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HOUSE BILL 21-1162

BY REPRESENTATIVE(S) Valdez A. and Cutter, Amabile, Bernett, Hooton, Kipp, Sirota, Woodrow, Bacon, Bird, Boesenecker, Caraveo, Duran, Froelich, Jackson, Jodeh, Kennedy, Lontine, McCormick, McLachlan, Michaelson Jenet, Mullica, Ortiz, Tipper, Titone, Gonzales-Gutierrez, McCluskie;
also SENATOR(S) Gonzales and Garcia, Bridges, Buckner, Danielson, Fenberg, Ginal, Jaquez Lewis, Lee, Story.

CONCERNING THE MANAGEMENT OF PLASTIC PRODUCTS.

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:

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.

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 THAT A CUSTOMER USES INSIDE A STORE TO:

(A) PACKAGE LOOSE OR BULK ITEMS, SUCH AS FRUITS, VEGETABLES, NUTS, GRAINS, CANDY, OR GREETING CARDS; NAILS, BOLTS, SCREWS, OR OTHER SMALL HARDWARE ITEMS; LIVE INSECTS, FISH, CRUSTACEANS, MOLLUSKS, OR OTHER SMALL SPECIES; AND BULK SEED, BULK LIVESTOCK FEED, OR BULK PET FEED;

(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

(IV) 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 (9)(b) OF THIS SECTION.

(b) "RETAIL FOOD ESTABLISHMENT" DOES NOT INCLUDE FARMERS MARKETS AND ROADSIDE MARKETS AS DESCRIBED IN SECTION 25-4-1602 (14)(j).

(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) "SCHOOL" HAS THE MEANING SET FORTH IN SECTION 23-3.9-101 (6).

(12) (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.

(13) "SMALL STORE" MEANS A STORE THAT OPERATES SOLELY IN COLORADO, HAS THREE OR FEWER LOCATIONS IN THE STATE, AND IS NOT PART OF A FRANCHISE, CORPORATION, OR PARTNERSHIP THAT HAS PHYSICAL LOCATIONS OUTSIDE OF COLORADO.

(14) (a) "STORE" MEANS, EXCEPT AS PROVIDED IN SUBSECTION (14)(c) OF THIS SECTION, 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.

(c) "STORE" DOES NOT INCLUDE A SMALL STORE.

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 JANUARY 1, 2024, A STORE OR RETAIL FOOD ESTABLISHMENT SHALL NOT PROVIDE A SINGLE-USE PLASTIC CARRYOUT BAG TO A CUSTOMER; EXCEPT THAT A RETAIL FOOD ESTABLISHMENT NEED NOT COMPLY WITH THIS SECTION IF THE RETAIL FOOD ESTABLISHMENT:

(a) PREPARES OR SERVES FOOD IN INDIVIDUAL PORTIONS FOR IMMEDIATE ON- OR OFF-PREMISES CONSUMPTION; AND

(b) IS NOT A GROCERY STORE OR CONVENIENCE STORE.

(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 JUNE 1, 2024, IF THE SINGLE-USE PLASTIC CARRYOUT BAG WAS PART OF THE STORE'S OR RETAIL FOOD ESTABLISHMENT'S INVENTORY BEFORE JANUARY 1, 2024.

(b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

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

(1) (a) ON AND AFTER JANUARY 1, 2023, AND BEFORE JANUARY 1, 2024, 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,

2024.

(2) (a) ON AND AFTER JANUARY 1, 2024, 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 JANUARY 1, 2024, AND ENDING JUNE 1, 2024, 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, 2024.

(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 APRIL 1, 2024, 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.

25-17-506. Prohibition on use of expanded polystyrene food containers. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, EFFECTIVE JANUARY 1, 2024, A RETAIL FOOD ESTABLISHMENT SHALL NOT DISTRIBUTE AN EXPANDED POLYSTYRENE PRODUCT FOR USE AS A CONTAINER

FOR READY-TO-EAT FOOD IN THIS STATE.

(2) IF A RETAIL FOOD ESTABLISHMENT PURCHASED EXPANDED POLYSTYRENE PRODUCTS BEFORE JANUARY 1, 2024, 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 SUBSECTIONS (1)(b) AND (1)(c) 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).

(c) A LOCAL GOVERNMENT SHALL NOT ENFORCE A VIOLATION OF THIS PART 5 AGAINST A RETAIL FOOD ESTABLISHMENT LOCATED WITHIN A SCHOOL.

(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, 2024, 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.

25-17-509. Exemption for medical products. NOTHING IN THIS PART 5 PROHIBITS OR LIMITS THE USE OF ANY MATERIAL 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 THE "FEDERAL FOOD, DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 321 ET SEQ., AS AMENDED, OR ANY EQUIPMENT AND MATERIALS USED TO MANUFACTURE SUCH PRODUCTS.

SECTION 3. Effective date. This act takes effect upon passage; except that section 1 of this act takes effect July 1, 2024.

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.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO