

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 additionally require that a city, county, or other public agency that adopts, implements, or enforces an ordinance, resolution, regulation, or rule that prohibits the use, import, sale, or distribution of a single use carryout bag not be eligible to receive any moneys from the fees collected pursuant to the act and that the entity provide an alternative to a single use carry out bag to consumers without charging a fee.*

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, of \$0.001~~ 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.

(2) A durable plastic bag that is at least 1.1 mils thick, has handles, can carry 15 pounds, and is specifically designed and manufactured for multiple reuse.

(e) “Single use carryout bag” means a plastic, paper, or other carryout bag provided by a store to a customer at the point of sale.

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

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

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

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

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

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

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

(1) Requiring a store to collect, transport, or recycle single use carryout bags.

(2) Imposing a single use carryout bag fee upon a store.

(3) Requiring a store to conduct auditing or reporting with regard to single use carryout bags.

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

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

3 (2) Impose a single use carryout bag fee upon a store that is in
4 compliance with this chapter.

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

8 ~~(4) Prohibit the use, import, sale, or distribution of a single use~~
9 ~~carryout bag.~~

10 (c) (1) This section does not prohibit the adoption,
11 implementation, or enforcement of a local ordinance, resolution,
12 regulation, or rule governing curbside or drop off recycling
13 programs operated by, or pursuant to a contract with, a city, county,
14 or other public agency, including any action relating to fees for
15 these programs.

16 (2) *If a city, county, or other public agency adopts, implements,*
17 *or enforces an ordinance, resolution, regulation, or rule that*
18 *prohibits the use, import, sale, or distribution of a single use*
19 *carryout bag, that entity shall not be eligible to receive any moneys*
20 *from the fees collected pursuant to this chapter.*

21 (3) *A city, county, or other public agency that prohibits the use,*
22 *import, sale, or distribution of a single use carryout bag shall be*
23 *responsible for providing alternatives to a single use carryout bag*
24 *to consumers, for which the city, county, or public agency shall*
25 *not charge any person, including a manufacturer, distributor,*
26 *operator, or a consumer, a fee.*

27 (d) This section does not affect a contract, franchise, permit,
28 license, or other arrangement regarding the collection or recycling
29 of solid waste or household hazardous waste.

30 SEC. 4. Section 42256 of the Public Resources Code is
31 repealed.

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

34 42265. This chapter shall remain in effect only until January
35 1, 2017, and as of that date is repealed, unless a later enacted
36 statute, that is enacted before January 1, 2017, deletes or extends
37 that date.

38 SEC. 6. Section 42258 is added to the Public Resources Code,
39 to read:

40 42258. The Legislature finds and declares all of the following:

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

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

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

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

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

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

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

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

(b) The amount of the fee shall be ~~_____~~ *one-tenth of one cent (\$0.001)*. The total fees collected annually under this chapter shall not exceed the total administrative annual costs to the state of administering this section and all programs authorized under this chapter, ~~and in no event shall exceed twenty-five million dollars (\$25,000,000) annually.~~

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

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

8 (2) An amount shall be allocated to the board that the Legislature
9 determines to be necessary to administer and implement this
10 chapter.

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

14 (A) Establishing and maintaining programs to cleanup single
15 use carryout bag litter, including programs in partnership with
16 nonprofit community-based organizations.

17 (B) Litter education and outreach programs related to single use
18 carryout bags.

19 (C) Mitigation projects relating to stormwater pollution caused
20 by single use carryout bags, including devices to prevent single
21 use plastic carryout bag litter from entering storm drain systems.

22 (D) Public education efforts that promote recycling of single
23 use carryout bags.

24 (E) Reusable bag giveaway programs.

25 (F) In conjunction with the advisory panel established pursuant
26 to subdivision (d), the board shall develop a voluntary best
27 practices educational program geared primarily for retailers to use
28 at their discretion, that may help with the efficient use of single
29 use carryout bags by retailers. These best practices
30 recommendations shall be posted on the board's Internet Web site
31 and may include, but are not limited to, the following suggestions
32 or recommendations for use by retail establishments:

33 (i) A single use carryout bag should not be provided to a
34 consumer for a single item.

