

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2647**

BY DELEGATES WALKER, FLEISCHAUER, AND HANSEN

[Introduced February 23, 2021; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, §16-63-5, §16-63-6, §16-63-7, and  
 3 §16-63-8, all relating to generally to prohibiting the use of polystyrene containers;  
 4 definitions; and authorizing the West Virginia Department of Health and Human Resources  
 5 to impose civil fines for violations.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 63. PROHIBITING ONE-USE POLYSTYRENE CONTAINERS.**

**§16-63-1. Legislative purpose and intent.**

1 The purpose and intent of this article is to reduce the adverse environmental impact of  
 2 polystyrene food containers by prohibiting a food establishment from dispensing prepared food to  
 3 a customer in a one-use polystyrene food service container.

**§16-63-2. Definitions.**

1 The following words and phrases when used in this article have the meanings given to  
 2 them in this section unless the context clearly indicates otherwise:

3 “Department” means the West Virginia Department of Health and Human Resources.

4 “Director” means the Director of Health.

5 “Food establishment” means all sales outlets, stores, shops or other places of business  
 6 located within this state which operate primarily to sell or convey food directly to the ultimate  
 7 consumer, which food is predominately contained, wrapped or held in or on packaging. The term  
 8 includes, but is not limited to, any place where food is prepared, mixed, cooked, baked, smoked,  
 9 preserved, bottled, packaged, handled, stored, manufactured and sold or offered for sale,  
 10 including, but not limited to, any fixed or mobile restaurant, drive-in, coffee shop, cafeteria, short-  
 11 order cafe, delicatessen, luncheonette, grill, sandwich shop, soda fountain, tavern, bar, cocktail  
 12 lounge, nightclub, roadside stand, prepared food takeout place, industrial feeding establishment,  
 13 catering kitchen, commissary, grocery store, public food market, food stand or similar place in  
 14 which food or drink is prepared for sale or for service on the premises or elsewhere, and any other

15 establishment or operation, including homes, where food is processed, prepared, stored, served  
16 or provided for the public.

17 “Polystyrene food service container” means as follows:

18 (1) A single-use polystyrene foam food service container such as a cup, bowl, plate, and  
19 clamshell-style container in addition to a foam cooler that is not encased in another material.

20 (2) A single-use polystyrene solid plastic food container such as a cup, bowl, plate,  
21 clamshell-style container, cutlery, straw and cup lid.

22 “Prepared food” means food or beverage prepared for public consumption by a food  
23 establishment using any cooking or food preparation technique. The term does not include raw  
24 or uncooked meat, fish, or eggs provided for public consumption without further food preparation

25 “Retailer” means a person that purchases or receives products from any source for the  
26 purpose of sale to a consumer.

**§16-63-3. Prohibitions; food establishment; retailer.**

1 (a) Food establishment. – A food establishment is prohibited from the following:

2 (1) Dispensing prepared food in or on a polystyrene food service container.

3 (2) Selling, giving or providing eating utensils or straws composed of polystyrene.

4 (b) Retailer. – A retailer is prohibited from selling, giving or providing a polystyrene food  
5 service container except for the following:

6 (1) Meat trays.

7 (2) Egg cartons.

8 (3) Packing materials.

**§16-63-4. Compliance.**

1 The department shall develop and maintain a publicly accessible Internet website with all  
2 the following:

3 (1) A description of the information necessary to comply with the prohibition under §16-  
4 63-3 of this code.

5           (2) A description of the procedure to file a complaint with the department for a violation of  
6 the prohibitions under §16-63-3 of this code.

**§16-63-5. Rules.**

1           The director shall propose rules for legislative approval in accordance with §29A-3-1 et  
2 seq. of this code necessary to implement the provisions of this article.

**§16-63-6. Penalties.**

1           (a) Imposition. – The director may impose a civil penalty in the following amounts for a  
2 violation of this article:

3           (1) For a first violation, \$500.

4           (2) For a second violation, \$1,000.

5           (3) For a third or subsequent violation, \$2,000.

6           (b) Payment. – Any civil penalty collected under subsection (a) shall be paid to the  
7 department.

**§16-63-7. Local law.**

1           This article preempts any ordinance or resolution passed or adopted by any political  
2 subdivision that is effective as of the date of this article to the extent that the ordinance or  
3 resolution conflicts or is inconsistent with the provisions of this article.

**§16-63-8. Applicability.**

1           This article shall apply to transactions consummated on or after July 1, 2021.

NOTE: The purpose of this bill is to prohibit the use of polystyrene containers.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.