A BILL FOR AN ACT

CONCERNING THE MANAGEMENT OF PLASTIC PRODUCTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Under current law, local governments are prohibited from requiring or banning the use or sale of specific types of plastic materials or products. Section 1 repeals the prohibition on July 1, 2023.

Section 2 prohibits stores and retail food establishments, on and after September 1, 2022, from providing single-use plastic carryout bags to customers. The prohibition does not apply to inventory purchased before September 1, 2022, and used on or before March 31, 2023, which may be supplied to a customer at the point of sale for a 10-cent fee.
Between September 1, 2021, and September 1, 2022, a store may furnish a recycled paper carryout bag or a single-use plastic carryout bag to a customer at the point of sale if the customer pays a fee of 10 cents per bag or a higher fee adopted by the municipality or county in which the store is located.

On and after September 1, 2022, a store may furnish only a recycled paper carryout bag to a customer at the point of sale at a fee of 10 cents per bag or a higher fee imposed by the municipality or county in which the store is located.

A store is required to remit, on a quarterly basis beginning January 1, 2022, 60% of the carryout bag fee revenues to the municipality or county within which the store is located and may retain the remaining 40% of the carryout bag fee revenues. A municipality or county may use its portion of the carryout bag fee revenues to pay for its administrative and enforcement costs and any recycling, composting, or other waste diversion programs or related outreach or education activities.

The carryout bag fee does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

Section 2 also prohibits a retail food establishment, on and after January 1, 2022, from distributing an expanded polystyrene product for use as a container for ready-to-eat food in this state. The prohibition does not apply to retail food establishments located within certain schools until January 1, 2023; except that the prohibition does not apply to a high school until January 1, 2024.

Retail food establishments that purchase expanded polystyrene products before January 1, 2022, may continue to use the products until their supply is depleted.

Section 2 also authorizes a local government to enforce against a violation of section 2 and expressly authorizes a county to impose a civil penalty against a store or retail food establishment of $500 for a second violation or $1,000 for a third or subsequent violation.

On and after July 1, 2023, a local government may enact, implement, or enforce an ordinance, resolution, rule, or charter provision that is as stringent as or more stringent than the requirements set forth in the bill.

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

SECTION 1. In Colorado Revised Statutes, repeal 25-17-104 as follows:

25-17-104. Local government preemption. No unit of local
government shall require or prohibit the use or sale of specific types of
plastic materials or products or restrict or mandate containers, packaging,
or labeling for any consumer products.

SECTION 2. In Colorado Revised Statutes, add part 5 to article
17 of title 25 as follows:

PART 5

MANAGEMENT OF PLASTIC PRODUCTS

25-17-501. Short title. The short title of this part 5 is the "Plastic Pollution Reduction Act".

25-17-502. Legislative declaration. 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.

25-17-503. Definitions - rules. As used in this part 5, unless the context otherwise requires:

(1) (a) "Carryout bag" means a bag that is furnished to a customer at a store or retail food establishment at the point of sale for use by the customer to transport or carry purchased items.

(b) "Carryout bag" does not include:

(I) A bag made of paper when the paper has a basis weight of thirty pounds or less;

(II) A bag that a pharmacy provides to a customer purchasing prescription medication;

(III) A bag or other material that is used in the packaging
OF A PRODUCT THAT IS REGULATED AS A DRUG, MEDICAL DEVICE, OR
DIETARY SUPPLEMENT BY THE FOOD AND DRUG ADMINISTRATION IN THE
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER
SEQ., AS AMENDED;

(IV) A BAG THAT A CUSTOMER USES INSIDE A STORE TO:

(A) PACKAGE LOOSE OR BULK ITEMS, SUCH AS FRUITS,
VEGETABLES, NUTS, GRAINS, CANDY, GREETING CARDS, OR SMALL
HARDWARE ITEMS SUCH AS NAILS, BOLTS, OR SCREWS;

(B) CONTAIN OR WRAP FROZEN FOODS, MEAT, SEAFOOD, FISH,
FLOWERS, POTTED PLANTS, OR OTHER ITEMS THAT, IF THEY WERE TO COME
IN CONTACT WITH OTHER ITEMS, COULD DAMPEN OR CONTAMINATE THE
OTHER ITEMS; OR

(C) CONTAIN UNWRAPPED PREPARED FOODS OR BAKERY GOODS;

OR

(V) A LAUNDRY, DRY CLEANING, OR GARMENT BAG.

