

SENATE COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED DECEMBER 17, 2012

Sponsored by:

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SYNOPSIS

"Carryout Bag Reduction and Recycling Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.



1 AN ACT concerning disposable and reusable carryout bags, and
2 supplementing Title 13 of the Revised Statutes.

3

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

6

7 1. This act shall be known and may be cited as the "Carryout
8 Bag Reduction and Recycling Act."

9

10 2. a. The Legislature finds and declares that:

11 (1) The production of plastic and paper carryout bags in the
12 United States has significant and detrimental environmental impacts
13 each year, using over 12 million barrels of oil, cutting down over 14
14 million trees, and killing thousands of marine animals through
15 ingestion and entanglement;

16 (2) Each year, an estimated 14 billion plastic carryout bags and
17 10 billion paper carryout bags are used in the United States alone, of
18 which only one percent of the plastic carryout bags are returned for
19 recycling;

20 (3) Most plastic carryout bags when biodegrading become toxic,
21 contaminating soil and waterways, and plastic and paper carryout bags
22 take up a large volume of the solid waste in landfills; and

23 (4) The plastic and paper carryout bags that are recycled must
24 go through a lengthy and labor-intensive process of re-integration and
25 renewal, using many chemicals, intense heat, and water.

26 b. The Legislature therefore determines that the State should:

27 (1) require stores to impose a fee for the use of disposable
28 carryout bags so as to discourage their use;

29 (2) allow stores to provide a credit for each bag provided by the
30 customer; and

31 (3) require disposable carryout bags to be recyclable plastic
32 bags or recyclable paper bags.

33

34 3. As used in this act:

35 "Carryout bag" means a bag provided by a store at the point of
36 sale for customers to carry their goods out of the store, but shall not
37 include (1) a bag used inside a store to package bulk items,
38 unwrapped prepared food or bakery items, prescription drugs,
39 frozen food, meat or fish, or flowers, (2) a paper carryout bag
40 provided to a customer to carry out food from a restaurant with
41 seating, or (3) a plastic bag used to package newspapers or dry-
42 cleaning.

43 "Department" means the Department of Environmental
44 Protection.

45 "Disposable carryout bag" means a carryout bag that is made of
46 any material and that is not a reusable bag.

1 "Operator" means a person in control of, or having daily
2 responsibility for, the daily operation of a store, which may include,
3 but is not limited to, the owner of the store.

4 "Recyclable paper bag" means a paper carryout bag that meets
5 all of the following requirements: (1) the bag contains no old
6 growth fiber; (2) the bag is 100% recyclable and contains a
7 minimum of 40% post-consumer recycled content; and (3) the bag
8 displays the words "Please Recycle This Bag" in a highly visible
9 manner.

10 "Recyclable plastic bag" means a plastic carryout bag that meets
11 all of the following requirements: (1) the bag is made of high-
12 density polyethylene film marked with the SPI resin code 2, or low-
13 density polyethylene film marked with the SPI resin code 4; and (2)
14 the bag displays the words "Please Recycle This Bag" in a highly
15 visible manner.

16 "Reusable bag" means (1) a bag made of cloth or other machine
17 washable fabric that has handles, or (2) a durable plastic bag with
18 handles that is at least 2.25 mils thick and is specifically designed
19 and manufactured for multiple reuse.

20 "Store" means a convenience store, bakery, drugstore,
21 supermarket, liquor store, restaurant, delicatessen, or retail
22 establishment that provides carryout bags to its customers as a
23 result of the sale of a product, but shall not include a farm market as
24 defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3).

25
26 4. a. Beginning January 1, 2014, every operator shall impose a
27 \$0.05 fee on every disposable carryout bag that is provided to a
28 customer.

29 b. Except as provided in subsection c. of this section, the
30 operator shall retain \$.01 of the fee charged pursuant to this section,
31 and shall remit the remaining \$.04 to the Department of
32 Environmental Protection.

33 c. An operator may establish a voluntary carryout bag credit
34 program pursuant to section 5 of this act. Any operator that
35 establishes a voluntary carryout bag credit program may retain \$.02
36 of the fee charged pursuant to this section, and shall remit the
37 remaining \$.03 to the Department of Environmental Protection.

38 d. The operator shall indicate the total number of disposable
39 carryout bags provided, and the total fee charged pursuant to
40 subsection a. of this section, on the sales or other receipt given to
41 the customer.

42
43 5. a. Any operator may establish a voluntary carryout bag
44 credit program pursuant to this section. Under the program, the
45 operator shall:

