

# STATE OF NEW YORK

2603

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sens. KRUEGER, BAILEY, HOYLMAN, KAVANAGH, SERRANO, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed 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:

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:

5 TITLE 22  
6 FOOD SERVICE WASTE REDUCTION

7 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. Powers of municipalities.

12 § 27-2201. Definitions.

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

16 2. "ASTM standard" means meeting the standards of the American Society  
17 for Testing and Materials (ASTM) International standards D6400 or D6868  
18 for biodegradable and compostable plastics as those standards may be  
19 amended.

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

LBD05848-01-9

1 3. "Compostable" means all the materials in the product or package  
2 will break down into, or otherwise become part of usable compost (e.g.,  
3 soil-conditioning material, mulch) in a safe and timely manner in an  
4 appropriate composting program or facility or in a home compost pile or  
5 device. Compostable disposable food service ware includes, by way of  
6 example, ASTM standard bio-plastics (plastic-like products) that are  
7 clearly labeled, preferably with a color symbol, such that any compost  
8 collector and processor can easily distinguish the ASTM standard  
9 compostable plastic from non-ASTM standard compostable plastic. For the  
10 purposes of this title the term biodegradable shall have the same mean-  
11 ing as compostable. This title uses the terms biodegradable and compost-  
12 able interchangeably and in all cases whether the terms are used sepa-  
13 rately, in the disjunctive or in the conjunctive they shall always be  
14 interpreted and applied consistent with this definition of the term  
15 "compostable".

16 4. "Municipal contractors and lessees" means any person or entity that  
17 has a contract with the municipality for public works or improvements to  
18 be performed, for a franchise, concession or lease of property, for  
19 grant monies or goods and services or supplies to be purchased at the  
20 expense of the municipality or to be paid out of monies deposited in the  
21 treasury or out of trust monies under the control or collected by the  
22 municipality.

23 5. "Municipal facility" means any building, structure or vehicle owned  
24 or operated by the municipality.

25 6. "Municipal facility food provider" means an entity that provides,  
26 but does not sell, prepared food in municipal facilities.

27 7. "Disposable food service ware" means all containers, bowls, plates,  
28 trays, cartons, cups, lids, straws, forks, spoons, knives, napkins and  
29 other items that are designed for one-time use for prepared foods,  
30 including without limitation, service ware for takeout foods and/or  
31 leftovers from partially consumed meals prepared by food vendors. The  
32 term "disposable food service ware" does not include items composed  
33 entirely of aluminum or polystyrene foam coolers and ice chests that are  
34 intended for reuse nor does this term include recyclable food service  
35 ware.

36 8. "Food vendor" means any restaurant or retail food vendor located or  
37 operating within the municipality.

38 9. "Municipality" means the same as such term is defined in section  
39 27-0501 of this article.

40 10. "Person" means an individual, trust, firm, joint stock company,  
41 corporation, including a government corporation, partnership, or associ-  
42 ation.

43 11. "Polystyrene foam" means blown polystyrene and expanded foams  
44 utilizing a styrene monomer and processed by any number of techniques.  
45 Polystyrene foam is generally used to make cups, bowls, plates, trays,  
46 clamshell containers, meat trays and egg cartons.

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

53 13. "Recyclable" means material that can be sorted, cleansed and  
54 reconstituted using available recycling collection programs for the  
55 purpose of using the altered form in the manufacture of a new product.

1 Recycling does not include burning, incinerating, converting, or other-  
2 wise thermally destroying solid waste.

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

7 15. "Retail food vendor" means any store, shop, sales outlet, or other  
8 establishment, including a grocery store, delicatessen or restaurant,  
9 located within the municipality that sells prepared food.

10 § 27-2203. Prohibited disposable food service ware.

11 1. Retail food vendors shall not sell prepared food in disposable food  
12 service ware that contains polystyrene foam.

13 2. Municipal facility food providers shall not provide prepared food  
14 in disposable food service ware that contains polystyrene foam.

15 3. Municipal departments shall not purchase, acquire or use disposable  
16 food service ware that contains polystyrene foam.

17 4. Municipal contractors and lessees shall not use disposable food  
18 service ware that contains polystyrene foam in municipal facilities and  
19 while performing under a municipal contract or lease.

