

SENATE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2776

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED DECEMBER 5, 2019

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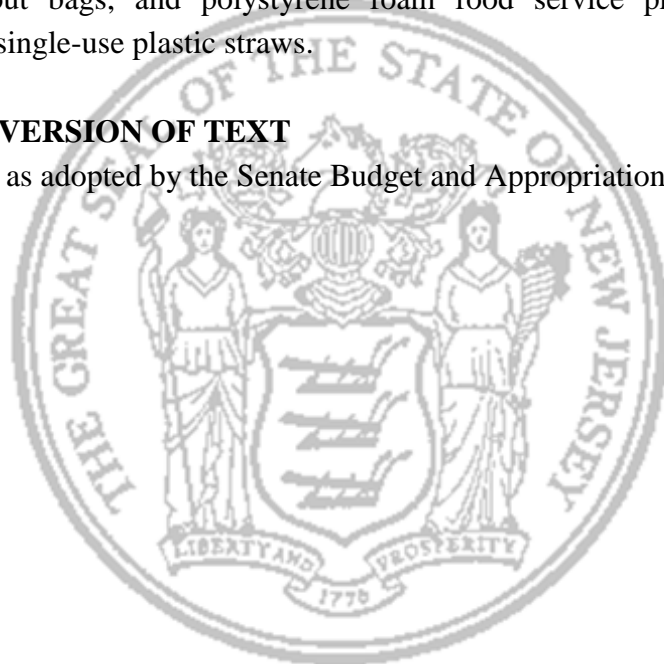
Senators Gill and Gopal

SYNOPSIS

Prohibits provision or sale of single-use plastic carryout bags, single-use paper carryout bags, and polystyrene foam food service products; limits provision of single-use plastic straws.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



1 AN ACT concerning single-use plastic carryout bags, single-use
2 paper carryout bags, polystyrene foam food service products, and
3 single-use plastic straws, and supplementing Title 13 of the
4 Revised Statutes.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8

9 1. The Legislature finds and declares that, since 1950, global
10 annual production of plastics has increased from two million tons to
11 over 381 million tons; that approximately one third of all plastics
12 produced are single-use plastics, which are plastics designed to be
13 used only once and then thrown away; and that an estimated 100
14 billion single-use plastic carryout bags and 25 billion styrofoam
15 plastic coffee cups are thrown away in the United States each year.

16 The Legislature further finds that, in 2017, only 8.4 percent of
17 plastics in the United States were recycled; that most single-use
18 plastics are disposed of in landfills, are incinerated, or become litter
19 in waterways and oceans; that plastics released in the environment
20 do not biodegrade, but instead break down into smaller pieces,
21 known as microplastics, which accumulate in the natural
22 environment and are eaten by fish and other marine life; and that
23 microplastic pollution moves through natural food webs and
24 accumulates in fish and shellfish tissues, which means microplastics
25 and associated pollutants can move into the food chain.

26 The Legislature further finds that approximately eight million
27 tons of plastic end up in the oceans annually; that, without action,
28 scientists estimate that by 2050 the mass of plastic pollution in the
29 ocean will exceed the mass of fish; that currently, there is a
30 collection of litter in the North Atlantic Ocean, known as the Great
31 Pacific Garbage Patch, that is 7.7 million square miles and is
32 composed primarily of plastics; that one study found plastics in the
33 gut of every sea turtle examined and in 90 percent of seabirds
34 examined; and that plastics have been known to cause death or
35 reproductive failure in sea turtles, birds, and other organisms that
36 ingest plastic.

37 The Legislature further finds that, as plastics break down through
38 photodegradation, they release harmful chemicals such as bisphenol
39 A (BPA) into the environment that have been linked to health
40 problems in humans; that these chemicals enter the food chain when
41 consumed by marine life; and that single-use plastic waste creates
42 visual pollution, degrades water quality, and impacts the tourism,
43 fishing, and shipping industries, all of which are major contributors
44 to the New Jersey economy.

45 The Legislature therefore determines that it is no longer
46 conscionable to permit the unfettered use and disposal of single-use
47 plastics in the State; that New Jersey must do its part to minimize
48 plastic pollution in the ocean, and to ensure that future generations

1 have a clean and healthy environment to live, work, and recreate in;
2 that banning or limiting the use of single-use plastic carryout bags,
3 polystyrene foam food service products, and single-use plastic
4 straws is a significant step in this effort, as these items are among
5 the most significant sources of beach and ocean pollution; that New
6 Jersey joins several other states and hundreds of municipalities
7 across the country in banning or limiting the use of single-use
8 plastics; and that such bans and limitations have drastically lowered
9 consumer consumption of single-use plastics.

