STATE OF NEW YORK

10981

IN ASSEMBLY

May 29, 2018

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

AN ACT to amend the agriculture and markets law, in relation to requiring supermarkets to make surplus food available to qualifying charities

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

Section 1. The agricultural and markets law is amended by adding a new article 17-C to read as follows:

ARTICLE 17-C

SURPLUS FOOD TO CHARITABLE ORGANIZATIONS ACT

Section 223. Legislative intent.
223-a. Definitions.
223-b. Availability requirement.
223-c. Exclusions.
223-d. Immunity from liability.
223-e. Construction.

§ 223. 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.

§ 223-a. Definitions. As used in this article, the following terms shall mean:

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

2. "Qualifying charity" means a religious, charitable or not-for-profit organization that provides food at no cost to the poor, needy,

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

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disadvantaged or at-risk persons, including but not limited to a food pantry, food bank, soup kitchen or community based organization that provides food at no cost to such persons.

3. "Supermarket" means a retail store at a given location which has more than ten thousand square feet devoted to the sale of food and groceries for human consumption.

§ 223-b. Availability requirement. 1. Every supermarket shall make a reasonable effort to make available to a qualifying charity, surplus food which the supermarket from time to time has in its possession.

2. No supermarket shall be required to make available a particular quantity or level of surplus food or to transport or distribute any surplus food in connection with this article.

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

4. A supermarket shall be deemed in compliance with this section if, in good faith, it arranges with one or more qualifying charities that have requested in writing to collect surplus food from the supermarket for the collection of such surplus food.

5. A supermarket may impose restrictions to ensure that the retrieval of surplus food by a qualifying charity does not interfere with the business operations of the supermarket.

§ 223-c. Exclusions. 1. Surplus food shall not include: fresh milk, or fresh meat, fish or poultry; food damaged by storage conditions, pests, mold, bacteria or other contamination; food which has been offered for sale from a hot, cold or prepared food bar; food subject to a governmental or producer recall; food returned to a supplier; food donated to a qualifying charity; food sold to a food remarketer or restaurant or other preparer of food for human consumption or sold to a farmer or other producer.

2. Supermarket shall not include hotels, motels, restaurants and cafeterias, bakeries, caterers, hospitals, assisted living facilities, independent living facilities, nursing homes, hospices, group homes, drug stores, educational institutions, food courts in shopping malls, food retailers at airports or other transportation facilities, gas stations, sports arenas, movie theaters or any other similar establishments.

§ 223-d. Immunity from liability. Notwithstanding any inconsistent provision of any general, special or local law, no supermarket or qualifying charity, or any employee, officer, shareholder, partner, agent, volunteer or religious leader thereof who provides, makes available, distributes or otherwise facilitates the distribution of surplus foods as provided in this article, shall be liable to any person for damages for injuries or death alleged to have been sustained as a result of the condition of surplus food made available hereunder, unless such injuries or death were caused by gross negligence or intentional conduct of such supermarket or qualifying charity or any employee, officer, shareholder, partner, agent, volunteer or religious leader thereof.

§ 223-e. Construction. Nothing in this article shall be construed to supersede any state or federal health laws or regulations regarding the handling of food.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule and regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such date.