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HOUSE BILL NO. 2095

Offered January 9, 2019

Prefiled January 7, 2019

A *BILL to amend the Code of Virginia by adding a section numbered 15.2-938.1 and by adding in Chapter 38 of Title 58.1 an article numbered 7.2, consisting of a section numbered 58.1-3835, relating to a local prohibition on single use plastic and expanded polystyrene products; local disposable paper and plastic bag tax.*

Patrons—Guzman, Hope, Kory, Krizek, Levine, Lopez, Rasoul, Rodman and Simon

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-938.1 and by adding in Chapter 38 of Title 58.1 an article numbered 7.2, consisting of a section numbered 58.1-3835, as follows:

§ 15.2-938.1. Local prohibition on single use plastic and expanded polystyrene products.**A. For the purposes of this section:**

"Expanded polystyrene" means any blown polystyrene or any expanded or extruded foam that is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques, including fusion of polymer spheres (expandable bead foam), injection molding, foam molding, or extrusion-blown molding (extruded foam polystyrene). "Expanded polystyrene" does not include rigid polystyrene.

"Plastic" means a material consisting of a polymer to which additives or other substances may have been added and that can function as a main structural component of a final product, with the exception of natural polymers that have not been chemically modified.

"Plastic carrier bag" shall not include the following:

1. Plastic bags used to carry ice cream, meat, fish, poultry, leftover restaurant food, newspapers, or dry cleaning;
2. Plastic bags used to carry alcoholic beverages or prescription drugs; or
3. Multiple plastic bags sold in packages and intended for use as garbage, pet waste, or leaf removal bags.

"Single use product" means any cotton swab stick, tobacco product filter, food container, beverage cup or bottle, piece of cutlery, plate, stirrer, straw, plastic carrier bag, or similar article that is made wholly or mostly from plastic or expanded polystyrene and is (i) not conceived, designed, or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to the producer for refill or reused for the same purpose for which it was conceived or (ii) generally recognized by the public as an item to be discarded after one use.

B. Any locality may by ordinance prohibit the purchase, sale, or provision, whether free or for a cost, of any single use product that is not recyclable or compostable and for which there is a suitable and cost effective compostable or recyclable alternative product available.

C. A locality that adopts an ordinance pursuant to subsection B may exempt the purchase, sale, or provision, whether free or for a cost, of:

1. Single use plastic straws intended for use by persons with a disability for which use of a straw is necessary or provides significant assistance; or
2. Single use products that are (i) made of expanded polystyrene and are filled with food or beverages and sealed before entering the locality or (ii) used to package raw, uncooked, or butchered meat, fish, poultry, or seafood for off-premises consumption.

D. Nothing in this section shall prohibit a locality from adopting a disposable paper bag and plastic bag tax pursuant to § 58.1-3835 unless such locality has prohibited such products pursuant to this section.

Article 7.2.**Disposable Plastic Bag Tax.****§ 58.1-3835. Disposable plastic bag tax.**

A. Any county or city may, by duly adopted ordinance, impose upon every consumer of tangible personal property a tax in the amount of five cents (\$0.05) for each disposable plastic bag provided, whether free or for a cost, to the consumer by retailers in grocery stores, convenience stores, or drug stores. The tax shall be collected by the retailer, along with the purchase price and all other fees and taxes, at the time the consumer pays for such personal property. However, every retailer that collects

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59 *the tax imposed by this article shall be allowed to retain one cent (\$0.01) from every five cents (\$0.05)*
60 *collected, provided that such retailer discounts are accounted for in the form of a deduction when*
61 *submitting the tax return and paying the amount due in a timely manner.*

62 *B. The tax imposed by this article shall not apply to the following:*

63 *1. Durable plastic bags with handles that are specifically designed and manufactured for multiple*
64 *reuse;*

65 *2. Plastic bags used to carry ice cream, meat, fish, poultry, leftover restaurant food, newspapers, or*
66 *dry cleaning;*

67 *3. Plastic bags used to carry alcoholic beverages or prescription drugs; and*

68 *4. Multiple plastic bags sold in packages and intended for use as garbage, pet waste, or leaf*
69 *removal bags.*

70 *C. The Tax Commissioner shall collect, administer, and enforce this tax in the same manner that he*
71 *collects, administers, and enforces the retail sales and use tax under the Virginia Retail Sales and Use*
72 *Tax Act (§ 58.1-600 et seq.), mutatis mutandis. However, the dealer discount provided under § 58.1-622*
73 *shall not be allowed, and the revenues from the tax authorized under this section, after reimbursement*
74 *of direct costs incurred by the Department of Taxation in administering and collecting this tax, shall be*
75 *distributed by the Comptroller to the respective county or city imposing the tax as soon as practicable*
76 *after the end of each month for which the tax is remitted. The Tax Commissioner shall develop and*
77 *make publicly available guidelines implementing the provisions of this article. Such guidelines shall be*
78 *exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

79 *The Department shall enforce the provisions of this article.*

80 *D. Each county or city ordinance imposing the tax shall provide for the tax to become effective on*
81 *the first day of any calendar quarter. The county or city shall, at least six months prior to the date the*
82 *tax is to become effective, provide a certified copy of such ordinance to the Tax Commissioner. Such*
83 *ordinance shall provide that the locality use the funds for litter control and stormwater management.*