

HOUSE No. 784

The Commonwealth of Massachusetts

PRESENTED BY:

Mindy Domb

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to plastic bag reduction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/19/2023</i>
<i>Margaret R. Scarsdale</i>	<i>1st Middlesex</i>	<i>1/26/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>1/31/2023</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/7/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/9/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/13/2023</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/15/2023</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>2/16/2023</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>3/8/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/11/2023</i>

HOUSE No. 784

By Representative Domb of Amherst, a petition (accompanied by bill, House, No. 784) of Mindy Domb and others relative to plastic bag reduction. Environment and Natural Resources.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to plastic bag reduction.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 21O the
2 following chapter:-

3 CHAPTER 21P.

4 PLASTIC BAG REDUCTION.

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Commissioner”, the commissioner of revenue.

8 “Department”, the department of environmental protection.

9 “Person”, an individual, partnership, trust, association, corporation, society, club,
10 institution, organization or other entity.

11 “Postconsumer recycled material”, material used in a recycled paper bag that would
12 otherwise be destined for solid waste disposal, having completed its intended end use and
13 product life cycle, and that does not comprise any material or byproduct generated from, and
14 commonly reused within, an original manufacturing and fabrication process.

15 “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable; (ii) contains either:
16 (A) a minimum of 40 per cent postconsumer recycled materials; or (B) if not more than a so-
17 called 8 pound paper bag, not less than 20 per cent postconsumer recycled material; and (iii)
18 displays on the outside of the bag the words “100% Recyclable” and either : (A) “40%
19 postconsumer recycled content”; or (B) such other per cent of postconsumer recycled material
20 established by department regulation.

21 “Retail establishment”, a store or premises in which a person is engaged in the retail
22 business of selling or providing merchandise, goods, groceries, prepared take-out food and
23 beverages for consumption off-premises or the servicing of an item, directly to customers at such
24 store or premises, including, but not limited to, grocery stores, department stores, pharmacies,
25 convenience stores, restaurants, coffee shops and seasonal and temporary businesses, including
26 farmers markets and public markets; provided, however, that a “retail establishment” shall also
27 include a food truck or other motor vehicle, mobile canteen, trailer, market pushcart or moveable
28 roadside stand used by a person from which to engage in such business directly with customers
29 and business establishments without a storefront, including, but not limited to, a business
30 delivering prepared foods or other food items, web-based or catalog business or delivery services
31 used by a retail establishment; provided further, that a “retail establishment” shall include a non-
32 profit organization, charity or religious institution that has a retail establishment and holds itself
33 out to the public as engaging in retail activities that are characteristic of similar type retail

34 businesses, whether or not for profit when engaging in such activity; provided further that a
35 “retail establishment” shall include K-12 food service operations or institutional cafeterias,
36 including those operated by or on behalf of any governmental entity.

37 “Reusable bag”, a bag that is not a plastic film bag that has handles that are stitched and
38 not heat-fused, and that is made of washable cloth, hemp or other woven or non-woven fibers,
39 fabrics or materials that are at least 80 grams per square meter, designed and manufactured
40 specifically for multiple uses.

41 “Serviced” or “Servicing”, a service performed to clean, repair, improve, refinish or alter
42 an item of a customer by a person engaged in a retail business of customarily providing such
43 services, including, but not limited to, dry cleaning and tailoring articles of clothing, jewelry
44 repair and shoe and leather repair.

45 “Single-use plastic bag”, a bag made of plastic film with or without handles provided by
46 a retail establishment to customers at its business location to carry items purchased from or
47 serviced by the retail establishment and that is not a recycled paper bag or reusable bag.

48 Section 2. (a) A retail establishment shall not provide a customer with a single-use plastic
49 bag or provide any other bag, unless specifically allowed under this chapter that is not: (i) a
50 recycled paper bag; or (ii) a reusable bag for the customer to carry away an item purchased from
51 or serviced by the retail establishment.

