TYPES OF BAG LAWS

**Bag Fee**: fee mandated for all carryout bags

**"Second Generation" Ban or "Ban/Fee Hybrid"**: ban on thin plastic bags, fee for all other carryout bags (paper, reusable, compostable)

"First Generation" or "Straight" Ban: ban on thin plastic bags only

**Best practice**: include fee component so all bag types are addressed & increase in the use of any bag is discouraged

In most local jurisdictions the entire amount of the fee must stay with retailer to avoid claims of "unconstitutional taxation" because generally the state must give permission for cities to collect a tax. (Depends on the state constitution, "enabling legislation" can allow cities to adopt taxes.)

TYPES OF PREEMPTION

Preemption: the action of forestalling, especially of making a preemptive attack

- **American Legislative Exchange Council (ALEC) boilerplate language preempting local laws on plastic bags or "auxiliary containers"**
- **Statewide plastic bag recycling law** that includes a clause preempting local ban and/or fee
- **State law intended to block a bag law in a specific city**

STATES WITH UNIFORM STATEWIDE LAWS INCLUDE: CA, OR, NY, VT, ME, CT, DE

*Hawaii has a de facto statewide law because all inhabited counties have their own law

CALIFORNIA WAS THE FIRST STATE WITH A UNIFORM STATEWIDE PLASTIC BAG REDUCTION LAW.


BAG LAWS ACROSS THE COUNTRY

MAP KEY
- statewide bag laws
- states with locally adopted bag laws that aren't preempted
- state preemption law allegedly in place but local bag law recently adopted (FL only, lawsuit pending)
- state preemption on bans only (MN only)
- state preemption

*notes: HI has a de facto state-wide law because all inhabited counties have local bag laws. TX preemption is based upon litigation over an existing statute. NC state pilot project for the Outer Banks was repealed.

Map developed by Korn Tangtrakul for PlasticBagLaws.org
Last updated August 13, 2019
**DO PLASTIC BAG LAWS WORK?**

**CALIFORNIA**
- Statewide ban on thin plastic bags (under 2.25 mils) & min 10-cent fee for paper & reusable
- Law was adopted by the legislature and later approved by statewide voter referendum
- 151 local jurisdictions had adopted bag laws prior to upholding statewide law
- A similar local law in San Jose, CA: reusable bag use increased from 4% to 62%, plastic bag litter decreased 59% on streets and 89% in storm drains
- **WASHINGTON, D.C.**
  - 60%+ reduction in single-use carryout bag consumption in first year
  - Corresponding reduction in plastic bag litter in D.C.'s Anacostia River
  - 83% of D.C. residents and 90% of D.C. businesses support the law or are neutral

**CHICAGO**
- Initially adopted a straight ban on all thin plastic bags (under 2.25 mils) but large chains, including Walmart, simply switched to giving away thicker plastic bags that qualify as reusable bags
- In reaction, environmental groups and some retailers united to push for a 7-cent tax on all carryout bags
- In the first month after the tax, the number of plastic and paper bags Chicagoans consumed at grocery stores dropped 42%

**WHY REGULATE PLASTIC BAGS?**

<table>
<thead>
<tr>
<th>WINDBLOWN LITTER</th>
<th>MARINE IMPACTS</th>
<th>WASTE MANAGEMENT</th>
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<tr>
<td>Even if disposed of properly, plastic bags get caught in the wind</td>
<td>Plastic bags can entangle or choke marine life</td>
<td>There is no viable market for dirty plastic bags</td>
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**RECYCLING PLASTIC BAGS IS NOT THE ANSWER**

- Recycling is a commodities market: some materials are more valuable than others & dirty plastic bags don’t have a viable market.
- Plastic bag recycling rates are difficult to measure, estimated at ~5%.
- Plastic bags often clog municipal recycling machinery when recycled curbside.

Instead of take-back recycling programs at retailers, focus should be on customers bringing their own bags (BYOBag).

Bag reduction laws (bans & fees) encourage BYOBag behavior.

**PLASTIC BAG LAWS WORK?**

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**LEARN MORE: PLASTICBAGLAWS.ORG**

By Jennie Romer, Esq, founder of plasticbaglaws.org last updated 8/13/19