

# STATE OF NEW YORK

5753

2019-2020 Regular Sessions

## IN ASSEMBLY

February 14, 2019

Introduced by M. of A. ENGLEBRIGHT, SIMON, ORTIZ, CARROLL, LAVINE, LIFTON, THIELE, ABINANTI, DE LA ROSA, LUPARDO, STECK, HYNDMAN, SEAWRIGHT, FAHY, L. ROSENTHAL, GOTTFRIED, PEOPLES-STOKES, JAFFEE, COLTON, SOLAGES, EPSTEIN, TAYLOR, PAULIN, ARROYO, GLICK, SANTABARBARA, WILLIAMS, GALEF, QUART, WOERNER, MAGNARELLI, ROZIC, BARRON, BLAKE, D'URSO, OTIS, MOSLEY, NIOU, DINOWITZ, RICHARDSON, BARRETT, STIRPE, RYAN -- Multi-Sponsored by -- M. of A. BRONSON, BUCHWALD, CYMBROWITZ, MONTESANO -- 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. This act shall be known and may be cited as the "New York  
2 state bring your own bag act".

3 § 2. Article 27 of the environmental conservation law is amended by  
4 adding a new title 28 to read as follows:

5 TITLE 28

6 CARRYOUT BAG WASTE REDUCTION

7 Section 27-2801. Definitions.

8 27-2802. Charges.

9 27-2803. Additional obligations for stores.

10 27-2804. Deposit and disposition of fees.

11 27-2805. Violations.

12 27-2806. Preemption of local law.

13 § 27-2801. Definitions.

14 As used in this article:

15 1. "Carryout bag" means a bag made of plastic, paper, or other materi-  
16 al that is intended for the purpose of carrying purchased items and is

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

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1 provided by a store to a customer at the point of sale and that is not a  
2 reusable grocery bag;

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

6 3. "Store" means a general vendor, or a retail or wholesale establish-  
7 ment engaged in the sale of personal, consumer or household items  
8 including but not limited to drug stores, pharmacies, grocery stores,  
9 supermarkets, convenience food stores or foodmarts that provide carryout  
10 bags to consumers in which to place items purchased or obtained at such  
11 establishments. Such term shall not include food service establishments,  
12 mobile food service establishments, or emergency food providers or  
13 501(c)(3) organizations;

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

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

26 § 27-2802. Charges.

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

33 (b) The store collecting fees pursuant to paragraph (a) of this subdivi-  
34 vision shall retain twenty percent of all such fees and shall remit the  
35 remaining eighty percent of all such fees to the commissioner of taxa-  
36 tion and finance in accordance with the provisions of section 27-2804 of  
37 this title for deposit to the credit of the environmental protection  
38 fund established pursuant to section ninety-two-s of the state finance  
39 law. All such funds shall be made available to localities for the  
40 purpose of pollution reduction, cleanup, and education, and purchasing  
41 and distributing reusable bags, with priority given to low and fixed-in-  
42 come communities.

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

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

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

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

55 5. The department shall promulgate all necessary or desirable rules  
56 and regulations to effect the purposes set forth in this title and

1 educate the general public about such purposes. The department shall  
2 conduct outreach programs to educate the general public about such  
3 purposes and shall publicize such rules and regulations on its website.  
4 § 27-2803. Additional obligations for stores.

5 1. All stores subject to the provisions of this title shall post signs  
6 provided or approved by the department at or near points of sale located  
7 in such covered stores to notify customers of the provisions of this  
8 section.

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

13 3. A store may not charge a fee pursuant to subdivision one of section  
14 27-2802 of this title, for a reusable grocery bag that meets the  
15 requirements of subdivision four of section 27-2801 of this title and  
16 which is distributed to a customer without charge during a limited dura-  
17 tion promotional event, not to exceed fourteen days per year.

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

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

23 § 27-2804. Deposit and disposition of fees.

