

STATE OF NEW YORK

9953

IN ASSEMBLY

February 27, 2018

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the alcoholic beverage control law and the state finance law, in relation to establishing guidelines for carryout bag waste reduction

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

TITLE 28

CARRYOUT BAG WASTE REDUCTION

Section 27-2801. Definitions.

27-2802. Charges.

27-2803. Additional obligations for stores.

27-2804. Deposit and disposition of fees.

27-2805. Violations.

27-2806. Preemption of local law.

§ 27-2801. Definitions.

As used in this article:

1. "Carryout bag" means a bag made of plastic, paper, or other material that is intended for the purpose of carrying purchased items and is provided by a store to a customer at the point of sale and that is not a reusable grocery bag;

2. "Exempt bag" means a bag intended to directly contain food, including, but not limited to sandwich bags, handleless produce bags and bags provided by a pharmacy to carry prescription drugs;

3. "Store" means a general vendor, or a retail or wholesale establishment engaged in the sale of personal, consumer or household items including but not limited to drug stores, pharmacies, grocery stores, supermarkets, convenience food stores or foodmarts that provide carryout bags to consumers in which to place items purchased or obtained at such establishments. Such term shall not include food service establishments, mobile food service establishments, or emergency food providers or 501(c)(3) organizations;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 4. "Reusable grocery bag" means a bag with handles that is specif-
2 ically designed and manufactured for multiple reuse that is provided by
3 a store to a customer at the point of sale and capable of carrying twen-
4 ty-two pounds over a distance of one hundred and seventy-five feet for a
5 minimum of one hundred and twenty-five uses and is either (a) made of
6 cloth or other machine washable fabric, or (b) made of durable plastic
7 that is at least 2.25 mils thick, measured according to the ASTM stand-
8 ard D6988-13;

9 5. "Mobile food vendor" means a self-contained food service operation,
10 located in a readily movable pushcart, motorized wheeled or towed vehi-
11 cle, used to store, prepare, display or serve food intended for individ-
12 ual portion service.

13 § 27-2802. Charges.

14 1. (a) Stores shall charge a fee of no less than ten cents for each
15 carryout bag or reusable grocery bag provided to any person. No store
16 shall charge more than twenty-five cents for each carryout bag. This
17 charge shall be incurred by the customer at the point of sale, and will
18 appear as a separate charge on the receipt received by the customer for
19 the purchased items.

20 (b) The store collecting fees pursuant to paragraph (a) of this subdivi-
21 vision shall retain twenty percent of all such fees and shall remit the
22 remaining eighty percent of all such fees to the commissioner of taxa-
23 tion and finance in accordance with the provisions of section 27-2804 of
24 this title for deposit to the credit of the environmental protection
25 fund established pursuant to section ninety-two-s of the state finance
26 law. All such funds shall be made available to localities for the
27 purpose of pollution reduction, cleanup, and education, and purchasing
28 and distributing reusable bags, with priority given to low and fixed-in-
29 come communities.

30 2. (a) No store shall charge a carryout bag fee for bags of any kind
31 provided by the customer in lieu of a carryout bag of any kind provided
32 by any such store.

33 (b) No store shall be required to charge such fee for an exempt bag.

34 3. No store shall prevent a person from using a bag of any kind that
35 they have brought to any such store for purposes of carrying goods from
36 such store.

37 4. All stores that provide carryout bags to customers shall provide
38 carryout bags free of charge for items purchased at such stores by any
39 person using the New York state supplemental nutritional assistance
40 program or the New York state special supplemental nutrition program for
41 women, infants and children as a full or partial payment.

42 5. The department shall promulgate all necessary or desirable rules
43 and regulations to effect the purposes set forth in this title and
44 educate the general public about such purposes. The department shall
45 conduct outreach programs to educate the general public about such
46 purposes and shall publicize such rules and regulations on its website.

47 § 27-2803. Additional obligations for stores.

48 1. All stores subject to the provisions of this title shall post signs
49 provided or approved by the department at or near points of sale located
50 in such covered stores to notify customers of the provisions of this
51 section.

52 2. No store subject to the provisions of this title shall provide a
53 credit to any person specifically for the purpose of offsetting or
54 avoiding the carryout bag charge required by section 27-2802 of this
55 title.

