

# STATE OF NEW YORK

7160

2017-2018 Regular Sessions

## IN ASSEMBLY

April 10, 2017

Introduced by M. of A. LUPINACCI -- read once and referred to the  
Committee on Governmental Operations

AN ACT to amend the executive law and the agriculture and markets law,  
in relation to the donation of excess food by state agencies and  
contractors to food assistance programs

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "New York state food donation act".

3 § 2. The executive law is amended by adding a new article 16-B to read  
4 as follows:

### ARTICLE 16-B

#### FOOD DONATION BY STATE AGENCIES AND CONTRACTORS

#### Section 340. Statement of legislative findings and purposes.

##### 341. Definitions.

##### 342. Food donation by agencies and contractors.

##### 343. Costs.

##### 344. Liability.

##### 345. Food donation guidelines.

13 § 340. Statement of legislative findings and purposes. 1. The legisla-  
14 ture finds that there are numerous food-insecure families in New York  
15 who experience difficulty obtaining affordable, nutritious food on a  
16 daily basis who would be helped by donation of excess food by state  
17 agencies and contractors. In 1996 the United States Congress passed the  
18 Bill Emerson Good Samaritan Food Donation Act, which protects good-faith  
19 donors who donate food to nonprofit feeding programs from civil and  
20 criminal liability at the federal level. The Bill Emerson Good Samaritan  
21 Food Donation Act covers donation of all food and grocery products that  
22 meet quality and labeling standards imposed by federal, state and local  
23 laws and regulations, even though the food may not be "readily marketa-  
24 ble due to age, freshness, grade, size, surplus, or other conditions".

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

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1 Congress later passed the Federal Food Donation Act of 2008 which  
2 encourages executive agencies and contractors of executive agencies to  
3 donate excess food to food-insecure people and keep it out of land fill.  
4 The legislature further finds that donations of excess food for consump-  
5 tion by food-insecure people reduces greenhouse gas releases in land-  
6 fills which in turn reduces climate change.

7 2. The legislature declares that it shall be the public policy of the  
8 state to reduce waste by encouraging state agencies and contractors, to  
9 the maximum extent practicable and safe, to donate excess, apparently  
10 wholesome food to food assistance programs to benefit food-insecure  
11 people within the state.

12 § 341. Definitions. For the purposes of this article, the following  
13 terms shall have the following meanings:

14 1. "agency" means any state department, agency, board, commission,  
15 local education agency, municipality, office, public authority or public  
16 benefit corporation.

17 2. "apparently wholesome food" means food that meets all quality and  
18 labeling standards imposed by federal, state, and local laws and regu-  
19 lations even though the food may not be readily marketable due to  
20 appearance, age, freshness, grade, size, surplus, or other conditions.

21 3. "contractor" means any person or entity that has a contract with an  
22 agency for public works or improvements to be performed, for a fran-  
23 chise, concession or lease of property, for grant monies or goods and  
24 services or supplies to be purchased at the expense of the agency or to  
25 be paid out of monies deposited in the treasury or out of trust monies  
26 under the control or collected by the agency.

27 4. "excess", when applied to food, means food that is not required to  
28 meet the needs of the agency or contractor and that would otherwise be  
29 discarded.

30 5. "food assistance program" means not-for-profit food assistance  
31 programs including, but not limited to, community food pantries, food  
32 banks, emergency food programs, soup kitchens, and other community and  
33 not-for-profit organizations or programs that provide assistance to  
34 food-insecure people within the state.

35 6. "food-insecure" means inconsistent access to sufficient, safe, and  
36 nutritious food.

37 7. "local education agency" means a school district, board of cooper-  
38 ative educational services, community college, agricultural and techni-  
39 cal college, state university of New York college of technology and a  
40 center for advanced technology designated pursuant to section three  
41 thousand one hundred two-a of the public authorities law, and other  
42 postsecondary providers of career education as set forth annually by the  
43 governor in consultation and cooperation with the commissioner of agri-  
44 culture and markets as eligible recipients under the federal vocational  
45 education act of nineteen hundred eighty-four.

46 8. "municipality" means a village, town, city or county, or any desig-  
47 nated agency thereof.

48 § 342. Food donation by agencies and contractors. All agencies and  
49 contractors are encouraged, to the maximum extent practicable and safe,  
50 to donate excess, apparently wholesome food to food assistance programs.

51 § 343. Costs. In any case in which a contractor enters into a contract  
52 with an agency under which apparently wholesome food is donated to a  
53 food assistance program, the agency shall not assume responsibility for  
54 the costs and logistics of collecting, transporting, maintaining the  
55 safety of, or distributing the excess, apparently wholesome food to  
56 food-insecure people under this article.

1 § 344. Liability. An agency or contractor making donations pursuant to  
2 this article shall be exempt from civil and criminal liability to the  
3 extent provided under 42 USC § 1791 and any other applicable sections of  
4 state or federal law.

5 § 345. Food donation guidelines. 1. The governor, in consultation and  
6 cooperation with the commissioner of agriculture and markets, shall  
7 develop guidelines to encourage and facilitate agencies and contractors  
8 to donate excess, apparently wholesome food to food assistance programs.  
9 Such guidelines may include, but need not be limited to:

10 (a) a methodology to provide information to agencies, contractors, and  
11 food assistance programs of the provisions of such guidelines;

12 (b) a means by which agencies and contractors are provided with the  
13 names and addresses of nearby food assistance programs;

14 (c) a means by which food assistance programs are provided with the  
15 names and addresses of nearby agencies and contractors who may make  
16 donations to food assistance programs;

17 (d) notification to agencies and contractors of their ability to elect  
18 to donate excess, apparently wholesome food to food assistance programs;  
19 and

20 (e) the provision of information and technical assistance on the  
21 manner of how to best donate excess, apparently wholesome food in a safe  
22 and sanitary manner.

23 2. Any agency may promulgate rules, regulations, ordinances, or laws  
24 to take any and all reasonable actions necessary to implement this arti-  
25 cle. This article shall not be construed to limit the authority of an  
26 agency to adopt, implement, or, enforce requirements on management of  
27 excess food that are more stringent or comprehensive than the require-  
28 ments of this article.

29 § 3. Section 16 of the agriculture and markets law is amended by  
30 adding a new subdivision 49 to read as follows:

31 49. Cooperate with the governor, pursuant to article sixteen-B of the  
32 executive law, to develop guidelines which encourage agencies and  
33 contractors to donate excess, apparently wholesome food to food assist-  
34 ance programs.

35 § 4. This act shall take effect on the one hundred eightieth day after  
36 it shall have become a law.