



**NYSAC**  
NEW YORK STATE  
ASSOCIATION OF COUNTIES

## PLASTIC BAGS



# Plastic Bags: Reduce, Reuse, Recycle, and More


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## Introduction

In April 2019, New York became the second state in the nation to ban single-use plastic bags in stores. This legislation comes after years of advocacy and deliberation about how to reduce the environmental impact of single-use plastics. This report serves to educate county officials about what to expect after the legislation takes effect on March 1, 2020.

# The 2019 New York State Bag Waste Reduction Act

Governor Andrew M. Cuomo introduced the “New York State Plastic Bag Waste Reduction Act,” in the 2019/20 State Budget which institutes a statewide ban on single-use plastic bags and empowers counties and cities to impose a \$0.05 fee on paper bags. The final bill text can be found in Part H of Senate Bill 1508C/Assembly Bill 2008C. (See Appendix A).

## Statewide Plastic Bag Ban

The adopted legislation institutes a statewide ban on single-use plastic bags, effective March 1, 2020. It applies to retail outlets required to pay sales tax. There are exemptions for several types of plastic bags: bags used to wrap uncooked meat/fish; bags used to package bulk items like produce and bulk candy; bags that contain food sliced or prepared to order; bags used for newspaper delivery; bags sold in bulk at point of sale; trash bags; food storage bags; garment bags; bags prepackaged for sale to a customer; bags used to carry out or deliver restaurant food; and bags provided by a pharmacy to carry prescription drugs.

## Local Government Option to Impose Paper Bag Fee

The legislation allows the legislative body of any county and city to impose a fee on paper carryout bags through local law to take effect on or after March 1, 2020.

This is an opt-in, meaning there will be no fee unless the county or city chooses to act. If a county and a city wholly within such county both impose a fee, then the fee imposed by such county does not apply within the territorial limits of the city. The paper bag fee cannot apply to customers using the Supplemental Nutritional Assistance Program (SNAP), the Women, Infants, and Children (WIC) program, or any successor programs used as full or partial payment.





If the county or city imposes a paper bag fee locally, the Comptroller will pay 40 percent of the paper bag fee (\$0.02) to the county or city that imposed it for the purpose of purchasing and distributing reusable bags, with priority given to low- and fixed-income communities. Any funds that have not been used for this purpose must be returned to the Comptroller and deposited into the General Fund for the State to purchase and distribute reusable bags. The remaining 60 percent of the fee (\$0.03) is deposited into the state's Environmental Protection Fund.

## Preemption

The legislation explicitly preempts local plastic bag laws.

There is a grandfathering clause for local laws governing fees on paper bags that are adopted prior to March 1, 2020. They may remain unless the county in which the local government is located adopts a fee on paper. If the county imposes a fee, then the municipality cannot charge a fee for paper bags more than one year after the county fee takes effect.

As of March 1, 2020, the fee structure for all local paper bag laws must comport with state law; that is, the fee must be \$0.05, split between the Environmental Protection Fund and locality. Additionally, local governments are not prohibited from banning paper bags outright.

## New York State Plastic Bag Task Force

In February 2017, Governor Cuomo convened the New York State Plastic Bag Task Force to develop a report and propose legislation to address the detrimental impact of plastic bags on the state's environment. The Task Force was led by state Department of Environmental Conservation (DEC) Commissioner Basil Seggos, along with co-chairs Senator Thomas O'Mara and Assemblyman Steve Englebright. Members included Stephen Acquario, Executive Director of New York State Association of Counties; Marcia Bystryn, President of the New York League of Conservation Voters; and Michael Rosen, President and CEO of the Food Industry Alliance.



Their report outlines eight options for action: <sup>1</sup>

1. Strengthen and enforce the existing New York State Plastic Bag Reduction, Reuse and Recycling Act (i.e. promote plastic bag recycling through increased education, enforcement, and reporting requirements);
2. Make manufacturers responsible for the recycling of single-use plastic bags (i.e. require the bag manufacturers to fund and implement a program for collecting and recycling single-use plastic bags);
3. Impose a fee on single-use plastic bags;
4. Impose a fee per transaction for single-use bags (i.e. customers pay a ten-cent fee for bags whether they receive one bag or ten bags);
5. Impose a fee on single-use plastic and paper bags;
6. Ban single-use plastic bags;
7. Ban plastic bags and impose a fee on the allowable alternatives (e.g. paper);
8. Continue existing policies (i.e. take no new action and keep the existing New York State Plastic Bag Reduction, Reuse and Recycling Act as is).



