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SENATE BILL 26-146

BY SENATOR(S) Cutter, Ball, Gonzales J., Jodeh, Kipp, Snyder, Wallace, Coleman;
also REPRESENTATIVE(S) Froelich, Brown, Lindsay, Nguyen, Smith, Story, Titone, Willford.

CONCERNING RESTRICTING THE DISTRIBUTION OF SINGLE-USE FOOD SERVICEWARE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 25-17-502 as follows:

25-17-502. Legislative declaration.

(1) The general assembly finds, determines, and declares that limiting the use of single-use plastic carryout bags and expanded polystyrene products will mitigate the harmful effects on our state's natural resources and our environment that result from disposing of these products in our landfills.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) MOST SINGLE-USE PLASTIC ITEMS, INCLUDING CONDIMENT PACKAGES AND UTENSILS, ARE NOT RECYCLABLE OR COMPOSTABLE, YET THEY ARE COMMONLY PLACED IN RECYCLING AND COMPOST STREAMS, BECOMING CONTAMINANTS AND CREATING FINANCIAL HARDSHIP FOR COLORADO RECYCLING AND COMPOSTING BUSINESSES. THIS CONFUSION AND CONTAMINATION IS EXACERBATED WHEN RETAIL FOOD ESTABLISHMENTS PROVIDE A MIXTURE OF RECYCLABLE, CERTIFIED COMPOSTABLE, NONCOMPOSTABLE, AND NONRECYCLABLE SINGLE-USE PRODUCTS TO CUSTOMERS.

(b) A STATEWIDE REQUIREMENT FOR RETAIL FOOD ESTABLISHMENTS TO ASK BEFORE PROVIDING SINGLE-USE FOOD SERVICEWARE, INCLUDING SINGLE-USE CONDIMENTS, WILL REDUCE THE AMOUNT OF UNWANTED ITEMS PROVIDED TO CUSTOMERS, REDUCE PLASTIC WASTE, AND SAVE FOOD RETAILERS HUNDREDS OR THOUSANDS OF DOLLARS PER YEAR;

(c) ADOPTING A STATEWIDE "ASK FIRST FOR SINGLE-USE ITEMS" POLICY WILL CREATE A MORE CONSISTENT FRAMEWORK FOR RETAIL FOOD ESTABLISHMENTS THAT CAN DRIVE BEHAVIOR CHANGE ACROSS COLORADO;

(d) ENCOURAGING THE USE OF DURABLE GOODS RATHER THAN SINGLE-USE PLASTIC ITEMS WOULD DRAMATICALLY REDUCE PLASTIC POLLUTION AND LEAD TO LONG-TERM BEHAVIOR CHANGE; AND

(e) MANY SINGLE-USE PLASTIC ITEMS CONTAIN TOXIC ADDITIVES SUCH AS PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS, EVEN THOUGH HOUSE BILL 22-1345, ENACTED IN 2022, AND SENATE BILL 24-081, ENACTED IN 2024, PROHIBIT THE INTENTIONAL INCLUSION OF PERFLUOROALKYL AND POLYFLUOROALKYL CHEMICALS, WHICH ARE WIDELY RECOGNIZED AS ENVIRONMENTAL TOXICANTS HARMFUL TO HUMAN HEALTH.

(3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THE IMPACTS OF SINGLE-USE PLASTIC ITEMS CONSTITUTE AN ENVIRONMENTAL JUSTICE ISSUE THAT DISPROPORTIONATELY BURDENS COMMUNITIES IDENTIFIED AS DISPROPORTIONATELY IMPACTED COMMUNITIES, AS DEFINED IN SECTION 24-4-109 AND ENACTED THROUGH THE "ENVIRONMENTAL JUSTICE ACT", AS ENACTED IN 2021 BY HOUSE BILL 21-1266. THESE COMMUNITIES INCLUDE THOSE WITH HIGHER PROPORTIONS

OF LOW-INCOME HOUSEHOLDS, COMMUNITIES OF COLOR, AND THOSE EXPERIENCING CUMULATIVE ENVIRONMENTAL AND SOCIOECONOMIC STRESSORS, AS WELL AS COMMUNITIES WITH A HISTORY OF ENVIRONMENTAL RACISM AND SYSTEMIC DISINVESTMENT.

