

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2776

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED SEPTEMBER 27, 2018

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Co-Sponsored by:

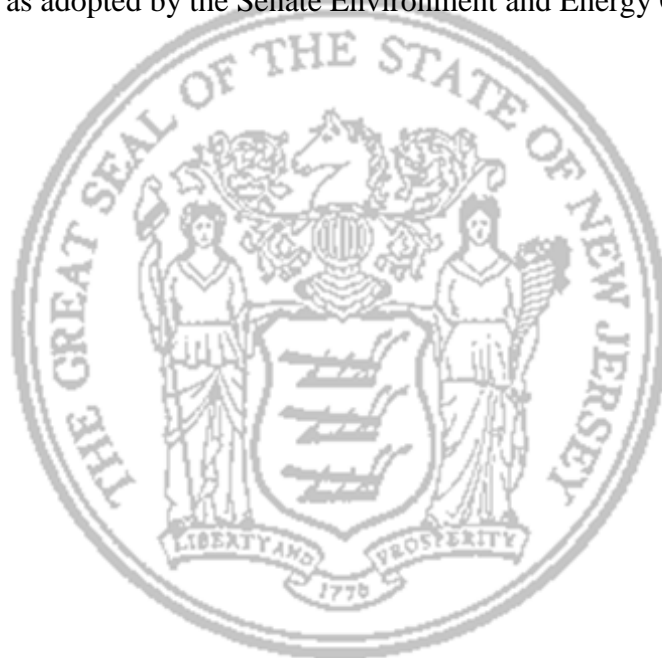
Senators Gill and Gopal

SYNOPSIS

Prohibits carryout bags made of plastic film, polystyrene foam food service products, and single-use plastic straws; assesses fee on paper carryout bags.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



(Sponsorship Updated As Of: 8/26/2019)

1 AN ACT concerning single-use carryout bags, polystyrene foam
2 food service products, and single-use plastic straws, and
3 supplementing Title 13 of the Revised Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. As used in this act:

9 “Carryout bag” means a bag that is provided by a store or food
10 service business to a customer at the point of sale for the purpose of
11 transporting groceries, prepared foods, or retail goods.

12 “Department” means the Department of Environmental
13 Protection.

14 “Director” means the Director of the Division of Taxation in the
15 Department of the Treasury.

16 “Food service business” means a business that sells or provides
17 food for consumption on or off the premises, and includes, but is
18 not limited to, any restaurant, café, delicatessen, coffee shop,
19 supermarket or grocery store, vending truck or cart, food truck,
20 movie theater, or business or institutional cafeteria, including those
21 operated by or on behalf of any governmental entity.

22 “Operator” means a person in control of, or having responsibility
23 for, the daily operation of a store, which may include, but need not be
24 limited to, the owner of the store.

25 “Plastic” means a synthetic material made from linking
26 monomers through a chemical reaction to create an organic polymer
27 chain that can be molded or extruded at high heat into various solid
28 forms retaining their defined shapes during the life cycle and after
29 disposal.

30 “Plastic film” means any non-woven, flexible plastic that is less
31 than 10 mils thick.

32 “Polystyrene foam” means blown polystyrene and expanded and
33 extruded foams that are thermoplastic petrochemical materials
34 utilizing a styrene monomer and processed by a number of
35 techniques, including, but not limited to, fusion of polymer spheres
36 (expandable bead polystyrene), injection molding, foam molding,
37 and extrusion-blow molding (extruded foam polystyrene).

38 “Polystyrene foam food service product” means a product made,
39 in whole or in part, of polystyrene foam that is used for selling or
40 providing a food or beverage, and includes, but is not limited to, a
41 food container, plate, hot or cold beverage cup, meat or vegetable
42 tray, cutlery, or egg carton.

43 “Store” means any grocery store, supermarket, convenience
44 store, liquor store, pharmacy, drug store, or other retail
45 establishment that has over 1,000 square feet of retail space.
46

47 2. a. No store or food service business shall provide a carryout
48 bag made of plastic film to a customer.