(2) "Container" means a receptacle upon which or inside
which food may be placed for consumption, whether or not the
receptacle can be fully closed. "Container" includes hinged
food containers, plates, bowls, cups, and trays.

(3) "Expanded polystyrene" means blown polystyrene,
commonly known as Styrofoam™, and any other expanded or
extruded foam consisting of thermoplastic petrochemical
materials utilizing a styrene monomer and processed by
techniques that may include:

(a) FOR EXPANDABLE BEAD POLYSTYRENE, FUSION OF POLYMER
SPHERES;
(b) INJECTION MOLDING;
(c) FOAM MOLDING; AND
(d) FOR EXTRUDED FOAM POLYSTYRENE, EXTRUSION BLOW MOLDING.

(4) (a) "FOOD" MEANS ANY RAW, COOKED, OR PROCESSED EDIBLE SUBSTANCE, ICE, BEVERAGE, OR INGREDIENT USED OR INTENDED FOR USE OR FOR SALE, IN WHOLE OR IN PART, FOR HUMAN CONSUMPTION.
(b) "FOOD" DOES NOT INCLUDE A DRUG, AS THAT TERM IS DEFINED IN SECTION 25-5-402 (9).

(5) "PLASTIC" MEANS A SYNTHETIC MATERIAL MADE FROM LINKING MONOMERS THROUGH A CHEMICAL REACTION TO CREATE A POLYMER CHAIN THAT CAN BE MOLDED OR EXTRUDED AT HIGH HEAT INTO VARIOUS SOLID FORMS THAT RETAIN THEIR DEFINED SHAPES DURING THEIR LIFE CYCLE AND AFTER DISPOSAL.

(6) "POINT OF SALE" MEANS A CHECK-OUT STAND, CASH REGISTER, OR OTHER POINT AT WHICH A SALES TRANSACTION OCCURS IN A STORE OR RETAIL FOOD ESTABLISHMENT OR, FOR PRODUCTS THAT ARE ORDERED REMOTELY FROM A STORE OR RETAIL FOOD ESTABLISHMENT AND DELIVERED, THE LOCATION WHERE THE PRODUCTS ARE DELIVERED.

(7) "READY-TO-EAT FOOD" MEANS FOOD THAT IS COOKED OR OTHERWISE PREPARED IN ADVANCE FOR IMMEDIATE CONSUMPTION.

(8) "RECYCLED PAPER CARRYOUT BAG" MEANS A CARRYOUT BAG MADE FROM ONE HUNDRED PERCENT:
(a) RECYCLED MATERIAL; OR
(b) OTHER POST-CONSUMER CONTENT.

(9) (a) "RETAIL FOOD ESTABLISHMENT" HAS THE MEANING SET FORTH IN SECTION 25-4-1602 (14) EXCEPT AS PROVIDED IN SUBSECTION
(b) "Retail food establishment" includes a farmers' market, roadside market or stand, festival, or other temporary food vendor or event that includes temporary food vendors.

(10) (a) "Reusable carryout bag" means a carryout bag that is designed and manufactured for at least one hundred twenty-five uses, can carry at least twenty-two pounds over a distance of one hundred seventy-five feet, has stitched handles, and is made of cloth, fiber, or other fabric or a recycled material such as polyethylene terephthalate (PET).

(b) "Reusable carryout bag" does not include bags made of biologically based polymers such as corn or other plant sources; except that a carryout bag made of hemp is a reusable carryout bag if it is designed and manufactured in accordance with subsection (10)(a) of this section.

(11) "Rural school" has the meaning set forth in section 23-3.9-101 (5).

(12) "School" has the meaning set forth in section 23-3.9-101 (6).

(13) (a) "Single-use plastic carryout bag" means a carryout bag that is a single-use plastic product made predominantly of plastic derived from natural gas, petroleum, or a biologically based source, such as corn or other plant sources, and that is provided to a customer at the point of sale.

