ASSEMBLY, No. 5331



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED MARCH 23, 2023

Sponsored by:

Assemblyman HERB CONAWAY, JR.

District 7 (Burlington)

SYNOPSIS

Prohibits food service businesses from providing single-use plastic utensils and condiments to customers, except upon request, and requires certain food service businesses to provide reusable, washable utensils to customers eating on site.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the provision, by food service businesses, of single-use plastic utensils and condiments to customers, amending P.L.2002, c.128, and supplementing Title 13 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Commissioner” means the Commissioner of Environmental Protection.

“Condiment” means packaged ketchup, mustard, mayonnaise, hot sauce, salt, pepper, or any other herb, spice, seasoning, sauce, or substance that is used to give a special flavor to food.

“Covered food service business” means a food service business that does not exclusively provide customers with eco-friendly alternative utensils and condiments, and which, therefore, is not exempt from the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill), as provided by subsection d. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

“Department” means the Department of Environmental Protection.

“Eco-friendly alternative utensils and condiments” means and includes: utensils and condiment packets or packages which are composed of compostable material or another material approved, by the department or the United States Environmental Protection Agency, as an eco-friendly alternative to conventional plastics, regardless of whether such utensils and condiment packages are designed to be discarded, by the consumer, after a single use; utensils and condiment packets or packages which are designed to be used multiple times and are not intended to be discarded after a single use, regardless of whether such utensils and condiment packages are composed of conventional plastics; and any other utensils and condiment packets or packages that are approved, by the department or the United States Environmental Protection Agency, as eco-friendly alternatives to single-use plastic utensils or condiments.

“Food service business” means and includes a restaurant, café, food truck, vendor station, cafeteria, or any other facility or premises, or section or part thereof, including, but not limited to, a section or part of a grocery store, convenience store, hospital, school, sports arena, entertainment venue, or other similar facility or venue, where meals are prepared and served to customers for immediate consumption thereby on or off the premises, whether on a take-out, eat-in, drive-thru, or delivery basis.

“Single-use plastic utensils or condiments” means utensils or condiment packets or packages which are composed of conventional plastics and are designed to be discarded, by the consumer, after a single use.

“Utensil” means an instrument, including, but not limited to, a knife, fork, or spoon, which is commonly used by humans to eat meals served thereto by a food service business.

2. a. Commencing on the effective date of this act:

(1) no food service business operating in the State shall provide single-use plastic utensils or condiments to any customer, except upon, and in accordance with, the express request of that customer. The provisions of this paragraph shall be applicable regardless of whether a customer is receiving meals from the food service business on an eat-in, take-out, drive-thru, or delivery basis, and regardless of whether the customer’s meal order is placed in person, over the phone, online, or using other available means or methods; and

(2) a food service business that has on-site seating capacity for 50 or more customers shall provide its on-site customers with easy access to reusable, washable utensils for use thereby while consuming meals on the premises, and shall require each customer using such utensils to return those utensils to the food service business, for the purposes of cleaning and reuse, upon completion of the customer’s on-site meal.

b. Any food service business that elects to supply customers with single-use plastic utensils or condiments, upon request, as authorized by paragraph (1) of subsection a. of this section:

(1) shall provide each customer with only those types and amounts of single-use plastic utensils and condiments that have been expressly requested thereby; and

(2) shall not create, acquire, or provide customers with bundled packages that contain more than one type of single-use plastic utensil or condiment, regardless of the nature of any customer request therefor.

c. Nothing in this section shall be deemed to:

(1) require a food service business to provide any single-use plastic utensils or condiments to customers, upon their request, as authorized by paragraph (1) of subsection a. of this section; or

(2) in any way restrict a food service business’ ability to provide its customers with eco-friendly alternative utensils and condiments, either on an exclusive basis, as provided by subsection d. of this section, or otherwise.

d. Any food service business that exclusively provides eco-friendly alternative utensils and condiments to its customers shall be exempt from compliance with the provisions of this section.

