

ASSEMBLY BILL

No. 1141

Introduced by Assembly Member Charles Calderon

February 27, 2009

An act to amend Sections 42250, 42253, and 42254 of, to amend and renumber Section 42257 of, to repeal Section 42256 of, and to add Sections 42258, 42259, 42260, 42261, and 42262 to, the Public Resources Code, relating to carryout bags.

LEGISLATIVE COUNSEL'S DIGEST

AB 1141, as introduced, Charles Calderon. Carryout bags.

The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, among other things, until January 1, 2013, requires the operator of a store, as defined, to establish an at-store recycling program that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags, as defined. The act imposes requirements for that program. The act includes legislative findings and declarations that certain matters concerning plastic carryout bags are matters of statewide interest and concern and generally prohibits a city, county, or other public agency from adopting, implementing, or enforcing specified related ordinances, resolutions, regulations, or rules, unless otherwise authorized.

This bill would extend the provisions regarding the at-store recycling program for plastic carryout bags until January 1, 2017, and define the term "single use carryout bag" for those purposes.

The bill would require a manufacturer or distributor who sells a plastic carryout bag to a store to make arrangements with the operator, upon the operator's request, for the collection, transport, and recycling of

plastic carryout bags and other film plastic collected consistent with the program.

The bill would revise the legislative findings and declarations of statewide interest and concern, and related prohibition upon local action, to refer to single use carryout bags, rather than plastic carryout bags, and additionally would prohibit a city, county, or other public agency from adopting, implementing, or enforcing an ordinance, resolution, regulation, or rule that prohibits the use, import, sale, or distribution of a single use carryout bag.

The bill would require the board to establish a 50% single use carryout bag waste reduction goal by 2014, using 2010 as an initial baseline, to reduce empty single use carryout bags going to landfill or becoming litter. The bill would require the board and others to work to increase the availability of plastic bag recycling and collection programs in areas throughout the state.

The bill would require, on and after July 1, 2011, a manufacturer or distributor of a single use carryout bag to pay a single use bag extended producer responsibility fee, in an undetermined amount, for each single use carryout bag that it sells directly or indirectly to a store. The bill would prohibit the total fees collected annually from exceeding the total annual costs to the state of administering and implementing certain actions related to single use carryout bags, and from exceeding \$25,000,000 annually. The bill would require the fee revenue to be expended, upon appropriation by the Legislature, for collecting and processing the fee and administering and implementing certain actions related to single use carryout bags. The bill would require the board to convene an advisory panel to provide guidance and assist the board in determining how the fee revenue should be distributed.

The bill would require every plastic carryout bag sold or supplied to a store in the state and provided to a consumer to contain specified percentages of recycled material beginning on July 1, 2011, with the amount increasing on July 1, 2013, and July 1, 2014. The bill would require a single use carryout bag provided to a consumer on and after July 1, 2011, to have printed on it a specified statement concerning recycled content. If a manufacturer is unable to obtain sufficient amounts of recycled post consumer material, the bill would authorize the board to grant the manufacturer an exemption.

The bill would require manufacturers to obtain specified information from their suppliers of recycled post consumer material for use in the manufacture of plastic carryout bags, and, on or before June 30, 2012,

and annually thereafter, to report to the board specified information concerning carryout bags.

The bill would require wholesalers and distributors of single use plastic carryout bags sold in this state, on and after July 1, 2011, to certify to the board the name and physical location of each manufacturer from whom it purchased the carryout bags, together with any other information the board may require.

The bill would require the board, on or before December 31, 2012, to survey manufacturers and report back to the Legislature on specified information obtained from those manufacturers.

The bill would require the board to refer specified false or misleading information to the Attorney General for prosecution for fraud.

The bill would make other related 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. Section 42250 of the Public Resources Code is
- 2 amended to read:
- 3 42250. For purposes of this chapter, the following definitions
- 4 shall apply:
- 5 (a) "Manufacturer" means the producer of a plastic carryout
- 6 bag sold to a store.
- 7 (b) "Operator" means a person in control of, or having daily
- 8 responsibility for, the daily operation of a store, which may include,
- 9 but is not limited to, the owner of the store.
- 10 (c) "Plastic carryout bag" means a plastic carryout bag provided
- 11 by a store to a customer at the point of sale.
- 12 (d) "Reusable bag" means either of the following:
- 13 (1) A bag made of cloth or other machine washable fabric that
- 14 has handles.
- 15 (2) A durable plastic bag ~~with handles~~ that is at least ~~2.25~~ *1.1*
- 16 mils thick, *has handles, can carry 15 pounds,* and is specifically
- 17 designed and manufactured for multiple reuse.
- 18 (e) "*Single use carryout bag*" means *a plastic, paper, or other*
- 19 *carryout bag provided by a store to a customer at the point of sale.*
- 20 (e)

