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S.227

Introduced by Senator Bray

Referred to Committee on Natural Resources and Energy

Date: January 7, 2020

Subject: Conservation and development; plastics; single-use products; personal
care products; lodging establishments

Statement of purpose of bill as introduced: This bill proposes to prohibit the
provision by lodging establishments of personal use products in small plastic
bottles.

An act relating to the provision of personal care products by lodging
establishments

It is hereby enacted by the General Assembly of the State of Vermont:

~~Sec. 1. 10 V.S.A., chapter 150, subchapter 5 is amended to read:~~

~~Subchapter 5. Single-Use Carryout Bags; Expanded Polystyrene Food Service
Products; Single-use Plastic Straws; and Single-use Plastic Stirrers Products~~

§ 6691. DEFINITIONS

As used in this subchapter:

(1) "Agency" means the Agency of Natural Resources.

1 ~~(18) "Small plastic bottle" means a plastic container with less than six~~
2 ~~ounce capacity that is intended to be nonreusable by the end user.~~

3 * * *

4 § 6701. PERSONAL CARE PRODUCTS; SMALL PLASTIC BOTTLES;
5 LODGING ESTABLISHMENTS

6 (a) The purpose of this section is to encourage lodging establishments to
7 use bulk dispensers or personal care products to reduce plastic waste and lower
8 operating costs, while still providing products for the health and safety of
9 guests.

10 (b) A lodging establishment shall not provide a small plastic bottle to a
11 person staying in a sleeping room accommodation, in a space within the
12 sleeping room accommodation, or within a bathroom used by the public or
13 guests beginning on:

14 (1) January 1, 2021, for a lodging establishment with more than
15 50 rooms; and

16 (2) January 1, 2022, for a lodging establishment with 50 rooms or
17 fewer.

18 (c) A lodging establishment may provide a personal care product in a small
19 plastic bottle to a person at no cost, upon request, at a place other than a
20 sleeping room accommodation, a space within the sleeping room
21 accommodation, or within a bathroom used by the public or guests.

1 ~~(d) A lodging establishment that violates the requirements of this section~~
2 ~~shall be subject to a civil penalty of not more than \$300.00. Upon a second or~~
3 ~~subsequent violation, the lodging establishment shall be subject to a civil~~
4 ~~penalty of not more than \$500.00.~~

5 ~~(e) Beginning on July 1, 2021, the requirements of this section preempt and~~
6 ~~supersede municipal bylaws regulating personal care products. A violation of~~
7 ~~this subsection is enforceable in the same manner as preemption under section~~
8 ~~6699 of this title.~~

9 Sec. 2. 4 V.S.A. § 1102 is amended to read:

10 § 1102. JUDICIAL BUREAU; JURISDICTION

11 (a) The Judicial Bureau is created within the Judicial Branch under the
12 supervision of the Supreme Court.

13 (b) The Judicial Bureau shall have jurisdiction of the following matters:

14 * * *

15 (6) Violations of 24 V.S.A. § 2201, relating to littering, burning of solid
16 waste, and illegal dumping.

17 * * *

18 ~~(30) Violations of 10 V.S.A. § 6701, relating to the provision by lodging~~
19 ~~establishments of personal use products in small plastic bottles.~~

20 (c) The Judicial Bureau shall not have jurisdiction over municipal parking
21 violations.

1 ~~(d) Three hearing officers appointed by the Court Administrator shall~~
2 ~~determine waiver penalties to be imposed for violations within the Judicial~~
3 ~~Bureau's jurisdiction, except municipalities shall adopt full and waiver~~
4 ~~penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For~~
5 ~~purposes of municipal violations, the issuing law enforcement officer shall~~
6 ~~indicate the appropriate full and waiver penalty on the complaint.~~

7 Sec. 3. EFFECTIVE DATE

8 ~~This act shall take effect on July 1, 2020.~~

** * * Single-use Products * * **

Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is amended to read:

Subchapter 5. Single-Use Carryout Bags; Expanded Polystyrene Food Service Products; Single-use Plastic Straws; and Single-use Plastic Stirrers Products

§ 6691. DEFINITIONS

As used in this subchapter:

(1) "Agency" means the Agency of Natural Resources.

** * **

(6) "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, including material derived from either petroleum or a biologically based polymer, such as corn or other plant sources. "Plastic" includes all materials identified with resin identification codes 1 to 7.

