

Texas Plastic Bag Efficiency and Reuse Act

89th Legislature, Regular Session

88RXXXX

By: Svar Chandak

H.B. No. XXXX

A BILL TO BE ENTITLED

An Act relating to the regulation of single-use plastic carryout bags at retail establishments; establishing standards for alternative bags; requiring fees for certain bags; providing for manufacturer certification; creating enforcement mechanisms; providing civil and administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SHORT TITLE

This Act may be cited as the "Texas Plastic Bag Efficiency and Reuse Act."

SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF POLICY

(a) Findings. The Legislature finds that:

1. Single-use plastic carryout bags have become a persistent source of litter throughout Texas, contaminating waterways, roadways, agricultural lands, and natural areas.
2. Plastic bag waste imposes substantial economic costs on Texas municipalities, counties, and taxpayers through increased waste management, street cleaning, and stormwater system maintenance expenses.
3. Plastic bags pose documented threats to Texas livestock, wildlife, and marine life, with ingestion of plastic debris causing injury and death to cattle, birds, sea turtles, and other animals.
4. The proliferation of single-use plastic bags contributes to microplastic pollution in Texas waterways and soil, potentially affecting human health and agricultural productivity.

5. Reusable and recyclable alternatives to single-use plastic bags are readily available, economically viable, and environmentally preferable.
6. Establishing uniform statewide standards for carryout bags will provide regulatory certainty for businesses while protecting environmental quality.
7. The State of Texas has the authority and responsibility to regulate solid waste and environmental protection on a statewide basis to prevent a patchwork of conflicting local regulations.

(b) Declaration of Policy. It is the policy of the State of Texas to:

1. Reduce the environmental and economic impacts of single-use plastic bags through the promotion of reusable and recyclable alternatives.
 2. Protect Texas agriculture, wildlife, and natural resources from plastic pollution.
 3. Establish uniform statewide standards that provide regulatory certainty for businesses while protecting the environment.
 4. Encourage innovation in sustainable packaging materials and practices.
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SECTION 3. DEFINITIONS

In this Act:

1. **"Carryout bag"** means a bag that is provided by a retail establishment at the point of sale to a customer to carry goods purchased at the establishment.
2. **"Compostable bag"** means a bag that:
 - Meets the requirements of ASTM D6400 or ASTM D6868 standard specifications for compostable bags.
 - Is certified by a third-party organization approved by the Texas Commission on Environmental Quality as meeting composability standards.
 - It is clearly labeled as "compostable" and includes certification information;
 - Contains no more than 40 parts per million of fluorine, as measured by the applicable ASTM standard test method.
3. **"Customers of low or fixed income"** means customers participating in the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Temporary Assistance for Needy Families (TANF), or the Medicaid program.
4. **"Department"** means the Texas Commission on Environmental Quality.
5. **"Pharmacy"** means a place licensed by the Texas State Board of Pharmacy where prescription drugs are compounded or dispensed.
6. **"Producer"** means a person who manufactures plastic bags for sale or distribution in Texas.
7. **"Recycled content"** means the percentage of a product made from materials that would otherwise be destined for disposal, having completed their intended end use and product life cycle, including postconsumer recycled content and pre-consumer or postindustrial recycled content.

8. **"Recycled paper bag"** means a paper bag that:
 - Contains at least 40 percent postconsumer recycled content.
9. **"Retail establishment"** means a commercial establishment located in Texas that:
 - Sells perishable or nonperishable goods, including but not limited to clothing, food, and personal items directly to customers; and
 - Provides carryout bags to customers.

This includes but is not limited to grocery stores, supermarkets, convenience stores, liquor stores, pharmacies, gas stations, department stores, and similar retail establishments. This does not include restaurants, food trucks, or other establishments that primarily serve prepared food for immediate consumption.

10. **"Reusable bag"** means a bag that:
 - Has handles and is specifically designed and manufactured for multiple reuse.
 - Has a minimum lifetime of 125 uses for carrying a minimum of 22 pounds over a distance of 175 feet.
 - Is machine washable or, if the bag is made from plastic, is made from polyester, polypropylene, or other durable material and can be cleaned or disinfected.
 - Does not contain lead, cadmium, or any other heavy metal in toxic amounts.
 - If made from plastic, is made from a minimum of 20 percent postconsumer recycled content or is made from plastic that is at least 2.25 mils thick.
 - If made from non-plastic material, is made from natural fibers or recycled materials.
 - Has printed or embossed on the bag "REUSABLE BAG" and the name of the manufacturer, the location (country) where the bag was manufactured, and a statement that the bag is designed for at least 125 uses.
11. **"Single-use plastic bag"** means a plastic bag that is provided by a retail establishment to a customer at the point of sale and that is not a reusable bag.

