

MAIN POINTS OF PLASTIC BAG BAN REDRAFT [Draft 6/19 v.7]

- APPROX. 121 MUNICIPALITIES HAVE NOW PASSED (OR ARE IN THE PROCESS OF PASSING) A PLASTIC BAG BAN.

BANS ADOPTED HAVE CREATED A PATCH-WORK, AS ALL BANS ARE NOT THE SAME (Based on random survey) – THIS CAN CREATE PROBLEMS FOR BUSINESSES OR FRANCHISES WITH MULTIPLE LOCATIONS.

AND- CAN GIVE AN UNFAIR ADVANTAGE TO BUSINESSES LOCATED IN MUNICIPALITIES THAT DON'T HAVE BAG BANS.

- LEGISLATIVE OBJECTIVE IS TO PROVIDE A UNIFORM STANDARD BANNING SINGLE-USE PLASTIC CARRY OUT BAGS THAT WILL APPLY TO ALL 351 MUNICIPALITIES.

- THE PROPOSED LEGISLATION DOES NOT MANDATE THAT RETAILERS CHARGE CUSTOMERS FOR RECYCLABLE PAPER BAGS/ REUSEABLE BAGS. The cities of Boston, Cambridge, Greenfield & Pittsfield require retailers to charge customers for certain bags; and Newton is considering this requirement. Other cities such as Springfield, Lowell, Newburyport and Haverhill have no mandatory charge requirement. (Haverhill had a mandatory charge for bags- but repealed the requirement in Feb. 2019)

Required charges can be regressive to people in need.

- THE BAN IMPROVES THE CURRENT BILL –
 - ❖ BANS SINGLE USE (FILM TYPE) PLASTIC BAGS THAT ARE 4 MILS OR LESS. (THIS IS A HIGHER THRESHOLD FOR MANY MUNICIPALITIES)
 - ❖ PROVIDES ADDITIONAL IMPORTANT EXEMPTIONS FOR THE USE OF PLASTIC BAGS
(FOR EXAMPLE- EXEMPTS PLASTIC BAGS REQUIRED PER FEDERAL AND STATE LAWS AND RELATED REGULATIONS- MARIJUANA BAGS & RECORKING OF WINE FROM RESTURANTS.)
 - ❖ ALLOWS DEP BY REGULATION TO UP-DATE/CHANGE STANDARDS FOR PAPER BAGS, RESUABLE BAGS AND CERTAIN OTHER ALLOWED BAGS, (FOR EXAMPLE, INCREASE THE AMOUNT OF POST-CONSUMER

RECYCLED CONTENT IN A PAPER BAG). THIS ALLOWS THE DEP TO RESPOND TO CERTAIN FUTURE CHANGES IN BAG INNOVATIONS AND RECYCLING - WITHOUT RETURNING TO THE LEGISLATURE FOR CHANGES TO THE PLASTIC BAG BAN LAW.

- LAW TO BE ENFORCED BY THE DEP AND LOCAL MUNICIPALITIES.
 - ❖ LOCAL MUNICIPALITIES TO CHOOSE THEIR OWN MEANS TO ENFORCE THE LAW (Some municipalities with current bans, now use the health department, building inspector, police, or town administrator designee etc., for enforcement. Cities and towns can choose the means of enforcement that best suits their individual situations.)
- ESTABLISHES CIVIL PENALTIES FOR VIOLATIONS, MUNICIPALITIES ARE PERMITTED TO SET THEIR OWN INCREASED PENALTIES FOR LOCAL VIOLATIONS. **(Municipalities to keep all civil penalties assessed and collected by the municipality for local violations.)**
- EXCEPT FOR ESTABLISHING CIVIL PENALTIES, THE LAW PREEMPTS MUNICIPAL PLASTIC BAG BAN ORDINANCES, BY-LAWS AND REGULATIONS- ALLOWING FOR A UNIFORM STANDARD TO BE ESTABLISHED ACROSS THE COMMONWEALTH.
- EXEMPTED FROM THE LAW ARE NON-PROFITS, CHARITIES AND RELIGIOUS ORGANIZATIONS WHEN PROVIDING FOOD AND GROCERY ITEMS (e.g. food banks & food pantries) AND CLOTHING TO THOSE IN NEED, INCLUDING THE ELDERLY.
- LAW GOES INTO EFFECT ONE YEAR AFTER PASSAGE
 - ❖ ALLOWING TIME FOR DEP REGULATIONS TO BE ESTABLISHED AND RETAILERS TO TRANSITION ALLOWED BAGS AND REDUCE EXISTING PLASTIC BAG STOCKS.

