

4595

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sens. SCHNEIDERMAN, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend chapter 641 of the laws of 2008 enacting the plastic bag reduction, reuse and recycling act; and to amend the environmental conservation law, in relation to plastic bag reduction and compostable plastic bags

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 2 of chapter 641 of the laws of 2008 enacting the
2 plastic bag reduction, reuse and recycling act, is amended to read as
3 follows:
4 S 2. Legislative findings. The legislature hereby finds that the
5 worldwide production of plastic bags has significant environmental
6 impacts each year, including the use of over 12 million barrels of oil,
7 and the deaths of thousands of marine animals through ingestion and
8 entanglement. Each year an estimated 500 billion to 1 trillion plastic
9 bags are used worldwide, which is over one million bags per minute, and
10 of which billions of bags end up as litter each year. Most plastic
11 carryout bags do not biodegrade which means that the bags break down
12 into smaller and smaller toxic bits that contaminate soil and waterways
13 and enter into the food web when animals accidentally ingest those materials. It is the intent of the legislature to encourage the use of reusable bags by consumers and retailers and to encourage the reduced consumption of single-use bags, the reuse of such bags, and the recycling of such bags AND SIMILAR PACKAGING PLASTICS.
14
15 S 2. Subdivisions 4, 5 and 6 of section 27-2701 of the environmental
16 conservation law, as added by chapter 641 of the laws of 2008, are
17 amended and two new subdivisions 7 and 8 are added to read as follows:
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EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 4. "Plastic carryout bag" means a plastic carryout bag provided by a
2 store to a customer at the point of sale THAT IS NOT A REUSABLE BAG OR A
3 COMPOSTABLE PLASTIC BAG.

4 5. "Reusable bag" means:

5 (a) a bag made of cloth or other machine washable fabric that has
6 handles; or

7 (b) a durable plastic bag with handles that is AT LEAST 2.25 MILS
8 THICK AND specifically designed and manufactured for multiple reuse.

9 6. "Store" means a retail establishment LOCATED IN THIS STATE, OTHER
10 THAN A FOOD SERVICE ESTABLISHMENT, that provides plastic carryout bags
11 to its customers as a result of the sale of a product and (a) has over
12 [ten] FIVE thousand square feet of retail space, or (b) such retail
13 establishment is part of a chain IN THIS STATE engaged in the same
14 general field of business [which operates five or more units of over
15 five thousand square feet of retail space in this state] AND CONDUCTING
16 BUSINESS UNDER THE SAME BUSINESS NAME OR under common ownership and
17 management OR PURSUANT TO A FRANCHISE AGREEMENT WITH THE SAME
18 FRANCHISOR.

19 7. "FILM PLASTIC" MEANS AN UNCONTAMINATED NON-RIGID FILM PLASTIC PACK-
20 AGING PRODUCT COMPOSED OF PLASTIC RESINS, INCLUDING BUT NOT LIMITED TO
21 PLASTIC NEWSPAPER BAGS, PLASTIC DRY CLEANING BAGS, AND SHRINK-WRAP PLAS-
22 TIC.

23 8. "FOOD SERVICE ESTABLISHMENT" MEANS ANY ESTABLISHMENT WHERE THE
24 PRIMARY BUSINESS IS PROVIDING FOOD FOR INDIVIDUAL PORTION SERVICE
25 DIRECTLY TO THE CONSUMER, WHETHER CONSUMPTION OF SUCH FOOD OCCURS ON OR
26 OFF THE PREMISES OR SUCH SERVICE IS PROVIDED IN A PREMISES OR FROM A
27 PUSH CART, STAND OR VEHICLE.

28 S 3. Section 27-2703 of the environmental conservation law, as added
29 by chapter 641 of the laws of 2008, is amended to read as follows:

30 S 27-2703. Store operator responsibilities.

31 1. The operator of a store shall establish an at-store recycling
32 program pursuant to the provisions of this title that provides an oppor-
33 tunity for a customer of the store to return to the store clean plastic
34 carryout bags AND FILM PLASTIC.

