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SENATE . . . . . No. 2422

Senate, November 20, 2019– Text of the Senate Bill relative to plastic bag reduction (being the text of Senate, No. 2410, printed as amended)

The Commonwealth of Massachusetts

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:

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

CHAPTER 21P.

PLASTIC BAG REDUCTION.

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

"Commissioner", the commissioner of revenue.

"Department", the department of environmental protection.

"Person", an individual, partnership, trust, association, corporation, society, club, institution, organization or other entity.

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

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

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

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

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

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

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

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

(b) Subsections (a) and (c) shall not apply to any type of bag used by a retail establishment or provided by a retail establishment to a customer for: (i) prescription medication; (ii) produce, meats, poultry, fish, bread and other food items to keep such items, including unwrapped items, fresh or unsoiled; (iii) preventing frozen food items, including ice cream, from thawing; (iv) containing products or items that are saturated, wet, prone to leak or need to be immersed in a liquid; (v) containing products or items that are granular, powdery, dirty or

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

(c) A retail establishment may make available for purchase a recycled paper bag or reusable bag; provided, however, that the price of a recycled paper bag or reusable bag shall be not less than $0.10; and provided further, that such a recycled paper bag or reusable bag provided to a customer to carry away an item purchased from or serviced by a retail establishment shall not be subject to tax under chapter 64H or chapter 64I.

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

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

(e) For each recycled paper bag sold, a retail establishment shall remit $0.05 to the commissioner of revenue at the same time and in the same manner as the sales tax due to the commonwealth and such amounts shall be administered in accordance with chapter 62C.

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

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

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

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

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

(h) Notwithstanding subsection (c) and to the extent permitted under federal and state law, a retail establishment that makes available for purchase a recycled paper bag at the point of sale shall not charge a fee for the bag to a customer using an electronic benefit transfer card as payment.

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

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

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

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

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

The department may through regulation: (i) increase or adjust the postconsumer recycled material percentage in a recycled paper bag; (ii) allow a retail establishment to use other non-plastic type carryout bags that are recyclable or compostable; and (iii) promulgate standards regulating bags authorized under subsection (b) of section 2.

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

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

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

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

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

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

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

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

SECTION 4. Notwithstanding section 5 of chapter 21P of the General Laws, a city or town with a by-law or ordinance regulating bags authorized under subsection (b) of section 2 of said chapter 21P may enforce the by-law or ordinance; provided, however, the by-law or ordinance shall have been approved not later than January 1, 2020.

SECTION 5. Notwithstanding any general or special law to the contrary, the department of transitional assistance shall, if necessary to implement subsection (h) of section 2 of chapter

21P of the General Laws, use reasonable efforts to seek a waiver from the federal Food and Nutrition Service to implement said subsection (h) of said section 2 of said chapter 21P.

SECTION 6. Notwithstanding any general or special law to the contrary, the department of environmental protection shall inform the clerks of the house and senate in the case of a regional or national market shortage or a forecasted regional or national market shortage in the paper bag supply chain.

SECTION 7. Section 1 shall take effect 6 months after passage of this act.

SECTION 8. Section 3 shall take effect on January 1, 2024.