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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 212

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

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

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

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

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

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

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

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

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

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

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

29 NOW, THEREFORE:

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

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

33 § 6099A. At-store recycling program.

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

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

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

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

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

42 a. Is either a bag made of cloth or other durable fabric that has stitched handles, or is a durable plastic bag
43 with handles that is at least ~~2.25~~ 10 mils thick.

44 b. Is designed and manufactured to be used for at least 125 uses.

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

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

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

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

52 g. A reusable carryout bag made from plastic film shall also meet the following requirements: it shall be
53 capable of carrying 22 pounds over a distance of 175 feet for a minimum of 125 uses and be at least ~~2.25~~ 10 mils
54 thick, measured according to the American Society of Testing and Materials (ASTM) Standard D6988-13.

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

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

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

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

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

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

69 (1) [Repealed.]

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

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

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

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

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

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

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

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

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

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

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

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

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

96 f. ~~Bags provided to contain an unwrapped food item.~~ Bags used to protect or transport prepared foods,
97 beverages, or bakery goods.

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

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

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

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

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

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

110 b. [Repealed.]

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

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

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

119 (4) (3) This section does not affect any contract, franchise, permit, license, or other arrangement regarding the
120 collection or recycling of solid waste or household hazardous waste.

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

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

SYNOPSIS

This Act provides a phased in approach to further the reduction of single-use plastic bags. This Act increases the minimum thickness for a plastic bag to qualify as a reusable bag from 2.25 mils to 10 mils effective January 1, 2022 and makes the restrictions applicable to stores regardless of size effective July 1, 2022. This Act also makes corrections to existing law to make it conform to the standards of the Legislative Drafting Manual.