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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10351-CC-10

Short Title: Customer Opt-in for Single-Use Foodware. (Public)

Sponsors: Representative von Haefen.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE SINGLE-USE FOODWARE IN TAKE-OUT AND DELIVERY OF
3 PREPARED MEALS.

4 Whereas, single-use accessories for food service are frequently provided to customers
5 that do not need them, resulting in unnecessary cost to food service operators and unnecessary
6 waste that is costly for local governments to manage; and

7 Whereas, one trillion disposable foodware items are used in the United States each
8 year, generating nine million tons of waste; and

9 Whereas, forty percent (40%) of plastics generated are used for packaging purposes,
10 making packaging the number one market for plastics use; and

11 Whereas, the United States uses more than 36 billion disposable plastic utensils
12 annually. Laid end-to-end, this amount of plastic utensils could wrap around the globe 139 times;
13 and

14 Whereas, four million trees are cut down each year in order to make chopsticks in
15 China. Eliminating forests, our natural carbon sink and providers of habitat and clean air, makes
16 no sense during a climate crisis; and

17 Whereas, the manufacturing of napkins requires a significant amount of water. For
18 instance, if fifty percent (50%) of the United States' population used three paper napkins per day,
19 that would total 450 million napkins for one day, which would require 31.5 million gallons of
20 water to manufacture; and

21 Whereas, many single-use foodware accessories are made from plastic, and as much
22 as 23 million metric tons of plastic waste enter the ocean each year, most of it generated in the
23 United States; and

24 Whereas, the amount of plastics in the ocean is projected to exceed the number of fish
25 by 2030; and

26 Whereas, the vast majority of these single-use foodware accessory items are
27 problematic in the waste stream because they are not recyclable. Even when manufactured from
28 recyclable materials, food packaging is usually too dirty to be recycled. Utensils and straws are
29 contaminated in many recycling systems. Plant-based foodware and utensils are often considered
30 contaminants in commercial compost facilities. Bio-plastics do not degrade quickly enough, and
31 paper and other fibers dilute the quality of compost; and

32 Whereas, restaurants in the United States spend \$24 billion purchasing disposable
33 foodware items each year; and

34 Whereas, local governments in the United States spend \$6 billion managing
35 disposable foodware waste; and



1 Whereas, it is in the interest of the health, safety, and welfare of all who live, work,
2 and do business in the State of North Carolina that the amount of litter on public streets, parks,
3 and in other public places be reduced and the amount of single-use foodware accessory waste be
4 reduced; Now, therefore,

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 9 of Chapter 130A of the General Statutes is amended by
7 adding a new Part to read:

8 "Part 2J. Single-Use Foodware and Condiments.

9 **"§ 130A-309.235. Definitions.**

10 Unless a different meaning is required by context, the following definitions apply throughout
11 this Part:

- 12 (1) Food establishment. – An establishment that prepares and serves food or drink
13 as regulated pursuant to Part 6 of Article 8 of this Chapter.
14 (2) Prepared food. – Food or beverages that are serviced, packaged, cooked,
15 chopped, sliced, mixed, brewed, frozen, squeezed, poured, or otherwise
16 prepared by a food establishment in a form that is edible without additional
17 preparation. Prepared food does not include raw eggs or raw, butchered meats,
18 fish, or poultry sold from a butcher case, refrigerator case, or similar retail
19 appliance.
20 (3) Single item dispenser. – A device that stores bulk amounts of single-use
21 foodware or standard condiments and dispenses one item at a time.
22 (4) Single-use. – Designed to be used once and then disposed, and not designed
23 for repeated use and sanitizing.
24 (5) Single-use foodware. – A single-use accessory provided alongside prepared
25 food, including utensils, tongs, chopsticks, napkins, standard condiments,
26 straws, stirrers, splash sticks, cocktail sticks, toothpicks, cup lids, cup sleeves,
27 cup trays, and food trays.
28 (6) Standard condiment or condiment. – A single-use packet containing relishes,
29 spices, sauces, confections, or seasonings, that requires no additional
30 preparation, and that is used on food or beverages, including ketchup, mustard,
31 mayonnaise, soy sauce, sauerkraut, salsa, syrup, jam, jelly, salad dressing, salt,
32 sugar, sugar substitutes, pepper, and chili pepper.
33 (7) Third-party food delivery platform. – A person that operates a website or
34 mobile application through which a consumer can order prepared food from a
35 food establishment for pick-up or delivery.
36 (8) Utensil. – An instrument used to serve or eat food, including forks, spoons,
37 knives, sporks, and chopsticks.

38 **"§ 130A-309.236. Consumer opt-in for single-use foodware.**

39 (a) Except as provided in G.S. 130A-309.237, a food establishment shall not provide any
40 single-use foodware or standard condiments to consumers for on-premises dining, take-out, and
41 delivery orders, or when using a third-party food delivery platform, unless the consumer requests
42 the single-use foodware or condiment.

