

AMENDED IN SENATE AUGUST 22, 2008

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2769**

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**Introduced by Assembly Member ~~Levine~~ Members *Levine, Brownley,*  
*and Davis***

February 22, 2008

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~~An act to add and repeal Section 1724 of the Civil Code, relating to digital television.~~ *An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to single-use carryout bags.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2769, as amended, ~~Levine. Digital television.~~ *Single-use carryout bags.*

*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.*

*Under existing law, the California Integrated Waste Management Board administers laws related to waste management. Existing law establishes in the Resources Agency the Department of Conservation, which, among other things, administers laws related to beverage container recycling.*

*This bill would, on and after January 1, 2010, prohibit a store, as defined, from providing a single-use carryout bag to a customer unless the store charges a fee of not less than \$0.25 per bag at the point of purchase. The bill would exempt certain customers from paying the fee. The bill would establish the Bag Pollution Fund in the State Treasury and would require a store to remit the single-use carryout bag fees, less a specified amount, to the State Board of Equalization for deposit in that fund.*

*The bill would require the Resources Agency and the Department of Conservation to administer and enforce the single-use carryout bag provisions and would require the State Board of Equalization to administer the collection of the fees imposed on those bags.*

*The moneys in the fund would be required to be expended, upon appropriation by the Legislature, in a specified order of priority, by the State Board of Equalization to reimburse its costs associated with collecting the fees, by the Resources Agency and Department of Conservation for purposes of providing financial assistance for projects and activities related to mitigating the effects of single-use carryout bags, and by the California Integrated Waste Management Board for grants to cities and counties for programs that encourage and support recycling of single-use carryout bags and single-use carryout bag pollution prevention and outreach programs.*

~~Existing federal law requires full-power television broadcast stations in the United States to broadcast only in digital after February 17, 2009.~~

~~This bill would require, until January 1, 2010, retailers who sell televisions to post a notice regarding the transition to digital television broadcasts near the entrance to the store and to make available to consumers a brochure containing specified information regarding the transition to digital broadcasts.~~

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

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

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *Single-use carryout bags provided by stores impose hidden*
- 4     *costs on consumers, local governments, the state, taxpayers, and*
- 5     *the environment.*

1 (b) Requiring stores to end the subsidy of single-use carryout  
2 bags and charge their full economic and environmental costs will  
3 provide consumers with an appropriate market signal to make  
4 informed decisions regarding carryout bag reduction and reuse  
5 options.

6 (c) Requiring stores to charge and remit a fee for the distribution  
7 of single-use carryout bags will help the state and local  
8 governments to offset the environmental and social costs of  
9 single-use carryout bags.

10 (d) The imposition of the fees pursuant to Section 42281 of the  
11 Public Resources Code would not result in the imposition of a tax  
12 within the meaning of Article XIII A of the California Constitution  
13 because the amount and nature of the fee have a fair and  
14 reasonable relationship to the environmental, public health, and  
15 societal burdens imposed by the use of single-use carryout bags,  
16 and there is a sufficient nexus between the fees imposed and the  
17 use of those fees to support programs to prevent the litter of  
18 single-use carryout bags, cleaning up the litter caused by single-use  
19 carryout bags, and encouraging the reduction of the use of  
20 single-use carryout bags.

21 (e) (1) There is a clear nexus between the type and amount of  
22 the fees imposed pursuant to this act and the environmental, public  
23 health, and societal costs resulting from single-use carryout bags.

24 (2) It is the intent of the Legislature that the fees that are  
25 imposed pursuant to Section 42281 of the Public Resources Code  
26 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*  
27 (1997) 15 Cal.4th 866.

28 SEC. 2. Chapter 5.3 (commencing with Section 42280) is added  
29 to Part 3 of Division 30 of the Public Resources Code, to read:

30

31 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

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33 Article 1. Definitions

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35 42280. For purposes of this chapter, the following definitions  
36 shall apply:

37 (a) "Agency" means the Resources Agency.

38 (b) "Bag Pollution Cleanup Fee" means the fee imposed  
39 pursuant to Section 42281.

1 (c) “Board” means the California Integrated Waste  
2 Management Board.

3 (d) “Department” means the Department of Conservation.

4 (e) “Fund” means the Bag Pollution Fund, established pursuant  
5 to subdivision (a) of Section 42285.

6 (f) (1) “Green carryout bag” means a single-use carryout bag  
7 that is provided by a store to a customer at the point of sale and  
8 meets all of the following requirements:

9 (A) Is composed of at least 40 percent post-consumer recycled  
10 content material.

