

# **HOUSE . . . . . No. 3945**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, July 1, 2019.

The committee on Environment, Natural Resources and Agriculture to whom was referred the petition (accompanied by bill, House, No. 771) of Lori A. Ehrlich, James B. Eldridge and others for legislation to reduce plastic bag pollution by requiring the availability of reusable bags at certain stores, reports recommending that the accompanying bill (House, No. 3945) ought to pass [Senator Eldridge dissents].

For the committee,

SMITTY PIGNATELLI.

**HOUSE . . . . . No. 3945**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act reducing plastic bag pollution.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. The General Laws are hereby amended by inserting after chapter 21O, the  
2 following chapter:

3           CHAPTER 21P.

4           PLASTIC BAG REDUCTION

5           Section 1. As used in this chapter, the following words shall have the following meanings  
6 unless the context clearly requires otherwise:

7                   “Department”, the department of environmental protection.

8                   “Person”, an individual, partnership, trust, association, corporation, society, club,  
9 institution, organization or other entity.

10                   “Postconsumer recycled material”, material used in a recycled paper bag that would  
11 otherwise be destined for solid waste disposal having completed its intended end use and product

12 life cycle, and does not comprise any material or byproduct generated from, and commonly  
13 reused within, an original manufacturing and fabrication process.

14 “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable, (ii) contains a  
15 minimum of 40 per cent postconsumer recycled materials, provided, however, that an 8 pound or  
16 smaller paper bag shall contain a minimum of 20 per cent postconsumer recycled material, and  
17 (iii) displays on the outside of the bag, the words "100% Recyclable" and “40 % postconsumer  
18 recycled content", or such other per cent of postconsumer recycled material content as required  
19 under clause (ii), or other standard established by department regulation.

20 “Retail establishment”, any store or premises, in which a person is engaged in the  
21 retail business of selling or providing merchandise, goods, groceries, prepared take-out food and  
22 beverages for consumption off-premises, or the servicing of an item, directly to customers at  
23 such store or premises, including but not limited to, grocery stores, department stores,  
24 pharmacies, convenience stores, restaurants, coffee shops, and seasonal and temporary  
25 businesses, such as farmers markets and public markets, provided the use of a food truck or other  
26 motor vehicle, mobile canteen, trailer, market pushcart, moveable roadside stand, used by a  
27 person from which to engage in such business directly with customers, shall be considered a  
28 “retail establishment” for the purpose of this definition.

29 A non-profit organization, charity or religious institution that has a retail establishment  
30 and holds itself out to the public as engaging in retail activities that are characteristic of similar  
31 type retail businesses, whether or not for profit, shall when engaging in such activity, be  
32 considered a “retail establishment”.

33                   “Reusable carryout bag”, a bag with handles made of washable, cloth, hemp, or  
34 other fibers, fabrics or materials, or combination thereof, that is designed and manufactured  
35 specifically for multiple uses, which meets the standards established by department regulation.

36                   “Serviced”, or “Servicing”, A service performed to clean, repair, improve,  
37 refinish or alter an item of a customer by a person engaged in a retail business of customarily  
38 providing such services, including but not limited to, dry cleaning and tailoring articles of  
39 clothing, jewelry repair, and shoe and leather repair.

40                   “Single-use plastic carryout bag”, a plastic film-type bag with or without handles, which  
41 is 4 mils thick or less, provided by a retail establishment to customers at its business location to  
42 carry items purchased or serviced, and is not a recycled paper bag or reusable carryout bag.

43                   Section 2. (a) Except as provided in this chapter, a retail establishment shall not  
44 provide a customer with a single-use plastic carryout bag or provide any other carryout bag that  
45 is not a recycled paper bag, or reusable carryout bag for the customer to carry away an item  
46 purchased or serviced, from the retail establishment.

47                   (b) A retail establishment when delivering prepared food, or other food item,  
48 directly to a customer at a place other than the location of such establishment, shall be subject to  
49 the prohibition in subsection (a).

50                   (c) The prohibition in subsection (a), shall not apply to any type of bag, used by a  
51 retail establishment, or provided to its customer for: (1) prescription medications, (2) produce,  
52 meats, poultry, fish, bread, and other food items to keep such items fresh or unsoiled, (3)  
53 preventing frozen food items, including ice cream, from thawing, (4) containing products or  
54 items that are saturated, wet, prone to leak, or need to be immersed in a liquid. (5) containing

55 products or items that are granular, powdery, dirty or greasy, (6) protecting an item from damage  
56 or contamination, or to protect a second item when both are carried together from the retail  
57 establishment, (7) protecting articles of clothing on a hanger, (8) items that contain any  
58 herbicide, pesticide, solvent, corrosive, automotive type fluid or other chemical, that can be  
59 harmful to public health, whether or not, the item is prepackaged in a sealed container or bag, (9)  
60 protecting small items from loss, and (10) any item that requires the use of a certain type bag,  
61 under federal and state laws and regulations.

