

AMENDED IN SENATE    JUNE 30, 2008  
AMENDED IN ASSEMBLY    MAY 23, 2008  
AMENDED IN ASSEMBLY    MAY 5, 2008  
AMENDED IN ASSEMBLY    MARCH 28, 2008

INTRODUCED BY    Assembly Members Levine, Brownley, and Davis

FEBRUARY 19, 2008

An act to amend Sections 42250, 42251, 42252, 42253, 42254, and 42255 of, to add Section 42252.5 to, ~~to add Article 3 (commencing with Section 42260) to Chapter 5.1 of Part 3 of Division 30 of,~~ to add headings as Article 1 (commencing with Section 42250) and Article 2 (commencing with Section 42251) to Chapter 5.1 of Part 3 of Division 30 of, to repeal Section 42256 of, and to repeal and add Section 42257 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Levine. Recycling: plastic carryout ~~bags; paper carryout bags.~~ bags.

(1) 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. Existing law imposes various requirements on at-store recycling programs, including requiring a store to maintain records describing the collection, transport, and recycling of plastic carryout bags collected by the store.

This bill would, on and after July 1, 2011, prohibit a store from providing plastic carryout bags to customers unless the store demonstrates an increased diversion rate, as defined, of 70% in the number of plastic carryout bags provided by the store during a specified period. The bill would require a store that is not complying with the diversion rate requirements to provide a plastic carryout bag to a customer ~~for~~ only if the store charges the customer not less than \$0.25 per bag. A store charging customers for plastic carryout bags would be required to demonstrate that any revenue collected, excluding the cost of the bags and a reasonable financial return, is used by the store to implement specified plastic carryout bag recycling, plastic carryout bag cleanup, and plastic carryout bag waste reduction programs.

~~This bill would, on and after July 1, 2011, permit a store to provide a paper carryout bag to a customer only if the store charges the customer not less than \$0.25 per bag. A store charging for these paper carryout bags would be required to demonstrate that any revenue collected, excluding the cost of the bags and a reasonable financial return, is used by the store to implement specified paper carryout bag recycling, cleanup, and waste reduction programs.~~

(2) Under existing law, the California Integrated Waste Management Board administers laws related to waste management.

This bill would require the California Integrated Waste Management Board to administer and enforce the plastic carryout bag ~~and paper carryout bag~~ provisions. The bill would require a store that imposes a charge for ~~a paper carryout bag or~~ a plastic carryout bag to pay a specified fee to the board for deposit in the Integrated Waste Management Account and would

authorize the board, upon appropriation by the Legislature, to expend those moneys for purposes of administering and enforcing the plastic carryout bag ~~and paper carryout bag~~ provisions.

(3) Under existing law, the above provisions are effective only until January 1, 2013.

This bill would delete the repeal date.

This bill would make clarifying and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The fee imposed pursuant to ~~Sections 42252.5 and 42260~~ Section 42252.5 of the Public Resources Code will mitigate the environmental, public health, and other public-financed impacts caused by the use of plastic ~~and paper~~ bags by offsetting the costs of programs to prevent the littering of plastic ~~and paper~~ carryout bags, cleaning up the litter caused by plastic ~~and paper~~ carryout bags, and encouraging the reduction of the use of plastic ~~and paper~~ carryout bags.

(2) The imposition of the fee would not result in the imposition of a tax within the meaning of Article XIII A of the California Constitution because the amount and nature of the fee have a fair and reasonable relationship to the environmental, public health, and societal burdens imposed by the use of plastic ~~and paper~~ carryout bags, and there is a sufficient nexus between the fees imposed and the use of those fees to support programs to prevent the littering of plastic ~~and paper~~ carryout bags, cleaning up the litter caused by plastic ~~and paper~~ carryout bags, and encouraging the reduction of the use of plastic ~~and paper~~ carryout bags.

(b) It is the intent of the Legislature that the fees that are imposed pursuant to ~~Sections 42252.5 and 42260~~ Section 42252.5 of the Public Resources Code be consistent with *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866.

SEC. 2. The heading of Article 1 (commencing with Section 42250) is added to Chapter 5.1 of Part 3 of Division 30 of the Public Resources Code, to read:

Article 1. Definitions

SEC. 3. Section 42250 of the Public Resources Code is amended to read:

42250. For purposes of this chapter, the following definitions shall apply:

(a) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

(b) "Operator" means a person in control of, or having daily responsibility for, the daily operation of a store, which may include, but is not limited to, the owner of the store.

~~(c) "Paper carryout bag" means a paper carryout bag provided by a store to a customer at the point of sale.~~

~~(d)~~

(c) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

~~(e)~~

(d) "Reusable bag" means either of the following:

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

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

~~(f)~~

(e) "Store" means a retail establishment that provides plastic ~~or paper~~ carryout bags to its customers as a result of the sale of a product and that meets either of the following requirements:

(1) ~~Meets~~ 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. 4. The heading of Article 2 (commencing with Section 42251) is added to Chapter 5.1 of Part 3 of Division 30 of the Public Resources Code, to read:

#### Article 2. Plastic Bags

SEC. 5. Section 42251 of the Public Resources Code is amended to read:

42251. (a) The operator of a store shall establish an at-store recycling program pursuant to this article that provides an opportunity for a customer of the store to return to the store clean plastic carryout bags.

(b) A retail establishment that does not meet the definition of a store, as specified in Section 42250, and that provides plastic carryout bags to customers at the point of sale may also adopt an at-store recycling program, as specified in this article.

SEC. 6. Section 42252 of the Public Resources Code is amended to read:

42252. An at-store recycling program provided by the operator of a store shall include all of the following:

(a) A plastic carryout bag provided by the store shall have printed or displayed on the bag, in a manner visible to a consumer, the words "PLEASE RETURN TO A PARTICIPATING STORE FOR RECYCLING."

