SPONSOR: Sen. Paradee & Rep. Baumbach & Rep. Phillips
Sens. Gay, Hansen, Hoffner, Huxtable, Lockman, S. McBride, Pinkney, Sokola, Sturgeon, Townsend; Reps. Chukwuocha, Dorsey Walker, Griffith, Harris, Heffernan, K. Johnson, Lambert, Lynn, S. Moore, Morrison, Neal, Parker Selby, Romer, Michael Smith, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 51
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 4

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.

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

WHEREAS, single-service plastic items are typically discarded by consumers or are not recyclable; and

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

WHEREAS, once used for food or liquids, polystyrene may not be recycled: and

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

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

WHEREAS, 2.3 million tons of polystyrene foam end up in landfills each year worldwide; and

WHEREAS, polystyrene foam has an expected lifetime of 500 years in landfills; and

WHEREAS, at least 71 nations have banned polystyrene food items; and

WHEREAS, 8 states have passed polystyrene foam bans for food establishments including our neighboring states of Maryland and New Jersey; and

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

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

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

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

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

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

NOW, THEREFORE:

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

Section 1. Amend § 122, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

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

The Department shall have the following general powers and duties:

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

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

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

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

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

§ 3001Q. Definitions.

For purposes of this chapter:

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

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

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

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

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

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

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

(8) "Health-care provider" means a facility that provides long-term, acute, and outpatient health-care services under Chapter 79 of Title 29.

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

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

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

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

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

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

a. “Consumer”.

b. “Core item”.

c. “Food”.

d. “Food establishment”.

e. “Ready-to-eat food”.

f. “Single-service article”.

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

§ 3002Q. Restrictions; beverage straws.

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

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

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

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

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

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

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

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

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

(1) Beverage stirrer.

(2) Cocktail pick.

(3) Sandwich pick.

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

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

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

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

(1) Pre-packaged food.

(2) Food provided to a patient or resident by a health-care provider.

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

§ 3005Q. Penalties

(a) Beginning [1 year after the effective date of this Act], a violation of § 3002Q, § 3003Q, or § 3004Q of this title or any rule or regulation promulgated thereunder shall be deemed a core item violation of the Delaware Food Code and subject to administrative penalty thereunder and under § 107 of Title 16.

(b) The license of a food establishment shall not be suspended or revoked solely for any single or reoccurring core item violation of § 3002Q, § 3003Q or § 3004Q of this title or any rule or regulation promulgated thereunder.

§ 3006Q. Regulations.

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

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

Section 4. The Delaware Solid Waste Authority shall provide by December 31, 2023 a report to the Secretary of the Department of Health and Social Services, the Chair of the House Natural Resources and Energy Committee, the Senate Environment, Energy & Transportation Committee, the Librarian and the Director of the Division of Research regarding the use of and potential substitutes for polystyrene foam from food establishments and other sources, and the disposal challenges and recycling options for waste polystyrene foam, identifying steps which can be considered in order to achieve the goal of reducing or eliminating polystyrene foam being added to landfills or open dumps in the State.