- 1 b. Nothing in this section shall be construed to prohibit the
2 provision to a customer of:
- 3 (1) a non-handled bag made of plastic film used to separate and
4 prevent a food item from damaging or contaminating another item;
- 5 (2) a bag made of plastic film used to contain an unwrapped food
6 item; or
- 7 (3) a durable, handled carryout bag made from any natural or
8 synthetic material other than plastic film, including, but not
9 necessarily limited to, woven or nonwoven plastic or cloth, that is at
10 least 10 mils thick, and that is specifically designed and
11 manufactured for multiple reuse.
- 12
- 13 3. a. No person shall sell or offer for sale in the State any
14 polystyrene foam food service product.
- 15 b. No food service business shall sell or provide any food in a
16 polystyrene foam food service product.
- 17 c. The following items shall be exempt from the provisions of
18 subsections a. and b. of this section for a period of one year from
19 the effective date of this section:
- 20 (1) Disposable, long-handled polystyrene foam soda spoons
21 when required and used for thick drinks;
- 22 (2) Portion cups of two ounces or less, if used for hot foods or
23 foods requiring lids; and
- 24 (3) Meat and fish trays for raw or butchered meat, including
25 poultry, or fish that is sold from a refrigerator or similar retail
26 appliance.
- 27 d. The department may extend any exemption provided for in
28 subsection c. of this section for additional periods not to exceed one
29 year upon a written determination that there is no cost-effective and
30 readily available alternative for the item. An exemption shall
31 expire after one year unless the department extends it pursuant to
32 this subsection.
- 33 e. The department may, upon written application by a person or
34 food service business, waive the provisions of subsections a. and b.
35 of this section for the person or food service business for a period
36 not to exceed one year, if:
- 37 (1) there is no feasible and commercially available alternative for
38 a specific polystyrene foam food service product; or
- 39 (2) the person or food service business has less than \$500,000 in
40 gross annual income and there is no reasonably affordable,
41 commercially-available alternative to the polystyrene foam food
42 service product.
- 43 The department shall prescribe the form and manner of the
44 application for a waiver pursuant to this subsection. The
45 department may, upon written application, extend any waiver
46 granted pursuant to this section for additional periods not to exceed
47 one year.

- 1 4. a. No food service business shall sell or provide a single-use
2 plastic straw to a customer.
- 3 b. Notwithstanding the provisions of subsection a. of this
4 section, upon request, a food service business may provide a single-
5 use plastic straw to a person that requires a single-use plastic straw
6 due to a disability or medical condition.
7
- 8 5. a. Each operator of a store shall impose a fee of at least
9 \$0.10 on the customer for each paper bag that is provided as a
10 carryout bag to the customer.
- 11 b. Each operator shall indicate the total number of paper bags
12 provided to a customer and the total fee charged pursuant to
13 subsection a. of this section on the sales or other receipt given to the
14 customer.
- 15 c. Each operator shall remit \$0.05 of the fee collected to the
16 director in a manner prescribed by the director, and retain the
17 remaining amount. Each operator shall be personally liable for the
18 fees imposed, collected, or required to be collected. Any operator
19 shall have the same right in respect to collecting the fee from a
20 customer as if the fee were a part of the sales price of the product
21 sold and payable at the same time.
- 22 d. The director may use up to one percent of the revenues
23 collected pursuant to subsection c. of this section to defray the costs
24 of administration and collection of the fees. The director shall
25 deposit the remainder of the revenues into the “Plastic Pollution
26 Prevention Fund” established pursuant to section 6 of this act.
- 27 e. The fee imposed pursuant to this section shall be governed
28 by the provisions of the State Uniform Tax Procedure Law,
29 R.S.54:48-1 et seq.
- 30 f. The director shall adopt, pursuant to the “Administrative
31 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
32 regulations necessary for the implementation of this section.
33
- 34 6. a. There is established in the Department of Environmental
35 Protection a nonlapsing fund to be known as the “Plastic Pollution
36 Prevention Fund.”
- 37 b. The fund shall be credited with:
- 38 (1) the fees collected by the director pursuant to section 5 of this
39 act;
- 40 (2) any penalties collected by the department, a municipality, or
41 an entity certified pursuant to the “County Environmental Health
42 Act,” P.L.1977, c.443 (C.26:3a2-21 et seq.) pursuant to section 8 of
43 this act;
- 44 (3) all interest or other income earned and received on
45 investment of the moneys in the fund; and
- 46 (4) any other monies that may be made available, or
47 appropriated, to the department for the purposes of the fund.

1 c. The department shall use moneys in the fund to establish:

2 (1) programs and grants or other incentives to facilitate the
3 development of the State's plastics recycling industry, including the
4 establishment of one or more plastics recycling facilities; and

5 (2) a public education and outreach program to inform the public
6 about the environmental impact of single-use plastics and encourage
7 the use of reusable alternatives to single-use plastics, which may
8 include, but need not be limited to, technical assistance to the
9 business community, educational signage or other media, and
10 compliance materials.

11 d. The department shall develop guidelines to prioritize the
12 disbursement of monies from the fund and shall post these
13 guidelines on its Internet website.

14 e. The department shall submit annually to the Governor and,
15 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the
16 Legislature a report detailing the single-use plastic reduction and
17 plastic waste prevention programs and activities undertaken and the
18 funds disbursed pursuant to this section.

19

20 7. This act shall supersede and preempt municipal and county
21 rules, regulations, codes, and ordinances concerning the regulation
22 or prohibition of carryout bags, polystyrene foam food service
23 products, and single-use plastic straws, or fees charged therefor.

