S T A T E O F N E W Y O R K

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I N A S S E M B L Y

March 10, 2011

Introduced by M. of A. KAVANAGH, COLTON, GALEF, LUPARDO, MAGNARELLI, McDONOUGH, MILLMAN, O'DONNELL, P. RIVERA, STEVENSON, SCHIMEL, SPANO, TITONE, TITUS -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, BROOK-KRASNY, COOK, GLICK, GUNTHER, JEFFRIES, MARKEY, PHEFFER, THIELE -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to prohibiting the use of certain food packaging and plastic food service ware

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

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

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

TITLE 22
FOOD SERVICE WASTE REDUCTION

SECTION 27-2201. DEFINITIONS.
27-2203. PROHIBITED DISPOSABLE FOOD SERVICE WARE.
27-2205. REQUIRED COMPOSTABLE OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE.
27-2207. POWERS OF MUNICIPALITIES.

S 27-2201. DEFINITIONS.

1. "AFFORDABLE" MEANS PURCHASABLE FOR NOT MORE THAN FIFTEEN PERCENT MORE THAN THE PURCHASE COST OF THE NON-BIODEGRADABLE NON-COMPOSTABLE OR NON-RECYCLABLE ALTERNATIVE.

2. "ASTM STANDARD" MEANS MEETING THE STANDARDS OF THE AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) INTERNATIONAL STANDARDS D6400 OR D6868

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

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FOR BIODEGRADABLE AND COMPOSTABLE PLASTICS AS THOSE STANDARDS MAY BE AMENDED.

3. "COMPOSTABLE" MEANS ALL THE MATERIALS IN THE PRODUCT OR PACKAGE WILL BREAK DOWN INTO, OR OTHERWISE BECOME PART OF USABLE COMPOST (E.G., SOIL-CONDITIONING MATERIAL, MULCH) IN A SAFE AND TIMELY MANNER IN AN APPROPRIATE COMPOSTING PROGRAM OR FACILITY OR IN A HOME COMPOST PILE OR DEVICE. COMPOSTABLE DISPOSABLE FOOD SERVICE WARE INCLUDES, BY WAY OF EXAMPLE, ASTM STANDARD BIO-PLASTICS (PLASTIC-LIKE PRODUCTS) THAT ARE CLEARLY LABELED, PREFERABLY WITH A COLOR SYMBOL, SUCH THAT ANY COMPOST COLLECTOR AND PROCESSOR CAN EASILY DISTINGUISH THE ASTM STANDARD COMPOSTABLE PLASTIC FROM NON-ASTM STANDARD COMPOSTABLE PLASTIC. FOR THE PURPOSES OF THIS TITLE THE TERM BIODEGRADABLE SHALL HAVE THE SAME MEANING AS COMPOSTABLE. THIS TITLE USES THE TERMS BIODEGRADABLE AND COMPOSTABLE INTERCHANGEABLY AND IN ALL CASES WHETHER THE TERMS ARE USED SEPARATELY, IN THE DISJUNCTIVE OR IN THE CONJUNCTIVE THEY SHALL ALWAYS BE INTERPRETED AND APPLIED CONSISTENT WITH THIS DEFINITION OF THE TERM "COMPOSTABLE".

4. "MUNICIPAL CONTRACTORS AND LESSEES" MEANS ANY PERSON OR ENTITY THAT HAS A CONTRACT WITH THE MUNICIPALITY FOR PUBLIC WORKS OR IMPROVEMENTS TO BE PERFORMED, FOR A FRANCHISE, CONCESSION OR LEASE OF PROPERTY, FOR GRANT MONIES OR GOODS AND SERVICES OR SUPPLIES TO BE PURCHASED AT THE EXPENSE OF THE MUNICIPALITY OR TO BE PAID OUT OF MONIES DEPOSITED IN THE TREASURY OR OUT OF TRUST MONIES UNDER THE CONTROL OR COLLECTED BY THE MUNICIPALITY.

5. "MUNICIPAL FACILITY" MEANS ANY BUILDING, STRUCTURE OR VEHICLE OWNED OR OPERATED BY THE MUNICIPALITY.

6. "MUNICIPAL FACILITY FOOD PROVIDER" MEANS AN ENTITY THAT PROVIDES, BUT DOES NOT SELL, PREPARED FOOD IN MUNICIPAL FACILITIES.

