

# STATE OF NEW YORK

7348

## IN SENATE

January 9, 2018

Introduced by Sen. ALCANTARA -- 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 "surplus food to charitable organizations act"

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "surplus food to charitable organizations act".

3 § 2. The agriculture and markets law is amended by adding a new arti-  
4 cle 4-E to read as follows:

### ARTICLE 4-E

#### SURPLUS FOOD TO CHARITABLE ORGANIZATIONS ACT

##### Section 71-aa. Definitions.

##### 71-bb. Declaration of policy.

##### 71-cc. Availability.

##### 71-dd. Construction.

11 § 71-aa. Definitions. As used in this article: 1. The term "excess  
12 food" means food products that a supermarket has offered for sale for  
13 human consumption, which is still edible but which such supermarket is  
14 disposing of due to diminishing quality standards or appearance, the  
15 "best by date" or "use by date" labeling deadline has passed, supplies  
16 are overstocked or other similar conditions. Excess food shall not  
17 include: fresh milk, meat, fish or poultry; food damaged due to pests,  
18 mold, bacteria or other contamination; food damaged by storage condi-  
19 tions; and any food that is subject to governmental or producer recall.  
20 Excess food shall not include any food: returned to a supplier; donated  
21 to a qualifying charity; sold to a food remarketer, a restaurant or  
22 other preparer of food for human consumption; or sold to a farmer or  
23 other producer.

24 2. The term "qualifying charity" means a religious, charitable or  
25 not-for-profit organization that provides food at no cost to the poor,  
26 needy, disadvantaged or at-risk persons, including but not limited to a  
27 food pantry, food bank, soup kitchen or community based organization  
28 that provides food at no cost to such persons.

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

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1     3. The term "supermarket" means a retail store having more than ten  
2 thousand square feet at a given location devoted to the sale of foods,  
3 food stuffs and groceries for human consumption. The following shall not  
4 be considered supermarkets for the purposes of this act: hotels, motels,  
5 restaurants, cafeterias, bakeries, caterers, hospitals, assisted living  
6 facilities, independent living facilities, nursing homes, hospices,  
7 group homes, drug stores, educational institutions, food courts in shop-  
8 ping malls, food retailers at airports or other transportation facili-  
9 ties, gas stations, sports arenas, movie theaters or any other similar  
10 establishments.

11     § 71-bb. Declaration of policy. In the United States, sixty to one  
12 hundred million tons of edible food is disposed of and thrown out each  
13 year, primarily deposited in landfills. In the face of this fact an  
14 estimated fifty million Americans, including sixteen million children,  
15 do not have sufficient food to eat. This constitutes a humanitarian  
16 disgrace. It is further declared that it shall be the policy of this  
17 state to encourage, wherever possible, supermarkets to ensure edible  
18 food that would otherwise be disposed of is made available to qualifying  
19 charities that provide food at no cost to needy, disadvantaged or  
20 at-risk persons.

21     In support of this policy, the federal Emerson Good Samaritan Food  
22 Donation Act, section seventeen hundred ninety-one of title forty-two of  
23 the United States Code, which establishes liability standards and  
24 protections for donated foods, shall be applicable to food transferred  
25 pursuant to this article.

26     § 71-cc. Availability. 1. Every supermarket shall, to the best of its  
27 ability, make a reasonable effort to make available on its premises to a  
28 qualifying charity excess food which the supermarket from time to time  
29 has in its possession.

30     2. No supermarket shall be required to provide or maintain a partic-  
31 ular quantity or level of excess food.

32     3. A supermarket may, in accordance with any applicable laws, dispose  
33 of any excess food that is not timely picked up by a qualifying charity.

34     4. No supermarket shall be required to transport or distribute any  
35 excess food in connection with this article.

36     5. A supermarket shall be deemed to be in compliance with this section  
37 if, in good faith, it establishes pick-up or retrieval arrangements with  
38 one or more qualifying charities that has requested permission in writ-  
39 ing to pick up excess food from such supermarket.

40     6. A supermarket may impose restrictions on qualifying charities to  
41 ensure that retrieval of excess food from the supermarket does not  
42 interfere with the business operations of the supermarket.

43     § 71-dd. Construction. Nothing contained in this article shall be  
44 construed to supersede any federal, state or local health or sanitary  
45 laws, rules or regulations that govern food safety and food donation.

46     § 3. This act shall take effect on the one hundred eightieth day after  
47 it shall have become a law.