

STATE OF NEW YORK

95

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KAMINSKY, KRUEGER, BAILEY, BRESLIN, BROOKS, HOYLMAN, KAVANAGH, MAYER, MONTGOMERY, PARKER, PERSAUD, SANDERS, SEPULVEDA, SERRANO, STAVISKY -- read twice and ordered printed, and when printed to be committed 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 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;

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

LBD02045-01-9

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

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

9 3. A store may not charge a fee pursuant to subdivision one of section
10 27-2802 of this title, for a reusable grocery bag that meets the
11 requirements of subdivision four of section 27-2801 of this title and
12 which is distributed to a customer without charge during a limited dura-
13 tion promotional event, not to exceed fourteen days per year.

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

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

19 § 27-2804. Deposit and disposition of fees.

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

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

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

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

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

51 d. the balance in the carryout bag account at the close of such quar-
52 ter.

53 3. a. An amount equal to eighty percent of the balance outstanding in
54 the carryout bag account at the close of each quarter shall be paid to
55 the commissioner of taxation and finance at the time the report provided
56 for in subdivision two of this section is required to be filed. The

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

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

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

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

40 6. a. Any store in operation prior to the effective date of this
41 title, must apply within three months of the effective date of this
42 title to the commissioner of taxation and finance for registration to
43 collect fees as provided in section 27-2802 of this title. Any store
44 commencing operations on or after three months from the effective date
45 of this title shall apply for registration prior to collecting any fees.
46 Such application shall be in a form prescribed by the commissioner of
47 taxation and finance and shall require such information deemed to be
48 necessary for proper administration of this title. The commissioner of
49 taxation and finance may require that applications for registration must
50 be submitted electronically. The commissioner of taxation and finance
51 shall electronically issue a store registration certificate in a form
52 prescribed by the commissioner of taxation and finance within fifteen
53 days of receipt of such application or may take an additional ten days
54 if the commissioner of taxation and finance deems it necessary to
55 consult with the commissioner before issuing such registration certif-
56 icate. A registration certificate issued pursuant to this subdivision

1 may be issued for a specified term of not less than three years and
2 shall be subject to renewal in accordance with procedures specified by
3 the commissioner of taxation and finance. The commissioner of taxation
4 and finance shall furnish to the commissioner a complete list of regis-
5 tered stores and shall continually update such list as warranted. The
6 commissioner shall share any information with the commissioner of taxa-
7 tion and finance that is necessary for the administration of this subdivi-
8 vision.

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

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

49 8. If any store fails or refuses to file a report or furnish any
50 information requested in writing by the department of taxation and
51 finance or the department, the department of taxation and finance with
52 the assistance of the department may, from any information in its
53 possession, make an estimate of the deficiency and collect such defi-
54 ciency from such store.

55 § 27-2805. Violations.

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

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

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

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

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

27 § 27-2806. Preemption of local law.

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

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

39 4. No licensee under this section shall be engaged in any other busi-
40 ness on the licensed premises. The sale of lottery tickets, when duly
41 authorized and lawfully conducted, the sale of carryout bags as defined
42 in subdivision one of section 27-2801 of the environmental conservation
43 law and reusable grocery bags as defined in subdivision four of section
44 27-2801 of the environmental conservation law, the sale of corkscrews or
45 the sale of ice or the sale of publications, including prerecorded video
46 and/or audio cassette tapes, or educational seminars, designed to help
47 educate consumers in their knowledge and appreciation of alcoholic
48 beverages, as defined in section three of this chapter and allowed
49 pursuant to their license, or the sale of non-carbonated, non-flavored
50 mineral waters, spring waters and drinking waters or the sale of glasses
51 designed for the consumption of wine, racks designed for the storage of
52 wine, and devices designed to minimize oxidation in bottles of wine
53 which have been uncorked, or the sale of gift bags, gift boxes, or wrap-
54 ping, for alcoholic beverages purchased at the licensed premises shall
55 not constitute engaging in another business within the meaning of this
56 subdivision. Any fee obtained from the sale of an educational seminar

1 shall not be considered as a fee for any tasting that may be offered
2 during an educational seminar, provided that such tastings are available
3 to persons who have not paid to attend the seminar and all tastings are
4 conducted in accordance with section sixty-three-a of this article.

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

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

51 (b) Moneys from the solid waste account shall be available, pursuant
52 to appropriation and upon certificate of approval of availability by the
53 director of the budget, for any non-hazardous municipal landfill closure
54 project; municipal waste reduction or recycling project, as defined in
55 article fifty-four of the environmental conservation law; for the
56 purposes of section two hundred sixty-one and section two hundred

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

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