(b) A plastic carryout bag collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(c) All plastic bags collected by the store shall be collected, transported, and recycled in a manner that does not conflict with the local jurisdiction's source reduction and recycling element, pursuant to Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300) of Part 2.

(d) The store shall maintain records describing the collection, transport, and recycling of plastic bags collected for a minimum of three years and shall make the records available to the board or the local jurisdiction, upon request, to demonstrate compliance with this article.

(e) The operator of the store shall make reusable bags available to customers within the store, which may be purchased and used in lieu of using a plastic carryout bag or paper carryout bag. This subdivision is not applicable to a retail establishment specified pursuant to subdivision (b) of Section 42251.

SEC. 7. Section 42252.5 is added to the Public Resources Code, to read:

42252.5. (a) Except as provided in subdivision (c), on and after July 1, 2011, a store shall not provide a plastic carryout bag to a customer unless the store demonstrates to the board that, in comparison to the number of plastic carryout bags provided by the store to customers and subjected to diversion in the 2007 calendar year, at least 70 percent more plastic carryout bags provided by the store to customers during the 12-month period ending on December 31, 2010, and annually thereafter, have been subjected to diversion, as described in subdivision (d).

(b) If a store does not comply with subdivision (a), the store may provide a plastic carryout bag to a customer only if the store charges the customer not less than twenty-five cents (\$0.25) per bag.

(c) A store charging customers for plastic carryout bags pursuant to subdivision (b) shall demonstrate that any revenue collected, excluding the cost of the plastic carryout bags, the amount submitted to the board pursuant to subdivision (b) of Section 42257, and a reasonable financial return, shall be used, in consultation with local communities, by the store to implement plastic bag litter reduction, plastic bag cleanup, plastic bag waste reduction, and plastic bag recycling activities.

(d) (1) Diversion, for purposes of this section, includes a reduction in the volume of plastic carryout bags provided to customers and an increase in the volume of plastic carryout bags recycled.

(2) All of the following are diversion for purposes of this section:

(A) Diversion of plastic carryout bags provided by an individual store.

(B) Diversion of plastic carryout bags provided by a chain of stores under common ownership.

(C) Diversion of plastic carryout bags within a city, county, or region.

(D) Diversion of plastic carryout bags within the entire state.

SEC. 8. 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 article.

SEC. 9. Section 42254 of the Public Resources Code is amended to read:

42254. (a) The Legislature finds and declares that both of the following matters are of statewide interest and concern:

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

(2) Requiring a store to conduct auditing or reporting with regard to plastic carryout bags.

(b) Unless expressly authorized by this article, 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) Require a store that is in compliance with this article to collect, transport, or recycle plastic carryout bags.

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

(c) This section does not prohibit the adoption, implementation, or enforcement of a local ordinance, resolution, regulation, or rule governing a curbside or dropoff recycling program operated by, or pursuant to a contract with, a city, county, or other public agency, including any action relating to fees for the program.

(d) This section does not affect any contract, franchise, permit,

license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

SEC. 10. Section 42255 of the Public Resources Code is amended to read:

42255. (a) A city, county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this article, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violation.

(b) Civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this article.

SEC. 11. Section 42256 of the Public Resources Code is repealed.

SEC. 12. Section 42257 of the Public Resources Code is repealed.

SEC. 13. Section 42257 is added to the Public Resources Code, to read:

42257. (a) The board shall administer and enforce this article.

(b) By January 31, 2012, and quarterly thereafter, a store that collects moneys pursuant to subdivision (b) of Section 42252.5 shall calculate the amount of moneys collected pursuant to subdivision (b) of Section 42252.5 and shall pay a fee equal to 3 percent of that amount to the board, as follows:

(1) For the initial payment, the store shall calculate the amount of moneys collected from July 1, 2011, to December 31, 2011, inclusive.

(2) Thereafter, for each quarterly payment, the store shall calculate the amount of moneys collected during the calendar quarter.

(c) Fees submitted to the board pursuant to subdivision (b) shall be deposited in the Integrated Waste Management Account and may be expended by the board, upon appropriation by the Legislature, for the purposes of subdivision (a).

~~SEC. 14. Article 3 (commencing with Section 42260) is added to Chapter 5.1 of Part 3 of Division 30 of the Public Resources Code, to read:~~

~~Article 3. Paper Bags~~

~~42260. (a) On and after July 1, 2011, a store may provide a paper carryout bag to a customer only if the store charges the customer not less than twenty five cents (\$.25) per bag.~~

~~(b) A store charging customers for paper carryout bags pursuant to this section shall demonstrate that any revenue collected, excluding the cost of the paper carryout bags and a reasonable financial return, shall be used, in consultation with local communities, by the store to implement paper bag litter reduction, paper bag cleanup, paper bag waste reduction, and paper bag recycling activities.~~

~~(c) The board shall administer and enforce this article.~~

~~(d) By January 31, 2012, and quarterly thereafter, a store that collects moneys pursuant to subdivision (a) shall calculate the amount of moneys collected pursuant to subdivision (a) and shall pay a fee equal to 3 percent of that amount to the board, as follows:~~

~~(1) For the initial payment, the store shall calculate the amount of moneys collected from July 1, 2011, to December 31, 2011, inclusive.~~

~~(2) For each quarterly payment, the store shall calculate the amount of moneys collected during the calendar quarter.~~

~~(e) Fees submitted to the board pursuant to subdivision (d) shall be deposited in the Integrated Waste Management Account and may be~~

~~expended by the board, upon appropriation by the Legislature, for the purposes of subdivision (c).~~