STATE OF NEW YORK

3447

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

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

AN ACT to amend the agriculture and markets law, in relation to enacting the New York state excess food act; and to amend the state finance law, in relation to establishing the New York state excess food fund

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

Section 1. This act shall be known and may be cited as the "New York state excess food act".

§ 2. The article heading of article 4-D of the agriculture and markets law, as amended by chapter 869 of the laws of 1980, is amended to read as follows:

[~~LIABILITY FOR CANNED, PERISHABLE FOOD OR FARM PRODUCTS DISTRIBUTED~~] **DISTRIBUTION OF EXCESS FOOD** FREE OF CHARGE

§ 3. Section 71-y of the agriculture and markets law, as amended by chapter 869 of the laws of 1980, subdivision 1 as amended and subdivision 7 as added by chapter 438 of the laws of 2010, subdivision 5 as added by chapter 286 of the laws of 1984, and subdivision 6 as added by chapter 182 of the laws of 1993, is amended to read as follows:

§ 71-y. Definitions. As used in this article: 1. "Perishable foods" means any food that may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen, or otherwise require refrigeration to remain nonperishable. This definition shall not include game or wild game.

2. "Canned foods" means any canned food that has been hermetically sealed and commercially processed and prepared for human consumption, including canned or preserved fruits, vegetables or other articles of food. There is specifically excluded for purposes of this [~~section~~]

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

LBD07428-01-3

subdivision damaged canned goods [~~that are rusted, leaking, swollen or canned goods that are defective or cannot be otherwise offered for sale to members of the general public~~], as defined in subdivision six of this section.

3. "Farm products" means any agricultural, dairy or horticultural product or any product designed or intended for human consumption or prepared principally from an agricultural, dairy or horticultural product.

4. "Consumable" means fit for human consumption notwithstanding any damage to packaging or temporal proximity to a used by or sell by date affixed to the item but shall not include damaged canned goods.

5. "Non-consumable" means unfit for human consumption because of spoilage, adulteration, contamination, or reasonable likelihood it would be harmful to human health. This term shall not include food or farm products not readily marketable due to appearance, freshness, grade, surplus, or partial unfitness for human consumption if the spoiled, adulterated, or contaminated portion of such food product can be safely removed and the remaining food product can be utilized for processed human food or animal feed.

6. "Damaged canned goods" means any canned goods that are rusted, leaking, swollen, or punctured.

7. "Organic waste" means any non-consumable food or farm product in whole or in part including the contents of damaged canned goods. The term shall also include any material found in the waste stream that can be broken down into, or otherwise become part of, usable compost, such as food scraps, soiled paper, and plant trimmings. As determined by the commissioner, such term may also include disposable plastic food service ware and bags that meet the ASTM International standard specifications for compostable plastics, but shall not include liquids and textiles.

8. "Toxic organic waste" means organic waste that has a reasonable likelihood of causing serious illness in humans or animals after composting because of contamination or adulteration.

9. "Covered retail establishment" means any location at which a retail food store has a floor area of at least ten thousand square feet, or any retail food store that is part of a chain of three or more retail food stores that have a combined floor area space of at least ten thousand square feet and that operate under common ownership or control and receive waste collection from the same entity.

10. "Charitable or nonprofit organization" means any organization which is exempt from federal or state income taxation, except that the term does not include organizations which sell or offer to sell such donated items of food.

[~~5.~~] 11. "Organized gleaning" means the harvest of an agricultural crop that has been donated by an owner, lessee, or occupant of premises or occupant of a farm by persons who are sponsored by a charitable not-for-profit organization.

[~~6.~~] 12. "Game or wild game" means any deer or big game, or portions thereof, as defined in section 11-0103 of the environmental conservation law, taken by lawful hunting.

