

# STATE OF NEW YORK

8719--A

## IN SENATE

March 4, 2024

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to clarifying certain provisions relating to prohibiting plastic carryout bags

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 27-2701 of the environmental conservation law, as  
2 added by chapter 641 of the laws of 2008, subdivision 2 as amended and  
3 subdivision 7 as added by chapter 481 of the laws of 2014, is amended to  
4 read as follows:

5 § 27-2701. Definitions.

6 As used in this title:

7 1. "Compostable plastic bag" means a plastic bag that at a minimum  
8 meets the American Society for Testing and Materials standard D6400 for  
9 compostable plastic, as amended.

10 2. "Manufacturer" means the producer of a plastic carryout bag or  
11 other film plastic sold to a store or the manufacturer's agent or broker  
12 who sold the plastic carryout bag or other film plastic to the store.

13 3. "Operator" means a person in control of, or having daily responsi-  
14 bility for, the daily operation of a store, which may include, but is  
15 not limited to, the owner of the store.

16 4. "Plastic carryout bag" means a [~~plastic~~] carryout bag made of film  
17 plastic of any thickness provided by a store to a customer at the point  
18 of sale that is not a reusable bag.

19 5. "Reusable bag" means a bag designed and manufactured for multiple  
20 reuse that:

21 (a) [~~a bag~~] is either made of [~~cloth~~] (i) hand washable or [~~other~~]  
22 machine washable cloth or fabric [~~that has handles~~], including cotton,  
23 jute, canvas, woven or nonwoven polypropylene (PP), polyethylene-tereph-  
24 thalate (PET), polyester, or nylon fabric, as well as fabric blends  
25 that include any such materials; or

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

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1 ~~[(b) a durable plastic bag with handles that is specifically designed~~  
2 ~~and manufactured for multiple reuse]~~ (ii) other non-film plastic wash-  
3 able material; and

4 (b) has at least one strap or handle that does not stretch and allows  
5 the bag to meet the strength and durability standards provided in para-  
6 graphs (c) and (d) of this subdivision;

7 (c) has a minimum lifespan of one hundred twenty-five uses, with a use  
8 equal to the ability to carry a minimum of twenty-two pounds over a  
9 distance of at least one hundred seventy-five feet; and

10 (d) has a minimum fabric weight of eighty grams per square meter  
11 ("GSM") or equivalent for bags made of cotton, jute, canvas, or any  
12 non-film plastic, including woven or nonwoven polypropylene (PP), polye-  
13 thylene-terephthalate (PET), polyester, nylon, or fabric blends.

14 6. "Store" means a retail establishment that provides plastic carryout  
15 bags to its customers as a result of the sale of a product or provided  
16 such bags any time prior to March first, two thousand twenty and (a) has  
17 over ten thousand square feet of retail space, or (b) such retail estab-  
18 lishment is part of a chain engaged in the same general field of busi-  
19 ness which operates five or more units of over five thousand square feet  
20 of retail space in this state under common ownership and management.

21 7. "Film plastic" means ~~[uncontaminated non-rigid film plastic packag-~~  
22 ~~ing products composed of plastic resins, which include,]~~ a flexible  
23 sheet or sheets of petroleum or non-petroleum-based plastic resin or  
24 other material of any thickness commonly used in and as packaging  
25 products, which include, but are not limited to, newspaper bags, ~~[dry~~  
26 ~~cleaning bags and]~~ garment bags, shrink-wrap, bags used to carryout and  
27 deliver prepared food and other plastic overwrap.

28 8. "Film plastic bag" means a bag that is made of film plastic.

29 § 2. Section 27-2703 of the environmental conservation law, as added  
30 by chapter 641 of the laws of 2008, subdivision 1 as amended by chapter  
31 481 of the laws of 2014, is amended to read as follows:

32 § 27-2703. Store operator responsibilities.

33 1. The operator of a store shall establish an at-store recycling  
34 program pursuant to the provisions of this title that provides an oppor-  
35 tunity for a customer of the store to return to the store clean plastic  
36 carryout bags and other film plastic.