35 (ii) A consumer purchasing two items should be asked whether
36 he or she needs a single use carryout bag.

37 (iii) No double bagging.

38 (iv) A single use carryout bag should be filled with the
39 maximum item count or weight per bag.

1 (v) A cashier or bagger should remind customers to return plastic
2 carryout bags and other recyclable plastic bags to the store for
3 recycling and point out the location of recycling bins.

4 (vi) A store should strive to ensure that the plastic carryout bag
5 collection bins are highly visible and clearly marked with a single
6 logo approved by the board for all stores in the state.

7 (vii) Stores may allocate space on bags for prominent printed
8 messages to educate, request, and encourage consumers to use
9 plastic carryout bag recycling bins.

10 (d) The board shall convene an advisory panel, appointed by
11 the executive director of the board, to provide guidance and assist
12 the board in determining how the fee revenue should be distributed.
13 The advisory panel shall consist of representatives from the plastic
14 and paper bag manufacturing industry, recyclers, waste haulers,
15 local government, retailers, anti-litter organizations, manufacturers
16 that utilize recycled plastic film in the manufacturing of recycled
17 content products, and environmental organizations. Advisory
18 members shall serve without compensation. Any costs incurred
19 by the board pursuant to this subdivision shall be funded by
20 revenue from the fee.

21 SEC. 9. Section 42261 is added to the Public Resources Code,
22 to read:

23 42261. (a) Every plastic carryout bag sold or supplied to a
24 store in this state shall contain the following percentages of
25 recycled material:

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

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

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

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

(c) Each manufacturer shall obtain from its suppliers of recycled post consumer material for use in the manufacture of plastic carryout bags, a statement identifying the quantity, source location, proximate prior usage of, and the actual post consumer material content of, each shipment of recycled post consumer 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 42262.

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

42262. (a) (1) On or before June 30, 2012, and annually thereafter, each manufacturer subject to this chapter shall submit a report to the board certifying that it has complied with this chapter during the preceding 12 months, certifying the name and physical location of each of its suppliers of recycled post consumer material for use in the manufacture of plastic carryout bags, and containing the information obtained pursuant to subdivision (c) of Section 42261 and any other information that the board may require by regulation. A manufacturer that processes its own recycled post consumer material shall certify to the board that it is the supplier of the material.

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

(b) On and after July 1, 2011, every wholesaler and distributor of single use plastic carryout bags sold in this state shall certify to the board the name and physical location of each manufacturer

1 from whom it purchased the carryout bags, together with any other
2 information that the board may require by regulation.

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

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

8 (2) Identify the quantity of recycled post consumer material
9 provided by suppliers within the state and the quantity of recycled
10 post consumer material provided by suppliers outside the state.

11 (3) Provide recommendations regarding recycled post consumer
12 material content requirements based on the availability of that
13 material.

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

17 (e) (1) If a recycler or supplier provides a manufacturer with
18 false or misleading certification or other information regarding
19 recycled material, the board, within 30 days of determining that
20 fact, shall refer the false or misleading information to the Attorney
21 General for prosecution for fraud.

22 (2) If a manufacturer, wholesaler, or distributor provides the
23 board with a false or misleading certification or other information,
24 the board, within 30 days of determining that fact, shall refer the
25 false or misleading certification or information to the Attorney
26 General for prosecution for fraud.

27 (e)

28 (f) If a manufacturer places false or misleading information
29 regarding recycled content on a single use plastic carryout bag,
30 including the statement required by subdivision (b) of Section
31 42261, the board, within 30 days of determining that fact, shall
32 refer the false or misleading information to the Attorney General
33 for prosecution for fraud, and those bags shall be subject to seizure
34 and forfeiture without compensation.