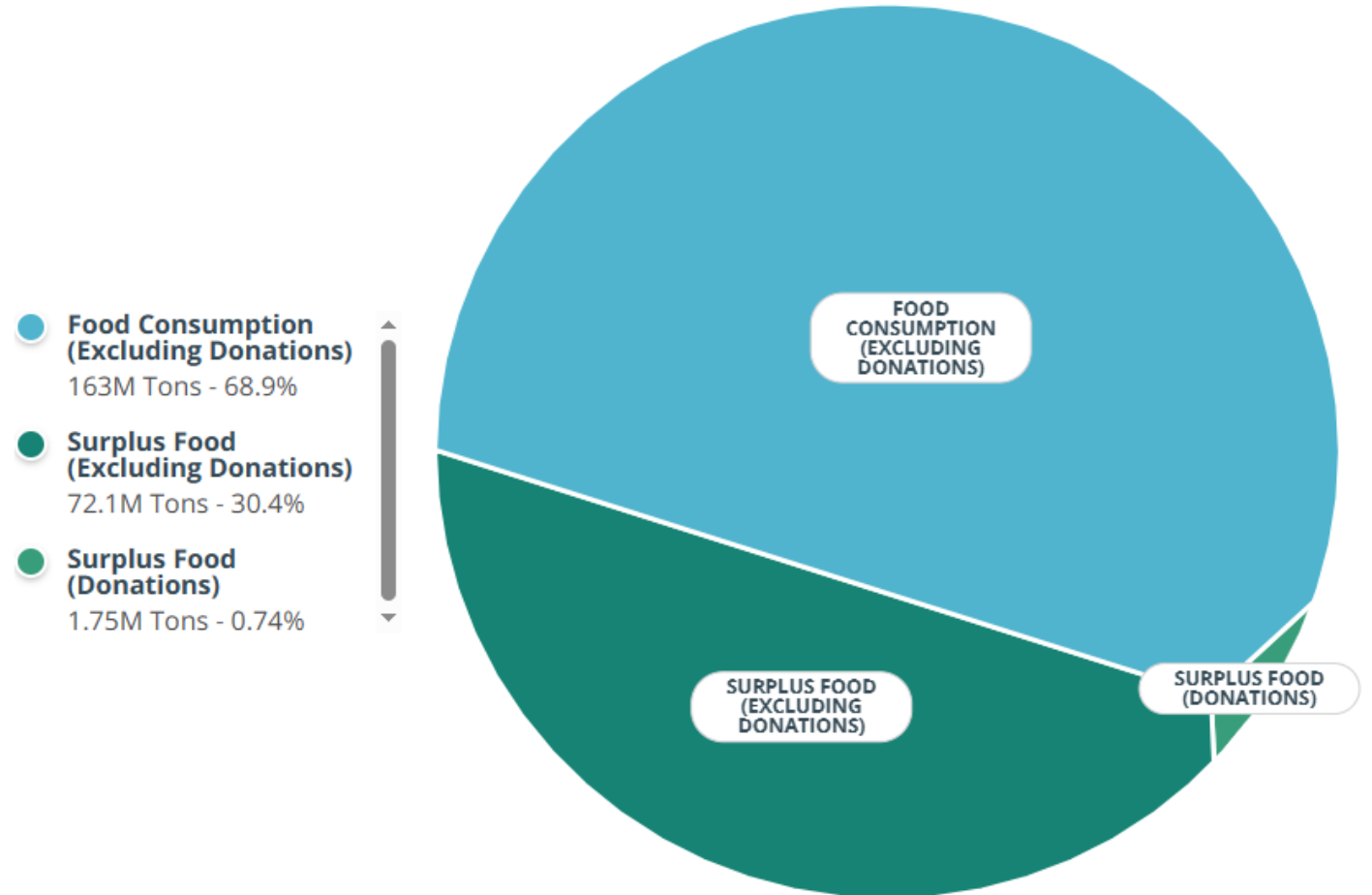


Educate students about the role of law and policy in the food system

Food Waste in the U.S.