11 (B) Is accepted in curbside recycling programs serving at least  
12 80 percent of households in the state.

13 (C) Is capable of composting within 180 days, as determined  
14 by the board.

15 (2) “Green carryout bag” does not include a reusable bag, as  
16 defined in subdivision (d) of Section 42250.

17 (g) “Reusable bag” means a reusable bag as defined in  
18 subdivision (d) of Section 42250.

19 (h) “Single-use carryout bag” means a single-use carryout bag  
20 that is provided by a store to a customer at the point of sale and  
21 that is not a reusable bag, as defined in subdivision (d) of Section  
22 42250.

23 (i) “State board” means the State Board of Equalization.

24 (j) “Store” means a retail establishment that provides single-use  
25 carryout bags or green carryout bags to its customers as a result  
26 of the sale of a product and that meets either of the following  
27 requirements:

28 (1) Meets the definition of a “supermarket” in Section 14526.5.

29 (2) Has over 10,000 square feet of retail space that generates  
30 sales or use tax pursuant to the Bradley-Burns Uniform Local  
31 Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)  
32 of Division 2 of the Revenue and Taxation Code) and has a  
33 pharmacy licensed pursuant to Chapter 9 (commencing with  
34 Section 4000) of Division 2 of the Business and Professions Code.  
35

36 Article 2. Bag Pollution Cleanup Fee

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38 42281. (a) (1) Except as provided in Section 42283, on and  
39 after January 1, 2010, a store shall not provide a single-use  
40 carryout bag, including a green carryout bag, to a customer at

1 *the point of sale, unless the store charges the customer not less*  
2 *than twenty-five cents (\$0.25) per bag.*

3 *(2) Before January 1, 2014, the total amount charged to a*  
4 *customer pursuant to paragraph (1) shall not exceed two dollars*  
5 *(\$2.00) per transaction and on and after January 1, 2014, this*  
6 *restriction shall not apply.*

7 *(b) The amount charged pursuant to paragraph (1) of*  
8 *subdivision (a) shall not be subject to sales tax, shall be separately*  
9 *stated on the receipt provided to the customer at the time of sale,*  
10 *and shall be identified as the Bag Pollution Cleanup Fee.*

11 *(c) (1) A store charging a fee pursuant to subdivision (a) may*  
12 *retain a portion of the fee, as specified in paragraph (2), in an*  
13 *amount necessary to reimburse the store's costs associated with*  
14 *complying with this chapter, in accordance with Section 42284.5.*  
15 *The store shall remit the remainder of the fee to the state board*  
16 *pursuant to Section 42284.*

17 *(2) (A) Before January 1, 2013, a store may retain not more*  
18 *than five cents (\$0.05) of the fee for each single-use carryout bag*  
19 *that is not a green carryout bag. For a single-use carryout bag*  
20 *that is a green carryout bag, a store may retain not more than ten*  
21 *cents (\$0.10) of the fee for each bag.*

22 *(B) On and after January 1, 2013, a store may retain an amount*  
23 *established by the department, based on the department's*  
24 *determination of the costs of complying with Section 42284.5.*

25 *(d) Any other transaction fee charged by a store in relation to*  
26 *providing a single-use carryout bag shall be identified separately*  
27 *from the Bag Pollution Cleanup Fee.*

28 *42283. The fee imposed pursuant to Section 42281 shall not*  
29 *be charged to either of the following:*

30 *(a) A customer participating in the Special Supplemental Food*  
31 *Program for Women, Infants, and Children (Article 2 (commencing*  
32 *with Section 123275) of Chapter 1 of Part 2 of Division 106 of the*  
33 *Health and Safety Code).*

34 *(b) A customer participating in the State Department of Social*  
35 *Services Food Stamp Program.*

36 *42284. A store that collects the Bag Pollution Cleanup Fee*  
37 *pursuant to Section 42281 shall calculate the amount of money*  
38 *collected and, after deducting the amount specified in subdivision*  
39 *(c) of Section 42281, shall, in accordance with Section 42288,*  
40 *remit the remainder to the state board for deposit into the fund.*

1 42284.5. A store charging a fee pursuant to Section 42281  
 2 shall use the amount of the fee retained pursuant to subdivision  
 3 (c) of Section 42281 for all of the following:

4 (a) Reimbursement of the store’s costs associated with the  
 5 collection and remittance of the fee pursuant to Sections 42281  
 6 and 42284.

7 (b) The development of in-store educational materials  
 8 encouraging the use of reusable bags for distribution to customers.