3. A store may not charge a fee pursuant to subdivision one of section 27-2802 of this title, for a reusable grocery bag that meets the requirements of subdivision four of section 27-2801 of this title and which is distributed to a customer without charge during a limited duration promotional event, not to exceed fourteen days per year.

4. Paper carryout bags subject to provisions of this title shall contain a minimum of forty percent post-consumer recycled content.

5. No store shall distribute any plastic carryout bags to its customers unless such bags are exempt bags as defined in subdivision two of section 27-2801 of this title.

§ 27-2804. Deposit and disposition of fees.

1. Each store collecting fees as provided in section 27-2802 of this title shall deposit all such fees collected into a designated carryout bag account. Such store shall hold the amounts in the carryout bag account in trust for the state. A carryout bag account shall be an interest-bearing account established in a banking institution located in this state, the deposits in which are insured by an agency of the federal government. Deposits of such amounts into the carryout bag account shall be made not less frequently than every five business days. All interest, dividends and returns earned on monies in the carryout bag account shall be paid directly into said account. The monies in such account shall be kept separate and apart from all other monies in the possession of the store. The commissioner of taxation and finance may specify a system of account and records to be maintained with respect to accounts established under this subdivision.

2. Each store shall file quarterly reports with the commissioner of taxation and finance on a form and in the manner prescribed by such commissioner. The commissioner of taxation and finance may require such reports to be filed electronically. The quarterly reports required by this subdivision shall be filed for the quarterly periods ending on the last day of May, August, November and February of each year, and each such report shall be filed within twenty days after the end of the quarterly period covered thereby. Each such report shall include all information such commissioner shall determine appropriate including but not limited to the following information:

a. the balance in the carryout bag account at the beginning of the quarter for which the report is prepared;

b. all such deposits credited to the carryout bag account and all interest, dividends or returns received on such account, during such quarter;

c. all service charges on the account, and all payments made pursuant to subdivision three of this section; and

d. the balance in the carryout bag account at the close of such quarter.

3. a. An amount equal to eighty percent of the balance outstanding in the carryout bag account at the close of each quarter shall be paid to the commissioner of taxation and finance at the time the report provided for in subdivision two of this section is required to be filed. The commissioner of taxation and finance may require that the payments be made electronically. The remaining twenty percent of the balance outstanding at the close of each quarter shall be the monies of the store and may be withdrawn from such account by the store. If the provisions of this section with respect to such account have not been fully complied with, each store shall pay to such commissioner at such time, in lieu of the amount described in the preceding sentence, an amount equal to the balance which would have been outstanding on such

1 date had such provisions been fully complied with. The commissioner of
2 taxation and finance may require that the payments be made electron-
3 ically.

4 b. A store who ceases to do business in this state as a store shall
5 file a final report and remit payment of eighty percent of all amounts
6 remaining in the carryout bag account as of the close of the store's
7 last day of business. The commissioner of taxation and finance may
8 require that the payments be made electronically. The store shall indi-
9 cate on the report that it is a "final report". The final report is due
10 to be filed with payment twenty days after the close of the quarterly
11 period in which the store ceases to do business.

12 4. All monies collected or received by the department of taxation and
13 finance pursuant to this title shall be deposited to the credit of the
14 comptroller with such responsible banks, banking houses or trust compa-
15 nies as may be designated by the comptroller. Such deposits shall be
16 kept separate and apart from all other monies in the possession of the
17 comptroller. The comptroller shall require adequate security from all
18 such depositories. The comptroller must, by the tenth day of each month,
19 pay into the state treasury to the credit of the environmental
20 protection fund established pursuant to section ninety-two-s of the
21 state finance law the revenue deposited under this subdivision during
22 the preceding calendar month and remaining to the comptroller's credit
23 on the last day of that preceding month.

24 5. The commissioner and the commissioner of taxation and finance shall
25 promulgate, and shall consult each other in promulgating, such rules and
26 regulations as may be necessary to effectuate the purposes of this
27 title. The commissioner and the commissioner of taxation and finance
28 shall provide all necessary aid and assistance to each other, including
29 the sharing of any information that is necessary to their respective
30 administration and enforcement responsibilities pursuant to the
31 provisions of this title.