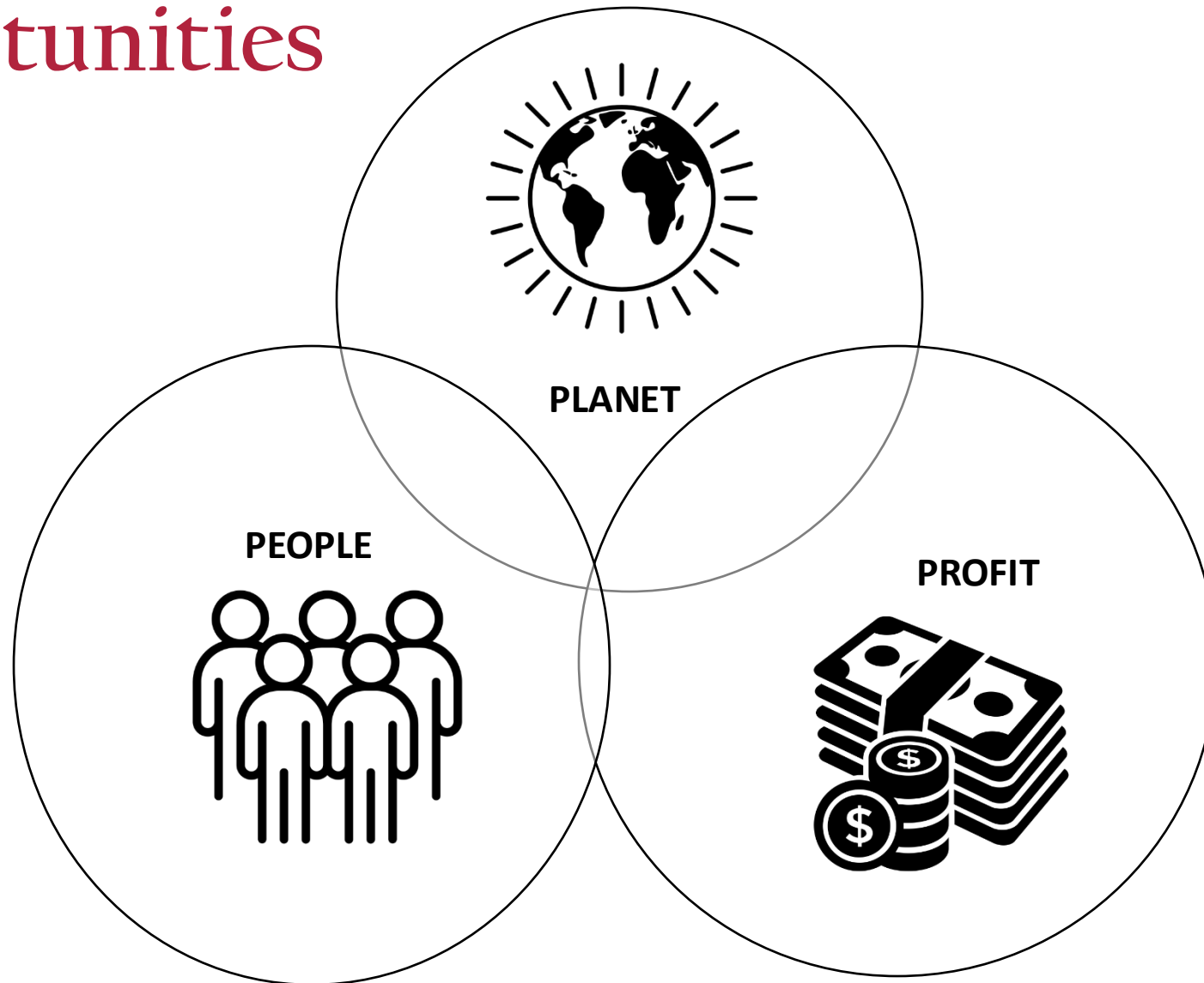
(Source: ReFED)

The U.S.
produced
nearly **74**
million tons of
surplus food in
2023.