The sheer number of options included in the final report indicate the difficulty the Task Force had in deciding on a single recommendation for the

Governor and Legislature. Other important considerations they noted were the need for an educational campaign, statewide consistency, an assessment of litter and baseline plastic bag use, continued recycling of bags, and reusable bag giveaways. The Task Force also considered the disposition of fees and whether to include exemptions, a phase-in period, and/or a sunset provision.

## Bag Reduction Measures in Other States

States have a long history of pursuing legislation related to labeling, recycling, and reusing plastic bags. In 1991, Maine became the first state to enact legislation requiring recycling efforts at retail stores. The statute prevents retailers from supplying plastic bags unless they provide a convenient storefront receptacle to ensure used bags are collected and recycled. Since then, at least four other states—California, Delaware, New York, Rhode Island, and the District of Columbia – have followed suit.

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<sup>1</sup> [https://www.dec.ny.gov/docs/materials\\_minerals\\_pdf/dplasticbagreport2017.pdf](https://www.dec.ny.gov/docs/materials_minerals_pdf/dplasticbagreport2017.pdf)



More recently, governments have turned to bans and fees to reduce plastic bag consumption. Bangladesh introduced the first total ban of plastic bags in 2002 to address pollution of their waterways and drainage systems. Today, more than 60 countries have instituted plastic bag control measures.

Plastic bag regulations have also caught on in the United States. In 2016, California was the first state to institute a statewide plastic bag ban and fee on allowable alternatives. This action came after several local governments in California passed their own local bag ordinances.

Hawaii has also effectively banned plastic bags because all the state's counties have adopted bans. Chicago, Seattle, and Austin are among the mainland cities that have banned plastic bags outright, and other cities like the District of Columbia, Boulder, and Portland are among those that have imposed a fee. Bans are more widespread than fees, and constituting 75 percent of the reduction measures in the United States.

Prior to the adoption of a statewide plastic bag ban in New York, several municipalities adopted their own measures. The New York City Council approved a \$0.05 fee on plastic bags in May 2016, but state lawmakers voted to block the local law before it became effective. Suffolk County was the first county outside of New York City to legislate on the issue, imposing a five-cent fee on plastic and paper bags that went into effect in January 2018.



## NYSAC Webinar for Local Officials

NYSAC is hosting a webinar on Wednesday, May 8 at 10am to hear from the state Department of Environmental Conservation (DEC) and other stakeholders across the state about the ban's implementation and other considerations.

Register using this link: [www.bit.ly/NYSACBagWeb](http://www.bit.ly/NYSACBagWeb)

## Appendix A

# New York State Bag Waste Reduction Act (A.2008C/S.1508C, Part H)

Section 1. This act shall be known and may be cited as the “New York state bag waste reduction act”.

§ 2. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows: *TITLE 28 BAG WASTE REDUCTION*

Section 27-2801. Definitions.

27-2803. Plastic carryout bag ban.

27-2805. Paper carryout bag reduction fee.

27-2807. Violations.

27-2809. Preemption of local law.

27-2801. Definitions.

As used in this title:

1. “Exempt bag” means a bag: (a) used solely to contain or wrap uncooked meat, fish, or poultry; (b) bags used by a customer solely to package bulk items such as fruits, vegetables, grains, or candy; (c) bags used solely to contain food sliced or prepared to order; (d) bags used solely to contain a newspaper for delivery to a subscriber; (e) bags sold in bulk to a consumer at the point of sale; (f) trash bags; (g) food storage bags; (h) garment bags; (i) bags prepackaged for sale to a customer; (j) plastic carryout bags provided by a restaurant, tavern or similar food service establishment, as defined in the state sanitary code, to carryout or deliver food; or (k) bags provided by a pharmacy to carry prescription drugs.

2. “Plastic carryout bag” means any plastic bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under article twenty-eight of the tax law.

