

STATE OF NEW YORK

7254

IN SENATE

January 5, 2018

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

AN ACT to amend the agriculture and markets law, in relation to enacting the New York state excess food act, and to amend the state finance law, in relation to establishing the New York state excess food fund

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 state excess food act".

3 § 2. The article heading of article 4-D of the agriculture and markets
4 law, as amended by chapter 869 of the laws of 1980, is amended to read
5 as follows:

6 [~~LIABILITY FOR CANNED, PERISHABLE FOOD OR FARM PRODUCTS~~
7 ~~DISTRIBUTED~~] DISTRIBUTION OF EXCESS FOOD FREE OF CHARGE

8 § 3. Section 71-y of the agriculture and markets law, as amended by
9 chapter 869 of the laws of 1980, subdivision 1 as amended and subdivi-
10 sion 7 as added by chapter 438 of the laws of 2010, subdivision 5 as
11 added by chapter 286 of the laws of 1984, and subdivision 6 as added by
12 chapter 182 of the laws of 1993, is amended to read as follows:

13 § 71-y. Definitions. As used in this article: 1. "Perishable foods"
14 means any food that may spoil or otherwise become unfit for human
15 consumption because of its nature, type or physical condition. Perish-
16 able food includes, but is not limited to, fresh or processed meats,
17 poultry, seafood, dairy products, bakery products, eggs in the shell,
18 fresh fruits or vegetables and foods that have been packaged, refriger-
19 ated or frozen, or otherwise require refrigeration to remain nonperish-
20 able. This definition shall not include game or wild game.

21 2. "Canned foods" means any canned food that has been hermetically
22 sealed and commercially processed and prepared for human consumption,
23 including canned or preserved fruits, vegetables or other articles of
24 food. There is specifically excluded for purposes of this [~~section~~]
25 subdivision damaged canned goods [~~that are rusted, leaking, swollen or~~
26 ~~canned goods that are defective or cannot be otherwise offered for sale~~

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

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1 ~~to members of the general public~~], as defined in subdivision six of this
2 this section.

3 3. "Farm products" means any agricultural, dairy or horticultural
4 product or any product designed or intended for human consumption or
5 prepared principally from an agricultural, dairy or horticultural prod-
6 uct.

7 4. "Consumable" means fit for human consumption notwithstanding any
8 damage to packaging or temporal proximity to a used by or sell by date
9 affixed to the item but shall not include damaged canned goods.

10 5. "Non-consumable" means unfit for human consumption because of spoi-
11 lage, adulteration, contamination, or reasonable likelihood it would be
12 harmful to human health. This term shall not include food or farm
13 products not readily marketable due to appearance, freshness, grade,
14 surplus, or partial unfitness for human consumption if the spoiled,
15 adulterated, or contaminated portion of such food product can be safely
16 removed and the remaining food product can be utilized for processed
17 human food or animal feed.

18 6. "Damaged canned goods" means any canned goods that are rusted,
19 leaking, swollen, or punctured.

20 7. "Organic waste" means any non-consumable food or farm product in
21 whole or in part including the contents of damaged canned goods. The
22 term shall also include any material found in the waste stream that can
23 be broken down into, or otherwise become part of, usable compost, such
24 as food scraps, soiled paper, and plant trimmings. As determined by the
25 commissioner, such term may also include disposable plastic food service
26 ware and bags that meet the ASTM International standard specifications
27 for compostable plastics, but shall not include liquids and textiles.

28 8. "Toxic organic waste" means organic waste that has a reasonable
29 likelihood of causing serious illness in humans or animals after
30 composting because of contamination or adulteration.

31 9. "Covered retail establishment" means any location at which a retail
32 food store has a floor area of at least ten thousand square feet, or any
33 retail food store that is part of a chain of three or more retail food
34 stores that have a combined floor area space of at least ten thousand
35 square feet and that operate under common ownership or control and
36 receive waste collection from the same entity.

37 10. "Charitable or nonprofit organization" means any organization
38 which is exempt from federal or state income taxation, except that the
39 term does not include organizations which sell or offer to sell such
40 donated items of food.

41 ~~[5-]~~ 11. "Organized gleaning" means the harvest of an agricultural
42 crop that has been donated by an owner, lessee, or occupant of premises
43 or occupant of a farm by persons who are sponsored by a charitable not-
44 for-profit organization.

45 ~~[6-]~~ 12. "Game or wild game" means any deer or big game, or portions
46 thereof, as defined in section 11-0103 of the environmental conservation
47 law, taken by lawful hunting.

48 ~~[7-]~~ 13. "Public food service establishment" means any building, vehi-
49 cle, place or structure, or any room or division in a building, vehicle,
50 place or structure where food is prepared, served or sold for immediate
51 consumption on or in the vicinity of the premises; called for or taken
52 out by customers; or prepared prior to being delivered to another
53 location for consumption.

