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Client Alert: New Jersey Latest with Statewide Ban of Single-Use Plastic (and Paper) Bags

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On November 4, New Jersey joined eight other states¹ with a statewide ban on single-use plastic bags. After vetoing an earlier bill that would have imposed a less restrictive 5-cent fee on single-use carryout bags, Governor Murphy signed a bill that imposes an absolute restriction on single-use plastic bags and polystyrene foam disposable food containers, as well as a partial ban on single-use paper bags.

S.B. 864, which will go into effect starting in May 2022 will:

1. Ban all stores and food service businesses from *providing or selling* single-use plastic carryout bags (grocery stores are also banned from providing or selling single-use paper carryout bags);²
2. Prohibit food-service businesses from handing out plastic straws, unless specifically requested by a customer (effective November 2021);
3. Bar the use of single-use plastic or polystyrene foam food containers, utensils, and cups;
4. Fine businesses up to \$5,000 for violations;
5. Allocate \$500,000 per year for three years to fund a public education campaign and distribute reusable bags; and
6. Create a Plastics Advisory Council within the New Jersey Department of Environment Protection.

The law includes permanent waivers for certain types of single-use plastic bags, such as bags wrapping raw meat or bags for loose produce. The law also includes a time-limited waiver for products prepackaged by the manufacturer and a discretionary one-year hardship deferment if a person or business can demonstrate that “there is no reasonably affordable, commercially available alternative to the polystyrene foam food service product.”

All fines collected by the ban would go to the Clean Communities Program Fund, which funds litter clean-up throughout New Jersey.

Although industry groups voiced concerns about how the ban might impact costs to consumers in the state, some commented that certain aspects of the statewide ban were welcome. Specifically, a trade group representing grocery stores in the state welcomed a single set of standards for the state, rather than a patchwork of piecemeal ordinances with different requirements.

Wider Impacts of New Jersey Ban

Although the ban, seen as one of the strictest in the United States to date, is limited to businesses in New Jersey, the bill could have impacts nationwide.

As more and more states (and/or a critical mass of local communities) pass similar bans, the industries most impacted will reach a tipping point where the “normal” mode of operations is to operate independent of single-use bags. Although it might be easier to continue using single-use plastic bags, difficulties with multiple implementation procedures or coordinating with numerous suppliers could be lessened. The states that have implemented bans will have figured out some of those logistical and business concerns making it easier for additional states to follow suit.

Similarly, rather than opposing bans in additional states, some trade groups might now be more receptive to single-use bag bans. Especially if those bans are similar among states. As indicated by the comments from trade groups in New Jersey, a single set of regulations that preempts various local rules might be welcome for statewide organizations as more local communities institute similar bans, but with minor (or major) differences.

One potential impact of the New Jersey ban is that it could shift the standard for what types of single-use bags are banned. New Jersey’s ban is arguably the most restrictive state ban to date. Other bans have focused on single-use plastic bags, naturally creating the use of paper bags as an alternative. But New Jersey is the first state to include a ban on the use of paper bags in grocery stores. New Jersey’s omnibus ban also includes food packages and utensils.

Statewide Single-Use Ban in Ohio?

Ohio is one state that will not be implementing a similar ban this year. In September, Governor DeWine, citing health concerns related to the pandemic, signed a bill banning communities for the next year from implementing local bans on single-use plastic bags. After the one year moratorium ends, however, many localities can again implement or re-implement single-use bag bans.

For now, retail businesses should be aware of local regulations and ensure compliance with those. If you have questions about single-use bans, please reach out to John Landolfi, Nat Morse or your Vorys attorney.

¹ California, Connecticut, Delaware, Hawaii, Maine, New York, Oregon, and Vermont

² The text of the statute does not ban the use of single-use paper bags for non-grocery stores.