

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 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. 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 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 This requirement is repealed on January 1, 2013.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, ~~2012~~ *2011*, and would instead, on and after January 1, 2012, prohibit ~~a store~~ *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 a store, on and after July 1, 2013, to only provide reusable bags, as defined, or 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 from the above prohibition and restriction. 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 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.*

~~The bill would require the department, on or before January 1, 2015, to submit to the Legislature a report regarding the effectiveness of the bill's provisions and recommendations to further encourage the use of reusable bags. The requirement for submitting the report would become inoperative on January 1, 2019.~~

This bill would 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 for the~~
- 5 ~~environmental, public health, and societal burdens imposed by~~
- 6 ~~single-use plastic carryout bags.~~

1 ~~(b) Despite global treaties to prevent dumping at sea and~~
2 ~~minimize land-based sources of pollution, and increasing efforts~~
3 ~~worldwide to protect water quality, the quantity of marine debris~~
4 ~~in the world's oceans is increasing.~~

5 ~~(c) Despite recycling and voluntary solutions to control pollution~~
6 ~~from plastic bags in California, only 5 percent of plastic carryout~~
7 ~~bags are recycled and the rest either take up valuable landfill space~~
8 ~~or are discarded in the environment.~~

9 ~~(d) The North Pacific Gyre in the Pacific Ocean is home to the~~
10 ~~largest accumulation of plastic pollution, now estimated to be the~~
11 ~~size of the United States and is increasing rapidly.~~

12 ~~(e) According to the California Coastal Commission, the~~
13 ~~majority of marine debris is composed of plastic materials; 60 to~~
14 ~~80 percent overall and 90 percent of floating debris is plastic.~~

15 ~~(f) It is estimated that at least 267 species of wildlife have been~~
16 ~~threatened by marine debris through ingestion or entanglement,~~
17 ~~including sea turtles, fish, marine mammals, and various species~~
18 ~~of sea birds.~~

19 ~~(g) Paper bags made from virgin materials are not~~
20 ~~environmentally sound alternatives to plastic carryout bags because~~
21 ~~the production of these types of bags contributes to deforestation,~~
22 ~~natural resource depletion, greenhouse gas emissions, and~~
23 ~~waterborne wastes.~~

24 ~~(h) Though recycled content paper carryout bags are recyclable~~
25 ~~and have fewer negative impacts than virgin paper bags, recycled~~
26 ~~content paper carryout bags are not environmentally sound~~
27 ~~alternatives to plastic carryout bags, because the production of~~
28 ~~these types of bags contributes to greenhouse gas emissions and~~
29 ~~waterborne wastes.~~

30 *(a) The prohibition imposed by this act, pursuant to Section*
31 *42281 of the Public Resources Code, is necessary to reduce the*
32 *environmental, public health, economic, and societal costs resulting*
33 *from the production, use, and discard of single-use plastic carryout*
34 *bags.*

35 *(b) Despite local and state efforts to minimize land-based*
36 *sources of pollution, and increasing efforts worldwide to protect*
37 *water quality, the quantity of plastic pollution in the world's*
38 *aquatic environments is increasing.*

39 *(c) Recycled content paper carryout bags, while not without*
40 *their impacts, when made with 40 percent or more postconsumer*

1 *content, are a high value recyclable collected in every curbside*
2 *and community recycling program in California.*

3 ~~(i)~~

4 (d) Plastics made from bio-based sources that are marketed as
5 “compostable” or “biodegradable” are not environmentally sound
6 alternatives to plastic carryout bags because they have not been
7 shown to degrade in aquatic environments and require conditions
8 only available in composting facilities to rapidly break down into
9 constituents that assimilate back into the environment. Most
10 Californians lack access to composting facilities capable of
11 accepting compostable plastic bags.

12 ~~(j)~~

13 (e) On September 18, 2006, the West Coast Governor’s
14 Agreement on Ocean Health was signed by Governor
15 Schwarzenegger of California, Governor Kulongoski of Oregon,
16 and Governor Gregoire of Washington to address the challenges
17 of the Pacific coast’s declining health and to establish its protection
18 as a regional priority.

19 ~~(k)~~

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

27 ~~(l) On World Oceans Day 2009, the Under-Secretary General~~
28 ~~and Executive Director of the United Nations Environmental~~
29 ~~Programme called for an outright ban or rapid phaseout of thin~~
30 ~~film plastic carryout bags worldwide.~~

31 ~~(m) In the United States, and in California, many cities have~~
32 ~~already enacted bans, or are seriously considering banning plastic~~
33 ~~single-use bags.~~

34 ~~(n) The Legislature finds and declares that proliferation of these~~
35 ~~bans should be of statewide interest and concern and that the state~~
36 ~~should take action regulating the use of plastic and paper single-use~~
37 ~~bags.~~

38 (g) *In the United States, and in California, many cities have*
39 *already introduced or enacted bans of single-use carryout bags*

1 *creating a patchwork of rules and regulations governing the use*
2 *and disposal of these bags.*