(7) "Point of sale" means a check-out stand, cash register, or other point of departure from a store or food service establishment, including the location where remotely ordered food or products are delivered to a purchaser.

** * **

(10) "Secretary" means the Secretary of Natural Resources.

** * **

(14) “Single-use product” or “single use” means a product that is generally recognized by the public as an item to be discarded after one use.

* * *

(16) “Lodging establishment” has the same meaning as in 18 V.S.A. § 4301.

(17) “Personal care product” means a product intended to be applied to or used on the human body in the shower or bath or on any part of the human body, including shampoo, hair conditioner, moisturizer, toothpaste, and bath soap.

(18) “Small container” means a container made of glass, plastic, or other material with less than six-ounce capacity that is intended to be nonreusable by the end user.

* * *

§ 6701. PERSONAL CARE PRODUCTS; SMALL CONTAINER;
LODGING ESTABLISHMENTS

(a) The purpose of this section is to encourage lodging establishments to use bulk dispensers of personal care products to reduce waste and lower operating costs while still providing products for the health and safety of guests.

(b) A lodging establishment shall not provide a personal care product in a small container in a sleeping room accommodation, in a space within the sleeping room accommodation, or within a bathroom used by the public or guests beginning on:

(1) January 1, 2023, for a lodging establishment with more than 50 rooms; and

(2) January 1, 2024, for a lodging establishment with 50 rooms or fewer.

(c) A lodging establishment may provide a personal care product in a small container to a person at no cost, upon request, at a place other than a sleeping room accommodation, a space within the sleeping room accommodation, or within a bathroom used by the public or guests.

(d) A lodging establishment that violates the requirements of this section shall be subject to a civil penalty of not more than \$300.00. Upon a second or subsequent violation, the lodging establishment shall be subject to a civil penalty of not more than \$500.00. A violation of this section shall be enforceable in the Judicial Bureau pursuant to the provisions of 4 V.S.A.

chapter 29 in an action that may be brought by the Department of Health or the Agency of Natural Resources.

(e) Beginning on July 1, 2023, the requirements of this section preempt and supersede municipal bylaws regulating personal care products. A violation of this subsection is enforceable in the same manner as preemption under section 6699 of this title.

Sec. 2. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) The Judicial Bureau is created within the Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(6) Violations of 24 V.S.A. § 2201, relating to littering, burning of solid waste, and illegal dumping.

* * *

(30) Violations of 10 V.S.A. § 6701, relating to the provision by lodging establishments of personal use products in small ~~plastic bottles~~ containers.

(c) The Judicial Bureau shall not have jurisdiction over municipal parking violations.

(d) Three hearing officers appointed by the Court Administrator shall determine waiver penalties to be imposed for violations within the Judicial Bureau's jurisdiction, except municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

* * * Extended Producer Responsibility Report * * *

Sec. 3. REPORT ON EXTENDED PRODUCER RESPONSIBILITY FOR
PACKAGING AND PRINTED MATERIALS

(a) The Office of Legislative Council, after consultation with the Chair of the Senate Committee on Natural Resources and Energy, the Chair of the House Committee on Natural Resources and Energy, the Solid Waste Division of the Department of Environmental Conservation, solid waste management entities, representatives of businesses, and other interested parties, shall draft legislation that would establish requirements under statute for an extended producer responsibility program in the State for packaging and printed material. The draft legislation shall consider inclusion of the following:

(1) A definition of packaging to include, at a minimum, material used to market, contain, wrap, protect, and deliver consumer goods, including food and beverages, personal care products, general consumer goods, and food service ware.

(2) A definition of printed material to include at a minimum newsprint and inserts, magazines and catalogues, direct mail, office paper, and telephone directories.

(3) A definition of a producer of a product that clearly identifies the manufacturer ultimately financially responsible for collection and recycling or disposal of packaging and printed material.

(4) Exemptions for small producers and for product packaging that is already covered under the Vermont beverage container redemption law and Vermont's other extended producer responsibility statutes.

(5) A definition of covered entities that includes at a minimum all generators of printed material and packaging in the State.