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

40 § 3. Section 27-2705 of the environmental conservation law, as added  
41 by chapter 641 of the laws of 2008, subdivisions 2, 3 and 4 as amended  
42 by chapter 481 of the laws of 2014, is amended to read as follows:

43 § 27-2705. Recycling program requirements.

44 An at-store recycling program provided by the operator of a store  
45 shall require:

46 1. ~~[a plastic carryout bag provided by the store to have printed or~~  
47 ~~displayed on the bag, in a manner visible to a consumer, the words~~  
48 ~~"PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING". Provided, howev-~~  
49 ~~er, such store shall be allowed for one year from the effective date of~~  
50 ~~this subdivision to use its existing stock of plastic carryout bags. A~~  
51 ~~store may also apply to the commissioner for approval of an alternative~~  
52 ~~plastic bag recycling message. The commissioner shall approve or reject~~  
53 ~~the proposed message within forty five days,~~

54 2.] a collection bin that is visible, easily accessible to the consum-  
55 er, and clearly marked that the collection bin is available for the  
56 purpose of collecting and recycling uncontaminated plastic carryout bags

1 and other film plastic. This subdivision shall apply to stores not with-  
2 in an enclosed shopping mall and stores of at least fifty thousand  
3 square feet within an enclosed shopping mall. In the case of an enclosed  
4 shopping mall, the owner of the enclosed mall shall place bins at  
5 reasonable intervals throughout the enclosed mall area;

6 ~~[3-]~~ 2. all plastic carryout bags and other film plastic collected by  
7 the store to be collected, transported and recycled along with any other  
8 in-store plastic recycling, except for plastic carryout bags and other  
9 film plastic [~~bags~~] that are not sufficiently free of foreign material  
10 to enter the recycling stream. Plastic carryout bags and other film  
11 plastic collected by the store or the manufacturer, which are free of  
12 foreign material, shall not be disposed of in any solid waste disposal  
13 facility permitted or authorized pursuant to title seven of this arti-  
14 cle;

15 ~~[4-]~~ 3. the store or its agent to maintain, for a minimum of three  
16 years, records describing the collection, transport and recycling of  
17 plastic carryout bags and other film plastic collected by weight,  
18 provided however that stores or its agents may weigh such plastic bags,  
19 film plastic and any other in-store plastic recycling at a regional  
20 collection center. Such records shall be made available to the depart-  
21 ment upon request, to demonstrate compliance with this title; and

22 ~~[5-]~~ 4. the operator of the store to (a) make reusable bags available  
23 to customers within the store for purchase, and (b) permit a [~~reusable~~]  
24 reusable bag to be used in lieu of a [~~plastic carryout bag or~~] paper  
25 carryout bag.

26 § 4. Section 27-2707 of the environmental conservation law, as added  
27 by chapter 641 of the laws of 2008, subdivision 1 as amended by chapter  
28 481 of the laws of 2014, is amended to read as follows:

29 § 27-2707. Manufacturer responsibilities.

30 1. When the manufacturer accepts plastic carryout bags and other film  
31 plastic for return, it or its agent shall maintain, for a minimum of  
32 three years, records describing the collection, transport and recycling  
33 of plastic carryout bags and other film plastic collected by weight,  
34 provided that the manufacturer or its agents may weigh such bags, film  
35 plastic and any other plastic resins at a regional collection center.  
36 Such records shall be made available to the department upon request, to  
37 demonstrate compliance with this title.

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

44 § 5. Section 27-2709 of the environmental conservation law, as amended  
45 by chapter 481 of the laws of 2014, is amended to read as follows:

46 § 27-2709. Department responsibility.

47 1. The department shall develop educational materials to encourage the  
48 reduction, reuse and recycling of plastic carryout bags and other film  
49 plastic and shall make those materials available to stores required to  
50 comply with this article.

51 2. The department shall provide information regarding the availability  
52 of recycling facilities and companies that recycle film plastic bags and  
53 other film plastic, including the addresses and phone numbers of such  
54 facilities and companies to stores required to comply with this article.