(b) "Single-use plastic carryout bag" does not include a reusable carryout bag.

(14) (a) "Store" means a grocery store, supermarket,
CONVENIENCE STORE, LIQUOR STORE, DRY CLEANER, PHARMACY, DRUG STORE, CLOTHING STORE, OR OTHER TYPE OF RETAIL ESTABLISHMENT AT WHICH CARRYOUT BAGS ARE TRADITIONALLY PROVIDED TO CUSTOMERS.

(b) "Store" includes a farmers' market, roadside market or stand, festival, or other temporary vendor or event that includes temporary vendors.

25-17-504. Restrictions on use of single-use plastic carryout bag - inventory exception - repeal. (1) Subject to section 25-17-505 (1), on and after September 1, 2022, a store or retail food establishment shall not provide a single-use plastic carryout bag to a customer.

(2) (a) Subject to the carryout bag fee applied to single-use plastic carryout bags in section 25-17-505, a store or retail food establishment may provide a single-use plastic carryout bag to a customer on or before March 31, 2023, if the single-use plastic carryout bag was part of the store's or retail food establishment's inventory before September 1, 2022.

(b) This subsection (2) is repealed, effective September 1, 2023.

25-17-505. Carryout bag fee - disposition of money - repeal.

(1) (a) On and after September 1, 2021, and before September 1, 2022, a store may provide a customer with one or more recycled paper carryout bags or single-use plastic carryout bags at the point of sale only if the customer pays a carryout bag fee of ten cents per recycled paper carryout bag or single-use plastic carryout bag, or a higher fee if a municipality or county in which the store is located raises the fee amount by ordinance or
resolution. For each carryout bag fee collected pursuant to this subsection (1)(a), the store shall:

(I) Remit, in accordance with subsection (3)(d) of this section, sixty percent to the municipality within which the store is located or, if the store is not located within a municipality, to the county within which the store is located, which municipality or county shall use the remitted fee to pay:

(A) its administrative and enforcement costs incurred as a result of this section; and

(B) for any recycling, composting, or other waste diversion programs and related outreach and education activities; and

(II) retain forty percent, which portion of the fee does not count as revenue for the purpose of calculating sales tax.

(b) The carryout bag fee set forth in subsection (1)(a) of this section does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

(c) This subsection (1) is repealed, effective September 1, 2022.

(2)(a) On and after September 1, 2022, a store may provide a customer with one or more recycled paper carryout bags at the point of sale only if the customer pays a carryout bag fee of ten cents per recycled paper carryout bag, or a higher fee if a municipality or county in which the store is located raises the fee amount by ordinance or resolution. For each carryout bag fee collected pursuant to this subsection (2), the store shall:
(I) Remit, in accordance with subsection (3)(d) of this section, sixty percent to the municipality within which the store is located or, if the store is not located within a municipality, to the county within which the store is located, which municipality or county shall use the remitted fee to pay:

(A) its administrative and enforcement costs incurred as a result of this section; and

(B) for any recycling, composting, or other waste diversion programs and related outreach and education activities; and

(II) retain forty percent, which portion of the fee does not count as revenue for the purpose of calculating sales tax.

(b) The carryout bag fee set forth in subsection (2)(a) of this section does not apply to a customer that provides evidence to the store that the customer is a participant in a federal or state food assistance program.

(c) (I) Beginning September 1, 2022, and ending March 31, 2023, a store may provide a customer with a single-use plastic carryout bag at the point of sale for the carryout bag fee described in subsection (2)(a) of this section only if the single-use plastic carryout bag is within the store's remaining inventory pursuant to section 25-17-504 (2)(a). The store shall remit the fee collected pursuant to this subsection (2)(c) in accordance with subsection (2)(a) of this section.

(II) This subsection (2)(c) is repealed, effective July 1, 2023.