32 6. a. Any store in operation prior to the effective date of this
33 title, must apply within three months of the effective date of this
34 title to the commissioner of taxation and finance for registration to
35 collect fees as provided in section 27-2802 of this title. Any store
36 commencing operations on or after three months from the effective date
37 of this title shall apply for registration prior to collecting any fees.
38 Such application shall be in a form prescribed by the commissioner of
39 taxation and finance and shall require such information deemed to be
40 necessary for proper administration of this title. The commissioner of
41 taxation and finance may require that applications for registration must
42 be submitted electronically. The commissioner of taxation and finance
43 shall electronically issue a store registration certificate in a form
44 prescribed by the commissioner of taxation and finance within fifteen
45 days of receipt of such application or may take an additional ten days
46 if the commissioner of taxation and finance deems it necessary to
47 consult with the commissioner before issuing such registration certif-
48 icate. A registration certificate issued pursuant to this subdivision
49 may be issued for a specified term of not less than three years and
50 shall be subject to renewal in accordance with procedures specified by
51 the commissioner of taxation and finance. The commissioner of taxation
52 and finance shall furnish to the commissioner a complete list of regis-
53 tered stores and shall continually update such list as warranted. The
54 commissioner shall share any information with the commissioner of taxa-
55 tion and finance that is necessary for the administration of this subdi-
56 vision.

1 b. The commissioner of taxation and finance shall have the authority
2 to revoke or refuse to renew any registration issued pursuant to this
3 subdivision when he or she has determined or has been informed by the
4 commissioner that any of the provisions of this title or rules and regu-
5 lations promulgated thereunder have been violated. Such violations shall
6 include, but not be limited to, the failure to file quarterly reports,
7 the failure to make payments pursuant to this subdivision, the providing
8 of false or fraudulent information to either the department of taxation
9 and finance or the department, or knowingly aiding or abetting another
10 person in violating any of the provisions of this title. A notice of
11 proposed revocation or non-renewal shall be given to the store in the
12 manner prescribed for a notice of deficiency of tax and all the
13 provisions applicable to a notice of deficiency under article twenty-
14 seven of the tax law shall apply to a notice issued pursuant to this
15 paragraph, insofar as such provisions can be made applicable to a notice
16 authorized by this paragraph, with such modifications as may be neces-
17 sary in order to adapt the language of such provisions to the notice
18 authorized by this paragraph. All such notices issued by the commis-
19 sioner of taxation and finance pursuant to this paragraph shall contain a
20 statement advising the store that the revocation or non-renewal of
21 registration may be challenged through a hearing process and the peti-
22 tion for such a challenge must be filed with the commissioner of taxa-
23 tion and finance within ninety days after such notice is issued. A store
24 whose registration has been so revoked or not renewed shall cease to do
25 business in this state, until this title has been complied with and a
26 new registration has been issued.

27 7. The commissioner of taxation and finance may require the mainte-
28 nance of such accounts, records or documents relating to the collection
29 of fees for carryout bags, by any store as such commissioner may deem
30 appropriate for the administration of this section. Such commissioner
31 may make examinations, including the conduct of store inspections during
32 regular business hours, with respect to the accounts, records or docu-
33 ments required to be maintained under this subdivision. Such accounts,
34 records and documents shall be preserved for a period of three years,
35 except that such commissioner may consent to their destruction within
36 that period or may require that they be kept longer. Such accounts,
37 records and documents may be kept within the meaning of this subdivision
38 when reproduced by any photographic, photostatic, microfilm, micro-card,
39 miniature photographic or other process which actually reproduces the
40 original accounts, records or documents.

41 8. If any store fails or refuses to file a report or furnish any
42 information requested in writing by the department of taxation and
43 finance or the department, the department of taxation and finance with
44 the assistance of the department may, from any information in its
45 possession, make an estimate of the deficiency and collect such defi-
46 ciency from such store.

47 § 27-2805. Violations.

48 1. Any retailer who shall violate any provision of this title shall
49 receive a warning notice for the first such violation. A retailer shall
50 be liable to the state of New York for a civil penalty of two hundred
51 fifty dollars for the first violation after receiving a warning and five
52 hundred dollars for any subsequent violation in the same calendar year.
53 For purposes of this section, each commercial transaction shall consti-
54 tute no more than one violation. A hearing or opportunity to be heard
55 shall be provided prior to the assessment of any civil penalty.

1 2. It shall not be a violation of this title for a general vendor or
2 green cart to fail to provide a receipt to a customer with an itemized
3 charge for a carryout bag fee.