1 (f) “Store” means a retail establishment that provides plastic
 2 carryout bags to its customers as a result of the sale of a product
 3 and that meets either of the following requirements:

4 (1) ~~Meet~~ *Meets* the definition of a “supermarket” as found in
 5 Section 14526.5.

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

12 SEC. 2. Section 42253 of the Public Resources Code is
 13 amended to read:

14 42253. The manufacturer of a plastic carryout bag shall develop
 15 educational materials to encourage the reducing, reusing, and
 16 recycling of plastic bags and shall make those materials available
 17 to stores required to comply with this chapter. *A manufacturer or*
 18 *distributor who sells a plastic carryout bag to a store subject to*
 19 *this chapter shall make arrangements with the operator, upon the*
 20 *operator’s request, for the collection, transport, and recycling of*
 21 *all plastic carryout bags and other film plastic collected consistent*
 22 *with this chapter. The arrangements may include contracts or*
 23 *other agreements with third parties.*

24 SEC. 3. Section 42254 of the Public Resources Code is
 25 amended to read:

26 42254. (a) The Legislature finds and declares that all of these
 27 are matters of statewide interest and concern:

28 (1) Requiring a store to collect, transport, or recycle ~~plastic~~
 29 *single use* carryout bags.

30 (2) Imposing a ~~plastic~~ *single use* carryout bag fee upon a store.

31 (3) Requiring a store to conduct auditing or reporting with regard
 32 to ~~plastic~~ *single use* carryout bags.

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

36 (1) Require a store that is in compliance with this chapter to
 37 collect, transport, or recycle ~~plastic~~ *single use* carryout bags.

38 (2) Impose a ~~plastic~~ *single use* carryout bag fee upon a store
 39 that is in compliance with this chapter.

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

4 (4) *Prohibit the use, import, sale, or distribution of a single use*
5 *carryout bag.*

6 (c) This section does not prohibit the adoption, implementation,
7 or enforcement of ~~any~~ a local ordinance, resolution, regulation, or
8 rule governing curbside or drop off recycling programs operated
9 by, or pursuant to a contract with, a city, county, or other public
10 agency, including any action relating to fees for these programs.

11 (d) This section does not affect ~~any~~ a contract, franchise, permit,
12 license, or other arrangement regarding the collection or recycling
13 of solid waste or household hazardous waste.

14 SEC. 4. Section 42256 of the Public Resources Code is
15 repealed.

16 ~~42256. This chapter shall become operative on July 1, 2007.~~

17 SEC. 5. Section 42257 of the Public Resources Code is
18 amended and renumbered to read:

19 ~~42257.~~

20 42265. This chapter shall remain in effect only until January
21 1, ~~2013~~ 2017, and as of that date is repealed, unless a later enacted
22 statute, that is enacted before January 1, ~~2013~~ 2017, deletes or
23 extends that date.

24 SEC. 6. Section 42258 is added to the Public Resources Code,
25 to read:

26 42258. The Legislature finds and declares all of the following:

27 (a) In order to complement California's existing plastic carryout
28 bag recycling program, established pursuant to Chapter 845 of the
29 Statutes of 2006, there is a need to further encourage market
30 development programs to stimulate a steady demand for this
31 material.

32 (b) Minimum recycled content requirements for plastic carryout
33 bags will help spur domestic markets for collected plastic bags
34 and film.

35 (c) Policies developed to reduce plastic bag waste should not
36 increase the use of alternative single use bags that have been shown
37 to have a greater life-cycle environmental impact.

38 (d) California has a unique and critical role in protecting the
39 Pacific Ocean and preventing marine debris.