SECTION 4. PROHIBITION ON SINGLE-USE PLASTIC BAGS

(a) General Prohibition. Except as provided in subsection (d), beginning January 1, 2026, a retail establishment may not provide a single-use plastic bag to a customer at the point of sale.

(b) Permitted Bag Types. A retail establishment may provide to customers at the point of sale:

1. **Recycled paper bags**, which must:
 - Be sold for not more than ten cents (\$0.10) per bag.
 - Meet the recycled content requirements of Section 3(8).
 - Be clearly marked with the recycled content percentage.
 - Include messaging encouraging reuse or recycling.
2. **Compostable bags**, which must:
 - Be sold for free.
 - Meet all requirements of Section 3(2).

- Be clearly labeled with a composability certification.
- 3. **Reusable bags**, which must:
 - Meet all requirements of Section 3(10).
 - Be sold for not more than ten cents (\$0.15) per bag.
 - Come with written information about proper care and cleaning.

(c) Bag Fee Requirements.

1. The minimum fee established in subsection (b) may be waived for:
 - Customers of low or fixed income, as defined in Section 3(3).
 - Customers participating in food assistance programs administered by food banks or similar charitable organizations.
 - Customers making purchases with benefits from the Supplemental Nutrition Assistance Program (SNAP) or the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
2. Retail establishments must post clear signage at the point of sale informing customers of:
 - The availability of free reusable bags for eligible customers.
 - The bag fee for non-exempt customers.
 - The environmental benefits of reusable bags.
3. All proceeds from bag fees collected by retail establishments are retained by the establishment.

(d) Exemptions. The prohibition in subsection (a) does not apply to:

1. **Food Service Bags** provided by:
 - Restaurants, food trucks, or other establishments that serve prepared food for immediate consumption.
 - Establishments providing takeout or delivery of prepared food.

SECTION 5. PRODUCER CERTIFICATION AND STANDARDS

(a) Certification Required. Beginning October 1, 2025, a producer may not sell or distribute in Texas any bag intended for use as a carryout bag unless the bag is certified under this section.

(b) Certification Process.

1. **Application.** A producer must submit an application to the Department that includes:
 - Detailed specifications for each bag type.
 - Results of third-party testing demonstrating compliance with applicable standards.
 - Chain of custody documentation for recycled content claims.
 - Manufacturing location and process information.
 - Proposed labeling and marking.
 - Payment of the required certification fee.

2. **Third-Party Testing.** All bags must be tested by a laboratory accredited by the American Association for Laboratory Accreditation (A2LA) or an equivalent organization approved by the Department.
3. **Certification Validity.** Certifications are valid for three years and must be renewed with updated testing results.

(c) Reusable Bag Standards. In addition to the requirements in Section 3(10), reusable bags must:

1. Pass drop testing from a height of 6 feet when loaded with 22 pounds, conducted according to ASTM D5276 or equivalent standard.
2. Have handles that can support 22 pounds without breaking or becoming detached.
3. Be tested for durability by a qualified testing laboratory, demonstrating a minimum of 125 uses.
4. If made from plastic, they contain no more than 100 parts per million of lead, cadmium, mercury, or hexavalent chromium.
5. Include a unique serial number or batch code for traceability.

(d) Compostable Bag Standards. Compostable bags must:

1. Meet ASTM D6400 or ASTM D6868 standards for composability.
2. Be certified by the Biodegradable Products Institute (BPI), TÜV AUSTRIA, or equivalent third-party certifier approved by the Department.
3. Disintegrate within 84 days and biodegrade within 180 days in a controlled composting environment.
4. Contain no more than 2% non-compostable material by weight.
5. Be clearly labeled with certification information and instructions for proper disposal.

(e) Certification Fees.

