

SENATE No. 2410

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, November 18, 2019.

The committee on Senate Ways and Means to whom was referred the Senate Bill protecting the natural resources of the commonwealth (Senate, No. 459), - reported, in part, a "Bill relative to plastic bag reduction" (Senate, No. 2410). [Senators Fattman and Humason dissenting.]

For the committee,
Michael J. Rodrigues

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to plastic bag reduction.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the
2 following chapter:-

3 CHAPTER 21P.

4 PLASTIC BAG REDUCTION.

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Commissioner”, the commissioner of revenue.

8 “Department”, the department of environmental protection.

9 “Person”, an individual, partnership, trust, association, corporation, society, club,
10 institution, organization or other entity.

11 “Postconsumer recycled material”, material used in a recycled paper bag that would
12 otherwise be destined for solid waste disposal, having completed its intended end use and
13 product life cycle, and that does not comprise any material or byproduct generated from, and
14 commonly reused within, an original manufacturing and fabrication process.

15 “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable; (ii) contains either:
16 (A) a minimum of 40 per cent postconsumer recycled materials; or (B) if not more than a so-
17 called 8 pound paper bag, not less than 20 per cent postconsumer recycled material; and (iii)
18 displays on the outside of the bag the words “100% Recyclable” and either : (A) “40%
19 postconsumer recycled content”; or (B) such other per cent of postconsumer recycled material
20 established by department regulation.

21 “Retail establishment”, a store or premises in which a person is engaged in the retail
22 business of selling or providing merchandise, goods, groceries, prepared take-out food and
23 beverages for consumption off-premises or the servicing of an item, directly to customers at such
24 store or premises, including, but not limited to, grocery stores, department stores, pharmacies,
25 convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including
26 farmers markets and public markets; provided, however, that a “retail establishment” shall also
27 include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable
28 roadside stand used by a person from which to engage in such business directly with customers
29 and business establishments without a storefront, including, but not limited to, a business
30 delivering prepared foods or other food items, web-based or catalog business or delivery services
31 used by a retail establishment; provided further, that a “retail establishment” shall include a non-
32 profit organization, charity or religious institution that has a retail establishment and holds itself

33 out to the public as engaging in retail activities that are characteristic of similar type retail
34 businesses, whether or not for profit when engaging in such activity.

35 “Reusable bag”, a bag that is not a single-use plastic bag with handles made of washable
36 cloth, hemp or other fibers, fabrics or materials, or a combination thereof, designed and
37 manufactured specifically for multiple uses.

38 “Serviced” or “Servicing”, a service performed to clean, repair, improve, refinish or alter
39 an item of a customer by a person engaged in a retail business of customarily providing such
40 services, including, but not limited to, dry cleaning and tailoring articles of clothing, jewelry
41 repair and shoe and leather repair.

42 “Single-use plastic bag”, a plastic film-type bag with or without handles provided by a
43 retail establishment to customers at its business location to carry items purchased from or
44 serviced by the retail establishment and that is not a recycled paper bag or reusable bag.

45 Section 2. (a) A retail establishment shall not provide a customer with a single-use plastic
46 bag or provide any other bag, unless specifically allowed under this chapter that is not: (i) a
47 recycled paper bag; or (ii) a reusable bag for the customer to carry away an item purchased from
48 or serviced by the retail establishment.

49 (b) Subsection (a) shall not apply to a single-use plastic bag used by a retail establishment
50 or provided by a retail establishment to a customer for: (i) prescription medication; (ii) produce,
51 meats, poultry, fish, bread and other food items to keep such items fresh or unsoiled; (iii)
52 preventing frozen food items, including ice cream, from thawing; (iv) containing products or
53 items that are saturated, wet, prone to leak or need to be immersed in a liquid; (v) containing
54 products or items that are granular, powdery, dirty or greasy; (vi) protecting an item from

55 damage or contamination or to protect a second item when both are carried together from the
56 retail establishment; (vii) protecting articles of clothing on a hanger; (viii) items that contain any
57 herbicide, pesticide, solvent, corrosive, automotive-type fluid or other chemical that can be
58 harmful to public health, whether or not the item is prepackaged in a sealed container or bag; (ix)
59 protecting small items from loss; (x) providing or distributing prepared foods, groceries or
60 articles of clothing at no cost or at a substantially reduced cost by a nonprofit organization,
61 charity or religious institution; or (xi) any item that requires the use of a certain type of bag under
62 federal or state law.

63 (c) A retail establishment may make available for purchase a recycled paper bag or
64 reusable bag; provided, however, that the price of a recycled paper bag or reusable bag shall be
65 not less than \$0.10.

66 (d) A retail establishment shall be exempt from the requirements of subsections (c) and
67 (e) if the retail establishment: (i) has not more than 3 store locations under the same ownership
68 and each store location has less than 4,000 square feet of retail selling space and not more than
69 15 employees; (ii): (A) is not a food establishment under chapter 94 or any regulations
70 promulgated pursuant to said chapter 94; or (B) provided less than 15,000 single-use plastic
71 bags, recycled paper bags or reusable bags to consumers at the point of sale in total during the
72 previous calendar year; and (iii) annually submits to the department an affidavit attesting that the
73 retail establishment meets the requirements of this subsection.

