

LAWS OF DELAWARE
VOLUME 83
CHAPTER 216
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 212
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO RECYCLING AND WASTE REDUCTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, since 1950, global annual production of plastics has increased from two million tons to over 38 million tons; and

WHEREAS; approximately one third of all plastics produced are single-use plastics, which are plastics designed to be used only once and then thrown away; and

WHEREAS, in 2017, only 8.4 percent of plastics in the United States were recycled; and

WHEREAS, most plastics are disposed of in landfills, are incinerated, or become litter in waterways and oceans; and

WHEREAS, plastics released into the environment do not biodegrade, but instead break down into smaller pieces, known as microplastics, which accumulate in the natural environment and are eaten by fish and other marine life; and that microplastic pollution moves through natural food webs and accumulates in fish and shellfish tissues, which means microplastics and associated pollutants can move into the food chain; and

WHEREAS, approximately eight million tons of plastic end up in the oceans annually; and

WHEREAS, without action, scientists estimate that by 2050 the mass of plastic pollution in the ocean will exceed the mass of fish; that currently, there is a collection of litter in the Pacific Ocean, known as the Great Pacific Garbage Patch, that is 7.7 million square miles and is composed primarily of plastics; that one study found plastics in the gut of every sea turtle examined and in 90 percent of seabirds examined; and that plastics have been known to cause death or reproductive failure in sea turtles, birds, and other organisms that ingest plastic; and

WHEREAS, when plastics break down through photodegradation they release harmful chemicals such as bisphenol A (BPA) into the environment that have been linked to health problems in humans; that these chemicals enter the food chain when consumed by marine life; and that single-use plastic waste creates visual pollution, degrades water quality, and impacts the tourism, fishing, and shipping industries, all of which are major contributors to our economy; and

WHEREAS, it is no longer conscionable to permit the unfettered use and disposal of plastics in this State; we must do our part to minimize plastic pollution in the ocean, and to ensure that future generations have a clean and healthy environment to live, work, and recreate in; that banning or limiting the use of plastic carryout bags, as this item is among the most significant source of beach and ocean pollution; and

WHEREAS, the nascent hemp-growing industry would be a significant force in creating biodegradable raw materials that can be turned into hemp-based bio-packaging, which breaks down in approximately 90 days versus the dozens of years it takes petroleum-based plastics to break down into microplastics in the ocean.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6099A, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6099A. At-store recycling program.

(a) For purposes of this subchapter, the following definitions shall apply:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

(3) "Plastic carryout bag" means a plastic ~~carryout~~ bag provided by a store to a customer at the point of sale made from plastic and not specifically designed and manufactured to be reusable.

(4) "Reusable bag" means a ~~fabrie or plastic~~ carryout bag made of polypropylene fabric, PET non woven fabric, nylon, cloth, cotton, jute, hemp product, or other washable fabric which also meets all of the following requirements:

a. Is ~~either~~ a bag made of cloth or other durable fabric that has stitched handles. ~~handles, or is a durable plastic bag with handles that is at least 2.25 mils thick.~~

~~b. is designed and manufactured to be used for at least 125 uses.~~

c. Has a volume capacity of at least 4 gallons (equivalent to 15 liters or 924 cubic inches).

d. Is machine washable or made from a durable material that can be cleaned and disinfected.

e. Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal Food and Drug Administration.

~~f. Complies with 16 C.F.R. § 260.12 related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.~~

~~g. A reusable carryout bag made from plastic film shall also meet the following requirements: it shall be capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and be at least 2.25 mils thick, measured according to the American Society of Testing Materials (ASTM) Standard D6988.13.~~

(5) "Store" means a retail establishment, excluding a restaurant, engaged in the business of selling or exchanging goods ~~and/or~~ or services for cash, ~~barter~~ barter, or any form of consideration on the assumption that the purchaser of such goods ~~and/or~~ or services has acquired the goods ~~and/or~~ or services for ultimate consumption or use and not resale that provides carryout bags to its customers in conjunction with the sale of such goods ~~and/or services~~ or services. ~~and that meets either of the following requirements:~~

~~a. Has at least 7,000 square feet of retail sales space, or space.~~

~~b. Has 3 or more stores or retail locations, each having at least 3,000 square feet of retail sales space, in the State.~~

(b) The store which provides plastic bags for exemptions listed in paragraph (e)(3) of this section below shall establish an at-store recycling program pursuant to this section that permits a customer of the store to return clean and dry plastic bags and film to the store.

