

# STATE OF NEW YORK

3068

2019-2020 Regular Sessions

## IN SENATE

February 1, 2019

Introduced by Sens. KRUEGER, BAILEY, HOYLMAN, KAVANAGH, LIU, 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 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

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. Unique packaging or financial hardship waiver.

12 § 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

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

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1 be purchased at the expense of the agency or municipality or to be paid  
2 out of monies deposited in the treasury or out of trust monies under the  
3 control or collected by the agency or municipality.

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

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

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

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

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

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

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

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

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

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

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

51 12. "Prepared food" means food or beverages, which are serviced, pack-  
52 aged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or other-  
53 wise prepared (collectively "prepared") for individual customers or  
54 consumers. For the purpose of this title, prepared food includes takeout  
55 food, but does not include raw, butchered meats, pork, fish, seafood  
56 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.