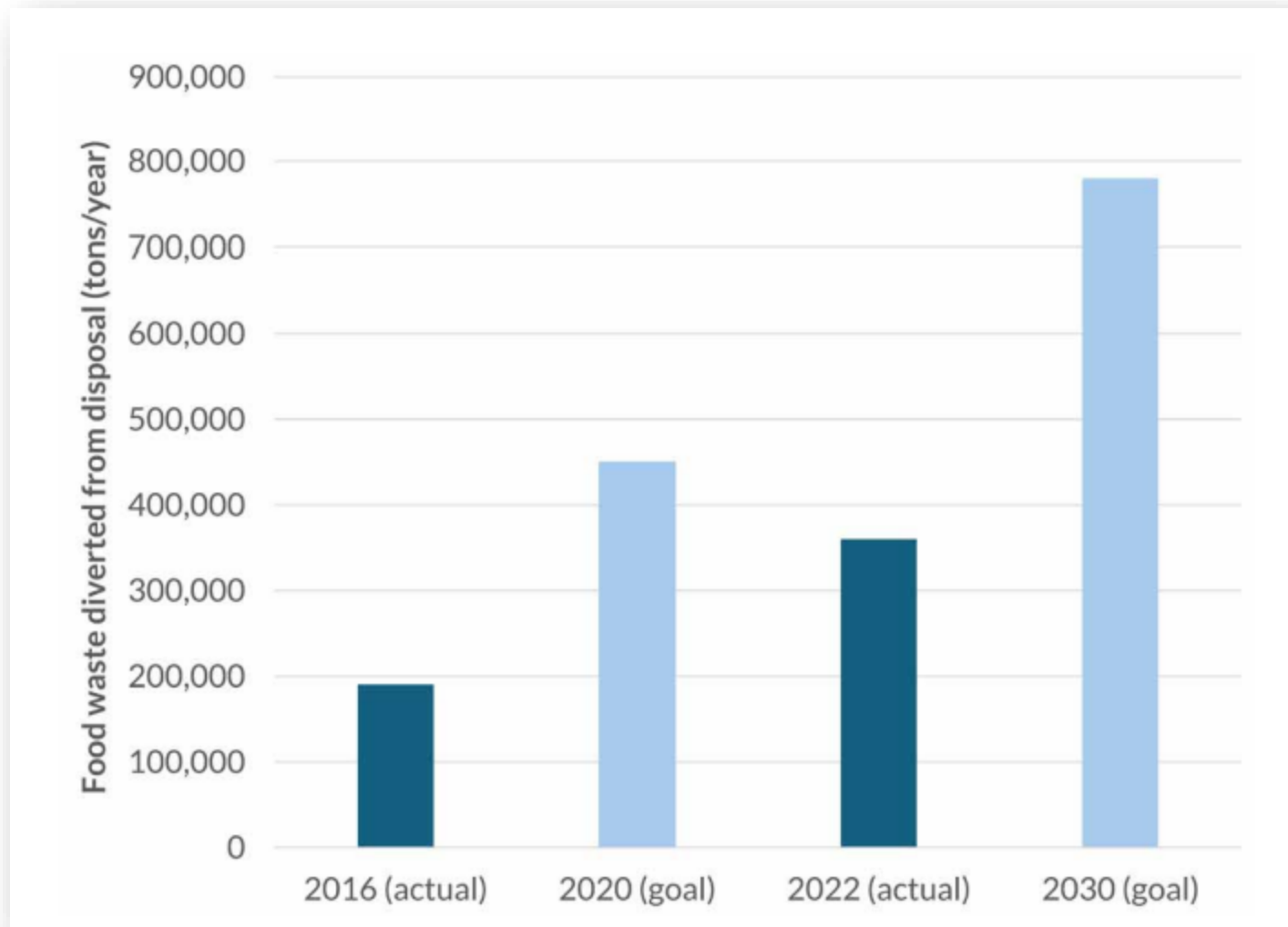


[Click the chart for more details](#)

Opportunities



MA's Food Waste Diversion v. Goals



Source: [MassPirg](#)



Why don't businesses donate more
food?



When poll is active respond at PolleEv.com/heatherlatino233



Why don't businesses donate more food?

Nobody has responded yet.

Hang tight! Responses are coming in.