55 § 6. Section 27-2713 of the environmental conservation law, as amended  
56 by chapter 481 of the laws of 2014, is amended to read as follows:

1 § 27-2713. Preemption.

2 Jurisdiction in all matters pertaining to plastic carryout bag and  
3 other film plastic recycling is by this article vested exclusively in  
4 the state. Any provision of any local law or ordinance, or any rule or  
5 regulation promulgated thereto, governing the recycling of plastic  
6 carryout bags and other film plastic shall, upon the effective date of  
7 this title, be preempted. Provided however, nothing in this section  
8 shall preclude a person from coordinating for recycling or reuse the  
9 collection of plastic carryout bags or other film plastic.

10 § 7. Section 27-2801 of the environmental conservation law, as added  
11 by section 2 of part H of chapter 58 of the laws of 2019, is amended to  
12 read as follows:

13 § 27-2801. Definitions.

14 As used in this title:

15 1. "Exempt bag" means a bag that is: (a) used solely to contain or  
16 wrap uncooked meat, fish, or poultry; (b) [~~bags~~] used by a customer  
17 solely to package bulk items such as fruits, vegetables, grains, or  
18 candy; (c) [~~bags~~] used solely to contain food sliced or prepared to  
19 order; (d) [~~bags~~] used solely to contain a newspaper for delivery to a  
20 subscriber; (e) [~~bags-sold~~] prepackaged by the manufacturer or distribu-  
21 tor in bulk quantities and sold to a consumer [~~at the point of sale~~];  
22 (f) sold as a trash [~~bags~~] or yard waste bag; (g) sold as a food storage  
23 [~~bags~~] bag; (h) used as a garment [~~bags~~] bag; (i) [~~bags~~] prepackaged,  
24 prelabeled, or tagged as merchandise for sale to a customer; (j) a plas-  
25 tic carryout [~~bags~~] bag provided by a restaurant, tavern or similar food  
26 service establishment, as defined in the state sanitary code, to carry-  
27 out or deliver prepared food; [~~or~~] (k) [~~bags~~] provided by a pharmacy to  
28 carry prescription drugs; or (l) a reusable bag.

29 2. "Plastic carryout bag" means [~~any plastic~~] a carryout bag made of  
30 film plastic of any thickness, other than an exempt bag, that is  
31 provided to a customer by a person required to collect tax to be used by  
32 the customer to [~~carry~~] transport tangible personal property, regardless  
33 of whether such person required to collect tax sells any tangible  
34 personal property or service to the customer, and regardless of whether  
35 any tangible personal property or service sold is exempt from tax under  
36 article twenty-eight of the tax law. A bag that meets the requirements  
37 of a reusable bag, as defined in subdivision four of this section, is  
38 not a plastic carryout bag.

39 3. "Paper carryout bag" means a paper bag, other than an exempt bag,  
40 that is provided to a customer by a person required to collect tax to be  
41 used by the customer to carry tangible personal property, regardless of  
42 whether such person required to collect tax sells any tangible personal  
43 property or service to the customer, and regardless of whether any  
44 tangible personal property or service sold is exempt from tax under  
45 article twenty-eight of the tax law.

46 4. "Reusable bag" means a bag designed and manufactured for multiple  
47 reuse that: (a) is either made of [~~cloth~~] (i) hand washable or [~~other~~]  
48 machine washable cloth or fabric [~~that has handles~~], including cotton,  
49 jute, canvas, woven or nonwoven polypropylene (PP), polyethylene-tereph-  
50 thalate (PET), polyester, or nylon fabric, as well as fabric blends that  
51 include any such materials; or [~~(b) a durable bag with handles that is~~  
52 ~~specifically designed and manufactured for multiple reuse.~~] (ii) other  
53 non-film plastic washable material; and

54 (b) has at least one strap or handle that does not stretch and allows  
55 the bag to meet the strength and durability standards in paragraphs (c)  
56 and (d) of this subdivision;

(c) has a minimum lifespan of one hundred twenty-five uses, with a use equal to the ability to carry a minimum of twenty-two pounds over a distance of at least one hundred seventy-five feet; and

(d) has a minimum fabric weight of eighty grams per square meter ("GSM") or equivalent for bags made of any non-film plastic, including woven or nonwoven polypropylene (PP), polyethylene-terephthalate (PET), cotton, jute, or canvas.

