



To: Jill Bartolotta, Ohio Sea Grant

From: Terra Bowling, NSGLC Research Counsel II

Re: Plastic and Styrofoam Bans NSGLC-24-04-02¹

Date: March 14, 2024

Advisory Summary

In 2018, the National Sea Grant Law Center provided a memorandum to Ohio Sea Grant on plastic bag legislation.² The memorandum addressed questions regarding plastic bag ban legislation by local governments and how that legislation is impacted by state laws. It examined several state laws that prohibited local governments from setting local standards on plastic bag use, state laws that ban or limit plastic bag use, and actions by local governments. In addition, the memorandum considered the policy arguments used by advocates for and against plastic bag use. The memorandum concluded with a discussion of some considerations for Sea Grant professionals related to Sea Grant’s nonadvocacy best practices.

The NSGLC updated the memo in 2020 to provide updated information on state laws that prohibit local governments from setting local standards on plastic bag use, state laws that ban or limit plastic bag use, and actions by local governments.³ In addition, the updated memorandum looked at state or local actions in the Great Lakes region for other plastic or trash, including straws, cigarette butts, polystyrene (Styrofoam), and balloons. Finally, the memo addressed the impact of COVID-19 on these state and local actions.

This memo summarizes state actions related to plastic bags since publication of the updated memo in 2020. The memo includes a nationwide, rather than regional, overview of state actions related to Styrofoam. The memo provides an overview and update for two bills currently in Congress—the Break Free from Plastic Act and the Plastic Pellet Free Waters Act—and the United Nations’ Global Plastics Treaty. Finally, the memo has examples of a plastic bag ban and a Styrofoam ban adopted by two Tribal communities.

¹ This product was prepared by the National Sea Grant Law Center under award number NA22OAR4170089 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

² [Plastic Bag Legislation](#), Terra Bowling, NSGLC, and Kristina Alexander, Mississippi-Alabama Sea Grant Legal Program, (June 5, 2018).

³ [Plastic Legislation](#), Terra Bowling, NSGLC (August 28, 2020).

State Acts Limiting or Banning Plastic Bags

The District of Columbia was the first non-municipal entity to restrict plastic bag usage, enacting a \$0.05 fee on any “disposable carryout bag” in 2009.⁴ In 2015, Hawaii claimed the first state-wide ban; however, it was a “de facto” state ban, as it was enacted at the county level by each of the four counties within the state.⁵ California’s was the first true statewide ban enacted by legislation.⁶ There are currently eleven states with plastic bag bans: California, Colorado, Connecticut, Delaware, Hawaii, Maine, New Jersey, New York, Oregon, Vermont, and Washington. Below are legislative actions taken by states to amend or enact plastic bag bans since the 2020 memo:

- California expanded its plastic bag ban to include “precheckout bags” ([Senate Bill 1046](#)).⁷ “Precheckout bags” includes not only bags typically used for fresh fruit and vegetables, but also bags used for unwrapped food items, like meat, fish, nuts, grains, candy, and bakery goods. Retailers may provide compostable plastic bags meeting certain criteria or recycled paper bags. The ban will take effect January 1, 2025.
- Colorado’s Plastic Pollution Reduction Act, effective January 1 2024, bans retail stores and food establishments from providing single-use plastic bags and eliminates a law preempting local plastic bans ([HB21-1162](#)).⁸ Stores that have three or fewer locations and operate solely in Colorado are exempt. Food establishments that prepare or serve food in individual portions are also exempt. Local governments are authorized to assess penalties for violations of the Act. The ban does not apply to materials used in the packaging of drugs, medical devices, or dietary supplements.
- New Jersey’s plastic bag ban went into effect in May 2022 banning stores from distributing single-use paper and plastic bags to customers at checkout ([Senate Bill 864](#)).⁹ Exceptions allow stores to distribute plastic bags for products such as fresh produce, raw meat, fish, newspapers, prescription drugs, and dry cleaning. Retail stores that are less than 2,500 square feet may provide customers with paper bags.
- Rhode Island’s Plastic Waste Reduction Act passed in 2022 bans the use of single-use plastic bags at checkout counters ([Senate Bill 2446](#)).¹⁰ Businesses may only offer reusable bags or recyclable paper bags. The Act establishes fines for retailer noncompliance: \$100 for the first offense, \$200 for the second offense, and \$500 for the third and any

⁴ D.C. CODE § 8-102, The Anacostia River Clean Up and Protection Act (2009).

⁵ See MAUI COUNTY, HAW., CODE § 20.18.040 (2008); KAUAI COUNTY, HAW., CODE § 22-19.2 (2009); HAWAII COUNTY, HAW., CODE § 14-118 (2013); HONOLULU, HAW., REV. ORDINANCES § 9-9.2 (2015).