3 *(h) The Legislature finds and declares that environmental and*
4 *economic costs posed by single-use bags is of statewide interest*
5 *and concern and that the state should take action to substantially*
6 *reduce the use of plastic and other single-use bags.*

7 ~~SEC. 2. Section 42257 of the Public Resources Code is~~
8 ~~amended to read:~~

9 ~~42257. This chapter shall remain operative only until January~~
10 ~~1, 2012, and as of that date is repealed, unless a later enacted~~
11 ~~statute, that is enacted before January 1, 2012, deletes or extends~~
12 ~~that date.~~

13 *SEC. 2. Chapter 5.1 (commencing with Section 42250) of Part*
14 *3 of Division 30 of the Public Resources Code is repealed.*

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

17
18 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

19
20 Article 1. Definitions

21
22 42280. For purposes of this chapter, the following definitions
23 shall apply:

24 (a) "Department" means the Department of Resources Recycling
25 and Recovery.

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

29 (1) Contains a minimum of 40 percent postconsumer recycled
30 content.

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

34 (3) Is capable of composting, consistent with the timeline and
35 specifications of the American Society of Testing and Materials
36 (ASTM) Standard Specifications for Compostable Plastics D6400,
37 as published in September 2004.

38 (4) Has printed on the bag the name of the manufacturer, the
39 location (country) where the bag was manufactured, and the
40 percentage of postconsumer content.

1 ~~(b) “Reusable bag” means a bag that meets both of the following~~
2 ~~(c) (1) Until a standard is established and enforceable by the~~
3 ~~department, “reusable bag” means a bag that meets both of the~~
4 ~~following requirements:~~
5 ~~(1)~~
6 ~~(A) Is designed and manufactured for at least 100 uses.~~
7 ~~(2) (A)–~~
8 ~~(B) (i) Is made of a washable material that does not contain~~
9 ~~lead or any other heavy metal in a toxic amount, as determined by~~
10 ~~the department.~~
11 ~~(B) The requirement of subparagraph (A)~~
12 ~~(ii) The requirements of clause (i) shall not affect any authority~~
13 ~~of the Department of Toxic Substances Control pursuant to Article~~
14 ~~14 (commencing with Section 25251) of Chapter 6.5 of Division~~
15 ~~20 of the Health and Safety Code and, notwithstanding subdivision~~
16 ~~(c) of Section 25257.1 of the Health and Safety Code, shall not be~~
17 ~~considered as a product category already regulated or subject to~~
18 ~~regulation.~~
19 ~~(e) “Single-use carryout bag” means a bag that meets all of the~~
20 ~~following conditions:~~
21 ~~(1) Is designed for one or more uses, but fewer than 100 uses.~~
22 ~~(2) Is made of plastic, paper, or other material.~~
23 ~~(3) Is provided by a store to a customer at the point of sale.~~
24 ~~(2) By January 1, 2013, the department shall establish standards~~
25 ~~in regulations that define “reusable bag,” using the standards~~
26 ~~specified in paragraph (1), and any additional durability, material~~
27 ~~content, or labeling requirements. Labeling requirements shall,~~
28 ~~at a minimum, require reusable bags to be imprinted, in a manner~~
29 ~~sufficient to be identifiable and readable, with both of the~~
30 ~~following:~~
31 ~~(A) The name of the reusable bag producer.~~
32 ~~(B) The reusable bag seal or logo, as determined by the~~
33 ~~department, showing compliance with the minimum standards.~~
34 ~~(d) “Reusable bag producer” means either of the following:~~
35 ~~(1) A person or entity that manufactures a reusable bag.~~
36 ~~(2) A person or entity that initially sells or offers for sale or~~
37 ~~distribution a reusable bag in California.~~
38 ~~(e) (1) “Single-use carryout bag” means a bag made of plastic,~~
39 ~~paper, or other material, that is provided by a store to a customer~~

1 at the point of sale and that is not a reusable bag, as defined in
2 subdivision (c).

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

5 (A) A bag provided by a pharmacy to a customer purchasing
6 prescription medication.

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

10 ~~(d)~~

11 (f) “Store” means a retail establishment that provides single-use
12 carryout bags to its customers as a result of the sale of a product
13 and that meets any of the following requirements:

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

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

21 ~~(3) Is a convenience food store or foodmart engaged in retailing
22 a limited line of goods that generally includes milk, bread, soda,
23 and snacks.~~

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

28

29

Article 2. Carryout Bag Regulation

30

31 42281. (a) (1) On and after January 1, 2012, a store, as defined
32 in paragraph (1) or (2) of subdivision (f) of Section 42280, shall
33 not provide a single-use carryout bag to a customer at the point of
34 sale.

35 (2) On and after July 1, 2013, a store, as defined in paragraph
36 (1) or (2) of subdivision (f) of Section 42280, shall only provide
37 reusable bags, as defined by subdivision (c) of Section 42280, that
38 meet the requirements of this chapter and standards established
39 by the department.

