

STATE OF NEW YORK

4083

2019-2020 Regular Sessions

IN ASSEMBLY

February 1, 2019

Introduced by M. of A. RA, DiPIETRO, LAWRENCE, GARBARINO, MOSLEY --
Multi-Sponsored by -- M. of A. BLAKE, BRABENEC, BUCHWALD, CROUCH,
GIGLIO, GUNTHER, McDONOUGH, B. MILLER, M. G. MILLER, M. L. MILLER,
MONTESANO, MORINELLO, ORTIZ, RAI, VAN, WILLIAMS -- 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

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

LBD02357-02-9

1 meet quality and labeling standards imposed by federal, state and local
2 laws and regulations, even though the food may not be "readily marketable
3 due to age, freshness, grade, size, surplus, or other conditions".
4 Congress later passed the Federal Food Donation Act of 2008 which
5 encourages executive agencies and contractors of executive agencies to
6 donate excess food to food-insecure people and keep it out of land fill.
7 The legislature further finds that donations of excess food for consump-
8 tion by food-insecure people reduces greenhouse gas releases in land-
9 fills which in turn reduces climate change.

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

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

17 1. "agency" means any state department, agency, board, commission,
18 local education agency, municipality, office, public authority or public
19 benefit corporation.

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

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

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

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

38 6. "food-insecure" means inconsistent access to sufficient, safe, and
39 nutritious food.

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

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

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

54 § 343. Costs. In any case in which a contractor enters into a contract
55 with an agency under which apparently wholesome food is donated to a
56 food assistance program, the agency shall not assume responsibility for

1 the costs and logistics of collecting, transporting, maintaining the
2 safety of, or distributing the excess, apparently wholesome food to
3 food-insecure people under this article.

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

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

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

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

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

20 (d) notification to agencies and contractors of their ability to elect
21 to donate excess, apparently wholesome food to food assistance programs;
22 and

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

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

32 § 3. Section 16 of the agriculture and markets law is amended by
33 adding a new subdivision 50 to read as follows:

34 50. Cooperate with the governor, pursuant to article sixteen-B of the
35 executive law, to develop guidelines which encourage agencies and
36 contractors to donate excess, apparently wholesome food to food assist-
37 ance programs.

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