

STATE OF NEW YORK

5398

2019-2020 Regular Sessions

IN ASSEMBLY

February 11, 2019

Introduced by M. of A. ORTIZ -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting food service waste

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "food service waste reduction act".

3 § 2. Article 27 of the environmental conservation law is amended by
4 adding a new title 22 to read as follows:

TITLE 22

FOOD SERVICE WASTE REDUCTION

Section 27-2201. Definitions.

8 27-2203. Prohibited disposable food service ware.

9 27-2205. Required compostable or recyclable disposable food
10 service ware.

11 27-2207. Unique packaging or financial hardship waiver.

§ 27-2201. Definitions.

13 As used in this title:

14 1. "Affordable" means purchasable for not more than fifteen percent
15 more than the purchase cost of the non-compostable or non-recyclable
16 alternative.

17 2. "Agency" means any state department, agency, board, public benefit
18 corporation, public authority, or commission.

19 3. "Agency or municipal facility" means any building, structure or
20 vehicle owned or operated by the agency or municipality.

21 4. "Agency or municipal contractors and lessees" means any person or
22 entity that has a contract with an agency or a municipality for public
23 works or improvements to be performed, for a franchise, concession or
24 lease of property, for grant monies or goods and services or supplies to
25 be purchased at the expense of the agency or municipality or to be paid

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

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1 out of monies deposited in the treasury or out of trust monies under the
2 control or collected by the agency or municipality.

3 5. "Agency or municipal facility food provider" means an entity that
4 provides, but does not sell, prepared food in agency or municipal facil-
5 ities.

6 6. "Chain retail food vendor" means a retail food vendor with five or
7 more locations that conduct business under the same business name or
8 operate under common ownership or management or pursuant to a franchise
9 agreement with the same franchisor.

10 7. "Compostable" means all the materials in the product or package
11 meet the American Society for Testing and Materials (ASTM) International
12 Standard Specification for Compostable Plastics D6400, and will:

13 (a) undergo degradation by biological processes during composting in
14 an appropriate municipal or industrial composting facility to yield
15 carbon dioxide, water, inorganic compounds, and biomass at a rate
16 consistent with other known compostable materials in similar facilities;
17 and

18 (b) leave no visible, distinguishable or toxic residue, including no
19 adverse impact on the ability of composts to support plant growth once
20 the finished compost is placed in soil.

21 8. "Home compostable" means all the materials in the product or pack-
22 age conform with the Vincotte OK Compost Home certification using the
23 European Norm 13432 standard, or a comparable standard as determined by
24 the department, and will:

25 (a) undergo degradation by biological processes during composting in a
26 home compost pile or device to yield carbon dioxide, water, inorganic
27 compounds, and biomass at a rate consistent with other known compostable
28 materials in similar facilities; and

29 (b) leave no visible, distinguishable or toxic residue, including no
30 adverse impact on the ability of composts to support plant growth once
31 the finished compost is placed in soil.

32 9. "Disposable food service ware" means all containers, bowls, plates,
33 trays, cartons, cups, lids, straws, forks, spoons, knives, napkins and
34 other items that are designed or generally recognized by the public as
35 being designed for one-time use for prepared foods, including without
36 limitation, service ware for takeout foods and/or leftovers from
37 partially consumed meals prepared by retail food vendors. The term
38 "disposable food service ware" does not include items composed entirely
39 of aluminum or polystyrene foam coolers and ice chests that are intended
40 for reuse.

41 10. "Municipality" means a village, town, city, or county, or any
42 designated agency thereof.

43 11. "Polystyrene foam" means blown polystyrene and expanded and
44 extruded foams that are thermoplastic petrochemical materials utilizing
45 a styrene monomer and processed by any number of techniques including,
46 but not limited to, fusion of polymer spheres, injection molding, foam
47 molding, and extrusion-blown molding. Polystyrene foam is generally
48 used to make cups, bowls, plates, trays, clamshell containers, meat
49 trays and egg cartons. Such term shall not include rigid polystyrene.

50 12. "Prepared food" means food or beverages, which are serviced, pack-
51 aged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or other-
52 wise prepared (collectively "prepared") for individual customers or
53 consumers. For the purpose of this title, prepared food includes takeout
54 food, but does not include raw, butchered meats, pork, fish, seafood
55 and/or poultry sold from a butcher case or similar retail appliance.

1 13. "Recyclable" means material that can be sorted, cleansed and
2 reconstituted using available recycling collection programs for the
3 purpose of using the altered form in the manufacture of a new product.
4 Recycling does not include burning, incinerating, converting, or other-
5 wise thermally destroying solid waste.

6 14. "Restaurant" means any establishment that sells prepared food for
7 consumption on, near, or off its premises. For purposes of this title,
8 the term includes a restaurant operating from a temporary facility,
9 cart, vehicle or mobile unit.

10 15. "Retail food vendor" means any store, shop, sales outlet, or other
11 establishment, including a grocery store, delicatessen or restaurant
12 that sells prepared food.

13 § 27-2203. Prohibited disposable food service ware.

14 1. Retail food vendors shall not possess, sell, or offer for use
15 disposable food service ware that contains polystyrene foam. This
16 subdivision shall not apply to polystyrene foam containers used for
17 prepackaged food that have been filled and sealed prior to receipt by
18 the retail food vendors.

19 2. Agency or municipal facility food providers shall not possess,
20 sell, or offer for use disposable food service ware that contains polys-
21 tyrene foam.

22 3. Agencies and municipalities shall not purchase, acquire or use
23 disposable food service ware that contains polystyrene foam.

24 4. Agency or municipal contractors and lessees shall not possess,
25 sell, or offer for use disposable food service ware that contains polys-
26 tyrene foam in agency or municipal facilities or while performing under
27 an agency or municipal contract or lease.

28 5. Nothing in this section shall be construed to govern the activities
29 of contractors and lessees that occur outside of the state or activities
30 of contractors and lessees that occur with entities other than agencies
31 or municipalities.

32 § 27-2205. Required compostable or recyclable disposable food service
33 ware.

34 1. All retail food vendors, agencies, municipalities, agency and
35 municipal facility food providers, and municipal contractors and lessees
36 operating in municipal facilities or performing under a municipal
37 contract or lease using any disposable food service ware shall use a
38 suitable affordable compostable, home compostable, or recyclable prod-
39 uct, unless there is no suitable affordable compostable, home composta-
40 ble, or recyclable product available as determined by the department
41 pursuant to a waiver in accordance with section 27-2207 of this title.

42 2. Nothing in this section shall be construed to govern the activities
43 of contractors and lessees that occur outside of the state or activities
44 of contractors and lessees that occur with entities other than agencies
45 or municipalities.

46 § 27-2207. Unique packaging or financial hardship waiver.

47 1. Any not-for-profit corporation, regardless of its income, and any
48 retail food vendor that had a gross income under five hundred thousand
49 dollars per location on their annual income tax filing for the most
50 recent tax year and is not part of a chain retail food vendor may
51 request from the department, in a manner and form established by the
52 department, a unique packaging or financial hardship waiver of the
53 requirements of this title. Such waiver request may apply to one or more
54 disposable food service ware articles possessed, sold, or offered for
55 use by any such not-for-profit corporation or retail food vendor.

1 2. The department shall grant such waiver if such not-for-profit
2 corporation or retail food vendor proves:

3 (a) that no reasonably feasible alternative exists to a specific and
4 necessary article of polystyrene foam disposable food service ware; or

5 (b) that there is no comparable alternative product not composed of
6 polystyrene foam that would cost the same as or less than the disposable
7 food service ware article composed of polystyrene foam and that the
8 purchase or use of an alternative product not composed of polystyrene
9 foam would create an undue financial hardship; or

10 (c) that there is no suitable affordable compostable, home composta-
11 ble, or recyclable product available as an alternative to any disposable
12 food service ware.

13 3. Such unique packaging or financial hardship waiver shall be valid
14 for twelve months and shall be renewable upon application to the depart-
15 ment. A pending application for such waiver shall be a defense to any
16 notice of violation issued pursuant to this title to which such pending
17 application relates and such notice of violation shall be dismissed.

18 § 3. The environmental conservation law is amended by adding a new
19 section 71-2730 to read as follows:

20 § 71-2730. Enforcement of sections 27-2203 and 27-2205 of this chapter.

21 1. Any person who shall violate section 27-2203 or 27-2205 of this
22 chapter shall receive a warning notice for the first such violation. A
23 person shall be liable to the state of New York for a civil penalty of
24 not more than two hundred fifty dollars for the first violation after
25 receiving a warning, not more than five hundred dollars for the second
26 violation in the same calendar year, and not more than one thousand
27 dollars for each subsequent violation in the same calendar year. For the
28 purposes of this section, each commercial transaction shall constitute
29 no more than one violation. A hearing or opportunity to be heard shall
30 be provided prior to the assessment of any civil penalty.

31 2. (a) The department, the department of agriculture and markets, the
32 department of health, and the attorney general are hereby authorized to
33 enforce the provisions of sections 27-2203 and 27-2205 of this chapter.

34 (b) The provisions of section 27-2203 or 27-2205 of this chapter may
35 also be enforced by a village, town, city, or county and the local
36 legislative body thereof may adopt local laws, ordinances or regulations
37 consistent with this title providing for the enforcement of such
38 provisions.

39 3. Any fines that are collected by the state during proceedings by the
40 state to enforce the provisions of section 27-2203 or 27-2205 of this
41 chapter shall be retained by the state. Any fines that are collected by
42 a municipality during proceedings by the municipality to enforce such
43 provisions within the municipality shall be retained by the munici-
44 pality.

45 § 4. This act shall take effect on the three hundred sixty-fifth day
46 after it shall have become a law. Effective immediately the addition,
47 amendment and/or repeal of any rule or regulation necessary for the
48 implementation of this act on its effective date are authorized to be
49 made on or before such date.