

# STATE OF NEW YORK

7936

2017-2018 Regular Sessions

## IN ASSEMBLY

May 19, 2017

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring supermarkets to make excess food available to qualifying charities

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

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

### TITLE 28

#### EXCESS FOOD ACT

#### Section 27-2801. Legislative intent.

#### 27-2802. Definitions.

#### 27-2803. Availability requirement.

#### 27-2804. Exclusions.

#### 27-2805. Immunity from liability.

#### 27-2806. Construction.

#### 27-2807. Enforcement.

#### § 27-2801. Legislative intent.

Sixty to one hundred million tons of edible food in the United States is discarded, primarily to solid waste landfills. An estimated fifty million Americans, including nearly sixteen million children, do not have sufficient food. Decomposition of organic waste accounts for over fifteen percent of our nation's emissions of methane, a potent greenhouse gas. An estimated 2.8 million New Yorkers face hunger and food insecurity. This legislation is designed to increase food donations to food banks and other providers who feed the needy and to reduce food waste in solid waste landfills which create dangerous emissions.

#### § 27-2802. Definitions.

As used in this title, the following terms shall mean:

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

LBD10758-05-7

1 1. "Excess food" means edible food that is not sold or used by a  
2 supermarket and is being disposed of by the supermarket due to quality  
3 standards, labeling, appearance, surplus or other similar conditions.

4 2. "Qualifying charity" means (a) a religious organization which  
5 provides food for free to needy persons, or (b) a charity qualified  
6 under section 501(c)(3) of the Internal Revenue Code which provides food  
7 for free to needy persons. Qualifying charities shall include food  
8 banks and food pantries qualified under section 501(c)(3) of the Inter-  
9 nal Revenue Code which provide food to other qualified charities which  
10 provide food for free to needy persons.

11 3. "Supermarket" means a physical retail store which has at the  
12 subject location more than ten thousand square feet devoted to offering  
13 food for human consumption for sale to the general public.

14 § 27-2803. Availability requirement.

15 1. Every supermarket shall from time to time make available to quali-  
16 fying charities, excess food which the supermarket has on its premises.

17 2. No supermarket shall be required to make available a particular  
18 quantity or level of excess food or to transport or distribute any  
19 excess food.

20 3. A supermarket may, in accordance with applicable laws, dispose of  
21 excess food which is not timely collected by a qualifying charity.

22 4. A supermarket shall be deemed in compliance with this section if it  
23 in good faith arranges with a qualifying charity that has requested in  
24 writing to collect excess food from the supermarket for the collection  
25 of such excess food.

26 5. A supermarket may impose reasonable restrictions as to the time and  
27 manner of collection by a qualifying charity so as not to interfere with  
28 its business operations.

29 § 27-2804. Exclusions.

30 1. Excess food shall not include: unpackaged fresh meat, fish, or  
31 poultry; food damaged by storage conditions, pests, mold, bacteria or  
32 other contamination; food which has been offered for sale from a hot,  
33 cold or prepared food bar; food subject to a governmental or producer  
34 recall; food returned to a supplier; food donated to a qualifying chari-  
35 ty; food sold to a food remarketer or restaurant or other preparer of  
36 food for human consumption or sold to a farmer or other producer.

37 2. Supermarket shall not include hotels, motels, restaurants and cafe-  
38 terias, bakeries, caterers, hospitals, assisted living facilities, inde-  
39 pendent living facilities, nursing homes, hospices, group homes, drug  
40 stores, educational institutions, food courts in shopping malls, food  
41 retailers at airports or other transportation facilities, gas stations,  
42 sports arenas, or movie theaters.

43 § 27-2805. Immunity from liability.

44 Notwithstanding any inconsistent provision of any general, special or  
45 local law, no supermarket or qualifying charity, or any employee, offi-  
46 cer, shareholder, partner, agent, volunteer or religious leader thereof  
47 who provides, makes available, distributes or otherwise facilitates the  
48 distribution of excess foods to needy persons as provided in this title,  
49 shall be liable to any person for damages for injuries or death alleged  
50 to have been sustained as a result of the condition of excess food made  
51 available hereunder, unless such injuries or death were caused by gross  
52 negligence or intentional conduct of such supermarket or qualifying  
53 charity or any employee, officer, shareholder, partner, agent, volunteer  
54 or religious leader thereof.

55 § 27-2806. Construction.

1     Nothing in this title shall be construed to supersede any state or  
2     federal health laws or regulations regarding the handling of food.  
3     § 27-2807. Enforcement.  
4     Any qualifying charity may seek an order from a court of competent  
5     jurisdiction requiring compliance with the provisions of this title.  
6     § 2. This act shall take effect immediately.