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

5 (c) Notwithstanding any other law, a store may provide a
6 customer participating in the California Special Supplemental
7 Food Program for Women, Infants, and Children pursuant to
8 Article 2 (commencing with Section 123275) of Chapter 1 of Part
9 2 of Division 106 of the Health and Safety Code with a reusable
10 bag or a recycled paper bag at no cost.

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

15 (e) Notwithstanding subdivision (a), because the City and
16 County of San Francisco provides residents with curbside
17 collection of food waste for composting, and has encouraged stores
18 to stock compostable plastic bags to facilitate participation in that
19 program, a store in the City and County of San Francisco may sell
20 to a consumer at the point of sale a compostable plastic bag
21 meeting the American Society for Testing and Materials (ASTM)
22 Standard Specification for Compostable Plastics D6400, as
23 published in September 2004, at a cost not less than five cents
24 (\$0.05).

25 42282. Beginning July 1, 2013, a store as defined in paragraph
26 (3) of subdivision (f) of Section 42280 shall comply with the
27 provisions of this article.

28 42283. (a) On or after January 1, 2013, and on or before
29 January 1 every two years thereafter, a reusable bag producer
30 that sells, distributes, or makes a reusable bag available to a store
31 in California, shall submit a certification to the department that
32 each reusable bag meets the requirements of subdivision (c) of
33 Section 42280 and associated standards issued by the department.

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

36 (c) The department shall provide a system to submit
37 certifications online.

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

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

3 (2) *The reusable bag product or products in compliance with*
4 *this chapter.*

5 42284. (a) *The fee for the initial certification by a reusable*
6 *bag producer, as defined in subdivision (d) of Section 42280, shall*
7 *not exceed ten thousand dollars (\$10,000) per reusable bag*
8 *producer, as determined by the department. In establishing the*
9 *initial fee, consideration by the department shall include, but not*
10 *be limited to, if provided by a reusable bag producer, the annual*
11 *sales revenue of a participating reusable bag producer, the number*
12 *of employees of the participating reusable bag producer, and the*
13 *number of reusable bag products to be submitted for certification*
14 *by the participating reusable bag producer.*

15 (b) *The fee for biennial certification thereafter shall be two*
16 *thousand dollars (\$2,000). The department may adjust the biennial*
17 *certification fee, not to exceed three thousand dollars (\$3,000) per*
18 *certification, if the department determines that additional fees are*
19 *necessary to support implementation of this chapter. Notification*
20 *of any fee increases shall be provided to certified producers and*
21 *posted on the department's Internet Web site 60 days in advance*
22 *of the fee increase.*

23 (c) *The fees in this section shall not exceed the amount necessary*
24 *to cover the department's reasonable costs associated with the*
25 *implementation of this chapter.*

26 42285. (a) *The department may inspect and audit any entity*
27 *subject to this chapter.*

28 (b) *On or after July 1, 2013, the department may test any*
29 *reusable bag manufactured by a reusable bag producer and*
30 *provided to a store for sale or distribution for compliance with*
31 *this chapter and associated regulations.*

32 (c) *The department may enter into an agreement with other*
33 *state entities that conduct inspections to provide necessary*
34 *enforcement of this chapter.*

35 42286. (a) *Any violation of Section 42281 shall be subject to*
36 *an administrative civil penalty assessed by the department in an*
37 *amount not to exceed five hundred dollars (\$500) for the first*
38 *violation. Subsequent violations may be increased by up to five*
39 *hundred dollars (\$500) per violation, not to exceed five thousand*
40 *dollars (\$5,000) per violation.*

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

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

10 42287. (a) The department shall deposit all certification fees
11 paid pursuant to this article into the Reusable Bag Account, which
12 is hereby created in the Integrated Waste Management Fund in
13 the State Treasury. The moneys deposited in the Reusable Bag
14 Account shall be expended by the department, upon appropriation
15 by the Legislature, to assist the department with its costs of
16 implementing this chapter.

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

22 42288. The department may adopt regulations that are
23 reasonable and necessary to implement this chapter.
24

25 Article 3. Report and Administration
26

27 ~~42282. (a) On or before January 1, 2015, the department shall~~
28 ~~submit a report to the Legislature regarding the effectiveness of~~
29 ~~this chapter. The report shall also include recommendations to~~
30 ~~further encourage the use of reusable bags by consumers and~~
31 ~~retailers and to reduce the consumption of single-use carryout~~
32 ~~bags, including at a minimum, expanding the definition of stores~~
33 ~~that are subject to this chapter to all other stores and retail~~
34 ~~establishments distributing single-use bags.~~

35 ~~(b) The requirement for submitting a report imposed under~~
36 ~~subdivision (a) is inoperative on January 1, 2019, pursuant to~~
37 ~~Section 10231.5 of the Government Code.~~

38 ~~(c) A report to be submitted pursuant to subdivision (a) shall~~
39 ~~be submitted in compliance with Section 9895 of the Government~~
40 ~~Code.~~

1 ~~42283. The department shall administer and enforce this~~
2 ~~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*
14 *carryout bags, recycled paper bags, or any other bag referred to*
15 *in this chapter unless expressly authorized by this division.*