4 3. (a) The department, the department of agriculture and markets, the
5 department of health, and the attorney general are hereby authorized to
6 enforce the provisions of this title, and all monies collected shall be
7 deposited to the credit of the environmental protection fund established
8 pursuant to section ninety-two-s of the state finance law.

9 (b) The provisions of this section may also be enforced by a county,
10 city, town or village and the local legislative body thereof may adopt
11 local laws, ordinances or regulations consistent with this title provid-
12 ing for the enforcement of such provisions.

13 4. Any fines that are collected by the state during proceedings by the
14 state to enforce the provisions of this title shall be retained by the
15 state. Any fines that are collected by a municipality during proceedings
16 by the municipality to enforce the provisions of this title against a
17 retailer located in the municipality shall be retained by the munici-
18 pality.

19 § 27-2806. Preemption of local law.

20 Jurisdiction in all matters pertaining to carryout bags is vested
21 exclusively in the state. Any provision of any local law or ordinance,
22 or any rule or regulation promulgated thereto, governing charges or bans
23 related to carryout bags shall, upon the effective date of this title,
24 be preempted. Provided, however, nothing in this section shall preclude
25 a local law or ordinance, or any rule or regulation from implementing a
26 higher fee for carryout bags or reusable grocery bags, or a ban on addi-
27 tional types of carryout bags.

28 § 2. Subdivision 4 of section 63 of the alcoholic beverage control
29 law, as amended by section 1 of chapter 360 of the laws of 2017, is
30 amended to read as follows:

31 4. No licensee under this section shall be engaged in any other busi-
32 ness on the licensed premises. The sale of lottery tickets, when duly
33 authorized and lawfully conducted, the sale of carryout bags as defined
34 in subdivision one of section 27-2801 of the environmental conservation
35 law and reusable grocery bags as defined in subdivision four of section
36 27-2801 of the environmental conservation law, the sale of corkscrews or
37 the sale of ice or the sale of publications, including prerecorded video
38 and/or audio cassette tapes, or educational seminars, designed to help
39 educate consumers in their knowledge and appreciation of alcoholic
40 beverages, as defined in section three of this chapter and allowed
41 pursuant to their license, or the sale of non-carbonated, non-flavored
42 mineral waters, spring waters and drinking waters or the sale of glasses
43 designed for the consumption of wine, racks designed for the storage of
44 wine, and devices designed to minimize oxidation in bottles of wine
45 which have been uncorked, or the sale of gift bags, gift boxes, or wrap-
46 ping, for alcoholic beverages purchased at the licensed premises shall
47 not constitute engaging in another business within the meaning of this
48 subdivision. Any fee obtained from the sale of an educational seminar
49 shall not be considered as a fee for any tasting that may be offered
50 during an educational seminar, provided that such tastings are available
51 to persons who have not paid to attend the seminar and all tastings are
52 conducted in accordance with section sixty-three-a of this article.

53 § 3. Subdivision 4 of section 63 of the alcoholic beverage control
54 law, as amended by section 2 of chapter 360 of the laws of 2017, is
55 amended to read as follows:

1 4. No licensee under this section shall be engaged in any other busi-
2 ness on the licensed premises. The sale of lottery tickets, when duly
3 authorized and lawfully conducted, the sale of carryout bags as defined
4 in subdivision one of section 27-2801 of the environmental conservation
5 law and reusable grocery bags as defined in subdivision four of section
6 27-2801 of the environmental conservation law, the sale of corkscrews or
7 the sale of ice or the sale of publications, including prerecorded video
8 and/or audio cassette tapes, or educational seminars, designed to help
9 educate consumers in their knowledge and appreciation of alcoholic
10 beverages, as defined in section three of this chapter and allowed
11 pursuant to their license, or the sale of non-carbonated, non-flavored
12 mineral waters, spring waters and drinking waters or the sale of glasses
13 designed for the consumption of wine, racks designed for the storage of
14 wine, and devices designed to minimize oxidation in bottles of wine
15 which have been uncorked, shall not constitute engaging in another busi-
16 ness within the meaning of this subdivision. Any fee obtained from the
17 sale of an educational seminar shall not be considered as a fee for any
18 tasting that may be offered during an educational seminar, provided that
19 such tastings are available to persons who have not paid to attend the
20 seminar and all tastings are conducted in accordance with section
21 sixty-three-a of this article.

