

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 405

Introduced by Senator Padilla
(Coauthor: Senator Leno)

February 20, 2013

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, and to repeal Section 42285 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Padilla. 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, on and after July 1, 2016, would additionally impose this prohibition on convenience food stores, foodmarts, and certain other specified stores.* The bill would require *all of* these stores to meet other specified requirements regarding providing recycled paper bags, compostable bags, or reusable grocery bags to customers.

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

The bill would require a reusable grocery bag that a store is required to sell on and after July 1, 2016, to meet specified requirements. A

violation of that requirement and the requirements that would be imposed upon grocery bag producers to submit certain laboratory test results would be subject to an administrative civil penalty assessed by the Department of Resources Recycling and Recovery. The department would be required to deposit these penalties into the Reusable Bag Account, which would be created in the Integrated Waste Management Fund, for expenditure by the department, upon appropriation by the Legislature, to implement those 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. 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.

The bill would declare that it occupies the whole field of the regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags and would prohibit a local public agency, on and after January 1, 2014, from enforcing or implementing an ordinance, resolution, regulation, or rule adopted on or after September 1, 2013, relating to those bags, unless expressly authorized. The bill would allow a local public agency that has adopted such an ordinance, resolution, regulation, or rule prior to September 1, 2013, to continue to enforce and implement that ordinance, resolution, regulation, or rule, but would require any amendments to that ordinance, resolution, regulation, or rule to be subject to state preemption.

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) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.

(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 country where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) “Reusable grocery bag” on and after July 1, 2016, means a bag that meets the requirements of Section 42281.

(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 Section 42281.

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

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

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

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

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

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

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

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28 Article 2. Reusable Grocery Bags

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30 42281. (a) On and after July 1, 2016, a reusable grocery bag
31 that is sold pursuant to subdivision (c) of Section ~~42282~~ 42283
32 shall meet all of the following requirements:

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

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

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

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

- 4 (A) The name of the manufacturer.
- 5 (B) The country where the bag was manufactured.
- 6 (C) A recycling symbol or end-of-life management instructions.
- 7 (D) The percentage of postconsumer recycled material, if any.

8 (4) Does not contain lead, cadmium, or any other heavy metal
9 in toxic amounts. This requirement shall not affect any authority
10 of the Department of Toxic Substances Control pursuant to Article
11 14 (commencing with Section 25251) of Chapter 6.5 of Division
12 20 of the Health and Safety Code and, notwithstanding subdivision
13 (c) of Section 25257.1 of the Health and Safety Code, the reusable
14 grocery bag shall not be considered as a product category already
15 regulated or subject to regulation.

16 (5) Complies with Section 260.12 of Part 260 of Title 16 of the
17 Code of Federal Regulations related to recyclable claims if the
18 reusable grocery bag producer makes a claim that the reusable
19 grocery bag is ~~recyclable~~ *recyclable*.

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

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

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

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

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

34 (c) A plastic reusable grocery bag that also meets the
35 specifications of the American Society of Testing and Materials
36 (ASTM) Standard Specification for Compostable Plastics D6400,
37 as published in September 2004, is not required to meet the
38 requirements of paragraph (1) of subdivision (b), but shall be
39 labeled in accordance with the applicable state law regarding
40 compostable plastics.

