

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.



1 **AN ACT** concerning the provision, by food service businesses, of
2 single-use plastic utensils and condiments to customers,
3 amending P.L.2002, c.128, and supplementing Title 13 of the
4 Revised Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. As used in this act:

10 “Commissioner” means the Commissioner of Environmental
11 Protection.

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

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

22 “Department” means the Department of Environmental
23 Protection.

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

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

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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

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

8
9 2. a. Commencing on the effective date of this act:

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

19 (2) a food service business that has on-site seating capacity for
20 50 or more customers shall provide its on-site customers with easy
21 access to reusable, washable utensils for use thereby while
22 consuming meals on the premises, and shall require each customer
23 using such utensils to return those utensils to the food service
24 business, for the purposes of cleaning and reuse, upon completion
25 of the customer’s on-site meal.

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

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

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

36 c. Nothing in this section shall be deemed to:

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

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

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

1 3. a. Any covered food service business that violates the
2 provisions of section 2 of this act shall be liable to a civil penalty of
3 \$1,000 for the first offense, \$2,500 for the second offense, and
4 \$5,000 for the third and each subsequent offense. Each day on
5 which a violation occurs shall constitute a separate and distinct
6 offense.

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

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

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

30
31 4. Section 5 of P.L.2002, c.128 (C.13:1E-217) is amended to
32 read as follows:

33 5. The Clean Communities Program Fund is established as a
34 nonlapsing, revolving fund in the Department of the Treasury. The
35 Clean Communities Program Fund shall be administered by the
36 Department of Environmental Protection and credited, in addition to
37 any appropriations made thereto, with all user fees imposed
38 pursuant to section 4 of P.L.2002, c.128 (C.13:1E-216) **[or]**,
39 penalties imposed pursuant to section 10 of P.L.2002, c.128
40 (C.13:1E-222), penalties imposed pursuant to P.L. , c. (C.)
41 (pending before the Legislature as this bill), and any sums received
42 as voluntary contributions from private sources. Interest received
43 on moneys in the Clean Communities Program Fund shall be
44 credited to the fund. Unless otherwise expressly provided by the
45 specific appropriation thereof by the Legislature, which shall take
46 the form of a discrete legislative appropriations act and shall not be
47 included within the annual appropriations act, all available moneys

- 1 in the Clean Communities Program Fund shall be appropriated
2 annually and solely for the following purposes and no others:
- 3 a. 10 percent of the estimated annual balance of the Clean
4 Communities Program Fund shall be used for a State program of
5 litter pickup and removal and of enforcement of litter-related laws
6 and ordinances in State owned places and areas that are accessible
7 to the public. Moneys in the fund may also be used by the State to
8 abate graffiti;
- 9 b. 50 percent of the estimated annual balance of the Clean
10 Communities Program Fund shall be distributed as State aid to
11 eligible municipalities with total housing units of 200 or more for
12 programs of litter pickup and removal, including establishing an
13 "Adopt-A-Highway" program, of public education and information
14 relating to litter abatement and of enforcement of litter-related laws
15 and ordinances. The amount of State aid due each municipality
16 shall be solely calculated based on the proportion which the housing
17 units of a qualifying municipality bear to the total housing units in
18 the State. Total housing units shall be determined using the most
19 recent federal decennial population estimates for New Jersey and its
20 municipalities, filed in the office of the Secretary of State. Moneys
21 in the fund may also be used by an eligible municipality to abate
22 graffiti;
- 23 c. 30 percent of the estimated annual balance of the Clean
24 Communities Program Fund shall be distributed as State aid to
25 eligible municipalities with total housing units of 200 or more for
26 programs of litter pickup and removal, including establishing an
27 "Adopt-A-Highway" program, of public education and information
28 relating to litter abatement and of enforcement of litter-related laws
29 and ordinances. The amount of State aid due each municipality
30 shall be solely calculated based on the proportion which the
31 municipal road mileage of a qualifying municipality bears to the
32 total municipal road mileage within the State. For the purposes of
33 this subsection, "municipal road mileage" means that road mileage
34 under the jurisdiction of municipalities, as determined by the
35 Department of Transportation. Moneys in the fund may also be
36 used by an eligible municipality to abate graffiti;
- 37 d. 10 percent of the estimated annual balance of the Clean
38 Communities Program Fund shall be distributed as State aid to
39 eligible counties for programs of litter pickup and removal,
40 including establishing an "Adopt-A-Highway" program, of public
41 education and information relating to litter abatement and of
42 enforcement of litter-related laws and ordinances. The amount of
43 State aid due each county shall be solely calculated based on the
44 proportion which the county road mileage of an eligible county
45 bears to the total county road mileage within the State. For the
46 purposes of this subsection, "county road mileage" means that road
47 mileage under the jurisdiction of counties, as determined by the

1 Department of Transportation. Moneys in the fund may also be
2 used by an eligible county to abate graffiti;

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

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

9 (1) \$375,000 of the estimated annual balance of the Clean
10 Communities Program Fund shall be annually appropriated to the
11 department and made available on July 1 of every year to the
12 organization under contract with the department pursuant to section
13 6 of P.L.2002, c.128 (C.13:1E-218) for a Statewide public
14 information and education program concerning antilittering
15 activities and other aspects of responsible solid waste handling
16 behavior, of which up to \$75,000 shall be used exclusively to
17 finance an annual Statewide television, radio, newspaper and other
18 media advertising campaign to promote antilittering and responsible
19 solid waste handling behavior.

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

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

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

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

1 The department may carry forward any unexpended balances in
2 the Clean Communities Program Fund as of June 30 of each year.
3 (cf: P.L.2020, c.117, s.10)
4

5 5. This act shall take effect on the first day of the seventh
6 month next following the date of enactment.
7

8
9 STATEMENT
10

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

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

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

33 (2) a food service business that has on-site seating capacity for
34 50 or more customers will be required to provide its on-site
35 customers with easy access to reusable, washable utensils that may
36 be used thereby while consuming meals on the premises, and which
37 are to be returned to the food service business, upon completion of
38 the on-site meal, for the purposes of cleaning and reuse.

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

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

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

6 (2) in any way restrict a food service business' ability to provide
7 its customers with eco-friendly alternative utensils and condiments,
8 either on an exclusive basis or otherwise. Pursuant to definitions
9 established in the bill, "eco-friendly alternative utensils or
10 condiments" would include: utensils and condiment packets or
11 packages which are composed of compostable material or another
12 material approved, by the department or the United States
13 Environmental Protection Agency, as an eco-friendly alternative to
14 conventional plastics, regardless of whether such utensils and
15 condiment packages are designed to be discarded, by the consumer,
16 after a single use; utensils and condiment packets or packages
17 which are designed to be used multiple times and are not intended
18 to be discarded after a single use, regardless of whether such
19 utensils and condiment packages are composed of conventional
20 plastics; and any other utensils and condiment packets or packages
21 that are approved, by the department or the United States
22 Environmental Protection Agency, as eco-friendly alternatives to
23 single-use plastic utensils or condiments.

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