



House of Representatives

General Assembly

File No. 194

February Session, 2022

Substitute House Bill No. 5146

House of Representatives, March 30, 2022

The Committee on General Law reported through REP. D'AGOSTINO of the 91st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FOOD DONATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) (a) For the purposes of this
2 section:

3 (1) "Canned food" means any food that has been commercially
4 processed, prepared and hermetically sealed for human consumption,
5 including, but not limited to, a canned or preserved fruit or vegetable;

6 (2) "Food relief organization" means a public or private entity,
7 including, but not limited to, a community-based organization, food
8 bank, food pantry or soup kitchen, that, on a nonprofit basis and in the
9 ordinary course of such entity's business or operations, provides
10 nutritional assistance to individuals in this state who are in need of such
11 assistance, free of charge;

12 (3) "Perishable food" means any food, including, but not limited to, a
13 fresh, frozen or refrigerated bakery product, dairy product, fruit,

14 packaged meat, packaged seafood or vegetable, that may spoil or
15 otherwise become unfit for human consumption because of its nature,
16 physical condition or type; and

17 (4) "Supermarket" means (A) a retail food store occupying a total
18 retail sales area of at least three thousand five hundred square feet, or
19 (B) a large discount department store that (i) sells a complete line of
20 grocery merchandise, (ii) continuously offers for sale fresh produce and
21 meats, poultry, seafood, nuts and dairy products, (iii) maintains a
22 bakery, as defined in section 21a-151 of the general statutes, (iv) is
23 locally permitted as a class 3 food establishment, as defined in section
24 19a-36g of the general statutes, and (v) has registered at least one
25 weighing or measuring device pursuant to subsection (b) of section 43-
26 3 of the general statutes.

27 (b) An insurer that delivers, issues for delivery, renews, amends or
28 continues in this state a commercial risk insurance policy or rider to such
29 policy which provides coverage for the spoilage of canned food or
30 perishable food shall provide coverage to the same extent for canned
31 food or perishable food that is donated by a food relief organization or
32 a supermarket.

33 (c) To the extent a tax deduction or tax credit is allowed under any
34 provision of the general statutes for a donation described in subsection
35 (b) of this section, no supermarket that donates to a food relief
36 organization any canned food or perishable food and receives payment
37 from an insurer for such canned food or perishable food shall avail itself
38 of a tax deduction or tax credit for the amount of such payment.

39 Sec. 2. (NEW) (*Effective October 1, 2022*) (a) For the purposes of this
40 section, "supermarket" has the same meaning as provided in section 1 of
41 this act.

42 (b) Not later than January 1, 2023, each supermarket doing business
43 in this state shall adopt a written policy describing a food donation
44 program that:

45 (1) Is designed to reduce such supermarket's food waste, support the
46 operations of food relief organizations and ensure that all food donated
47 by such supermarket under such policy is safe and fit for human
48 consumption;

49 (2) Provides for the education of such supermarket's management
50 and employees regarding the food distribution process and the
51 relationship between such process and food insecurity and food waste;

52 (3) Calls for such supermarket to make reasonable efforts to identify,
53 and partner with, at least two food relief organizations for the purpose
54 of donating excess edible food to such food relief organizations;

55 (4) Includes a framework to formalize and streamline such
56 supermarket's store-level protocols concerning food donated by such
57 supermarket; and

58 (5) Includes a process to ensure that the food donated as part of such
59 program has significant nutritional value.

60 (c) If multiple supermarkets subject to the provisions of subsection
61 (b) of this section are under common ownership, such supermarkets
62 may adopt a common written policy under this section.

63 Sec. 3. Section 52-557l of the general statutes is repealed and the
64 following is substituted in lieu thereof (*Effective October 1, 2022*):

65 (a) Notwithstanding any provision of the general statutes, any
66 person, including but not limited to a seller, farmer, processor,
67 distributor, wholesaler or retailer of food, who donates an item of food
68 for use or distribution by a nonprofit organization, nonprofit
69 corporation, political subdivision of the state or senior center, and any
70 nonprofit organization or nonprofit corporation that collects donated
71 food and distributes such food to other nonprofit organizations or
72 nonprofit corporations or a political subdivision of the state or senior
73 center free of charge or for a nominal fee, shall not be liable for civil
74 damages or criminal penalties resulting from the nature, age, condition
75 or packaging of the food, unless it is established that the donor, at the

76 time of making the donation, or the nonprofit organization or nonprofit
77 corporation, at the time of distributing the food, knew or had reasonable
78 grounds to believe that the food was (1) adulterated, as [defined]
79 described in section 21a-101, or (2) not fit for human consumption.