43 (b) A food establishment shall not bundle or package single-use foodware or standard
44 condiments in a manner that prevents consumers from taking only the type of single-use
45 foodware or condiment desired without having to take a different type of single-use foodware or
46 condiment.

47 (c) A third-party food delivery platform shall not allow consumers to use the platform to
48 place orders from a food establishment without providing an option on the platform for
49 consumers to request single-use foodware or standard condiments from the food establishment.

50 **"§ 130A-309.237. Exceptions.**

1 (a) For delivery orders, food establishments may include specific accessories such as cup
2 lids, spill plugs, and trays in order to prevent spills or otherwise deliver food and beverages
3 safely.

4 (b) This Part shall not be construed to prohibit a food establishment from making standard
5 condiments available to consumers using refillable single item dispensers.

6 **"§ 130A-309.238. Liability; enforcement.**

7 (a) If the Department finds that a food establishment has failed to comply with the
8 requirements of this Part, the Department may issue a written notice to the food establishment of
9 its findings and direct the food establishment to take remedial action to comply with the
10 requirements of this Part. The Department shall allow the noncompliant food establishment 60
11 calendar days from the receipt of the notice of noncompliance to demonstrate compliance to the
12 satisfaction of the Department. If after 60 calendar days following receipt of the notice of
13 noncompliance the food establishment fails to demonstrate compliance with the requirements of
14 this Part, the Department may impose administrative penalties against the food establishment
15 pursuant to G.S. 130A-22(a). Third-party food delivery platforms are not liable for the failure of
16 a food establishment to comply with this Part.

17 (b) If the Department finds that a third-party food delivery platform has failed to comply
18 with the requirements of this Part, the Department may issue a written notice to the third-party
19 food delivery platform of its findings and direct the third-party food delivery platform to take
20 remedial action to comply with the requirements of this Part. The Department shall allow the
21 noncompliant third-party food delivery platform 60 calendar days from the receipt of the notice
22 of noncompliance to demonstrate compliance to the satisfaction of the Department. If after 60
23 calendar days following receipt of the notice of noncompliance the third-party food delivery
24 platform fails to demonstrate compliance with the requirements of this Part, the Department may
25 impose administrative penalties against the third-party food delivery platform pursuant to
26 G.S. 130A-22(a). Food establishments are not liable for the failure of a third-party food delivery
27 platform to comply with this Part.

28 (c) The Department shall establish and maintain an online portal by which individuals
29 can report violations of this Part to the Department.

30 **"§ 130A-309.239. Local government authority not preempted.**

31 Nothing in this Part shall be construed as limiting the authority of any local government to
32 adopt ordinances that restrict the provision of single-use foodware by food establishments or
33 third-party food delivery platforms."

34 **SECTION 2.** G.S. 130A-22 reads as rewritten:

35 **"§ 130A-22. Administrative penalties.**

36 (a) The Secretary of Environmental Quality may impose an administrative penalty on a
37 person who violates Article 9 of this Chapter, rules adopted by the Environmental Management
38 Commission pursuant to Article 9, or any term or condition of a permit or order issued under
39 Article 9. Each day of a continuing violation shall constitute a separate violation. The penalty
40 shall not exceed fifteen thousand dollars (\$15,000) per day in the case of a violation involving
41 nonhazardous waste. The penalty shall not exceed thirty-two thousand five hundred dollars
42 (\$32,500) per day in the case of a first violation involving hazardous waste as defined in
43 G.S. 130A-290 or involving the disposal of medical waste as defined in G.S. 130A-290 in or
44 upon water in a manner that results in medical waste entering waters or lands of the State; and
45 shall not exceed fifty thousand dollars (\$50,000) per day for a second or further violation
46 involving the disposal of medical waste as defined in G.S. 130A-290 in or upon water in a manner
47 that results in medical waste entering waters or lands of the State. The penalty shall not exceed
48 thirty-two thousand five hundred dollars (\$32,500) per day for a violation involving a voluntary
49 remedial action implemented pursuant to G.S. 130A-310.9(c) or a violation of the rules adopted
50 pursuant to G.S. 130A-310.12(b). For violations of Part 2J of Article 9 of this Chapter, the
51 penalty shall not exceed one hundred dollars (\$100.00) per day. For violations of Part 7 of Article

1 9 of this Chapter and G.S. 130A-309.10(m): (i) a warning shall be issued for a first violation; (ii)
2 the penalty shall not exceed two hundred dollars (\$200.00) for a second violation; and (iii) the
3 penalty shall not exceed five hundred dollars (\$500.00) for subsequent violations. If a person
4 fails to pay a civil penalty within 60 days after the final agency decision or court order has been
5 served on the violator, the Secretary of Environmental Quality shall request the Attorney General
6 to institute a civil action in the superior court of any county in which the violator resides or has
7 his or its principal place of business to recover the amount of the assessment. Such civil actions
8 must be filed within three years of the date the final agency decision or court order was served
9 on the violator.

10"

11 **SECTION 3.** This act becomes effective October 1, 2023, and applies to violations
12 committed on or after that date.