7. "DISPOSABLE FOOD SERVICE WARE" MEANS ALL CONTAINERS, BOWLS, PLATES, TRAYS, CARTONS, CUPS, LIDS, STRAWS, FORKS, SPOONS, KNIVES, NAPKINS AND OTHER ITEMS THAT ARE DESIGNED FOR ONE-TIME USE FOR PREPARED FOODS, INCLUDING WITHOUT LIMITATION, SERVICE WARE FOR TAKEOUT FOODS AND/OR LEFTOVERS FROM PARTIALLY CONSUMED MEALS PREPARED BY FOOD VENDORS. THE TERM "DISPOSABLE FOOD SERVICE WARE" DOES NOT INCLUDE ITEMS COMPOSED ENTIRELY OF ALUMINUM OR POLYSTYRENE FOAM COOLERS AND ICE CHESTS THAT ARE INTENDED FOR REUSE NOR DOES THIS TERM INCLUDE RECYCLABLE FOOD SERVICE WARE.

8. "FOOD VENDOR" MEANS ANY RESTAURANT OR RETAIL FOOD VENDOR LOCATED OR OPERATING WITHIN THE MUNICIPALITY.

9. "MUNICIPALITY" MEANS THE SAME AS SUCH TERM IS DEFINED IN SECTION 27-0501 OF THIS ARTICLE.

10. "PERSON" MEANS AN INDIVIDUAL, TRUST, FIRM, JOINT STOCK COMPANY, CORPORATION, INCLUDING A GOVERNMENT CORPORATION, PARTNERSHIP, OR ASSOCIATION.

11. "POLYSTYRENE FOAM" MEANS BLOWN POLYSTYRENE AND EXPANDED AND EXTRUDED FOAMS (SOMETIMES CALLED STYROFOAM TM) WHICH ARE THERMOPLASTIC PETROCHEMICAL MATERIALS UTILIZING A STYRENE MONOMER AND PROCESSED BY ANY NUMBER OF TECHNIQUES INCLUDING, BUT NOT LIMITED TO, FUSION OF POLYMER SPHERES (EXPANDABLE BEAD POLYSTYRENE), INJECTION MOLDING, FOAM MOLDING, AND EXTRUSION-BLOWN MOLDING (EXTRUDED FOAM POLYSTYRENE). POLYSTYRENE FOAM IS GENERALLY USED TO MAKE CUPS, BOWLS, PLATES, TRAYS, CLAMSHELL CONTAINERS, MEAT TRAYS AND EGG CARTONS.

12. "PREPARED FOOD" MEANS FOOD OR BEVERAGES, WHICH ARE SERVICED, PACKAGED, COOKED, CHOPPED, SLICED, MIXED, BREWED, FROZEN, SQUEEZED OR OTHERWISE PREPARED (COLLECTIVELY "PREPARED") FOR INDIVIDUAL CUSTOMERS OR CONSUMERS. FOR THE PURPOSE OF THIS TITLE, PREPARED FOOD INCLUDES TAKEOUT

FOOD, BUT DOES NOT INCLUDE RAW, BUTCHERED MEATS, FISH AND/OR POULTRY SOLD FROM A BUTCHER CASE OR SIMILAR RETAIL APPLIANCE.

13. "RECYCLABLE" MEANS MATERIAL THAT CAN BE SORTED, CLEANSED AND RECONSTITUTED USING AVAILABLE RECYCLING COLLECTION PROGRAMS FOR THE PURPOSE OF USING THE ALTERED FORM IN THE MANUFACTURE OF A NEW PRODUCT. RECYCLING DOES NOT INCLUDE BURNING, INCINERATING, CONVERTING, OR OTHERWISE THERMALLY DESTROYING SOLID WASTE.

14. "RESTAURANT" MEANS ANY ESTABLISHMENT LOCATED WITHIN A MUNICIPALITY THAT SELLS PREPARED FOOD FOR CONSUMPTION ON, NEAR, OR OFF ITS PREMISES. FOR PURPOSES OF THIS TITLE, THE TERM INCLUDES A RESTAURANT OPERATING FROM A TEMPORARY FACILITY, CART, VEHICLE OR MOBILE UNIT.

15. "RETAIL FOOD VENDOR" MEANS ANY STORE, SHOP, SALES OUTLET, OR OTHER ESTABLISHMENT, INCLUDING A GROCERY STORE, DELICATESSEN OR RESTAURANT, LOCATED WITHIN THE MUNICIPALITY THAT SELLS PREPARED FOOD.