20 § 27-2205. Required compostable or recyclable disposable food service  
21 ware.

22 1. All food vendors using any disposable food service ware shall use a  
23 suitable affordable alternative compostable or recyclable product,  
24 unless there is no suitable affordable compostable or recyclable product  
25 available as determined by the municipality in accordance with this  
26 subdivision. Not later than thirty days before the effective date of  
27 this title, the commissioner shall adopt a list of available suitable  
28 affordable compostable or recyclable alternatives for each product type.  
29 The municipality shall regularly update the list.

30 2. All municipal facility food providers and municipal departments  
31 using any disposable food service ware shall use compostable or recycla-  
32 ble disposable food service ware unless there is no affordable composta-  
33 ble or recyclable product available as determined by the municipality in  
34 accordance with subdivision one of section 27-2203 of this title.

35 3. Municipal contractors and lessees using any disposable food service  
36 ware shall use compostable or recyclable disposable food service ware in  
37 municipal facilities and while performing under a municipal contract or  
38 lease unless there is no affordable compostable or recyclable product  
39 available as determined by the municipality in accordance with subdivi-  
40 sion one of section 27-2203 of this title.

41 § 27-2207. Powers of municipalities.

42 1. Any municipality may promulgate regulations, ordinances, or laws  
43 to take any and all other reasonable actions necessary to implement and  
44 enforce this title.

45 2. Any person may seek a waiver from the requirements of section  
46 27-2205 of this title by filing a request on a form provided by the  
47 municipality. The municipality may, consistent with this title, waive  
48 any specific requirement of this title for a period of up to one year if  
49 the person seeking the waiver has demonstrated that strict application  
50 of the requirement would create an undue hardship or practical difficul-  
51 ty not generally applicable to other persons in similar circumstances.  
52 The municipality's decision to grant or deny such a waiver shall be in  
53 writing and shall be final.

54 3. All municipal contracts and leases, including without limitation,  
55 contracts with municipal facility food providers, shall contain the  
56 following minimum language: "Contractor agrees to comply fully with and

1 be bound by all of the provisions of the food service waste reduction  
2 act, as provided in title 22 of article 27 of the environmental conser-  
3 vation law, including the remedies provided, and implementing guidelines  
4 and rules. The provisions of such law are incorporated herein by refer-  
5 ence and made a part of this agreement as though fully set forth. This  
6 provision is a material term of this agreement. By entering into this  
7 agreement, contractor agrees that if it breaches this provision, munici-  
8 pality will suffer actual damages that will be impractical or extremely  
9 difficult to determine; further, contractor agrees that the sum of one  
10 hundred dollars (\$100.00) liquidated damages for the first breach, two  
11 hundred dollars (\$200.00) liquidated damages for the second breach in  
12 the same year, and five hundred dollars (\$500.00) liquidated damages for  
13 subsequent breaches in the same year is a reasonable estimate of the  
14 damage that municipality will incur based on the violation, established  
15 in light of the circumstances existing at the time this agreement was  
16 made. Such amounts shall not be considered a penalty, but rather agreed  
17 monetary damages sustained by municipality because of contractor's fail-  
18 ure to comply with this provision."

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

21 § 71-2730. Enforcement of sections 27-2203 and 27-2205.

22 1. The municipality shall issue a written warning to any person the  
23 municipality determines is violating section 27-2203 or 27-2205 of this  
24 chapter. If after issuing a written warning of violation from the muni-  
25 cipality, the municipality finds that person continues to violate the  
26 provisions of section 27-2203 or 27-2205 of this chapter, the munici-  
27 pality may impose the various sanctions provided in this section.

28 2. Any person who violates the provisions of section 27-2203 or  
29 27-2205 of this chapter shall be guilty of a violation. If charged as a  
30 violation, upon conviction thereof, such person shall be punished for  
31 the first offense by a fine of not more than one hundred dollars for a  
32 first violation; not more than two hundred dollars for a second  
33 violation in the same year and not more than two hundred fifty dollars  
34 for each subsequent violation in the same year.

35 3. The municipality may issue an administrative civil liability cita-  
36 tion to such person in an amount not exceeding one hundred dollars for  
37 the first violation, an amount not exceeding two hundred dollars for the  
38 second violation, and not more than two hundred fifty dollars for each  
39 subsequent violation against the same person.

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