⁶ CAL. PUB. RES. CODE § 42287 (2016).

⁷ CAL. PUB. RES. CODE § 42281.2 (2023).

⁸ COLO. REV. STAT. ANN. § 25-17-501 (2021).

⁹ N.J. STAT. ANN. § 13:1E-99.126 (2020).

¹⁰ 23 R.I. GEN. LAWS ANN. § 23-19.18-1 (2022).



subsequent offenses. The penalties reset each year. The ban went into effect January 1, 2024. The Rhode Island Department of Environmental Management has developed [regulations](#) related to the Act.

State Laws Prohibiting Local Bans

Seventeen states have preemptive bans that prohibit local governments from enacting bag bans: Arizona, Florida, Idaho, Indiana, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin. As noted in the previous memos, multiple states have enacted legislation that prohibit local plastic bag bans, closely following a model law prepared by the American Legislative Exchange Council (ALEC). ALEC is a group consisting of state legislators, which is headquartered in Arlington, VA, a D.C. suburb, and favors “limited government, free markets, [and] federalism.” Key provisions of the model legislation, an “Act to Establish Statewide Uniformity for Auxiliary Container Regulations,”¹¹ are:

- 1) A definition of “auxiliary container” to mean any receptacle of any fabrication designed to transport purchases from or at a food service or retail facility;
- 2) A prohibition on local units of government from regulating or restricting the use, disposition, or sale of auxiliary containers, including taxing the items;
- 3) A statement that the prohibition does not restrict creating curbside recycling or a commercial recycling program; and
- 4) A statement that the ban does not apply to the use of auxiliary containers on the property of local governments.

Although some of the enacted “auxiliary container” legislation follows the ALEC model verbatim, other laws are modified. For example, the Mississippi legislation on auxiliary containers is narrower in scope than the ALEC model, as it applies only to food service establishments rather than to all retailers. States that use the “auxiliary containers” language to prohibit local plastic bag ordinances include Arizona, Idaho, Indiana, Michigan, Mississippi, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, and Wisconsin.¹² Five other states produced their own legislation to restrict local ordinances: Florida, Iowa, Minnesota, Missouri, and Texas.¹³ Below are legislative actions taken by states to preempt plastic bans since the 2020 memo:

¹¹ *Act to Establish Statewide Uniformity for Auxiliary Container Regulations*, American Legal Exchange Council (Jan. 20, 2018), available at <https://www.alec.org/model-policy/act-to-establish-statewide-uniformity-for-auxiliary-container-regulations>.

¹² ARIZ. REV. STAT. § 9-500.38 (2016); IDAHO CODE ANN. § 67-2340 (West 2016); IND. CODE ANN. § 36-1-3-8.6 (West 2016); MICH. COMP. LAWS ANN. § 445.591 (West 2017); Miss. S.B. 2570 (eff. July 1, 2018); N.D. CENT. CODE ANN. § 23.1-08-06.1 (West 2019); OKLA. STAT. ANN. tit. 27A, § 2-11-504 (2019); TENN. CODE ANN. § 7-51-2002 (2019); and WIS. STAT. § 66.0419 (2016).

¹³ COLO. REV. STAT. ANN. § 25-17-104; FLA. STAT. § 403.7033 (2008); MINN. STAT. ANN. § 471.9998 (West 2017); MO. REV. STAT. § 260.283 (2015); and N.Y. LEG. MEMO 7 (2017).

- Colorado’s Plastic Pollution Reduction Act, passed in 2021, eliminated a law preempting local governments from passing ordinances banning the use or sale of certain types of plastic materials ([HB21-1162](#)).
- Nebraska adopted legislation in 2020 prohibiting local government bans or fees on containers ([Bill 632](#)).¹⁴
- Ohio enacted legislation temporarily preempting local auxiliary container fees in 2020, amending the law in 2021 to be a permanent preemption ([House Bill 242](#), [House Bill 110](#)).¹⁵
- Pennsylvania prohibited local governments from enacting plastic bag bans for one year in 2019 as part of its state budget bill. In May 2020, the state extended the moratorium as an amendment through July 1, 2021, or for six months after Pennsylvania’s Covid-19 emergency order was lifted ([House Bill 1083](#)). Pennsylvania’s succeeding budget bills have not included the preemption on local ordinances banning single-use plastic bans.
- South Dakota passed legislation in 2020 preempting other political subdivisions in the state from regulating auxiliary containers, beverage containers, garbage bags, straws used for beverage consumption, or plastic packaging materials ([Senate Bill 54](#)).¹⁶

