

# 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:

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

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

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

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

13 § 71-y. Definitions. As used in this article: 1. "Perishable foods"  
14 means any food that may spoil or otherwise become unfit for human  
15 consumption because of its nature, type or physical condition. Perish-  
16 able food includes, but is not limited to, fresh or processed meats,  
17 poultry, seafood, dairy products, bakery products, eggs in the shell,  
18 fresh fruits or vegetables and foods that have been packaged, refriger-  
19 ated or frozen, or otherwise require refrigeration to remain nonperish-  
20 able. This definition shall not include game or wild game.

21 2. "Canned foods" means any canned food that has been hermetically  
22 sealed and commercially processed and prepared for human consumption,  
23 including canned or preserved fruits, vegetables or other articles of  
24 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.

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

5 3. "Farm products" means any agricultural, dairy or horticultural  
6 product or any product designed or intended for human consumption or  
7 prepared principally from an agricultural, dairy or horticultural prod-  
8 uct.

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

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

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

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

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

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

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

43 [~~5-~~] 11. "Organized gleanings" means the harvest of an agricultural  
44 crop that has been donated by an owner, lessee, or occupant of premises  
45 or occupant of a farm by persons who are sponsored by a charitable not-  
46 for-profit organization.

47 [~~6-~~] 12. "Game or wild game" means any deer or big game, or portions  
48 thereof, as defined in section 11-0103 of the environmental conservation  
49 law, taken by lawful hunting.

50 [~~7-~~] 13. "Public food service establishment" means any building, vehi-  
51 cle, place or structure, or any room or division in a building, vehicle,  
52 place or structure where food is prepared, served or sold for immediate  
53 consumption on or in the vicinity of the premises; called for or taken  
54 out by customers; or prepared prior to being delivered to another  
55 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

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

5 § 71-dd. Administration. All fines collected pursuant to this article  
6 shall go into the New York excess food fund established pursuant to  
7 section ninety-seven-zzzz of the state finance law to be used for the  
8 administrative and enforcement costs associated with this article.

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

11 § 97-zzzz. New York state excess food fund. 1. There is hereby estab-  
12 lished in the joint custody of the commissioner of agriculture and  
13 markets and the comptroller a fund to be known as the "New York state  
14 excess food fund".

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

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

26 4. Monies shall be payable from the fund on the audit and warrant of  
27 the state comptroller on vouchers approved and certified by the commis-  
28 sioner of agriculture and markets for application toward the administra-  
29 tive and enforcement costs associated with article four-D of the agri-  
30 culture and markets law.

31 § 7. This act shall take effect on the one hundred twentieth day after  
32 it shall have become a law. Effective immediately, the addition, amend-  
33 ment and/or repeal of any rule or regulation necessary for the implemen-  
34 tation of this act on its effective date are authorized to be made and  
35 completed on or before such effective date.