80 (b) Notwithstanding any provision of the general statutes, any food
81 establishment classified as a class 3 or class 4 food establishment
82 pursuant to regulations adopted under section 19a-36h, that donates
83 perishable food for use or distribution by a temporary emergency
84 shelter in accordance with the provisions set forth in section 38a-313b
85 shall not be liable for civil damages or criminal penalties resulting from
86 the nature, age, condition or packaging of the food, unless it is
87 established that the donor, at the time of making the donation, knew or
88 had reasonable grounds to believe that the food was (1) embargoed or
89 ordered destroyed by the Department of Public Health or a local
90 director of health, or an authorized agent thereof, (2) adulterated, as
91 [defined] described in section 21a-101, or (3) not fit for human
92 consumption.

93 (c) Notwithstanding any provision of the general statutes, any food
94 relief organization or supermarket that donates any canned food or
95 perishable food shall not be liable for civil damages or criminal penalties
96 resulting from the nature, age, condition or packaging of such canned
97 food or perishable food, unless it is established that such food relief
98 organization or supermarket, at the time such food relief organization
99 or supermarket donated such canned food or perishable food, knew or
100 had reasonable grounds to believe that such canned food or perishable
101 food was (1) embargoed or ordered destroyed by the Department of
102 Public Health or a local director of health, or an authorized agent
103 thereof, (2) adulterated, as described in section 21a-101, or (3) not fit for
104 human consumption. For the purposes of this subsection, "canned
105 food", "food relief organization", "perishable food" and "supermarket"
106 have the same meanings as provided in section 1 of this act.

107 Sec. 4. (*Effective from passage*) (a) There is established a task force to
108 study implementation of a supermarket food donation program in this

109 state. The task force shall examine, and make recommendations
110 concerning, establishing a supermarket food donation program in this
111 state that (1) alleviates hunger, reduces food waste and supports the
112 operations of food relief organizations providing nutritional assistance
113 in this state, and (2) ensures that all food donated as part of such
114 program is safe and fit for human consumption.

115 (b) The task force shall consist of the following members:

116 (1) The Commissioner of Agriculture, or the commissioner's
117 designee;

118 (2) The Commissioner of Consumer Protection, or the commissioner's
119 designee;

120 (3) The Commissioner of Public Health, or the commissioner's
121 designee;

122 (4) A representative of supermarkets doing business in this state, who
123 shall be jointly appointed by the chairpersons of the joint standing
124 committee of the General Assembly having cognizance of matters
125 relating to general law;

126 (5) A representative of food establishments doing business in this
127 state that are classified as class 3 or class 4 food establishments under
128 regulations adopted by the Commissioner of Public Health pursuant to
129 section 19a-36h of the general statutes, who shall be jointly appointed
130 by the chairpersons of the joint standing committee of the General
131 Assembly having cognizance of matters relating to general law;

132 (6) Two representatives of food relief organizations providing
133 nutritional assistance in this state, who shall be jointly appointed by the
134 chairpersons of the joint standing committee of the General Assembly
135 having cognizance of matters relating to general law; and

136 (7) Two members of the General Assembly, who shall be jointly
137 appointed by the chairpersons of the joint standing committee of the
138 General Assembly having cognizance of matters relating to general law.

139 (c) Any vacancy shall be filled by the appointing authority.

140 (d) The chairpersons of the joint standing committee of the General
141 Assembly having cognizance of matters relating to general law shall
142 select the chairpersons of the task force from among the members of the
143 task force.

144 (e) The administrative staff of the joint standing committee of the
145 General Assembly having cognizance of matters relating to general law
146 shall serve as administrative staff of the task force.

147 (f) Not later than January 1, 2023, the task force shall submit a report
148 on its findings and recommendations to the joint standing committee of
149 the General Assembly having cognizance of matters relating to general
150 law, in accordance with the provisions of section 11-4a of the general
151 statutes. The task force shall terminate on the date that it submits such
152 report or January 1, 2023, whichever is later.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2022</i>	New section
Sec. 2	<i>October 1, 2022</i>	New section
Sec. 3	<i>October 1, 2022</i>	52-5571
Sec. 4	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In Section 1(a)(4), "and" was changed to "or" for clarity.

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill establishes a task force to study the implementation of a supermarket food donation program in the state which results in no fiscal impact. This task force has no fiscal impact because PA 17-236 prohibits transportation allowances for task force members.