(6) Provisions for the establishment of a nonprofit stewardship organization or organizations of producers of packaging and printed material and how to set, collect, and track fees for producers based on what they sell into the State and how the fees will be used to support the State's recycling programs including payment of:

(A) 100 percent of the cost of collection, transport, and recycling of packaging and printed material that is readily recyclable and sold into the State;

(B) the costs of waste reduction and recycling education; and

(C) the cost of recycling infrastructure.

(7) A requirement that fees established by a stewardship organization encourage packaging design that reduces its environmental impact by assessing higher fees for packaging and printed material sold into the State that are more harmful to the environment and lower fees for those that cause less environmental harm. The environmental considerations that the Secretary may address include recyclability of a product, recycled content in a product, greenhouse gas emissions from production of a product, and the toxicity of a product.

(8) Provisions of a stewardship plan to be submitted by a stewardship organization describing how producers will provide for the collection, transportation, and recycling of packaging and printed material using existing infrastructure.

(9) Requirements for a stewardship organization to submit data obtained from producers to the State including data regarding the amount of packaging and printed material sold into the State, recovery rates of recyclables, fees collected, and the entire cost of the program so that:

(A) there is transparency and accountability in assessing the success of the program;

(B) there is consistency with internationally accepted standards; and

(C) there is sufficient information to evaluate the effectiveness of the program.

(10) Performance goals to be set at or above existing recycling recovery rates, with penalties if the goals are not met.

(11) Convenience provisions that at a minimum meet the convenience requirements of 2012 Acts and Resolves No. 148.

(12) A recommended goal for the percentage reduction in the amount of waste generated State-wide from single-use products. The recommendation shall be based on review of similar percentage reduction goals in other states, such as the California goal of reducing the amount of waste generated from single-use products by 75 percent by 2030.

(13) A recommended goal for the percentage of post-consumer recycled content in packaging, including recommendations for the reduction of plastic packaging. The recommendation shall be based on similar percentage goals for post-consumer content in other states, such as the Washington state goal of reducing plastic packaging 20 percent by 2025.

(14) Roles and responsibilities of the Agency of Natural Resources.

(15) A method by which producers can protect themselves against producers that fail to register with a program. These methods may include a private right of action, requirements that online retailers of packaging be responsible for paying into a fund in support of the program if the products they sell are from producers who are not part of the stewardship program, or other methods to ensure fairness and full compliance.

(16) A recommended method for coordinating among other northeastern states an extended producer responsibility program or other provisions for the management and disposition of packaging and printed material.

(b) The draft legislation required under subsection (a) of this section shall not include proposed changes to the beverage container redemption law under 10 V.S.A. chapter 53.

(c) On or before January 15, 2021, the Office of Legislative Council shall submit the draft legislation required by this section to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish, and Wildlife.

** * * Beverage Container Redemption * * **

Sec. 4. 10 V.S.A. § 1522 is amended to read:

§ 1522. BEVERAGE CONTAINERS; DEPOSIT

(a) Except with respect to beverage containers that contain liquor, a deposit of not less than five cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. With respect to beverage containers of volume greater than 50 ml. that contain liquor, a deposit of 15 cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. The difference between liquor bottle deposits collected and refunds made is hereby retained by the Liquor Control Enterprise Fund for administration of this subsection.

(b) A retailer or a person operating a redemption center who redeems beverage containers shall be reimbursed by the manufacturer or distributor of ~~such~~ the beverage containers in an amount that is three and one-half cents per container for containers of beverage brands that are part of a commingling program and ~~four~~ five cents per container for containers of beverage brands that are not part of a commingling program.

** * **

Sec. 5. Subsection 10-109(b) of the Agency of Natural Resources'

Environmental Protection Regulations for the Deposit for Beverage Containers is amended to read:

(b) Any commingling agreement shall contain, at a minimum, the following criteria:

(1) The agreement shall include pick up of commingled beverage containers from:

(A) at least 30 percent of the beverage containers redeemed in the state State of Vermont; or

(B) as otherwise approved by the Secretary.

** * * Product Stewardship Primary Batteries * * **

Sec. 6. 10 V.S.A. § 7581(10) is amended to read:

(10) "Primary battery" means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. "Primary battery" shall not mean:

(A) ~~a battery intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use;~~

(B) ~~a battery that is sold in a computer, computer monitor, computer peripheral, printer, television, or device containing a cathode ray tube;~~

(C) ~~(B) a battery that is not easily removable or is not intended to be removed from a consumer product; and~~

(D) ~~(C) a battery that is sold or used in a medical device, as that term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as may be amended, provided that the medical device is not designed and marketed for sale or resale principally to consumers for personal use.~~

Sec. 7. 10 V.S.A. § 7584 is amended to read:

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

(a) Primary battery stewardship plan required. On or before June 1, 2015, each producer selling, offering for sale, distributing, or offering for promotional purposes a primary battery in the State shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the Secretary for review.

