

HOUSE REDRAFT No. 771

By Representative Ehrlich of Marblehead and Senator Eldridge, a 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. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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:

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

CHAPTER 21P.

PLASTIC BAG REDUCTION

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

“Department”, the department of environmental protection.

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

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

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

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

A non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type retail

businesses, whether or not for profit, shall when engaging in such activity, be considered a “retail establishment”.

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

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

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

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

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

(c) The prohibition in subsection (a), shall not apply to any type of bag, used by a retail establishment, or provided to its customer for: (1) prescription medications, (2) produce, meats,

poultry, fish, bread, and other food items to keep such items fresh or unsoiled, (3) preventing frozen food items, including ice cream, from thawing, (4) containing products or items that are saturated, wet, prone to leak, or need to be immersed in a liquid. (5) containing products or items that are granular, powdery, dirty or greasy, (6) protecting an item from damage or contamination, or to protect a second item when both are carried together from the retail establishment, (7) protecting articles of clothing on a hanger, (8) items that contain any herbicide, pesticide, solvent, corrosive, automotive type fluid or other chemical, that can be harmful to public health, whether or not, the item is prepackaged in a sealed container or bag, (9) protecting small items from loss, and (10) any item that requires the use of a certain type bag, under federal and state laws and regulations.

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding the provisions of subsection (b), a city or town may establish increased civil penalties for violations occurring within the municipality. In a city or town having an ordinance or by-law that imposes a civil fine that is greater than the civil fine imposed for a violation under subsection (b), the ordinance or by-law shall prevail over the prescribed penalty under said subsection.

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

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

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

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

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

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

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

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

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

COMMITTEE ON ENVIRONMENT, NATURAL RESOURCES AND AGRICULTURE

Bill Summary

Bill Number: H.771

Name: An Act reducing plastic bag pollution

Sponsor(s): Representative Ehrlich and Senator Eldridge (Joint Petition)

Hearing Date: Tuesday, April 2nd, 2019, at 1:00 PM – 5:00 PM, Hearing Room A-2.

Similar Bills: S.462

Prior History: Similar to H.2121 released favorably as a redraft (H4234)
by ENRA last session.

Summary of Proposed Law:

The legislation proposes adding a new Chapter 21P in the General Laws.

Under this legislation, on and after one year from enactment, a retail establishment will not provide a single-use carryout bag to a customer. From the date of enactment until one year thereafter, a store can make available a single-use carryout bag, reusable grocery bag, or recycled paper bag. This ban also applies to non-profits acting as retail establishments and restaurants when delivering food to a customer's home but does not apply to non-profit or religious institutions when providing food or clothing to those in need. Exceptions are made for plastic bags that hold unpackaged food items, protect other items in the shopping bag from contamination, protect clothing on a hanger, or contain items that must be kept in a plastic bag as per state or federal law.

Retail establishments may charge a fee for bags they provide to customers, but no such fee is mandated. All money collected under this legislation will be retained by the store. This law establishes a list of minimum civil penalties for violation, but a municipality may implement stricter civil penalties if they so choose. Each town may choose the enforcement authority that best suits them, and the Department of Environmental Protection will act as the enforcement backstop. DEP will have the authority to further amend standards for recyclable paper bags, reusable grocery bags, and other bags as technologies develop.

H.771 Original and Redraft Comparison

	Original	Redraft
Bags Prohibited	Plastic or paper bags that are not recycled paper bags	Single-use, film-type plastic bags that are 4 mils thick or less
Exempted Plastic Bags	Bags used for: (1) prescriptions, (2) protecting items from damaging or contaminating other items, (3) containing unwrapped food items, or (4) dry-cleaning	Bags used for: (1) prescriptions, (2) unpackaged food items (i.e. produce, meat, seafood, etc.), (3) prevent frozen food items from thawing, (4) containing items that are wet or may leak, (5) granular, powdery, or greasy items; (6) protecting other items from contamination or damage, (7) clothing/ dry-cleaning, (8) containing herbicide, pesticide, or chemical/substance that may be harmful to public health; (9) protect small items from loss, or (10) items required to be placed in bags per federal or state law (i.e. recorked wine from restaurant, marijuana products). Includes language specifying that sandwich bags, garbage bags, and plastic bags that come with merchandise to contain parts are not considered a single-use bag
Retail Business Establishments Affected	A retail establishment, person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods or materials directly to a customer, whether for or not for profit	A retail establishment that sells, vends, or provides merchandise, grocery items, food items, other goods or services, directly to customers at its business location. A retail establishment shall include non-profit organizations unless exempted. Food items delivered by retail establishments to customers away from the business establishment shall subject to the ban

	Original	Redraft
Allowed Bags	Recycled paper bags or reusable grocery bags	Recycled paper bags, reusable grocery bags or non-plastic compostable bags (as allowed by DEP)
Requirements of Reusable Grocery Bags	Sewn bag with stitched handles that is specifically designed and manufactured for at least 175 uses; can carry 25 pounds over a distance of 300 feet; and is made of cloth or other machine-washable fabric other than polyethylene or polyvinyl chloride	Bag with handles made of washable cloth, hemp, or other fibers, fabric or material specifically designed and manufactured for multiple uses, as defined by DEP regulation
Requirements of Recycled Paper Bags	100% recyclable and contains a minimum of 40% post-consumer recycled materials or minimum of 20% post-consumer recycled materials for 8 pound bag or smaller	100% recyclable and contains a minimum of 40% post-consumer recycled materials or minimum of 20% post-consumer recycled materials for 8 pound bag or smaller. DEP shall provide regulations for paper bag standards and may as needed increase threshold for the post-consumer recycled content and other paper bag requirements
Paper Bag Fees	\$0.10 fee for recycled paper and reusable grocery bags	Stores may charge a fee if they choose
Business Establishments Exempted From Act	Bazaars, fairs or festivals operated by nonprofit organizations or religious institutions	Non-profit, charity and religious organizations are exempt from this ban when providing food and grocery items (i.e. food banks, food pantries and by other sources) and clothing to those in need, including the elderly

	Original	Redraft
Civil Penalties for Violation	Not Included	Minimum civil penalties: 1 st Violation: Warning 2 nd Violation: \$50 Penalty 3 rd Violation: \$100 Penalty (Each day is separate violation) Each city and town has flexibility to impose stricter penalties as they see fit, and penalty fees will be kept by the municipality
Enforcement by Municipalities	Not Included	Municipalities may determine the municipal board, department or official responsible for the enforcement of the law
Enforcement and Regulation by DEP	DEP shall promulgate regulations with regard to the enforcement of this chapter	DEP shall enforce and oversee the provision of the law, and may assess additional civil administrative penalties when a retail establishment repeatedly violates the law or related DEP regulation. Sets DEP as regulatory backstop if necessary to uphold enforcement. DEP will determine regulations for enforcement and standards for recyclable paper bags, reusable grocery bags, compostable bags, and exempted bags. DEP may adopt new regulations in the future to allow for better standards as recycling innovations improve
Preemption	Makes existing laws null and void but allows for further municipal limitations	Supersedes any municipal bans, except in the case of increased civil penalties
Effective Date	August 1, 2019	Will take effect 1 year after law's passage