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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 51

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 typically discarded by consumers or are not recyclable; and
5 WHEREAS, the ability to recycle polystyrene products is very limited so polystyrene products are rarely recycled;
6 and
7 WHEREAS, once used for food or liquids, polystyrene may not 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 because there are
15 recyclable 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 making deletions as shown by strike through and
28 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 30Q and by making deletions
42 as shown by strike through and insertions as shown by underline as follows:

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

44 § 3001Q. 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 device. “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) “Health-care provider” means a facility that provides long-term, acute, and outpatient health-care services
64 under Chapter 79 of Title 29.

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

67 (10) “Polystyrene foam” or “polystyrene” means blown polystyrene and expanded or extruded foams using a
68 styrene monomer. “Polystyrene foam” or “polystyrene” does not mean clear or solid polystyrene.

69 (11) “Polystyrene foam food service packaging” means food service packaging made from polystyrene foam.
70 “Polystyrene foam food service packaging” does not mean polystyrene foam products that are containers used to
71 contain, transport, or package raw, uncooked, or butchered meat, poultry, fish, seafood, eggs, fruits, or vegetables.

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

74 (13) “Sandwich pick” means a single-service article, either hollow or solid, commonly used to pierce a
75 sandwich.

76 (14) The following terms mean as defined in the Delaware Food Code, Regulation 4458 of Title 16 of the
77 Delaware Administrative Code:

78 a. “Consumer”.

79 b. “Food”.

80 c. “Food establishment”.

81 d. "Ready-to-eat food".

82 e. "Single-service article".

83 f. "Single-service" means as "single-service article" is defined.

84 § 3002Q. Restrictions; beverage straws.

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

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

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

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

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

92 (2) A food establishment that provides a plastic straw to a consumer must provide it free of charge and may
93 not inquire into the reason for the request.

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

96 § 3003Q. Restrictions; plastic single-service articles.

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

99 (1) Beverage stirrer.

100 (2) Cocktail pick.

101 (3) Sandwich pick.

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

104 § 3004Q. Restrictions; polystyrene foam food service packaging.

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

107 (b) This section does not apply to any of the following:

108 (1) Pre-packaged food.

109 (2) A health-care provider.

110 (3) A fire company.

111 (4) A nonprofit organization.

112 (c) Food establishments are encouraged not to use or sell food that is pre-packaged in polystyrene foam food
113 service packaging.

114 § 3005Q. Penalties

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

117 § 3006Q. Regulations.

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

119 Section 3. Section 2 of this Act takes effect on July 1, 2025.

SYNOPSIS

This Act prohibits food establishments from providing consumers with ready-to-eat food or beverages in polystyrene foam containers or with single-service plastic coffee stirrers, cocktail picks, or sandwich picks. It also prohibits food establishments from providing single-service plastic straws, unless requested by a consumer. These restrictions take effect on July 1, 2025.

This Act provides the following exemptions to the prohibitions on single-service plastic implements and polystyrene foam containers:

1. The definition of "polystyrene foam food service packaging" excludes 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, eggs, fruits, or vegetables.
2. The prohibition on plastic straws does not apply 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.
3. The restriction on providing ready-to-eat food in polystyrene foam food service packaging does not apply to any of the following:
 - Fire companies.
 - Health-care providers that provide long-term, acute, and outpatient health-care services.
 - Nonprofit organizations, including religious institutions.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Paradee