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

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

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

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

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

55 d. the balance in the carryout bag account at the close of such quar-  
56 ter.

1 3. a. An amount equal to eighty percent of the balance outstanding in  
2 the carryout bag account at the close of each quarter shall be paid to  
3 the commissioner of taxation and finance at the time the report provided  
4 for in subdivision two of this section is required to be filed. The  
5 commissioner of taxation and finance may require that the payments be  
6 made electronically. The remaining twenty percent of the balance  
7 outstanding at the close of each quarter shall be the monies of the  
8 store and may be withdrawn from such account by the store. If the  
9 provisions of this section with respect to such account have not been  
10 fully complied with, each store shall pay to such commissioner at such  
11 time, in lieu of the amount described in the preceding sentence, an  
12 amount equal to the balance which would have been outstanding on such  
13 date had such provisions been fully complied with. The commissioner of  
14 taxation and finance may require that the payments be made electron-  
15 ically.

16 b. A store who ceases to do business in this state as a store shall  
17 file a final report and remit payment of eighty percent of all amounts  
18 remaining in the carryout bag account as of the close of the store's  
19 last day of business. The commissioner of taxation and finance may  
20 require that the payments be made electronically. The store shall indi-  
21 cate on the report that it is a "final report". The final report is due  
22 to be filed with payment twenty days after the close of the quarterly  
23 period in which the store ceases to do business.

24 4. All monies collected or received by the department of taxation and  
25 finance pursuant to this title shall be deposited to the credit of the  
26 comptroller with such responsible banks, banking houses or trust compa-  
27 nies as may be designated by the comptroller. Such deposits shall be  
28 kept separate and apart from all other monies in the possession of the  
29 comptroller. The comptroller shall require adequate security from all  
30 such depositories. The comptroller must, by the tenth day of each month,  
31 pay into the state treasury to the credit of the environmental  
32 protection fund established pursuant to section ninety-two-s of the  
33 state finance law the revenue deposited under this subdivision during  
34 the preceding calendar month and remaining to the comptroller's credit  
35 on the last day of that preceding month.

36 5. The commissioner and the commissioner of taxation and finance shall  
37 promulgate, and shall consult each other in promulgating, such rules and  
38 regulations as may be necessary to effectuate the purposes of this  
39 title. The commissioner and the commissioner of taxation and finance  
40 shall provide all necessary aid and assistance to each other, including  
41 the sharing of any information that is necessary to their respective  
42 administration and enforcement responsibilities pursuant to the  
43 provisions of this title.

44 6. a. Any store in operation prior to the effective date of this  
45 title, must apply within three months of the effective date of this  
46 title to the commissioner of taxation and finance for registration to  
47 collect fees as provided in section 27-2802 of this title. Any store  
48 commencing operations on or after three months from the effective date  
49 of this title shall apply for registration prior to collecting any fees.  
50 Such application shall be in a form prescribed by the commissioner of  
51 taxation and finance and shall require such information deemed to be  
52 necessary for proper administration of this title. The commissioner of  
53 taxation and finance may require that applications for registration must  
54 be submitted electronically. The commissioner of taxation and finance  
55 shall electronically issue a store registration certificate in a form  
56 prescribed by the commissioner of taxation and finance within fifteen

1 days of receipt of such application or may take an additional ten days  
2 if the commissioner of taxation and finance deems it necessary to  
3 consult with the commissioner before issuing such registration certifi-  
4 cate. A registration certificate issued pursuant to this subdivision  
5 may be issued for a specified term of not less than three years and  
6 shall be subject to renewal in accordance with procedures specified by  
7 the commissioner of taxation and finance. The commissioner of taxation  
8 and finance shall furnish to the commissioner a complete list of regis-  
9 tered stores and shall continually update such list as warranted. The  
10 commissioner shall share any information with the commissioner of taxa-  
11 tion and finance that is necessary for the administration of this subdi-  
12 vision.

