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AMENDED IN ASSEMBLY MARCH 20, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 158

Introduced by Assembly Member Levine
(Coauthors: Assembly Members Ammiano, Chesbro, Gordon, and
Lowenthal)
(Coauthor: Senator Hill)

January 22, 2013

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, and to repeal Section 42289 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 158, as amended, Levine. Solid waste: single-use carryout bags.

Existing law, until January 1, 2020, 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.

With specified exceptions, this bill, as of January 1, 2015, would prohibit stores that have a specified amount of dollar sales or retail floor space from providing a single-use carryout bag to a customer. The bill would require these stores to meet other specified requirements regarding providing recycled paper bags and compostable bags to customers. The bill would require these stores to make reusable grocery bags available to customers.

The bill would, on and after July 1, 2016, additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and certain other specified stores.

The bill, beginning January 1, 2016, would require reusable grocery bags to that are sold or provided to a store by a reusable grocery bag producer meet specified requirements, *and would require a producer to provide an independent certification to the Department of Resources Recycling and Recovery that the bags meet the requirements, and to pay a specified fee.* The bill would require the department to deposit all penalties collected for violations of these requirements into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund. The bill would require that moneys in the account be expended by the department, upon appropriation by the Legislature, to implement these requirements.

~~The bill would require the department, by January 1, 2017, to submit a report to the Legislature regarding the implementation of the bill's provisions. The bill would repeal this report requirement on January 1, 2018.~~

The bill would allow a city, county, or city and county, or the state to impose civil penalties for a violation of the bill's requirements, except for the certification requirements. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions. The bill would provide that these remedies are not exclusive, as specified.

This bill would prohibit enforcement and implementation of local ordinances and other local regulations on this subject that were enacted on or after January 1, 2014, as specified.

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

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

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

(a) “Department” means the Department of Resources Recycling and Recovery.

(b) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Contains a minimum of 40 percent postconsumer recycled materials, except as provided in subparagraph (B).

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

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

(3) Has printed on the bag the name of the manufacturer, the location (country) where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) (1) “Reusable grocery bag” on or before June 30, 2016, means either of the following:

(A) A bag made of cloth or other machine washable fabric that has handles.

(B) A durable plastic bag with handles that is at least 2.25 mils thick and specifically designed for multiple reuses.

(2) “Reusable grocery bag” on and after July 1, 2016, means a bag that meets the requirements of Section 42287.

(e) “Reusable grocery bag producer” means a person or entity that does any of the following:

(1) Manufactures reusable grocery bags for sale or distribution to a store.

(2) Imports reusable grocery bags into this state, for sale or distribution to a store.

(3) Sells or distributes reusable bags to a store.

(f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material, that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of subdivision (b) of Section 42287.

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

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

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

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

(1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and that sells a line of dry grocery items, canned goods, or nonfood items, and some perishable items.

(2) Has at least 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.

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

Article 2. Carryout Bags

42281. (a) (1) On or before June 30, 2016, the requirements of this section shall apply only to a store that is defined in paragraph (1) or (2) of subdivision (g) of Section 42280.

1 (2) On and after July 1, 2016, the requirements of this section
2 shall apply to a store, as defined in subdivision (g) of Section
3 42280.

4 (b) (1) On and after January 1, 2015, a store shall not provide
5 a single-use carryout bag to a customer at the point of sale, except
6 as provided in this section.

7 (2) On January 1, 2015, until June 30, 2016, a store may provide
8 to a customer a reusable grocery bag, as defined in paragraph (1)
9 of subdivision (d) of Section 42280.

10 (3) On and after July 1, 2016, a store shall only provide to a
11 customer at the point of sale a reusable grocery bag, as defined in
12 paragraph (2) of subdivision (d) of Section 42280, that meets the
13 requirements of Section 42287.

14 (c) A store shall make reusable grocery bags available for
15 purchase by a customer.

16 (d) Notwithstanding subdivision (b), a store may make available
17 for purchase at the point of sale a recycled paper bag.