52 (b) Subsections (a) and (c) shall not apply to any type of bag used by a retail
53 establishment or provided by a retail establishment to a customer for: (i) prescription medication;
54 (ii) produce, meats, poultry, fish, bread and other food items to keep such items, including
55 unwrapped items, fresh or unsoiled; (iii) preventing frozen food items, including ice cream, from

56 thawing; (iv) protecting articles of clothing on a hanger; (v) protecting small items from loss;
57 (vi) providing or distributing prepared foods, groceries or articles of clothing at no cost or at a
58 substantially reduced cost by a nonprofit organization, charity or religious institution; or (vii) any
59 item that requires the use of a certain type of bag under federal or state law.

60 (c) A retail establishment may make available for purchase a recycled paper bag or
61 reusable bag; provided, however, that the price of a recycled paper bag or reusable bag shall be
62 not less than \$0.10; and provided further, that such a recycled paper bag or reusable bag provided
63 to a customer to carry away an item purchased from or serviced by a retail establishment shall
64 not be subject to tax under chapter 64H or chapter 64I.

65 (d) A retail establishment shall be exempt from the requirements of subsections (c) and
66 (e) if the retail establishment: (i) has not more than 3 store locations under the same ownership
67 and each store location has less than 4,000 square feet of retail selling space and not more than
68 15 employees; (ii): (A) is not a food establishment under chapter 94 or any regulations
69 promulgated pursuant to said chapter 94; or (B) provided less than 15,000 single-use plastic
70 bags, recycled paper bags or reusable bags to consumers at the point of sale in total during the
71 previous calendar year; and (iii) annually submits to the department an affidavit attesting that the
72 retail establishment meets the requirements of this subsection.

73 Nothing in this subsection shall prohibit a retail establishment from making available for
74 purchase a recycled paper bag or reusable bag under subsections (c).

75 (e) For each recycled paper bag sold, a retail establishment shall remit \$0.05 to the
76 commissioner of revenue at the same time and in the same manner as the sales tax due to the
77 commonwealth and such amounts shall be administered in accordance with chapter 62C.

78 Not less than quarterly, money received by the commissioner under this section shall be
79 distributed, credited and paid by the state treasurer upon certification of the commissioner to
80 each city and town in proportion to the amount of the sums received from the sales of recycled
81 paper bags sold in the city or town. Sums received by a city or town under this section shall be
82 used for reusable bags for residents, litter prevention, multilingual bag reuse and recycling
83 education and promotion, enforcement of this chapter, cleanup programs, recycling programs
84 and associated costs, waste reduction, composting programs, support for nonprofit, religious and
85 charitable institutions reducing their plastic bag use, beautification and community greening. If
86 the amount of the distribution to a city or town is \$25,000 or less, the chief executive officer as
87 defined in section 7 of chapter 4, may expend such funds for the purposes provided in this
88 paragraph without further appropriation by the city or town.

89 Notwithstanding section 21 of chapter 62C, the commissioner may make available to
90 cities and towns any information necessary for the administration of the fee collected by a retail
91 establishment under this section including, but not limited to, a report of the amount of fees
92 collected in the aggregate by each city or town under this section in the preceding fiscal year and
93 the identification of each individual retail establishment collecting fees on recycled paper bag
94 sold under this chapter.

95 Each even-numbered year, each city and town receiving money under this subsection
96 shall provide a report to the department on: (i) the total amount received under this subsection;
97 and (ii) a description of expenditures made with the money received under this subsection.

98 (f) Nothing in this section shall prohibit a customer from bringing a personal bag, made
99 or comprised of any material, to a retail establishment to carry out items purchased from or
100 serviced by the retail establishment.

