



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1240

Introduced 2/6/2019, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 105/5.891 new

55 ILCS 5/5-1184 new

65 ILCS 5/11-42-17 new

Creates the Checkout Bag Tax Act. Imposes a tax of \$0.07 on each checkout bag used by a customer at a retail establishment in the State. Provides that the term "checkout bag" means a single use plastic, paper, or compostable bag provided by a retail establishment at the checkout, cash register, point of sale, or other point of departure to a customer for the purpose of transporting goods out of the retail establishment. Sets forth certain exceptions. Provides that the proceeds from the tax shall be distributed as follows: (1) the retailer shall retain \$0.02 per bag; (2) the wholesaler shall retain \$0.02 per bag; and (3) \$0.03 per bag shall be deposited into the Checkout Bag Tax Fund. Amends the State Finance Act to create the Checkout Bag Tax Fund. Provides that moneys in the Fund shall be remitted to counties and municipal joint action agencies. Amends the Counties Code and the Illinois Municipal Code to preempt certain actions by counties and municipalities concerning auxiliary containers or checkout bags.

LRB101 08782 HLH 53869 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Checkout Bag Tax Act.

6 Section 5. Definitions. As used in this Act:

7 "Agency" means the Illinois Environmental Protection  
8 Agency.

9 "Auxiliary container" means, but is not limited to, a bag,  
10 cup, bottle, lid, or other packaging that is:

11 (1) designed to be reusable or for single use;

12 (2) made of cloth, paper, plastic, cardboard,  
13 corrugated material, aluminum, glass, extruded  
14 polystyrene, postconsumer recycled material, or similar  
15 material or substrates, including coated, laminated, or  
16 multi-layer substrates;

17 (3) designed for transporting, containing, or  
18 protecting merchandise, food, or beverages from a retail  
19 establishment or restaurant;

20 (4) used to package bulk items such as fruit,  
21 vegetables, nuts, grains, or candy;

22 (5) used for greeting cards or small hardware items  
23 such as nails and bolts;

1           (6) used to contain or wrap frozen foods, meat, or fish  
2 whether prepackaged or not;

3           (7) used to contain or wrap flowers or potted plants or  
4 other items where dampness may be a problem;

5           (8) used to contain unwrapped prepared foods or bakery  
6 goods;

7           (9) used to contain prescription drugs;

8           (10) used to safeguard public health and safety during  
9 the transportation of prepared take-out foods and prepared  
10 liquids intended for consumption away from a retail  
11 establishment or restaurant; or

12           (11) a newspaper bag, door-hanger bag, laundry  
13 cleaning bag, garment bag, or a bag of any type that  
14 customers bring to a retail establishment for their own use  
15 or to carry away from the retail establishment goods that  
16 are not placed in a bag provided by the retail  
17 establishment.

18           "Checkout bag" means a single use plastic, paper, or  
19 compostable bag that is provided by a retail establishment at  
20 the checkout, cash register, point of sale, or other point of  
21 departure to a customer for the purpose of transporting goods  
22 out of the retail establishment. The term "checkout bag" does  
23 not include auxiliary containers.

24           "Department" means the Department of Revenue.

25           "Restaurant" means any business having sales of  
26 ready-to-eat food for immediate consumption comprising at

1 least 51% of total sales excluding the sale of liquor.

2 "Retail establishment" means any person, corporation,  
3 partnership, business venture, public sports or entertainment  
4 facility, government agency, or organization that sells or  
5 provides merchandise, goods, or materials, including, but not  
6 limited to, clothing, food, beverages, household goods, or  
7 personal items of any kind directly to a customer. "Retail  
8 establishment" includes, but is not limited to, department  
9 stores, clothing stores, jewelry stores, grocery stores,  
10 pharmacies, home improvement stores, liquor stores,  
11 convenience stores, gas stations, restaurants, mobile food  
12 delivery, and farmers markets. The term "retail establishment"  
13 does not include food banks or other food assistance programs.

14 "Wholesaler" means any person who engages in the business  
15 of selling or supplying checkout bags to any retail  
16 establishment for use in the State and includes any such person  
17 who makes or fabricates checkout bags or packs and sells  
18 checkout bags in packages.

19 Section 10. Checkout Bag Tax Fund.

20 (a) The Checkout Bag Tax Fund is created as a special fund  
21 in the State treasury. Moneys in the Fund shall be used as  
22 provided in this Act.

23 (b) Notwithstanding any other provision of law, the  
24 Checkout Bag Tax Fund is not subject to sweeps, administrative  
25 charges or chargebacks, or any other fiscal or budgetary

1 maneuver that would in any way transfer any funds from the  
2 Checkout Bag Tax Fund into any other fund of the State.