22 § 4. Subdivision 3 and paragraph (b) of subdivision 6 of section 92-s
23 of the state finance law, subdivision 3 as amended by section 2-a of
24 part JJ of chapter 58 of the laws of 2017 and paragraph (b) of subdivi-
25 sion 6 as amended by section 3 of part U of chapter 58 of the laws of
26 2016, are amended to read as follows:

27 3. Such fund shall consist of the amount of revenue collected within
28 the state from the amount of revenue, interest and penalties deposited
29 pursuant to section fourteen hundred twenty-one of the tax law, the
30 amount of fees and penalties received from easements or leases pursuant
31 to subdivision fourteen of section seventy-five of the public lands law
32 and the money received as annual service charges pursuant to section
33 four hundred four-n of the vehicle and traffic law, all moneys required
34 to be deposited therein from the contingency reserve fund pursuant to
35 section two hundred ninety-four of chapter fifty-seven of the laws of
36 nineteen hundred ninety-three, all moneys required to be deposited
37 pursuant to section thirteen of chapter six hundred ten of the laws of
38 nineteen hundred ninety-three, repayments of loans made pursuant to
39 section 54-0511 of the environmental conservation law, all moneys to be
40 deposited from the Northville settlement pursuant to section one hundred
41 twenty-four of chapter three hundred nine of the laws of nineteen
42 hundred ninety-six, provided however, that such moneys shall only be
43 used for the cost of the purchase of private lands in the core area of
44 the central Suffolk pine barrens pursuant to a consent order with the
45 Northville industries signed on October thirteenth, nineteen hundred
46 ninety-four and the related resource restoration and replacement plan,
47 the amount of penalties required to be deposited therein by section
48 71-2724 of the environmental conservation law, all moneys required to be
49 deposited pursuant to article thirty-three of the environmental conser-
50 vation law, all fees collected pursuant to subdivision eight of section
51 70-0117 of the environmental conservation law, all moneys collected
52 pursuant to title thirty-three of article fifteen of the environmental
53 conservation law, beginning with the fiscal year commencing on April
54 first, two thousand thirteen, nineteen million dollars, and all fiscal
55 years thereafter, twenty-three million dollars plus all funds received
56 by the state each fiscal year in excess of the greater of the amount

1 received from April first, two thousand twelve through March thirty-
2 first, two thousand thirteen or one hundred twenty-two million two
3 hundred thousand dollars, from the payments collected pursuant to subdi-
4 vision four of section 27-1012 of the environmental conservation law
5 ~~[and]~~, all funds collected pursuant to section 27-1015 of the environ-
6 mental conservation law, provided such funds shall not be less than four
7 million dollars for the fiscal year commencing April first, two thousand
8 thirteen, and not less than eight million dollars for all fiscal years
9 thereafter, all moneys required to be deposited pursuant to section
10 27-2804 of the environmental conservation law and all other moneys cred-
11 ited or transferred thereto from any other fund or source pursuant to
12 law. All such revenue shall be initially deposited into the environ-
13 mental protection fund, for application as provided in subdivision five
14 of this section.

15 (b) Moneys from the solid waste account shall be available, pursuant
16 to appropriation and upon certificate of approval of availability by the
17 director of the budget, for any non-hazardous municipal landfill closure
18 project; municipal waste reduction or recycling project, as defined in
19 article fifty-four of the environmental conservation law; for the
20 purposes of section two hundred sixty-one and section two hundred
21 sixty-four of the economic development law; any project for the develop-
22 ment, updating or revision of local solid waste management plans pursu-
23 ant to sections 27-0107 and 27-0109 of the environmental conservation
24 law; environmental justice projects and grants and for the development
25 of the pesticide sales and use data base pursuant to title twelve of
26 article thirty-three of the environmental conservation law; provided
27 that all funds collected pursuant to title twenty-eight of article twen-
28 ty-seven of the environmental conservation law shall be made available
29 to localities for the purpose of pollution reduction, cleanup, and
30 education, and purchasing and distributing reusable bags, with priority
31 given to low and fixed-income communities.

32 § 5. This act shall take effect on the two hundred seventieth day
33 after it shall have become a law; provided that the amendments to subdi-
34 vision 4 of section 63 of the alcoholic beverage control law made by
35 section two of this act shall be subject to the expiration and reversion
36 of such subdivision pursuant to section 18 of chapter 297 of the laws of
37 2016, as amended, when upon such date the provisions of section three of
38 this act shall take effect.