Liability Protections

Food Donation Improvement Act (2023)

Federal Liability Protection For Food Donation LEGAL FACT SHEET

Businesses and nonprofits that donate or distribute donated food or grocery products are well-protected by laws designed to provide immunity from liability related to food donations. The Bill Emerson Good Samaritan Food Donation Act, originally passed in 1996 and amended by the Food Donation Improvement Act (FDIA)¹ in 2022 (hereinafter collectively referred to as “the Emerson Act”), provides comprehensive federal liability protection to encourage food donation to individuals experiencing food insecurity.² Furthermore, the risk of liability for food and grocery product donation is already very low; no court case exists to date related to food donation liability.



The Emerson Act provides civil and criminal liability protection for liability that might arise due to harm from donated food or grocery products.

The Emerson Act covers both donors and intermediaries that distribute food, including:³

- All individuals
- Government entities
- Schools⁴
- Businesses (including retailers, restaurants, and wholesalers)
- Nonprofit organizations
- The officers of businesses and nonprofit organizations
- Gleaners (individuals that harvest donated agricultural crops for a nonprofit organization that distributes the food to individuals⁵)

Expands upon the Bill Emerson Act, which **protects food donors & nonprofits** against any federal or state liability, so long as:

1. Food products are “apparently wholesome” (or “reconditioned”)
2. Donations are made via a non-profit, or directly donated by a “qualified direct donor”
3. Food is offered for free or at a “Good Samaritan Reduced Price”
4. Donations are made in good faith, with no gross negligence or intentional misconduct

[Link to Resource](#)



State Liability Protections

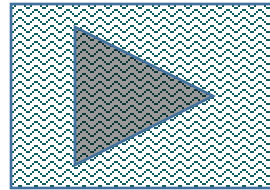
States cannot provide less liability protection than the Emerson Act. Massachusetts state law:

- Explicit protection for donations of past-date food if it is separated and clearly labeled as past-date.

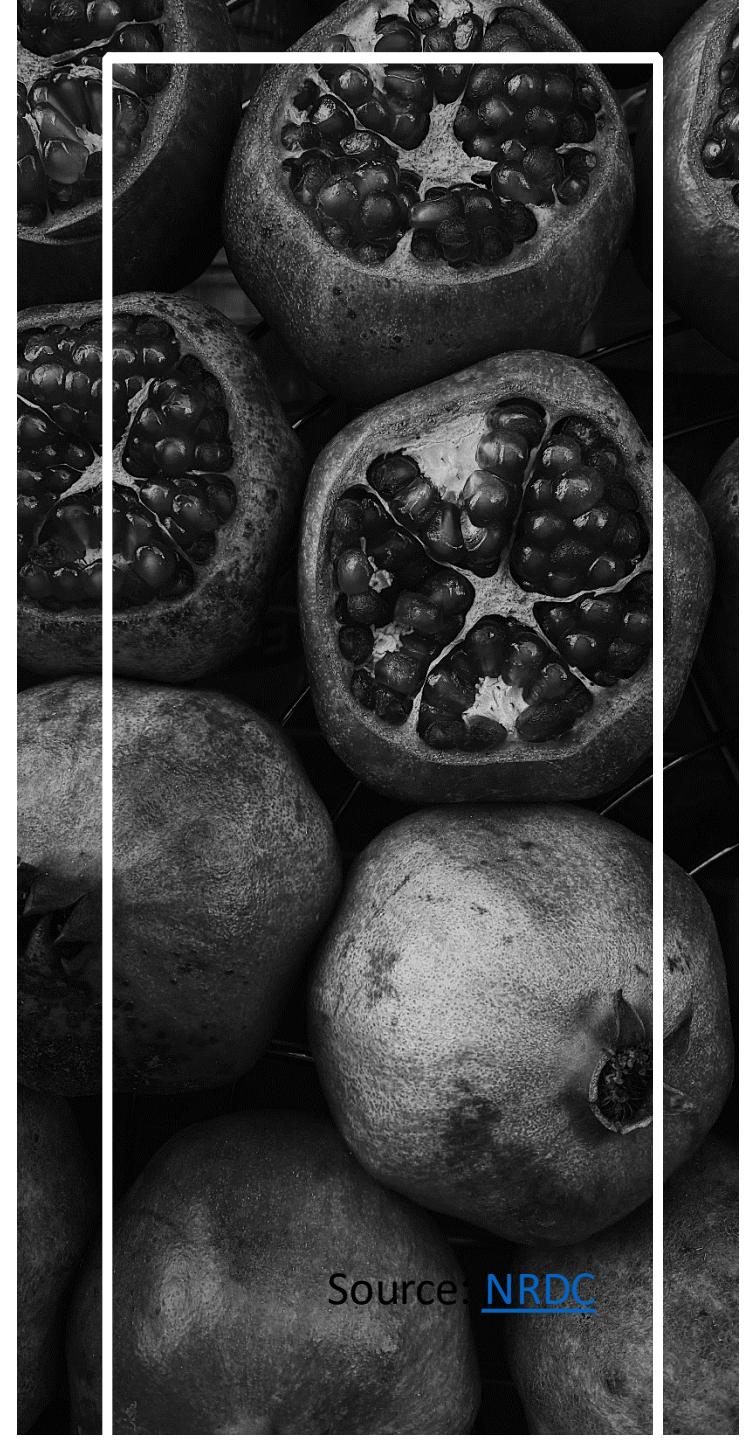
[Massachusetts General Law, Ch. 94, Sec. 328](#)

