

# STATE OF NEW YORK

1672

2019-2020 Regular Sessions

## IN ASSEMBLY

January 16, 2019

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 agriculture 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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1 disadvantaged or at-risk persons, including but not limited to a food  
2 pantry, food bank, soup kitchen or community based organization that  
3 provides food at no cost to such persons.

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

7 § 223-b. Availability requirement. 1. Every supermarket shall make a  
8 reasonable effort to make available to a qualifying charity, surplus  
9 food which the supermarket from time to time has in its possession.

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

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

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

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

22 § 223-c. Exclusions. 1. Surplus food shall not include: fresh milk, or  
23 fresh meat, fish or poultry; food damaged by storage conditions, pests,  
24 mold, bacteria or other contamination; food which has been offered for  
25 sale from a hot, cold or prepared food bar; food subject to a govern-  
26 mental or producer recall; food returned to a supplier; food donated to  
27 a qualifying charity; food sold to a food remarketer or restaurant or  
28 other preparer of food for human consumption or sold to a farmer or  
29 other producer.

30 2. Supermarket shall not include hotels, motels, restaurants and cafe-  
31 terias, bakeries, caterers, hospitals, assisted living facilities, inde-  
32 pendent living facilities, nursing homes, hospices, group homes, drug  
33 stores, educational institutions, food courts in shopping malls, food  
34 retailers at airports or other transportation facilities, gas stations,  
35 sports arenas, movie theaters or any other similar establishments.

36 § 223-d. Immunity from liability. Notwithstanding any inconsistent  
37 provision of any general, special or local law, no supermarket or quali-  
38 ifying charity, or any employee, officer, shareholder, partner, agent,  
39 volunteer or religious leader thereof who provides, makes available,  
40 distributes or otherwise facilitates the distribution of surplus foods  
41 as provided in this article, shall be liable to any person for damages  
42 for injuries or death alleged to have been sustained as a result of the  
43 condition of surplus food made available hereunder, unless such injuries  
44 or death were caused by gross negligence or intentional conduct of such  
45 supermarket or qualifying charity or any employee, officer, shareholder,  
46 partner, agent, volunteer or religious leader thereof.

47 § 223-e. Construction. Nothing in this article shall be construed to  
48 supersede any state or federal health laws or regulations regarding the  
49 handling of food.

50 § 2. This act shall take effect on the one hundred eightieth day after  
51 it shall have become a law. Effective immediately the addition, amend-  
52 ment and/or repeal of any rule or regulation necessary for the implemen-  
53 tation of this act on its effective date are authorized to be made on or  
54 before such date.