

ASSOCIATION OF STATE AND TERRITORIAL

# Be Careful Recycling Another State's Legislation

Sharing EPR Across State Lines

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# Legislation and Regulation: The Skeleton of Our Jobs...

- ▶ All States either have Statute enacted via Legislation or Regulations adopted to help us manage our role in protecting human health and the environment.
- ▶ In some cases, this body of language can be easily adopted from one jurisdiction to another as a means of making it easy to adopt rather than reinventing the wheel each time.
- ▶ BEWARE....while this might seem like hitting the “Easy Button” it’s not what you think!



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# The Story of Bags...



- ▶ The Delaware Legislature began the journey of banning bags more than a decade ago, starting discussions in 2009/2010.
- ▶ The goal was a 'statewide' ban on bags, which was different than many of our surrounding States which allowed municipal/county bans but had not looked at a 'statewide' implementation.
- ▶ There was support from the industry but for action further than what was proposed.
- ▶ The Legislature proposed a bill that mimicked the California Bag Ban but 'adapted' to Delaware.
- ▶ The bill originally passed in 2019, with a January 1, 2021, implementation date.
- ▶ Based on the lead up to 2021's implementation and the rollout at the beginning of the year, the Legislature deemed the law a failure and revised it.
- ▶ The enhanced Plastic Carryout Bag Ban went into effect on July 1, 2022.



# What were the results?

- ▶ As of January 2021, Program Staff within the Department inspected over 180 stores and there was one (1) store that was found to be non-compliant.
- ▶ Over the next three (3) months, we received approximately 50 complaints of stores not complying by residents and Legislators. Of these complaints, 2 stores were NOT in compliance and 48 were compliant.
- ▶ Due to the pandemic, most of the stores were unable to get paper bags so they opted for a thicker plastic film bag (which was reusable under the law) and that led to much confusion in the market.
- ▶ Overall, the program deemed this program successful in adopting the goals outlined in the legislation.



# What went wrong?

- ▶ As indicated, Delaware used California's law as the basis for developing the language which was ultimately adopted in our Statute. Some of the elements included:
  - ▶ The law only affected certain stores, using the square footage and number of locations to determine who had to comply.
  - ▶ Reusable bags had a very specific definition which was broad and still allowed for plastic film bags, but only if they met thickness and performance requirements based on ASTM standards.
  - ▶ The pandemic put pressures on the bag supply chain so the industry, while willing to comply, had asked for an extension rather than an implementation date of 1/1/2021. This pushed our marketing and education efforts behind as we waited for the Governor's decision. Similarly, there was no funding provided for outreach specifically about bags.



# Closing the “Loophole” ...

- ▶ After the close of the first quarter of the program (March 2021), the Legislature decided that the thicker bags was a ‘loophole’ that the retailers were exploiting.
- ▶ In order to eliminate this, they proposed legislation which would have further increased the thickness of the bags that were defined as ‘reusable’ within the State.
  - ▶ To do this, the definition mandated that bags be made from a durable or washable material with stitched handles. This eliminated film as an option for stores.
- ▶ Additionally, the size limitations of the stores was eliminated, and this law impacted ALL retailers, except restaurants, within Delaware.
- ▶ The Legislature gave retailers until July 1, 2022, to come into compliance with the law.



# What were the NEXT results?

- ▶ The initial universe of retailers during Phase 1 was approximately 850 based on the square footage delineation.
- ▶ The new universe of ALL retailers registered in the State bumped the regulated universe to over 8,000 Delaware retail locations.
- ▶ As of July 1, 2022, program staff performed inspections based on complaints that were registered by members of the public, DNREC employees, and the Legislature.
- ▶ Currently we've performed approximately 100 inspections and in all but 10 cases, these were smaller retailers who were not aware of the law change and immediately came into compliance.
- ▶ At this time, we have not had to take any enforcement actions.



# Lessons Learned...

- ▶ Copying legislation from one State to another does not lead to good decision making or execution.
- ▶ It is very important to make sure that there is a clear goal in what is are trying to be accomplished and how to measure results and success.
- ▶ Beware the unintended consequences.
- ▶ Build in flexibility to be able to pivot, where it's possible.
- ▶ Be as inclusive in your consensus building as possible and make sure to have the impacted parties, to the best of their ability, participate in the process.
- ▶ Understand the impact of how the proposed actions outlined in the legislation will rollout and make sure they align with the clear goals established.
- ▶ If you find you need a legislative fix, make sure that the change doesn't lead to similar problems you are correcting.



# Delaware is still not done...

- ▶ What is on the horizon for DE's Bag Ban?
  - ▶ Further clarification and changes to the exempt bags.
  - ▶ Adding definitions to accommodate for 'retailers' that are considered in this category but are not the intended audience of the law.
  - ▶ Non-profit 'stores' and restaurants might be included in an expanded ban.
  - ▶ Paper bags are under consideration for banning.
- ▶ Much of the proposed changes come from surrounding State laws that have been implemented at the local, regional and State level.



# Questions?

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