

New York State Plastic Bag Ban Goes Into Effect March 1st

February 28, 2020

New York State's plastic bag ban **[1]** goes into effect on March 1, 2020. **[2]** Except for certain "exempt bags," the regulations prohibit stores from distributing plastic carryout bags to customers. **[3]** The prohibition applies to any "person required to collect tax," meaning any vendor that is required to collect New York State sales tax pursuant to subdivision (a) of Section 1105 of the New York State sales tax law. **[4]**

The regulations also require stores to make reusable bags available to customers at a cost determined by the store operator. **[5]** Reusable bags are those that (i) are either made of cloth, washable fabric, or other non-film plastic washable material, (ii) have a strap or handle that does not stretch, (iii) have a lifespan of 125 uses of carrying 22 pounds a distance of 175 feet, and (iv) have a minimum fabric weight of 80 grams per square meter (or equivalent). **[6]**

"Exempt bags," which may continue to be used, include those that are: (i) used to contain uncooked meat, fish, seafood, and poultry for the purpose of avoiding contamination (ii) used to package items from bulk containers, including fruits, vegetables, grains, candy, or aquatic items requiring a waterproof bag; (iii) used to contain food sliced or prepared to order; (iv) used to contain a newspaper for delivery; (v) bulk prepackaged bags; (vi) trash bags; (vii) food storage bags (e.g. sandwich bags), (viii) garment bags; (ix) restaurant take-out bags, and (x) provided by a pharmacy for prescription drugs. **[7]**

The regulations also include the requirements of the Bag Reduction, Reuse and Recycling Act (in effect since 2009), which mandates that stores greater than 10,000 square feet in size and those that are a retail chain store with more than five locations of 5,000 square feet or greater within New York State must place plastic bag recycling bins within the stores. **[8]** Bags collected in those bins must be recycled and store operators must maintain for three years records of the collection, transportation and recycling (by weight) of such bags. **[9]**

Store operators that violate the plastic bag ban face a civil penalty of \$250 for the first violation after receiving a warning and \$500 for any subsequent violation in the same calendar year. **[10]**

Although it is anticipated that initial enforcement of the new regulations may be relaxed as retailers become accustomed to the new rules, store owners and operators should be prepared to discontinue the distribution of one-use disposable bags and be cognizant of the rule's exemptions.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have any questions regarding New York's new plastic bag regulations, please feel free to contact Brendan Mooney at (516) 357-3757 or via email at bmooney@cullenllp.com.

Footnotes

[1] Environmental Conservation Law Article 27, Title 28, “The Plastic Bag Waste Reduction Law.”

[2] NYSDEC’s Plastic Bag Reduction, Reuse and Recycling regulations, set forth at 6 NYCRR Part 351, become effective as of March 14, 2020.

[3] 6 NYCRR §351-2.1.

[4] *Ibid.* at §351-1.2(l).

[5] *Id.* at §351-2.2(a)-(b).

[6] *Id.* at §351-1.2(n).

[7] *Id.* at §351-1.2(f).

[8] *Id.* at §351-2.3(a).

[9] *Id.* at §351-2.3(b), (d).

[10] ECL §27-2807(1).

Practices

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