



SPONSOR: Rep. Michael Smith & Rep. Brady & Rep. Longhurst &
Sen. Lopez
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HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 224

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

WHEREAS, the production of paper bags has a significant environmental global impact each year; and

WHEREAS, cities that banned plastic bags saw a surge in the use of paper bags, which it is estimated resulted in approximately 80 million pounds of extra paper trash per year; and

WHEREAS, the belief that paper is better than plastic is not based on science or fact. It is based on misconceptions about how plastic bags are made, how landfills work, the incidence of plastic litter, and that non-biodegrading products are bad for the planet; and

WHEREAS, paper bags have much greater mass and weigh seven to ten times more than plastic bags, so they add seven to ten times more tonnage to the waste stream. This in turn results in an increase in greenhouse gas emissions; and

WHEREAS, paper bag manufacturing is more resource-intensive than plastic bag manufacturing. Every bag, paper or plastic, has an environmental impact.

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 paper 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 fabric, plastic or paper carryout bag which meets all of the following requirements:

a. Is either a bag made of cloth or other fabric that has 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 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 and 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 services for cash, barter or any form of consideration on the assumption that the purchaser of such goods and/or services has acquired the goods and/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 and that meets either of the following requirements:

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

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)(2) of this section 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 (a)(5) shall not provide any single-use paper bag or 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).

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

~~(3-2)~~ A store may provide paper or 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.

82 (h) Paper bags used for prescription drugs.

83 (i) Paper bags used for carryout hot food.

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

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

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

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

93 b. [Repealed.]

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

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

100 (3) Any municipality with a population in excess of 50,000 may enact a law requiring stores in excess of
101 500 square feet to comply with this section.

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

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

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

110 (g) This subchapter shall become effective on December 1, 2009.

111 (h) All stores subject to this section shall register with the Department by June 30, 2018, on a form provided by
112 the Department. Information required in the form will relate to compliance with this section.
113 Section 2. This Act shall become effective January 1, 2021.

SYNOPSIS

This bill expands upon the companion bill (House Bill No. 130 as amended of the 150th General Assembly) relating to the use of single-use plastic bags. This bill prohibits the use of single use paper bags and works to lessen consumption of single use bags in favor of having consumers utilize reusable bags. The purpose of the bill, as detailed in the preamble, is to further clean up Delaware's communities and watersheds, reduce storm water and trash management costs to taxpayers, and promote the health and safety of watersheds, wildlife and humans, and the ecosystem's food chain. On January 1, 2021 this bill enacts a ban on certain stores providing single-use paper bags at check-out.