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:

Section 1. This act shall be known and may be cited as the "New York state bring your own bag act".

§ 2. 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

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

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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;

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

5. "Mobile food vendor" means a self-contained food service operation, located in a readily movable pushcart, motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service.

§ 27-2802. Charges.

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

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

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

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

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

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

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

educate the general public about such purposes. The department shall conduct outreach programs to educate the general public about such purposes and shall publicize such rules and regulations on its website.

§ 27-2803. Additional obligations for stores.

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

2. No store subject to the provisions of this title shall provide a credit to any person specifically for the purpose of offsetting or avoiding the carryout bag charge required by section 27-2802 of this 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 date had such provisions been fully complied with. The commissioner of taxation and finance may require that the payments be made electronically.

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

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

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

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

days of receipt of such application or may take an additional ten days if the commissioner of taxation and finance deems it necessary to consult with the commissioner before issuing such registration certificate. A registration certificate issued pursuant to this subdivision may be issued for a specified term of not less than three years and shall be subject to renewal in accordance with procedures specified by the commissioner of taxation and finance. The commissioner of taxation and finance shall furnish to the commissioner a complete list of registered stores and shall continually update such list as warranted. The commissioner shall share any information with the commissioner of taxation and finance that is necessary for the administration of this subdivision.

b. The commissioner of taxation and finance shall have the authority to revoke or refuse to renew any registration issued pursuant to this subdivision when he or she has determined or has been informed by the commissioner that any of the provisions of this title or rules and regulations promulgated thereunder have been violated. Such violations shall include, but not be limited to, the failure to file quarterly reports, the failure to make payments pursuant to this subdivision, the providing of false or fraudulent information to either the department of taxation and finance or the department, or knowingly aiding or abetting another person in violating any of the provisions of this title. A notice of proposed revocation or non-renewal shall be given to the store in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of the tax law shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to a notice authorized by this paragraph, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this paragraph. All such notices issued by the commissioner of taxation and finance pursuant to this paragraph shall contain a statement advising the store that the revocation or non-renewal of registration may be challenged through a hearing process and the petition for such a challenge must be filed with the commissioner of taxation and finance within ninety days after such notice is issued. A store whose registration has been so revoked or not renewed shall cease to do business in this state, until this title has been complied with and a new registration has been issued.

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

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

possession, make an estimate of the deficiency and collect such deficiency from such store.

§ 27-2805. Violations.

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

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

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

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

4. Any fines that are collected by the state during proceedings by the state to enforce the provisions of this title shall be retained by the state. Any fines that are collected by a municipality during proceedings by the municipality to enforce the provisions of this title against a retailer located in the municipality shall be retained by the municipality.

§ 27-2806. Preemption of local law.

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

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

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

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

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

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-n of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, all moneys required to be deposited pursuant to article thirty-three of the environmental conservation law, all fees collected pursuant to subdivision eight of section 70-0117 of the environmental conservation law, all moneys collected pursuant to title thirty-three of article fifteen of the environmental conservation law, beginning with the fiscal year commencing on April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received by the state each fiscal year in excess of the greater of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, from the payments collected pursuant to subdivision four of section 27-1012 of the environmental conservation law and all funds collected pursuant to section 27-1015 of the environmental conservation law**, all moneys required to be deposited pursuant to section 27-2804 of the environmental conservation law**, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

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

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

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