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

39 7. The commissioner of taxation and finance may require the mainte-  
40 nance of such accounts, records or documents relating to the collection  
41 of fees for carryout bags, by any store as such commissioner may deem  
42 appropriate for the administration of this section. Such commissioner  
43 may make examinations, including the conduct of store inspections during  
44 regular business hours, with respect to the accounts, records or docu-  
45 ments required to be maintained under this subdivision. Such accounts,  
46 records and documents shall be preserved for a period of three years,  
47 except that such commissioner may consent to their destruction within  
48 that period or may require that they be kept longer. Such accounts,  
49 records and documents may be kept within the meaning of this subdivision  
50 when reproduced by any photographic, photostatic, microfilm, micro-card,  
51 miniature photographic or other process which actually reproduces the  
52 original accounts, records or documents.

53 8. If any store fails or refuses to file a report or furnish any  
54 information requested in writing by the department of taxation and  
55 finance or the department, the department of taxation and finance with  
56 the assistance of the department may, from any information in its

1 possession, make an estimate of the deficiency and collect such defi-  
2 ciency from such store.

3 § 27-2805. Violations.

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

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

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

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

24 4. Any fines that are collected by the state during proceedings by the  
25 state to enforce the provisions of this title shall be retained by the  
26 state. Any fines that are collected by a municipality during proceedings  
27 by the municipality to enforce the provisions of this title against a  
28 retailer located in the municipality shall be retained by the munici-  
29 pality.

30 § 27-2806. Preemption of local law.

31 Jurisdiction in all matters pertaining to carryout bags is vested  
32 exclusively in the state. Any provision of any local law or ordinance,  
33 or any rule or regulation promulgated thereto, governing charges or bans  
34 related to carryout bags shall, upon the effective date of this title,  
35 be preempted. Provided, however, nothing in this section shall preclude  
36 a local law or ordinance, or any rule or regulation from implementing a  
37 higher fee for carryout bags or reusable grocery bags, or a ban on addi-  
38 tional types of carryout bags.

39 § 3. Subdivision 4 of section 63 of the alcoholic beverage control  
40 law, as amended by chapter 360 of the laws of 2017, is amended to read  
41 as follows:

42 4. No licensee under this section shall be engaged in any other busi-  
43 ness on the licensed premises. The sale of lottery tickets, when duly  
44 authorized and lawfully conducted, the sale of carryout bags as defined  
45 in subdivision one of section 27-2801 of the environmental conservation  
46 law and reusable grocery bags as defined in subdivision four of section  
47 27-2801 of the environmental conservation law, the sale of corkscrews or  
48 the sale of ice or the sale of publications, including prerecorded video  
49 and/or audio cassette tapes, or educational seminars, designed to help  
50 educate consumers in their knowledge and appreciation of alcoholic  
51 beverages, as defined in section three of this chapter and allowed  
52 pursuant to their license, or the sale of non-carbonated, non-flavored  
53 mineral waters, spring waters and drinking waters or the sale of glasses  
54 designed for the consumption of wine, racks designed for the storage of  
55 wine, and devices designed to minimize oxidation in bottles of wine  
56 which have been uncorked, or the sale of gift bags, gift boxes, or wrap-

1 ping, for alcoholic beverages purchased at the licensed premises shall  
2 not constitute engaging in another business within the meaning of this  
3 subdivision. Any fee obtained from the sale of an educational seminar  
4 shall not be considered as a fee for any tasting that may be offered  
5 during an educational seminar, provided that such tastings are available  
6 to persons who have not paid to attend the seminar and all tastings are  
7 conducted in accordance with section sixty-three-a of this article.

