

HOUSE ENERGY, ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 392

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE SINGLE-USE PLASTIC BAG ACT; PROHIBITING RETAIL ESTABLISHMENTS FROM MAKING OR DELIVERING GOODS USING SINGLE-USE PLASTIC BAGS; CREATING EXCEPTIONS; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 74 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Single-Use Plastic Bag Act"."

SECTION 2. A new section of Chapter 74 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Single-Use Plastic Bag Act:

A. "carryout bag" means a bag that is furnished to

1 a customer at a retail establishment at the point of sale for
2 use by the customer to transport or carry purchased items;

3 B. "department" means the department of
4 environment;

5 C. "plastic" means a synthetic material made from
6 linking monomers through a chemical reaction to create a
7 polymer chain that can be molded or extruded at high heat into
8 various solid forms, including material derived from petroleum
9 or a biologically based polymer such as corn or other plant
10 sources;

11 D. "recyclable cardboard box" means a box made of
12 non-coated cardboard, corrugated paper or paper;

13 E. "recycled content paper bag" means a paper
14 carryout bag that contains a minimum of forty percent post-
15 consumer recycled content and is one hundred percent
16 recyclable;

17 F. "retail establishment" means a retail business
18 that sells merchandise or dry goods to consumers or is a goods
19 or service delivery provider;

20 G. "reusable carryout bag" means a carryout bag
21 that is designed and manufactured for multiple uses, has
22 stitched handles and is made of cloth, fiber, polypropylene or
23 recycled-content polyethylene terephthalate; and

24 H. "single-use plastic bag" means a carryout bag
25 that is provided to a customer at a point of sale for the

.231349.3

1 purpose of transporting groceries, food or other goods that is
 2 made predominantly of plastic derived from natural gas,
 3 petroleum or a biologically based source, such as corn or other
 4 plant sources, and is not specifically designed for or
 5 manufactured for multiple uses."

6 SECTION 3. A new section of Chapter 74 NMSA 1978 is
 7 enacted to read:

8 "[NEW MATERIAL] PROHIBITIONS ON THE USE OF SINGLE-USE
 9 PLASTIC BAGS--EXCEPTIONS.--

10 A. A retail establishment shall not provide a
 11 single-use plastic bag or other bag or box that is not a
 12 reusable carryout bag, recycled content paper bag or recyclable
 13 cardboard box to carry groceries, food or other goods from the
 14 point of sale in a retail establishment.

15 B. This section does not apply to single-use
 16 plastic bags:

17 (1) provided to customers for use with loose
 18 or bulk products, produce, meat or fish or when provided for
 19 separating items to avoid contamination or prevent damage from
 20 moisture or for sanitary, public health or environmental
 21 protection purposes;

22 (2) provided for prepared takeout food with a
 23 potential for leakage, as determined by the retail
 24 establishment, that is not intended for consumption on the
 25 retail establishment's premises;

.231349.3

1 (3) provided by pharmacists or veterinarians
2 to contain prescription drugs or medical necessities;

3 (4) provided by laundries or dry cleaning
4 establishments;

5 (5) used to transport or contain live animals;

6 (6) used to transport chemical pesticides or
7 drain-cleaning or other toxic chemicals sold at retail
8 establishments;

9 (7) used to protect newspapers from inclement
10 weather;

11 (8) distributed by manufacturers for packaging
12 or preparing goods for display prior to sale; or

13 (9) that are similar to those exempted by this
14 subsection, as determined by the department."

15 SECTION 4. A new section of Chapter 74 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] DEPARTMENT RULES.--The department may
18 promulgate rules for the implementation of the provisions of
19 the Single-Use Plastic Bag Act."

