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DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL NO. 134

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE USE OF SINGLE-SERVICE  
PLASTIC IMPLEMENTS AND POLYSTYRENE CONTAINERS IN FOOD ESTABLISHMENTS.

1           WHEREAS, discarded single-service plastic items and polystyrene packaging from food, beverages, and other  
2 products constitute a significant and growing portion of litter found in Delaware's parks, beaches, streets, and other public  
3 spaces; and

4           WHEREAS, single-service plastic items are not recyclable; and

5           WHEREAS, the ability to recycle polystyrene products, is very limited, so polystyrene products are rarely  
6 recycled; and

7           WHEREAS, once used for food or liquids, polystyrene cannot be recycled; and

8           WHEREAS, non-biodegradable and non-recyclable materials pose a challenge to any environmentally and  
9 financially responsible solid waste management program; and

10           WHEREAS, regulation of food packaging is necessary to encourage a recyclable waste stream and to reduce the  
11 volume of solid waste disposed and the economic and environmental costs of waste management; and

12           WHEREAS, polystyrene products are either discarded in our landfills or become litter where they can harm  
13 humans and wildlife, including marine animals; and

14           WHEREAS, many food establishments have already stopped using polystyrene products and there are recyclable  
15 or compostable alternatives for all polystyrene products; and

16           WHEREAS, polystyrene contains the toxic substances styrene and benzene, which are suspected carcinogens and  
17 neurotoxins that are hazardous to humans; and

18           WHEREAS, hot foods and liquids, in particular, start to melt and break down polystyrene upon contact, causing  
19 some toxins to be absorbed into the bloodstream and tissue of anyone who consumes foods or liquids which have been in a  
20 polystyrene container; and

21 WHEREAS, the Department of Health and Social Services already regulates food establishments for health and  
22 safety measures and conducts routine enforcement inspections; and

23 WHEREAS, there are circumstances in which the use of plastic straws enhance safety and independence,  
24 including activities of daily living, for people with physical impairments or who are recovering from illness or injury.

25 NOW, THEREFORE:

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

27 Section 1. Amend § 122, Title 16 of the Delaware Code by creating a new Chapter 30P and by making deletions as  
28 shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

29 § 122. Powers and duties of the Department of Health and Social Services.

30 The Department shall have the following general powers and duties:

31 (3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend,  
32 modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state  
33 and local public health officials, to do all of the following:

34 u. 1. Promulgate and enforce standards to regulate food establishments ~~which may include, but are not~~  
35 ~~limited to,~~ establishments. For purposes of this paragraph (3)u.1., “food establishment” includes restaurants,  
36 caterers, temporary food vendors, grocery stores, food vending machines, ice ~~manufacturers~~ manufacturers, and  
37 cottage industries that prepare or handle food for human consumption whenever it is determined that said food  
38 represents a hazard to the public health.

39 6. Notwithstanding any regulation to the contrary, the owner of a food establishment or beer garden  
40 may permit leashed dogs in the owner’s beer garden or on the owner’s licensed outdoor patio.

41 Section 2. Amend Part II, Title 16 of the Delaware Code by creating a new Chapter 30P and by making deletions  
42 as shown by strike through and insertions as shown by underline as follows:

43 Chapter 30P. Food Establishments; Polystyrene and Plastic Waste.

44 § 3001P. Definitions.

45 For purposes of this chapter:

46 (1) “ASTM D6400 standard specification” means the standard specification for labeling of plastics designed  
47 to be aerobically composted in municipal or industrial facilities set by the American Society for Testing and Materials.

48 (2) “ASTM D6868 standard specification” means the standard specification for labeling of end items that  
49 incorporate plastics and polymers as coatings or additives with paper and other substrates designed to be aerobically  
50 composted in municipal or industrial facilities set by the American Society for Testing and Materials.

51           (3) “Beverage stirrer” means a single-service article primarily intended to be used to stir a beverage, such as  
52 coffee, cocoa, or tea.

53           (4) “Beverage straw” or “straw” means a single-service tube primarily intended to be used for transferring a  
54 beverage from its container to the mouth when drinking.

55           (5) “Cocktail pick” means a single-service article that is used to garnish a beverage, including to hold an olive  
56 or fruit.

57           (6) “Compostable” means that all the materials in the article will break down into, or otherwise become part  
58 of, usable compost in a safe and timely manner in an appropriate composting facility or in a home compost pile or  
59 devise. “Compostable” includes articles with a certification logo indicating that the article meets the ASTM D6400  
60 standard specification or ASTM D6868 standard specification.

61           (7) “Food service packaging” means a single-service article used for serving or transporting prepared, ready-  
62 to-consume food or beverages, including plates, cups, bowls, trays, and hinged or lidded containers.

63           (8) “Plastic” means a synthetic material made from organic polymers, including polypropylene and  
64 polystyrene, that can be molded into shape while soft, and then set into a rigid or slightly elastic form.

