

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 20, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1998

Introduced by Assembly Member Brownley

(Principal coauthor: Senator Leno)

(Coauthors: Assembly Members Ammiano, Chesbro, De Leon, Evans, Feuer, Hill, Bonnie Lowenthal, Nava, Ruskin, Skinner, Torlakson, and Yamada)

(Coauthors: Senators DeSaulnier, Hancock, Liu, Lowenthal, and Pavley)

February 17, 2010

~~An act to add Chapter 5.3 (commencing with Section 42280) to, and to repeal Chapter 5.1 (commencing with Section 42250) of, Part 3 of An act to amend Section 42257 of, and to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as amended, Brownley. Solid waste: 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. This requirement is repealed on January 1, 2013.

This bill would repeal those at-store recycling program requirements on January 1, ~~2011~~ 2012, and would instead, on and after January 1, 2012, prohibit certain types of stores, as defined, from providing a single-use carryout bag to a customer. The bill would, on and after July 1, 2013, prohibit convenience food stores, foodmarts, and certain specified stores from providing a single-use carryout bag to a customer. *The bill would require both types of stores, as of January 1, 2011, to make reusable bags available for purchase and would allow certain stores to provide reusable bags to customers at no cost.* The bill would require a store, on and after July 1, 2013, to only provide reusable bags, as defined, ~~or~~ *and would require a store, as of January 1, 2011, to make available for sale recycled paper bags at a reasonable cost, but not less than \$0.05.* The bill would exempt the sale of ~~certain~~ specified bags *by certain stores* from the above prohibition and ~~restriction~~ requirements. The bill would, beginning January 1, 2013, require a reusable bag manufacturer to obtain a biennial certification from the Department of Resources Recycling and Recovery by submitting a certification fee and a certification that its reusable bag meets specified requirements. The bill would specify administrative civil penalties for a person ~~who~~ *that* violates the above requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund, and to deposit the penalties and fines collected into the Penalty Subaccount, which would be established by the bill in the account. The bill would provide that moneys in the account and the subaccount ~~would~~ be expended by the department, upon appropriation by the Legislature, to implement the above requirements.

This bill would, *as of January 1, 2011*, preempt local regulations on the use and sales of reusable bags, single-use carryout bags, recycled paper bags, or other specified bags at stores, as defined.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The prohibition imposed by this act, pursuant to Section
- 4 42281 of the Public Resources Code, is necessary to reduce the
- 5 environmental, public health, economic, and societal costs resulting

1 from the production, use, and discard of single-use plastic carryout
2 bags.

3 (b) Despite local and state efforts to minimize land-based
4 sources of pollution, and increasing efforts worldwide to protect
5 water quality, the quantity of plastic pollution in the world's aquatic
6 environments is increasing.

7 (c) Recycled content paper carryout bags, while not without
8 their impacts, when made with 40 percent or more postconsumer
9 content, are a high value recyclable collected in every curbside
10 and community recycling program in California.

11 (d) Plastics made from bio-based sources that are marketed as
12 "compostable" or "biodegradable" are not environmentally sound
13 alternatives to plastic carryout bags because they have not been
14 shown to degrade in aquatic environments and require conditions
15 only available in composting facilities to rapidly break down into
16 constituents that assimilate back into the environment. Most
17 Californians lack access to composting facilities capable of
18 accepting compostable plastic bags.

19 (e) On September 18, 2006, the West Coast Governor's
20 Agreement on Ocean Health was signed by Governor
21 Schwarzenegger of California, Governor Kulongoski of Oregon,
22 and Governor Gregoire of Washington to address the challenges
23 of the Pacific coast's declining health and to establish its protection
24 as a regional priority.

25 (f) On February 8, 2007, the California Ocean Protection
26 Council approved a resolution to call for statewide action to reduce
27 the amount of land-based sources of marine debris and the resulting
28 implementation strategy was adopted by the Ocean Protection
29 Council in November 2008, which called for aggressive actions
30 to reduce the use of single-use plastic products, including plastic
31 bags.

32 (g) In the United States, and in California, many cities have
33 already introduced or enacted bans ~~of~~ *on* single-use carryout bags
34 creating a patchwork of rules and regulations governing the use
35 and disposal of these bags.

36 (h) The Legislature finds and declares that environmental and
37 economic costs posed by single-use bags ~~is~~ *are* of statewide interest
38 and concern and that the state should take action to substantially
39 reduce the use of plastic and other single-use bags.

1 ~~SEC. 2. Chapter 5.1 (commencing with Section 42250) of Part~~
2 ~~3 of Division 30 of the Public Resources Code is repealed.~~

3 *SEC. 2. Section 42257 of the Public Resources Code is*
4 *amended to read:*

5 42257. This chapter shall remain in effect only until January
6 1, ~~2013~~ 2012, and as of that date is repealed, unless a later enacted
7 statute, that is enacted before January 1, ~~2013~~ 2012, deletes or
8 extends that date.