3. “Paper carryout bag” means a paper bag, other than an exempt bag, that is provided to a customer by a person required to collect tax to be used by the customer to carry tangible personal property, regardless of whether such person required to collect tax sells any tangible personal property or service to the customer, and regardless of whether any tangible personal property or service sold is exempt from tax under article twenty-eight of the tax law.

4. “Reusable bag” means a bag: (a) made of cloth or other machine washable fabric that has handles; or (b) a durable bag with handles that is specifically designed and manufactured for multiple reuse.

5. “Person required to collect tax” means any vendor of tangible personal property subject to the tax imposed by subdivision (a) of section eleven hundred five of the tax law.

### *§ 27-2803. Plastic carryout bag ban.*

1. No person required to collect tax shall distribute any plastic carryout bags to its customers unless such bags are exempt bags as defined in subdivision one of section 27-2801 of this title.

2. No person required to collect tax shall prevent a person from using a bag of any kind that they have brought for purposes of carrying goods.

3. Nothing in this section shall be deemed to exempt the provisions set forth in title 27 of this article relating to at store recycling.

*§ 27-2805. Paper carryout bag reduction fee.*

1. (a) Notwithstanding any other provision of law to the contrary, any city and any county, other than a county wholly within such a city, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing a paper carryout bag reduction fee within the territorial limits of such city or county, to take effect on or after March first, two thousand twenty. Notwithstanding the foregoing, if a county and a city wholly within such county both impose such fee, the fee imposed by such county shall not apply within the territorial limits of such city.

(b) Such paper carryout bag reduction fee, whether or not any tangible personal property is sold therewith, shall be imposed at a rate of fivecents on each paper carryout bag provided by a person required to collect tax to a customer in this state; provided, however, that such paper carryout bag reduction fee shall not be imposed on paper carryout bags that are subject to a fee on the provision of such paper carryout bag pursuant to a local law or ordinance that was adopted prior to the effective date of this section. The paper carryout bag reduction fee must be reflected and made payable on the sales slip, invoice, receipt, or other statement of the price rendered to the customer.

(c) Such paper carryout bag reduction fee shall not constitute a receipt for the sale of tangible personal property subject to tax pursuant to article twenty-eight and pursuant to the authority of article twenty-nine of the tax law, and transfer of a bag to a customer by a person required to collect tax shall not constitute a retail sale.

(d) It shall be unlawful for a municipal corporation to adopt or amend a local law, ordinance or resolution requiring the imposition of any fee on the provision of a paper carryout bag except as expressly authorized by this section. Where a municipal corporation that adopted such a local law, ordinance or resolution prior to the effective date of this section is, or is located in, a county that has imposed a paper carryout bag reduction fee pursuant to this section, such municipal corporation shall be prohibited from requiring the imposition of a fee on any provision of paper carryout bags that occurs more than one year after such county paper carryout bag reduction fee takes effect.

2. Any such local law, ordinance or resolution adopted pursuant to this section shall state the amount of the paper carryout bag reduction fee and the date on which a person required to collect tax shall begin to add such paper carryout bag reduction fee to the sales slip, invoice, receipt, or other statement of the price rendered to its customers. No such local law, ordinance or resolution shall be effective unless a certified copy of such law, ordinance or resolution is mailed by registered or certified mail to the commissioner of taxation and finance in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of the tax law.

3. The paper carryout bag reduction fee imposed by this section shall not apply to any customer using the supplemental nutritional assistance program, special supplemental nutrition program for women, infants and children, or any successor programs used as full or partial payment for the items purchased.

4. The paper carryout bag reduction fee must be reported and paid to the commissioner of taxation and finance on a quarterly basis on or before the twentieth day of the month following each quarterly period ending on the last day of February, May, August and November, respectively. The payments must be accompanied by a return in the form and containing the information the commissioner of taxation and finance may prescribe.

5. Any sales slip, invoice, receipt, or other statement of price furnished by a person required to collect tax to a customer shall separately state the paper carryout bag reduction fee and shall state the number of bags provided to the customer.

