

1 "Expanded polystyrene foam" means blown polystyrene and
2 expanded and extruded foams that are thermoplastic petrochemical
3 materials utilizing styrene.

4 "Prepared food" means food or beverages that are prepared
5 for consumption on the premises of a restaurant or food
6 establishment or taken out by a customer from the restaurant or
7 food establishment.

8 "Small business" means a business that grossed \$500,000 or
9 less in revenues in the previous year.

10 **§342H-B Distribution of expanded polystyrene foam**

11 **disposable food service containers; remittance of fees. (a)**

12 Beginning January 1, 2015, all businesses in the State of Hawaii
13 shall charge and collect a fee of 10 cents for each disposable
14 food service container made of expanded polystyrene foam that is
15 provided to customers.

16 (b) Businesses subject to subsection (a) shall indicate on
17 each customer transaction receipt the number of expanded
18 polystyrene foam disposable food service containers provided and
19 the amount of fees collected.

20 (c) No later than the last day of each month, each
21 business subject to this part shall remit to the department the
22 fees collected pursuant to subsection (a), less the amount



1 retained pursuant to subsection (d), during the immediately
2 preceding month; provided that a small business may remit the
3 fees on a quarterly basis on the last day of the month following
4 the end of a quarter.

5 (d) Of the fees collected pursuant to subsection (a), a
6 business may retain ten per cent from January 1, 2015, through
7 December 31, 2015; provided that all fees retained shall be
8 subject to chapters 235 and 237; provided further that any taxes
9 imposed on the fees retained shall not be charged to any
10 consumer.

11 (e) Payments and receipts of fees shall be reported on
12 forms prescribed by the director. Any proprietary information
13 obtained by the department shall be kept confidential and shall
14 not be disclosed to any other person.

15 (f) Businesses shall be subject to penalties and interest
16 for late or underpaid fees.

17 (g) The disposition of fees collected pursuant to this
18 part shall be as follows:

19 (1) The first \$1,200,000 per year shall be deposited into
20 a special account in the environmental management
21 special fund established by section 342G-63 to be
22 expended by the department for administrative,



1 education, audit, compliance, and enforcement
2 activities associated with collection of the expanded
3 polystyrene foam disposable food service container
4 fee; and

5 (2) Any remaining balance shall be distributed as follows:

6 (A) Fifty per cent shall be deposited into the
7 general fund; and

8 (B) Fifty per cent shall be distributed to the
9 counties in proportion to their populations,
10 according to the latest census; provided that the
11 counties shall expend at least twenty-five per
12 cent of their share for litter prevention, litter
13 control, and litter clean-up programs.

14 **§342H-C Administration.** The department shall administer
15 this chapter. The director shall adopt rules pursuant to
16 chapter 91 necessary to implement this chapter.

17 **§342H-D Violations.** (a) It shall be a violation of this
18 part for any business that is subject to this part to pay or
19 otherwise reimburse a customer for any portion of the fee
20 required to be charged and collected pursuant to section 342H-B.



1 (b) Violations of this part or any rule adopted pursuant
2 to this part shall be subject to a fine of not less than \$500
3 for each violation.

4 **§342H-E Injunctive and other relief.** The director may
5 institute a civil action in any court of competent jurisdiction
6 for injunctive or other relief to correct or abate violation of
7 this part or any rule adopted pursuant to this part, to collect
8 administrative penalties, or to obtain other relief.

9 **§342H-F County ordinances.** (a) Nothing in this part
10 shall be construed to preempt or in any manner affect a county
11 ordinance prohibiting or restricting expanded polystyrene foam
12 disposable food service containers; provided that the fee
13 established under section 342H-B shall be applicable to expanded
14 polystyrene foam disposable food service containers that are not
15 prohibited or restricted by a county ordinance.

16 (b) Nothing in this part shall prohibit a county from
17 enacting ordinances that are more stringent in the control or
18 prohibition of expanded polystyrene foam disposable food service
19 containers than this part.

20 **§342H-G Business reporting.** By March 31 of each year, all
21 businesses that are required to charge and collect the expanded
22 polystyrene foam disposable food service container fee pursuant



1 to section 342H-B shall submit to the department, on forms
2 prescribed by the department, an annual report for the previous
3 calendar year containing the following information:

- 4 (1) The number of expanded polystyrene foam disposable
5 food service containers provided to customers; and
- 6 (2) The number of biodegradable alternative containers
7 provided to customers.

8 **§342H-H Audit authority.** The records of each business
9 subject to this part shall be made available, upon request, for
10 inspection by the department or a duly authorized agent of the
11 department. Any proprietary information obtained by the
12 department or its duly authorized agent shall be kept
13 confidential and shall not be disclosed to any other person,
14 except:

- 15 (1) As may be reasonably required in an administrative or
16 judicial proceeding to enforce any provision of this
17 part or any rule adopted pursuant to this part; or
- 18 (2) Under an order issued by a court or administrative
19 hearing officer.

20 **§342H-I Rules.** The director shall adopt rules, pursuant
21 to chapter 91, as may be necessary for the purposes of this
22 part.



1 **§342H-J Annual report.** The department shall submit to the
2 legislature an annual report, no later than twenty days prior to
3 the convening of each regular session, which shall include the
4 department's efforts to effectuate this part, the number of
5 expanded polystyrene foam disposable food service containers
6 distributed, the statewide reduction rate in the number of
7 expanded polystyrene foam disposable food service containers
8 distributed, and any recommended policy changes needed to better
9 effectuate the purposes of this part."

10 SECTION 2. Section 342G-63, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) The department shall expend monies contained in the
13 environmental management special fund to:

- 14 (1) Partially fund the operating costs of the program
15 including its regulatory functions and the development
16 of waste reduction and diversion activities as
17 mandated by Chapter 342G;
- 18 (2) Fund statewide education, demonstration, and market
19 development programs, through direct contract or
20 direct transfer of funds to the counties and
21 department of business, economic development, and



1 tourism, or under a grant program that may be
2 developed under rules pursuant to Chapter 91; [and]
3 (3) Provide for annual training for municipal solid waste
4 operators in compliance with 40 code of federal
5 regulations part 258 and chapter 11-58, Hawaii
6 Administrative Rules; and

7 (4) Fund administrative, education, audit, compliance, and
8 enforcement activities associated with the collection
9 of the expanded polystyrene foam disposable food
10 service container fee established by part of
11 chapter 342H."

12 SECTION 3. No later than March 31, 2016, each business, as
13 defined in section 2 of this Act, that is required to charge and
14 collect the expanded polystyrene foam disposable food service
15 container fee pursuant to this Act shall submit to the
16 department of health a one-time report listing the number of
17 expanded polystyrene foam disposable food service containers and
18 compostable alternative containers provided to customers by that
19 business for the 2015 calendar year.

20 SECTION 4. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 5. Nothing in this Act shall be interpreted or
5 applied so as to create any requirement, power, or duty in
6 conflict with any federal or state law.

7 SECTION 6. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.

10

INTRODUCED BY:

Mike Gabbard



Report Title:

Styrofoam Food Container Fee; Reporting; Environment

Description:

Requires all businesses in the State to charge a ten cent fee for each foam disposable food container provided to a customer. Directs collected fees to a special account of the environmental management special fund. Requires businesses to submit annual reports identifying the number of foam disposable and biodegradable containers provided to customers. Requires the department of health to expend funds from the environmental management special fund on enforcement and education related to the fee program.

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