35 2. A retail establishment that does not meet the definition of a store
36 and that provides plastic carryout bags to customers at the point of
37 sale may [also] adopt an at-store recycling program.

38 S 4. Section 27-2705 of the environmental conservation law, as added
39 by chapter 641 of the laws of 2008, is amended to read as follows:

40 S 27-2705. Recycling program requirements.

41 An at-store recycling program provided by the operator of a store
42 shall require:

43 1. a plastic carryout bag provided by the store TO A CUSTOMER to have
44 printed or displayed on the bag, in a manner visible to a consumer, the
45 words ["PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING"] "PLEASE
46 REUSE OR RECYCLE AT A PARTICIPATING STORE". Provided, however, [such
47 store shall be allowed for one year from the effective date of this
48 subdivision to use its existing stock of plastic carryout bags] PLASTIC
49 CARRYOUT BAGS THAT DO NOT COMPLY WITH THIS SUBDIVISION MAY BE PROVIDED
50 FOR UP TO SIX MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION TO USE THE
51 STORE'S EXISTING STOCK OF SUCH PLASTIC CARRYOUT BAGS. A store may also
52 apply to the commissioner for approval of an alternative plastic bag
53 recycling message. The commissioner shall approve or reject the proposed
54 message within forty-five days;

55 2. a [plastic carryout bag] collection bin that is visible, easily
56 accessible to the consumer, and clearly marked that the collection bin

1 is available for the purpose of collecting and recycling plastic carry-
2 out bags AND FILM PLASTIC. This subdivision shall apply to stores not
3 within an enclosed shopping mall and stores of at least fifty thousand
4 square feet within an enclosed shopping mall. In the case of an enclosed
5 shopping mall, the owner of the enclosed mall shall place bins at
6 reasonable intervals throughout the enclosed mall area;

7 3. all plastic carryout bags AND FILM PLASTIC collected by the store
8 PURSUANT TO THIS TITLE to be collected, transported and recycled [along
9 with any other in-store plastic recycling], except for plastic bags OR
10 FILM PLASTICS that are not sufficiently free of foreign material to
11 enter the recycling stream. Plastic carryout bags AND FILM PLASTIC
12 collected by the store [or the manufacturer], which are free of foreign
13 material, shall not be disposed of in any solid waste disposal facility
14 permitted or authorized pursuant to title seven of this article;

15 4. the store or its agent to maintain, for a minimum of three years,
16 records describing the collection, transport and recycling of plastic
17 carryout bags AND FILM PLASTIC collected by weight, provided however
18 that stores or its agents may weigh such bags, FILM PLASTIC and any
19 other in-store plastic recycling at a regional collection center. Such
20 records shall be made available to the department upon request, to
21 demonstrate compliance with this title; [and]

22 5. the operator of the store to (a) make reusable bags available to
23 customers within the store for purchase, and (b) permit a [reuseable]
24 REUSABLE bag to be used in lieu of a plastic carryout bag or paper
25 bag[.]; AND

26 6. A COMPOSTABLE PLASTIC BAG PROVIDED BY THE STORE TO A CUSTOMER TO
27 HAVE PRINTED ON THE BAG, IN A MANNER VISIBLE TO THE CONSUMER, THE WORDS
28 "COMPOSTABLE BAG - DO NOT PLACE IN RECYCLING BIN". PROVIDED HOWEVER,
29 COMPOSTABLE PLASTIC BAGS THAT DO NOT COMPLY WITH THIS SUBDIVISION MAY BE
30 PROVIDED FOR UP TO SIX MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION TO
31 USE THE STORE'S EXISTING STOCK OF SUCH COMPOSTABLE PLASTIC BAGS.