(3) In providing carryout bags for a fee pursuant to this section, a store shall:
(a) For each customer provided a carryout bag for a fee, provide on the customer's transaction receipt a record of the number of carryout bags provided as part of the transaction and the total amount of fees charged for the carryout bags provided, itemized by type of carryout bag;

(b) Not refund to the customer any portion of the carryout bag fee, either directly or indirectly, or advertise or otherwise convey to customers that any portion of the carryout bag fee will be refunded;

(c) conspicuously display a sign in a location inside or outside the store, which sign alerts customers about the carryout bag fee; and

(d) (I) On a quarterly basis starting January 1, 2022, remit from the total amount of carryout bag fees collected in the previous quarter the amount that is owed to the municipality or county:

   (A) To the finance department or division or equivalent agency of the municipality within which the store is located; or

   (B) If the store is not located within a municipality, to the finance department or division or equivalent agency of the county within which the store is located.

   (II) A store need not remit carryout bag fees collected in any quarter in which the collected fees total less than twenty dollars. The store shall retain those collected fees until the store has more than twenty dollars worth of collected fees to remit and shall remit those fees as part of the next quarterly remittance.
(III) (A) The remittance made on January 1, 2022, pursuant to subsection (3)(d)(I) of this section must include any fees collected during the month of September 2021.

(B) This subsection (3)(d)(III) is repealed, effective July 1, 2022.

25-17-506. Prohibition on use of expanded polystyrene food containers - definition. (1) (a) Except as provided in subsections (1)(b) and (2) of this section, effective January 1, 2022, a retail food establishment shall not distribute an expanded polystyrene product for use as a container for ready-to-eat food in this state.

(b) A retail food establishment located within a kindergarten through twelfth grade, middle, junior high, or high school or a rural school need not comply with subsection (1)(a) of this section until:

(I) January 1, 2023, if the school is a middle or junior high school, a rural elementary school, or a kindergarten through twelfth grade school; or

(II) January 1, 2024, if the school is a high school.

(2) If a retail food establishment purchased expanded polystyrene products before January 1, 2022, the retail food establishment may distribute any remaining inventory of the expanded polystyrene products then purchased for use as containers for ready-to-eat food in this state until the inventory is depleted.

25-17-507. Enforcement - possible penalties. (1) (a) Except as provided in subsection (1)(b) of this section, a local government...
MAY ENFORCE A VIOLATION OF THIS PART 5 AGAINST A STORE OR RETAIL FOOD ESTABLISHMENT THAT IS LOCATED WITHIN THE BOUNDARIES OF THE LOCAL GOVERNMENT IN THE MANNER THAT THE LOCAL GOVERNMENT CHOOSES.

(b)(I) A COUNTY THAT CHOOSES TO ENFORCE A VIOLATION OF THIS PART 5 AGAINST A STORE OR RETAIL FOOD ESTABLISHMENT LOCATED WITHIN THE UNINCORPORATED BOUNDARIES OF THE COUNTY MAY SEEK INJUNCTIVE RELIEF AGAINST THE STORE OR RETAIL FOOD ESTABLISHMENT OR MAY ASSESS THE FOLLOWING CIVIL PENALTIES AGAINST THE STORE OR RETAIL FOOD ESTABLISHMENT:

(A) UP TO FIVE HUNDRED DOLLARS FOR A SECOND VIOLATION; OR

(B) UP TO ONE THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT VIOLATION.

(II) A COUNTY THAT CHOOSES TO ENFORCE A VIOLATION OF THIS PART 5 MAY BOTH SEEK INJUNCTIVE RELIEF AND IMPOSE A CIVIL PENALTY IN ACCORDANCE WITH THIS SUBSECTION (1)(b).

(2) FOR PURPOSES OF THIS SECTION, EACH RETAIL SALES TRANSACTION IN WHICH A VIOLATION OF THIS PART 5 IS COMMITTED, REGARDLESS OF WHETHER MULTIPLE VIOLATIONS OF THIS PART 5 ARE COMMITTED IN ONE RETAIL SALES TRANSACTION, CONSTITUTES A SINGLE VIOLATION OF THIS PART 5.

25-17-508. Local government regulation - preemption. On and after July 1, 2023, a local government may enact, implement, or enforce any ordinance, resolution, rule, or charter provision that is as stringent as or more stringent than this part 5.

SECTION 3. Effective date. This act takes effect upon passage; except that section 1 of this act takes effect July 1, 2023.
SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.