

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY MAY 5, 2008

AMENDED IN ASSEMBLY MARCH 28, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2058

Introduced by Assembly Members Levine, Brownley, and Davis

February 19, 2008

An act to amend Sections 42250, 42251, 42252, 42253, 42254, and 42255 of, to add Section 42252.5 to, to add Article 3 (commencing with Section 42260) to Chapter 5.1 of Part 3 of Division 30 of, to add headings as Article 1 (commencing with Section 42250) and Article 2 (commencing with Section 42251) to Chapter 5.1 of Part 3 of Division 30 of, and to repeal Sections 42256 and 42257 of *Section 42256 of, and to repeal and add Section 42257 of*, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Levine. Recycling: plastic carryout bags: paper carryout bags.

(1) Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

This bill would, on and after July 1, 2011, prohibit a store from providing plastic carryout bags to customers unless the store demonstrates an increased diversion rate, as defined, of 70% in the

number of plastic carryout bags provided by the store during a specified period. The bill would require a store that is not complying with the diversion rate requirements to ~~sell~~ *provide a plastic carryout bag* to customers a customer for not less than \$0.25 per bag. A store charging customers for plastic carryout bags would be required to demonstrate that any revenue collected, excluding the cost of the bags and a reasonable financial return, is used by the store to implement specified plastic carryout bag recycling, cleanup, and waste reduction programs.

This bill would, on and after July 1, 2011, permit a store to provide a paper carryout bag to a customer only if the store charges the customer not less than \$0.25 per bag. A store charging for these paper carryout bags would be required to demonstrate that any revenue collected, excluding the cost of the bags and a reasonable financial return, is used by the store to implement specified paper carryout bag recycling, cleanup, and waste reduction programs.

(2) *Under existing law, the California Integrated Waste Management Board administers laws related to waste management.*

This bill would require the California Integrated Waste Management Board to administer and enforce the plastic carryout bag and paper carryout bag provisions. The bill would require a store that imposes a charge for a paper carryout bag or a plastic carryout bag to pay a specified fee to the board for deposit in the Integrated Waste Management Account and would authorize the board, upon appropriation by the Legislature, to expend those moneys for purposes of administering and enforcing the plastic carryout bag and paper carryout bag provisions.

(2)

(3) Under existing law, the above provisions are effective only until January 1, 2013.

This bill would delete the repeal date.

This bill would make clarifying and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The fee imposed pursuant to Sections 42252.5 and 42260
- 4 of the Public Resources Code will mitigate the environmental,

1 public health, and other public-financed impacts caused by the use
2 of plastic and paper bags by offsetting the costs of programs to
3 prevent the littering of plastic and paper carryout bags, cleaning
4 up the litter caused by plastic and paper carryout bags, and
5 encouraging the reduction of the use of plastic and paper carryout
6 bags.

7 (2) The imposition of the fee would not result in the imposition
8 of a tax within the meaning of Article XIII A of the California
9 Constitution because the amount and nature of the fee have a fair
10 and reasonable relationship to the environmental, public health,
11 and societal burdens imposed by the use of plastic and paper
12 carryout bags, and there is a sufficient nexus between the fees
13 imposed and the use of those fees to support programs to prevent
14 the littering of plastic and paper carryout bags, cleaning up the
15 litter caused by plastic and paper carryout bags, and encouraging
16 the reduction of the use of plastic and paper carryout bags.

17 (b) It is the intent of the Legislature that the fees that are
18 imposed pursuant to Sections 42252.5 and 42260 of the Public
19 Resources Code be consistent with *Sinclair Paint Co. v. State Bd.*
20 *of Equalization* (1997) 15 Cal.4th 866.

21 SEC. 2. The heading of Article 1 (commencing with Section
22 42250) is added to Chapter 5.1 of Part 3 of Division 30 of the
23 Public Resources Code, to read:

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25 Article 1. Definitions

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27 SEC. 3. Section 42250 of the Public Resources Code is
28 amended to read:

29 42250. For purposes of this chapter, the following definitions
30 shall apply:

31 (a) "Manufacturer" means the producer of a plastic carryout
32 bag sold to a store.

33 (b) "Operator" means a person in control of, or having daily
34 responsibility for, the daily operation of a store, which may include,
35 but is not limited to, the owner of the store.

36 (c) "Paper carryout bag" means a paper carryout bag provided
37 by a store to a customer at the point of sale.

38 (d) "Plastic carryout bag" means a plastic carryout bag provided
39 by a store to a customer at the point of sale.

40 (e) "Reusable bag" means either of the following:

1 (1) A bag made of cloth or other machine washable fabric that
2 has handles.

3 (2) A durable plastic bag with handles that is at least 2.25 mils
4 thick and is specifically designed and manufactured for multiple
5 reuse.

