

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:

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 film bag with handles made of
36 washable 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 bag made of plastic film with or without handles provided by
43 a 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) Subsections (a) and (c) shall not apply to any type of bag used by a retail
50 establishment or provided by a retail establishment to a customer for: (i) prescription medication;
51 (ii) produce, meats, poultry, fish, bread and other food items to keep such items, including
52 unwrapped items, fresh or unsoiled; (iii) preventing frozen food items, including ice cream, from
53 thawing; (iv) containing products or items that are saturated, wet, prone to leak or need to be
54 immersed in a liquid; (v) containing products or items that are granular, powdery, dirty or

55 greasy; (vi) protecting an item from damage or contamination or to protect a second item when
56 both are carried together from the retail establishment; (vii) protecting articles of clothing on a
57 hanger; (viii) items that contain any herbicide, pesticide, solvent, corrosive, automotive-type
58 fluid or other chemical that can be harmful to public health, whether or not the item is
59 prepackaged in a sealed container or bag; (ix) protecting small items from loss; (x) providing or
60 distributing prepared foods, groceries or articles of clothing at no cost or at a substantially
61 reduced cost by a nonprofit organization, charity or religious institution; or (xi) any item that
62 requires the use of a certain type of bag under 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; and provided further, that such a recycled paper bag or reusable bag provided
66 to a customer to carry away an item purchased from or serviced by a retail establishment shall
67 not be subject to tax under chapter 64H or chapter 64I.

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

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

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

81 Not less than quarterly, money received by the commissioner under this section shall be
82 distributed, credited and paid by the state treasurer upon certification of the commissioner to
83 each city and town in proportion to the amount of the sums received from the sales of recycled
84 paper bags sold in the city or town. Sums received by a city or town under this section shall be
85 used for reusable bags for residents, litter prevention, recycling education and promotion,
86 enforcement of this chapter, cleanup programs, waste reduction, composting programs,
87 beautification and community greening. If the amount of the distribution to a city or town is
88 \$25,000 or less, the chief executive officer as defined in section 7 of chapter 4, may expend such
89 funds for the purposes provided in this paragraph without further appropriation by the city or
90 town.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

160 21P of the General Laws, use reasonable efforts to seek a waiver from the federal Food and
161 Nutrition Service to implement said subsection (h) of said section 2 of said chapter 21P.

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

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

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