8 § 4. Subdivision 3 and paragraph (b) of subdivision 6 of section 92-s  
9 of the state finance law, subdivision 3 as amended by section 1 of part  
10 AA of chapter 58 of the laws of 2018 and paragraph (b) of subdivision 6  
11 as amended by section 3 of part U of chapter 58 of the laws of 2016, are  
12 amended to read as follows:

13 3. Such fund shall consist of the amount of revenue collected within  
14 the state from the amount of revenue, interest and penalties deposited  
15 pursuant to section fourteen hundred twenty-one of the tax law, the  
16 amount of fees and penalties received from easements or leases pursuant  
17 to subdivision fourteen of section seventy-five of the public lands law  
18 and the money received as annual service charges pursuant to section  
19 four hundred four-n of the vehicle and traffic law, all moneys required  
20 to be deposited therein from the contingency reserve fund pursuant to  
21 section two hundred ninety-four of chapter fifty-seven of the laws of  
22 nineteen hundred ninety-three, all moneys required to be deposited  
23 pursuant to section thirteen of chapter six hundred ten of the laws of  
24 nineteen hundred ninety-three, repayments of loans made pursuant to  
25 section 54-0511 of the environmental conservation law, all moneys to be  
26 deposited from the Northville settlement pursuant to section one hundred  
27 twenty-four of chapter three hundred nine of the laws of nineteen  
28 hundred ninety-six, provided however, that such moneys shall only be  
29 used for the cost of the purchase of private lands in the core area of  
30 the central Suffolk pine barrens pursuant to a consent order with the  
31 Northville industries signed on October thirteenth, nineteen hundred  
32 ninety-four and the related resource restoration and replacement plan,  
33 the amount of penalties required to be deposited therein by section  
34 71-2724 of the environmental conservation law, all moneys required to be  
35 deposited pursuant to article thirty-three of the environmental conser-  
36 vation law, all fees collected pursuant to subdivision eight of section  
37 70-0117 of the environmental conservation law, all moneys collected  
38 pursuant to title thirty-three of article fifteen of the environmental  
39 conservation law, beginning with the fiscal year commencing on April  
40 first, two thousand thirteen, nineteen million dollars, and all fiscal  
41 years thereafter, twenty-three million dollars plus all funds received  
42 by the state each fiscal year in excess of the greater of the amount  
43 received from April first, two thousand twelve through March thirty-  
44 first, two thousand thirteen or one hundred twenty-two million two  
45 hundred thousand dollars, from the payments collected pursuant to subdi-  
46 vision four of section 27-1012 of the environmental conservation law and  
47 all funds collected pursuant to section 27-1015 of the environmental  
48 conservation law, all moneys required to be deposited pursuant to  
49 section 27-2804 of the environmental conservation law, and all other  
50 moneys credited or transferred thereto from any other fund or source  
51 pursuant to law. All such revenue shall be initially deposited into the  
52 environmental protection fund, for application as provided in subdivi-  
53 sion five of this section.

54 (b) Moneys from the solid waste account shall be available, pursuant  
55 to appropriation and upon certificate of approval of availability by the  
56 director of the budget, for any non-hazardous municipal landfill closure

1 project; municipal waste reduction or recycling project, as defined in  
2 article fifty-four of the environmental conservation law; for the  
3 purposes of section two hundred sixty-one and section two hundred  
4 sixty-four of the economic development law; any project for the develop-  
5 ment, updating or revision of local solid waste management plans pursu-  
6 ant to sections 27-0107 and 27-0109 of the environmental conservation  
7 law; environmental justice projects and grants and for the development  
8 of the pesticide sales and use data base pursuant to title twelve of  
9 article thirty-three of the environmental conservation law; provided  
10 that all funds collected pursuant to title twenty-eight of article twen-  
11 ty-seven of the environmental conservation law shall be made available  
12 to localities for the purpose of pollution reduction, cleanup, and  
13 education, and purchasing and distributing reusable bags, with priority  
14 given to low and fixed-income communities.

15 § 5. This act shall take effect on the two hundred seventieth day  
16 after it shall have become a law. Effective immediately the addition,  
17 amendment and/or repeal of any rule or regulation necessary for the  
18 implementation of this act on its effective date are authorized to be  
19 made on or before such date.