

Office of Policy and Legal Analysis

Date: March 3, 2021
To: Joint Standing Committee on Environment and Natural Resources
From: Dan Tartakoff, Legislative Analyst
Re: LD 39 An Act To Remove the Plastic Bag Ban (Guerin); LD 108 An Act To Improve Public Safety by Repealing the Single-use Plastic Carry-out Bag Ban (Faulkingham); LD 244 An Act To Repeal Maine's Single-use Plastic Bag Law (Davis)

Summary of bills and additional background

These three bills all propose to repeal the law restricting the use of single-use carry-out plastic bags by retail stores (the so-called “plastic bag ban”). In its place, the bills would re-enact the law that was in place prior to the enactment of the plastic bag ban, which allows a retailer to use plastic bags if the retailer maintains a receptacle for collecting used plastic bags and ensures that such collected plastic bags are recycled. It is worth noting that a slightly modified version of this same plastic bag collection requirement also exists in the current law at 38 MRSA §1611(2)(C).

The plastic bag ban – 38 MRSA §1611 (attached) – was enacted in 2019 by the 129th Legislature. Under that law, a plastic bag prohibition, a requirement to charge a 5-cent fee per recycled paper bag and the State’s preemption and voiding of local plastic and paper bag regulations were all set to take effect April 22, 2020.

Before the 129th Legislature adjourned sine die in March 2020 due to the onset of the novel coronavirus pandemic, it enacted a so-called COVID omnibus bill, LD 2167, which among other things delayed the paper bag fee requirement and the local ordinance preemption requirement until January 1, 2021. Oddly, that bill did not delay the implementation date for the plastic bag ban itself.

In December 2020, the DEP announced that its enforcement of the plastic bag ban and paper bag fee would be further delayed until July 1, 2021. Under the existing law, municipal regulation of the use of plastic bags and paper bags have been preempted and void since at least January 15, 2021 (the preemption provision is a little vague due to some odd changes made by that COVID omnibus bill).

List of entities that submitted written testimony and/or spoke at the hearing

Proponents – Sen. Guerin, Rep. Faulkingham, Sen. Davis, Rep. Javner, American Recyclable Plastic Bag Alliance.

Opponents – Aroostook Waste Solutions, Casella, Conservation Law Foundation, Defend Our Health, Department of Environmental Protection, ecomaine, Environment Maine, Friends of Casco Bay, Maine Audubon, Maine Conservation Voters, Maine Grocers and Food Producers Association, Maine Municipal Association, Maine Resource Recovery Association, Maine Unitarian Universalist State Advocacy Network, Municipal Review Committee, Natural Resources Council of Maine, Retail Association of Maine, Senator George J. Mitchell Center for Sustainability Solutions, Shaw Institute, Surfrider Foundation, Troiano Waste Services, Waste Management, additional members of the public.

Neither for nor against – American Forest and Paper Association.

Notes, issues, proposed amendments and requests of analyst

1. *Paper bag fee* – testimony from American Forest and Paper Association suggests that, for a number of reasons, the committee reconsider the current law’s requirement that a fee be paid for each recycled paper bag provided by a retailer.
2. *Rep. Gramlich request* – request made of analyst for more information regarding provisions in current plastic bag ban for low-income individuals.
 - The original version of LD 1532 – the plastic bag ban bill – contained the following exemption from the 5-cent recycled paper bag fee:

A retail establishment that sells a recycled paper bag to bag products at the point of sale may not charge for the bag if a customer uses an electronic benefits transfer card or a payment card or voucher issued by the State for the federal supplemental nutrition program under Title 22, section 3104 or the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966 to pay for the customer's products.

- The majority report amendment to LD 1532 made a number of changes to the bill including removing this exemption language (i.e., this language is not currently included in the law).
- After some discussion with the three primary entities involved in the development of LD 1532 – the Maine Grocers and Food Producers Association, the Natural Resources Council of Maine and the Retail Association of Maine– it appears that concern over whether this exemption would conflict with federal SNAP program requirements may have contributed to the decision to remove the exemption.

§1611. Plastic bag reduction

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable, and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified. [PL 2019, c. 346, §2 (NEW).]

B. "Point of sale" means a check-out stand, cash register or other point of departure from a retail establishment. [PL 2019, c. 346, §2 (NEW).]

C. "Post-consumer recycled material" means a recycled material that if not recycled would otherwise have been destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused in, an original manufacturing and fabrication process. [PL 2019, c. 346, §2 (NEW).]

D. "Recycled paper bag" means a paper bag that:

(1) Is 100% recyclable; and

(2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds, [PL 2019, c. 346, §2 (NEW).]