1 SEC. 7. Section 42259 is added to the Public Resources Code,
2 to read:

3 42259. The board shall establish a 50 percent single use
4 carryout bag waste reduction goal by 2014 using 2010 as an initial
5 baseline. The goal is to reduce empty single use carryout bags
6 going to a landfill or becoming litter. The goal shall take into
7 account single use carryout bag reduction and reuse of single use
8 carryout bags by consumers for other purposes, provided that it
9 can be clearly demonstrated that the reuse of single use carryout
10 bags avoids the need for the use of additional products, recycling
11 efforts, and recycled content. The board, in conjunction with bag
12 manufacturers, retailers, local governments, recyclers, waste
13 haulers, and end-users of recycled material, shall work to increase
14 the availability of plastic bag recycling and collection programs
15 in areas throughout the state.

16 SEC. 8. Section 42260 is added to the Public Resources Code,
17 to read:

18 42260. (a) On and after July 1, 2011, a manufacturer or
19 distributor of a single use carryout bag shall pay a single use bag
20 extended producer responsibility fee for each single use carryout
21 bag that it sells directly or indirectly to a store.

22 (b) The amount of the fee shall be _____. The total fees collected
23 annually under this chapter shall not exceed the total administrative
24 annual costs to the state of administering this section and all
25 programs authorized under this chapter, and in no event shall
26 exceed twenty-five million dollars (\$25,000,000) annually.

27 (c) The manufacturer or distributor shall remit the fee directly
28 to the state pursuant to regulations that the board shall establish.
29 The fee revenue shall be expended, upon appropriation by the
30 Legislature in the annual Budget Act or other statute, in the manner
31 and in the order of priority as follows:

32 (1) No more than 5 percent shall be expended by the state for
33 the costs of collecting and processing the fee.

34 (2) An amount shall be allocated to the board that the Legislature
35 determines to be necessary to administer and implement this
36 chapter.

37 (3) The remainder, upon appropriation to the board, shall be
38 allocated by the board to state agencies and to cities and counties
39 on a per capita basis, for the following purposes:

- 1 (A) Establishing and maintaining programs to cleanup single
2 use carryout bag litter, including programs in partnership with
3 nonprofit community-based organizations.
- 4 (B) Litter education and outreach programs related to single use
5 carryout bags.
- 6 (C) Mitigation projects relating to stormwater pollution caused
7 by single use carryout bags, including devices to prevent single
8 use plastic carryout bag litter from entering storm drain systems.
- 9 (D) Public education efforts that promote recycling of single
10 use carryout bags.
- 11 (E) Reusable bag giveaway programs.
- 12 (F) In conjunction with the advisory panel established pursuant
13 to subdivision (d), the board shall develop a voluntary best
14 practices educational program geared primarily for retailers to use
15 at their discretion, that may help with the efficient use of single
16 use carryout bags by retailers. These best practices
17 recommendations shall be posted on the board's Internet Web site
18 and may include, but are not limited to, the following suggestions
19 or recommendations for use by retail establishments:
- 20 (i) A single use carryout bag should not be provided to a
21 consumer for a single item.
- 22 (ii) A consumer purchasing two items should be asked whether
23 he or she needs a single use carryout bag.
- 24 (iii) No double bagging.
- 25 (iv) A single use carryout bag should be filled with the
26 maximum item count or weight per bag.
- 27 (v) A cashier or bagger should remind customers to return plastic
28 carryout bags and other recyclable plastic bags to the store for
29 recycling and point out the location of recycling bins.
- 30 (vi) A store should strive to ensure that the plastic carryout bag
31 collection bins are highly visible and clearly marked with a single
32 logo approved by the board for all stores in the state.
- 33 (vii) Stores may allocate space on bags for prominent printed
34 messages to educate, request, and encourage consumers to use
35 plastic carryout bag recycling bins.
- 36 (d) The board shall convene an advisory panel, appointed by
37 the executive director of the board, to provide guidance and assist
38 the board in determining how the fee revenue should be distributed.
39 The advisory panel shall consist of representatives from the plastic
40 and paper bag manufacturing industry, recyclers, waste haulers,

1 local government, retailers, anti-litter organizations, manufacturers
2 that utilize recycled plastic film in the manufacturing of recycled
3 content products, and environmental organizations. Advisory
4 members shall serve without compensation. Any costs incurred
5 by the board pursuant to this subdivision shall be funded by
6 revenue from the fee.

7 SEC. 9. Section 42261 is added to the Public Resources Code,
8 to read:

9 42261. (a) Every plastic carryout bag sold or supplied to a
10 store in this state shall contain the following percentages of
11 recycled material:

12 (1) Plastic carryout bags provided to consumers on and after
13 July 1, 2011, shall contain at least 20 percent recycled material of
14 which at least 10 percent shall be post consumer.