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

11
12 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

13
14 Article 1. Definitions

15
16 42280. For purposes of this chapter, the following definitions
17 shall apply:

18 (a) "Department" means the Department of Resources Recycling
19 and Recovery.

20 (b) "Recycled paper bag" means a paper carryout bag provided
21 by a store to a customer at the point of sale that meets all of the
22 following requirements:

23 (1) Contains a minimum of 40 percent postconsumer recycled
24 content.

25 (2) Is accepted for recycling in curbside programs in a majority
26 of households that have access to curbside recycling programs in
27 the state.

28 (3) Is capable of composting, consistent with the timeline and
29 specifications of the American Society of Testing and Materials
30 (ASTM) Standard ~~Specifications~~ *Specification* for Compostable
31 Plastics D6400, as published in September 2004.

32 (4) Has printed on the bag the name of the manufacturer, the
33 location (country) where the bag was manufactured, and the
34 percentage of postconsumer content.

35 (c) (1) Until a standard is established and enforceable by the
36 department, "reusable bag" means a bag that meets both of the
37 following requirements:

38 (A) Is designed and manufactured for at least 100 uses.

1 (B) (i) Is made of a washable material that does not contain
2 lead or any other heavy metal in a toxic amount, as determined by
3 the department.

4 (ii) The requirements of clause (i) shall not affect any authority
5 of the Department of Toxic Substances Control pursuant to Article
6 14 (commencing with Section 25251) of Chapter 6.5 of Division
7 20 of the Health and Safety Code and, notwithstanding subdivision
8 (c) of Section 25257.1 of the Health and Safety Code, shall not be
9 considered as a product category already regulated or subject to
10 regulation.

11 (2) By January 1, 2013, the department shall establish standards
12 in regulations that define “reusable bag,” using the standards
13 specified in paragraph (1), and any additional durability, material
14 content, or labeling requirements. Labeling requirements shall, at
15 a minimum, require reusable bags to be imprinted, in a manner
16 sufficient to be identifiable and readable, with both of the
17 following:

18 (A) The name of the reusable bag producer.

19 (B) The reusable bag seal or logo, as determined by the
20 department, showing compliance with the minimum standards.

21 (d) “Reusable bag producer” means either of the following:

22 (1) A person or entity that manufactures a reusable bag.

23 (2) A person or entity that initially sells or offers for sale or
24 distribution a reusable bag in California.

25 (e) (1) “Single-use carryout bag” means a bag made of plastic,
26 paper, or other material; that is provided by a store to a customer
27 at the point of sale and that is not a reusable bag, as defined in
28 subdivision (c).

29 (2) A single-use carryout bag does not include either of the
30 following:

31 (A) A bag provided by a pharmacy to a customer purchasing
32 prescription medication.

33 (B) A nonhandled bag used to protect a purchased item from
34 damaging or contaminating other purchased items when placed in
35 a recycled paper bag or reusable bag.

36 (f) “Store” means a retail establishment that meets any of the
37 following requirements:

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

39 (2) Has over 10,000 square feet of retail space that generates
40 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales

1 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
2 Division 2 of the Revenue and Taxation Code) and has a pharmacy
3 licensed pursuant to Chapter 9 (commencing with Section 4000)
4 of Division 2 of the Business and Professions Code.

5 (3) Is a convenience food store, foodmart, or other entity
6 engaged in the retail sale of a limited line of goods that generally
7 includes milk, bread, soda, and snack foods with a Type 20 or 21
8 license issued by the Department of Alcoholic Beverage Control.

9

10 Article 2. Carryout Bag Regulation

11

12 42281. (a) (1) On and after January 1, 2012, a store, as defined
13 in paragraph (1) or (2) of subdivision (f) of Section 42280, shall
14 not provide a single-use carryout bag to a customer at the point of
15 sale.

16 (2) On and after July 1, 2013, a store, as defined in paragraph
17 (1) or (2) of subdivision (f) of Section 42280, shall only provide
18 reusable bags, as defined by subdivision (c) of Section 42280, that
19 meet the requirements of this chapter and standards established
20 by the department.

21 (b) A store shall make reusable bags available for purchase by
22 a customer. A store, as defined in paragraph (1) or (2) of
23 subdivision (f) of Section 42280, may provide reusable bags to
24 customers at no cost.

25 (c) Notwithstanding any other law, a store may provide a
26 customer participating in the California Special Supplemental Food
27 Program for Women, Infants, and Children pursuant to Article 2
28 (commencing with Section 123275) of Chapter 1 of Part 2 of
29 Division 106 of the Health and Safety Code with a reusable bag
30 or a recycled paper bag at no cost.

31 (d) Notwithstanding the requirements of subdivision (a), a store
32 shall make available for sale to a consumer at the point of sale a
33 recycled paper bag at a reasonable cost, but not less than five cents
34 (\$0.05), except as provided in subdivision (c).