E. "Restaurant" means an establishment that sells prepared food directly to the consumer. [PL 2019, c. 346, §2 (NEW).]

F. "Retail establishment" means a store, a restaurant or a temporary business. [PL 2019, c. 346, §2 (NEW).]

G. "Reusable bag" means a bag with handles that:

(1) Is designed and manufactured to withstand a minimum of 75 repeated uses;

(2) Is machine washable or made from a material that can be cleaned and disinfected regularly;

(3) If made from plastic is at least 4 mils thick; and

(4) Has the capability of carrying a minimum of 18 pounds. [PL 2019, c. 346, §2 (NEW).]

H. "Single-use carry-out bag" means a bag that is made of plastic, paper or other material provided by a retail establishment within the retail establishment for the purpose of transporting merchandise away from the retail establishment or for packaging, protecting or otherwise containing merchandise within the retail establishment and that is not a recycled paper bag or a reusable bag. [PL 2019, c. 674, §1 (AMD).]

I. "Store" means a retail store that engages in the retail sale of merchandise, including food, goods, products and clothing. "Store" includes grocery stores primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and convenience stores engaged in the sale of a limited line of goods, including milk, bread, soda and snack foods, and prepared foods intended to be consumed off the premises. [PL 2019, c. 346, §2 (NEW).]

J. "Temporary business" means a seasonal or nonpermanent retail establishment such as a farmers' market or fair that sells merchandise including food, goods, products or clothing. [PL 2019, c. 346, §2 (NEW).]

[PL 2019, c. 674, §1 (AMD).]

2. Prohibition; exemptions. This subsection governs the use of single-use carry-out bags.

A. Except as otherwise provided in this subsection, beginning April 22, 2020, a retail establishment may not provide a single-use carry-out bag to a customer at the point of sale or otherwise make single-use carry-out bags available to customers. [PL 2019, c. 346, §2 (NEW).]

B. The prohibition in paragraph A does not apply to:

- (1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store;
- (2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag;
- (3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants;
- (4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses;
- (5) Newspaper bags;
- (6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste;
- (7) Bags used to contain live animals, such as fish or insects sold in pet stores;
- (8) Bags used for vehicle tires;
- (9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment;
- (10) Bags used by a hunger relief organization such as a food pantry or soup kitchen to distribute food directly to the consumer at no charge;
- (11) Bags that customers bring to the retail establishment for their own use or for carrying away from the retail establishment goods that are not placed in a bag provided by the retail establishment. [PL 2019, c. 346, §2 (NEW).]

C. A retail establishment may make single-use carry-out bags made of plastic that are exempted in paragraph B available to customers to bag products within the retail establishment other than at the point of sale only if the retail establishment:

- (1) Locates inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and
- (2) Ensures that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics. [PL 2019, c. 346, §2 (NEW).]

[PL 2019, c. 346, §2 (NEW).]

3. Recycled paper bag fees and reusable plastic bag fees; exemptions. This subsection governs fees assessed on recycled paper bags and on reusable bags made of plastic.

A. Beginning January 15, 2021 a retail establishment may use a recycled paper bag or a reusable bag made of plastic to bag products at the point of sale as long as the retail establishment charges a fee of at least 5¢ per bag.

- (1) All amounts collected pursuant to this paragraph are retained by the retail establishment and may be used for any lawful purpose.

(2) A retail establishment may not rebate or otherwise reimburse a customer any portion of the fee charged pursuant to this paragraph. [PL 2019, c. 617, Pt. J, §1 (AMD).]

B. The requirement to charge a fee under paragraph A does not apply to:

(1) Stores at which less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area;

(2) Restaurants; or

(3) Hunger relief organizations engaged in distributing food directly to consumers at no charge.

A retail establishment exempt from charging a fee under this paragraph may charge a fee for a recycled paper bag or a reusable bag made of plastic. [PL 2019, c. 346, §2 (NEW).]

[PL 2019, c. 617, Pt. J, §1 (AMD).]

4. Violations. A retail establishment that violates a provision of this section is subject to civil penalties under section 349.

[PL 2019, c. 346, §2 (NEW).]

5. Preemption. To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carry-out bags at retail establishments beginning March 17, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning January 15, 2021, any ordinance or regulation that violates this subsection is void and has no force or effect.

[PL 2019, c. 617, Pt. J, §2 (AMD).]

SECTION HISTORY

PL 2019, c. 346, §2 (NEW). PL 2019, c. 617, Pt. J, §§1, 2 (AMD). PL 2019, c. 674, §1 (AMD).

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