

## Senate Bill No. 698

### CHAPTER 44

An act to amend Sections 42290, 42291, 42292, 42293, and 42297 of, to add Sections 42290.5 and 42291.5 to, and to repeal Section 42298 of, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 22, 1998. Filed with  
Secretary of State May 22, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 698, Rainey. Plastic trash bags.

Existing law, the California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, establishes an integrated waste management program.

The act requires every manufacturer that manufactures plastic trash bags of 0.75 mil or greater thickness to ensure that at least 30% of the materials used in those plastic bags is recycled plastic postconsumer material.

This bill would state legislative intent regarding the diversion of polyethylene from landfills.

The bill would for each calendar year commencing January 1, 1998, require each manufacturer of plastic trash bags equal to or greater than 0.70 mil thickness to ensure either that its trash bags intended for sale in this state contain a quantity of recycled plastic postconsumer material equal to at least 10% of the weight of the regulated bags, or that at least 30% of the weight of the material used in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

The bill would make conforming changes and prescribe related matters.

The bill would, until January 1, 2001, require the board, for every pound of postconsumer material purchased from a source of postconsumer material for use in the manufacture of plastic trash bags, to credit the manufacturer so certifying with having used 1.2 pounds of recycled plastic postconsumer material toward compliance with the certification requirements.

The bill would repeal provisions authorizing any manufacturer of plastic trash bags that received an exemption pursuant to former provisions exempting bags that use adhesive, heat-affixed straps, as prescribed, to petition the board for a variance from the requirements of the bill for the manufacture of those bags. However, the bill would provide that any variance issued by the board on or before the effective date of the bill would remain in effect until

December 31, 1998, and would exempt the variance holder from the requirements of the bill until that date.

The bill would require the board, by October 1, 2001, to survey manufacturers subject to the bill, as prescribed.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 42290 of the Public Resources Code is amended to read:

42290. For purposes of this chapter, the following terms have the following meaning:

(a) "Manufacturer" means a person who manufactures plastic trash bags for sale in this state.

(b) (1) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.

(2) A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.

(3) A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:

(A) "Hazardous waste," as defined in Section 25117 of the Health and Safety Code.

(B) "Medical waste," as defined in Section 117690 of the Health and Safety Code.

(c) "Postconsumer material" means a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(d) "Regulated bag" means a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in the state.

(e) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state.

SEC. 2. Section 42290.5 is added to the Public Resources Code, to read:

42290.5. To encourage waste diversion of polyethylene from California landfills as well as to encourage California's postconsumer market development, it is the intent of the Legislature that any certification of postconsumer materials used for compliance with this chapter not be the same materials that are certified or used for compliance with any other state requirement or with any federal requirement that requires the use or reporting of postconsumer materials for plastic products.



SEC. 3. Section 42291 of the Public Resources Code is amended to read:

42291. (a) Until January 1, 1998, every manufacturer that manufactures plastic trash bags of 0.75 mil or greater thickness for sale in this state shall ensure that at least 30 percent of the material used in those plastic trash bags is recycled plastic postconsumer material.

(b) (1) On and after January 1, 1998, the manufacturer's required use of recycled plastic postconsumer material shall be determined pursuant to paragraph (2). Compliance by a manufacturer with either alternative shall be deemed to be compliance with this subdivision.

(2) Every manufacturer of regulated bags shall do one of the following:

(A) Ensure that its plastic trash bags intended for sale in this state contain a quantity of recycled plastic postconsumer material equal to at least 10 percent of the weight of the regulated bags.

(B) Ensure that at least 30 percent of the weight of the material used in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

(3) Beginning March 1, 1999, and annually thereafter, every manufacturer subject to this subdivision shall certify to the board that it has used the required amount of recycled plastic postconsumer material annually in compliance with paragraph (2).

(c) Any certification of postconsumer materials used for compliance with this chapter shall not include any materials that are certified or used for compliance with any other state or federal requirement that requires the use or reporting of postconsumer materials for any plastic products.

(d) If any manufacturer subject to this section is unable to obtain sufficient amounts of recycled plastic postconsumer material to comply with this section within a reporting period because of unavailability or because the available material did not meet recycled plastic postconsumer material quality standards adopted by the board, the manufacturer shall certify that fact to the board. Each manufacturer making that certification shall make a reasonable effort to identify available supplies of material before submitting certification to the board.