3. a. Any covered food service business that violates the provisions of section 2 of this act shall be liable to a civil penalty of $1,000 for the first offense, $2,500 for the second offense, and $5,000 for the third and each subsequent offense. Each day on which a violation occurs shall constitute a separate and distinct offense.

b. A penalty imposed pursuant to this section shall be collected, by the commissioner, in a summary proceeding commenced, pursuant to the provisions of the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), before a court of competent jurisdiction. The Superior Court and municipal courts shall have jurisdiction to enforce the provisions of the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.), for the purposes of this section.

c. Any moneys collected from penalties imposed pursuant to this section shall be deposited into the “Clean Communities Program Fund,” established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217).

d. Notwithstanding any provision of this act to the contrary, a food service business shall be authorized to acquire, and to maintain on its premises, an adequate supply of non-bundled single-use plastic utensils or condiments for the purposes of providing such single-use plastic utensils or condiments to customers, upon request, in accordance with the provisions of paragraph (1) of subsection a. of section 2 of this act, and no food service business shall be subject to a penalty, pursuant to subsection a. of this section, for acquiring, possessing, or maintaining a supply of single-use plastic utensils or condiments for the limited purposes authorized by this subsection.

4. Section 5 of P.L.2002, c.128 (C.13:1E-217) is amended to read as follows:

5. The Clean Communities Program Fund is established as a nonlapsing, revolving fund in the Department of the Treasury. The Clean Communities Program Fund shall be administered by the Department of Environmental Protection and credited, in addition to any appropriations made thereto, with all user fees imposed pursuant to section 4 of P.L.2002, c.128 (C.13:1E-216) **[**or**]**, penalties imposed pursuant to section 10 of P.L.2002, c.128 (C.13:1E-222), penalties imposed pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), and any sums received as voluntary contributions from private sources. Interest received on moneys in the Clean Communities Program Fund shall be credited to the fund. Unless otherwise expressly provided by the specific appropriation thereof by the Legislature, which shall take the form of a discrete legislative appropriations act and shall not be included within the annual appropriations act, all available moneys in the Clean Communities Program Fund shall be appropriated annually and solely for the following purposes and no others:

a. 10 percent of the estimated annual balance of the Clean Communities Program Fund shall be used for a State program of litter pickup and removal and of enforcement of litter-related laws and ordinances in State owned places and areas that are accessible to the public. Moneys in the fund may also be used by the State to abate graffiti;

b. 50 percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the housing units of a qualifying municipality bear to the total housing units in the State. Total housing units shall be determined using the most recent federal decennial population estimates for New Jersey and its municipalities, filed in the office of the Secretary of State. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

c. 30 percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible municipalities with total housing units of 200 or more for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each municipality shall be solely calculated based on the proportion which the municipal road mileage of a qualifying municipality bears to the total municipal road mileage within the State. For the purposes of this subsection, "municipal road mileage" means that road mileage under the jurisdiction of municipalities, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible municipality to abate graffiti;

d. 10 percent of the estimated annual balance of the Clean Communities Program Fund shall be distributed as State aid to eligible counties for programs of litter pickup and removal, including establishing an "Adopt-A-Highway" program, of public education and information relating to litter abatement and of enforcement of litter-related laws and ordinances. The amount of State aid due each county shall be solely calculated based on the proportion which the county road mileage of an eligible county bears to the total county road mileage within the State. For the purposes of this subsection, "county road mileage" means that road mileage under the jurisdiction of counties, as determined by the Department of Transportation. Moneys in the fund may also be used by an eligible county to abate graffiti;

e. No eligible municipality shall receive less than $4,000 in State aid as apportioned pursuant to subsections b. and c. of this section. A municipality or county may use up to five percent of its State aid for administrative expenses;

f. Prior to the distribution of funds pursuant to subsections a. through d. of this section:

(1) $375,000 of the estimated annual balance of the Clean Communities Program Fund shall be annually appropriated to the department and made available on July 1 of every year to the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for a Statewide public information and education program concerning antilittering activities and other aspects of responsible solid waste handling behavior, of which up to $75,000 shall be used exclusively to finance an annual Statewide television, radio, newspaper and other media advertising campaign to promote antilittering and responsible solid waste handling behavior.

(2) in each of the first three years after the effective date of P.L.2020, c.117 (C.13:1E-99.126 et al.), $500,000 of the estimated annual balance of the Clean Communities Program Fund shall be appropriated to the department and made available on July 1 of each year to the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) for the Statewide public information and education program developed pursuant to subsection b. of section of section 8 of P.L.2020, c.117 (C.13:1E-99.133).

The organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) shall, no later than the date on which the contract period concludes, submit a report to the Governor and the Legislature concerning its activities during the contract period and any recommendations concerning improving the program. Every eligible municipality and county shall cooperate with the organization under contract with the department pursuant to section 6 of P.L.2002, c.128 (C.13:1E-218) in providing information concerning its program of litter pickup and removal.