Plastic Bag Talking Points

1. Main Points about the Bill

- a. This aims to provide a uniform standard banning single-use plastic carry-out bag
- b. This is step one of six in the legislative process, and has been written for amendments and further input. Suggestions are welcomed, and will continue to be welcome as the bill enters the House Ways and Means process.

2. Frequently Asked Questions

a. **Why is there no mandatory fee?**

- i. Having a mandatory fee does not change the overall goal of the legislation, which is to reduce plastic pollution by banning single-use plastic carryout bags, which this bill does..
- ii. Of the 122 plastic bag bans in the state, 5 cities (Boston, Cambridge, Greenfield, and Pittsfield) had imposed a mandatory fee for paper bags. The fifth city, Haverhill, did have a mandatory fee but actually repealed this requirement in February, 2019
- iii. Boston, Cambridge, Greenfield, and Pittsfield actually require retailers to charge customers for certain bags, and our bill allows for retail stores to have the option to do so

b. **What would you say to those who argue that no mandatory fee is bad for the environment and is a step back?**

- i. There is concern that a mandatory fee could negatively impact small businesses, particularly in border towns where customers may decide to shop across state lines.
- ii. Also, we did not want the unintended consequence of hurting poor and low-income families being disproportionately affected by a mandatory fee

c. **Well what if some towns want the option to have a fee but now they don't?**

- i. Per a ruling by the Attorney General, only cities are allowed to mandate a fee for paper bags, towns do not have that right. This law does not take away a town's ability to charge a fee for paper bags because that is something towns were not allowed in the first place
- ii. The option to have a fee is still there, retailers are allowed to charge a fee if they would like; nothing in this bill prevents them from doing so

d. **Does your bill allow stores to offer thicker plastic bags as alternatives? Why was a mil number added into the definition of a single-use plastic bag?**

- i. The redraft does not allow for thicker single-use plastic bags. Lines 43-46 explicitly state that retailers can only provide recyclable paper bags or reusable bags (non-plastic compostable bags are also allowed if approved by DEP)
- ii. The only thicker plastic bags that are allowed are reusable grocery bags allowed by DEP. DEP has the authority to raise standards for reusable bags, recyclable paper bags, and non-plastic compostable bags to make them even more environmentally friendly as time goes on.
- iii. The sole purpose was meant for clarity of a single-use plastic bag in relation to how it was written in cities and towns, and simply to distinguish a single-use bag from a reusable one

Plastic Bag Talking Points

- iv. A mil number was included in the definition to align with language used in existing municipal bans, almost all of which included different thicknesses.
- e. **Why allow DEP to change standards and regulations for bags?**
 - i. The idea to set a state-wide standard is that it needs to be enforced and regulated. Furthermore, this allows DEP to set even stricter standards and regulations for reusable bags, recyclable paper bags, and non-plastic compostable bags to make them even more environmentally friendly as technology develops.
- f. **Does your bill allow for more exemptions?**
 - i. The exemptions included in the redraft are based off the exemptions in the original bill; however, in some cases they were reworded to provide clarity/reduce ambiguity. A couple exemptions were added to ensure this ban complied with existing laws and to take certain public health concerns into account.
- g. **Why does this bill preempt existing city and town bans?**
 - i. The idea is and always has been to set a uniform standard across Massachusetts and bring the towns that didn't have a ban into the fold
 - ii. The idea of superseding town regulations has been a part of the conversation for years, and is included to ensure that no city or town has a ban that is less restrictive
 - iii. Now, if a city or town wants to go beyond the bill regarding civil penalties for violation or incentivizing reusable bags, that is well within their purview and not affected by this bill

