

BILL NO. 35-0198

Thirty-Fifth Legislature of the Virgin Islands

November 13, 2023

An Act amending title 29 Virgin Islands Code, chapter 8, by adding subchapter III to institute a ban prohibiting any food service establishment and food service provider from selling or distributing in the Virgin Islands a disposable food container that is composed in whole or in part of polystyrene foam and prohibiting any manufacturer or store from providing polystyrene loose fill packaging

PROPOSED BY: Senator Milton E. Potter

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 29, Virgin Islands Code, chapter 8 is amended by adding subchapter III to read as follows:

“Subchapter III. Regulation of Expanded Polystyrene Foam Containers and Polystyrene Loose Fill Packaging

§ 500aa. Definitions.

(1) “Authority” means the Virgin Islands Waste Management Authority.

(2) “Department” means the Virgin Islands Department of Licensing and Consumer Affairs.

(3) "Disposable food service container" means a bowl, carton, clamshell, cup, lid, plate, tray, or any other product that is designed or used for the temporary storage or transport of a

1 prepared food or beverage including a container generally recognized by the public as being
2 designed for single use.

3 (4) "Expanded polystyrene foam" means blown polystyrene and expanded and
4 extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and
5 processed by a number of techniques, including: fusion of polymer spheres, known as
6 expandable bead 20 polystyrene; injection molding; foam molding; and extrusion-blow
7 molding, also known as extruded foam polystyrene.

8 (5) "Food service establishment" means an entity that prepares, serves, and sells food
9 to the public, including restaurants, temporary food vendors, caterers, and mobile food units.

10 (6) "Food service provider" means a person engaged in the business of selling or
11 distributing prepared food or beverages for on-premise or off-premise consumption including:

12 (A) retail food stores;

13 (B) delicatessens;

14 (C) grocery stores;

15 (D) restaurants;

16 (E) cafeterias;

17 (F) coffee shops;

18 (G) hospitals, adult and daycare facilities, and nursing homes; and

19 (H) learning institutions – elementary, middle, and high schools, trade schools,
20 colleges, and universities.

21 (7) "Manufacturer" means every person, firm, or corporation that produces or imports
22 polystyrene loose fill packaging that is sold, offered for sale, or distributed in the Territory.

23 (8) "Polystyrene loose fill packaging" means a void-filling packaging product made of
24 expanded polystyrene foam that is used as a packaging fill, commonly referred to as packing
25 peanuts.

1 (9) "Prepared food" means food or beverages that are cooked, chopped, sliced, mixed,
2 brewed, frozen, heated, squeezed, combined, or otherwise prepared on the premises of a food
3 service provider for immediate consumption and require no further preparation to be consumed.
4 The term includes ready-to-eat take out foods and beverages.

5 (10) "Provide" means to give out, distribute, sell, supply, or otherwise make available
6 for use in the territory.

7 (11) "Rigid polystyrene" means plastic packaging made from rigid, polystyrene resin
8 that has not been expanded, extruded, or foamed.

9 (12) "Store" means a retail or wholesale establishment other than a food service
10 provider.

11 **§ 500bb. Expanded polystyrene foam container and polystyrene loose fill packaging ban.**

12 (a) Beginning June 1, 2024, no food service provider, food service establishment, or
13 store may provide disposable food service containers that contain expanded polystyrene foam
14 in the Territory.

15 (b) Beginning June 1, 2024, no manufacturer or store shall provide polystyrene loose
16 fill packaging in the Territory.

17 **§ 500cc. Exemption and waivers.**

18 (a) Notwithstanding any inconsistent law, this subchapter does not apply to:

19 (1) Prepackaged food, filled or sealed prior to receipt at a food service provider;
20 or

21 (2) Raw meat, pork, seafood, poultry, or fish sold for the purpose of cooking or
22 preparing off-premises by the customer.

23 (b) Any facility, regardless of its income, including soup kitchens, food pantries, and
24 places of worship, operated by a not-for-profit corporation or by a federal, or local government
25 agency that provides food to needy individuals at no or nominal charge, and that does not

1 operate three or more locations within the territory, and is not operated pursuant to a franchise
2 agreement may request from the Authority, in a manner and form established by the Authority,
3 a financial hardship waiver of the requirements of section 500bb of this subchapter.

4 (c) The hardship waiver request may apply to one or more disposable food service
5 containers provided by any food service provider.

6 (d) The Authority shall grant a waiver if the food service provider demonstrates that
7 there is no alternative product of comparable cost that is not composed of expanded polystyrene
8 foam and that the purchase or use of an alternative product that is not composed of expanded
9 polystyrene foam would create an undue financial hardship. A financial hardship waiver is
10 valid for twelve months and is renewable upon application to the Authority for an additional
11 six months. The Authority shall promulgate regulations establishing criteria for determining
12 products of comparable costs.

13 **§ 500dd. Penalties; enforcement.**

14 (a) Beginning December 1, 2024, any food service provider, store, or manufacturer
15 violating any provision of this subchapter, or any regulation adopted pursuant to this
16 subchapter, is subject to:

17 (1) an order to discontinue providing disposable food service containers that
18 contain expanded polystyrene foam or polystyrene loose fill packaging prohibited by this
19 subchapter; and

20 (2) a civil fine of not less than \$500 or more than \$1,000 for each day of violation.

21 (b) The Authority, the Department or the Department of Planning and Natural
22 Resources may institute a civil action in any court of competent jurisdiction for injunctive or
23 other relief to correct or abate violations of this subchapter or any regulation adopted pursuant
24 to this subchapter to collect civil fines or to obtain other relief.

1 (c) Any monies collected from fines or other civil penalties assessed to any business
2 found to have violated this subchapter must be allocated as follows:

3 (1) 75 percent to the Virgin Islands Waste Management Authority; and

4 (2) 25 percent to the General Fund of the Treasury of the Virgin Islands.

5 (d) Nothing in this subchapter precludes the Authority from enforcing any law, rule,
6 regulation, fine, or other penalty under other laws and regulations under the jurisdiction
7 of the Authority.

8 (e) Fees, fines, and penalties pursuant to this subchapter may only be assessed after the
9 opportunity to be heard in accordance with due process under the law.

10 **§ 500ee. Regulations.**

11 The Authority may promulgate regulations in accordance with this subchapter as needed
12 for the implementation, administration, and enforcement of this subchapter.

13 **SECTION 2.** The Authority shall establish a public education program to disseminate
14 information regarding the implementation of this subchapter. The information must include
15 the publication of this subchapter and publication of the general benefits of waste reduction and
16 reuse.

17 **BILL SUMMARY**

18 This bill amend title 29, Virgin Islands Code, chapter 8 by adding subchapter III:
19 Regulation of Expanded Polystyrene Foam Containers and Polystyrene Loose Fill Packaging.
20 § 500aa sets out the definitions for terms used in the bill, § 500bb describes what is banned, §
21 500cc describes exemptions and waivers, § 500dd discusses penalties and enforcement, and §
22 500ee allows the Authority to promulgate regulations. Section 2 requires that a public education
23 program be established.

24 **BR23-0632/October 18, 2023/HLF**