(b) Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:

** * **

(6) Education and outreach.

(A) A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include mass media advertising in radio or television broadcasts or newspaper publications of general circulation in the State, retail displays, articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, certified solid waste management facilities, retailers, wholesalers, and haulers.

At a minimum, the education and outreach program shall notify the public of the following:

(A)(i) that there is a free collection program for all primary batteries; and

(B)(ii) the location of collection points and how to access the collection program.

(B) In the event that a producer or primary battery stewardship organization does not meet the annual collection rate performance goal established under subdivision (8) of this subsection, the Secretary may require the producer or battery stewardship organization to conduct more outreach, provide additional educational materials, or improve collection accessibility.

** * **

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan. The collection rate includes the estimated total weight of primary batteries that will be sold or offered for sale in the State by the producer or the producers participating in the primary battery stewardship plan.

** * **

Sec. 8. 10 V.S.A. § 6621a(a) is amended to read:

(a) In accordance with the following schedule, no person shall knowingly dispose of the following materials in solid waste or in landfills:

(1) Lead-acid batteries Batteries, after July 1, 1990 2020.

** * **

** * * Universal Recycling Variance Authority * * **

*Sec. 9. VARIANCE OF UNIVERSAL RECYCLING REQUIREMENTS;
COVID-19*

(a) A solid waste management facility or commercial hauler may apply to the Secretary of Natural Resources to issue a variance to one or more of the following requirements as a result of a declared state of emergency under 20 V.S.A. chapter 1 due to the COVID-19 coronavirus:

(1) the requirement for a solid waste management facility to collect mandated recyclables, leaf and yard residuals and wood waste, and food residuals separate from solid waste under 10 V.S.A. § 6605(j);

(2) the requirement for a commercial hauler to offer to collect mandated recyclables and food residuals separate from solid waste under 10 V.S.A. § 6607a(g)(1); and

(3) the prohibition under 10 V.S.A. § 6621a on the landfill disposal by a solid waste management facility of mandated recyclables, leaf and yard residuals and wood waste, or food residuals.

(b) The Secretary may grant a variance under this section upon a finding that:

(1) the proposed variance will not endanger human health or safety;

(2) compliance with the requirement would produce serious hardship to the applicant without equal or greater benefits to the public; and

(3) the inability to comply with the requirement or the difficulty in complying with the requirement is attributable to the COVID-19 coronavirus, including personnel shortages during the declared state of emergency due to illness or contractors or laboratories not operating due to not being designated as critical during the declared state of emergency.

(c) The Secretary of Natural Resources shall include the following in any variance issued under this section:

(1) a requirement that the solid waste management facility or commercial hauler comply with the relevant requirement for which a variance is sought to the maximum extent feasible in light of hardship posed by the COVID-19 coronavirus; and

(2) if compliance with the relevant requirement is not possible, the authority of the Secretary of Natural Resources to impose conditions that require an applicant to return to compliance as soon as practicable or according to a schedule of compliance issued by the Secretary.

(d) Prior to issuing a variance under subsection (a), the Secretary of Natural Resources shall conduct public notice and comment according to the requirements of 10 V.S.A. § 7716 (Type 5). Decisions made by the Secretary of Natural Resources under this section shall be reviewable by the Environmental Division of the Superior Court under 10 V.S.A. chapter 220.

(e) A variance issued under subsection (a) of this section shall be issued for not more than 60 days and, upon request of the solid waste management facility or commercial hauler, may be renewed in the same manner as an original application for a variance under this section.

(f) If the Secretary of Natural Resources grants a variance under this section, the Secretary shall notify the Senate Committee on Natural Resources

and Energy and the House Committee on Natural Resources, Fish and Wildlife of the issued variance and shall include a copy of the variance with the notice.

** * * Effective Dates * * **

Sec. 10. EFFECTIVE DATES

(a) This section and Sec. 9 (universal recycling variance authority) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2020.