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SENATE BILL NO. 193

Offered January 8, 2020

Prefiled December 29, 2019

A *BILL to amend the Code of Virginia by adding a section numbered 15.2-938.1 and by adding in Article 7.1 of Chapter 38 of Title 58.1 a section numbered 58.1-3835, relating to single-use plastic and expanded polystyrene products; local prohibition; local tax.*

Patrons—Favola and Boysko

Referred to Committee on Local Government

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 Article 7.1 of Chapter 38 of Title 58.1 a section numbered 58.1-3835, as follows:

§ 15.2-938.1. Local prohibition on single-use plastic and expanded polystyrene products.

A. For 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 elderly persons or 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 single-use plastics and polystyrene tax pursuant to § 58.1-3835 for any product that is not prohibited pursuant to this section.

§ 58.1-3835. Single-use plastics and polystyrene tax.

A. As used in this section,

"Plastic carrier bag" shall not include the following:

1. Durable plastic bags with handles that are (i) at least 2.25 mils in thickness and (ii) specifically designed and manufactured for multiple reuse;

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

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

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

"Single-use product" means any food container, beverage cup or bottle, piece of cutlery, plate,

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59 *stirrer, straw, plastic carrier bag, or similar article that is made wholly or mostly from plastic or*
60 *expanded polystyrene and is (i) not conceived, designed, or placed on the market to accomplish, within*
61 *its life span, multiple trips or rotations by being returned to the producer for refill or reused for the*
62 *same purpose for which it was conceived or (ii) generally recognized by the public as an item to be*
63 *discarded after one use.*

64 *B. Any locality may, by duly adopted ordinance, impose upon every consumer of tangible personal*
65 *property a tax in the amount of five cents (\$0.05) for each single-use product provided, whether free or*
66 *for a cost, to the consumer by a restaurant or retailer in a grocery store, convenience store, or*
67 *drugstore. The tax shall be collected by the restaurant or retailer, along with the purchase price and all*
68 *other fees and taxes, at the time the consumer pays for such personal property. However, every*
69 *restaurant or retailer that collects the tax imposed by this section shall be allowed to retain one cent*
70 *(\$0.01) from every five cents (\$0.05) collected, provided that such discounts are accounted for in the*
71 *form of a deduction when submitting the tax return and paying the amount due in a timely manner.*

72 *C. A locality that adopts an ordinance pursuant to subsection B may exempt the provision of:*

73 *1. Single-use plastic straws intended for use by elderly persons or persons with a disability for which*
74 *use of a straw is necessary or provides significant assistance; or*

75 *2. Single-use products that are (i) made of expanded polystyrene and are filled with food or*
76 *beverages and sealed before entering the locality or (ii) used to package raw, uncooked, or butchered*
77 *meat, fish, poultry, or seafood for off-premises consumption.*

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

87 *The Department shall enforce the provisions of this section.*

88 *E. Each ordinance imposing the tax shall provide for the tax to become effective on the first day of*
89 *any calendar quarter. The locality shall, at least six months prior to the date the tax is to become*
90 *effective, provide a certified copy of such ordinance to the Tax Commissioner. Such ordinance shall*
91 *provide that the locality use the funds for cleanup or education programs designed to reduce waste.*