18 (e) Notwithstanding subdivision (b), a store may make available
19 for purchase at the point of sale a compostable bag that, at a
20 minimum, meets the American Society for Testing and Materials
21 (ASTM) Standard Specification for Compostable Plastics D6400
22 if in the jurisdiction where the compostable bag is sold both of the
23 following requirements are met:

24 (1) A majority of the residential households in the jurisdiction
25 have access to curbside collection of food waste for composting.

26 (2) The governing authority for the jurisdiction has voted to
27 allow stores in the jurisdiction to sell to a consumer at the point
28 of sale a compostable bag at a cost not less than the actual cost of
29 the bag.

30 (f) Notwithstanding any other law, on and after January 1, 2015,
31 a store shall provide a customer participating in the California
32 Special Supplemental Food Program for Women, Infants, and
33 Children pursuant to Article 2 (commencing with Section 123275)
34 of Chapter 1 of Part 2 of Division 106 of the Health and Safety
35 Code and a customer participating in the Supplemental Food
36 Program pursuant to Chapter 10 (commencing with Section 15500)
37 of Part 3 of Division 9 of the Welfare and Institutions Code, with
38 a reusable grocery bag or a recycled paper bag at no cost at the
39 point of sale.

Article 3. Reusable Grocery Bags

42287. (a) On and after July 1, 2016, a reusable grocery bag sold or provided to a store by a reusable grocery bag producer for purposes of this chapter shall meet all of the following requirements:

(1) (A) Be designed and manufactured to withstand, at a minimum, 125 uses.

(B) For purposes of this paragraph, “125 uses” means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

(2) Is machine washable or made from a material that can be cleaned and disinfected.

(3) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer the following information:

(A) The name of the manufacturer.

(B) The location (country) where the bag was manufactured.

(C) The appropriate recycling symbol or end-of-life management instructions.

(D) The percentage of postconsumer recycled material, if any.

(4) Does not contain lead, cadmium, or any other heavy metal in toxic amounts. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.

(5) If the reusable grocery bag producer makes a claim that it is recyclable, the producer shall comply with the requirements of Part 260 of Title 16 of the Code of Federal Regulations relating to environmental marketing claims.

(b) In addition to the requirements in subdivision (a), a reusable grocery bag made from plastic shall meet both of the following requirements:

(1) On and after July 1, 2017, be made from a minimum of 20 percent postconsumer recycled material, except as provided in subdivision ~~(d)~~ (c).

(2) In addition to the information required to be printed on the bag or on a tag, pursuant to paragraph (3) of subdivision (a), all of the following information shall be printed on the bag, or on a tag that complies with that paragraph:

(A) A statement that the bag is a reusable bag and designed for at least 125 uses.

(B) Instructions to return the bag to the store for recycling or to another appropriate recycling location.

(c) (1) If, after making a reasonable effort to identify postconsumer recycled material, a plastic reusable grocery bag producer is unable to obtain sufficient amounts of postconsumer recycled material to comply with this article because of unavailability, upon the request of the department, the producer shall demonstrate to the department the actions taken by that plastic reusable grocery bag producer to find that postconsumer recycled material.

(2) A plastic reusable grocery bag producer subject to paragraph (1) shall include the greatest amount of postconsumer recycled material possible in the reusable grocery bag, even if this amount is less than required by paragraph (1) of subdivision (b) and shall indicate the percentage that is postconsumer recycled material.

42288. (a) On or before January 1, 2016, and on January 1 every two years thereafter, in a manner determined by the department, a reusable grocery bag producer shall provide to the department a certification, as conducted by a third-party certifier approved by the department, for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and that is provided by the grocery bag producer to a store for sale or distribution. The certification shall certify that the bag meets the requirements of Section 42287.

(b) The department shall enable certification to be submitted online.

(c) On and after July 1, 2016, the department shall publish a list on its Internet Web site that includes both of the following:

(1) The name, location, and appropriate contact information of each reusable grocery bag producer that is in compliance with this article.

(2) The reusable grocery bags that are in compliance with this article.

1 (d) A reusable grocery bag producer shall submit a fee, as
2 established pursuant to subdivision (e), to the department to cover
3 the costs of being listed. The fee may be submitted by the
4 third-party certifier on behalf of the reusable grocery bag
5 producer.

6 (e) The department shall establish a certification fee schedule
7 that will generate fee revenues sufficient to cover, but not to exceed,
8 all of the department's costs to enforce this article.