[~~7.~~] 13. "Public food service establishment" means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure where food is prepared, served or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

§ 4. Section 71-z of the agriculture and markets law, as added by chapter 869 of the laws of 1980, subdivision 1 as amended by chapter 438 of the laws of 2010 and subdivision 3 as added by chapter 286 of the laws of 1984, is amended to read as follows:

§ 71-z. Liability for canned, perishable food or farm products distributed free of charge. 1. Notwithstanding any other provision of law, a good-faith donor of any **apparently consumable** canned or perishable food, farm product, game or wild game, [~~**apparently fit for human consumption,**~~] to a bona fide charitable or nonprofit organization, for free distribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food, if the said donor reasonably inspects the food at the time of donation and finds the food apparently [~~**fit for human consumption**~~] **consumable** and unless the donor has actual or constructive knowledge that the food is adulterated, tainted, contaminated or harmful to the health or well-being of the person consuming said food. Such good-faith donor shall include, but not be limited to, public food service establishments **and covered retail establishments as defined by subdivisions thirteen and nine, respectively, of section seventy-one-y of this article**.

2. [~~**This section includes the good faith donation of canned or perishable food or farm products not readily marketable due to appearance, freshness, grade, surplus or other considerations, but shall not be deemed or construed to restrict the authority of any lawful agency to otherwise regulate or ban the use of such food for human consumption.**~~

~~**3.**~~] A not-for-profit charitable organization shall provide liability insurance to persons engaged in gleaning activities organized or sponsored by such charitable organization.

§ 5. Article 4-D of the agriculture and markets law is amended by adding four new sections 71-aa, 71-bb, 71-cc and 71-dd to read as follows:

§ 71-aa. Required donation. 1. Every covered retail establishment, as defined in section seventy-one-y of this article, shall contract with a charitable or nonprofit organization as defined in section seventy-one-y of this article to ensure the good faith donation of all apparently consumable farm and food products.

2. The wilful or wanton failure to donate consumable farm and food products shall be punishable by a fine of up to four thousand dollars.

3. Any funds collected pursuant to subdivision two of this section shall be deposited in the New York state excess food fund established pursuant to section ninety-seven-zzzz of the state finance law and shall be used for administrative and enforcement costs associated with this article.

§ 71-bb. Intentional spoilage prohibited. 1. It shall be unlawful for any food service establishment or retail food seller to intentionally contaminate, spoil or cause to spoil a farm or food product that would otherwise be consumable.

2. The intentional spoilage of a farm or food product shall be punishable by a fine of up to four thousand dollars.

3. Any funds collected pursuant to subdivision two of this section shall be deposited in the New York state excess food fund established pursuant to section ninety-seven-zzzz of the state finance law and shall be used for administrative and enforcement costs associated with this article.

§ 71-cc. Organic waste. Every covered retail establishment, as defined in section seventy-one-y of this article shall contract with a waste collection entity, or through its own facility, provide for the

collection of all non-toxic organic waste generated by such establishment, including damaged canned goods and food that has spoiled or is not suitable for human consumption, for composting through anaerobic or aerobic digestion.

§ 71-dd. Administration. All fines collected pursuant to this article shall go into the New York excess food fund established pursuant to section ninety-seven-zzzz of the state finance law to be used for the administrative and enforcement costs associated with this article.

§ 6. The state finance law is amended by adding a new section 97-zzzz to read as follows:

§ 97-zzzz. New York state excess food fund. 1. There is hereby established in the joint custody of the commissioner of agriculture and markets and the comptroller a fund to be known as the "New York state excess food fund".

2. The fund shall consist of all monies appropriated for its purpose, all monies required by this section or any other provision of law to be paid into or credited to such fund. Whenever a lawsuit results in a civil judgment for expenses already paid for by the fund, that portion of the civil judgment shall be paid into the fund. Nothing contained in this subdivision shall prevent the department of agriculture and markets from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Monies of the fund, when allocated, shall be available pursuant to section seventy-one-dd of the agriculture and markets law.

4. Monies shall be payable from the fund on the audit and warrant of the state comptroller on vouchers approved and certified by the commissioner of agriculture and markets for application toward the administrative and enforcement costs associated with article four-D of the agriculture and markets law.

§ 7. This act shall take effect on the one hundred twentieth 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 effective date.