(c) A retail establishment that does not meet the definition of a store, as defined herein, and that provides plastic carryout bags to customers at the point of sale may adopt a similar at-store recycling program, as specified in this section.

(d) An at-store recycling program provided by a store shall include all of the following:

(1) [Repealed.]

(2) A plastic bag and film collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(3) All plastic bags and film collected by the store shall be collected and recycled in a manner consistent with the intent of this section. In no instance, shall a store permit collected plastic bags and film to be disposed of or to further any act other than the recycling of such bags.

(4) The store shall maintain records describing the collection and recycling of plastic bags and film collected by such store and shall make the records available to the Department of Natural Resources and Environmental Control (DNREC), upon request, to demonstrate compliance with this section.

(5) The store shall make reusable bags available to customers within the store, which bags may be purchased by such customer and used in lieu of using a plastic carryout bag or paper bag. This subsection is not applicable to a retail establishment specified pursuant to subsection (c) of this section above.

(e) Effective January 1, 2021, a “store” as defined in ~~paragraph (a)(5)~~ subsection (a) of this section shall not provide any single-use plastic carryout bag, as defined in subsection (a) of this section, to a customer at the point of sale except as provided in this section:

(1) A store may make available for purchase or distribution at the point of sale a reusable grocery bag that meets the requirements of paragraph (a)(4) of this section.

(2) A store may make paper bags available for no cost or charge any price at their discretion.

(3) A store may provide plastic carryout bags for any of the following purposes:

a. Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness.

b. Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste.

c. Bags used to contain live animals such as fish or insects sold in pet stores.

d. Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals.

e. Nonhandled bags used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or a reusable grocery bag.

f. Bags provided to contain an unwrapped food item.

g. Nonhandled bags that are designed to be placed over articles of clothing on a hanger.

h. Bags used by customers inside a business to package loose items, such as nuts, ground coffee, grains, fruits, vegetables, or candies.

(4) Stores that have adopted practices which eliminate the need for plastic carry out bags as outlined in this subsection do not need to participate in an at-store recycling program. ~~program as of March 31, 2021.~~

(f) The manufacturer of a plastic carryout bag shall provide educational materials to all stores required to comply with this section to encourage the reduction, reuse, and recycling of plastic carryout bags and the stores shall place such materials in a conspicuous location, visible to the customers of such store.

(g) (1) Unless expressly authorized by this section, a county, city, or other public agency shall not adopt, Implement, or enforce an ordinance, resolution, regulation, or rule to do any of the following:

a. Require a store that is in compliance with this section to collect, transport, or recycle plastic carryout bags.

b. [Repealed.]

c. Impose auditing or reporting requirements upon a store that are in addition to those set forth in paragraph (d)(4) of this section.

(2) This section does not prohibit the adoption, implementation, or enforcement of any county, city or other local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a county, city, or other public agency, including any action relating to fees for these programs.

~~(3) Any municipality with a population in excess of 50,000 may enact a law requiring stores in excess of 500 square feet to comply with this section.~~

(4) ~~(3)~~ This section does not affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

~~(h)(1) A violation of this section, with such determination thereof being made by the Department, shall result in civil liability or administrative penalty in an amount up to \$500 for the first violation, up to \$1,000 for the second violation, and up to \$2,000 for the third, and each subsequent, violation.~~

~~(2) Any civil penalties collected in accordance with paragraph (h)(1) of this section shall be paid to the Department. The penalties collected pursuant to this section by the Department shall be expended by the Department, upon appropriation by the General Assembly, to assist in funding enforcement and furtherance of the intent of this section.~~

~~(i) This subchapter shall become effective on December 1, 2009.~~

~~(j) All stores subject to this section shall register with the Department by June 30, 2018, on a form provided by the Department. Information required n the form will relate to compliance with this section.~~

Section 2. § 6099A(a)(4)a. becomes effective July 1, 2022.

Section 3. § 6099A(5) becomes effective July 1, 2022.

Approved September 30, 2021