

HOUSE No. 992

The Commonwealth of Massachusetts

PRESENTED BY:

Smitty Pignatelli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act reducing plastic bag pollution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>2/19/2021</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/22/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/24/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>3/12/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>3/15/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>3/16/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>5/16/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>6/6/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>7/9/2021</i>

HOUSE No. 992

By Mr. Pignatelli of Lenox, a petition (accompanied by bill, House, No. 992) of Smitty Pignatelli and others relative to reducing plastic bag pollution. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act reducing plastic bag pollution.

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 “Department”, the department of environmental protection.

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

12 “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable, (ii) contains a
13 minimum of 40 per cent postconsumer recycled materials, provided, however, that an 8 pound or
14 smaller paper bag shall contain a minimum of 20 per cent postconsumer recycled material, and
15 (iii) displays on the outside of the bag, the words "100% Recyclable" and “40 % postconsumer
16 recycled content", or such other per cent of postconsumer recycled material content as required
17 under clause (ii), or other standard established by department regulation.

18 “Retail establishment”, any store or premises engaged in the retail business of selling or
19 providing merchandise, goods, groceries, prepared take-out food and beverages for consumption
20 off-premises, or the servicing of an item, directly to customers at such store or premises,
21 including but not limited to, grocery stores, department stores, pharmacies, convenience stores,
22 restaurants, coffee shops, and seasonal and temporary businesses, such as farmers markets and
23 public markets, provided the use of a food truck or other motor vehicle, mobile canteen, trailer,
24 market pushcart, moveable roadside stand, used to engage in such business directly with
25 customers, shall be considered a “retail establishment” for the purpose of this definition.

26 A non-profit organization, charity or religious institution that has a retail establishment
27 and holds itself out to the public as engaging in retail activities that are characteristic of similar
28 type retail businesses, whether or not for profit, shall when engaging in such activity, be
29 considered a “retail establishment”.

30 “Reusable carryout bag”, a bag with handles made of washable, cloth, hemp, or other
31 fibers, fabrics or materials, or combination thereof, that is designed and manufactured
32 specifically for multiple uses, which meets the standards established by department regulation.

33 “Serviced”, or “Servicing”, A service performed to clean, repair, improve, refinish or
34 alter an item of a customer by a retail business that provides such services, including but not
35 limited to, dry cleaning and tailoring articles of clothing, jewelry repair, and shoe and leather
36 repair.

37 “Single-use plastic carryout bag”, a plastic film-type bag with or without handles
38 provided by a retail establishment to customers at its business location to carry items purchased
39 or serviced, and is not a recycled paper bag or reusable carryout bag.

40 Section 2. (a) Except as provided in this chapter, a retail establishment shall not provide a
41 customer with a single-use plastic carryout bag or provide any other carryout bag that is not a
42 recycled paper bag, or reusable carryout bag for the customer to carry away an item purchased or
43 serviced, from the retail establishment.

44 (b) A retail establishment when delivering prepared food, or other food item, directly to a
45 customer at a place other than the location of such establishment, shall be subject to the
46 prohibition in subsection (a).

47 (c) The prohibition in subsection (a), shall not apply to any type of bag, used by a retail
48 establishment, or provided to its customer for: (1) prescription medications, (2) produce, meats,
49 poultry, fish, bread, and other food items to keep such items fresh or unsoiled, (3) preventing
50 frozen food items, including ice cream, from thawing, (4) containing products or items that are
51 saturated, wet, prone to leak, or need to be immersed in a liquid. (5) containing products or items
52 that are granular, powdery, dirty or greasy, (6) protecting an item from damage or contamination,
53 or to protect a second item when both are carried together from the retail establishment, (7)
54 protecting articles of clothing on a hanger, (8) items that contain any herbicide, pesticide,

55 solvent, corrosive, automotive type fluid or other chemical, that can be harmful to public health,
56 whether or not, the item is prepackaged in a sealed container or bag, (9) protecting small items
57 from loss, and (10) any item that requires the use of a certain type bag, under federal and state
58 laws and regulations.

59 (d) A retail establishment may charge a fee for a recycled paper bag, reusable carryout
60 bag, or other type of carryout bag approved by department regulation under section 4. The retail
61 business establishment shall retain any collected fees.