Styrofoam

States and local governments have taken measures to ban polystyrene expanded foam (aka Styrofoam) products used in restaurants or for packing material. Local governments in Alaska, California, Connecticut, Minnesota, New Hampshire, Pennsylvania, and South Carolina have enacted Styrofoam bans. Eleven states and the District of Columbia have enacted statewide Styrofoam bans for certain products:

- Colorado’s Plastic Pollution Reduction Act banned retail food establishments from providing Styrofoam cups and containers for ready-to-eat food, beginning January 1, 2024 ([HB21-1162](#)).¹⁷ The ban does not apply to materials used in the packaging of drugs, medical devices, or dietary supplements.
- Delaware passed legislation in 2023 prohibiting food establishments from providing consumers with ready-to-eat food in Styrofoam containers ([Senate Bill 51](#)). The restriction does not apply to pre-packaged food or healthcare providers. Food establishments are encouraged not to use or sell food that is pre-packaged in Styrofoam packaging.
- Maine prohibits covered establishments from processing, preparing, selling, or providing food or beverages in or on a disposable food service container that is composed in whole

¹⁴ NEB. REV. STAT. ANN. § 13-2023 (2020).

¹⁵ OHIO REV. CODE ANN. § 301.30 (2021); OHIO REV. CODE ANN. § 504.04 (2021); OHIO REV. CODE ANN. § 715.013 (2021).

¹⁶ S.D. CODIFIED LAWS § 34A-6-92 (2020).

¹⁷ COLO. REV. STAT. ANN. § 25-17-506 (2021).

or in part of Styrofoam, except for home use and use by certain exempted entities.¹⁸ The law was scheduled to go into effect in 2020, but the Maine Department of Environmental Protection delayed enforcement of the law due to COVID-19 until July 1, 2021. In June of 2021, emergency legislation provided a temporary exemption for polystyrene foam packaging for meat, poultry, fish, seafood, and eggs. This temporary exemption will be repealed on July 1, 2025 ([H.P. 1214](#), [L.D. 1631](#)).

- Maryland enacted a ban in 2020 on the sale of food or beverages in products composed of Styrofoam. The state temporarily lifted the ban in 2020 due to COVID-19 ([Chapter 579 \(Sections 9-2201 through 9-2207\)](#)).
- New Jersey's Styrofoam food containers and cups ban went into effect in May 2022 ([Senate Bill 864](#)).¹⁹ The law exempts certain products, including meat and fish trays for raw or butchered meat or any food product pre-packaged by the manufacturer with a polystyrene foam food service product.
- New York prohibits food service providers from selling, offering for sale, or distributing disposable food service containers that contain Styrofoam. The law also prohibits manufacturers from selling, offering for sale, or distributing Styrofoam loose fill packaging and went into effect January 1, 2022 ([ECL, Article 27, Title 30](#)).²⁰ The DEC has developed [regulations](#) to implement the ban.
- Oregon prohibits food vendors from using Styrofoam containers in selling, offering for sale, serving, or dispensing prepared food to a consumer. Any single use container must meet certain requirements. The sale, offer for sale, or distribution of Styrofoam containers or polystyrene foam packaging peanuts is also prohibited ([Senate Bill 543](#)).²¹ The law goes into effect January 2025.
- Rhode Island legislation passed in 2023 that will prohibit a covered establishment from processing, preparing, selling, or providing food or beverages in or on a disposable food service container composed in whole or in part of Styrofoam ([House Bill 5090](#)). The law will go into effect January 1, 2025.²²
- Vermont prohibited Styrofoam for retail stores and food service providers, with exceptions for meat, poultry, and seafood, beginning in July 2020 ([Act 69 of 2019](#)).²³
- Virginia passed legislation banning single use Styrofoam cups and containers in 2021; however, implementation was delayed through budget legislation ([House Bill 1902](#)). Currently, the ban will take effect July 1, 2028 for food establishments with 20 or more locations and by July 1, 2030 for remaining food establishments.
- Washington passed a ban in 2021 that will be effective June 2024 that prohibits the sale and distribution of the following Styrofoam products: coolers; food service products that

¹⁸ ME. REV. STAT. TIT. 38, § 1572 (2021)

¹⁹ N.J. STAT. ANN. § 13:1E-99.126 (2020).

²⁰ N.Y. ENVTL. CONSERV. LAW § 27-003 (Consol. 2020).

²¹ OR. REV. STAT. ANN. § Ch. 73, § 1 (2023).

²² R.I. GEN. LAWS ANN. § 21-27.3-1 (2023).

²³ VT. STAT. ANN. tit. 10, § 6692 (2020).

include food containers, plates, clam shell-style containers, and hot and cold beverage cups.²⁴ Local governments are prohibited from passing ordinances banning these items unless the ordinance was in place prior to June 2021. The distribution or sale of packing peanuts and loose fill packing materials were banned in 2023, with established penalties for violation of this provision.