1 (d) If a plastic reusable grocery bag producer is unable to obtain
2 sufficient amounts of postconsumer recycled material to comply
3 with this article because of unavailability, the producer shall
4 include the greatest amount of postconsumer recycled material
5 possible in the reusable grocery bag even if this amount is less
6 than required by paragraph (1) of subdivision (b) and shall indicate
7 the percentage that is postconsumer recycled material.
8 42282. (a) The department may inspect and audit a reusable
9 grocery bag producer subject to this article with all costs associated
10 with the audit being paid for by the reusable grocery bag producer.
11 (b) Upon request by the department, a reusable grocery bag
12 producer shall submit laboratory test results from independent,
13 accredited (ISO/IEC 17025) laboratories to the department
14 validating the reusable grocery bag meets the requirements of
15 Section 44281 for each type of reusable grocery bag that is
16 manufactured, imported, sold, or distributed in the state and
17 provided to a store for sale or distribution.
18 (c) The department may test any reusable grocery bag
19 manufactured by a reusable grocery bag producer and provided to
20 a store for sale or distribution for compliance with this article and
21 the regulations adopted pursuant to this article.
22 (d) The department may enter into an agreement with other state
23 entities that conduct inspections to provide necessary enforcement
24 of this article.
25 (e) Notwithstanding Section 42285, a violation of this article
26 shall be subject to an administrative civil penalty assessed by the
27 department in an amount not to exceed five hundred dollars (\$500)
28 for the first violation. A subsequent violation may be subject to
29 an increased penalty of up to five hundred dollars (\$500) per
30 violation, not to exceed five thousand dollars (\$5,000) per violation.
31 (f) The department shall deposit all penalties collected pursuant
32 to subdivision ~~(d)~~ (e) for a violation of this article into the Reusable
33 Bag Account, which is hereby created in the Integrated Waste
34 Management Fund. The moneys in the Reusable Bag Account
35 shall be expended by the department, upon appropriation by the
36 Legislature, to assist the department with its costs of implementing
37 this article.

Article 3. Single-Use Carryout Bags

42283. (a) On and after January 1, 2015, a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(b) On and after July 1, 2016, a store, as defined in paragraph (3) of subdivision (g) of Section 42280, shall not provide a single-use carryout bag to a customer at the point of sale.

(c) (1) On and after July 1, 2016, a store shall make available for purchase by a customer reusable grocery bags that meet the requirements of Section 42281.

(2) On and after July 1, 2016, a store shall not sell or distribute a reusable bag at the point of sale that does not meet the requirements of Section 42281.

(d) A store may make available for purchase at the point of sale a recycled paper bag.

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

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

(1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.

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

Article 4. Reporting Requirements

42284. (a) On or before January 1, 2017, the department shall submit a report to the Legislature in accordance with Section 9795 of the Government Code regarding the effectiveness of this chapter and recommendations for statutory changes to increase effectiveness, which shall include all of the following:

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

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

(3) An evaluation of the requirements for reusable grocery bags specified in Section 42281.

(4) Distribution of recycled paper bags.

(5) Number and type of violations.

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

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

Article 5. Enforcement

Article 4. Enforcement

42285. (a) A city, a county, a city and county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violations.

(b) Any 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 chapter.

(c) The remedies provided by this section shall not be exclusive and shall be in addition to the remedies that may be available

1 pursuant to Chapter 5 (commencing with Section 17200) of Part
2 of Division 7 of the Business and Professions Code.

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Article 5. Preemption

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6 42287. (a) *Except as provided in subdivision (c), this chapter*
7 *is a matter of statewide interest and concern and is applicable*
8 *uniformly throughout the state. Accordingly, this chapter occupies*
9 *the whole field of regulation of reusable grocery bags, single-use*
10 *carryout bags, and recycled paper bags, as defined in this chapter.*

11 (b) *On and after January 1, 2014, a city, county, or other local*
12 *public agency shall not enforce against a store, as defined in*
13 *subdivision (g) of Section 42280, or otherwise implement, an*
14 *ordinance, resolution, regulation, or rule adopted on or after*
15 *September 1, 2013, relating to reusable grocery bags, single-use*
16 *carryout bags, or recycled paper bags, as defined in this chapter,*
17 *unless expressly authorized by this chapter.*

18 (c) *A city, county, or other local public agency that has adopted,*
19 *prior to September 1, 2013, an ordinance, resolution, regulation,*
20 *or rule relating to reusable grocery bags, single-use carryout bags,*
21 *or recycled paper bags may continue to enforce and implement*
22 *that ordinance, resolution, regulation, or rule that was in effect*
23 *before that date. Any amendments to that ordinance, resolution,*
24 *regulation, or rule on or after January 1, 2014, shall be subject*
25 *to subdivision (b), except a city, county, or other local public*
26 *agency may amend that ordinance, resolution, regulation, or rule*
27 *with regard to the amount that a store shall charge with regard*
28 *to a recycled paper bag.*

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