6 (f) “Store” means a retail establishment that provides plastic or
7 paper carryout bags to its customers as a result of the sale of a
8 product and that meets either of the following requirements:

9 (1) Meet the definition of a “supermarket” as found in Section
10 14526.5.

11 (2) Has over 10,000 square feet of retail space that generates
12 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
13 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
14 Division 2 of the Revenue and Taxation Code) and has a pharmacy
15 licensed pursuant to Chapter 9 (commencing with Section 4000)
16 of Division 2 of the Business and Professions Code.

17 SEC. 4. The heading of Article 2 (commencing with Section
18 42251) is added to Chapter 5.1 of Part 3 of Division 30 of the
19 Public Resources Code, to read:

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Article 2. Plastic Bags

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23 SEC. 5. Section 42251 of the Public Resources Code is
24 amended to read:

25 42251. (a) The operator of a store shall establish an at-store
26 recycling program pursuant to this article that provides an
27 opportunity for a customer of the store to return to the store clean
28 plastic carryout bags.

29 (b) A retail establishment that does not meet the definition of a
30 store, as specified in Section 42250, and that provides plastic
31 carryout bags to customers at the point of sale may also adopt an
32 at-store recycling program, as specified in this article.

33 SEC. 6. Section 42252 of the Public Resources Code is
34 amended to read:

35 42252. An at-store recycling program provided by the operator
36 of a store shall include all of the following:

37 (a) A plastic carryout bag provided by the store shall have
38 printed or displayed on the bag, in a manner visible to a consumer,
39 the words “PLEASE RETURN TO A PARTICIPATING STORE
40 FOR RECYCLING.”

1 (b) A plastic carryout bag collection bin shall be placed at each
2 store and shall be visible, easily accessible to the consumer, and
3 clearly marked that the collection bin is available for the purpose
4 of collecting and recycling plastic carryout bags.

5 (c) All plastic bags collected by the store shall be collected,
6 transported, and recycled in a manner that does not conflict with
7 the local jurisdiction's source reduction and recycling element,
8 pursuant to Chapter 2 (commencing with Section 41000) and
9 Chapter 3 (commencing with Section 41300) of Part 2.

10 (d) The store shall maintain records describing the collection,
11 transport, and recycling of plastic bags collected for a minimum
12 of three years and shall make the records available to the board or
13 the local jurisdiction, upon request, to demonstrate compliance
14 with this article.

15 (e) The operator of the store shall make reusable bags available
16 to customers within the store, which may be purchased and used
17 in lieu of using a plastic carryout bag or paper carryout bag. This
18 subdivision is not applicable to a retail establishment specified
19 pursuant to subdivision (b) of Section 42251.

20 SEC. 7. Section 42252.5 is added to the Public Resources Code,
21 to read:

22 42252.5. (a) Except as provided in subdivision (c), on and
23 after July 1, 2011, a store shall not provide a plastic carryout bag
24 to a customer unless the store demonstrates to the board that, in
25 comparison to the number of plastic carryout bags provided by the
26 store to customers and subjected to diversion in the 2007 calendar
27 year, at least 70 percent more plastic carryout bags provided by
28 the store to customers during the 12-month period ending on
29 December 31, 2010, and annually thereafter, have been subjected
30 to diversion, as described in subdivision (d).

31 (b) If a store does not comply with subdivision (a), the store may
32 provide a plastic carryout bag to a customer only if the store
33 charges the customer not less than twenty-five cents (\$0.25) per
34 bag.

35 (c) A store charging customers for plastic carryout bags pursuant
36 to subdivision (b) shall demonstrate that any revenue collected,
37 excluding the cost of the plastic carryout bags, *the amount*
38 *submitted to the board pursuant to subdivision (b) of Section*
39 *42257*, and a reasonable financial return, shall be used, in
40 consultation with local communities, by the store to implement

1 plastic bag litter reduction, plastic bag cleanup, plastic bag waste
2 reduction, and plastic bag recycling activities.

3 (d) (1) Diversion, for purposes of this section, includes a
4 reduction in the volume of plastic carryout bags provided to
5 customers and an increase in the volume of plastic carryout bags
6 recycled.

7 (2) All of the following are diversion for purposes of this
8 section:

9 (A) Diversion of plastic carryout bags provided by an individual
10 store.

11 (B) Diversion of plastic carryout bags provided by a chain of
12 stores under common ownership.

13 (C) Diversion of plastic carryout bags within a city, county, or
14 region.

15 (D) Diversion of plastic carryout bags within the entire state.

16 SEC. 8. Section 42253 of the Public Resources Code is
17 amended to read:

18 42253. The manufacturer of a plastic carryout bag shall develop
19 educational materials to encourage the reducing, reusing, and
20 recycling of plastic bags and shall make those materials available
21 to stores required to comply with this article.