- The District of Columbia’s ban on food service entities providing or selling went into effect in 2016. In January 2021, the ban was expanded to the retail sale of foam food service ware; containers, such as coolers and ice chests; and foam loose-fill packaging material.²⁵

National Plastics Legislation

Break Free from Plastic Pollution Act of 2023

In October 2023, Senator Jeff Merkley (OR) and Jared Huffman (CA) introduced the Break Free from Plastic Pollution Act of 2023 in Congress. The [bill](#) proposes to amend the Solid Waste Disposal Act “to reduce the production and use of certain single-use plastic products and packaging, to improve the responsibility of producers in the design, collection, reuse, recycling, and disposal of consumer products and packaging, to prevent pollution from consumer products and packaging from entering into animal and human food chains and waterways, and for other purposes.”²⁶ The Act proposes to accomplish this by:

- Creating an extended producer responsibility (EPR) that provides producers incentives to incorporate environmental considerations into product design and packaging.
- Establishing source reduction targets for single-use plastic products and beverage containers:
 - By 2032: 25%, by weight and by plastic component
 - By 2040: 40%, by weight and by plastic component
 - By 2050: 50%, by weight and by plastic component
- Creating a nationwide beverage container refund program, modeled on state laws, that provides a 10-cent refund for beverage containers, regardless of material, when customers return containers.
- Banning retailers from selling beverage containers that are: composed wholly or partially of polyethylene terephthalate; opaque or pigmented a color other than transparent blue or transparent green; contain polyethylene glycol; or contain a toxic substance, as defined by the legislation.
- Prohibiting retail establishments or food service businesses from providing or selling single use plastic bags. They may offer single-use paper bags, or reusable bags, for sale for at least \$0.10.

²⁴ WASH. REV. CODE ANN. § 70A.245.070 (2021).

²⁵ D.C. CODE ANN. § 8-1532 (2020).

²⁶ S. 3127, 118th Cong. (2023).



- Reducing and banning certain single-use plastic products that are not recyclable, including: food service products made of foam; plastic utensils; stirrers; splash sticks; cocktail sticks or toothpicks; single-use condiment packaging; small, plastic personal care products at hotels; black plastics; non-compostable produce stickers.
- Preventing the export of plastic waste, scrap and pairings to countries that are not part of the Organization for Economic Co-operation and Development.
- Establishing grant programs to support reusable and refillable products.
- Pausing on new plastic facilities until certain environment justice and health protections are put in place.

The bill is currently in the Committee on Environment and Public Works.

Plastic Pellet Free Waters Act

In 2023, Senator Richard Durbin (IL) introduced the Plastic Pellet Free Waters Act.²⁷ The [bill](#) requires the Environmental Protection Agency to issue a final rule that prohibits certain discharges of plastic pellets and other preproduction plastic into waters of the United States. The bill is currently in the Committee on Environment and Public Works.

International Efforts

UN Global Plastics Treaty

In March 2022, the UN Environment Assembly adopted a [resolution](#) requesting the Executive Director of the UN Environment Programme convene an Intergovernmental Negotiating Committee (INC) to develop an international legally binding instrument on plastic pollution by the end of 2024. The resolution requested that the instrument include multiple provisions, including ones to:

- Promote sustainable production and consumption of plastics through, among other things, product design and environmentally sound waste management, including through resource efficiency and circular economy approaches;
- Promote national and international cooperative measures to reduce plastic pollution in the marine environment, including existing plastic pollution;
- Develop, implement and update national action plans reflecting country-driven approaches to contribute to the objectives of the instrument; and
- Specify national reporting, as appropriate.

The INC has held three sessions, with a fourth planned for April 2024 in Ottawa, Canada, and a fifth next fall in Busan, Republic of Korea.

²⁷ S. 2337, 118th Cong. (2023).



Tribal Actions

There is currently not a general legal database that would allow a search of all Tribal laws. As such, a comprehensive inventory of Tribal actions related to plastic pollution is beyond the scope of this advisory research memo. However, Tribes have taken action to ban plastic bags or Styrofoam and the following examples are provided for illustration.

The Leech Lake Band of Ojibwe passed a [resolution](#) in 2009 related to Styrofoam use. The resolution states that “all Divisions, Departments, and Programs of the Leech Lake Band of Ojibwe will undertake all possible efforts to reduce and/or eliminate the use of Styrofoam based materials within the workplace or program areas/activities and replace them with items made for permanent use or can be recycled when disposed of.”

The Metlakatla Indian Community enacted a ban on single use plastic bags. The ban was suspended in 2021 during the COVID-19 pandemic and has not been reinstated. (See step-by-step [guide](#) developed by EPA for tribal environmental professionals who want to develop a waste code for their tribe.)