

6303

2009-2010 Regular Sessions

I N   S E N A T E

November 18, 2009

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Introduced by Sen. AUBERTINE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the agriculture and markets law, in relation to food donation by public food service establishments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. This act shall be known and may be cited as the "New York  
2 restaurant lending a helping hand act".

3     S 2. Section 71-z of the agriculture and markets law, as added by  
4 chapter 869 of the laws of 1980, subdivision 1 as amended by chapter 182  
5 of the laws of 1993 and subdivision 3 as added by chapter 286 of the  
6 laws of 1984, is amended to read as follows:

7     S 71-z. Liability for canned, perishable food or farm products  
8 distributed free of charge. 1. AS USED IN THIS SECTION, "PERISHABLE  
9 FOOD" SHALL MEAN ANY FOOD THAT MAY SPOIL OR OTHERWISE BECOME UNFIT FOR  
10 HUMAN CONSUMPTION BECAUSE OF ITS NATURE, TYPE OR PHYSICAL CONDITION.  
11 "PERISHABLE FOOD" INCLUDES, BUT IS NOT LIMITED TO, FRESH OR PROCESSED  
12 MEATS, POULTRY, SEAFOOD, DAIRY PRODUCTS, BAKERY PRODUCTS, EGGS IN THE  
13 SHELL, FRESH FRUITS OR VEGETABLES, AND FOODS THAT HAVE BEEN NON-COMMER-  
14 CIALY PACKAGED, THAT HAVE BEEN FROZEN OR OTHERWISE REQUIRE REFRIGER-  
15 ATION TO REMAIN NON-PERISHABLE FOR A REASONABLE LENGTH OF TIME, OR THAT  
16 HAVE BEEN PREPARED AT A LICENSED PUBLIC FOOD SERVICE ESTABLISHMENT.

17     2. AS USED IN THIS SECTION, "PUBLIC FOOD SERVICE ESTABLISHMENT" SHALL  
18 MEAN ANY BUILDING, VEHICLE, PLACE, OR STRUCTURE, OR ANY ROOM OR DIVISION  
19 IN A BUILDING, VEHICLE, PLACE, OR STRUCTURE WHERE FOOD IS PREPARED,  
20 SERVED, OR SOLD FOR IMMEDIATE CONSUMPTION ON OR IN THE VICINITY OF THE  
21 PREMISES; CALLED FOR OR TAKEN OUT BY CUSTOMERS; OR PREPARED PRIOR TO  
22 BEING DELIVERED TO ANOTHER LOCATION FOR CONSUMPTION.

23     THE FOLLOWING PLACES SHALL NOT BE CONSIDERED PUBLIC FOOD SERVICE  
24 ESTABLISHMENTS:

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 (A) ANY PLACE MAINTAINED AND OPERATED BY A PUBLIC OR PRIVATE SCHOOL,  
2 COLLEGE, OR UNIVERSITY FOR THE USE OF STUDENTS AND FACULTY OR TEMPORAR-  
3 ILY TO SERVE SUCH EVENTS AS FAIRS, CARNIVALS, AND ATHLETIC CONTESTS;

4 (B) ANY EATING PLACE MAINTAINED AND OPERATED BY A CHURCH OR A RELI-  
5 GIOUS, NONPROFIT FRATERNAL, OR NONPROFIT CIVIC ORGANIZATION FOR THE USE  
6 OF MEMBERS AND ASSOCIATES OR TEMPORARILY TO SERVE SUCH EVENTS AS FAIRS,  
7 CARNIVALS, OR ATHLETIC CONTESTS;

8 (C) ANY EATING PLACE LOCATED ON AN AIRPLANE, TRAIN, BUS, OR WATERCRAFT  
9 WHICH IS A COMMON CARRIER;

10 (D) ANY EATING PLACE MAINTAINED BY A HOSPITAL, NURSING HOME, SANITARI-  
11 UM, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTER, OR OTHER SIMILAR  
12 PLACE;

13 (E) ANY PLACE OF BUSINESS ISSUED A PERMIT OR INSPECTED BY THE DEPART-  
14 MENT;

15 (F) ANY PLACE OF BUSINESS WHERE THE FOOD AVAILABLE FOR CONSUMPTION IS  
16 LIMITED TO ICE, BEVERAGES WITH OR WITHOUT GARNISHMENT, POPCORN, OR  
17 PREPACKAGED ITEMS SOLD WITHOUT ADDITIONS OR PREPARATION;

18 (G) ANY THEATER, IF THE PRIMARY USE IS AS A THEATER AND IF PATRON  
19 SERVICE IS LIMITED TO FOOD ITEMS CUSTOMARILY SERVED TO THE ADMITTEES OF  
20 THEATERS;

21 (H) ANY VENDING MACHINE THAT DISPENSES ANY FOOD OR BEVERAGES OTHER  
22 THAN POTENTIALLY HAZARDOUS FOODS, AS DEFINED BY 1NYCRR 271-1.2; OR

23 (I) ANY RESEARCH AND DEVELOPMENT TEST KITCHEN LIMITED TO THE USE OF  
24 EMPLOYEES AND WHICH IS NOT OPEN TO THE GENERAL PUBLIC.

25 3. Notwithstanding any other provision of law, a good-faith donor of  
26 any canned or perishable food, farm product, game or wild game, appar-  
27 ently fit for human consumption, to a bona fide charitable or nonprofit  
28 organization, for free distribution, shall not be subject to criminal  
29 penalty or civil damages arising from the condition of the food, if the  
30 said donor reasonably inspects the food at the time of donation and  
31 finds the food apparently fit for human consumption and unless the donor  
32 has actual or constructive knowledge that the food is adulterated,  
33 tainted, contaminated or harmful to the health or well-being of the  
34 person consuming said food.

35 [2.] 4. This section includes the good faith donation of canned or  
36 perishable food or farm products not readily marketable due to appear-  
37 ance, freshness, grade, surplus or other considerations, but shall not  
38 be deemed or construed to restrict the authority of any lawful agency to  
39 otherwise regulate or ban the use of such food for human consumption.

40 [3.] 5. A not-for-profit charitable organization shall provide liabil-  
41 ity insurance to persons engaged in gleaning activities organized or  
42 sponsored by such charitable organization.

43 S 3. This act shall take effect immediately.