No later than May 31, 2008, 25 percent of the estimated annual balance of the Clean Communities Program Fund shall be appropriated to the State Recycling Fund established pursuant to section 5 of P.L.1981, c.278 (C.13:1E-96). These moneys shall be used by the Department of Environmental Protection for direct recycling grants to counties and municipalities, up to a maximum appropriation of $4,000,000.

g. As used in this section, "graffiti" means any inscription drawn, painted or otherwise made on a bridge, building, public transportation vehicle, rock, wall, sidewalk, street or other exposed surface on public property.

The department may carry forward any unexpended balances in the Clean Communities Program Fund as of June 30 of each year.

(cf: P.L.2020, c.117, s.10)

5. This act shall take effect on the first day of the seventh month next following the date of enactment.

STATEMENT

This bill would prohibit food service businesses in the State from providing customers with access to single-use plastic utensils or condiments, except in certain limited cases. “Food service business” is defined, by the bill, to mean a restaurant, café, food truck, vendor station, cafeteria, or any other facility or premises, or section or part thereof, including, but not limited to, a section or part of a grocery store, convenience store, hospital, school, sports arena, entertainment venue, or other similar facility or venue, where meals are prepared and served to customers for immediate consumption thereby on or off the premises, whether on a take-out, eat-in, drive-thru, or delivery basis. “Single-use plastic utensils or condiments” is further defined by the bill to mean those utensils or condiment packets or packages which are composed of conventional plastics and are designed to be discarded, by the consumer, after a single use.

Specifically, the bill would provide that, commencing on its effective date (i.e., the first day of the seventh month next following the date of the bill’s enactment):

(1) no food service business operating in the State will be authorized to provide single-use plastic utensils or condiments to any customer, except upon, and in accordance with, the express request of that customer; and

(2) a food service business that has on-site seating capacity for 50 or more customers will be required to provide its on-site customers with easy access to reusable, washable utensils that may be used thereby while consuming meals on the premises, and which are to be returned to the food service business, upon completion of the on-site meal, for the purposes of cleaning and reuse.

Any food service business that elects to supply customers with single-use plastic utensils or condiments, upon customer request, as authorized by the bill, would be additionally required to provide each customer with only those types and amounts of single-use plastic utensils and condiments that have been expressly requested by the customer. A food service business would also be prohibited from creating, acquiring, or providing customers with bundled utensil or condiment packages that contain more than one type of single-use plastic utensil or condiment, regardless of the nature of any customer request therefor.

The bill would specify that nothing in its provisions may be deemed to:

(1) require a food service business to provide any single-use plastic utensils or condiments to customers, upon request, as authorized by the bill; or

(2) in any way restrict a food service business’ ability to provide its customers with eco-friendly alternative utensils and condiments, either on an exclusive basis or otherwise. Pursuant to definitions established in the bill, “eco-friendly alternative utensils or condiments” would include: utensils and condiment packets or packages which are composed of compostable material or another material approved, by the department or the United States Environmental Protection Agency, as an eco-friendly alternative to conventional plastics, regardless of whether such utensils and condiment packages are designed to be discarded, by the consumer, after a single use; utensils and condiment packets or packages which are designed to be used multiple times and are not intended to be discarded after a single use, regardless of whether such utensils and condiment packages are composed of conventional plastics; and any other utensils and condiment packets or packages that are approved, by the department or the United States Environmental Protection Agency, as eco-friendly alternatives to single-use plastic utensils or condiments.

Any food service business that exclusively provides its customers with eco-friendly alternative utensils and condiments would be fully exempt from compliance with the bill’s requirements. Any non-exempt food service business that violates the bill’s provisions would be liable to a civil penalty of $1,000 for the first offense, $2,500 for the second offense, and $5,000 for the third and each subsequent offense, to be collected through a summary proceeding, and each day on which a violation occurs would constitute a separate and distinct offense. The bill would specify, however, that no food service business will be subject to a penalty, under the bill, if it acquires, possesses, or maintains on the premises, a supply of single-use plastic utensils or condiments to provide to customers, upon request, as authorized by bill. Any moneys collected from penalties imposed pursuant to the bill would be deposited into the “Clean Communities Program Fund” for use in financing litter pickup, removal, education, and enforcement programs at the State and local levels.