H.771 An Act Reducing Plastic Bag Pollution (Redraft) [Draft 6/19 v.7]

Problem	<p>Single-use (film type) plastic bags provided by retailers to customers:</p> <ul style="list-style-type: none"> • Pollute the environment and not easily recycled adding to waste problems; • Pose problems for material recycling facilities processing other recyclables; • Harmful to wildlife and marine life that ingest wrongfully disposed bags; • Create substantial litter problems that can cause issues for street drains, streams, waterbodies and wetlands; • Do not compost well in the environment (issues depend on the bag type).
Legislative Objective	To establish a uniform standard across the Commonwealth prohibiting retailers from providing single use plastic bags to customers for carrying their purchases.
Bags Prohibited	Single-use, (film type) plastic carryout bags, which are 4 mils thick or less, provided by retail business establishments to customers.
Exempted Plastic Bags	<p>Bags used for: [Concept Examples]</p> <ul style="list-style-type: none"> • prescription medications; • unpackaged food items (produce, meat, seafood, etc.); • contain granular, powdery, or unpackaged items; • to protect unpackaged items from contamination or damage; • to protect clothing/dry cleaning on a hanger; and; • items <i>required</i> to be placed in plastic bags per federal or state law and regulation, (e.g. recorked wine from a restaurant).
Retail Business Establishments Affected	<p>A retail establishment that sells, vends, or provides merchandise, grocery items, food items, other goods or services, directly to customers at its business location. A retail establishment shall include non-profit organizations unless exempted. Food items delivered by retail establishments to customers away from the business establishment shall be subject to the ban.</p> <p>Examples: stores that sell merchandise and goods, restaurants, pharmacies, convenience and grocery stores, liquor stores, jewelry stores, shoe cobblers, including seasonal and temporary and businesses such as farmers markets, public markets, farm stands, or establishments that sell or provide goods or food items from vending carts, stands, and vending trailers, trucks, and canteens.</p>
Allowed Bags	Retail establishments may sell or provide bags to customers, limited to certain recycled paper bags, reusable grocery bags, or non-plastic compostable bags (as allowed by DEP).
Requirements of Recycled Paper Bags	<p>Paper bags with or without handles, made of 100% recyclable materials and that comprise at least 40% post-consumer recycled materials. Eight (8) pound bags or smaller may contain at least 20% post-consumer recycled materials.</p> <p>The Department of Environmental Protection (“DEP”) by regulation shall provide paper bag standards, including, any necessary exemptions and standards for specialty bags, i.e. wax-paper type bakery bags and foil/paper ice cream bags. The DEP may as needed increase the standards for the post-consumer recycled content and other requirements of paper bags.</p>
PLEASE SEE NEXT PAGE	
Paper Bag	No fee mandated. A retail establishment <i>may charge a fee</i> for paper bags, e.g., to