3 Section 15. Payment of checkout bag tax required. A  
4 checkout bag tax of \$0.07 is imposed on each checkout bag used  
5 by a customer at retail establishments located in the State,  
6 except for a retail establishment located in a municipality  
7 that passed a bag fee or bag tax ordinance on or before  
8 February 1, 2018. The fee shall be paid by the customer. The  
9 ultimate incidence and liability for payment of the tax is to  
10 be borne by the customer. The tax shall be separately stated on  
11 the receipt provided to the customer at the time of sale and  
12 shall be identified as the Checkout Bag Tax. It is a violation  
13 of this Section for the retail establishment to fail to  
14 separately itemize the tax on a customer's purchase of such a  
15 bag or to otherwise absorb the tax on such sale. The tax shall  
16 be collected by each wholesaler who sells checkout bags to a  
17 retail establishment in Illinois. Any wholesaler required to  
18 pay the tax shall collect the tax from each retail  
19 establishment in the State to whom the sales of checkout bags  
20 are made. The retail establishment shall retain \$0.02 of the  
21 tax. The retail establishment shall remit the remaining \$0.05  
22 of the tax to the wholesaler. The wholesaler receiving such  
23 remittance or payment from a retail establishment shall be  
24 required to remit to the Department, on form ST-1 or any  
25 successor form, the net amount of \$0.05 per checkout bag sold

1 or used. If a wholesaler sells checkout bags to a purchaser  
2 other than a retail establishment for use or consumption by  
3 such person in the State, then the wholesaler shall collect the  
4 tax from such purchaser and remit it to the Department in the  
5 same manner as applies to its sales to retail establishments.  
6 The wholesaler shall be eligible to retain \$0.02 per checkout  
7 bag sold to such purchaser. The Department shall deposit \$0.03  
8 per bag into the Checkout Bag Tax Fund and \$0.02 per bag into  
9 the General Revenue Fund. The Department shall monthly remit  
10 the \$0.03 per bag of the tax from the Checkout Bag Tax Fund to  
11 the county where the retail establishment is located, except  
12 that, if a municipal joint action agency is located within the  
13 county where the retail establishment is located, then the  
14 Department shall monthly remit to the municipal joint action  
15 agency a portion of the tax to the municipal joint action  
16 agency based on the location of retail establishments within  
17 the municipal joint action agency.

18 The Department shall publish an annual report detailing the  
19 amount of taxes remitted to each individual county or municipal  
20 joint action agency from the Checkout Bag Tax Fund. The report  
21 may be published electronically.

22 Section 20. Use of tax proceeds by counties and municipal  
23 joint action agencies. A county or municipal joint action  
24 agency shall use the revenue received from the checkout bag tax  
25 in the following manner:

1           (1) At least 50% of the funds shall be used to collect  
2 items that include auxiliary containers, checkout bags,  
3 oil-based paints, latex paints, paint thinners,  
4 herbicides, insecticides, pesticides, gasoline, pool  
5 chemicals, packaging, plastic film, prescription drugs,  
6 non-prescription drugs, cleaning products, mercury,  
7 household batteries, used motor oil, oil filters, drain  
8 cleaners, lawn chemicals, solvents, antifreeze, carpet,  
9 mattresses, sharps, needles, fluorescent lamps, aerosol  
10 products, adhesives, glues, acids, caustics, flammable  
11 liquids, and any other products collected at residential  
12 household hazardous waste events funded by the Agency. A  
13 county or municipal joint action agency or county may  
14 contract with a governmental entity whose primary function  
15 is environmental protection and operates permanent and  
16 temporary household waste facilities or a private vendor  
17 whose primary function is to collect and process permanent  
18 and temporary household hazardous waste to collect  
19 materials in this Section that are considered hazardous.

20           (2) The remainder of the funds shall be used for:

21           (A) education programs to reduce contamination and  
22 increase participation in recycling and composting  
23 programs;

24           (B) programs to increase the collection and  
25 recycling or composting of auxiliary containers;

26           (C) programs or grants to encourage infrastructure

1 development for and market development or recycling  
2 and composting; or

3 (D) the implementation of solid waste management  
4 plans developed pursuant to the Solid Waste Planning  
5 and Recycling Act.

6 Section 25. Recordkeeping. Each county or municipal joint  
7 action agency that receives revenue from the Checkout Bag Tax  
8 Fund shall provide an annual report to the Agency detailing how  
9 the revenues received from the Checkout Bag Tax Fund were spent  
10 or distributed pursuant to Section 20 by no later than March 15  
11 of each year. The report shall include but not be limited to  
12 itemized amounts for each individual program, grant, plan,  
13 event or any other disbursement made pursuant to Section 20;  
14 the percentage of the revenue distributed to item (1) of  
15 Section 20 and the enumerated categories in item (2) of Section  
16 20; the category of products collected, the aggregate weight of  
17 each product collected, and the amount of fund spent on  
18 collecting each product.

19 The Agency shall publish an annual report that includes  
20 each municipal joint action agency and county report.

21 Section 30. Exemption. The tax imposed under this Act does  
22 not apply to the retail sale or use of checkout bags that are  
23 used to carry items purchased pursuant to the Supplemental  
24 Nutrition Assistance Program or a similar governmental food



1 assistance program.