65           (9) “Polystyrene foam” or “polystyrene” means blown polystyrene and expanded or extruded foams using a  
66 styrene monomer. “Polystyrene foam” or “polystyrene” does not include clear or solid polystyrene.

67           (10) “Polystyrene foam food service packaging” means food service packaging made from polystyrene foam.  
68 “Polystyrene foam food service packaging” does not include polystyrene foam products that are containers used to  
69 contain, transport, or package raw, uncooked or butchered meat, poultry, fish, seafood, or eggs.

70           (11) “Pre-packaged” means bottled, canned, cartoned, bagged, or wrapped at a food processing plant or before  
71 arriving at a food establishment.

72           (12) “Sandwich pick” means a single-service article, either hollow or solid, commonly used to pierce a  
73 sandwich.

74           (13) The following terms mean as defined in the Delaware Food Code, Regulation 4458 of Title 16 of the  
75 Delaware Administrative Code:

76           a. “Consumer”.

77           b. “Food”.

78           c. “Food establishment”.

79           d. “Ready-to-eat food”.

80           e. “Single-service article”.

81 f. “Single-service” means as “single-service article” is defined.

82 § 3002P. Restrictions; beverage straws.

83 (a) A food establishment may not provide a single-service plastic straw unless any of the following apply:

84 (1) A plastic straw is requested by a consumer.

85 (2) The plastic straw is for a patient or resident, if the food establishment is located in a hospital or long-term  
86 care facility.

87 (3) The plastic straw is attached to pre-packaged goods, including juice boxes.

88 (b)(1) A food establishment that provides straws must strive to ensure that single-service plastic straws always  
89 remain available upon request.

90 (2) Upon request, a food establishment must provide a plastic straw to a consumer free of charge and may not  
91 inquire into the reason for the request.

92 (c) This section does not restrict a food establishment from providing compostable beverage straws that are not  
93 made from plastic.

94 § 3003P. Restrictions; plastic single-service articles.

95 (a) A food establishment may not provide a consumer with any of the following single-service articles if the article  
96 is made from plastic:

97 (1) Beverage stirrer.

98 (2) Cocktail pick.

99 (3) Sandwich pick.

100 (b) This section does not restrict a food establishment from providing compostable single-service articles, such as  
101 those made from paper, pasta, sugar cane, wood, or bamboo.

102 § 3004P. Restrictions; polystyrene foam food service packaging.

103 (a) A food establishment may not provide ready-to-eat food to a consumer in polystyrene foam food service  
104 packaging.

105 (b) This section does not apply to pre-packaged food. However, food establishments are encouraged not to use or  
106 sell food that is pre-packaged in polystyrene foam food service packaging.

107 § 3005P. Penalties

108 A food establishment that refuses, fails, or neglects to comply with this chapter is in violation of the Delaware  
109 Food Code and subject to penalty under § 107 of Title 16 and Regulation 4458 of the Delaware Administrative Code.

110 § 3006P. Regulations.

111 The Secretary may adopt rules, regulations, and procedures necessary to implement this chapter.

112 Section 3. Section 2 of this Act takes effect on July 1, 2023.

#### SYNOPSIS

Senate Bill No. 134 prohibits a food establishment from providing consumers with a single-service plastic coffee stirrer, cocktail pick, or sandwich pick or with ready-to-eat food or a beverage in polystyrene containers. SB 134 also prohibits food establishments from providing single-service plastic straws, unless requested by a consumer.

Senate Substitute No. 1 for Senate Bill No. 134 creates the same restrictions as SB 134, but updates and corrects terms and definitions, and includes additional exceptions for both polystyrene foam food service packaging and plastic straws. Section 1 of SS 1 for SB 134 also makes technical corrections to § 122(3)u. of Title 16, the authority under which the Department of Health and Social Services regulates food establishments.

Substantively, SS 1 for SB 134 differs from SB 134 as follows:

1. Defines the term "compostable" using the standards under the Federal Trade Commission's guides for the use of environmental marketing claims and as established by the American Society for Testing and Materials.

2. Revises the term "polystyrene", and how it is defined, to clearly include only polystyrene foam, and also include both processes by which polystyrene foam can be made.

3. Revises the definition of "polystyrene foam food service packaging" to exclude coolers or ice chests used for the processing or shipping of seafood and containers used to contain, transport, or package raw, uncooked, or butchered meat, poultry, fish, seafood, or eggs.

4. Adds the term "food" to the list of terms that have the meaning defined in the Delaware Food Code because the Delaware Food Code definition of "food" includes beverages.

5. Revises the restrictions on providing plastic straws by creating exemptions for plastic straws provided to patients or residents of hospitals or long-term care facilities and for plastic straws that are attached to pre-packaged goods, such as juice boxes.

6. Revised the penalty section to align with the current penalties under the Delaware Food Code.

7. Delays the effective date of Section 2 this Act until July 1, 2023.

Author: Senator Paradee