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:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

TITLE 28

EXCESS FOOD ACT

Section 27-2801. Legislative intent.
27-2802. Definitions.
27-2803. Availability requirement.
27-2804. Construction.
27-2805. Enforcement.

§ 27-2801. 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. An estimated 2.8 million New Yorkers face hunger and food insecurity. Decomposition of organic waste accounts for over fifteen percent of our nation's emissions of methane, a potent greenhouse gas. This legislation is designed to increase food donations to food banks and other providers who feed the needy while reducing food waste in solid waste landfills which create dangerous emissions.

§ 27-2802. Definitions.

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

1. "Excess food" means edible food that is not sold or used by a supermarket and is still safe to be consumed but is being disposed of by 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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conditions. "Excess food" shall not include: unpackaged 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 entity; 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. "Qualifying entity" means a religious or other not-for-profit organization which provides food for free to needy persons, including, but not limited to a food pantry, food bank, soup-kitchen or community-based organization that provides food for free to needy persons.

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

§ 27-2803. Availability requirement.

1. Every supermarket shall from time to time make excess food available to qualifying entities.

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

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

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

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

§ 27-2804. Construction.

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

§ 27-2805. Enforcement.

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

§ 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 or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.