(e) The Legislature hereby finds and declares that although the changes made to this section by the act amending this section during the 1998 portion of the 1997-98 Regular Session become effective after January 1, 1998, it is the intent of the Legislature that the new requirements specified in subdivision (b) be effective as of January 1, 1998. The Legislature further finds that this change is requested by the manufacturers subject to this section and that the retroactive effect of these changes will not cause any hardship on any manufacturer subject to this section, or cause any manufacturer to be



subject to regulatory action as a result of these changes, but rather, would instead have the effect of preventing hardship to the manufacturers regulated by this section.

SEC. 4. Section 42291.5 is added to the Public Resources Code, to read:

42291.5. Until January 1, 2001, for each pound of recycled plastic postconsumer material purchased from a source of recycled plastic postconsumer material in this state for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, the board shall credit the manufacturer certifying pursuant to Section 42293 with having used 1.2 pounds of recycled plastic postconsumer material toward compliance with the requirements of Section 42291.

SEC. 5. Section 42292 of the Public Resources Code is amended to read:

42292. Each manufacturer shall obtain from its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, a statement identifying the quantity, source location, and proximate prior usage of, and the actual postconsumer material content of, each shipment of recycled plastic postconsumer material purchased by the manufacturer, and any other information that the board, may, by regulation, require the manufacturer to obtain from its suppliers, for purposes of inclusion in the annual report required by Section 42293.

SEC. 6. Section 42293 of the Public Resources Code is amended to read:

42293. (a) On or before March 1, 1999, and annually thereafter, each manufacturer subject to this chapter shall submit a report to the board certifying that it has complied with Section 42291 during the preceding calendar year, certifying the name and physical location of each of its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, and containing the information obtained pursuant to Section 42292 and any other information that the board may require by regulation. Any manufacturer that processes its own recycled plastic postconsumer material shall certify to the board that it is the supplier of the material.

(b) On or before October 1, 2001, the board shall survey manufacturers subject to this section and, notwithstanding Section 7550.5 of the Government Code, report back to the Legislature. The survey shall do all of the following:

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



(2) Identify the quantity of recycled plastic postconsumer material provided by suppliers within the state and the quantity of the material provided by suppliers outside the state.

(3) Provide recommendations regarding recycled plastic postconsumer material content requirements based on the availability of that material.

(4) Identify gauge thickness of all regulated bags.

(5) Determine national production versus production of a separate line for California.

SEC. 7. Section 42297 of the Public Resources Code is amended to read:

42297. (a) The board may adopt such regulations as it determines are necessary to more specifically define terms for purposes of the chapter and to otherwise implement this chapter.

(b) Annually on or before July 1, the board shall publish a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this chapter.

(c) (1) Any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors, who fails to comply with this chapter, shall be ineligible for the award of any state contract or subcontract, or for the renewal, extension, or modification of an existing contract or subcontract, until the board determines that it is in compliance with this chapter.

(2) No state agency shall solicit offers from, award contracts to, or renew, extend, or modify a current contract or subcontract with, any supplier, manufacturer, or wholesaler, or any of its divisions, subsidiaries, or successors, who fails to comply with this chapter until the board determines that it is in compliance with this chapter.

SEC. 8. Section 42298 of the Public Resources Code is repealed.

SEC. 9. Notwithstanding the repeal of Section 42298 of the Public Resources Code, as provided in Section 8 of this act, any variance issued by the California Integrated Waste Management Board on or before the effective date of this act shall remain in effect until December 31, 1998, and, for purposes of that variance, the variance shall exempt the variance holder from the requirements of Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, as amended by this act, until December 31, 1998. Nothing in Chapter 5.4 (commencing with Section 42290) of Part 3 of Division 30 of the Public Resources Code, or in any variance issued before the effective date of this act, shall be construed as allowing that variance to continue in effect after December 31, 1998.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to encourage at the earliest possible time the recycling of plastic postconsumer material, thereby conserving resources and



protecting public health and safety and the environment, it is necessary that this act take effect immediately.

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