CHAPTER 1104

An Act to amend and reenact §§ 10.1-1414 and 10.1-1422.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1424.3, relating to expanded polystyrene food service containers; prohibition; civil penalty.

[H 533]

Approved April 10, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1414 and 10.1-1422.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1424.3 as follows:

§ 10.1-1414. Definitions.

As used in this article, unless the context requires a different meaning:

"Advisory Board" means the Litter Control and Recycling Fund Advisory Board.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or the environment. Beneficial use products are produced by facilities that include beneficiation facilities and recycling centers.

"Beneficiation facility" means a facility that uses methods including sorting by color, removal of contaminants, crushing, grinding, screening, grading, and monitoring of size and quality to produce clean, crushed glass cullet that satisfies the specifications of the end user of the cullet, including a manufacturer of glass containers or fiberglass.

"Disposable package" or "container" means all packages or containers intended or used to contain solids, liquids or materials and so designated.

"Expanded polystyrene food service container" means a rigid single-use container made primarily of expanded polystyrene and used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages. "Expanded polystyrene food service container" includes plates, cups, bowls, trays, and hinged containers but does not include packaging for unprepared foods or packaging, including a cooler, used in the shipment of food.

"Food vendor" means an establishment that provides prepared food for public consumption on or off its premises and includes a store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, or catering truck or vehicle; any other person who provides prepared food; and any individual, organization, or group that regularly provides food as a part of its services. "Food vendor" does not include a nonprofit organization.

"Fund" means the Litter Control and Recycling Fund.

"Litter" means all waste material disposable packages or containers but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing.

"Litter bag" means a bag, sack, or durable material which is large enough to serve as a receptacle for litter inside a vehicle or watercraft which is similar in size and capacity to a state approved litter bag.

"Litter receptacle" means containers acceptable to the Department for the depositing of litter.

"Person" means any natural person, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, *or* representative or group of individuals or entities of any kind.

"Prepared food" means a food or beverage prepared for consumption on or off a food vendor's premises, using any cooking or food preparation technique. "Prepared food" does not include raw or uncooked meat, fish, or eggs provided without further food preparation.

"Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product which may or may not be similar to the original product.

"Recycling center" means a facility that (i) accepts recyclable materials that have already been separated at the source from municipal solid waste generated by either residential or commercial producers; (ii) processes source segregated recyclable materials, including mixed-paper fiber materials, metal and plastic postconsumer containers, and glass containers; and (iii) processes and sells recyclable materials according to end-user specifications. "Recycling center" does not include a facility for construction and demolition debris processing, sorting of municipal solid waste, incineration, sorting or processing of industrial waste, composting, or used tire processing.

"Sold within the Commonwealth" or "sales of the business within the Commonwealth" means all sales of retailers engaged in business within the Commonwealth and in the case of manufacturers and wholesalers, sales of products for use and consumption within the Commonwealth.

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by

which any person or property may be transported upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

"Watercraft" means any boat, ship, vessel, barge, or other floating craft.

§ 10.1-1422.01. Litter Control and Recycling Fund established; use of moneys; purpose of Fund.

A. All moneys collected *from the civil penalties imposed pursuant to § 10.1-1424.3,* from the taxes imposed under §§ 58.1-1700 through 58.1-1710, and by the taxes increased by Chapter 616 of the 1977 Acts of Assembly, shall be paid into the treasury and credited to a special nonreverting fund known as the Litter Control and Recycling Fund, which is hereby established. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Director is authorized to release money from the Fund on warrants issued by the Comptroller after receiving and considering the recommendations of the Advisory Board for the purposes enumerated in subsection B ~~of this section~~.

B. Moneys from the Fund shall be expended, according to the allocation formula established in subsection C ~~of this section~~, for the following purposes:

1. Local litter prevention and recycling grants to localities that meet the criteria established in § 10.1-1422.04; ~~and~~

2. Payment to (i) the Department to process the grants authorized by this article and (ii) the actual administrative costs of the Advisory Board. The Director shall assign one person in the Department to serve as a contact for persons interested in the Fund*; and*

3. The operation of public information campaigns to discourage the sale and use of expanded polystyrene products and to promote alternatives to expanded polystyrene.

C. All moneys deposited into the Fund shall be expended pursuant to the following allocation formula:

1. ~~Ninety-five~~ *Ninety* percent for grants made to localities pursuant to subdivision B 1 ~~of this section; and~~*;*

2. Up to a maximum of ~~5%~~ *five percent* for the actual administrative expenditures authorized pursuant to subdivision B 2 ~~of this section~~*; and*

3. Up to a maximum of five percent for the operation of public information campaigns pursuant to subdivision B 3.

§ 10.1-1424.3. Expanded polystyrene food service containers prohibited; civil penalty.

A. Beginning July 1, 2023, no food vendor that is a restaurant or similar retail food establishment and is part of a chain with 20 or more locations offering for sale substantially the same menu items and doing business under the same name, regardless of the form of ownership of such locations, shall dispense prepared food to a customer in an expanded polystyrene food service container.

Beginning July 1, 2025, no food vendor of any type shall dispense prepared food to a customer in an expanded polystyrene food service container.

B. Any food vendor may request from the locality in which it is located an exemption from the provisions of subsection A. The locality may grant the exemption if the food vendor demonstrates to the satisfaction of the locality that compliance with subsection A would impose an undue economic hardship on the food vendor. For the purposes of this subsection, "undue economic hardship" means a situation in which (i) a food vendor has no reasonable alternative to the expanded polystyrene food service containers in use by that food vendor and (ii) compliance with subsection A would cause significant economic hardship to that food vendor. A locality may so exempt a food vendor for a period of not more than one year from the date of the exemption. A food vendor granted such an exemption may reapply to the locality before the expiration of the exemption, and the locality may grant an additional exemption from the provisions of subsection A not to exceed one year for each such reapplication if the food vendor demonstrates a continuing undue economic hardship at the time of reapplication to the satisfaction of the locality.

C. Any person who violates any provision of this section, upon such finding by an appropriate circuit court, shall be assessed a civil penalty of not more than $50 for each day of such violation. Any civil penalties assessed pursuant to this section in a civil action brought by the Attorney General in the name of the Commonwealth shall be paid into the state treasury and deposited by the State Treasurer into the Litter Control and Recycling Fund. Any civil penalty assessed pursuant to this section in a civil action brought by a locality shall be paid into the treasury of the locality, except where the violator of this section is the locality or its agent, in which case the civil penalty shall be paid into the state treasury and deposited by the State Treasurer into the Fund.

D. The Department shall post to its website information on how to comply with this section and how to file a complaint for a violation of this section.

2. That the provisions of this act shall not become effective unless reenacted by the 2021 Session of the General Assembly.