1. Initial certification: \$2,500 per bag type
2. Renewal certification: \$1,500 per bag type
3. Expedited review (within 30 days): Additional \$1,000
4. Modification of existing certification: \$750

(f) Prohibited Bags. The following bags may not be certified or sold in Texas:

1. Bags containing oxo-degradable additives or marketed as "degradable," "biodegradable," or "photodegradable" unless they meet compostable standards.
2. Bags containing per- and polyfluoroalkyl substances (PFAS) above 40 parts per million.
3. Bags made from materials that pose unreasonable risks to human health or the environment.

SECTION 6. ENFORCEMENT

(a) Enforcement Authority. The Department has primary enforcement authority under this Act and may delegate enforcement to:

1. Local health departments.
2. Code enforcement departments of municipalities.
3. County environmental health departments.
4. Other agencies with appropriate expertise, as determined by the Department.

(b) Inspection Authority. The Department and its authorized agents may:

1. Enter and inspect retail establishments during normal business hours.
2. Examine bags provided by retail establishments.
3. Review records related to bag purchases and sales.
4. Investigate complaints regarding violations.
5. Issue notices of violation and compliance orders.

(c) Retail Establishment Violations and Penalties.

1. **First Violation:** Written notice of violation with 30-day cure period.
2. **Second Violation within 12 months:** Civil penalty of \$300 per day for each day of violation.
3. **Third and Subsequent Violations within 12 months:** Civil penalty of \$500 per day for each day of violation.
4. **Willful or Repeat Violations:** Civil penalty up to \$1,000 per day plus potential suspension of business license.

(d) Producer Violations and Penalties.

1. **Operating without certification:** \$5,000 per month of violation.
2. **Selling non-compliant bags:** \$2,500 per batch or lot of non-compliant bags.
3. **False certification or testing:** \$10,000 per violation plus revocation of certification.
4. **Failure to maintain records:** \$1,000 per violation.

(e) Administrative Procedures.

1. **Notice of Violation:** Must specify the violation, required corrective action, and deadline for compliance.
2. **Hearing Rights:** Alleged violators may request an administrative hearing within 30 days of receiving a notice of violation.
3. **Settlement:** The Department may enter into settlement agreements with violators.
4. **Collection:** Unpaid penalties may be collected through civil action or administrative enforcement.

(f) Criminal Penalties. A person who knowingly provides false information in certification applications or testing results commits a Class C misdemeanor.

SECTION 7. RETAILER ASSISTANCE AND EDUCATION

(a) Technical Assistance Program. The Department shall establish a technical assistance program to help retail establishments comply with this Act, including:

1. Written guidance materials in English and Spanish.
2. Online resources and frequently asked questions.
3. Training workshops for retail staff.
4. Consultation services for small businesses.
5. Sample compliance materials and signage.

(b) Small Business Priority. The Department shall prioritize assistance to:

1. Retail establishments with fewer than 10 employees.
2. Establishments located in rural areas.
3. Establishments serving predominantly low-income communities.
4. Minority-owned and women-owned businesses.

(c) Compliance Timeline. The Department shall provide:

1. **July 1, 2025:** Begin public education campaign.
2. **September 1, 2025:** Begin technical assistance program.
3. **October 1, 2025:** Begin accepting producer certification applications.
4. **November 1, 2025:** Complete retailer outreach and education.
5. **December 1, 2025:** Final compliance assistance before enforcement begins.

(d) Educational Materials. The Department shall develop:

1. Multilingual signage templates for retail establishments.
2. Consumer education materials about bag alternatives.
3. Training videos for retail staff.
4. Fact sheets about environmental benefits.
5. Guidance for customers with disabilities who may need assistance with reusable bags.

SECTION 8. COMMUNITY ASSISTANCE PROGRAMS

(a) Low-Income Assistance Fund. The Department shall establish a fund to provide reusable bags to low-income customers, funded by:

1. Producer certification fees.
2. Civil penalties collected under this Act.
3. Federal grants and donations.

4. Funds appropriated by the Legislature.

(b) Reusable Bag Distribution Program. The Department shall:

1. Partner with food banks, community centers, and social service organizations.
2. Provide free reusable bags to customers with low or fixed income.
3. Ensure bags are distributed in urban and rural areas.
4. Prioritize areas with limited access to affordable reusable bags.