54 § 4. Section 71-z of the agriculture and markets law, as added by
55 chapter 869 of the laws of 1980, subdivision 1 as amended by chapter 438

1 of the laws of 2010 and subdivision 3 as added by chapter 286 of the
2 laws of 1984, is amended to read as follows:

3 § 71-z. Liability for canned, perishable food or farm products
4 distributed free of charge. 1. Notwithstanding any other provision of
5 law, a good-faith donor of any apparently consumable canned or perish-
6 able food, farm product, game or wild game, [~~apparently fit for human~~
7 ~~consumption,~~] to a bona fide charitable or nonprofit organization, for
8 free distribution, shall not be subject to criminal penalty or civil
9 damages arising from the condition of the food, if the said donor
10 reasonably inspects the food at the time of donation and finds the food
11 apparently [~~fit for human consumption~~] consumable and unless the donor
12 has actual or constructive knowledge that the food is adulterated,
13 tainted, contaminated or harmful to the health or well-being of the
14 person consuming said food. Such good-faith donor shall include, but not
15 be limited to, public food service establishments and covered retail
16 establishments as defined by sections thirteen and nine, respectively,
17 of section seventy-one-y of this article.

18 2. [~~This section includes the good faith donation of canned or perish-~~
19 ~~able food or farm products not readily marketable due to appearance,~~
20 ~~freshness, grade, surplus or other considerations, but shall not be~~
21 ~~deemed or construed to restrict the authority of any lawful agency to~~
22 ~~otherwise regulate or ban the use of such food for human consumption.~~

23 ~~3-]~~ A not-for-profit charitable organization shall provide liability
24 insurance to persons engaged in gleaning activities organized or spon-
25 sored by such charitable organization.

26 § 5. Article 4-D of the agriculture and markets law is amended by
27 adding four new sections 71-aa, 71-bb, 71-cc and 71-dd to read as
28 follows:

29 § 71-aa. Required donation. 1. Every covered retail establishment, as
30 defined in section seventy-one-y of this article, shall contract with a
31 charitable or nonprofit organization as defined in section seventy-one-y
32 of this article to ensure the good faith donation of all apparently
33 consumable farm and food products.

34 2. The wilful or wanton failure to donate consumable farm and food
35 products shall be punishable by a fine of up to four thousand dollars.

36 3. Any funds collected pursuant to subdivision two of this section
37 shall be deposited in the New York state excess food fund established
38 pursuant to section ninety-seven-yyyy of the state finance law and shall
39 be used for administrative and enforcement costs associated with this
40 article.

41 § 71-bb. Intentional spoilage prohibited. 1. It shall be unlawful for
42 any food service establishment or retail food seller to intentionally
43 contaminate, spoil or cause to spoil a farm or food product that would
44 otherwise be consumable.

45 2. The intentional spoilage of a farm or food product shall be punish-
46 able by a fine of up to four thousand dollars.

47 3. Any funds collected pursuant to subdivision two of this section
48 shall be deposited in the New York state excess food fund established
49 pursuant to section ninety-seven-yyyy of the state finance law and shall
50 be used for administrative and enforcement costs associated with this
51 article.

52 § 71-cc. Organic waste. Every covered retail establishment, as defined
53 in section seventy-one-y of this article shall contract with a waste
54 collection entity, or through its own facility, provide for the
55 collection of all non-toxic organic waste generated by such establish-
56 ment, including damaged canned goods and food that has spoiled or is not

1 suitable for human consumption, for composting through anaerobic or
2 aerobic digestion.

3 § 71-dd. Administration. All fines collected pursuant to this article
4 shall go into the New York excess food fund established pursuant to
5 section ninety-seven-yyyy of the state finance law to be used for the
6 administrative and enforcement costs associated with this article.

7 § 6. The state finance law is amended by adding a new section 97-yyyy
8 to read as follows:

9 § 97-yyyy. New York state excess food fund. 1. There is hereby estab-
10 lished in the joint custody of the commissioner of agriculture and
11 markets and the comptroller a fund to be known as the "New York state
12 excess food fund".

13 2. The fund shall consist of all monies appropriated for its purpose,
14 all monies required by this section or any other provision of law to be
15 paid into or credited to such fund. Whenever a lawsuit results in a
16 civil judgment for expenses already paid for by the fund, that portion
17 of the civil judgment shall be paid into the fund. Nothing contained in
18 this subdivision shall prevent the department of agriculture and markets
19 from receiving grants, gifts or bequests for the purposes of the fund as
20 defined in this section and depositing them into the fund according to
21 law.

22 3. Monies of the fund, when allocated, shall be available pursuant to
23 section seventy-one-dd of the agriculture and markets law.

24 4. Monies shall be payable from the fund on the audit and warrant of
25 the state comptroller on vouchers approved and certified by the commis-
26 sioner of agriculture and markets for application toward the administra-
27 tive and enforcement costs associated with article four-D of the agri-
28 culture and markets law.

29 § 7. This act shall take effect on the one hundred twentieth day after
30 it shall have become a law; provided, however, immediately, the addi-
31 tion, amendment, and/or repeal of any rule or regulation necessary for
32 the implementation of this act on its effective date are authorized and
33 directed to be made and completed on or before such effective date.