



Colorado Bag Fee and Plastic Bag/Styrofoam Bans

House Bill 21-1162

Background

In 2021, the Colorado Legislature passed House Bill 21-1162, which did three big things:

1. Created a statewide bag fee as of January 1, 2023;
2. Created a statewide plastic bag ban starting on January 1, 2024; and
3. Created a statewide ban on the use of Styrofoam as a takeout container for ready to eat food.

The Colorado Restaurant Association (CRA) worked with the sponsors of this legislation very carefully, because the CRA firmly believes that single-use bags -- even plastic ones -- are vital for food safety. Most food from a restaurant is ready to eat and will not be heat or chemically treated before being eaten, so single-use bags, maintained by the restaurant, are essential to ensure the final food product is safe to eat. Also, because restaurants are required by the food code to ensure that their food is safe to eat, procedures ensuring food safety shouldn't have a fee associated with them.

For those reasons and more, **the sponsors of House Bill 21-1162 agreed to exempt restaurants from both the bag fee and the plastic bag ban.**

How are restaurants impacted by the requirements of HB21-1162?

There has been some confusion about who is impacted by the bag fee and the bag ban created in House Bill 21-1162. **Restaurants are not impacted by either the bag fee starting on January 1, 2023 or the plastic bag ban starting on January 1, 2024.** While the bill doesn't specifically call out restaurants as exempt, the bill does outline what types of businesses must comply with each section of the bill and restaurants are not included in the bag fee or the plastic bag ban.

The carryout bag fee, which is required in CRS 25-17-505, applies only to stores and not to retail food establishments (see subsections (1)(a) and (2)(a) that each describe "... a store may provide a customer with one or more ... carryout bags at the point of sale only if the customer pays a carryout bag fee ..."). **Therefore, the bag fee does not apply to retail food establishments.**

Moreover, **restaurants are exempted from the prohibition against using plastic bags which starts on Jan. 1, 2024.** Section 25-17-504 prohibits the use of single-use plastic carryout bags; however, subsection (1) of that section exempts a retail food establishment from the prohibition if the retail food establishment (a) prepares or serves food in individual portions for immediate on-or off-premises consumption and (b) is not a grocery store or convenience store.

How are restaurants impacted by the 2024 ban on Styrofoam takeout containers?

The section of the bill banning the use of Styrofoam takeout containers in retail food establishments DOES apply to restaurants in Colorado. This means that starting on January 1, 2024, restaurants will no longer be allowed to provide customers with a Styrofoam takeout container, **unless the takeout container was already in the retail food establishments inventory prior to January 1, 2024.**