(b) EMISSIONS AND POLLUTION ASSOCIATED WITH SINGLE-USE PLASTIC ITEMS OCCUR ACROSS THE FULL LIFE CYCLE OF PLASTIC PRODUCTION AND DISPOSAL, INCLUDING AT EXTRACTION SITES, REFINING FACILITIES, PETROCHEMICAL MANUFACTURING PLANTS, PRODUCT MANUFACTURING FACILITIES, AND LANDFILLS. THESE CUMULATIVE IMPACTS CONTRIBUTE TO PERSISTENT DISPARITIES IN AIR QUALITY, WATER CONTAMINATION, AND SOIL DEGRADATION IN DISPROPORTIONATELY IMPACTED COMMUNITIES.

SECTION 2. In Colorado Revised Statutes, 25-17-503, **amend** (9)(b) and (14)(c); and **add** (2.5), (4.5), (11.3), (11.5), (13.3), (13.5), (14)(d), (15), and (16) as follows:

25-17-503. Definitions.

As used in this part 5, unless the context otherwise requires:

(2.5) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT CREATED IN SECTION 25-1-102.

(4.5) "HOTEL" MEANS AN ESTABLISHMENT THAT HAS SLEEPING ROOMS FOR THE ACCOMMODATION OF GUESTS AND RESTAURANT FACILITIES.

(9) (b) ~~"Retail food establishment" does not include farmers markets and roadside markets as described in section 25-4-1602 (14)(j).~~ FOR THE PURPOSES OF SECTION 25-17-510, "RETAIL FOOD ESTABLISHMENT" INCLUDES:

(I) FARMERS' MARKETS AND ROADSIDE MARKETS; AND

(II) A HOME, COMMERCIAL, PRIVATE, OR PUBLIC KITCHEN IN WHICH A PERSON PRODUCES FOOD PRODUCTS SOLD DIRECTLY TO CONSUMERS PURSUANT TO THE "COLORADO COTTAGE FOODS ACT", SECTION 25-4-1614.

(11.3) (a) "SINGLE-USE CONDIMENT" MEANS A FACTORY-PACKAGED CONDIMENT, SUCH AS A RELISH, SPICE, SAUCE, CONFECTION, OR SEASONING,

THAT:

(I) DOES NOT REQUIRE ADDITIONAL PREPARATION;

(II) IS INTENDED FOR USE ON FOOD; AND

(III) IS INTENDED FOR A SINGLE USE.

(b) "SINGLE-USE CONDIMENT" INCLUDES KETCHUP, MUSTARD, MAYONNAISE, CREAMER, BUTTER, SOY SAUCE, HOT SAUCE, SALSA, SYRUP, JAM, JELLY, SUGAR, SALT, PEPPER, SWEETENER, OR CHILI PEPPER.

(11.5) (a) "SINGLE-USE FOOD SERVICEWARE" MEANS AN ITEM THAT A RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE PROVIDES TO A CUSTOMER TO ASSIST THE CUSTOMER IN CONSUMING FOOD THAT THE RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE PROVIDES TO THE CUSTOMER, WHICH ITEM IS DESIGNED TO BE USED ONCE AND THEN DISCARDED.

(b) "SINGLE-USE FOOD SERVICEWARE" INCLUDES A UTENSIL, NAPKIN, SINGLE-USE CONDIMENT, STRAW, STIRRER, LID, CUP SLEEVE, SPILL PLUG, SPLASH STICK, TRAY, COCKTAIL STICK, OR PAIR OF CHOPSTICKS.

(c) "SINGLE-USE FOOD SERVICEWARE" DOES NOT INCLUDE PACKAGING, SUCH AS A BOWL, CUP, LID, OR CLAMSHELL CONTAINER, THAT IS NECESSARY TO CONTAIN FOOD AT THE TIME THE FOOD IS PROVIDED TO A CUSTOMER THROUGH A DELIVERY ORDER.

(13.3) "SPECIAL EVENT" MEANS AN ORGANIZED EVENT OR CELEBRATION FOR WHICH A RETAIL FOOD ESTABLISHMENT PREPARES, SERVES, OR OTHERWISE PROVIDES FOOD FOR HUMAN CONSUMPTION.

(13.5) "SPILL PLUG" OR "SPLASH STICK" MEANS A PIECE OF PLASTIC THAT IS INSERTED INTO A BEVERAGE LID TO PREVENT SPILLS.

(14)(c) "Store" does not include a small store, EXCEPT AS PROVIDED IN SUBSECTION (14)(d) OF THIS SECTION.

