

STATE OF NEW YORK

4176

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

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 28 to read as follows:

3 TITLE 28

4 EXCESS FOOD ACT

5 Section 27-2801. Legislative intent.

6 27-2802. Definitions.

7 27-2803. Availability requirement.

8 27-2804. Construction.

9 27-2805. Enforcement.

10 § 27-2801. Legislative intent.

11 Sixty to one hundred million tons of edible food in the United States
12 is discarded, primarily to solid waste landfills. An estimated fifty
13 million Americans, including nearly sixteen million children, do not
14 have sufficient food. An estimated 2.8 million New Yorkers face hunger
15 and food insecurity. Decomposition of organic waste accounts for over
16 fifteen percent of our nation's emissions of methane, a potent green-
17 house gas. This legislation is designed to increase food donations to
18 food banks and other providers who feed the needy while reducing food
19 waste in solid waste landfills which create dangerous emissions.

20 § 27-2802. Definitions.

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

22 1. "Excess food" means edible food that is not sold or used by a
23 supermarket and is still safe to be consumed but is being disposed of by
24 the supermarket due to labeling, appearance, surplus or other similar

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

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1 conditions. "Excess food" shall not include: unpackaged fresh meat,
2 fish, or poultry; food damaged by storage conditions, pests, mold,
3 bacteria or other contamination; food which has been offered for sale
4 from a hot, cold or prepared food bar; food subject to a governmental or
5 producer recall; food returned to a supplier; food donated to a qualify-
6 ing entity; food sold to a food remarketer or restaurant or other
7 preparer of food for human consumption or sold to a farmer or other
8 producer.

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

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

22 § 27-2803. Availability requirement.

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

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

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

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

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

40 § 27-2804. Construction.

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

43 § 27-2805. Enforcement.

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

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