

# STATE OF NEW YORK

4176--A

2019-2020 Regular Sessions

## IN SENATE

March 4, 2019

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to requiring supermarkets to make excess food available to qualifying entities

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

1 Section 1. Article 27 of the environmental conservation law is amended  
2 by adding a new title 30 to read as follows:

3 TITLE 30

4 EXCESS FOOD ACT

5 Section 27-3001. Legislative intent.

6 27-3002. Definitions.

7 27-3003. Availability requirement.

8 27-3004. Construction.

9 27-3005. Enforcement.

10 § 27-3001. Legislative intent.

11 An estimated fifty million Americans, including nearly sixteen million  
12 children, do not have sufficient food. An estimated 2.8 million New  
13 Yorkers face hunger and food insecurity. This legislation is designed to  
14 increase food donations to food banks and other providers who feed the  
15 needy while reducing food waste in solid waste landfills which create  
16 dangerous emissions.

17 § 27-3002. Definitions.

18 As used in this title, the following terms shall mean:

19 1. "Excess food" means edible food that is not sold or used by a  
20 supermarket and is still safe to be consumed but is being disposed of by  
21 the supermarket due to labeling, appearance, surplus or other similar  
22 conditions. "Excess food" shall not include: unpackaged fresh meat,

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

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1 fish, or poultry; food damaged by storage conditions, pests, mold,  
2 bacteria or other contamination; food which has been offered for sale  
3 from a hot, cold or prepared food bar; food subject to a governmental or  
4 producer recall; food returned to a supplier; food donated to a qualify-  
5 ing entity; food sold to a food remarketer or restaurant or other  
6 preparer of food for human consumption or sold to a farmer or other  
7 producer.

8 2. "Qualifying entity" means a religious or other not-for-profit  
9 organization which provides food for free to needy persons, including,  
10 but not limited to a food pantry, food bank, soup-kitchen or community-  
11 based organization that provides food for free to needy persons.

12 3. "Supermarket" means a physical retail store which has at the  
13 subject location more than ten thousand square feet devoted to offering  
14 food for human consumption for sale to the general public. "Supermar-  
15 ket" shall not include hotels, motels, restaurants and cafeterias,  
16 bakeries, caterers, hospitals, assisted living facilities, nursing  
17 homes, hospices, group homes, drug stores, educational institutions, and  
18 food courts in shopping malls, food retailers at airports and other  
19 transportation facilities, gas stations, sports arenas, movie theaters  
20 or any other similar establishment.

21 § 27-3003. Availability requirement.

22 1. Every supermarket shall from time to time make excess food avail-  
23 able to qualifying entities.

24 2. No supermarket shall be required to make available a particular  
25 quantity or level of excess food or to transport or distribute any  
26 excess food.

27 3. A supermarket shall be deemed in compliance with this section if  
28 it in good faith arranges with a qualifying entity that has requested in  
29 writing to collect excess food from the supermarket for the collection  
30 of such excess food. A supermarket acting in compliance with this  
31 section shall have no liability for the food transferred in the absence  
32 of gross negligence or intentional misconduct.

33 4. A supermarket may impose reasonable restrictions as to the time and  
34 manner of collection by a qualifying entity so as not to interfere with  
35 its business operations.

36 5. A supermarket may, in accordance with any applicable laws, dispose  
37 of any excess food which is not picked up by a qualifying entity within  
38 a reasonable time.

39 § 27-3004. Construction.

40 Nothing in this title shall be construed to supersede any state or  
41 federal health laws or regulations regarding the handling of food.

42 § 27-3005. Enforcement.

43 A supermarket that does not meet the requirements of this title shall  
44 not be subject to the penalties specified in title twenty-seven of arti-  
45 cle seventy-one of this chapter.

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