

HOUSE No. 4826

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 2, 2022.

The committee on Environment, Natural Resources and Agriculture to whom was referred the joint petition (accompanied by bill, House, No. 902) of Lori A. Ehrlich, James B. Eldridge and others relative to plastic bag reduction, and the petition (accompanied by bill, House, No. 992) of Smitty Pignatelli and others relative to reducing plastic bag pollution, reports recommending that the accompanying bill (House, No. 4826) ought to pass.

For the committee,

MINDY DOMB.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to plastic bag reduction.

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 “Commissioner”, the commissioner of revenue.

8 “Department”, the department of environmental protection.

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

11 “Postconsumer recycled material”, material used in a recycled paper bag that would
12 otherwise be destined for solid waste disposal, having completed its intended end use and
13 product life cycle, and that does not comprise any material or byproduct generated from, and
14 commonly reused within, an original manufacturing and fabrication process.

15 “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable; (ii) contains either:
16 (A) a minimum of 40 per cent postconsumer recycled materials; or (B) if not more than a so-
17 called 8 pound paper bag, not less than 20 per cent postconsumer recycled material; and (iii)
18 displays on the outside of the bag the words “100% Recyclable” and either : (A) “40%
19 postconsumer recycled content”; or (B) such other per cent of postconsumer recycled material
20 established by department regulation.

21 “Retail establishment”, a store or premises in which a person is engaged in the retail
22 business of selling or providing merchandise, goods, groceries, prepared take-out food and
23 beverages for consumption off-premises or the servicing of an item, directly to customers at such
24 store or premises, including, but not limited to, grocery stores, department stores, pharmacies,
25 convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including
26 farmers markets and public markets; provided, however, that a “retail establishment” shall also
27 include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable
28 roadside stand used by a person from which to engage in such business directly with customers
29 and business establishments without a storefront, including, but not limited to, a business
30 delivering prepared foods or other food items, web-based or catalog business or delivery services
31 used by a retail establishment; provided further, that a “retail establishment” shall include a non-
32 profit organization, charity or religious institution that has a retail establishment and holds itself

33 out to the public as engaging in retail activities that are characteristic of similar type retail
34 businesses, whether or not for profit when engaging in such activity.

35 “Reusable bag”, a bag that is not a plastic film bag that has handles that are stitched and
36 not heat-fused, and that is made of washable cloth, hemp or other woven or non-woven fibers,
37 fabrics or materials that are at least 80 grams per square meter, designed and manufactured
38 specifically for multiple uses.

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

43 “Single-use plastic bag”, a bag made of plastic film with or without handles provided by
44 a retail establishment to customers at its business location to carry items purchased from or
45 serviced by the retail establishment and that is not a recycled paper bag or reusable bag.

46 Section 2. (a) A retail establishment shall not provide a customer with a single-use plastic
47 bag or provide any other bag, unless specifically allowed under this chapter that is not: (i) a
48 recycled paper bag; or (ii) a reusable bag for the customer to carry away an item purchased from
49 or serviced by the retail establishment.

50 (b) Subsections (a) and (c) shall not apply to any type of bag used by a retail
51 establishment or provided by a retail establishment to a customer for: (i) prescription medication;
52 (ii) produce, meats, poultry, fish, bread and other food items to keep such items, including
53 unwrapped items, fresh or unsoiled; (iii) preventing frozen food items, including ice cream, from
54 thawing; (iv) protecting articles of clothing on a hanger; (v) protecting small items from loss;

55 (vi) providing or distributing prepared foods, groceries or articles of clothing at no cost or at a
56 substantially reduced cost by a nonprofit organization, charity or religious institution; or (vii) any
57 item that requires the use of a certain type of bag under federal or state law.

58 (c) A retail establishment may make available for purchase a recycled paper bag or
59 reusable bag; provided, however, that the price of a recycled paper bag or reusable bag shall be
60 not less than \$0.10; and provided further, that such a recycled paper bag or reusable bag provided
61 to a customer to carry away an item purchased from or serviced by a retail establishment shall
62 not be subject to tax under chapter 64H or chapter 64I.

63 (d) A retail establishment shall be exempt from the requirements of subsections (c) and
64 (e) if the retail establishment: (i) has not more than 3 store locations under the same ownership
65 and each store location has less than 4,000 square feet of retail selling space and not more than
66 15 employees; (ii): (A) is not a food establishment under chapter 94 or any regulations
67 promulgated pursuant to said chapter 94; or (B) provided less than 15,000 single-use plastic
68 bags, recycled paper bags or reusable bags to consumers at the point of sale in total during the
69 previous calendar year; and (iii) annually submits to the department an affidavit attesting that the
70 retail establishment meets the requirements of this subsection.

71 Nothing in this subsection shall prohibit a retail establishment from making available for
72 purchase a recycled paper bag or reusable bag under subsections (c).

73 (e) For each recycled paper bag sold, a retail establishment shall remit \$0.05 to the
74 commissioner of revenue at the same time and in the same manner as the sales tax due to the
75 commonwealth and such amounts shall be administered in accordance with chapter 62C.