9 (c) The development and implementation of an educational  
 10 campaign encouraging the use of reusable bags, including, but  
 11 not limited to, public service announcements.

12 (d) Reimbursement of the store’s costs associated with providing  
 13 reusable bags to customers participating in programs described  
 14 in subdivisions (a) and (b) of Section 42283.

15 (e) Reimbursement of the store’s costs associated with providing  
 16 reusable bags as donations to community organizations, nonprofit  
 17 organizations, and other similar entities.

18 (f) Reimbursement of the store’s costs associated with the use  
 19 of single-use carryout bags.

20 42285. (a) The Bag Pollution Fund is hereby established in  
 21 the State Treasury. All fees collected by the state board pursuant  
 22 to this chapter shall be deposited in the fund.

23 (b) The moneys in the fund shall be expended, upon  
 24 appropriation by the Legislature in the annual Budget Act, in the  
 25 manner and in the order of priority as follows:

26 (1) By the state board, to reimburse the state board’s costs of  
 27 implementing Section 42288.

28 (2) (A) By the board, 50 percent of the moneys in the fund, for  
 29 grants to cities and counties, on a per capita basis, for purposes  
 30 of programs that encourage and support recycling of single-use  
 31 carryout bags and single-use carryout bag pollution prevention  
 32 and outreach programs. Except as provided in subparagraphs (B)  
 33 and (C), the amount for which each city or county is eligible shall  
 34 be based on the total population of the incorporated area of the  
 35 city or the total unincorporated area of the county, whichever is  
 36 applicable.

37 (B) If a city or a county prohibits the use of all single-use  
 38 carryout bags and no fees are collected pursuant to Section 42281  
 39 within that jurisdiction, that city or county shall not be eligible for  
 40 grant funds pursuant to this paragraph.

1 (C) If a city or a county prohibits the use of plastic single-use  
2 carryout bags, but not all single-use carryout bags, that city or  
3 county shall be eligible for 75 percent of its per capita share of  
4 grant funds pursuant to this paragraph.

5 (3) By the agency and the department, the remainder of the  
6 moneys in the fund, for purposes of Section 42287.

7 42286. (a) The Legislature finds and declares that imposing  
8 a single-use carryout bag fee upon a store is a matter of statewide  
9 interest and concern.

10 (b) Unless expressly authorized by this chapter, a city, county,  
11 or other public agency shall not adopt, implement, or enforce an  
12 ordinance, resolution, regulation, or rule to impose a single-use  
13 carryout bag fee upon a store that is in compliance with this  
14 chapter.

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16 Article 3. Financial Assistance Program

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18 42287. (a) The agency and the department shall develop and  
19 implement a financial assistance program to provide financial  
20 assistance for projects that encourage and support recycling of  
21 single-use carryout bags, activities for the cleanup and restoration  
22 of waterways to mitigate the effects of single-use carryout bags,  
23 and pollution prevention and outreach related to single-use  
24 carryout bags. At a minimum, the financial assistance program  
25 shall do all of the following:

26 (1) Provide guidelines for providing financial assistance,  
27 including criteria for eligibility and additional consideration.

28 (2) Provide criteria for determining the amount of financial  
29 assistance to be awarded.

30 (3) Provide technical assistance for preparation of applications  
31 for financial assistance.

32 (b) The development and adoption of guidelines and selection  
33 criteria for the financial assistance program shall not be subject  
34 to the requirements of Chapter 3.5 (commencing with Section  
35 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

36 (c) Prior to adopting the guidelines or providing financial  
37 assistance pursuant to subdivision (a), the agency shall hold two  
38 public hearings to consider public comments. One public hearing  
39 shall be conducted at a location in northern California and one  
40 public hearing shall be conducted at a location in southern

1 California. The agency shall publish draft guidelines on its Internet  
2 Web site at least 30 days before the first public hearing. Upon  
3 adoption, the agency shall transmit copies of the guidelines to the  
4 fiscal committees and the appropriate policy committees of the  
5 Legislature.

6 (d) Activities and projects financed pursuant to this section shall  
7 be in compliance with the California Environmental Quality Act  
8 (Division 13 (commencing with Section 21000)).

9 (e) Not more than 5 percent of the funds allocated to the  
10 financial assistance program may be used to pay the agency’s and  
11 the department’s costs of administering the program.