Fees	cover the retailer's costs.
Requirements of Reusable Grocery Bags	Bags with handles made of washable cloth, hemp, or other fibers, fabric or material specifically designed and manufactured for multiple uses (as defined by DEP regulation).
Business Establishments Exempted From Act	Non-profit, charity and religious organizations are exempt from this ban when providing food and grocery items (i.e. food banks, food pantries and by other sources) and clothing to those in need, including the elderly.
Bags Provided by Customers	Customers allowed to bring <i>their own</i> clean plastic, paper or reusable bags to a retail business establishment to carry their purchases.
Civil Penalties for Violations	The following civil penalties are provided for violations of the act: 1 st Violation: Warning 2 nd Violation: \$50 Penalty 3 rd Violation: \$100 Penalty (Each day is separate violation) Notwithstanding, each municipality may establish increased penalties for violations in the municipality in lieu of the above prescribed penalties.
Enforcement by Municipalities	Each municipality may determine the municipal board, department or official responsible for the enforcement of the law. Each municipality shall keep any civil penalties assessed and collected by the municipality for local violations.
Enforcement by DEP	The DEP shall enforce and oversee the provision of the law, and may assess additional civil administrative penalties when a retail establishment repeatedly violates the law or related DEP regulation.
DEP Regulations	DEP shall adopt regulations to implement, administer and enforce the law, including defining the standards for (i) carryout paper bags, (ii) reusable carryout bags, (iii) exempted plastic bags and (iv) non-plastic compostable bags (as allowed by DEP). To allow for the future, the DEP may adopt or amend regulations to change standards for paper bags, reusable bags, and certain other allowed bags, provided by retailers to customers to carry items from retail establishments, e.g., increase the percentage of post-consumer recycled materials to reduce the need for new paper stock. In adopting regulations, the DEP shall consult with the Department of Public Health on issues relating to food safety and the materials used in allowed bags.
Preemption	This law shall supersede any municipal ordinance, bylaw or local regulation (including Board of Health regulations), except when a municipality establishes increased civil penalties under an ordinance or bylaw for local violations.
Effective Date	Law is to take effect 1 year after its passage. The period allows for adoption of regulations, and time for retail establishments to use existing inventories of single use type plastic bags.

HOUSE REDRAFT No. 771

By Representative Ehrlich of Marblehead and Senator Eldridge, a petition (accompanied by bill, House, No. 771) of Lori A. Ehrlich, James B. Eldridge and others for legislation to reduce plastic bag pollution by requiring the availability of reusable bags at certain stores. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act reducing plastic bag pollution.

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

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

CHAPTER 21P.

PLASTIC BAG REDUCTION

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

“Department”, the department of environmental protection.

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

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

“Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable, (ii) contains a minimum of 40 per cent postconsumer recycled materials, provided, however, that an 8 pound or smaller paper bag shall contain a minimum of 20 per cent postconsumer recycled material, and (iii) displays on the outside of the bag, the words "100% Recyclable" and “40 % postconsumer recycled content”, or such other per cent of postconsumer recycled material content as required under clause (ii), or other standard established by department regulation:

“Retail establishment”, any store or premises, in which a person is engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises, or the servicing of an item, directly to customers at such store or premises, including but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops, and seasonal and temporary businesses, such as farmers markets and public markets, provided the use of a food truck or other motor vehicle, mobile canteen, trailer, market pushcart, moveable roadside stand, used by a person from which to engage in such business directly with customers, shall be considered a “retail establishment” for the purpose of this definition.

A non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type retail

businesses, whether or not for profit, shall when engaging in such activity, be considered a “retail establishment”.

“Reusable carryout bag”, a bag with handles made of washable, cloth, hemp, or other fibers, fabrics or materials, or combination thereof, that is designed and manufactured specifically for multiple uses, which meets the standards established by department regulation.

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

“Single-use plastic carryout bag”, a plastic film-type bag with or without handles, which is 4 mils thick or less, provided by a retail establishment to customers at its business location to carry items purchased or serviced, and is not a recycled paper bag or reusable carryout bag.

Section 2. (a) Except as provided in this chapter, a retail establishment shall not provide a customer with a single-use plastic carryout bag or provide any other carryout bag that is not a recycled paper bag, or reusable carryout bag for the customer to carry away an item purchased or serviced, from the retail establishment.

(b) A retail establishment when delivering prepared food, or other food item, directly to a customer at a place other than the location of such establishment, shall be subject to the prohibition in subsection (a).