9 ~~42288.~~

10 42288.5. (a) The department may inspect and audit a reusable
11 grocery bag producer subject to this article, with all costs associated
12 with the inspection or audit being paid for by the reusable grocery
13 bag producer.

14 (b) The department may test any reusable grocery bag
15 manufactured by a reusable grocery bag producer and provided to
16 a store for sale or distribution for compliance with this article and
17 the regulations adopted pursuant to this article. All costs associated
18 with the test shall be paid for by the reusable grocery bag producer.

19 (c) The department may enter into an agreement with other state
20 entities that conduct inspections to provide necessary enforcement
21 of this article.

22 (d) Notwithstanding Section 42289.5, a violation of this article
23 by a reusable grocery bag producer shall be subject to an
24 administrative civil penalty assessed by the department in an
25 amount not to exceed five hundred dollars (\$500) for the first
26 violation. A subsequent violation may be subject to an increased
27 penalty of up to five hundred dollars (\$500) per violation, not to
28 exceed five thousand dollars (\$5,000) per violation.

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

35
36 ~~Article 4. Reporting Requirements~~
37

38 ~~42289. (a) On or before January 1, 2017, the department shall~~
39 ~~submit a report to the Legislature in accordance with Section 9795~~
40 ~~of the Government Code, regarding the effectiveness of this chapter~~

1 ~~and recommendations for statutory changes to increase~~
2 ~~effectiveness, which shall include all of the following:~~

3 ~~(1) A compilation of state cleanup data to evaluate pollution~~
4 ~~reduction.~~

5 ~~(2) Recommendations to further encourage the use of reusable~~
6 ~~grocery bags by customers and stores.~~

7 ~~(3) An evaluation of the requirements for reusable bags specified~~
8 ~~in Section 42287.~~

9 ~~(4) Distribution of recycled paper bags.~~

10 ~~(5) Number and type of violations.~~

11 ~~(b) The department shall coordinate with other state and local~~
12 ~~agencies in compiling this report to maximize existing efforts and~~
13 ~~resources in the areas of litter reduction, water quality, and~~
14 ~~environmental protection.~~

15 ~~(c) Pursuant to Section 110231.5 of the Government Code, this~~
16 ~~section is repealed on January 1, 2018.~~

17
18 Article 5-4. Enforcement

19
20 42289.5. (a) A city, a county, a city and county, or the state
21 may impose civil liability in the amount of five hundred dollars
22 (\$500) for the first violation of this chapter, one thousand dollars
23 (\$1,000) for the second violation, and two thousand dollars
24 (\$2,000) for the third and subsequent violations.

25 (b) Any civil penalties collected pursuant to subdivision (a)
26 shall be paid to the office of the city attorney, city prosecutor,
27 district attorney, or Attorney General, whichever office brought
28 the action. The penalties collected pursuant to this section by the
29 Attorney General may be expended by the Attorney General, upon
30 appropriation by the Legislature, to enforce this chapter.

31 (c) Subdivisions (a) and (b) shall not apply to a violation of
32 Article 3 (commencing with Section 42287).

33 (d) This chapter shall not be exclusive and shall not limit the
34 ability of a city, county, city and county, or the state to pursue
35 enforcement pursuant to Chapter 5 (commencing with Section
36 17200) of Part 2 of Division 7 of the Business and Professions
37 Code.

38
39 Article 5. Preemption

1 42289.7. (a) A city, county, or other local public agency shall
2 not enforce or otherwise implement against a store an ordinance,
3 resolution, regulation, or rule adopted on or after January 1, 2014,
4 relating to reusable grocery bags, single-use carryout bags, or
5 recycled paper bags.

6 (b) A city, county, or other local public agency that has adopted,
7 prior to January 1, 2014, an ordinance, resolution, regulation, or
8 rule relating to reusable grocery bags, single-use carryout bags,
9 or recycled paper bags may continue to enforce or otherwise
10 implement that ordinance, resolution, regulation, or rule that was
11 in effect before that date. However, any amendment to that
12 ordinance, resolution, regulation, or rule on or after January 1,
13 2014, shall be subject to subdivision (a).