(c) School Education Program. The Department shall develop age-appropriate educational materials for schools about:

1. Environmental impacts of single-use plastics.
 2. Benefits of reusable alternatives.
 3. Proper care and maintenance of reusable bags.
 4. Waste reduction and recycling principles.
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SECTION 9. REPORTING AND MONITORING

(a) Retailer Reporting. Retail establishments with more than 10 locations in Texas must submit annual reports to the Department by March 31 of each year, including:

1. Number and type of bags distributed in the previous year.
2. Revenue generated from bag sales.
3. Participation in low-income assistance programs.
4. Consumer feedback and compliance challenges.
5. Recommendations for program improvements.

(b) Producer Reporting. Certified producers must submit annual reports by March 31 of each year, including:

1. Volume of bags sold in Texas by type.
2. Results of quality control testing.
3. Supply chain and manufacturing location information.
4. Research and development activities for improved bag alternatives.

(c) Department Monitoring. The Department shall:

1. Monitor statewide bag usage trends.
2. Assess environmental impact reductions.
3. Evaluate program effectiveness.
4. Track compliance rates and enforcement actions.
5. Identify emerging issues and needed improvements.

(d) Annual Report to Legislature. The Department shall submit an annual report to the Legislature by December 1 of each year, including:

1. Program implementation status.
 2. Compliance and enforcement statistics.
 3. Environmental and economic impacts.
 4. Stakeholder feedback and recommendations.
 5. Proposed legislative or regulatory changes.
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SECTION 10. RULEMAKING AUTHORITY

(a) General Rulemaking. The Department may adopt rules necessary to implement this Act, including:

1. Detailed certification procedures and standards.
2. Testing protocols and laboratory requirements.
3. Enforcement procedures and penalty guidelines.
4. Reporting requirements and forms.
5. Technical assistance program operations.

(b) Stakeholder Input. Before adopting rules, the Department shall:

1. Conduct public hearings in multiple regions of Texas.
2. Solicit input from retailers, producers, environmental groups, and consumer advocates.
3. Consider economic impacts on small businesses.
4. Provide draft rules for public comment for at least 30 days.

(c) Emergency Rulemaking. The Department may adopt emergency rules to address immediate threats to public health or safety related to bag contamination, but such rules expire after 120 days unless adopted through regular rulemaking procedures.

SECTION 11. PREEMPTION

(a) State Preemption. This Act preempts any local ordinance, rule, or regulation relating to the regulation of bags provided by retail establishments, except as provided in subsection (b).

(b) Local Authority Preserved. Local governments may:

1. Adopt more restrictive bag regulations that are consistent with this Act.
2. Provide additional assistance to low-income residents.
3. Implement local education and outreach programs.
4. Establish recycling programs for paper bags and reusable bags.

(c) Existing Local Ordinances. Any local ordinance in conflict with this Act is void as of the effective date of this Act.

SECTION 12. SEVERABILITY

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 13. APPROPRIATION

(a) Initial Appropriation. There is appropriated from the general revenue fund to the Texas Commission on Environmental Quality the sum of \$3,000,000 for the biennium beginning September 1, 2025, for the implementation of this Act.

(b) Ongoing Funding. After the initial appropriation, the program shall be funded through:

1. Producer certification fees.
 2. Civil penalties collected under this Act.
 3. Federal grants and other funding sources.
 4. Funds appropriated by the Legislature.
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SECTION 14. EFFECTIVE DATE

This Act takes effect September 1, 2025, except that:

1. The prohibition on single-use plastic bags in Section 4(a) takes effect January 1, 2026.
 2. Producer certification requirements in Section 5 take effect October 1, 2025.
 3. Enforcement provisions in Section 6 take effect March 1, 2026.
 4. The Department may begin rulemaking and program development immediately upon enactment.
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SECTION 15. SUNSET PROVISION

(a) Review Required. The Department shall conduct a comprehensive review of this Act's effectiveness by December 1, 2029, including:

1. Reduction in single-use plastic bag consumption.
2. Environmental impact assessments.
3. Economic effects on retailers and consumers.
4. Compliance costs and administrative burden.
5. Effectiveness of assistance programs.

(b) Legislative Recommendations. Based on the review, the Department shall recommend to the Legislature whether this Act should be:

1. Continued without modification.
2. Modified to improve effectiveness.
3. Expanded to cover additional bag types or establishments.
4. Allowed to sunset.

(c) Automatic Sunset. Unless extended by the Legislature, this Act expires September 1, 2031.