(c) The prohibition in subsection (a), shall not apply to any type of bag, used by a retail establishment, or provided to its customer for: (1) prescription medications, (2) produce, meats,

poultry, fish, bread, and other food items to keep such items fresh or unsoiled, (3) preventing frozen food items, including ice cream, from thawing, (4) containing products or items that are saturated, wet, prone to leak, or need to be immersed in a liquid. (5) containing products or items that are granular, powdery, dirty or greasy, (6) protecting an item from damage or contamination, or to protect a second item when both are carried together from the retail establishment, (7) protecting articles of clothing on a hanger, (8) items that contain any herbicide, pesticide, solvent, corrosive, automotive type fluid or other chemical, that can be harmful to public health, whether or not, the item is prepackaged in a sealed container or bag, (9) protecting small items from loss, and (10) any item that requires the use of a certain type bag, under federal and state laws and regulations.

(d) A retail establishment may charge a fee for a recycled paper bag, reusable carryout bag, or other type of carryout bag approved by department regulation under section 4. The retail business establishment shall retain any collected fees.

(e) Notwithstanding the prohibition in subsection (a), a customer shall not be prohibited under said subsection, from bringing a clean personal bag, made or comprised of any material, to the retail establishment to carry out items purchased or serviced from such establishment.

(f) Notwithstanding the prohibition in subsection (a), a retail establishment shall not be prohibited under said subsection, from selling, or offering for sale, to customers:

(1) Any package containing several bags, including but not limited to, food bags, sandwich bags, yard waste bags, garbage bags, or municipal pay-as-you-throw program trash bags;

(c) Notwithstanding the provisions of subsection (b), a city or town may establish increased civil penalties for violations occurring within the municipality. In a city or town having an ordinance or by-law that imposes a civil fine that is greater than the civil fine imposed for a violation under subsection (b), the ordinance or by-law shall prevail over the prescribed penalty under said subsection.

(d) A city or town shall determine the municipal board, department, or official responsible for the local enforcement of this chapter and for the collection of monies resulting from civil penalties assessed for violations of this chapter. A city or town shall retain any civil penalties it collects for such violations.

(e) The department shall enforce the provisions of this chapter and may assess additional civil administrative penalties when a retail establishment repeatedly violates the provision of this chapter or related department regulation.

Section 4. The department shall adopt regulations, and may amend such regulations, to implement, enforce, and administer this chapter, consistent with the provisions of this chapter. The department shall establish standards for reusable carryout bags, including but not limited to, the minimum amount of weight and number of uses required of a reusable carryout bag, and the minimum amount of any recycled material required in certain types reusable carryout bags.

To further advance the use of non-plastic type carryout bags and reduce waste, as necessary the department by regulation may, (i) increase or adjust the postconsumer recycled material percentage in a recycled paper bag, and (ii) allow a retail establishment to use other non-plastic type carryout bags, that are recyclable or compostable, including carryout bags composed of a plant material, in addition to allowed recycled paper bags and reusable carryout bags under

subsection (a), provided the department by regulation, establishes standards for the allowed use of such bag.

When adopting or amending any standard for an allowed carryout bag under this chapter, the department shall consult with the department of public health relating to issues of food safety regarding the materials used in such bag.

Section 5. The provisions of this chapter when effective, shall preempt any limitation by any political subdivision of the commonwealth regarding the use, sale, or distribution of carryout bags, or other bags, by a retail establishment or other entity, to the extent such subject is regulated or covered by this chapter. Any existing municipal ordinance, by-law, or regulation, including a regulation of a board of health, that is inconsistent with the provisions of this chapter when effective, shall be null and void.

SECTION 2. Section 1 shall take effect 1 year after passage of this act.

H.771 Original and Redraft Comparison [6/25 v.4]