20 SECTION 5. A new section of Chapter 74 NMSA 1978 is
21 enacted to read:

22 "[NEW MATERIAL] RECYCLED CONTENT PAPER BAGS ALLOWED--FEE--
23 DISPOSITION OF MONEY.--

24 A. A retail establishment may provide a customer
25 with one or more recycled content paper bags at the point of

1 sale only if the customer pays a carryout bag fee of not less
2 than ten cents (\$.10) per recycled content paper bag or a
3 higher fee if a municipality or county in which the retail
4 establishment is located raises the fee by ordinance, except
5 that retail establishments shall not collect the fee from a
6 person with a voucher or electronic benefits card issued under
7 the women, infants and children program, the emergency food
8 assistance program, the temporary assistance for needy families
9 program or the federal supplemental nutrition assistance
10 program.

11 B. Retail establishments shall indicate on the
12 customer transaction receipt the number of recycled content
13 paper bags provided.

14 C. Retail establishments shall not refund the
15 customer any portion of the fee, either directly or indirectly,
16 or advertise or otherwise convey to customers that a portion of
17 the fee will be refunded.

18 D. A retail establishment shall collect a fee per
19 recycled content paper bag provided to a customer. The retail
20 establishment may retain three cents (\$.03) of the fee
21 collected per recycled content paper bag. The retail
22 establishment shall:

23 (1) for a retail establishment in a
24 municipality that has implemented an ordinance to assess and
25 collect the fee, transmit the balance of the fee to the

.231349.3

underscoring material = new
~~[bracketed material] = delete~~

1 municipality in which the retail establishment is located or,
2 if not located in a municipality, the county in which the
3 retail establishment is located; and

4 (2) for a retail establishment in a
5 municipality that has not implemented an ordinance to assess
6 and collect the fee, transmit the balance of the fee to the
7 department.

8 E. All fees transmitted to a municipality or county
9 shall be used for waste and litter reduction programs.

10 F. A retail establishment shall, on a quarterly
11 basis starting January 1, 2026, remit from the total amount of
12 recycled content paper bag fees collected in the previous
13 quarter the amount that is owed to the municipality or county
14 within which the retail establishment is located or to the
15 department. A retail establishment need not remit recycled
16 content paper bag fees collected in any quarter in which the
17 collected fees total less than twenty dollars (\$20.00). The
18 retail establishment shall retain those collected fees until
19 the retail establishment has more than twenty dollars (\$20.00)
20 of collected fees to remit and shall remit those fees as part
21 of the next quarterly remittance."

22 SECTION 6. A new section of Chapter 74 NMSA 1978 is
23 enacted to read:

24 "[NEW MATERIAL] ENFORCEMENT--COMPLIANCE ORDERS--
25 PENALTIES.--

.231349.3

1 A. Except as provided in Section 7 of the Single-
2 Use Plastic Bag Act, a municipality or county may enforce a
3 violation of the Single-Use Plastic Bag Act against a retail
4 establishment that is located within the boundaries of the
5 municipality or county in the manner that the municipality or
6 county chooses.

7 B. A municipality or county that chooses to enforce
8 a violation of the Single-Use Plastic Bag Act against a retail
9 establishment may seek injunctive relief against the retail
10 establishment or may assess civil penalties, or both. The
11 county or municipality may assess penalties of up to:

12 (1) five hundred dollars (\$500) per day for a
13 second violation; or

14 (2) one thousand dollars (\$1,000) per day for
15 a third or subsequent violation.

16 C. A municipality or county may enforce but shall
17 not assess a civil penalty for the first violation of the
18 Single-Use Plastic Bag Act.

19 D. The department may enforce a violation of the
20 Single-Use Plastic Bag Act against the owner or operator of a
21 retail establishment if the municipality or county fails to do
22 so."

23 SECTION 7. A new section of Chapter 74 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] MUNICIPALITY OR COUNTY REGULATION--

.231349.3

1 PREEMPTION.--

2 A. A municipality or county may enact, implement or
3 enforce any ordinance that is as stringent as or more stringent
4 than the Single-Use Plastic Bag Act.

5 B. Beginning January 1, 2026, the department may
6 administer and enforce the Single-Use Plastic Bag Act. Fees
7 and civil penalties collected by the department shall be
8 deposited in the recycling and illegal dumping fund."

9 SECTION 8. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is January 1, 2026.