10 The Legislature further finds that single-use paper carryout bags
11 use as much or more energy and resources to manufacture and
12 transport than single-use plastic carryout bags and contribute to
13 harmful air emissions. Consequently, the Legislature further
14 determines that it is in the public interest to prohibit grocery stores
15 from providing single-use paper carryout bags.

16

17 2. As used in this act:

18 “Carryout bag” means a bag that is provided by a store or food
19 service business to a customer for the purpose of transporting
20 groceries, prepared foods, or retail goods. “Carryout bag” shall not
21 include:

22 (1) a bag used solely to contain or wrap uncooked meat, fish, or
23 poultry;

24 (2) a bag used solely to package loose items such as fruits,
25 vegetables, nuts, coffee, grains, baked goods, candy, greeting cards,
26 flowers, or small hardware items;

27 (3) a bag used solely to contain live animals, such as fish or
28 insects sold in a pet store;

29 (4) a bag used solely to contain food sliced or prepared to order,
30 including soup or hot food;

31 (5) a laundry, dry cleaning, or garment bag;

32 (6) a bag provided by a pharmacy to carry prescription drugs;

33 (7) a newspaper bag; and

34 (8) any similar bag, as determined by the department pursuant to
35 rule, regulation, or guidance.

36 “Department” means the Department of Environmental
37 Protection.

38 “Food service business” means a business that sells or provides
39 food for consumption on or off the premises, and includes, but is
40 not limited to, any restaurant, café, delicatessen, coffee shop,
41 convenience store, grocery store, vending truck or cart, food truck,
42 movie theater, or business or institutional cafeteria, including those
43 operated by or on behalf of any governmental entity.

44 “Grocery store” means a self-service retail establishment that
45 occupies at least 4,500 square feet and that primarily sells a full-line
46 of household foodstuffs for off-site consumption, including, but not
47 limited to, fresh produce, meat, poultry, fish, deli products, dairy

1 products, canned foods, dry foods, beverages, baked foods, or
2 prepared foods.

3 “Person” means any individual, corporation, company,
4 association, society, firm, partnership, joint stock company, or
5 governmental entity.

6 “Plastic” means a synthetic material made from linking
7 monomers through a chemical reaction to create an organic polymer
8 chain that can be molded or extruded at high heat into various solid
9 forms retaining their defined shapes during the life cycle and after
10 disposal.

11 “Polystyrene foam” means blown polystyrene and expanded and
12 extruded foams that are thermoplastic petrochemical materials
13 utilizing a styrene monomer and processed by a number of
14 techniques, including, but not limited to, fusion of polymer spheres
15 (expandable bead polystyrene), injection molding, foam molding,
16 and extrusion-blow molding (extruded foam polystyrene).

17 “Polystyrene foam food service product” means a product made,
18 in whole or in part, of polystyrene foam that is used for selling or
19 providing a food or beverage, and includes, but is not limited to, a
20 food container, plate, hot or cold beverage cup, meat or vegetable
21 tray, cutlery, or egg carton.

22 “Reusable carryout bag” means a carryout bag that: (1) is made
23 of polypropylene, PET nonwoven fabric, nylon, cloth, or other
24 machine washable fabric; (2) has stitched handles; and (3) is
25 designed and manufactured for multiple reuse.

26 “Single-use paper carryout bag” means a carryout bag made of
27 paper that is not a reusable carryout bag.

28 “Single-use plastic carryout bag” means a carryout bag made of
29 plastic that is not a reusable carryout bag.

30 “Store” means any grocery store, convenience store, liquor store,
31 pharmacy, drug store, or other retail establishment.

32

33 3. a. Beginning one year after the effective date of this act:

34 (1) no store or food service business shall provide or sell a
35 single-use plastic carryout bag to a customer; and

36 (2) no grocery store shall provide or sell a single-use paper
37 carryout bag to a customer.

38 b. Beginning one year after the effective date of this act, for a
39 period of two months, a grocery store shall provide, without charge,
40 reusable carryout bags to its customers.

41 c. A municipality or county shall not adopt any rule,
42 regulation, code, or ordinance concerning the regulation or
43 prohibition of single-use plastic carryout bags or single-use paper
44 carryout bags after the effective date of this act.

