

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1200
(Representatives D. Ruby, Becker, Johnston, Kasper, Laning, Lefor, Marschall)
(Senators Hogue, Kreun, Vedaa)

AN ACT to create and enact section 23-29-07.12 and a new section to chapter 23.1-08 of the North Dakota Century Code, relating to prohibiting a political subdivision from regulating an auxiliary container; to amend and reenact sections 23-29-03 and 23.1-08-02 of the North Dakota Century Code, relating to the definition of auxiliary container; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-29-03 of the North Dakota Century Code is amended and reenacted as follows:

23-29-03. Definitions. (Contingent repeal - [See note](#))

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
 - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
 - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
- ~~2-3.~~ "Department" means the state department of health.
- ~~3-4.~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- ~~4-5.~~ "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- ~~5-6.~~ "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- ~~6-7.~~ "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
- ~~7-8.~~ "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- ~~8-9.~~ "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.
- ~~9-10.~~ "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by

commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.

- ~~40-11.~~ "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- ~~41-12.~~ "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
- ~~42-13.~~ "Political subdivision" means a city, county, township, or solid waste management authority.
- ~~43-14.~~ "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- ~~44-15.~~ "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- ~~45-16.~~ "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- ~~46-17.~~ "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
- ~~47-18.~~ "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- ~~48-19.~~ "Transport" means the offsite movement of solid waste.

SECTION 2. Section 23-29-07.12 of the North Dakota Century Code is created and enacted as follows:

23-29-07.12. Prohibition on political subdivision ordinance regulating auxiliary containers.

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
 - a. Regulates the use or disposition of an auxiliary container;
 - b. Prohibits or restricts an auxiliary container; or

- c. Imposes a fee, charge, or tax on an auxiliary container.
- 2. This section may not be construed to prohibit or restrict:
 - a. A curbside or commercial recycling program;
 - b. A designated residential or commercial recycling location;
 - c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
 - d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

SECTION 3. AMENDMENT. Section 23.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-08-02. Definitions. (Contingent effective date - [See note](#))

- 1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
 - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
 - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
- 2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
- ~~2-3.~~ "Department" means the department of environmental quality.
- ~~3-4.~~ "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
- ~~4-5.~~ "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
- ~~5-6.~~ "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
- ~~6-7.~~ "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
- ~~7-8.~~ "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
- ~~8-9.~~ "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.
- ~~9-10.~~ "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.

- ~~40-11.~~ "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
- ~~41-12.~~ "Political subdivision" means a city, county, township, or solid waste management authority.
- ~~42-13.~~ "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
- ~~43-14.~~ "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
- a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- ~~44-15.~~ "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
- ~~45-16.~~ "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
- ~~46-17.~~ "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- ~~47-18.~~ "Transport" means the offsite movement of solid waste.

SECTION 4. A new section to chapter 23.1-08 of the North Dakota Century Code is created and enacted as follows:

Prohibition on political subdivision ordinance regulating auxiliary containers.

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
 - a. Regulates the use or disposition of an auxiliary container;
 - b. Prohibits or restricts an auxiliary container; or
 - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:
 - a. A curbside or commercial recycling program;
 - b. A designated residential or commercial recycling location;

- c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
- d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. If, by August 1, 2019, the legislative council has not received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality, section 2 of this Act becomes effective on August 1, 2019, and remains in effect until the date certification is received, after which section 2 of this Act is ineffective. If the certification is received before August 1, 2019, section 2 of this Act does not become effective.

Sections 3 and 4 of this Act become effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by August 1, 2019, sections 3 and 4 of this Act become effective on the date certification is received.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1200.

House Vote: Yeas 72 Nays 19 Absent 3

Senate Vote: Yeas 31 Nays 14 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State