35 (e) Notwithstanding subdivision (a), because the City and
36 County of San Francisco provides residents with curbside collection
37 of foodwaste for composting, and has encouraged stores to stock
38 compostable plastic bags to facilitate participation in that program,
39 a store in the City and County of San Francisco may sell to a
40 consumer at the point of sale a compostable plastic bag meeting

1 the American Society for Testing and Materials (ASTM) Standard
2 Specification for Compostable Plastics D6400, as published in
3 September 2004, at a cost not less than five cents (\$0.05).

4 42282. Beginning July 1, 2013, a store as defined in paragraph
5 (3) of subdivision (f) of Section 42280 shall comply with the
6 provisions of this article.

7 42283. (a) On or after January 1, 2013, and on or before
8 January 1 every two years thereafter, a reusable bag producer that
9 sells, distributes, or makes a reusable bag available to a store in
10 California, shall submit a certification to the department that each
11 reusable bag meets the requirements of subdivision (c) of Section
12 42280 and associated standards issued by the department.

13 (b) A reusable bag producer shall submit a fee to the department
14 with each certification pursuant to Section 42284.

15 (c) The department shall provide a system to submit
16 certifications online.

17 (d) The department shall publish a list on its Internet Web site
18 that includes:

19 (1) The name, location, and appropriate contact information of
20 a reusable bag producer in compliance with this chapter.

21 (2) The reusable bag product or products in compliance with
22 this chapter.

23 42284. (a) The fee for the initial certification ~~by~~ of a reusable
24 bag producer, as defined in subdivision (d) of Section 42280, shall
25 not exceed ten thousand dollars (\$10,000) per reusable bag
26 producer, as determined by the department. In establishing the
27 initial fee, consideration by the department shall include, but not
28 be limited to, if provided by a reusable bag producer, the annual
29 sales revenue of a participating reusable bag producer, the number
30 of employees of the participating reusable bag producer, and the
31 number of reusable bag products to be submitted for certification
32 by the participating reusable bag producer.

33 (b) The fee for biennial certification thereafter shall be two
34 thousand dollars (\$2,000). The department may adjust the biennial
35 certification fee, not to exceed three thousand dollars (\$3,000) per
36 certification, if the department determines that additional fees are
37 necessary to support implementation of this chapter. Notification
38 of any fee increases shall be provided to certified producers and
39 posted on the department's Internet Web site 60 days in advance
40 of the fee increase.

1 (c) The fees in this section shall not exceed the amount necessary
2 to cover the department's reasonable costs associated with the
3 implementation of this chapter.

4 42285. (a) The department may inspect and audit any entity
5 subject to this chapter.

6 (b) On or after July 1, 2013, the department may test any
7 reusable bag manufactured by a reusable bag producer and provided
8 to a store for sale or distribution for compliance with this chapter
9 and associated regulations.

10 (c) The department may enter into an agreement with other state
11 entities that conduct inspections to provide necessary enforcement
12 of this chapter.

13 42286. (a) Any violation of Section 42281 shall be subject to
14 an administrative civil penalty assessed by the department in an
15 amount not to exceed five hundred dollars (\$500) for the first
16 violation. Subsequent violations may be increased by up to five
17 hundred dollars (\$500) per violation, not to exceed five thousand
18 dollars (\$5,000) per violation.

19 (b) Any violation of Section 42283, or any submission of false
20 or misleading information to the department, shall be subject to
21 an administrative civil penalty assessed by the department of up
22 to fifty thousand dollars (\$50,000) per violation, not to exceed an
23 annual total of one hundred fifty thousand dollars (\$150,000).

24 (c) The department shall publish a list on its Internet Web site
25 of any fines or penalties that have been levied against a violator
26 of this section for failure to comply with the requirements of this
27 chapter.

28 42287. (a) The department shall deposit all certification fees
29 paid pursuant to this article into the Reusable Bag Account, which
30 is hereby created in the Integrated Waste Management Fund in the
31 State Treasury. The moneys deposited in the Reusable Bag Account
32 shall be expended by the department, upon appropriation by the
33 Legislature, to assist the department with its costs of implementing
34 this chapter.

35 (b) The department shall deposit all penalties and fines collected
36 pursuant to this article into the Penalty Subaccount, which is hereby
37 created in the Reusable Bag Account, and shall be expended by
38 the department, upon appropriation by the Legislature, to assist
39 the department with its costs of implementing this chapter.

1 42288. The department may adopt regulations that are
2 reasonable and necessary to implement this chapter.

3

4

Article 3. Preemption

5

6 42289. This chapter is a matter of statewide interest and
7 concern and is applicable uniformly throughout the state.
8 Accordingly, this chapter occupies the whole field of regulation
9 of reusable bags, single-use carryout bags, recycled paper bags,
10 or any other bag referred to in this chapter. No city, county, or
11 other local public agency may enforce or implement any existing
12 or new ordinance, resolution, regulation, or rule on any store as
13 defined by this chapter relating to reusable bags, single-use carryout
14 bags, recycled paper bags, or any other bag referred to in this
15 chapter unless expressly authorized by this division.

O