- 1 (1) provide a credit to the customer of \$.05 for each carryout
2 bag provided by the customer for use in the transaction, regardless
3 of whether the bag is plastic or paper or is a reusable bag;
- 4 (2) provide the total number of credits for the number of
5 carryout bags that are reasonably required to carry the purchased
6 goods;
- 7 (3) prominently advertise its participation in, and the substance
8 of, the carryout bag credit program at each of its checkout registers;
9 and
- 10 (4) indicate the total amount credited pursuant to this section on
11 the sales or other receipt of the customer who provides the carryout
12 bags.
- 13 b. An operator that establishes a voluntary carryout bag credit
14 program shall not be required to provide a \$.05 credit for that
15 portion of a customer's purchase for which the customer declines
16 the use of a carryout bag.
- 17 c. Any operator that establishes a voluntary carryout bag credit
18 program shall register with the Department of Environmental
19 Protection on a form prescribed by the department.
20
- 21 6. Beginning on January 1, 2015, an operator shall not provide
22 a disposable carryout bag unless the disposable carryout bag is a
23 recyclable plastic bag or recyclable paper bag.
24
- 25 7. a. Beginning April 1, 2014, and quarterly thereafter, every
26 operator shall submit a report, in writing, to the department and
27 shall remit the dollar equivalent of the amount collected from
28 customers as disposable carryout bag fees pursuant to section 4 of
29 this act, less the amount authorized to be retained by the operator.
30 The report shall document the total fees collected from the
31 distribution of disposable carryout bags, the total amount retained
32 by the operator, and the total amount credited to customers who
33 provide carryout bags under a voluntary carryout bag credit
34 program established pursuant to section 5 of this act.
- 35 b. The revenues from the fees on disposable carryout bags shall
36 be deposited by the department in the Barnegat Bay Restoration
37 Fund established pursuant to section 8 of this act and shall be used
38 for the purposes of the fund.
39
- 40 8. a. There is established in the Department of Environmental
41 Protection a special, nonlapsing fund to be known as the "Barnegat
42 Bay Restoration Fund." The fund shall be administered by the
43 Commissioner of Environmental Protection and shall be credited
44 with:
- 45 (1) moneys received from operators from fees charged for the
46 provision of disposable carryout bags pursuant to section 4 of this
47 act;

1 (2) such moneys as are appropriated by the Legislature; and

2 (3) any return on investment of moneys deposited in the fund.

3 b. Moneys in the fund shall be annually appropriated and used
4 for programs to improve the water quality of the Barnegat Bay.

5

6 9. The department shall be responsible for the implementation and
7 enforcement of this act. The department shall maintain all submitted
8 reports in order to track progress in reducing the volume of
9 disposable carryout bags.

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11 10. a. Whenever the Commissioner of Environmental Protection
12 finds that a person has violated any provision of this act, or any rule
13 or regulation adopted pursuant to this act, the commissioner may:

14 (1) Issue an order in accordance with subsection b. of this
15 section requiring any such person to comply with the provision; or

16 (2) Bring a civil action in accordance with subsection c. of this
17 section; or

18 (3) Levy a civil administrative penalty in accordance with
19 subsection d. of this section; or

20 (4) Bring an action for a civil penalty in accordance with
21 subsection e. of this section.

22 Recourse to any of the remedies available under this section shall
23 not preclude recourse to any of the other remedies prescribed in this
24 section or by any other applicable law.

25 b. Whenever, on the basis of available information, the
26 commissioner finds a person in violation of any provision of this
27 act, or any rule or regulation adopted pursuant thereto, the
28 commissioner may issue an order: (1) specifying the provision or
29 provisions of the law, rule, or regulation of which the person is in
30 violation; (2) citing the action which constituted the violation; (3)
31 requiring compliance with the provision or provisions violated; and
32 (4) providing notice to the person of the right to a hearing on the
33 matters contained in the order.

34 c. The commissioner is authorized to institute a civil action in
35 Superior Court for appropriate relief from any violation this act, or
36 any rule or regulation adopted pursuant thereto. Such relief may
37 include, singly or in combination:

38 (1) A temporary or permanent injunction; and

39 (2) Assessment of the violator for the costs of any investigation
40 or inspection, and for the reasonable costs of preparing and bringing
41 legal action under this subsection.

42 d. The commissioner is authorized to assess a civil
43 administrative penalty of up to \$100 for the first violation, up to
44 \$200 for the second violation, and up to \$500 for the third and each
45 subsequent violation. No civil administrative penalty shall be
46 levied pursuant to this section until after the party has been notified
47 by certified mail or personal service. The notice shall: (1) identify
48 the section of the law, rule, or regulation that has been violated; (2)

1 recite the facts alleged to constitute the violation; (3) state the
2 amount of the civil administrative penalties to be imposed; and (4)
3 affirm the rights of the alleged violator to a hearing. The ordered
4 party shall have 20 days from receipt of the notice within which to
5 deliver to the commissioner a written request for a hearing. After
6 the hearing and upon finding that a violation has occurred, the
7 commissioner may issue a final order after assessing the amount of
8 the penalty specified in the notice. If no hearing is requested, the
9 notice shall become a final order after the expiration of the 20-day
10 period. Payment of the penalty is due when a final order is issued
11 or the notice becomes a final order. The authority to levy an
12 administrative penalty is in addition to all other enforcement
13 provisions in this act and in any other applicable law, rule, or
14 regulation, and the payment of any penalty shall not be deemed to
15 affect the availability of any other enforcement provisions in
16 connection with the violation for which the assessment is levied.
17 Any civil administrative penalty assessed under this section may be
18 compromised by the commissioner upon such terms and conditions
19 as the commissioner may establish by rules or regulation.

20 e. A person who violates any provision of this act, or any rule
21 or regulation adopted pursuant thereto, an administrative order
22 issued pursuant to subsection b. of this section, or a court order
23 issued pursuant to subsection c. of this section, or who fails to pay a
24 civil administrative penalty in full pursuant to subsection d. of this
25 section, shall be subject, upon order of a court, to a civil penalty not
26 to exceed \$500 for the violation. Any civil penalty imposed
27 pursuant to this subsection may be collected with costs in a
28 summary proceeding pursuant to the "Penalty Enforcement Law of
29 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
30 and the municipal court shall have jurisdiction to enforce the
31 provisions of the "Penalty Enforcement Law of 1999" in connection
32 with this act.

33
34 11. The department shall adopt, pursuant to the "Administrative
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules
36 and regulations as are necessary to effectuate the purposes of this
37 act.

38
39 12. This act shall take effect immediately.