32 S 5. Section 27-2707 of the environmental conservation law, as added
33 by chapter 641 of the laws of 2008, is amended to read as follows:

34 S 27-2707. Manufacturer responsibilities; COMPOSTABLE PLASTIC BAGS.

35 1. PLASTIC CARRYOUT BAGS AND FILM PLASTIC COLLECTED BY THE MANUFACTUR-
36 ER WHICH ARE FREE OF FOREIGN MATERIAL SHALL NOT BE DISPOSED OF IN ANY
37 SOLID WASTE DISPOSAL FACILITY PERMITTED OR AUTHORIZED PURSUANT TO TITLE
38 SEVEN OF THIS ARTICLE.

39 2. When [the] A manufacturer accepts plastic carryout bags AND/OR FILM
40 PLASTIC for return, it or its agent shall maintain, for a minimum of
41 three years, records describing the collection, transport and recycling
42 of plastic carryout bags AND/OR FILM PLASTIC collected by weight,
43 provided that the manufacturer or its agents may weigh such bags and any
44 other plastic resins at a regional collection center. Such records shall
45 be made available to the department upon request, to demonstrate compli-
46 ance with this title.

47 [2. Manufacturers of compostable plastic bags sold to stores in the
48 state that are subject to the provisions of this title shall have print-
49 ed on the bag, in a manner visible to the consumer, the words "COMPOSTA-
50 BLE BAG -- DO NOT PLACE IN RECYCLING BIN". Provided however, such bags
51 may be sold or distributed for one year from the effective date of this
52 section to use the store's existing stock of compostable bags.]

53 3. NO PERSON SHALL SELL COMPOSTABLE PLASTIC BAGS TO A STORE IN THIS
54 STATE THAT IS SUBJECT TO THE PROVISIONS OF THIS TITLE UNLESS SUCH
55 COMPOSTABLE BAGS HAVE THE FOLLOWING WORDS PRINTED ON THEM IN A MANNER

1 VISIBLE TO THE CONSUMER, "COMPOSTABLE BAG -- DO NOT PLACE IN RECYCLING
2 BIN".

3 S 6. Section 27-2709 of the environmental conservation law, as added
4 by chapter 641 of the laws of 2008, is amended to read as follows:

5 S 27-2709. Department responsibility.

6 1. The department shall develop educational materials to encourage the
7 reduction, reuse and recycling of plastic carryout bags AND OTHER FILM
8 PLASTIC and shall make those materials available to stores required to
9 comply with this article.

10 2. The department shall provide information regarding the availability
11 of recycling facilities and companies that recycle plastic bags AND
12 OTHER FILM PLASTIC, including the addresses and phone numbers of such
13 facilities and companies to stores required to comply with this article.

14 3. THE COMMISSIONER IS AUTHORIZED TO REQUIRE ANY AND ALL STORES OR A
15 CROSS-SECTION THEREOF WHICH ARE SUBJECT TO THIS TITLE TO SUBMIT PERIOD-
16 ICALLY, NO MORE FREQUENTLY THAN ANNUALLY, SOME OR ALL OF THE INFORMATION
17 REQUIRED TO BE COLLECTED PURSUANT TO SUBDIVISION FOUR OF SECTION 27-2705
18 OF THIS TITLE.

19 S 7. Section 27-2713 of the environmental conservation law, as added
20 by chapter 641 of the laws of 2008, is amended to read as follows:

21 S 27-2713. Preemption.

22 1. Jurisdiction in all matters pertaining to plastic bag recycling is
23 by this article vested exclusively in the state. Any provision of any
24 local law or ordinance, or any rule or regulation promulgated thereto,
25 governing the recycling of plastic bags shall, upon the effective date
26 of this title, be preempted. Provided however, [nothing] THAT THE
27 PROVISIONS OF THIS SECTION SHALL NOT PREEMPT ANY LOCAL LAW ENACTED BY A
28 CITY OF ONE MILLION OR MORE RELATING TO REQUIRING A RECYCLING PROGRAM
29 FOR PLASTIC CARRYOUT BAGS AND FILM PLASTIC IF SUCH LOCAL LAW REMAINS AS
30 IT WAS ENACTED ON JANUARY TWENTY-THIRD, TWO THOUSAND EIGHT. NOTHING in
31 this section shall preclude a person from coordinating for recycling or
32 reuse the collection of plastic bags.

