
A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the excessive use of non-reusable checkout bags presents an unnecessary hazard to the natural environment. Non-reusable checkout bags:

- (1) Require crude oil, a polluting fossil fuel, for their manufacture;
- (2) Pose serious health risks to legally protected sea turtles and marine mammals;
- (3) Contribute to unsightly litter;
- (4) Burden overcrowded landfills;
- (5) Are recycled minimally;
- (6) Contribute to deforestation; and
- (7) Are manufactured with non-renewable energy.

An environmentally friendly alternative to the non-reusable checkout bag is the reusable bag which consumers can easily acquire, clean, and store. The legislature finds that Hawaii should strongly discourage the use of non-reusable checkout bags.

The legislature finds that the State has a compelling interest in protecting its precious natural environment. Several countries and both international and domestic cities have successfully implemented similar laws that have resulted in a significant reduction in non-reusable checkout bag usage. Because the people of Hawaii depend on the preservation of the

natural environment for economic, social, and cultural reasons, the public's health and welfare will benefit immensely from a significant reduction of non-reusable checkout bag waste and litter.

The purpose of this Act is to reduce the adverse impact of non-reusable checkout bag waste on Hawaii's precious and unique natural environment by establishing an offset fee for the distribution of non-reusable checkout bags.

SECTION 2. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . NON-REUSABLE CHECKOUT BAG OFFSET FEE

§342H- Definitions. As used in this part:

"Business" means any commercial enterprise or establishment that distributes non-reusable checkout bags in any county or that does not distribute non-reusable checkout bags in an exempt county, including:

- (1) Sole proprietorships, joint ventures, partnerships, and corporations, or any other legal entity, whether for profit or not for profit; and
- (2) All employees, principals, owners, partners, or directors of a business doing business with the entities under paragraph (1), including independent contractors.

"Exempt county" means any county in the State that has adopted an ordinance banning non-biodegradable plastic carryout checkout bags or similarly constituted bags deemed potentially harmful to the environment.

"Non-reusable checkout bag" means a paper or plastic carryout bag that is provided by a business to a customer at the point of sale for the transport of purchased items. A non-reusable checkout bag does not meet the standards for a reusable bag, regardless of the potential frequency of reuse of the same non-reusable checkout bag. The term "non-reusable checkout bag" does not include bags distributed by businesses for the transport of:

- (1) Raw meat, poultry, fish, frozen food, flowers, or other items that contain dampness;
- (2) Bulk food products sold without packaging;
- (3) Fresh produce;
- (4) Baked goods sold over-the-counter without packaging;
- (5) Take-out food from restaurants;
- (6) Live animals;
- (7) Newspapers for home delivery; and
- (8) Laundry or dry-cleaning.

"Reusable bag" means a bag that is specifically designed and manufactured for multiple reuse that is made of:

- (1) Cloth or other machine washable fabric; or
- (2) Other durable material suitable for reuse, including a plastic that is at least 2.25 millimeters thick.

"Undue hardship" means a financial burden that is extremely unique and unavoidable.

§342H- Distribution of checkout bags; offset fee. (a) Beginning July 1, 2012, any business, having a gross annual income of \$500,000 or more shall charge and collect an offset fee of 25 cents for each non-reusable checkout bag provided to a customer; provided that a business shall add the amount of offset fee to the total price of the customer's purchase. The offset fee shall be stated separately and prominently on any sales receipt, invoice, or other record of the sale or other transfer of the non-reusable checkout bag.

(b) A business may retain twenty-five per cent of the offset fees collected as revenue that shall be subject to income taxes; provided that the offset fee shall not be subject to excise taxes.

(c) A business shall keep a record on a quarterly basis of the:

- (1) Number of non-reusable checkout bags the business has purchased, been provided with, or otherwise acquired; and

- (2) Amounts collected from the distribution of non-reusable checkout bags that are provided to or sold to consumers.

The record shall be subject to inspection by the department for enforcement purposes.

(d) Not later than the fifteenth day of each month, each business shall remit to the department an amount equal to seventy-five per cent of the offset fees collected during the previous month. The department shall provide forms to document the remittance. Of the amount collected by the department under this subsection:

- (1) Seventy per cent shall be deposited into the general fund; and
- (2) Thirty per cent shall be deposited into a special account in the state general fund for expenditure by the department for expenses related to the administration and enforcement of this part; provided that any funds in excess of those expenses shall be expended by the department to:
 - (A) Perform community outreach and education relating to the impact of non-reusable checkout bags on the environment; and
 - (B) Fund litter cleanups.

§342H- Penalties. Any business that violates this part shall be subject to a fine of:

- (1) \$250 for a first violation;
- (2) \$500 for a second violation occurring within one year of the first violation; and
- (3) \$1,000 for any subsequent violation after the second violation.

§342H- Injunctive and other relief. The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to correct or abate violation of this part or any rule adopted pursuant to this part, to collect administrative penalties, or to obtain other relief.

§342H- Rules. The director shall adopt rules under chapter 91

necessary for the purposes of this part.

§342H- Exemptions. The director may exempt from the requirements of this part businesses that sufficiently demonstrate that the offset fee will cause an undue hardship; provided that no exemption shall exceed one year; and provided that no business shall be entitled to receive more than one exemption.

§342H- County ordinances. (a) Nothing in this part shall be construed to supersede or in any manner affect a county plastic or non-reusable checkout bag ordinance; provided that the ordinance is at least as stringent in the control or prohibition of non-reusable checkout bags as the provisions under this chapter.

(b) Nothing in this part shall prohibit a county from enacting ordinances that are more stringent in the control or prohibition of non-reusable checkout bags than this part."

SECTION 3. No later than twenty days prior to the convening of the regular session of 2013, the department of health shall report to the legislature on:

- (1) An assessment of the effectiveness of this Act in reducing the usage of non-reusable checkout bags; and
- (2) Recommendations for proposed legislation to further reduce the usage of non-reusable checkout bags.

SECTION 4. Nothing in this Act shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Environmental Protection; Plastic Checkout Bags

Description:

Requires businesses to collect a 25 cent offset fee for distribution of every non-reusable checkout bag. Provides for the department of health to collect seventy-five per cent of offset fee to be used for administration and enforcement. Allows businesses to retain twenty-five per cent of offset fee as taxable income. Exempts offset fee from excise tax.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.