The bill also makes various food donation changes resulting in no fiscal impact to the state.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5146*****AN ACT CONCERNING FOOD DONATION.*****SUMMARY**

By January 1, 2023, this bill requires supermarkets to adopt a written food donation program policy aimed at reducing food waste and food insecurity and partnering with food relief organizations (FROs) to redistribute excess edible food with significant nutritional value (§ 2). The bill also expands current law's criminal and civil liability protections for entities donating food to encompass FRO and supermarket donations (§ 3).

Additionally, the bill requires insurers that deliver, issue, renew, amend, or continue a commercial risk insurance policy or rider in Connecticut which provides coverage for canned or perishable (i.e., fresh, frozen, or refrigerated) food spoilage to provide coverage to the same extent for these foods that are donated by a supermarket or FRO. It prohibits a FRO or supermarket from claiming an otherwise allowable tax deduction or credit for donations in an amount equal to any insurance reimbursement it receives for the food. (§ 1).

The bill also creates a task force to study implementing an in-state supermarket food donation program (§ 4).

Lastly, it makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2022, except the task force is effective upon passage.

COVERED ENTITIES AND PRODUCTS

Under the bill, "supermarkets" are:

1. retail food stores with at least 3,500 square feet of retail space and

2. large discount department stores that (a) sell a complete line of grocery merchandise, including those that continuously offer fresh produce and meats, poultry, seafood, nuts, and dairy products; (b) have a bakery; (c) sell prepared foods; and (d) either sell on-premise motor fuel or have an electric vehicle charging station or registered weighing and measuring device.

“FROs” are public or private entities, including community-based organizations, food banks, food pantries, and soup kitchens that provide free nutritional assistance to needy individuals in Connecticut on a nonprofit basis and in the ordinary course of business or operations.

WRITTEN SUPERMARKET POLICIES

By January 1, 2023, Connecticut supermarkets must adopt a written food donation program policy that:

1. is designed to reduce their food waste, support FROs’ operations, and ensure that all food donated under the policy is safe and fit for human consumption;
2. provides for supermarket management’s and employees’ education about the food distribution process and its relationship to food insecurity and waste;
3. calls for the supermarket to make reasonable efforts to identify and partner with at least two FROs to donate excess edible food; and
4. includes a framework formalizing and streamlining the supermarket's store-level protocols on donated food and a process ensuring that the donations have significant nutritional value.

The bill specifies that supermarkets under common ownership may adopt a common written policy.

LIABILITY PROTECTIONS

Existing law provides criminal and civil liability protection to anyone (including food growers, processors, distributors, and retailers) who donates food for use by, or distribution amongst, nonprofits, political subdivisions of the state, or senior centers. Existing law also protects these distributing entities if they distribute food for free or for a nominal fee. The immunity applies to claims related to the donated food's nature, age, condition, or packaging unless at the time of donation or distribution the donor or distributor knew or had reasonable grounds to believe that the food was adulterated (as defined in the state's Food, Drug, and Cosmetic Act) or unfit for human consumption.

The bill specifically expands the covered entities to include FROs and supermarkets that donate canned or perishable food, but it also specifies that the immunity for these entities does not apply if they knew or had reasonable grounds to believe that state or local health officials embargoed the donated food or ordered it destroyed. (The federal Bill Emerson Good Samaritan Food Donation Act provides similar protection for most food donors and applies when states do not adopt stronger liability protections (42 U.S.C. § 1791).)

FOOD DONATION PROGRAM TASK FORCE

The bill creates a nine-member task force to examine and make recommendations about establishing an in-state supermarket food donation program that (1) alleviates hunger, reduces food waste, and supports the operations of FROs providing nutritional assistance and (2) ensures that all food donated is safe and fit for human consumption.

The members are the agriculture, consumer protection, and public health commissioners, or their designees, and the following individuals, jointly appointed by the General Law Committee chairpersons:

1. a representative of supermarkets operating in Connecticut,
2. a representative of class 3 or 4 food establishments (generally, operations that make and prepare hot food) operating in Connecticut,

3. two representatives of FROs providing nutritional assistance in Connecticut, and
4. two members of the legislature.

The General Law Committee chairs must select the task force chairpersons from among the members and fill any vacancies. The committee's administrative staff serve as the task force's staff.

The task force must submit its findings and recommendations to the General Law Committee by January 1, 2023. It terminates on that date or the date it submits the report, whichever is later.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 1 (03/15/2022)