33 2. PROVIDED FURTHER THAT COUNTIES NOT WHOLLY CONTAINED WITHIN A CITY
34 ARE AUTHORIZED TO ENFORCE THE PROVISIONS OF THIS TITLE.

35 S 8. Section 71-2728 of the environmental conservation law, as added
36 by chapter 641 of the laws of 2008, is amended to read as follows:

37 S 71-2728. Enforcement of title 27 of article 27 of this chapter.

38 1. [Any person who knowingly or intentionally violates any provision
39 of or fails to perform any duty imposed pursuant to title 27 of article
40 27 of this chapter shall upon the first finding of such a violation be
41 provided with a warning that future violations shall result in the im-
42 position of a fine. Any person convicted of a second violation shall be
43 liable for a civil penalty not to exceed one hundred dollars. Any person
44 convicted of a third or subsequent violation shall be liable for a civil
45 penalty not to exceed five hundred dollars.] CIVIL AND ADMINISTRATIVE
46 SANCTIONS. ANY PERSON WHO VIOLATES ANY PROVISION OF TITLE 27 OF ARTICLE
47 27 OF THIS CHAPTER, AS ADDED BY CHAPTER 641 OF THE LAWS OF 2008, OR ANY
48 RULE OR REGULATION PROMULGATED PURSUANT THERETO, OR ANY FINAL DETERMI-
49 NATION OR ORDER OF THE COMMISSIONER, SHALL UPON THE FIRST FINDING OF
50 SUCH A VIOLATION BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED
51 DOLLARS. IN THE CASE OF A SECOND VIOLATION, THE LIABILITY FOR A CIVIL
52 PENALTY SHALL NOT EXCEED FIVE HUNDRED FIFTY DOLLARS. IN THE CASE OF A
53 THIRD OR SUBSEQUENT VIOLATION, THE LIABILITY FOR A CIVIL PENALTY SHALL
54 NOT EXCEED SEVEN HUNDRED FIFTY DOLLARS FOR EACH SUCH VIOLATION AND AN
55 ADDITIONAL PENALTY NOT TO EXCEED SEVEN HUNDRED FIFTY DOLLARS FOR EACH
56 DAY DURING WHICH SUCH VIOLATION CONTINUES. PENALTIES UNDER THIS SECTION

1 SHALL BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO
2 BE HEARD PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS ARTICLE,
3 OR BY A COURT IN ANY ACTION OR PROCEEDING PURSUANT TO SECTION 71-2727 OF
4 THIS ARTICLE, AND, IN ADDITION THERETO, ANY PERSON FOUND TO HAVE
5 VIOLATED TITLE 27 OF ARTICLE 27 OF THIS CHAPTER, AS ADDED BY CHAPTER 641
6 OF THE LAWS OF 2008, MAY BY SIMILAR PROCESS BE ENJOINED FROM CONTINUING
7 SUCH VIOLATION.

8 2. [Penalties under this section shall be assessed by the commissioner
9 after a hearing or opportunity to be heard pursuant to the provisions of
10 section 71-1709 of this article and, in addition thereto, any person
11 found to have violated title 27 of article 27 of this chapter may by
12 similar process be enjoined from continuing such violation.

13 3.] DISPOSITION OF PENALTIES AND FINES. All civil penalties and fines
14 collected for any violation of title 27 of article 27 of this chapter,
15 AS ADDED BY CHAPTER 641 OF THE LAWS OF 2008, shall be paid over to the
16 commissioner for deposit in the environmental protection fund estab-
17 lished by section ninety-two-s of the state finance law.

18 S 9. This act shall take effect immediately; provided however, that
19 the provisions of section 27-2713 of the environmental conservation law,
20 as amended by section seven of this act, shall be deemed to have been in
21 full force and effect on the same date and in the same manner as chapter
22 641 of the laws of 2008 took effect; and provided further that the duty
23 to collect film plastic imposed by section 27-2705 of the environmental
24 conservation law, as amended by section four of this act, shall take
25 effect July 1, 2009.