12 (f) The Secretary of the Resources Agency shall provide for an  
13 independent audit of expenditures pursuant to this chapter every  
14 three years to ensure that all moneys appropriated for purposes  
15 of the financial assistance program are expended in accordance  
16 with this chapter. The Secretary of the Resources Agency shall  
17 annually publish a list of all projects receiving financial assistance  
18 pursuant to this section on the agency’s Internet Web site.

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Article 4. Administration and Enforcement

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22 42288. (a) The state board shall administer and collect the  
23 Bag Pollution Cleanup Fee pursuant to the Fee Collection  
24 Procedures Law (Part 30 (commencing with Section 55001) of  
25 Division 2 of the Revenue and Taxation Code).

26 (b) The state board may adopt rules and regulations to carry  
27 out this article, including, but not limited to, provisions governing  
28 collections, reporting, refunds, and appeals.

29 (c) The Bag Pollution Cleanup Fee shall be due and payable  
30 quarterly on or before the 25th day of the month following each  
31 calendar quarter. Payments shall be accompanied by a form, as  
32 prescribed by the state board, including, but not limited to,  
33 electronic media.

34 (d) The state board may require the payment of the fee for other  
35 than quarterly periods.

36 42288.5. Except as otherwise provided by this chapter, the  
37 agency and the department shall administer and enforce this  
38 chapter.

Article 5. Operative Date

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42289. This chapter shall become operative on January 1, 2010.

SECTION 1. ~~The Legislature finds and declares all of the following:~~

~~(a) On February 17, 2009, all full-power broadcast television stations in the United States will begin to broadcast only in digital. For people who already own a digital television or subscribe to cable, satellite, or other pay service, the transition will have little or no impact.~~

~~(b) However, more than 13 million United States households rely on over-the-air broadcast on their analog television sets exclusively. These people tend to rely heavily on television to keep them informed in times of emergency and cannot afford to lose their connection to broadcast television.~~

~~(c) It is the responsibility of the Legislature to ensure that households that rely solely on over-the-air analog television broadcast for their television viewing understand that the transition will occur on February 17, 2009.~~

SEC. 2. Section 1724 is added to the Civil Code, to read:

1724. (a) For purposes of this section, “retailer” means an establishment that sells televisions to a consumer.

(b) Each retailer in the state of California shall post a notice near the store entrance that is clear, conspicuous, and in legible type from a distance of 10 feet containing the following information:

~~—(1) Will Your TV Work After February 17, 2009? Prepare for the digital transition.~~

~~—(2) Know Your Options:~~

~~—(A) Buy a converter box that will plug into your analog TV.~~

~~—(B) Buy a TV with a digital tuner.~~

~~—(C) Connect your analog TV to cable, satellite, or other pay service.~~

~~—(3) For more information call 1-888-DTV-2009 (1-888-388-2009) or 1-877-530-2634 (TTY) or visit www.DTV2009.gov.~~

1 ~~-(e) Each retailer shall make available to the consumer upon~~  
2 ~~request a brochure that at a minimum contains the following~~  
3 ~~information:~~

4  
5 ~~-(1) An important change in broadcasting is coming in~~  
6 ~~February 2009. Television broadcasting is moving from an~~  
7 ~~old standard, known as “analog,” to a new standard, called~~  
8 ~~“digital.” After February 17, 2009, all television broadcasts~~  
9 ~~will be digital. After February 17, 2009, all analog televisions~~  
10 ~~getting programming “over the air” through an antenna will~~  
11 ~~need to be plugged into a special television converter to receive~~  
12 ~~digital broadcasts. Before you buy a new TV, consider these~~  
13 ~~options:~~

14 ~~-(A) Keep your TV and buy a converter. If you have an analog~~  
15 ~~television, you will need a digital-to-analog converter box to~~  
16 ~~continue to watch broadcast television on that set. This~~  
17 ~~converter box will also enable you to see any additional~~  
18 ~~multicast programming that your local stations are offering.~~

19 ~~-(B) Buy a digital television.~~

20 ~~-(C) Hook up your television to cable, satellite, or other pay~~  
21 ~~television service.~~

22 ~~-(2) After February 17, 2009, all television broadcasts will~~  
23 ~~be digital. Prepare for the digital transition. For more~~  
24 ~~information, call the FCC at 1-888-225-5322 (TTY:~~  
25 ~~1-888-835-5322) or visit their DTV Internet Web site at~~  
26 ~~www.dtv.gov.~~

27  
28 ~~(d) This section shall remain in effect only until January 1, 2010,~~  
29 ~~and as of that date is repealed, unless a later enacted statute, that~~  
30 ~~is enacted before January 1, 2010, deletes or extends that date.~~