SPONSOR: Rep. Longhurst & Sen. McDowell
Reps. Barbieri, Bennett, Gilligan, Jaques, J. Johnson, Q. Johnson, M. Marshall, Mitchell, Mulrooney, Schooley, Schwartzkopf, Walls, D.P. Williams

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 15

AN ACT TO AMEND CHAPTER 60, TITLE 7 OF THE DELAWARE CODE RELATING TO RECYCLING AND WASTE REDUCTION IN THE STATE OF DELAWARE.

WHEREAS, the production of plastic bags has a significant environmental global impact each year, including the use of millions of barrels of oil, and the deaths of thousands of marine and land animals through ingestion and entanglement; and

WHEREAS, each year, an estimated 500 billion to 1 trillion plastic bags are used worldwide, which is over one million bags per minute, and of which billions of these bags end up as litter strewn across our highways, rivers and coastlines; and

WHEREAS, most plastic carryout bags do not biodegrade which means that the bags break down into smaller and smaller toxic bits that contaminate soil and waterways and enter into the food web where animals and, ultimately, humans accidentally ingest those materials; and

WHEREAS, the U.S. Environmental Protection Agency estimates that no more than five percent of plastic grocery bags were recycled across the country in 2005;

NOW, THEREFORE:

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

Section 1. Amend Chapter 60, Title 7 of the Delaware Code by adding a new “Subchapter IX” thereto, as follows:

“Subchapter IX. Recycling and Waste Reduction.

§ 6101. At-Store Recycling Program.

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

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

(2) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

(3) "Reusable bag" means either of the following:

HD : MPM : SES
3941450001
Released: 03/06/2009 11:21 AM

a. A bag made of cloth or other fabric that has handles and is designed and manufactured to be used repeatedly.

b. A durable plastic bag with handles that is at least 2.25 mils thick and is designed and manufactured to be used repeatedly.

(4) "Store" means a retail establishment 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 three (3) or more stores or retail locations in the State of Delaware.

(b) The store shall establish an at-store recycling program pursuant to this section that permits a customer of the store to return clean plastic carryout bags 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) 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.

(2) A plastic carryout bag 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 carryout bags 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 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 carryout bags 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) above.

(e) 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.

(f)

(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.

c. Impose auditing or reporting requirements upon a store that are in addition to those set forth in subsection (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) 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.

(g)

(1) A violation of this section, with such determination thereof being made by DNREC, shall result in civil liability in an amount up to five hundred dollars ($500) for the first violation, up to one thousand dollars ($1,000) for the second violation, and up to two thousand dollars ($2,000) for the third, and each subsequent, violation.

(2) Any civil penalties collected in accordance with subsection (1) shall be paid to DNREC. The penalties collected pursuant to this section by DNREC shall be expended by DNREC, upon

appropriation by the Legislature, to assist in funding enforcement and furtherance of the intent of this section.

(h) This Act shall become effective on December 1, 2009.

(i) This section shall remain in effect through and including December 1, 2014, unless later-enacted legislation extends such date."

SYNOPSIS

It is the intent of the Legislature, in enacting this Bill, to encourage the use of reusable bags by consumers and retailers and to reduce the consumption of limited use plastic carryout bags that require massive quantities of oil, cause countless pollution, and, as such bags decompose, are harmful to the health of the environment and humans.

This Bill would require a store, as defined, to establish an at-store recycling program that provides an opportunity for a customer of the store to return clean plastic carryout bags to that store. The Bill would require a plastic carryout bag provided by a store to have specified information printed or displayed on the bag by a date certain set forth in the Bill, and would require the placement of a plastic bag collection bin in each store that is visible and easily accessible to the consumer. The Bill would also require a store to make reusable bags, as defined, available to customers for purchase.

The Bill would require a manufacturer of plastic carryout bags to provide educational materials to encourage the reduction, reuse, and recycling of plastic bags and to make the materials available to stores.

The Bill would prohibit a County, city, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that requires a store to collect, transport, or recycle plastic carryout bags or conduct additional auditing or reporting, or imposing a plastic bag fee upon a store, except as specified.

The Bill would authorize the imposition of civil liability, in specified amounts, and would require any civil penalties collected to be paid to DNREC. The Bill would authorize any penalties collected by DNREC to be expended by DNREC, upon appropriation by the Legislature, to enforce and further the intent of this Act.