S T A T E O F N E W Y O R K

6303

2009-2010 Regular Sessions

I N S E N A T E

November 18, 2009

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:

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

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

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

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

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

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

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

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

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

(D) ANY EATING PLACE MAINTAINED BY A HOSPITAL, NURSING HOME, SANITARIUM, ASSISTED LIVING FACILITY, ADULT DAY CARE CENTER, OR OTHER SIMILAR PLACE;

(E) ANY PLACE OF BUSINESS ISSUED A PERMIT OR INSPECTED BY THE DEPARTMENT;

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

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

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

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

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

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

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

S 3. This act shall take effect immediately.