6. (a) Except as otherwise provided in this section, any paper carryout bag reduction fee imposed under the authority of this section shall be administered and collected by the commissioner of taxation and finance in a like manner as the taxes imposed by articles twenty-eight and twenty-nine of the tax law. All the provisions of articles twenty-eight and twenty-nine of the tax law, including the provisions relating to definitions, exemptions, returns, personal liability for the tax, collection of tax from the customer, payment of tax and the administration of the taxes imposed by such article, shall apply to the paper carryout bag reduction fee imposed under the authority of this section, with such modifications as may be necessary in order to adapt the language of those provisions to the paper carryout bag reduction fee imposed under the authority of

this section. Those provisions shall apply with the same force and effect as if the language of those provisions had been set forth in full in this section, except to the extent that any of those provisions is either inconsistent with a provision of this section or is not relevant to the paper carryout bag reduction fee imposed under the authority of this section. For purposes of this section, any reference in this chapter to a tax or the taxes imposed by articles twenty-eight and twenty-nine of the tax law shall be deemed also to refer to the paper carryout bag reduction fee imposed under the authority of this section unless a different meaning is clearly required.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision:

(1) the exemptions provided for in section eleven hundred sixteen of the tax law, other than the exemptions in paragraphs one, two and three of subdivision (a) of such section, shall not apply to the paper carryout bag reduction fees imposed under the authority of this section;

(2) the credit provided in subdivision (f) of section eleven hundred thirty-seven of the tax law shall not apply to this section.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision or subdivision (a) of section eleven hundred forty-six of the tax law, the commissioner of taxation and finance may, in his or her discretion, permit the commissioner or his or her authorized representative to inspect any return related to the paper carryout bag reduction fee filed under this section, or may furnish to the commissioner or his or her authorized representative any such return or supply him or her with information concerning an item contained in any such return, or disclosed by any investigation of a liability under this section.

7. All paper carryout bag reduction fee monies and any related penalties and interest remitted to the commissioner of taxation and finance under this section, except as hereinafter provided, shall be deposited daily with such responsible banks, banking houses, or trust companies as may be designated by the state comptroller. Of the revenues deposited, the comptroller shall retain in the comptroller's hands such amount as the commissioner of taxation and finance may determine to be necessary for refunds or reimbursements of the fees collected or received pursuant to this section, out of which the comptroller shall pay any refunds or reimbursements of such fees to which persons shall be entitled under the provisions of this section. The comptroller, after reserving such refund and reimbursement fund shall, on or before the twelfth day of each month, pay to the appropriate fiscal officers of the counties or cities imposing tax under subdivision one of this section an amount equal to forty percent of the paper carryout bag reduction fee monies and any related penalties and interest collected by the commissioner of taxation and finance in respect of each such county or city in the preceding calendar month to be used for the purpose of purchasing and distributing reusable bags, with priority given to low- and fixed-income communities. Provided further that at the end of each fiscal year, any funds which have not been used for the purpose defined in this section shall be returned to the comptroller and be deposited into the general fund to be used for the purpose of purchasing and distributing reusable bags with priority given to low- and fixed-income communities. Any remaining amount of paper carryout bag reduction fee monies and any related penalties and interest shall be deposited monthly into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

### *§ 27-2807. Violations.*

1. Any person required to collect tax who violates any provision of section 27-2803 of this title shall receive a warning notice for the first such violation. A person required to collect tax shall be liable to the state of New York for a civil penalty of two hundred fifty dollars for the first violation after receiving a warning and five hundred dollars for any subsequent violation in the same calendar year. For purposes of this section, each commercial transaction shall constitute no more than one violation. A hearing or opportunity to be heard shall be provided prior to the assessment of any civil penalty.

2. The department, the department of agriculture and markets, and the attorney general are hereby authorized to enforce the provisions of this title, and all monies collected shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.



*§ 27-2809. Preemption of local law.*

Jurisdiction in all matters pertaining to plastic carryout bags is vested exclusively in the state.

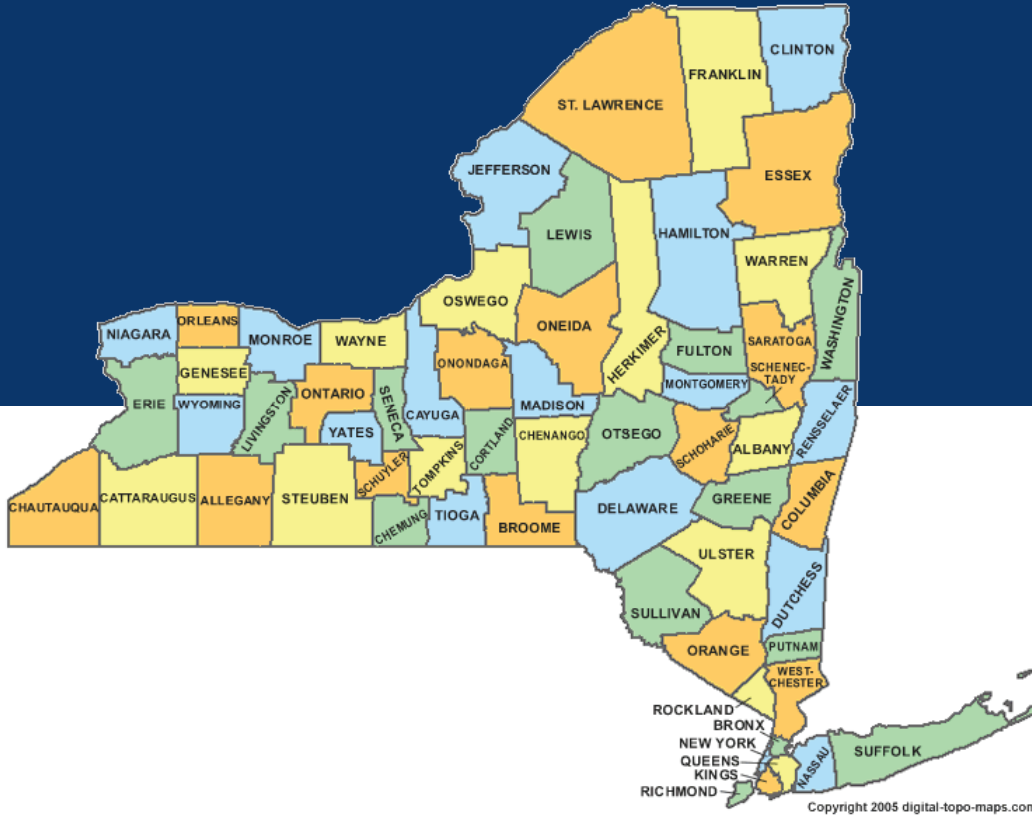
§ 3. Subdivision 4 of section 63 of the alcoholic beverage control law, as amended by chapter 360 of the laws of 2017, is amended to read as follows:

4. No licensee under this section shall be engaged in any other business on the licensed premises. The sale of lottery tickets, when duly authorized and lawfully conducted, the sale of reusable bags as defined in section 27-2801 of the environmental conservation law, the sale of corkscrews or the sale of ice or the sale of publications, including prerecorded video and/or audio cassette tapes, or educational seminars, designed to help educate consumers in their knowledge and appreciation of alcoholic beverages, as defined in section three of this chapter and allowed pursuant to their license, or the sale of non-carbonated, non-flavored mineral waters, spring waters and drinking waters or the sale of glasses designed for the consumption of wine, racks designed for the storage of wine, and devices designed to minimize oxidation in bottles of wine which have been uncorked, or the sale of gift bags, gift boxes, or wrapping, for alcoholic beverages purchased at the licensed premises shall not constitute engaging in another business within the meaning of this subdivision. Any fee obtained from the sale of an educational seminar shall not be considered as a fee for any tasting that may be offered during an educational seminar, provided that such tastings are available to persons who have not paid to attend the seminar and all tastings are conducted in accordance with section sixty-three-a of this article.

§ 4. Subdivision 3 of section 92-s of the state finance law, as amended by section 1 of part AA of chapter 58 of the laws of 2018, is amended to read as follows:

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-n of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, all moneys required to be deposited pursuant to article thirty-three of the environmental conservation law, all fees collected pursuant to subdivision eight of section 70-0117 of the environmental conservation law, all moneys collected pursuant to title thirty-three of article fifteen of the environmental conservation law, beginning with the fiscal year commencing on April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received by the state each fiscal year in excess of the greater of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, from the payments collected pursuant to subdivision four of section 27-1012 of the environmental conservation law and all funds collected pursuant to section 27-1015 of the environmental conservation law, all moneys required to be deposited pursuant to sections 27-2805 and 27-2807 of the environmental conservation law, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision five of this section.

§ 5. This act shall take effect March 1, 2020.



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