	Original	Redraft
Bags Prohibited	Plastic or paper bags that are not recycled paper bags	Single-use, film-type plastic bags that are 4 mils thick or less. This sets high standard across Massachusetts
Exempted Plastic Bags	Bags used for: (1) prescriptions, (2) protecting items from damaging or contaminating other items, (3) containing unwrapped food items, or (4) dry-cleaning	Bags used for: (1) prescriptions, (2) unpackaged food items (i.e. produce, meat, seafood, etc.), (3) prevent frozen food items from thawing, (4) containing items that are wet or may leak, (5) granular, powdery, or greasy items; (6) protecting other items from contamination or damage, (7) clothing/dry-cleaning, (8) containing herbicide, pesticide, or chemical/substance that may be harmful to public health; (9) protect small items from loss, or (10) items required to be placed in bags per federal or state law (i.e. recorked wine from restaurant, marijuana products). Includes language specifying that sandwich bags, garbage bags, and plastic bags that come with merchandise to contain parts are not considered a single-use bag. Updated list of exemptions is more comprehensive while taking existing law into account
Retail Business Establishments Affected	A retail establishment, person, corporation, partnership, business venture, or vendor that sells or provides merchandise, goods or materials directly to a customer, whether for or not for profit	A retail establishment that sells, vends, or provides merchandise, grocery items, food items, other goods or services, directly to customers at its business location. A retail establishment shall include non-profit organizations unless exempted. Food items delivered by retail establishments to customers away from the business establishment shall subject to the ban. This draft clarifies and expands list of affected establishments

	Original	Redraft
Allowed Bags	Recycled paper bags or reusable grocery bags	Recycled paper bags, reusable grocery bags or non-plastic compostable bags (as allowed by DEP)
Requirements of Reusable Grocery Bags	Sewn bag with stitched handles that is specifically designed and manufactured for at least 175 uses; can carry 25 pounds over a distance of 300 feet; and is made of cloth or other machine-washable fabric other than polyethylene or polyvinyl chloride	Bag with handles made of washable cloth, hemp, or other fibers, fabric or material specifically designed and manufactured for multiple uses, as defined by DEP regulation. This both allows for more reusable bag options and DEP to define best standards
Requirements of Recycled Paper Bags	100% recyclable and contains a minimum of 40% post-consumer recycled materials or minimum of 20% post-consumer recycled materials for 8 pound bag or smaller	100% recyclable and contains a minimum of 40% post-consumer recycled materials or minimum of 20% post-consumer recycled materials for 8 pound bag or smaller. DEP shall provide regulations for paper bag standards and may as needed increase threshold for the post-consumer recycled content and other paper bag requirements. This allows for improved standards to be set as innovations develop.
Paper Bag Fees	\$0.10 fee for recycled paper and reusable grocery bags	No mandated fee, but stores can charge one if they wish. A mandated fee would be regressive, disproportionately affecting low-income citizens
Business Establishments Exempted From Act	Bazaars, fairs or festivals operated by nonprofit organizations or religious institutions	Non-profit, charity and religious organizations are exempt from this ban when providing food and grocery items (i.e. food banks, food pantries and by other sources) and clothing to those in need, including the elderly. Allows broader exemptions for organizations that provide for social good

	Original	Redraft
Civil Penalties for Violation	Not Included	<p>Minimum civil penalties: 1st Violation: Warning 2nd Violation: \$50 Penalty 3rd Violation: \$100 Penalty (Each day is separate violation) Each city and town has flexibility to impose stricter penalties as they see fit, and penalty fees will be kept by the municipality</p>
Enforcement by Municipalities	Not Included	<p>Municipalities may determine the municipal board, department or official responsible for the enforcement of the law. This allows them to choose enforcement that best suits their circumstances</p>
Enforcement and Regulation by DEP	DEP shall promulgate regulations with regard to the enforcement of this chapter	<p>DEP shall enforce and oversee the provision of the law, and may assess additional civil administrative penalties when a retail establishment repeatedly violates the law or related DEP regulation. Sets DEP as regulatory backstop if necessary to uphold enforcement. DEP will determine regulations for enforcement and standards for recyclable paper bags, reusable grocery bags, compostable bags, and exempted bags. DEP may adopt new regulations in the future to allow for better standards as recycling innovations improve</p>
Preemption	Makes existing laws null and void but allows for further municipal limitations	<p>Supersedes any municipal bans, except in the case of increased civil penalties, in order to allow for uniform standards across Massachusetts</p>
Effective Date	August 1, 2019	<p>Will take effect 1 year after law's passage in order to give municipalities and retail establishments ample time to prepare themselves for compliance</p>