STATE OF NEW YORK

4449--A

2023-2024 Regular Sessions

IN SENATE

February 8, 2023

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law and the general business law, in relation to prohibitions on single-use food service items at restaurants and third-party food delivery services

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

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 34 to read as follows:

TITLE 34

SINGLE-USE FOOD SERVICE ITEMS

Section 27-3401. Definitions.
27-3403. Single-use food service items.
27-3405. Enforcement.

§ 27-3401. Definitions.

1. "Beverage splash stick" means a device primarily intended to be used to keep heat and liquid from escaping a lidded cup.

2. "Beverage stirrer" means a device primarily intended for stirring beverages.

3. "Condiment pack" means an individual single-use container, sealed by the manufacturer or a restaurant, containing a condiment.

4. "Plastic" means a synthetic material made from organic polymers.

5. "Restaurant" means any diner or other eating or beverage establishment, which offers for sale food or beverages to the public, guests, members, or patrons, whether consumption occurs on or off the premises.

6. "Single-use food service items" shall mean any eating utensil or other item used as part of food or beverage service that is designed and intended by the manufacturer for only one use before being discarded

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

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including, but not limited to condiment packs, forks, spoons, sporks, knives, chopsticks, beverage straws, cocktail sticks, toothpicks, non-plastic beverage splash sticks, non-plastic beverage stirrers, napkins, wet wipes, cup sleeves, beverage trays, beverage lids, empty plates, empty bowls, and empty cups. For purposes of this title, single-use food service items shall not include: (a) a plastic beverage stirrer or a plastic beverage splash stick as defined in this section; or (b) containers actively holding food or beverages for dine-in or take-away customers, such as plates, bowls, and cups.

7. "Third-party food delivery service" shall have the same meaning as section three hundred ninety-one-v of the general business law.

§ 27-3403. Single-use food service items.

1. (a) Restaurants and third-party food delivery services shall only provide single-use food service items to customers when explicitly requested by the customer. Restaurants and third-party food delivery services shall provide options to allow a customer to request single-use food service items upon submission of an order. Such options shall be available for all methods of ordering, including but not limited to phone, internet, or mobile phone application orders. The default selected options shall be that no single-use food service items are requested.

(b) No inquiry into the reason for the request shall be made by a restaurant, third-party food delivery service, or any of its employees in carrying out the request authorized by paragraph (a) of this subdivision.

2. Restaurants and third-party food delivery services are prohibited from providing customers with single-use plastic food service items. This prohibition does not apply to plastic straws, which may be provided by a restaurant or third-party food delivery service, pursuant to subdivision one of this section.

3. Single-use food service items provided by a restaurant, pursuant to subdivision one of this section, shall not be individually wrapped in plastic.

4. (a) If a restaurant fills an order placed through a third-party food delivery service, such restaurant may rely on the information provided by such third-party food delivery service regarding whether the customer has requested single-use food service items. In a proceeding to collect a civil penalty pursuant to section 27-3505 of this title, it shall be a complete defense for a respondent restaurant to establish that such restaurant relied on the information provided to it by the third-party food delivery service regarding the customer's choice pursuant to paragraph (a) of subdivision one of this section.

(b) A copy or screenshot of a communication by the third-party food delivery service to the restaurant regarding the customer's choice pursuant to paragraph (a) of subdivision one of this section shall constitute prima facie evidence that the restaurant relied on the information provided to it by the third-party food delivery service. Each third-party food delivery service shall provide such communication in writing to a restaurant within seventy-two hours of such restaurant's request for such communication.

§ 27-3405. Enforcement.

Every local department of health shall ensure compliance with this title as part of an inspection of a food place pursuant to section thirteen hundred fifty-one of the public health law, the provisions of the sanitary code and provisions of local ordinances or regulations. Any establishment that violates this title shall be liable for a civil

penalty in the amount of two hundred dollars for the first violation, three hundred dollars for the second violation committed on a different day within a period of twelve months, and five hundred dollars for the third and each subsequent violation committed on different days within a period of twelve months, except that the local department of health shall not issue a notice of violation, but shall issue a warning and provide information on compliance with such section, for any violation that occurs within one year of the effective date of this section.

§ 2. The general business law is amended by adding a new section 399-tt to read as follows:

§ 399-tt. Single-use food service items. Restaurants and third-party food delivery services shall only provide single-use food service items to customers when explicitly requested by the customer pursuant to title thirty-four of article twenty-seven of the environmental conservation law.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.