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HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 130
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 5

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

WHEREAS, billions of plastic bags end up as litter strewn across our communities, roadsides, parks, forests, rivers and coastlines, and clog our storm water management systems resulting in increased cleanup costs; and

WHEREAS, 1,946 plastic bags were collected on Delaware's coastal beaches during the 2018 International Coastal Cleanup Day, amid more than two tons of trash collected in just a few hours that day; and

WHEREAS, it is estimated that less than ten percent of plastic carryout bags are recycled or reused across the country, resulting in more than 3,500,000 tons of plastic bags thrown away or discarded annually; and

WHEREAS, single use plastic carryout bags have significant impacts on wildlife, causing injury and fatalities when turtles and other marine animals mistakenly ingest plastic; and

WHEREAS, plastic carryout bags are difficult to recycle, contaminate other material that is being processed for recycling and composting, and clog the machinery in recycling Materials Recovery Facilities causing daily delay and expense; and

WHEREAS, both retailers and communities can derive significant financial benefit when single-use plastic bags are no longer distributed to consumers, resulting in the elimination or reduction of litter cleanup, sewer/wastewater and recycling management costs; and

WHEREAS, single use plastic bags contribute a toll on human health and well-being as toxic plastic particles are now found in the food chain,

NOW, THEREFORE:

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

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

(42) "Manufacturer" means the producer of a plastic carryout bag sold to a Store.

(23) "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.

(34) "Reusable bag" means ~~either of the following a fabric or plastic carryout bag which meets all of the following requirements:~~

a. Is either a bag made of cloth or other fabric that has handles and is designed and manufactured to be used repeatedly, or ~~b. is a durable plastic bag with handles that is at least 2.25 mils thick and~~

b. Is designed and manufactured to be used repeatedly 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 Section 260.12 of Part 260 of Title 16 of the Code of Federal Regulations 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:

(i) 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.

(56) "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 plastic 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 (e)(3) 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 carryout bags and film to the store.

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

~~(1) By August 1, 2010, all plastic carryout bags provided by the store to a customer shall have printed or displayed on the bag, in a manner conspicuously visible to a consumer, the words "PLEASE RETURN THIS BAG TO A PARTICIPATING STORE FOR RECYCLING", or a similar message encouraging the reuse or recycling of plastic carryout bags.~~

(12) A plastic ~~carryout~~ 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.

(23) All plastic ~~carryout~~ 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 ~~carryout~~ bags and film to be disposed of or to further any act other than the recycling of such bags.

(34) The store shall maintain records describing the collection and recycling of plastic ~~carryout bag~~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.

(45) 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 plastic carryout bag, as defined in Section (a), 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 Section (a)(4).

(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.

(4) Stores that have adopted practices which eliminate the need for plastic carry out bags as outlined in § 6099A(e) do not need to participate in an at-store recycling program as of March 31, 2021.

(fe) 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.

(gf)(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. Impose a plastic carryout bag fee upon a store that is in compliance with this section.~~

~~be. 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 § 6099A.

(4) 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.

(hg)(1) A violation of this section, with such determination thereof being made by the Department DNREC, 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 (g)(1) of this section shall be paid to the Department DNREC. The penalties collected pursuant to this section by the Department DNREC shall be expended by the Department DNREC, upon appropriation by the General Assembly, to assist in funding enforcement and furtherance of the intent of this section.

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