62 (e) Notwithstanding the prohibition in subsection (a), a customer shall not be prohibited
63 under said subsection, from bringing a clean personal bag, made or comprised of any material, to
64 the retail establishment to carry out items purchased or serviced from such establishment.

65 (f) Notwithstanding the prohibition in subsection (a), a retail establishment shall not be
66 prohibited under said subsection, from selling, or offering for sale, to customers:

67 (1) Any package containing several bags, including but not limited to, food bags,
68 sandwich bags, yard waste bags, garbage bags, or municipal pay-as-you-throw program trash
69 bags;

70 (2) Any product, merchandise, or good with a protective bag, or a bag to hold related
71 accessories, parts, and instruction manuals, or a bag used as product packaging, that the retail
72 establishment received with such item or product, from the manufacturer, distributor or vendor;
73 or

74 (3) Any bag that is not a retail type carryout bag, which is sold, or offered for sale, as a
75 product or merchandise, including but not limited to, sports bags, handbags, equipment bags, tent
76 bags, or other bags specifically designed to protect or contain a particular item.

77 (g) Notwithstanding any provision of this chapter, a nonprofit organization, charity, or
78 religious institution, shall be exempt from the provisions of subsection (a), when providing or
79 distributing, prepared foods, groceries, or articles of clothing directly to those in need, including
80 the elderly.

81 Section 3. (a) The department shall enforce this chapter, and a city or town, through its
82 enforcing authority as determined under subparagraph (d), shall enforce this chapter in such city
83 or town.

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

88 Each city or town, and the department, shall dispose of a civil violation under this
89 subsection by the non-criminal method of disposition procedures contained in section 21D of
90 chapter 40, without an enabling ordinance or by law, or by the equivalent of these procedures by
91 the department under its regulations.

92 (c) Notwithstanding the provisions of subsection (b), a city or town may establish
93 increased civil penalties for violations occurring within the municipality. In a city or town having
94 an ordinance or by-law that imposes a civil fine that is greater than the civil fine imposed for a

95 violation under subsection (b), the ordinance or by-law shall prevail over the prescribed penalty
96 under said subsection.

97 (d) A city or town shall determine the municipal board, department, or official
98 responsible for the local enforcement of this chapter and for the collection of monies resulting
99 from civil penalties assessed for violations of this chapter. A city or town shall retain any civil
100 penalties it collects for such violations.

101 (e) The department shall enforce the provisions of this chapter and may assess additional
102 civil administrative penalties when a retail establishment repeatedly violates the provision of this
103 chapter or related department regulation.

104 Section 4. The department shall adopt regulations, and may amend such regulations, to
105 implement, enforce, and administer this chapter, consistent with the provisions of this chapter.

106 The department shall establish standards for reusable carryout bags, including but not
107 limited to, the minimum amount of weight and number of uses required of a reusable carryout
108 bag, and the minimum amount of any recycled material required in certain types reusable
109 carryout bags.

110 To further advance the use of non-plastic type carryout bags and reduce waste, as
111 necessary the department by regulation may, (i) increase or adjust the postconsumer recycled
112 material percentage in a recycled paper bag, and (ii) allow a retail establishment to use other
113 non-plastic type carryout bags, that are recyclable or compostable, including carryout bags
114 composed of a plant material, in addition to allowed recycled paper bags and reusable carryout
115 bags under subsection (a), provided the department by regulation, establishes standards for the
116 allowed use of such bag.

117 When adopting or amending any standard for an allowed carryout bag under this chapter,
118 the department shall consult with the department of public health relating to issues of food safety
119 regarding the materials used in such bag.

120 Section 5. Nothing in this chapter shall prevent a political subdivision of the
121 commonwealth from imposing restrictions on the use, sale or distributions of carryout bags by a
122 retail establishment or other entity in addition to the provisions of this chapter. Where such
123 additional regulations of a political subdivision undermine the provisions of this chapter or
124 regulations adopted by the department, such additional regulations shall be null and void.

125 SECTION 2. Section 1 shall take effect 1 year after passage of this act.