45 d. Beginning one year after the effective date of this act, this
46 section shall supersede and preempt any municipal or county rule,
47 regulation, code, or ordinance concerning the regulation or

- 1 prohibition of single-use plastic carryout bags or single-use paper
2 carryout bags that was enacted prior to the effective date of this act.
3
- 4 4. a. Beginning two years after the effective date of this act,
5 no person shall sell or offer for sale in the State any polystyrene
6 foam food service product.
- 7 b. Beginning two years after the effective date of this act, no
8 food service business shall provide or sell any food in a polystyrene
9 foam food service product.
- 10 c. The following products shall be exempt from the provisions
11 of subsections a. and b. of this section for a period of two years
12 beginning two years after the effective date of this act:
- 13 (1) disposable, long-handled polystyrene foam soda spoons
14 when required and used for thick drinks;
- 15 (2) portion cups of two ounces or less, if used for hot foods or
16 foods requiring lids;
- 17 (3) meat and fish trays for raw or butchered meat, including
18 poultry, or fish that is sold from a refrigerator or similar retail
19 appliance;
- 20 (4) any food product pre-packaged by the manufacturer with a
21 polystyrene foam food service product; and
- 22 (5) any other polystyrene foam food service product as
23 determined necessary by the department.
- 24 d. The department may extend any exemption provided for in
25 subsection c. of this section for additional periods not to exceed one
26 year upon a written determination that there is no cost-effective and
27 readily available alternative for the item. An exemption shall
28 expire after one year unless the department extends the exemption
29 pursuant to this subsection.
- 30 e. The department may, upon written application by a person or
31 food service business, waive the provisions of subsection a. or b. of
32 this section for the person or food service business for a period not
33 to exceed one year, if:
- 34 (1) there is no feasible and commercially available alternative
35 for a specific polystyrene foam food service product; or
- 36 (2) the person or food service business has less than \$500,000 in
37 gross annual income and there is no reasonably affordable,
38 commercially-available alternative to the polystyrene foam food
39 service product.
- 40 The department shall prescribe the form and manner of the
41 application for a waiver pursuant to this subsection. The
42 department may, upon written application, extend any waiver
43 granted pursuant to this section for additional periods not to exceed
44 one year.
- 45 f. A municipality or county shall not adopt any rule,
46 regulation, code, or ordinance concerning the regulation or
47 prohibition of polystyrene foam food service products after the
48 effective date of this act.

1 g. Beginning two years after the effective date of this act, this
2 section shall supersede and preempt any municipal or county rule,
3 regulation, code, or ordinance concerning the regulation or
4 prohibition of polystyrene foam food service products that was
5 enacted prior to the effective date of this act.

6
7 5. a. Beginning one year after the effective date of this act, a
8 food service business shall only provide a single-use plastic straw to
9 a customer upon the request of the customer.

10 b. A food service business shall maintain an adequate supply of
11 single-use plastic straws to provide at the request of customers
12 pursuant to subsection a. of this section.

13 c. Nothing in this section shall be construed to prohibit a store
14 from selling packages of single-use plastic straws to customers, or
15 from providing or selling a beverage pre-packaged by the
16 manufacturer with a single-use plastic straw, including, but not
17 limited to, a juice box.

18 d. Notwithstanding the provisions of subsection c. of section 6
19 of this act, the Department of Health shall enforce the provisions of
20 this section. The Department of Health may adopt, pursuant to the
21 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
22 seq.), any rules and regulations necessary to effectuate the
23 provisions of this section.

24 e. No later than four years after the effective date of this act,
25 the Department of Health shall prepare and submit to the Plastics
26 Advisory Council a written report evaluating the compliance of
27 food service businesses with the requirements of this section.

28 f. A municipality or county shall not adopt any rule,
29 regulation, code, or ordinance concerning the regulation or
30 prohibition of single-use plastic straws after the effective date of
31 this act.

32 g. Beginning one year after the effective date of this act, this
33 section shall supersede and preempt any municipal or county rule,
34 regulation, code, or ordinance concerning the regulation or
35 prohibition of single-use plastic straws that was enacted prior to the
36 effective date of this act.

37
38 6. a. Any person or entity that violates a provision of this act,
39 or any rule or regulation adopted pursuant thereto, shall be subject
40 to a warning for a first offense, up to \$1,000 for a second offense,
41 and up to \$5,000 for a third or subsequent offense, to be collected in
42 a civil action by a summary proceeding under the “Penalty
43 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.),
44 or in any case before a court of competent jurisdiction wherein
45 injunctive relief has been requested. If the violation is of a
46 continuing nature, each day during which it continues shall
47 constitute an additional, separate, and distinct offense. The
48 Superior Court and the municipal court shall have jurisdiction to

1 enforce the provisions of the “Penalty Enforcement Law of 1999” in
2 connection with this act.