Food is Made to Be Eaten

*Listen to Grandma and Chef
Tom Colicchio:*



Source: [NRDC](#)



A black and white photograph of a bunch of white grapes hanging from a vine. The grapes are in sharp focus in the foreground, while the background is blurred. A semi-transparent white rectangular box is centered over the middle of the image, containing the text "Tax Incentives" in a red serif font. There are also some white rectangular outlines in the corners of the image, possibly indicating crop marks or design elements.

Tax Incentives

Federal Tax Incentives

Example: A grocery store donates potatoes with a fair market value of \$100. The basis value of these potatoes was \$30. The expected profit margin is the fair market value minus the basis value (\$100-\$30), which is \$70.

- **General Deduction**

Deduct the basis value = **\$30**

- **Enhanced Deduction**

Deduct the smaller of:

1. Basis Value x 2 = $\$30 \times 2 = \mathbf{\$60}$
or

2. Basis Value + (expected profit margin/2) = $\$30 + (\$70/2) = \mathbf{\$65}$



State Tax Incentives

Massachusetts does **not currently** have state-level tax incentives for food donation.

Proposed Legislation (HB 3154/SB1043)

- Tax credit
- Fair market value up to \$25,000/year
- Eligible donors: food businesses (farm, restaurants, grocery stores)
- Eligible recipients: Nonprofits providing food to people in need in the state



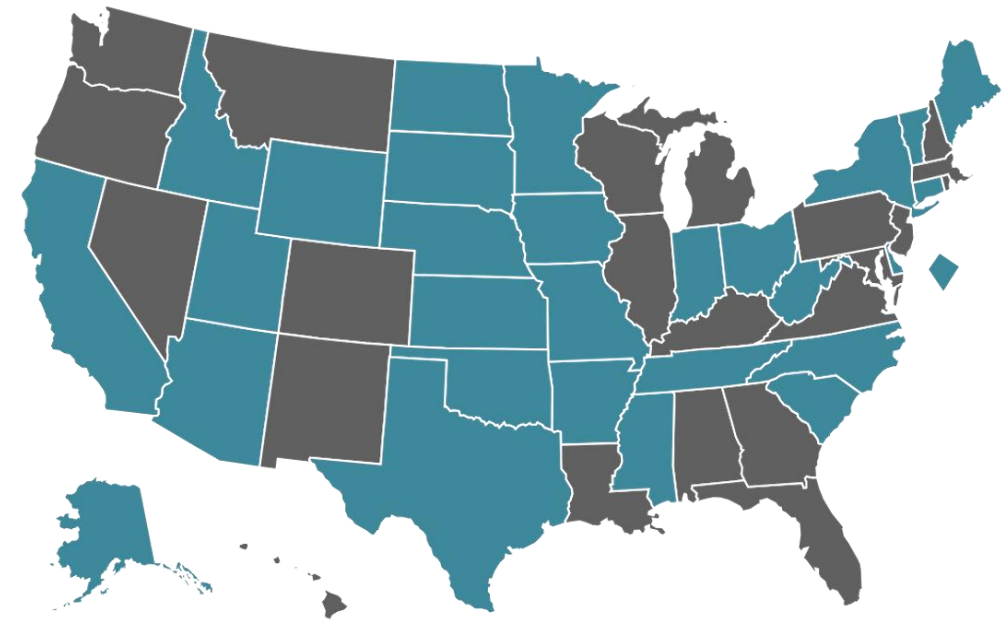
The background is a black and white photograph of wheat stalks. A semi-transparent white rectangular box is centered horizontally and vertically, containing the text "Date Labeling".

