

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

TITLE 30
EXPANDED POLYSTYRENE FOAM CONTAINER AND POLYSTYRENE LOOSE FILL
PACKAGING BAN

Section 27-3001. Definitions.

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

27-3005. Exemptions and waivers.

27-3007. Preemption.

27-3009. Severability.

§ 27-3001. Definitions.

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

1. "Covered food service provider" means a person engaged in the business of selling or distributing prepared food or beverages for on-premise or off-premise consumption including but not limited to: (a) food service establishments, caterers, temporary food service establishments, mobile food service establishments, and pushcarts as defined in the New York State Sanitary Code; (b) retail food stores as defined in article 28 of the agriculture and markets law; (c) delicatessens; (d) grocery stores; (e) restaurants; (f) cafeterias; (g) coffee shops; (h) hospitals, adult care facilities, and nursing homes; and (i) elementary and secondary schools, colleges, and universities.

2. "Disposable food service container" means a bowl, carton, clamshell, cup, lid, plate, tray, or any other product that is designed or used for the temporary storage or transport of a prepared food or beverage including a container generally recognized by the public as being designed for single use.

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

4. "Manufacturer" means every person, firm or corporation that produces or imports polystyrene loose fill packaging that is sold, offered for sale, or distributed in the state.

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

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

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

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

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

1. (a) Beginning January first, two thousand twenty-two, no covered food service provider or store shall sell, offer for sale, or distribute disposable food service containers that contain expanded polystyrene foam in the state.

(b) Beginning January first, two thousand twenty-two, no manufacturer or store shall sell, offer for sale, or distribute polystyrene loose fill packaging in the state.

2. The department is authorized to promulgate any other such rules and regulations as it shall deem necessary to implement the provisions of this title including criteria related to what constitutes comparable costs pursuant to subdivision two of section 27-3005 of this title.

§ 27-3005. Exemptions and waivers.

1. Notwithstanding any inconsistent provision of law, this title shall not apply to:

- (a) Prepackaged food filled or sealed prior to receipt at a covered food service provider; or
- (b) Raw meat, pork, seafood, poultry or fish sold for the purpose of cooking or preparing off-premises by the customer.

2. Any facility, regardless of its income, including soup kitchens, food pantries and places of worship, operated by a not-for-profit corporation or by a federal, state, or local government agency that provides food to needy individuals at no or nominal charge, and any covered food service provider having an annual gross income under five hundred thousand dollars per location as stated on the income tax filing for the most recent tax year and that: (a) does not operate ten or more locations within the state; and (b) is not operated pursuant to a franchise agreement may request from the department, in a manner and form established by the department, a financial hardship waiver of the requirements of section 27-3003 of this title. Such waiver request may apply to one or more disposable food service containers sold, offered for sale, or distributed by any such covered food service provider. The department shall grant a waiver if such covered food service provider demonstrates that there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product that is not composed of expanded polystyrene foam would create an undue financial hardship. Such financial hardship waiver shall be valid for twelve months and shall be renewable upon application to the department.

§ 27-3007. Preemption.

1. Except as provided in subdivisions two and three of this section, this title shall supersede and preempt all local laws, ordinances or regulations governing the sale, offer for sale, or distribution of disposable food service containers containing expanded polystyrene foam and polystyrene loose fill packaging.

2. Any local law, ordinance or regulation of any county shall not be preempted if such local law, ordinance or regulation provides environmental protection equal to or greater than the provisions of this title or any rules or regulations promulgated hereunder, and such county files with the department a written declaration of its intent to administer and enforce such local law, ordinance or regulation.

3. This title shall not apply in a city with a population of one million or more which has a local law, ordinance or regulation in place which restricts the sale, offer for sale, or distribution of expanded polystyrene containers and polystyrene loose fill packaging.

§ 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. Any person who shall violate section 27-3003 of this chapter shall be liable to the state of New York for a civil penalty of not more than two hundred fifty dollars for the first violation, not more than five hundred dollars for the second violation in the same calendar year, and not more than one thousand dollars for the third and each subsequent violation in the same calendar year. A hearing or opportunity to be heard shall be provided prior to the assessment of any civil penalty.

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

(b) The provisions of section 27-3003 of this chapter may also be enforced by a county and the local legislative body thereof may adopt local laws, ordinances or regulations consistent with this title providing for the enforcement of such provisions. Provided that a violation of this title may not be enforced by both the state and a county, and provided further that any county that has filed a written declaration pursuant to subdivision two of section 27-3007 of this title shall not enforce the provisions of this title.

3. Any fines that are collected by the state during proceedings by the state to enforce the provisions of section 27-3003 of this chapter shall be paid into the environmental protection fund established pursuant to section ninety-two-s of the finance law.

4. Any fines that are collected by a county during proceedings by the county to enforce the provisions of section 27-3003 of this title within the county shall be retained by the county.

§ 3. Subdivision 3 of section 92-s of the state finance law, as amended by section 4 of part H of chapter 58 of the laws of 2019, is amended to read as follows:

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-n of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, all moneys required to be deposited pursuant to article thirty-three of the environmental conservation law, all fees collected pursuant to subdivision eight of section 70-0117 of the environmental conservation law, all moneys collected pursuant to title thirty-three of article fifteen of the environmental conservation law, beginning with the fiscal year commencing on April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received by the state each fiscal year in excess of the greater of the amount received from April first, two thousand twelve through March thirty- first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, from the payments collected pursuant to subdivision four of section 27-1012 of the environmental conservation law and all funds collected pursuant to section 27-1015 of the environmental conservation law, all moneys required to be deposited pursuant to sections 27-2805 and 27-2807 of the environmental conservation law, all moneys collected pursuant to section 71-2730 of the environmental conservation law, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

§ 4. This act shall take effect immediately; provided however that subdivision 4 of section 71-2730 of the environmental conservation law as added by section two of this act shall expire and be deemed repealed January 1, 2025.