5. "Film plastic" means a flexible sheet or sheets of petroleum or non-petroleum based plastic resin or other material, of any thickness, (not including a paper carryout bag) commonly used in and as packaging products, which include, but are not limited to, newspaper bags, garment bags, shrink-wrap, bags used to carryout and deliver prepared food, and other plastic overwrap.

~~[5-]~~ 6. "Person required to collect tax" means any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section eleven hundred five of the tax law.

§ 8. Section 27-2803 of the environmental conservation law, as added by section 2 of part H of chapter 58 of the laws of 2019, is amended to read as follows:

§ 27-2803. Plastic carryout bag ban.

1. No person required to collect tax shall distribute, for free or for sale, any plastic carryout bags to its customers unless such bags are exempt bags as defined in subdivision one of section 27-2801 of this title.

2. No person required to collect tax shall prevent a person from using a bag of any kind that they have brought for purposes of carrying goods.

3. ~~[Nothing in this section shall be deemed to exempt the provisions set forth in title 27 of this article relating to at store recycling]~~  
Any person who was required to comply with the collection and recycling requirements in title 27 of this article prior to March first, two thousand twenty, including the requirement to maintain a collection bin for collection and recycling plastic carryout bags and other film plastic, shall continue to comply.

§ 9. Subdivision 1 of section 27-2807 of the environmental conservation law, as added by section 2 of part H of chapter 58 of the laws of 2019, is amended to read as follows:

1. Any person required to collect tax who violates any provision of ~~[section 27-2803 of]~~ this title ~~[shall receive a warning notice for the first such violation. A person required to collect tax]~~ or any rule or regulation promulgated pursuant thereto, or any final determination or order of the commissioner made pursuant to this chapter shall be liable to the state of New York for a civil penalty ~~[of two hundred fifty]~~ not to exceed one thousand dollars for the first violation ~~[after receiving a warning]~~ and ~~[five hundred]~~ a civil penalty not to exceed five thousand 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.

§ 10. Subdivision 1 of section 71-2728 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is amended to read as follows:

1. Any person who ~~[knowingly or intentionally]~~ violates any provision of or fails to perform any duty imposed pursuant to title 27 of article 27 of this chapter ~~[shall upon the first finding of such a violation be provided with a warning that future violations shall result in the imposition of a fine. Any person convicted of a second violation]~~ or any

1 rule or regulation promulgated pursuant thereto, or any final determi-  
2 nation or order of the commissioner made pursuant to this chapter shall  
3 be liable for a civil penalty not to exceed one [~~hundred~~] thousand  
4 dollars[~~, Any person convicted of a third or subsequent violation shall~~  
5 ~~be liable~~] for the first violation and a civil penalty not to exceed  
6 five [~~hundred~~] thousand dollars for any subsequent violations.

7 § 11. Subdivision 1 of section 71-2730 of the environmental conserva-  
8 tion law, as added by section 2 of part PP of chapter 58 of the laws of  
9 2020, is amended to read as follows:

10 1. Any person who [~~shall violate section 27-3003~~] violates title 30 of  
11 article 27 of this chapter or any rule or regulation promulgated pursu-  
12 ant thereto, or any final determination or order of the commissioner  
13 made pursuant to this chapter shall be liable to the state of New York  
14 for a civil penalty of not more than [~~two~~] five hundred [~~fifty~~] dollars  
15 for the first violation, not more than [~~five hundred~~] one thousand  
16 dollars for the second violation [~~in the same calendar year~~], and not  
17 more than [~~one~~] five thousand dollars for the third and each subsequent  
18 violation [~~in the same calendar year~~]. A hearing or opportunity to be  
19 heard shall be provided prior to the assessment of any civil penalty.

20 § 12. This act shall take effect on the thirtieth day after it shall  
21 have become a law.