15 (2) Plastic carryout bags provided to consumers on and after
16 July 1, 2013, shall contain at least 25 percent recycled material of
17 which at least 15 percent shall be post consumer.

18 (3) Plastic carryout bags provided to consumers on and after
19 July 1, 2014, shall contain at least 30 percent recycled material of
20 which at least 20 percent shall be post consumer.

21 (b) On and after July 1, 2011, all single use carryout bags
22 provided to consumers shall have printed thereon a statement of
23 the amount of the recycled content in letters at least half an inch
24 high using the following words: "This bag is made from __ percent
25 recycled material of which __ percent is post consumer."

26 (c) Each manufacturer shall obtain from its suppliers of recycled
27 post consumer material for use in the manufacture of plastic
28 carryout bags, a statement identifying the quantity, source location,
29 proximate prior usage of, and the actual post consumer material
30 content of, each shipment of recycled post consumer material
31 purchased by the manufacturer, and any other information that the
32 board may, by regulation, require the manufacturer to obtain from
33 its suppliers, for purposes of inclusion in the annual report required
34 by Section 42262.

35 SEC. 10. Section 42262 is added to the Public Resources Code,
36 to read:

37 42262. (a) (1) On or before June 30, 2012, and annually
38 thereafter, each manufacturer subject to this chapter shall submit
39 a report to the board certifying that it has complied with this chapter
40 during the preceding 12 months, certifying the name and physical

1 location of each of its suppliers of recycled post consumer material
2 for use in the manufacture of plastic carryout bags, and containing
3 the information obtained pursuant to subdivision (c) of Section
4 42261 and any other information that the board may require by
5 regulation. A manufacturer that processes its own recycled post
6 consumer material shall certify to the board that it is the supplier
7 of the material.

8 (2) If a manufacturer subject to this section is unable to obtain
9 sufficient amounts of recycled post consumer material to comply
10 with this chapter within a reporting period because of unavailability
11 or because the available material did not meet recycled post
12 consumer material quality standards that may be adopted by the
13 board, the manufacturer shall certify that fact to the board. Price
14 shall not be a valid basis for that certification. A manufacturer
15 making that certification shall make reasonable efforts to identify
16 available supplies of material before submitting the certification
17 to the board and shall describe all efforts in detail and provide the
18 board with supporting documentation. The board shall determine
19 in its discretion whether to grant the manufacturer an exemption
20 based on the certification. The board shall apply consistent criteria
21 to manufacturers in granting those exemptions.

22 (b) On and after July 1, 2011, every wholesaler and distributor
23 of single use plastic carryout bags sold in this state shall certify to
24 the board the name and physical location of each manufacturer
25 from whom it purchased the carryout bags, together with any other
26 information that the board may require by regulation.

27 (c) On or before December 31, 2012, the board shall survey
28 manufacturers subject to this chapter and report back to the
29 Legislature. The survey shall do all of the following:

30 (1) Identify the name and physical location of suppliers certified
31 by manufacturers pursuant to subdivision (a).

32 (2) Identify the quantity of recycled post consumer material
33 provided by suppliers within the state and the quantity of recycled
34 post consumer material provided by suppliers outside the state.

35 (3) Provide recommendations regarding recycled post consumer
36 material content requirements based on the availability of that
37 material.

38 (d) Each recycler, supplier, manufacturer, wholesaler, and
39 distributor required to provide a report, certification, or any
40 information pursuant to this chapter is subject to audit by the board.

1 (e) (1) If a recycler or supplier provides a manufacturer with
2 false or misleading certification or other information regarding
3 recycled material, the board, within 30 days of determining that
4 fact, shall refer the false or misleading information to the Attorney
5 General for prosecution for fraud.
6 (2) If a manufacturer, wholesaler, or distributor provides the
7 board with a false or misleading certification or other information,
8 the board, within 30 days of determining that fact, shall refer the
9 false or misleading certification or information to the Attorney
10 General for prosecution for fraud.
11 (e) If a manufacturer places false or misleading information
12 regarding recycled content on a single use plastic carryout bag,
13 including the statement required by subdivision (b) of Section
14 42261, the board, within 30 days of determining that fact, shall
15 refer the false or misleading information to the Attorney General
16 for prosecution for fraud, and those bags shall be subject to seizure
17 and forfeiture without compensation.