(d) FOR THE PURPOSES OF SECTION 25-17-510, FOR A RETAIL FOOD ESTABLISHMENT THAT IS ALSO A STORE, "STORE" INCLUDES A SMALL STORE.

(15) "THIRD-PARTY FOOD DELIVERY SERVICE" MEANS A COMPANY OR WEBSITE, MOBILE APPLICATION, OR OTHER INTERNET SERVICE THAT OFFERS OR ARRANGES FOR THE SALE AND DELIVERY OR CARRYOUT OF PREPARED FOOD OR BEVERAGES FROM A RETAIL FOOD ESTABLISHMENT.

(16) "THIRD-PARTY FOOD DELIVERY SERVICE PLATFORM" OR "PLATFORM" MEANS A THIRD-PARTY FOOD DELIVERY SERVICE'S ONLINE OR MOBILE PLATFORM ON WHICH A CUSTOMER CAN VIEW AND ORDER AVAILABLE PRODUCTS.

SECTION 3. In Colorado Revised Statutes, **add 25-17-510** as follows:

25-17-510. Single-use food serveware - exemptions - department responsibilities - definition.

(1) ON AND AFTER JANUARY 1, 2027:

(a) WHEN A CUSTOMER ORDERS FOOD FROM A RETAIL FOOD ESTABLISHMENT OR THROUGH A THIRD-PARTY FOOD DELIVERY SERVICE PLATFORM FOR DELIVERY OR CARRYOUT, THE RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE SHALL NOT PROVIDE THE CUSTOMER WITH SINGLE-USE FOOD SERVICEWARE UNLESS THE CUSTOMER:

(I) REQUESTS SINGLE-USE FOOD SERVICEWARE; OR

(II) CONFIRMS THAT THE CUSTOMER WANTS SINGLE-USE FOOD SERVICEWARE AFTER BEING ASKED IF THEY WOULD LIKE SINGLE-USE FOOD SERVICEWARE BY AN EMPLOYEE OF THE RETAIL FOOD ESTABLISHMENT OR THROUGH THE THIRD-PARTY FOOD DELIVERY SERVICE PLATFORM;

(b) A RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE SHALL NOT CREATE, ACQUIRE, OR PROVIDE A CUSTOMER WITH A BUNDLED PACKAGE THAT CONTAINS MORE THAN ONE TYPE OF SINGLE-USE FOOD SERVICEWARE ITEM;

(c) A RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE SHALL PROVIDE ONLY THE SINGLE-USE FOOD SERVICEWARE ITEMS REQUESTED OR CONFIRMED BY A CUSTOMER; AND

(d) A RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE SHALL ENABLE A CUSTOMER THAT USES A THIRD-PARTY FOOD DELIVERY SERVICE PLATFORM TO SELECT THE SINGLE-USE FOOD SERVICEWARE OFFERED BY THE RETAIL FOOD ESTABLISHMENT THAT THE CUSTOMER WANTS INCLUDED WITH THE CUSTOMER'S FOOD ORDER.

(2) A THIRD-PARTY FOOD DELIVERY SERVICE IS IN COMPLIANCE WITH THIS SECTION IF:

(a) THE DEFAULT OF THE THIRD-PARTY FOOD DELIVERY SERVICE'S PLATFORM IS NOT TO PROVIDE SINGLE-USE FOOD SERVICEWARE;

(b) THE THIRD-PARTY FOOD DELIVERY SERVICE PROVIDES A RETAIL FOOD ESTABLISHMENT WITH THE OPTION TO ALLOW A CUSTOMER TO CLEARLY INDICATE WHICH SINGLE-USE FOOD SERVICEWARE THE CUSTOMER WANTS IN THE ONLINE ORDERING PROCESS; AND

(c) THE THIRD-PARTY FOOD DELIVERY SERVICE'S PLATFORM CLEARLY COMMUNICATES TO THE RETAIL FOOD ESTABLISHMENT FULFILLING THE ORDER WHICH SINGLE-USE FOOD SERVICEWARE ITEMS, IF ANY, THE CUSTOMER REQUESTED. A THIRD-PARTY FOOD DELIVERY SERVICE IS NOT LIABLE FOR A RETAIL FOOD ESTABLISHMENT'S FAILURE TO FOLLOW A CUSTOMER'S REQUEST IF THE THIRD-PARTY FOOD DELIVERY SERVICE ACCURATELY COMMUNICATED THE CUSTOMER'S REQUEST TO THE RETAIL FOOD ESTABLISHMENT.