S 27-2203. PROHIBITED DISPOSABLE FOOD SERVICE WARE.

1. RETAIL FOOD VENDORS SHALL NOT SELL PREPARED FOOD IN DISPOSABLE FOOD SERVICE WARE THAT CONTAINS POLYSTYRENE FOAM.

2. MUNICIPAL FACILITY FOOD PROVIDERS SHALL NOT PROVIDE PREPARED FOOD IN DISPOSABLE FOOD SERVICE WARE THAT CONTAINS POLYSTYRENE FOAM.

3. MUNICIPAL DEPARTMENTS SHALL NOT PURCHASE, ACQUIRE OR USE DISPOSABLE FOOD SERVICE WARE THAT CONTAINS POLYSTYRENE FOAM.

4. MUNICIPAL CONTRACTORS AND LESSEES SHALL NOT USE DISPOSABLE FOOD SERVICE WARE THAT CONTAINS POLYSTYRENE FOAM IN MUNICIPAL FACILITIES AND WHILE PERFORMING UNDER A MUNICIPAL CONTRACT OR LEASE.

S 27-2205. REQUIRED COMPOSTABLE OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE.

1. ALL FOOD VENDORS USING ANY DISPOSABLE FOOD SERVICE WARE SHALL USE A SUITABLE AFFORDABLE ALTERNATIVE COMPOSTABLE OR RECYCLABLE PRODUCT, UNLESS THERE IS NO SUITABLE AFFORDABLE COMPOSTABLE OR RECYCLABLE PRODUCT AVAILABLE AS DETERMINED BY THE MUNICIPALITY IN ACCORDANCE WITH THIS SUBDIVISION. NOT LATER THAN THIRTY DAYS BEFORE THE EFFECTIVE DATE OF THIS TITLE, THE COMMISSIONER SHALL ADOPT A LIST OF AVAILABLE SUITABLE AFFORDABLE COMPOSTABLE OR RECYCLABLE ALTERNATIVES FOR EACH PRODUCT TYPE. THE MUNICIPALITY SHALL REGULARLY UPDATE THE LIST.

2. ALL MUNICIPAL FACILITY FOOD PROVIDERS AND MUNICIPAL DEPARTMENTS USING ANY DISPOSABLE FOOD SERVICE WARE SHALL USE COMPOSTABLE OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE UNLESS THERE IS NO AFFORDABLE COMPOSTABLE OR RECYCLABLE PRODUCT AVAILABLE AS DETERMINED BY THE MUNICIPALITY IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION 27-2203 OF THIS TITLE.

3. MUNICIPAL CONTRACTORS AND LESSEES USING ANY DISPOSABLE FOOD SERVICE WARE SHALL USE COMPOSTABLE OR RECYCLABLE DISPOSABLE FOOD SERVICE WARE IN MUNICIPAL FACILITIES AND WHILE PERFORMING UNDER A MUNICIPAL CONTRACT OR LEASE UNLESS THERE IS NO AFFORDABLE COMPOSTABLE OR RECYCLABLE PRODUCT AVAILABLE AS DETERMINED BY THE MUNICIPALITY IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION 27-2203 OF THIS TITLE.

S 27-2207. POWERS OF MUNICIPALITIES.

1. ANY MUNICIPALITY MAY PROMULGATE REGULATIONS, ORDINANCES, OR LAWS TO TAKE ANY AND ALL OTHER REASONABLE ACTIONS NECESSARY TO IMPLEMENT AND ENFORCE THIS TITLE.

2. ANY PERSON MAY SEEK A WAIVER FROM THE REQUIREMENTS OF SECTION 27-2205 OF THIS TITLE BY FILING A REQUEST ON A FORM PROVIDED BY THE MUNICIPALITY. THE MUNICIPALITY MAY, CONSISTENT WITH THIS TITLE, WAIVE ANY SPECIFIC REQUIREMENT OF THIS TITLE FOR A PERIOD OF UP TO ONE YEAR IF THE PERSON SEEKING THE WAIVER HAS DEMONSTRATED THAT STRICT APPLICATION OF THE REQUIREMENT WOULD CREATE AN UNDUE HARDSHIP OR PRACTICAL DIFFICULTY NOT GENERALLY APPLICABLE TO OTHER PERSONS IN SIMILAR CIRCUMSTANCES.

THE MUNICIPALITY'S DECISION TO GRANT OR DENY SUCH A WAIVER SHALL BE IN WRITING AND SHALL BE FINAL.

3. ALL MUNICIPAL CONTRACTS AND LEASES, INCLUDING WITHOUT LIMITATION, CONTRACTS WITH MUNICIPAL FACILITY FOOD PROVIDERS, SHALL CONTAIN THE FOLLOWING MINIMUM LANGUAGE: "CONTRACTOR AGREES TO COMPLY FULLY WITH AND BE BOUND BY ALL OF THE PROVISIONS OF THE FOOD SERVICE WASTE REDUCTION ACT, AS PROVIDED IN TITLE 22 OF ARTICLE 27 OF THE ENVIRONMENTAL CONSERVATION LAW, INCLUDING THE REMEDIES PROVIDED, AND IMPLEMENTING GUIDELINES AND RULES. THE PROVISIONS OF SUCH LAW ARE INCORPORATED HEREIN BY REFERENCE AND MADE A PART OF THIS AGREEMENT AS THOUGH FULLY SET FORTH. THIS PROVISION IS A MATERIAL TERM OF THIS AGREEMENT. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AGREES THAT IF IT BREACHES THIS PROVISION, MUNICIPALITY WILL SUFFER ACTUAL DAMAGES THAT WILL BE IMPRACTICAL OR EXTREMELY DIFFICULT TO DETERMINE; FURTHER, CONTRACTOR AGREES THAT THE SUM OF ONE HUNDRED DOLLARS ($100.00) LIQUIDATED DAMAGES FOR THE FIRST BREACH, TWO HUNDRED DOLLARS ($200.00) LIQUIDATED DAMAGES FOR THE SECOND BREACH IN THE SAME YEAR, AND FIVE HUNDRED DOLLARS ($500.00) LIQUIDATED DAMAGES FOR SUBSEQUENT BREACHES IN THE SAME YEAR IS A REASONABLE ESTIMATE OF THE DAMAGE THAT MUNICIPALITY WILL INCUR BASED ON THE VIOLATION, ESTABLISHED IN LIGHT OF THE CIRCUMSTANCES EXISTING AT THE TIME THIS AGREEMENT WAS MADE. SUCH AMOUNTS SHALL NOT BE CONSIDERED A PENALTY, BUT RATHER AGREED MONETARY DAMAGES SUSTAINED BY MUNICIPALITY BECAUSE OF CONTRACTOR'S FAILURE TO COMPLY WITH THIS PROVISION."

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

S 71-2730. ENFORCEMENT OF SECTIONS 27-2203 AND 27-2205.

1. THE MUNICIPALITY SHALL ISSUE A WRITTEN WARNING TO ANY PERSON THE MUNICIPALITY DETERMINES IS VIOLATING SECTION 27-2203 OR 27-2205 OF THIS CHAPTER. IF AFTER ISSUING A WRITTEN WARNING OF VIOLATION FROM THE MUNICIPALITY, THE MUNICIPALITY FINDS THAT PERSON CONTINUES TO VIOLATE THE PROVISIONS OF SECTION 27-2203 OR 27-2205 OF THIS CHAPTER, THE MUNICIPALITY MAY IMPOSE THE VARIOUS SANCTIONS PROVIDED IN THIS SECTION.

2. ANY PERSON WHO VIOLATES THE PROVISIONS OF SECTION 27-2203 OR 27-2205 OF THIS CHAPTER SHALL BE GUILTY OF A VIOLATION. IF CHARGED AS A VIOLATION, UPON CONVICTION THEREOF, SUCH PERSON SHALL BE PUNISHED FOR THE FIRST OFFENSE BY A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS FOR A FIRST VIOLATION; NOT MORE THAN TWO HUNDRED DOLLARS FOR A SECOND VIOLATION IN THE SAME YEAR AND NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR EACH SUBSEQUENT VIOLATION IN THE SAME YEAR.

3. THE MUNICIPALITY MAY ISSUE AN ADMINISTRATIVE CIVIL LIABILITY CITATION TO SUCH PERSON IN AN AMOUNT NOT EXCEEDING ONE HUNDRED DOLLARS FOR THE FIRST VIOLATION, AN AMOUNT NOT EXCEEDING TWO HUNDRED DOLLARS FOR THE SECOND VIOLATION, AND NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR EACH SUBSEQUENT VIOLATION AGAINST THE SAME PERSON.

S 4. This act shall take effect on the three hundred sixty-fifth day after it shall have become a law.