2 Section 35. Illinois False Claims Act. No acts or omissions  
3 by the employee or retailer regarding the charging of taxes  
4 under this Act shall be the basis for filing an action by a  
5 private person under the Illinois False Claims Act.

6 The Department of Revenue shall have the sole authority to  
7 bring an administrative action resulting from information  
8 provided by any person alleging a false claim, statement or  
9 record, as defined in Section 3 of the Illinois False Claims  
10 Act pertaining to any tax administered by the Department of  
11 Revenue under this Act.

12 Section 40. Incorporation by reference. All of the  
13 provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5j, 6,  
14 6a, 6b, 6c, 7, 8, 9, 10, 11, 11, 12, and 13 of the Retailers'  
15 Occupation Tax Act that are not inconsistent with this Act, and  
16 all provisions of the Uniform Penalty and Interest Act shall  
17 apply, as far as practicable, to the subject matter of this Act  
18 to the same extent as if such provisions were included in this  
19 Act.

20 Section 45. Repealer. This Act is repealed on January 1,  
21 2030.

22 Section 900. The State Finance Act is amended by adding

1 Section 5.891 as follows:

2 (30 ILCS 105/5.891 new)

3 Sec. 5.891. The Checkout Bag Tax Fund.

4 Section 905. The Counties Code is amended by adding Section  
5 5-1184 as follows:

6 (55 ILCS 5/5-1184 new)

7 Sec. 5-1184. Auxiliary containers and checkout bags.

8 (a) As used in this Section:

9 "Auxiliary container" has the meaning given to that term in  
10 Section 5 of the Checkout Bag Tax Act.

11 "Checkout bag" has the meaning given to that term in  
12 Section 5 of the Checkout Bag Tax Act.

13 (b) Except as otherwise provided in this Section, a county  
14 may not ban, place a fee or tax on, or regulate in any other  
15 manner the use, disposition, content, taxation, or sale of  
16 auxiliary containers or checkout bags.

17 (c) Except for the prohibition on taxing or placing a fee  
18 on auxiliary containers and checkout bags, Subsection (b) may  
19 not be construed to prohibit or restrict any of the following:

20 (1) a curbside recycling program;

21 (2) a designated residential or commercial recycling  
22 location;

23 (3) a commercial recycling program; or

1           (4) the use or sale of auxiliary containers on property  
2           owned or operated by a unit of local government.

3           (d) A home rule county may not ban, place a fee or tax on,  
4           or regulate in any other manner the use, disposition, content,  
5           taxation, or sale of auxiliary containers or checkout bags,  
6           except as provided for in this Section. This Section is a  
7           denial and limitation of home rule powers and functions under  
8           subsection (g) of Section 6 of Article VII of the Illinois  
9           Constitution.

10           Section 910. The Illinois Municipal Code is amended by  
11           adding Section 11-42-17 as follows:

12           (65 ILCS 5/11-42-17 new)

13           Sec. 11-42-17. Auxiliary containers and checkout bags.

14           (a) As used in this Section:

15           "Auxiliary container" has the meaning given to that term in  
16           Section 5 of the Checkout Bag Tax Act.

17           "Checkout bag" has the meaning given to that term in  
18           Section 5 of the Checkout Bag Tax Act.

19           (b) Except as otherwise provided in this Section, a  
20           municipality may not ban, place a fee or tax on, or regulate in  
21           any other manner the use, disposition, content, taxation, or  
22           sale of auxiliary containers or checkout bags.

23           (c) Except for the prohibition on taxing or placing a fee  
24           on auxiliary containers and checkout bags, Subsection (b) may

1 not be construed to prohibit or restrict any of the following:

2 (1) a curbside recycling program;

3 (2) a designated residential or commercial recycling  
4 location;

5 (3) a commercial recycling program; or

6 (4) the use or sale of auxiliary containers on property  
7 owned or operated by a unit of local government.

8 (d) A municipality that charged a fee or tax on checkout  
9 bags as defined by the municipality's ordinance on or before  
10 February 1, 2018 may continue to charge the fee or tax as  
11 existed on that date. The municipality is prohibited from  
12 further regulating auxiliary containers or checkout bags and  
13 from making further changes to the bag fee or bag tax ordinance  
14 in effect on or before February 1, 2018. However, the  
15 municipality may change its regulations to be consistent with  
16 this Section, the Checkout Bag Tax Act, or eliminate the tax or  
17 fee altogether.

18 (e) Except in municipalities with a population greater than  
19 2,500,000, that charged a fee or tax on checkout bags as  
20 defined by the municipality's ordinance on February 1, 2018, a  
21 home rule municipality may not ban, place a fee or tax on, or  
22 regulate in any other manner the use, disposition, content,  
23 taxation, or sale of auxiliary containers and Checkout bags,  
24 except as provided for in this Section. This Section is a  
25 denial and limitation of home rule powers and functions under  
26 subsection (g) of Section 6 of Article VII of the Illinois

1 Constitution.