Date Labeling

What's the Problem?

- **Dates are not federally defined or regulated***
 - FDA/USDA merely recommend businesses use "Best if used by" for quality
- **Consumers are confused**
 - Dates generally suggest peak quality
 - Confusion causes consumers to waste 3 billion pounds of food annually (ReFED)
- **States regulate, but no two state laws are the same**
- **Costly to consumers, businesses, and the environment**
 - Standardizing date labels could divert >425,000 tons of food waste annually, equal to 708M meals (ReFED)

*except infant formula



LEVEL OF STATE DATE LABELING REGULATIONS

Under federal law, date labels are almost entirely unregulated. States have filled the void with a wide variety of regulations that often fail to reflect the distinction between food safety and food quality.





Massachusetts's Date Label Laws

- **Required for Pre-Packaged Perishable foods**
 - Shelf life less than 90 days
 - Exempt foods:
 - Fresh meat, poultry, fish, fruits, and vegetables that are unpackaged or in containers allowing sensory examination
 - Pre-packaged foods weighing less than 1.5 ounces
- **Sale of past-date foods allowed if**
 - (1) wholesome and good quality;
 - (2) separated from foods that are not past date; and
 - (3) clearly marked as past date
- **More restrictive than the FDA Food Code Model language**

Proposed Law (SB 1555/HB 2460)

- Voluntary quality dates
- If quality date appears, must use "BEST if used by"
- Ready-to-eat food must have safety date ("Expires on")
- Dept. of Health to create guidance on setting quality/safety dates



Food Safety

FDA Encourages Food Donation

Key Steps for Donating Food



U.S. FOOD & DRUG
ADMINISTRATION

FDA encourages the donation of wholesome food to help reduce food loss and waste in our communities while feeding those in need.



“Donated food should be handled safely and according to state or local food codes.”



Hot foods should be stored and held at **135°F** or above,

and cold foods should be stored and held at **41°F** or below.





Resources



ReFED's Impact Calculator

Measuring the Environmental and Social Impacts of Food Waste

What is this tool?

A resource that quantifies the impact of amounts of wasted food on the climate, natural resources, and lost meals.

How do I use it?

1. Indicate a **sector**: where in the supply chain the waste occurred
2. Select the **type** of food waste
3. Input the **amount of food lost** for destination(s), or how the lost food is being disposed of
4. Explore and export your results

For more detailed information on the underlying assumptions and formulas for the final numbers that you see, please refer to the [Methodology](#). For definitions, refer to the [Glossary](#).

GET STARTED →



Resources

- [Impact Calculator \(ReFED\)](#) – measure the environmental and social impacts of your food waste
- ReFED Policy Finder - [Massachusetts](#) (ReFED, FLPC)
- [How to Reduce Food Waste in Massachusetts](#) (MAPirg)
- [Federal Liability Protection for Food Donation Legal Fact Sheet \(FLPC\)](#)
- Overview of Liability Protections and [Tom Colicchio videos](#) (NRDC)
- [Legal Fact Sheet for Massachusetts Food Donation: Tax Incentives for Businesses](#) (FLPC)
- [Federal Enhanced Tax Deduction for Food Donation: a legal guide](#) (FLPC & UARK)
- [Key Steps for Donating Food – For Retail Food Establishments](#) (FDA)
- [Comprehensive Guidance for Food Recovery Programs](#) (CFP)
 - [How Food Establishments Can Donate Food](#)
 - [How to Transport Donated Food](#)
 - [How to Serve Donated Food](#)
 - [Serving Highly Susceptible Populations](#)
- [2025 Food Waste Legislative Tracker](#) (FLPC, Divert, ZFWC)



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