

# 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:

1 Section 1. Article 27 of the environmental conservation law is amended  
2 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:

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

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

20 3. "Store" means a general vendor, or a retail or wholesale establish-  
21 ment engaged in the sale of personal, consumer or household items  
22 including but not limited to drug stores, pharmacies, grocery stores,  
23 supermarkets, convenience food stores or foodmarts that provide carryout  
24 bags to consumers in which to place items purchased or obtained at such  
25 establishments. Such term shall not include food service establishments,  
26 mobile food service establishments, or emergency food providers or  
27 501(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 sion 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.

1 3. A store may not charge a fee pursuant to subdivision one of section  
2 27-2802 of this title, for a reusable grocery bag that meets the  
3 requirements of subdivision four of section 27-2801 of this title and  
4 which is distributed to a customer without charge during a limited dura-  
5 tion promotional event, not to exceed fourteen days per year.

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

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

11 § 27-2804. Deposit and disposition of fees.

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

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

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

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

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

43 d. the balance in the carryout bag account at the close of such quar-  
44 ter.

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