24

25 8. a. Any person or entity that violates any provision of this act
26 shall be subject to a penalty of up to \$500 for a first offense, up to
27 \$1,000 for a second offense, and up to \$5,000 for a third or
28 subsequent offense, to be collected in a civil action by a summary
29 proceeding under the "Penalty Enforcement Law of 1999,"
30 P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a court
31 of competent jurisdiction wherein injunctive relief has been
32 requested. If the violation is of a continuing nature, each day
33 during which it continues shall constitute an additional, separate,
34 and distinct offense. The Superior Court and the municipal court
35 shall have jurisdiction to enforce the provisions of the "Penalty
36 Enforcement Law of 1999" in connection with this act.

37 b. Any penalty collected pursuant to subsection a. of this
38 section shall be remitted to the director for deposit in the "Plastic
39 Pollution Prevention Fund" established pursuant to section 6 of this
40 act.

41 c. The Department of Environmental Protection, a
42 municipality, and any entity certified pursuant to the "County
43 Environmental Health Act," P.L.1977, c.443 (C.26:3a2-21 et seq.)
44 shall have the authority to enforce the provisions of this act. Those
45 entities may institute a civil action for injunctive relief to enforce
46 this act and to prohibit and prevent a violation thereof, and the court
47 may proceed in the action in a summary manner.

- 1 9. a. There is established in the Department of Environmental
2 Protection the Plastics Advisory Council. The council shall monitor
3 the implementation of this act, and evaluate its effectiveness in
4 reducing single-use plastics and plastic waste in the State.
- 5 b. The council shall consist of 14 members as follows:
- 6 (1) the Commissioner of Environmental Protection, who shall
7 serve ex officio, or the commissioner's designee;
- 8 (2) the Commissioner of Health, who shall serve ex officio, or
9 the commissioner's designee;
- 10 (3) the following members appointed by the Governor:
- 11 (a) two members of the academic community with expertise on
12 the issues of single-use plastics and plastic waste;
- 13 (b) four members representing the environmental community;
- 14 (c) four members representing food service businesses and
15 stores;
- 16 (d) one member representing the recycling industry; and
17 (e) one member representing local governments.
- 18 c. All appointments to the council shall be made no later than
19 90 days after the effective date of this section. The term of office of
20 each public member shall be three years. Each member shall serve
21 until a successor has been appointed and qualified, and vacancies
22 shall be filled in the same manner as the original appointments for
23 the remainder of the unexpired term. A member is eligible for
24 reappointment to the council. The members of the council shall
25 serve without compensation, but shall be eligible for necessary and
26 reasonable expenses incurred in the performance of their official
27 duties within the limits of funds appropriated or otherwise made
28 available for the council's purposes.
- 29 d. The council shall organize as soon as practicable following
30 the appointment of its members and shall select a chairperson and a
31 vice-chairperson from among its members, as well as a secretary
32 who need not be a member of the council. A majority of the
33 membership of the council shall constitute a quorum for the
34 transaction of council business. The council may meet and hold
35 hearings at the place or places it designates.
- 36 e. No later than one year after the effective date of this section,
37 and each year thereafter, the council shall submit a report to the
38 Governor, the Legislature pursuant to section 2 of P.L.1991, c.164
39 (C.52:14-19.1), and the respective chairpersons of the Senate
40 Environment and Energy Committee and the Assembly
41 Environment and Solid Waste Committee, or their successors,
42 evaluating the implementation and the effectiveness of this act, and
43 making any recommendations for legislative or administrative
44 action.
- 45
- 46 10. No later than one year after the effective date of this section,
47 the Department of Environmental Protection shall submit a report to
48 the Governor and, pursuant to section 2 of P.L.1991, c.164

1 (C.52:14-19.1), to the Legislature, containing recommendations for
2 additional measures the State can take, including administrative or
3 legislative action, to reduce single-use plastics and plastic waste.

4
5 11. No later than six months after the effective date of this
6 section, the Department of State, in consultation with the
7 Department of Environmental Protection, shall establish a program
8 to assist businesses in complying with the provisions of this act,
9 including, but not necessarily limited to, developing, and publishing
10 on its Internet website, guidance on compliance with the act, and
11 establishing an online clearinghouse of vendors who provide
12 alternatives to carryout bags made of plastic film, polystyrene foam
13 food service products, and single-use plastic straws.

14
15 12. The department shall adopt, pursuant to the “Administrative
16 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
17 regulations as may be necessary to effectuate the purposes of this
18 act.

19
20 13. Sections 2 through 4 of this act shall take effect one year
21 after the date of enactment of this act, section 5 of this act shall take
22 effect two years after the date of enactment of this act, and the
23 remainder of this act shall take effect immediately.