3 b. Any penalty collected pursuant to this section shall be
4 remitted to the State Treasurer for deposit in the Clean
5 Communities Program Fund established pursuant to section 5 of
6 P.L.2002, c.128 (C.13:1E-217), except that a municipality or entity
7 certified pursuant to the “County Environmental Health Act,”
8 P.L.1977, c.443 (C.26:3a2-21 et seq.) may retain 30 percent of any
9 penalty it collects pursuant to subsection a. of this section.

10 c. The Department of Environmental Protection, a
11 municipality, and any entity certified pursuant to the “County
12 Environmental Health Act,” P.L.1977, c.443 (C.26:3a2-21 et seq.)
13 shall have the authority to enforce the provisions of this act. Those
14 entities may institute a civil action for injunctive relief to enforce
15 this act and to prohibit and prevent a violation thereof, and the court
16 may proceed in the action in a summary manner.

17

18 7. a. There is established in the Department of Environmental
19 Protection the Plastics Advisory Council. The council shall monitor
20 the implementation of this act, and evaluate its effectiveness in
21 reducing single-use plastics and plastic waste in the State.

22 b. The council shall consist of 15 members as follows:

23 (1) the Commissioner of Environmental Protection, who shall
24 serve ex officio, or the commissioner’s designee;

25 (2) the Commissioner of Health, who shall serve ex officio, or
26 the commissioner’s designee;

27 (3) the following members appointed by the Governor:

28 (a) two members of the academic community with expertise on
29 the issues of single-use plastics and plastic waste;

30 (b) four members representing the environmental community;

31 (c) four members representing stores and food service
32 businesses in the State;

33 (d) one member representing the polystyrene foam industry;

34 (e) one member representing the recycling industry; and

35 (f) one member representing local governments.

36 c. All appointments to the council shall be made no later than
37 90 days after the effective date of this act. The term of office of
38 each public member shall be three years. Each member shall serve
39 until a successor has been appointed and qualified, and vacancies
40 shall be filled in the same manner as the original appointments for
41 the remainder of the unexpired term. A member is eligible for
42 reappointment to the council. The members of the council shall
43 serve without compensation, but shall be eligible for necessary and
44 reasonable expenses incurred in the performance of their official
45 duties within the limits of funds appropriated or otherwise made
46 available for the council’s purposes.

47 d. The council shall organize as soon as practicable following
48 the appointment of its members and shall select a chairperson and a

1 vice-chairperson from among its members, as well as a secretary
2 who need not be a member of the council. A majority of the
3 membership of the council shall constitute a quorum for the
4 transaction of council business. The council may meet and hold
5 hearings at the place or places it designates.

6 e. No later than one year after the effective date of this act, and
7 each year thereafter, the council shall prepare and submit a written
8 report to the Governor, the Legislature pursuant to section 2 of
9 P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of
10 the Senate Environment and Energy Committee and the Assembly
11 Environment and Solid Waste Committee, or their successors,
12 evaluating the implementation and effectiveness of this act, and
13 making any recommendations for legislative or administrative
14 action to improve the implementation or effectiveness of this act.

15 f. (1) The council shall also study the environmental and
16 public health impacts of single-use plastics and micro-plastics;
17 healthy and environmentally-friendly alternatives to single-use
18 plastics; strategies and policies to increase the recyclability of
19 plastics and reduce the amount of plastic entering the environment;
20 the technological feasibility of increasing recycled content of
21 consumer plastics and expanding the types of plastics that may be
22 manufactured from recycled material; and ways to enhance the
23 development and expansion of markets of post-consumer recycled
24 plastic, including State and local purchasing and procurement
25 practices.

26 (2) No later than two years after the effective date of this act,
27 the council shall submit a written report to the Governor, the
28 Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1),
29 and the respective chairpersons of the Senate Environment and
30 Energy Committee and the Assembly Environment and Solid Waste
31 Committee, or their successors. The written report shall summarize
32 the analysis conducted pursuant to paragraph (1) of this subsection
33 and recommend ways to reduce the use of plastics and the amount
34 of plastic entering the environment, and increase the rate of
35 recycling of plastics.

36
37 8. No later than six months after the effective date of this act,
38 the Department of State, in consultation with the Department of
39 Environmental Protection, shall establish a program to assist
40 businesses in complying with the provisions of this act, including,
41 but not limited to, developing and publishing on its Internet website
42 guidance on compliance with the act, and establishing an online
43 clearinghouse of vendors who provide environmentally sound
44 alternatives to single-use plastic carryout bags, single-use paper
45 carryout bags, polystyrene foam food service products, and single-
46 use plastic straws.

1 9. The department shall adopt, pursuant to the “Administrative
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
3 regulations necessary to effectuate the provisions of this act.

4

5 10. This act shall take effect immediately.