22 SEC. 9. Section 42254 of the Public Resources Code is
23 amended to read:

24 42254. (a) The Legislature finds and declares that both of the
25 following matters are of statewide interest and concern:

26 (1) Requiring a store to collect, transport, or recycle plastic
27 carryout bags.

28 (2) Requiring a store to conduct auditing or reporting with regard
29 to plastic carryout bags.

30 (b) Unless expressly authorized by this article, a city, county,
31 or other public agency shall not adopt, implement, or enforce an
32 ordinance, resolution, regulation, or rule to do any of the following:

33 (1) Require a store that is in compliance with this article to
34 collect, transport, or recycle plastic carryout bags.

35 (2) Require auditing or reporting requirements that are in
36 addition to what is required by subdivision (d) of Section 42252,
37 upon a store that is in compliance with this article.

38 (c) This section does not prohibit the adoption, implementation,
39 or enforcement of a local ordinance, resolution, regulation, or rule
40 governing a curbside or drop off recycling program operated by,

1 or pursuant to a contract with, a city, county, or other public
2 agency, including any action relating to fees for the program.

3 (d) This section does not affect any contract, franchise, permit,
4 license, or other arrangement regarding the collection or recycling
5 of solid waste or household hazardous waste.

6 SEC. 10. Section 42255 of the Public Resources Code is
7 amended to read:

8 42255. (a) A city, county, or the state may impose civil liability
9 in the amount of five hundred dollars (\$500) for the first violation
10 of this article, one thousand dollars (\$1,000) for the second
11 violation, and two thousand dollars (\$2,000) for the third and
12 subsequent violation.

13 (b) Civil penalties collected pursuant to subdivision (a) shall be
14 paid to the office of the city attorney, city prosecutor, district
15 attorney, or Attorney General, whichever office brought the action.
16 The penalties collected pursuant to this section by the Attorney
17 General may be expended by the Attorney General, upon
18 appropriation by the Legislature, to enforce this article.

19 SEC. 11. Section 42256 of the Public Resources Code is
20 repealed.

21 SEC. 12. Section 42257 of the Public Resources Code is
22 repealed.

23 SEC. 13. *Section 42257 is added to the Public Resources Code,*
24 *to read:*

25 42257. (a) *The board shall administer and enforce this article.*

26 (b) *By January 31, 2012, and quarterly thereafter, a store that*
27 *collects moneys pursuant to subdivision (b) of Section 42252.5*
28 *shall calculate the amount of moneys collected pursuant to*
29 *subdivision (b) of Section 42252.5 and shall pay a fee equal to 3*
30 *percent of that amount to the board, as follows:*

31 (1) *For the initial payment, the store shall calculate the amount*
32 *of moneys collected from July 1, 2011, to December 31, 2011,*
33 *inclusive.*

34 (2) *Thereafter, for each quarterly payment, the store shall*
35 *calculate the amount of moneys collected during the calendar*
36 *quarter.*

37 (c) *Fees submitted to the board pursuant to subdivision (b) shall*
38 *be deposited in the Integrated Waste Management Account and*
39 *may be expended by the board, upon appropriation by the*
40 *Legislature, for the purposes of subdivision (a).*

1 ~~SEC. 13.~~

2 *SEC. 14* Article 3 (commencing with Section 42260) is added
3 to Chapter 5.1 of Part 3 of Division 30 of the Public Resources
4 Code, to read:

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Article 3. Paper Bags

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8 42260. (a) On and after July 1, 2011, a store may provide a
9 paper carryout bag to a customer only if the store charges the
10 customer not less than twenty-five cents (\$0.25) per bag.

11 (b) A store charging customers for paper carryout bags pursuant
12 to this section shall demonstrate that any revenue collected,
13 excluding the cost of the paper carryout bags and a reasonable
14 financial return, shall be used, in consultation with local
15 communities, by the store to implement paper bag litter reduction,
16 paper bag cleanup, paper bag waste reduction, and paper bag
17 recycling activities.

18 (c) *The board shall administer and enforce this article.*

19 (d) *By January 31, 2012, and quarterly thereafter, a store that*
20 *collects moneys pursuant to subdivision (a) shall calculate the*
21 *amount of moneys collected pursuant to subdivision (a) and shall*
22 *pay a fee equal to 3 percent of that amount to the board, as follows:*

23 (1) *For the initial payment, the store shall calculate the amount*
24 *of moneys collected from July 1, 2011, to December 31, 2011,*
25 *inclusive.*

26 (2) *For each quarterly payment, the store shall calculate the*
27 *amount of moneys collected during the calendar quarter.*

28 (e) *Fees submitted to the board pursuant to subdivision (d) shall*
29 *be deposited in the Integrated Waste Management Account and*
30 *may be expended by the board, upon appropriation by the*
31 *Legislature, for the purposes of subdivision (c).*

O