

1 this section and any other rules and regulations that he or she deems
2 necessary to implement the terms of this section.

3 § 2. This act shall take effect October 1, 2020; provided, however,
4 that the superintendent of financial services may promulgate any rules
5 or regulations related to this act immediately.

6 PART PP

7 Section 1. Article 27 of the environmental conservation law is amended
8 by adding a new title 30 to read as follows:

9 TITLE 30

10 EXPANDED POLYSTYRENE FOAM CONTAINER AND POLYSTYRENE LOOSE FILL

11 PACKAGING BAN

12 Section 27-3001. Definitions.

13 27-3003. Expanded polystyrene foam container and polystyrene
14 loose fill packaging ban.

15 27-3005. Exemptions.

16 27-3007. Preemption.

17 27-3009. Severability.

18 § 27-3001. Definitions.

19 For the purposes of this title, the following terms shall have the
20 following meanings:

21 1. "Covered food service provider" means a person engaged in the
22 primary or secondary business of selling or distributing prepared food
23 or beverages for on-premise or off-premise consumption including but not
24 limited to: (a) food service establishments, caterers, temporary food
25 service establishments, mobile food service establishments, and push-
26 carts as defined in the New York State Sanitary Code; (b) retail food

1 stores as defined in article 28 of the agriculture and markets law; (c)
2 delicatessens; (d) grocery stores; (e) restaurants; (f) cafeterias; (g)
3 coffee shops; (h) hospitals, adult care facilities, and nursing homes;
4 and (i) elementary and secondary schools, colleges, and universities.

5 2. "Disposable food service container" means a bowl, carton, clam-
6 shell, cup, lid, plate, tray, or any other product that is designed or
7 used for the temporary storage or transport of a prepared food or bever-
8 age including a container generally recognized by the public as being
9 designed for single use.

10 3. "Expanded polystyrene foam" means expanded foam thermoplastics
11 utilizing a styrene monomer and processed by any number of techniques.
12 Such term shall not include rigid polystyrene.

13 4. "Manufacturer" means every person, firm or corporation that produc-
14 es or imports polystyrene loose fill packaging that is sold, offered for
15 sale, or distributed in the state.

16 5. "Polystyrene loose fill packaging" means a void-filling packaging
17 product made of expanded polystyrene that is used as a packaging fill,
18 commonly referred to as packing peanuts.

19 6. "Prepared food" means food or beverages that are cooked, chopped,
20 sliced, mixed, brewed, frozen, heated, squeezed, combined or otherwise
21 prepared on the premises of a covered food service provider for immedi-
22 ate consumption and require no further preparation to be consumed.
23 Prepared food includes but is not limited to ready to eat takeout foods
24 and beverages.

25 7. "Rigid polystyrene" means plastic packaging made from rigid, polys-
26 tyrene resin that has not been expanded, extruded, or foamed.

27 8. "Store" means a retail or wholesale establishment other than a
28 covered food service provider.

1 § 27-3003. Expanded polystyrene foam container and polystyrene loose
2 fill packaging ban.

3 1. (a) Beginning January first, two thousand twenty-two, no covered
4 food service provider or store shall sell, offer for sale, use, or
5 distribute disposable food service containers used to hold prepared food
6 or beverages that contain expanded polystyrene foam.

7 (b) Beginning January first, two thousand twenty-two, no covered food
8 service provider, manufacturer, or store shall sell, offer for sale,
9 use, or distribute polystyrene loose fill packaging.

10 2. The department is authorized to:

11 (a) undertake a review of additional product packaging, and, based on
12 the environmental impacts of such products, promulgate regulations to
13 limit the sale, use, or distribution of such products;

14 (b) conduct education and outreach in multiple languages to covered
15 food service providers, manufacturers, and stores to inform them of the
16 provisions of this title; and

17 (c) promulgate any other such rules and regulations as it shall deem
18 necessary to implement the provisions of this title.

19 § 27-3005. Exemptions.

20 Notwithstanding any inconsistent provision of law, this title shall
21 not apply to:

22 1. Prepackaged food filled or sealed prior to receipt at a covered
23 food service provider; or

24 2. Raw meat or raw fish sold for the purpose of cooking or preparing
25 off-premises by the customer; or

26 3. For purposes of the expanded polystyrene foam container ban,
27 covered food service providers that demonstrate undue financial hard-
28 ship, as determined by the department, provided however that such

covered food service providers that have ten or more locations within the state that (a) conduct business under the same business name or (b) operate under common ownership or management or pursuant to a franchise agreement with the same franchisor shall not be eligible for an exemption.

§ 27-3007. Preemption.

1. Except as provided in subdivision two of this section, any local law or ordinance which is inconsistent with any provision of this title or any rule or regulation promulgated hereunder shall be preempted.

2. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing the prohibition of expanded polystyrene use or sale or the offering for sale of polystyrene loose fill packaging, which is inconsistent with the provisions of this title or any rules or regulations promulgated hereunder, shall not be preempted if such local law or ordinance is at least as comprehensive as the provisions of this title or any rules or regulations promulgated hereunder.

§ 27-3009. Severability.

If any clause, sentence, paragraph, section or part of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 2. The environmental conservation law is amended by adding a new section 71-2730 to read as follows:

§ 71-2730. Enforcement of title 30 of article 27 of this chapter.

1 1. Any person who shall violate section 27-3003 of this chapter shall
2 be liable to the state of New York for a civil penalty of not more than
3 two hundred fifty dollars for the first violation, not more than five
4 hundred dollars for the second violation in the same calendar year, not
5 more than one thousand dollars for the third violation in the same
6 calendar year, and not more than two thousand dollars for the fourth and
7 each subsequent violation in the same calendar year. A hearing or oppor-
8 tunity to be heard shall be provided prior to the assessment of any
9 civil penalty.

10 2. (a) The department, the department of agriculture and markets, the
11 department of health, and the attorney general are hereby authorized to
12 enforce the provisions of section 27-3003 of this chapter.

13 (b) The provisions of section 27-3003 of this chapter may also be
14 enforced by a village, town, city, or county and the local legislative
15 body thereof may adopt local laws, ordinances or regulations consistent
16 with this title providing for the enforcement of such provisions.

17 3. Any fines that are collected by the state during proceedings by the
18 state to enforce the provisions of section 27-3003 of this chapter shall
19 be paid into the environmental protection fund established pursuant to
20 section ninety-two-s of the finance law. Any fines that are collected
21 by a municipality during proceedings by the municipality to enforce such
22 provisions within the municipality shall be retained by the munici-
23 pality.

24 § 3. This act shall take effect immediately.