76 Not less than quarterly, money received by the commissioner under this section shall be
77 distributed, credited and paid by the state treasurer upon certification of the commissioner to
78 each city and town in proportion to the amount of the sums received from the sales of recycled
79 paper bags sold in the city or town. Sums received by a city or town under this section shall be
80 used for reusable bags for residents, litter prevention, multilingual bag reuse and recycling
81 education and promotion, enforcement of this chapter, cleanup programs, recycling programs
82 and associated costs, waste reduction, composting programs, beautification and community
83 greening. If the amount of the distribution to a city or town is \$25,000 or less, the chief executive
84 officer as defined in section 7 of chapter 4, may expend such funds for the purposes provided in
85 this paragraph without further appropriation by the city or town.

86 Notwithstanding section 21 of chapter 62C, the commissioner may make available to
87 cities and towns any information necessary for the administration of the fee collected by a retail
88 establishment under this section including, but not limited to, a report of the amount of fees
89 collected in the aggregate by each city or town under this section in the preceding fiscal year and
90 the identification of each individual retail establishment collecting fees on recycled paper bag
91 sold under this chapter.

92 Each even-numbered year, each city and town receiving money under this subsection
93 shall provide a report to the department on: (i) the total amount received under this subsection;
94 and (ii) a description of expenditures made with the money received under this subsection.

95 (f) Nothing in this section shall prohibit a customer from bringing a personal bag, made
96 or comprised of any material, to a retail establishment to carry out items purchased from or
97 serviced by the retail establishment.

98 (g) A retail establishment shall not be prohibited from selling or offering for sale to
99 customers: (i) any package containing several bags, including, but not limited to, food bags,
100 sandwich bags, yard waste bags, garbage bags or municipal pay-as-you-throw program trash
101 bags; (ii) any product, merchandise or good with a protective bag, a bag to hold related
102 accessories, parts or instruction manuals or a bag used as product packaging that the retail
103 establishment received with such item or product from the manufacturer, distributor or vendor;
104 or (iii) any bag that is not a retail type carryout bag that is sold or offered for sale as a product or
105 merchandise, including, but not limited to, sports bags, handbags, equipment bags, tent bags or
106 other bags specifically designed to protect or contain a particular item.

107 (h) Notwithstanding subsection (c) and to the extent permitted under federal and state
108 law, a retail establishment that makes available for purchase a recycled paper bag at the point of
109 sale shall not charge a fee for the bag to a customer using an electronic benefit transfer card as
110 payment.

111 Section 3. (a) Each city and town shall enforce this chapter through its enforcing
112 authority as determined under subsection (c).

113 (b) A retail establishment that violates this chapter shall be subject to a warning for the
114 first violation, a civil penalty of \$500 for the second violation and a civil penalty of \$1000 for a
115 third or subsequent violation. Each day a retail establishment is in violation of this chapter shall
116 be considered a separate violation.

117 Each city and town shall dispose of a civil violation under this subsection by the non-
118 criminal method of disposition procedures contained in section 21D of chapter 40 without an
119 enabling ordinance or bylaw.

120 (c) Each city and town shall designate the municipal board, department or official
121 responsible for the local enforcement of this chapter and for the collection of money resulting
122 from civil penalties assessed for violations of this chapter. A city or town shall retain any civil
123 penalties collected for such violations.

124 Section 4. The department shall establish standards for reusable bags including, but not
125 limited to, the minimum amount of weight, number of uses and the minimum amount of recycled
126 material required in reusable bags.

127 The department may through regulation: (i) increase or adjust the postconsumer recycled
128 material percentage in a recycled paper bag; (ii) increase or adjust the fee established under
129 subsection (c) of section 2; (iii) allow a retail establishment to use other non-plastic type carryout
130 bags that are recyclable or compostable, provided however that such regulations shall not be
131 implemented prior to the universal availability of a safe disposal route for compostable bags and,
132 provided further, that the department shall seek public comment on said proposed regulations;
133 and (iv) promulgate standards regulating bags authorized under subsection (b) of section 2.

134 The department shall, when adopting or amending any standard for an allowed recycled
135 or reusable bag under this chapter, consult with the department of public health on issues relating
136 to food safety and the materials used to produce the bags.

137 The department shall conduct an evaluation of the implementation of this act every three
138 years and shall submit to the clerks of the senate and the house of representatives a report
139 including legislative recommendations not later than December 31.

140 Section 5. Nothing in this chapter shall prohibit or limit the department's authority to
141 enforce this chapter.

142 SECTION 2. Subsection (b) of section 21 of chapter 62C of the General Laws, as
143 amended by section 15 of chapter 5 of the acts of 2019, is hereby further amended by adding the
144 following clause:-

145 (32) the disclosure of information necessary for administration of the recycled paper bag
146 fee imposed under section 2 of chapter 21P.

147 SECTION 3. Subsection (d) of section 2 of chapter 21P is hereby repealed.

148 SECTION 4. Notwithstanding any general or special law to the contrary, the department
149 of transitional assistance shall, if necessary to implement subsection (h) of section 2 of chapter
150 21P of the General Laws, use reasonable efforts to seek a waiver from the federal Food and
151 Nutrition Service to implement said subsection (h) of said section 2 of said chapter 21P.

152 SECTION 5. Notwithstanding any general or special law to the contrary, the department
153 of environmental protection shall inform the clerks of the house and senate in the case of a
154 regional or national market shortage or a forecasted regional or national market shortage in the
155 paper bag supply chain.

156 SECTION 6. Section 1 shall take effect 6 months after passage of this act.

157 SECTION 7. Section 3 shall take effect on January 1, 2025.