(3) SUBSECTIONS (1)(a) AND (1)(b) OF THIS SECTION DO NOT APPLY TO THE FOLLOWING, THOUGH ALL FOOD ESTABLISHMENTS ARE ENCOURAGED TO COMPLY WITH SUBSECTIONS (1)(a) AND (1)(b) OF THIS SECTION:

(a) SINGLE-USE FOOD SERVICEWARE PROVIDED AT A SELF-SERVICE STATION LOCATED WITHIN A RETAIL FOOD ESTABLISHMENT OR AT A SPECIAL EVENT. A RETAIL FOOD ESTABLISHMENT OR SPECIAL EVENT WITH A SELF-SERVICE STATION IS ENCOURAGED TO OFFER BULK CONDIMENT DISPENSERS AT THE SELF-SERVICE STATION, PROVIDE ONLY SINGLE-USE FOOD SERVICEWARE THAT IS LIKELY TO BE NECESSARY FOR THE FOOD SERVED, AND NOT BUNDLE SINGLE-USE FOOD SERVICEWARE.

(b) MEALS PROVIDED AS PART OF A SOCIAL SERVICE PROGRAM DIRECTED AT SERVING ONE OR MORE VULNERABLE POPULATIONS, SUCH AS

SCHOOLCHILDREN IN INCOME-ELIGIBLE HOUSEHOLDS, INDIVIDUALS EXPERIENCING HOMELESSNESS, OR ELDERLY INDIVIDUALS;

(c) A RETAIL FOOD ESTABLISHMENT LOCATED WITHIN A PUBLIC AIRPORT;

(d) MEALS PROVIDED TO GUESTS STAYING AT A HOTEL, LODGING HOUSE, OR ROOMING HOUSE;

(e) SINGLE-USE FOOD SERVICEWARE INTENDED TO PREVENT SPILLS THAT IS PROVIDED BY A RETAIL FOOD ESTABLISHMENT AT A DRIVE-THROUGH OR FOR CARRYOUT FOR A CUSTOMER'S TRANSPORT OF FOOD FOR OFF-SITE CONSUMPTION OR PROVIDED FOR DELIVERY OF FOOD BY A RETAIL FOOD ESTABLISHMENT OR A THIRD-PARTY FOOD DELIVERY SERVICE;

(f) MEALS PROVIDED TO PATIENTS OR RESIDENTS OF A HEALTH FACILITY LICENSED OR CERTIFIED BY THE DEPARTMENT PURSUANT TO SECTION 25-1.5-103 OR CERTIFIED BY THE STATE DEPARTMENT PURSUANT TO SECTION 25.5-5-412, INCLUDING HOSPITALS, LONG-TERM CARE FACILITIES, HOSPICE INPATIENT FACILITIES, AND ASSISTED LIVING RESIDENCES; OR

(g) SCHOOL CAFETERIAS.

(4) NOTHING IN THIS SECTION:

(a) AUTHORIZES THE DISTRIBUTION OF SINGLE-USE PLASTIC CARRYOUT BAGS OR EXPANDED POLYSTYRENE PRODUCTS IN A MANNER THAT VIOLATES THIS PART 5; OR

(b) PROHIBITS AN EMPLOYEE OF A RETAIL FOOD ESTABLISHMENT OR THIRD-PARTY FOOD DELIVERY SERVICE FROM OFFERING A CUSTOMER SINGLE-USE FOOD SERVICEWARE.

(5) ON OR BEFORE JANUARY 1, 2027, THE DEPARTMENT SHALL ESTABLISH A PAGE ON THE DEPARTMENT'S PUBLIC WEBSITE THAT INCLUDES A DESCRIPTION OF THE REQUIREMENTS OF THIS SECTION AND THE ENFORCEMENT MECHANISM SET FORTH IN SECTION 25-17-507.

(6) AS USED IN THIS SECTION, "BULK CONDIMENT DISPENSER" MEANS

A REFILLABLE, SELF-SERVICE CONTAINER OR APPARATUS DESIGNED TO HOLD AND DISPENSE TO A CUSTOMER, ON AN AS-NEEDED BASIS, CONDIMENTS SUCH AS SAUCES, SPICES, OR SEASONINGS.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO