

HOUSE BILL 209

C2

0lr0712
CF SB 313

By: Delegates Lierman, Fraser-Hidalgo, Acevero, B. Barnes, Boyce, Cain, Cardin, Carr, Charkoudian, Clippinger, D.E. Davis, Dumais, Ebersole, Feldmark, W. Fisher, Guyton, Healey, Hettleman, Hill, Holmes, Kelly, Korman, Lehman, J. Lewis, R. Lewis, Lopez, Love, Luedtke, McIntosh, Moon, Mosby, Palakovich Carr, Reznik, Shetty, Solomon, Stein, Stewart, Terrasa, Washington, C. Watson, Wells, Wilkins, Williams, ~~and K. Young~~ K. Young, Barve, and Ruth

Introduced and read first time: January 16, 2020

Assigned to: Environment and Transportation and Economic Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 8, 2020

CHAPTER _____

1 AN ACT concerning

2 ~~Plastics and Packaging~~ Plastic Bag Reduction Act

3 FOR the purpose of prohibiting ~~a store~~, on or after a certain date, a certain retail
4 establishment from distributing plastic carryout bags to a customer at the point of
5 sale; providing that, on or after a certain date, only the State may enact a law or take
6 other action to prohibit, restrict, or regulate the use of certain plastic bags by a retail
7 establishment, that certain authority of a county or municipality is preempted, and
8 that certain laws or ordinances are superseded; requiring a store to charge, collect,
9 and retain a certain amount of money for durable carryout bags the store provides
10 to a customer; prohibiting a store from advertising, holding out, or stating certain
11 information under certain circumstances; requiring a store to include certain
12 information on certain receipts; providing that the sales and use tax does not apply
13 to a certain amount of money retained by a store under certain circumstances;
14 establishing a certain maximum civil penalty for a violation of this Act; establishing
15 that the distribution of ~~or failure to charge for~~ a certain number of plastic carryout
16 bags at a single point of sale constitutes a single violation; prohibiting the imposition
17 of a penalty under this Act unless certain conditions are met; authorizing a unit of
18 county government to grant a certain waiver under certain circumstances; providing
19 for the enforcement of this Act; prohibiting a county or municipality from adopting

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~or enforcing a certain law or ordinance unless certain conditions are met; requiring the Maryland Department of Labor to adopt certain regulations; establishing the Single Use Products Workgroup; providing for the composition and staffing of the Workgroup; prohibiting a member of the Workgroup from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Workgroup to hold certain public hearings in certain locations and to study and make recommendations regarding single use products; requiring the Workgroup to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; defining certain terms; providing for a delayed effective date for certain provisions of this Act; providing for the termination of certain provisions of this Act; and generally relating to carryout bags and single use products.~~

BY adding to

Article – Business Regulation

Section 19–106

Annotated Code of Maryland

(2015 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Business Regulation

19–106.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~(2) (I) “DURABLE CARRYOUT BAG” MEANS A BAG THAT IS PROVIDED BY A STORE TO A CUSTOMER AT THE POINT OF SALE.~~

~~(II) “DURABLE CARRYOUT BAG” DOES NOT INCLUDE:~~

(2) “FOOD SERVICE FACILITY” HAS THE MEANING STATED IN § 21–301 OF THE HEALTH – GENERAL ARTICLE.

(3) (I) “PLASTIC CARRYOUT BAG” MEANS A PLASTIC BAG LESS THAN 4 MILS THICK THAT IS PROVIDED BY A RETAIL ESTABLISHMENT TO A CUSTOMER AT THE POINT OF SALE.

(II) “PLASTIC CARRYOUT BAG” INCLUDES A COMPOSTABLE PLASTIC BAG THAT MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY OF TESTING AND MATERIALS INTERNATIONAL STANDARD SPECIFICATION FOR COMPOSTABLE PLASTICS D6400.

(III) “PLASTIC CARRYOUT BAG” DOES NOT INCLUDE:

1 1. A PLASTIC BAG USED TO:

2 A. PACKAGE BULK ITEMS, INCLUDING FRUIT,
3 VEGETABLES, NUTS, GRAINS, CANDY, OR SMALL HARDWARE ITEMS;

4 B. CONTAIN OR WRAP FROZEN FOODS, MEAT, OR FISH,
5 WHETHER PREPACKAGED OR NOT;

6 C. CONTAIN OR WRAP FLOWERS, POTTED PLANTS, OR
7 OTHER DAMP ITEMS;

8 D. CONTAIN UNWRAPPED PREPARED FOODS OR BAKERY
9 GOODS;

10 E. CONTAIN A NEWSPAPER; ~~OR~~

11 F. CONTAIN GARMENTS OR DRY-CLEANED CLOTHES,
12 INCLUDING SUITS, JACKETS, AND DRESSES; ~~OR~~

13 G. CONTAIN ICE;

14 2. A PLASTIC BAG PROVIDED BY A PHARMACIST THAT
15 CONTAINS PRESCRIPTION DRUGS; ~~OR~~

16 3. PLASTIC BAGS SOLD IN PACKAGES CONTAINING
17 MULTIPLE PLASTIC BAGS;

18 4. A PLASTIC BAG PROVIDED BY A FOOD SERVICE
19 FACILITY THAT IS NECESSARY TO MEET FOOD SAFETY AND CONTAMINATION
20 STANDARDS; ~~OR~~

21 5. A PLASTIC BAG PROVIDED BY A RETAIL
22 ESTABLISHMENT TO TAKE LIVE FISH, INSECTS, MOLLUSKS, OR CRUSTACEANS AWAY
23 FROM THE RETAIL ESTABLISHMENT; OR

24 6. A PLASTIC BAG PROVIDED AT A FARM OR ORCHARD
25 THAT CONTAINS FRUITS OR VEGETABLES THAT WERE PRODUCED BY AND
26 PURCHASED ON THE FARM OR ORCHARD.

27 ~~(3) (i) "PLASTIC CARRYOUT BAG" MEANS A PLASTIC BAG LESS~~
28 ~~THAN 4 MILS THICK THAT IS PROVIDED BY A STORE TO A CUSTOMER AT THE POINT~~
29 ~~OF SALE.~~

~~(H) "PLASTIC CARRYOUT BAG" INCLUDES A COMPOSTABLE PLASTIC BAG THAT MEETS THE SPECIFICATIONS OF THE AMERICAN SOCIETY OF TESTING AND MATERIALS INTERNATIONAL STANDARD SPECIFICATION FOR COMPOSTABLE PLASTICS D6400.~~

~~(4) "STORE" MEANS A RETAIL ESTABLISHMENT THAT PROVIDES DURABLE CARRYOUT BAGS OR PLASTIC CARRYOUT BAGS TO ITS CUSTOMERS AS A RESULT OF THE SALE OF A PRODUCT.~~

(4) "RETAIL ESTABLISHMENT" MEANS A STORE, A FOOD SERVICE FACILITY, OR ANY OTHER ESTABLISHMENT THAT PROVIDES BAGS TO ITS CUSTOMERS AS A RESULT OF THE SALE OF A PRODUCT.

(B) A STORE ON OR AFTER JULY 1, 2021, A RETAIL ESTABLISHMENT MAY NOT PROVIDE A PLASTIC CARRYOUT BAG TO A CUSTOMER.

~~(C) (1) A STORE SHALL CHARGE, COLLECT, AND RETAIN AT LEAST 10 CENTS FOR EACH DURABLE CARRYOUT BAG THAT THE STORE PROVIDES TO A CUSTOMER.~~

~~(2) A STORE MAY NOT ADVERTISE, HOLD OUT, OR STATE TO THE PUBLIC OR TO A CUSTOMER, DIRECTLY OR INDIRECTLY, THAT REIMBURSEMENT OF ANY PART OF THE MONEY COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION WILL BE ASSUMED OR ABSORBED BY THE STORE OR REFUNDED TO THE CUSTOMER.~~

~~(3) A STORE SHALL INDICATE ON THE CONSUMER TRANSACTION RECEIPT THE NUMBER OF DURABLE CARRYOUT BAGS PROVIDED BY THE STORE AND THE TOTAL AMOUNT OF MONEY CHARGED.~~

~~(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SALES AND USE TAX DOES NOT APPLY TO THE MONEY RETAINED BY A STORE UNDER PARAGRAPH (1) OF THIS SUBSECTION.~~

~~(D)~~ (C) SUBJECT TO SUBSECTION ~~(E)~~ (D) OF THIS SECTION, A ~~STORE~~ RETAIL ESTABLISHMENT THAT VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$500.

~~(E)~~ (D) ~~(1)~~ (H) THE PROVISION OF ONE OR MORE PLASTIC CARRYOUT BAGS AT A SINGLE POINT OF SALE IS A SINGLE VIOLATION.

~~(H) THE FAILURE TO CHARGE THE AMOUNT OF MONEY REQUIRED UNDER SUBSECTION (C)(1) OF THIS SECTION FOR THE PROVISION OF ONE OR MORE DURABLE CARRYOUT BAGS AT A SINGLE POINT OF SALE IS A SINGLE VIOLATION.~~

1 (2) A PENALTY MAY NOT BE IMPOSED UNDER THIS SECTION UNLESS
2 ~~A STORE~~ RETAIL ESTABLISHMENT:

3 (I) IS FIRST ISSUED A WRITTEN NOTICE OF VIOLATION; AND

4 (II) DOES NOT CORRECT THE VIOLATION WITHIN 3 MONTHS
5 AFTER RECEIPT OF THE WRITTEN NOTICE.

6 (3) A PENALTY MAY NOT BE IMPOSED ON A ~~STORE~~ RETAIL
7 ESTABLISHMENT MORE THAN ONCE WITHIN A 7-DAY PERIOD.

8 ~~(F)~~ (E) (1) THIS SECTION SHALL BE ENFORCED BY THE APPROPRIATE UNIT
9 OF COUNTY GOVERNMENT.

10 (2) A UNIT OF COUNTY GOVERNMENT MAY GRANT A ~~STORE~~ RETAIL
11 ESTABLISHMENT UP TO TWO WAIVERS FROM THE REQUIREMENTS OF THIS SECTION
12 FOR A PERIOD OF UP TO 3 MONTHS FOR EACH WAIVER IF THE UNIT OF COUNTY
13 GOVERNMENT DETERMINES THAT ACHIEVING COMPLIANCE UNDER THIS SECTION
14 WOULD CAUSE THE ~~STORE~~ RETAIL ESTABLISHMENT AN UNDUE HARDSHIP OR A
15 PRACTICAL DIFFICULTY NOT GENERALLY APPLICABLE TO OTHER ~~STORES~~ RETAIL
16 ESTABLISHMENTS IN SIMILAR CIRCUMSTANCES.

17 (F) BEGINNING JULY 1, 2021:

18 (1) ONLY THE STATE MAY ENACT A LAW OR TAKE ANY OTHER ACTION
19 TO PROHIBIT, RESTRICT, OR REGULATE THE USE OF PLASTIC BAGS LESS THAN 4
20 MILS THICK BY A RETAIL ESTABLISHMENT;

21 (2) ITEM (1) OF THIS SUBSECTION PREEMPTS THE AUTHORITY OF A
22 COUNTY OR MUNICIPALITY TO ENACT A LAW OR AN ORDINANCE TO PROHIBIT,
23 RESTRICT, OR REGULATE THE USE OF PLASTIC BAGS LESS THAN 4 MILS THICK BY A
24 RETAIL ESTABLISHMENT; AND

25 (3) THIS SECTION SUPERSEDES ANY LAW OR ORDINANCE OF A
26 COUNTY OR MUNICIPALITY THAT PROHIBITS, RESTRICTS, OR REGULATES THE USE
27 OF PLASTIC BAGS LESS THAN 4 MILS THICK BY A RETAIL ESTABLISHMENT.

28 (G) (1) NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED
29 IN PARAGRAPH (2) OF THIS SUBSECTION, A COUNTY OR MUNICIPALITY MAY NOT
30 ADOPT OR ENFORCE A LAW OR AN ORDINANCE THAT REQUIRES A RETAIL
31 ESTABLISHMENT TO CHARGE AND COLLECT A FEE, A TAX, OR ANY OTHER CHARGE
32 FOR THE USE OF CARRYOUT BAGS AT THE POINT OF SALE UNLESS THE LAW OR

ORDINANCE IS AUTHORIZED BY A STATE LAW ENACTED ON OR AFTER JANUARY 1, 2021.

(2) WITH RESPECT TO A COUNTY OR MUNICIPALITY THAT, ON OR BEFORE FEBRUARY 1, 2020, ADOPTED A LAW OR AN ORDINANCE THAT REQUIRES A RETAIL ESTABLISHMENT TO CHARGE AND COLLECT A FEE, A TAX, OR ANY OTHER CHARGE FOR THE USE OF CARRYOUT BAGS AT THE POINT OF SALE, THIS SUBSECTION DOES NOT AFFECT THE AUTHORITY OF THE COUNTY OR MUNICIPALITY TO CHARGE AND COLLECT THE FEE, TAX, OR OTHER CHARGE FOR THE USE OF CARRYOUT BAGS THAT ARE NOT OTHERWISE PROHIBITED UNDER THIS SECTION.

~~(C)~~ (H) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

~~(a) There is a Single Use Products Workgroup.~~

~~(b) In alignment with the Waste Reduction and Resource Recovery Plan for Maryland (Executive Order 01.01.2017.13), the purpose of the Workgroup is to study, identify, assess, and make recommendations regarding materials, process, infrastructure, and policy to directly address plastic and single use container waste throughout Maryland, including extended producer responsibility and tax credits or compensation to businesses for reduction of single use packaging and products.~~

~~(c) The Workgroup consists of the following members:~~

~~(1) two members of the Senate of Maryland, appointed by the President of the Senate;~~

~~(2) two members of the House of Delegates, appointed by the Speaker of the House;~~

~~(3) the Secretary of the Environment, or the Secretary's designee;~~

~~(4) two Maryland residents who have volunteered or worked within their communities to reduce waste or trash, including one who is under the age of 30 years at the time of appointment, appointed jointly by the President of the Senate and the Speaker of the House; and~~

~~(5) the following members, appointed by the Secretary of the Environment:~~

~~(i) one representative of the Maryland Retailers Association;~~

~~(ii) one representative of the Restaurant Association of Maryland;~~

~~(iii) two representatives of the solid waste management industry;~~

~~(iv) two representatives of Trash Free Maryland, the Maryland League of Conservation Voters, the Sierra Club, the Chesapeake Bay Foundation, United Workers, or Riverkeeper;~~

~~(v) one representative of an organization working to reduce waste or trash, including Blue Water Baltimore, the Sunrise Movement, the Anacostia Watershed Society, or Maryland Public Interest Research Group;~~

~~(vi) one representative with scientific expertise in marine science, pollution, or ecology of the Chesapeake Bay who works at an institution of higher education in Maryland; and~~

~~(vii) one representative of the Maryland Association of Counties.~~

~~(d) The Secretary of the Environment shall designate the chair of the Workgroup.~~

~~(e) The Department of the Environment shall provide staff for the Workgroup.~~

~~(f) A member of the Workgroup:~~

~~(1) may not receive compensation as a member of the Workgroup; but~~

~~(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.~~

~~(g) The Workgroup shall hold at least two public hearings that allow public testimony and are not located in Annapolis.~~

~~(h) The Workgroup shall:~~

~~(1) evaluate current State and municipal policies and requirements for the management of single-use products;~~

~~(2) recommend policies or requirements that the State should enact to:~~

~~(i) reduce the use of single-use products;~~

~~(ii) reduce the environmental impact of single-use products;~~

~~(iii) improve statewide management of single-use products;~~

~~(iv) divert single-use products from disposal in landfills; and~~

~~(v) prevent contamination of natural resources by discarded single-use products; and~~

~~(3) evaluate potential economic impact on Marylanders with an income at or below 130% of the federal poverty level and make recommendations to mitigate this impact, including by providing access to free or discounted reusable bags and making changes to the allocation of money collected for carryout bags.~~

~~(i) On or before December 1, 2020, the Workgroup shall report its findings and recommendations to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly.~~

SECTION ~~3~~ 2. AND BE IT FURTHER ENACTED, That ~~Section 1~~ of this Act shall take effect July 1, ~~2021~~ 2020.

~~SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect July 1, 2020. Section 2 of this Act shall remain effective for a period of 1 year and, at the end of June 30, 2021, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.~~

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.