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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 140

AN ACT TO AMEND TITLE 7 AND TITLE 14 OF THE DELAWARE CODE RELATING TO EXPANDED
POLYSTYRENE PRODUCTS AND SINGLE-SERVICE PLASTIC ITEMS.

1 WHEREAS, discarded single-service plastic items, such as straws, stirrers, and cocktail picks, and expanded
2 polystyrene packaging, known by the brand name Styrofoam, from food, beverages, and other products constitute a
3 significant and growing portion of the Delaware waste stream; and

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

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

8 WHEREAS, the ability to recycle expanded polystyrene products, is very limited, so expanded polystyrene
9 products are rarely recycled; and

10 WHEREAS, once used for food or liquids, expanded polystyrene cannot be recycled: and

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

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

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

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

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

21 WHEREAS, hot foods and liquids, in particular, start to melt and break down expanded polystyrene upon contact,
22 causing some toxins to be absorbed into the bloodstream and tissue of anyone who consumes foods or liquids which have
23 been in an expanded polystyrene container.

24 NOW, THEREFORE:

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

26 Section 1. Amend Chapter 60, Title 7 of the Delaware Code by creating a new Chapter 60B and by making
27 deletions as shown by strike through and insertions as shown by underline as follows:

28 Chapter 60B. Expanded Polystyrene and Plastic Waste.

29 § 6001B. Definitions.

30 For purposes of this chapter:

31 (1) “Cocktail pick” means a slender, disposable implement, either hollow or solid, commonly used to garnish a
32 beverage, including to hold an olive or fruit.

33 (2) “Coffee stirrer” means a slender, disposable implement, either hollow or solid, commonly used to stir a
34 beverage, including coffee, cocoa, and tea.

35 (3) “Disposable food service ware” means containers, bowls, plates, trays, cartons, cups, lids, straws, forks,
36 spoons, knives, napkins, and any other items that are designed for one-time use for beverages, prepared food, or leftovers
37 from meals prepared by a food establishment.

38 (4) “Expanded polystyrene” means a thermoplastic petrochemical material utilizing a styrene monomer, including
39 clear or solid polystyrene, and processed using techniques that include fusion of polymer spheres, injection molding, form
40 molding, and extrusion-blow molding.

41 (5) “Expanded polystyrene container” means a container, such as a cooler or ice chest, made of expanded
42 polystyrene that is not wholly encapsulated or encased within a more durable material.

43 (6) “Expanded polystyrene food service products” means food containers, plates, hot and cold beverage cups, meat
44 and vegetable trays, egg cartons, and other products made of expanded polystyrene and used for selling or providing food.

45 (7) “Expanded polystyrene packing materials” means material, such as packing peanuts, made of expanded
46 polystyrene that are designed to hold, cushion, or protect items packed in a container for shipping, transport, or storage.

47 (8) “Plastic” means any material made of polymeric organic compounds and additives that can be shaped by flow.
48 “Plastic” does not include items made from compostable materials.

49 (9) “Pre-packaged” means filled and sealed in expanded polystyrene containers before arriving at a food
50 establishment.

51 (10) “Sandwich pick” means a slender, disposable implement, either hollow or solid, commonly used to pierce a
52 sandwich.

53 (11) “Straw” means a disposable tube used to transfer a beverage from a container to the mouth of the person
54 drinking the beverage, including drinking straws and cocktail straws. “Straw” does not include a straw made from non-
55 plastic materials, including paper, pasta, sugar cane, wood, or bamboo, or a straw that is attached to pre-packaged goods,
56 including juice boxes.

57 (12) The following terms mean as defined under the Delaware Food Code, Regulation 4458 of Title 16 of the
58 Delaware Administrative Code:

59 a. “Consumer”.

60 b. “Core item”.

61 c. “Food establishment”.

62 d. “Packaged”.

63 e. “Ready-to-eat food”.

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

65 § 6002B. Restrictions; food establishments.

66 (a) A food establishment may not provide a single-service plastic straw, unless requested by a consumer. A food
67 establishment that provides straws must strive to ensure that single-service plastic straws always remain available upon
68 request.

69 (b) A food establishment may not provide a single-service plastic coffee stirrer, cocktail pick, or sandwich pick to
70 a consumer.

71 (c) A food establishment may not provide ready-to-eat food to a consumer in an expanded polystyrene food
72 service product.

73 (d) This section does not apply to pre-packaged food or beverages. However, food establishments are encouraged
74 not to use or sell food that is pre-packaged in expanded polystyrene food service products.

75 § 6003B. Restrictions; retail sales.

76 A person may not sell, offer for sale, or attempt to sell an expanded polystyrene food service product, expanded
77 polystyrene container, or expanded polystyrene packing material.

78 § 6004B. Penalties.

79 (a) A person who violates this chapter is subject to a civil penalty as follows:

80 (1) For a first occurrence, a civil penalty in an amount not more than \$500.

- 81 (2) For a second occurrence, a civil penalty in an amount not more than \$1,000.
- 82 (3) For a third or subsequent occurrence, a civil penalty in an amount not more than \$2,000.
- 83 (b) All civil penalties collected under this section are payable to the Delaware Department of Natural Resources
- 84 and Environmental Control and must be used for enforcement of this chapter.

85 Section 2. Amend Chapter 41, Title 14 of the Delaware Code by making deletions as shown by strike through and

86 insertions as shown by underline as follows:

87 § 4136A. Restrictions on expanded polystyrene food service products in public schools.

88 (a) For purposes of this section, “expanded polystyrene food service products” and “pre-packaged” means a

89 defined in § 6001B of Title 7.

90 (b) Public schools, including charter schools, may not provide ready-to-eat food through a school cafeteria or

91 school food services in expanded polystyrene food service products.

92 (c) Public schools, including charter schools, are encouraged not to use or sell food that is pre-packaged in

93 expanded polystyrene food service products.

94 Section 3. Section 1 of this Act takes effect on July 1, 2022.

95 Section 4. Section 2 of this Act takes effect beginning with the 2022 – 2023 school year.

SYNOPSIS

This Act reduces risks to the environment and public health by doing all of the following:

1. Prohibiting the sale of containers, food service products, or packing material made of expanded polystyrene.
2. Prohibiting food establishments and public schools from providing ready-to-eat food and beverages in expanded polystyrene containers.
3. Limiting the use of single-service plastic items in food establishments.

This Act allows restaurants to provide plastic straws at the request of a customer and does not apply to containers where the expanded polystyrene is wholly encased in more durable material. The term “food” includes beverages, under the Delaware Food Code. In addition, this Act encourages food establishments not to use or sell food that is pre-packaged in expanded polystyrene containers.

This Act takes effect beginning July 1, 2022, except for public schools, for which it takes effect beginning with the 2022 – 2023 school year.

Author: Senator Paradee