101 (g) A retail establishment shall not be prohibited from selling or offering for sale to
102 customers: (i) any package containing several bags, including, but not limited to, food bags,
103 sandwich bags, yard waste bags, garbage bags or municipal pay-as-you-throw program trash
104 bags; (ii) any product, merchandise or good with a protective bag, a bag to hold related
105 accessories, parts or instruction manuals or a bag used as product packaging that the retail
106 establishment received with such item or product from the manufacturer, distributor or vendor;
107 or (iii) any bag that is not a retail type carryout bag that is sold or offered for sale as a product or
108 merchandise, including, but not limited to, sports bags, handbags, equipment bags, tent bags or
109 other bags specifically designed to protect or contain a particular item.

110 (h) Notwithstanding subsection (c) and to the extent permitted under federal and state
111 law, a retail establishment that makes available for purchase a recycled paper bag at the point of
112 sale shall not charge a fee for the bag to a customer using an electronic benefit transfer card as
113 payment.

114 Section 3. (a) Each city and town shall enforce this chapter through its enforcing
115 authority as determined under subsection (c).

116 (b) A retail establishment that violates this chapter shall be subject to a warning for the
117 first violation, a civil penalty of \$500 for the second violation and a civil penalty of \$1000 for a
118 third or subsequent violation. Each day a retail establishment is in violation of this chapter shall
119 be considered a separate violation.

120 Each city and town shall dispose of a civil violation under this subsection by the non-
121 criminal method of disposition procedures contained in section 21D of chapter 40 without an
122 enabling ordinance or bylaw.

123 (c) Each city and town shall designate the municipal board, department or official
124 responsible for the local enforcement of this chapter and for the collection of money resulting
125 from civil penalties assessed for violations of this chapter. A city or town shall retain any civil
126 penalties collected for such violations.

127 Section 4. The department shall establish standards for reusable bags including, but not
128 limited to, the minimum amount of weight, number of uses and the minimum amount of recycled
129 material required in reusable bags.

130 The department may through regulation: (i) increase or adjust the postconsumer recycled
131 material percentage in a recycled paper bag; (ii) increase or adjust the fee established under
132 subsection (c) of section 2; (iii) allow a retail establishment to use other non-plastic type carryout
133 bags that are recyclable or compostable, provided however that such regulations shall not be
134 implemented prior to the universal availability of a safe disposal route for compostable bags and,
135 provided further, that the department shall seek public comment on said proposed regulations;
136 and (iv) promulgate standards regulating bags authorized under subsection (b) of section 2.

137 The department shall, when adopting or amending any standard for an allowed recycled
138 or reusable bag under this chapter, consult with the department of public health on issues relating
139 to food safety and the materials used to produce the bags.

140 The department shall conduct an evaluation of the implementation of this act every three
141 years and shall submit to the clerks of the senate and the house of representatives a report
142 including legislative recommendations not later than December 31.

143 Section 5. Nothing in this chapter shall prohibit or limit the department’s authority to
144 enforce this chapter.

145 SECTION 2. Subsection (b) of section 21 of chapter 62C of the General Laws, as
146 amended by section 15 of chapter 5 of the acts of 2019, is hereby further amended by adding the
147 following clause:-

148 (32) the disclosure of information necessary for administration of the recycled paper bag
149 fee imposed under section 2 of chapter 21P.

150 SECTION 3. Subsection (d) of section 2 of chapter 21P is hereby repealed.

151 SECTION 4. Notwithstanding any general or special law to the contrary, the department
152 of transitional assistance shall, if necessary to implement subsection (h) of section 2 of chapter
153 21P of the General Laws, use reasonable efforts to seek a waiver from the federal Food and
154 Nutrition Service to implement said subsection (h) of said section 2 of said chapter 21P.

155 SECTION 5. Notwithstanding any general or special law to the contrary, the department
156 of environmental protection shall inform the clerks of the house and senate in the case of a
157 regional or national market shortage or a forecasted regional or national market shortage in the
158 paper bag supply chain.

159 SECTION 6. Section 1 shall take effect 6 months after passage of this act.

160 SECTION 7. Section 3 shall take effect on January 1, 2025.