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House Bill 209

Rationale for Restaurant Exemption in Carryout Bag Legislation

- Bill sponsors and supporters of the carryout bag legislation have shared that a primary goal is to incentivize customers to avoid the proposed paper bag fee by using their own reusable bags, or declining unnecessary bags when shopping at stores. While this may make sense for retail store customers, it's impractical for restaurant carryout, drive-thru and delivery customers who need provided bags to protect ready-to-eat foods.
- Reusable bags pose legitimate food safety concerns. Because of potential cross-contamination risks associated with reusable bags that may have previously been used to carry leaky packages of raw meat, seafood or other groceries, or dirty hardware store items and plants (and such bags are not typically cleaned between uses), many foodservice establishments refuse to place ready-to-eat foods into customer-provided reusable bags because they don't want to risk being accused of causing foodborne illness. And because the outside of reusable bags aren't generally any cleaner, most restaurants won't take such bags across the counter to fill, or allow them to be placed on tables, counters or other surfaces. In such cases, many restaurants will put the food into a protective bag before handing it to the customer to place into their reusable bag.
- Most restaurants use both paper and plastic bags to suit their needs. For foods prone to leaking or spilling, plastic bags may be necessary to guard against bag breakage. Plastic bags may also be used for moist foods that are loosely wrapped/packaged, and also for heavier or larger orders. Doubling paper bags to guard against bag breakage is wasteful, and customers would surely complain about being charged for 2 bags instead of 1. Plastic bags are also used as an additional barrier for steamed crabs and seafood.
- We have heard from suppliers about a shortage of paper bag manufacturing capacity (because of proliferating plastic bag bans) which could potentially drive up the cost of paper bags for smaller, independent restaurants that don't have the benefit of high-volume purchasing discounts. For these businesses, plastic bags may continue to be the most practical, affordable and available option.
- Other jurisdictions and states treat the needs of restaurants differently in their laws/ordinances regarding carryout bag restrictions and/or fees, and for good reasons. This includes (but is not limited to) Montgomery County (MD), Chestertown (MD), City of Westminster (MD), and the states of California, New York, Delaware, Maine and Oregon.
- For restaurants, being forced to charge customers for bags is the antithesis of hospitality.

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Forcing restaurants to charge customers a fee for carryout bags is problematic for multiple reasons:

1. In quick-service (or fast food) restaurants, food orders are not bagged until AFTER the customer has paid for it. For larger orders, staff won't know how many bags will be needed to correctly charge any required bag fee. Reversing this standard operating practice would slow transactions and be counter-productive to the concept of quick-service.
2. For popular online ordering and third-party delivery apps (Uber Eats, Grubhub, DoorDash, etc.), customers pay for transactions before restaurants receive and bag the orders for pickup and delivery. Bag and order sizes vary, and it would be difficult to estimate the number of bags needed to apply any required bag fee.
3. For convenient curbside pickup (a growing trend), restaurants deliver already-bagged food to vehicles waiting outside – which means bag use is not optional and the number of bags used depends on the size of the bag and the order.
4. For dine-in customers who decide they want a “doggie bag” for leftovers after they've already paid the check, it would be impossible for a restaurant to subsequently charge for the bag. And if the restaurant did reopen a check only to charge the required bag fee, the customer would probably never return to that restaurant.
5. Restaurant customers who seek to reduce bag fees will refuse to pay for more than one bag and request that restaurant staff cram everything into a single bag, which potentially compromises food quality. And the speed of drive-thru service would be slowed by customers who request that purchased food be handed through the window individually in order to avoid the bag fee.