

# STATE OF NEW YORK

5398--B

2019-2020 Regular Sessions

## IN ASSEMBLY

February 11, 2019

Introduced by M. of A. ORTIZ, ZEBROWSKI, FALL, ABINANTI, GLICK, COLTON, DINOWITZ, GRIFFIN, EPSTEIN, GOTTFRIED, TAYLOR, D'URSO, CRUZ, STECK -- Multi-Sponsored by -- M. of A. SAYEGH -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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

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 "polystyrene waste reduction act".

§ 2. Article 27 of the environmental conservation law is amended by adding a new title 20 to read as follows:

### TITLE 20

#### POLYSTYRENE WASTE REDUCTION

##### Section 27-2001. Definitions.

27-2003. Prohibited disposable food service containers.

27-2005. Required compostable or recyclable disposable food service containers.

27-2007. Unique packaging or financial hardship waiver.

##### § 27-2001. Definitions.

As used in this title:

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

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

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

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

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1     4. "Agency or municipal contractors and lessees" means any person or  
2 entity that has a contract with an agency or a municipality for public  
3 works or improvements to be performed, for a franchise, concession or  
4 lease of property, for grant monies or goods and services or supplies to  
5 be purchased at the expense of the agency or municipality or to be paid  
6 out of monies deposited in the treasury or out of trust monies under the  
7 control or collected by the agency or municipality.

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

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

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

18     (a) undergo degradation by biological processes during composting in  
19 an appropriate municipal or industrial composting facility to yield  
20 carbon dioxide, water, inorganic compounds, and biomass at a rate  
21 consistent with other known compostable materials in similar facilities;  
22 and

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

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

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

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

37     9. "Disposable food service containers" means all containers, bowls,  
38 plates, trays, cartons, cups, lids and other items that are designed or  
39 generally recognized by the public as being designed for one-time use to  
40 hold, contain, or transport foods, including without limitation,  
41 containers for takeout foods and/or leftovers from partially consumed  
42 meals prepared by retail food vendors. For the purposes of this title,  
43 the term "disposable food service container" does not include containers  
44 or other items that are used for the transportation, storage, or display  
45 of raw eggs, or raw uncooked butchered meats, fish, seafood, and/or  
46 poultry sold from a butcher case or similar retail appliance.

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

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

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 purposes of this title, prepared food includes take-out food, but does not include raw, butchered meats, pork, fish, seafood 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 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 that sells prepared food.

§ 27-2003. Prohibited disposable food service containers.

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

2. Agency or municipal facility food providers shall not possess, sell, or offer for use disposable food service containers that contain polystyrene foam.

3. Agencies and municipalities shall not purchase, acquire or use disposable food service containers that contain polystyrene foam.

4. Agency or municipal contractors and lessees shall not possess, sell, or offer for use disposable food service containers that contain polystyrene foam in agency or municipal facilities or while performing under an agency or municipal contract or lease.

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

§ 27-2005. Required compostable or recyclable disposable food service containers.

1. All retail food vendors, agencies, municipalities, agency and municipal facility food providers, and municipal contractors and lessees operating in municipal facilities or performing under a municipal contract or lease using any disposable food service containers shall use a suitable affordable compostable, home compostable, or recyclable product, unless there is no suitable affordable compostable, home compostable, or recyclable product available as determined by the department pursuant to a waiver in accordance with section 27-2007 of this title.

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

§ 27-2007. Unique packaging or financial hardship waiver.

1. Any not-for-profit corporation, regardless of its income, and any retail food vendor that had a gross income under five hundred thousand dollars per location on their annual income tax filing for the most recent tax year and is not part of a chain retail food vendor may

1 request from the department, in a manner and form established by the  
2 department, a unique packaging or financial hardship waiver of the  
3 requirements of this title. Such waiver request may apply to one or more  
4 types of disposable food service containers possessed, sold, or offered  
5 for use by any such not-for-profit corporation or retail food vendor.

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

8 (a) that no reasonably feasible alternative exists to a specific and  
9 necessary type of polystyrene foam disposable food service container; or

10 (b) that there is no comparable, affordable disposable food service  
11 container not composed of polystyrene foam and that the purchase or use  
12 of an alternative disposable food service container not composed of  
13 polystyrene foam would create an undue financial hardship; or

14 (c) that there is no suitable affordable compostable, home composta-  
15 ble, or recyclable product available as an alternative to any type of  
16 disposable food service container.

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

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

24 § 71-2730. Enforcement of sections 27-2003 and 27-2005 of this chapter.

25 1. Any person who shall violate section 27-2003 or 27-2005 of this  
26 chapter shall receive a warning notice for the first such violation. A  
27 person shall be liable to the state of New York for a civil penalty of  
28 not more than two hundred fifty dollars for the first violation after  
29 receiving a warning, not more than five hundred dollars for the second  
30 violation in the same calendar year, and not more than one thousand  
31 dollars for each subsequent violation in the same calendar year. For the  
32 purposes of this section, each commercial transaction shall constitute  
33 no more than one violation. A hearing or opportunity to be heard shall  
34 be provided prior to the assessment of any civil penalty.

35 2. (a) The department, the department of agriculture and markets, the  
36 department of health, and the attorney general are hereby authorized to  
37 enforce the provisions of sections 27-2003 and 27-2005 of this chapter.

38 (b) The provisions of section 27-2003 or 27-2005 of this chapter may  
39 also be enforced by a village, town, city, or county and the local  
40 legislative body thereof may adopt local laws, ordinances or regulations  
41 consistent with this title providing for the enforcement of such  
42 provisions.

43 3. Any fines that are collected by the state during proceedings by the  
44 state to enforce the provisions of section 27-2003 or 27-2005 of this  
45 chapter shall be retained by the state. Any fines that are collected by  
46 a municipality during proceedings by the municipality to enforce such  
47 provisions within the municipality shall be retained by the munici-  
48 pality.

49 § 4. This act shall take effect on the three hundred sixty-fifth day  
50 after it shall have become a law. This act shall apply only to agency  
51 and municipal contracts executed or extended on or after the effective  
52 date. Effective immediately the addition, amendment and/or repeal of  
53 any rule or regulation necessary for the implementation of this act on  
54 its effective date are authorized to be made and completed on or before  
55 such date.