74 Nothing in this subsection shall prohibit a retail establishment from making available for
75 purchase a recycled paper bag or reusable bag under subsections (c).

76 (e) For each recycled paper bag sold, a retail establishment shall remit \$0.05 to the
77 commissioner of revenue at the same time and in the same manner as the sales tax due to the
78 commonwealth.

79 Not less than quarterly, money received by the commissioner under this section shall be
80 distributed, credited and paid by the state treasurer upon certification of the commissioner to
81 each city and town in proportion to the amount of the sums received from the sales of recycled
82 paper bags sold in the city or town. Sums received by a city or town under this section shall be
83 used for reusable bags for residents, litter prevention, recycling education and promotion,
84 enforcement of this chapter, cleanup programs, waste reduction, beautification and community
85 greening. If the amount of the distribution to a city or town is \$25,000 or less, the chief executive
86 officer as defined in section 7 of chapter 4, may expend such funds for the purposes provided in
87 this paragraph without further appropriation by the city or town.

88 Notwithstanding section 21 of chapter 62C, the commissioner may make available to
89 cities and towns any information necessary for the administration of the fee collected by a retail
90 establishment under this section including, but not limited to, a report of the amount of fees
91 collected in the aggregate by each city or town under this section in the preceding fiscal year and
92 the identification of each individual retail establishment collecting fees on recycled paper bag
93 sold under this chapter.

94 (3) Each even-numbered year, each city and town receiving money under this subsection
95 shall provide a report to the department on: (i) the total amount received under this subsection;
96 and (ii) a description of expenditures made with the money received under this subsection.

97 (f) Nothing in this section shall prohibit a customer from bringing a clean personal bag,
98 made or comprised of any material, to a retail establishment to carry out items purchased from or
99 serviced by the retail establishment.

100 (g) A retail establishment shall not be prohibited from selling or offering for sale to
101 customers: (i) any package containing several bags, including, but not limited to, food bags,
102 sandwich bags, yard waste bags, garbage bags or municipal pay-as-you-throw program trash
103 bags; (ii) any product, merchandise or good with a protective bag, a bag to hold related
104 accessories, parts or instruction manuals or a bag used as product packaging that the retail
105 establishment received with such item or product from the manufacturer, distributor or vendor;
106 or (iii) any bag that is not a retail type carryout bag that is sold or offered for sale as a product or
107 merchandise, including, but not limited to, sports bags, handbags, equipment bags, tent bags or
108 other bags specifically designed to protect or contain a particular item.

109 (h) Notwithstanding subsection (c), a retail establishment that makes available for
110 purchase a recycled paper bag at the point of sale shall not charge a fee for the bag to a customer
111 using an electronic benefit transfer card as payment.

112 Section 3. (a) Each city and town shall enforce this chapter through its enforcing
113 authority as determined under subsection (c).

114 (b) A retail establishment that violates this chapter shall be subject to a warning for the
115 first violation, a civil penalty of \$50 for the second violation and a civil penalty of \$100 for a
116 third or subsequent violation. Each day a retail establishment is in violation of this chapter shall
117 be considered a separate violation.

118 Each city and town shall dispose of a civil violation under this subsection by the non-
119 criminal method of disposition procedures contained in section 21D of chapter 40 without an
120 enabling ordinance or bylaw.

121 (c) Each city and town shall designate the municipal board, department or official
122 responsible for the local enforcement of this chapter and for the collection of money resulting
123 from civil penalties assessed for violations of this chapter. A city or town shall retain any civil
124 penalties collected for such violations.

125 Section 4. The department shall establish standards for reusable bags including, but not
126 limited to, the minimum amount of weight, number of uses and the minimum amount of recycled
127 material required in reusable carryout bags.

128 The department may through regulation: (i) increase or adjust the postconsumer recycled
129 material percentage in a recycled paper bag; and (ii) allow a retail establishment to use other
130 non-plastic type carryout bags that are recyclable or compostable.

131 The department shall, when adopting or amending any standard for an allowed recycled
132 or reusable bag under this chapter, consult with the department of public health on issues relating
133 to food safety and the materials used to produce the bags.

134 Section 5. This chapter shall preempt any limitation by any political subdivision of the
135 commonwealth regarding the use, sale or distribution of carryout bags, or other bags, by a retail
136 establishment to the extent that it is regulated or covered by this chapter.

137 No political subdivision shall require a retail establishment to charge greater than \$0.10
138 for a recycled paper bag made available for purchase.

139 Any municipal ordinance, by-law or regulation, including a regulation of a board of
140 health, that is inconsistent with this chapter shall be null and void.

141 Section 6. Nothing in this chapter shall prohibit or limit the department's authority to
142 enforce this chapter.

143 SECTION 2. Subsection (b) of section 21 of chapter 62C of the General Laws, as
144 amended by section 15 of chapter 5 of the acts of 2019, is hereby further amended by adding the
145 following clause:-

146 (32) the disclosure of information necessary for administration of the recycled paper bag
147 fee imposed under section 2 of chapter 21P.

148 SECTION 3. Subsection (d) of section 2 of chapter 21P is hereby repealed.

149 SECTION 4. Section 1 shall take effect 6 months after passage of this act.

150 SECTION 5. Section 3 shall take effect on January 1, 2022.