62 (d) A retail establishment may charge a fee for a recycled paper bag, reusable  
63 carryout bag, or other type of carryout bag approved by department regulation under section 4.  
64 The retail business establishment shall retain any collected fees.

65 (e) Notwithstanding the prohibition in subsection (a), a customer shall not be prohibited  
66 under said subsection, from bringing a clean personal bag, made or comprised of any material, to  
67 the retail establishment to carry out items purchased or serviced from such establishment.

68 (f) Notwithstanding the prohibition in subsection (a), a retail establishment shall  
69 not be prohibited under said subsection, from selling, or offering for sale, to customers:

70 (1) Any package containing several bags, including but not limited to, food bags,  
71 sandwich bags, yard waste bags, garbage bags, or municipal pay-as-you-throw program trash  
72 bags;

73 (2) Any product, merchandise, or good with a protective bag, or a bag to hold  
74 related accessories, parts, and instruction manuals, or a bag used as product packaging, that the  
75 retail establishment received with such item or product, from the manufacturer, distributor or  
76 vendor; or

77 (3) Any bag that is not a retail type carryout bag, which is sold, or offered for  
78 sale, as a product or merchandise, including but not limited to, sports bags, handbags, equipment  
79 bags, tent bags, or other bags specifically designed to protect or contain a particular item.

80 (g) Notwithstanding any provision of this chapter, a nonprofit organization,  
81 charity, or religious institution, shall be exempt from the provisions of subsection (a), when  
82 providing or distributing, prepared foods, groceries, or articles of clothing directly to those in  
83 need, including the elderly.

84 Section 3. (a) The department shall enforce this chapter, and a city or town,  
85 through its enforcing authority as determined under subparagraph (d), shall enforce this chapter  
86 in such city or town.

87 (b) A retail establishment that violates the provisions of this chapter shall be  
88 subject a warning for the first violation; a \$50 civil penalty for a second violation; and a \$100  
89 civil penalty for a third, or subsequent violation. Each day a retail establishment is in violation of  
90 this chapter shall be considered a separate violation.

91 Each city or town, and the department, shall dispose of a civil violation under this  
92 subsection by the non-criminal method of disposition procedures contained in section 21D of  
93 chapter 40, without an enabling ordinance or by law, or by the equivalent of these procedures by  
94 the department under its regulations.

95 (c) Notwithstanding the provisions of subsection (b), a city or town may establish  
96 increased civil penalties for violations occurring within the municipality. In a city or town having  
97 an ordinance or by-law that imposes a civil fine that is greater than the civil fine imposed for a

98 violation under subsection (b), the ordinance or by-law shall prevail over the prescribed penalty  
99 under said subsection.

100 (d) A city or town shall determine the municipal board, department, or official  
101 responsible for the local enforcement of this chapter and for the collection of monies resulting  
102 from civil penalties assessed for violations of this chapter. A city or town shall retain any civil  
103 penalties it collects for such violations.

104 (e) The department shall enforce the provisions of this chapter and may assess  
105 additional civil administrative penalties when a retail establishment repeatedly violates the  
106 provision of this chapter or related department regulation.

107 Section 4. The department shall adopt regulations, and may amend such  
108 regulations, to implement, enforce, and administer this chapter, consistent with the provisions of  
109 this chapter.

110 The department shall establish standards for reusable carryout bags, including but not  
111 limited to, the minimum amount of weight and number of uses required of a reusable carryout  
112 bag, and the minimum amount of any recycled material required in certain types reusable  
113 carryout bags.

114 To further advance the use of non-plastic type carryout bags and reduce waste, as  
115 necessary the department by regulation may, (i) increase or adjust the postconsumer recycled  
116 material percentage in a recycled paper bag, and (ii) allow a retail establishment to use other  
117 non-plastic type carryout bags, that are recyclable or compostable, including carryout bags  
118 composed of a plant material, in addition to allowed recycled paper bags and reusable carryout

119 bags under subsection (a), provided the department by regulation, establishes standards for the  
120 allowed use of such bag.

121           When adopting or amending any standard for an allowed carryout bag under this chapter,  
122 the department shall consult with the department of public health relating to issues of food safety  
123 regarding the materials used in such bag.

124           Section 5. The provisions of this chapter when effective, shall preempt any  
125 limitation by any political subdivision of the commonwealth regarding the use, sale, or  
126 distribution of carryout bags, or other bags, by a retail establishment or other entity, to the extent  
127 such subject is regulated or covered by this chapter. Any existing municipal ordinance, by-law,  
128 or regulation, including a regulation of a board of health, that is inconsistent with the provisions  
129 of this chapter when effective, shall be null and void.

130           SECTION 2. Section 1 shall take effect 1 year after passage of this act.