

MEETING DATE:

July 23, 2012

AGENDA ITEM:

Consideration of Support for Assembly Bill 298.

ATTACHMENTS

AB 298 Amended Bill Text-Amended in the Senate on June 18, 2012.

Pages

1-13

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN ASSEMBLY APRIL 14, 2011

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 298

Introduced by Assembly Member Brownley
(Principal coauthor: Assembly Member Chesbro)
(Coauthors: Assembly Members Dickinson, Huffman, and Ma)
(Coauthors: Senators De León and Evans)

February 9, 2011

An act to add Chapter 5.2 (commencing with Section 42280) to Part 3 of Division 30 of the Public Resources Code, relating to recycling 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 298, as amended, Brownley. ~~Recycling: reusable bags. Solid waste: single-use carryout bags.~~

Existing law, until January 1, 2013, 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 and prohibits a city, county, or other local public agency from taking specified regulatory actions with regard to the recycling of plastic carryout bags.

With specified exceptions, the bill would, as of January 1, 2014, 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, compostable bags, or reusable bags to customers.

The bill would also require these stores, on and after January 1, 2013, to provide a plastic bag collection bin for their customers, for the purpose of collecting and recycling single-use plastic bags and reusable bags.

The bill would, on and after July 1, 2015, additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and certain other specified stores, except for the requirement to provide plastic bag collection bins.

The bill would, beginning January 1, 2015, require a reusable grocery bag producer to submit to the Department of Resources Recycling and Recovery a biennial certification, including a certification fee established by the department, that certifies that each type of reusable grocery bag that is imported, manufactured, sold, or distributed in the state and provided to a store for sale or distribution meets specified 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. The bill would require that moneys in the account be expended by the department, upon appropriation by the Legislature, to implement the certification requirements. A violation of these certification requirements would be subject to an administrative civil penalty assessed by the department. The department would be required to deposit these penalties into the Penalty Subaccount, which the bill would create in the Reusable Bag Account, for expenditure by the department, upon appropriation by the Legislature, to implement the certification requirements.

The bill would require the department, by January 1, 2016, 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, 2017.

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.

Existing law, part of the California Integrated Waste Management Act of 1989, as administered by the Department of Resources Recycling and Recovery, requires an operator of a store, as defined, to establish an at-store recycling program that provides customers the opportunity to return clean plastic carryout bags to that store and to make reusable bags available to customers. A violation of these requirements is subject to civil liability penalties imposed by a local agency or the state. These requirements are repealed on January 1, 2013.

This bill would prohibit a manufacturer from selling or distributing a reusable bag, as defined, in this state if the bag is designed or intended to be sold or distributed to a store's customers, unless the guidelines for the cleaning and disinfection of the bag are printed on the bag or on a tag attached to the bag.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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,
3 to read:

4
5 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

6
7 Article 1. Definitions

8
9 42280. For purposes of this chapter, the following definitions
10 shall apply:

11 (a) "Department" means the Department of Resources
12 Recycling and Recovery.

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

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

1 (1) (A) Except as provided in subparagraph (B), the paper
2 carryout bag contains a minimum of 40 percent postconsumer
3 recycled materials.

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

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

9 (3) Is capable of composting, consistent with the timeline and
10 specifications of the American Society of Testing and Materials
11 (ASTM) Standard Specification for Compostable Plastics D6400.

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

15 (d) (1) “Reusable grocery bag” on or before June 30, 2015,
16 means either of the following:

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

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

21 (2) “Reusable grocery bag” on and after July 1, 2015, means
22 a bag that meets the requirements of Section 42287.

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

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

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

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

30 (f) (1) “Single-use carryout bag” means a bag made of plastic,
31 paper, or other material, that is provided by a store to a customer
32 at the point of sale and that is not a reusable grocery bag that
33 meets the requirements of Section 42287, on and after July 1, 2015,
34 and paragraph (1) of subdivision (d) of this section on or before
35 June 30, 2015.

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

38 (A) A bag provided by a pharmacy pursuant to Chapter 9
39 (commencing with Section 4000) of Division 2 of the Business and

1 Professions Code to a customer purchasing a prescription
2 medication.

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

6 (g) "Store" means a retail establishment that meets any of the
7 following requirements:

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

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

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

23
24 Article 2. Carryout Bag Regulation
25

26 42281. (a) Except as provided in Section 42282, the
27 requirements of this section apply only to a store, as defined in
28 paragraph (1) or (2) of subdivision (g) of Section 42280.

29 (b) (1) On and after January 1, 2014, a store shall not provide
30 a single-use carryout bag to a customer at the point of sale, except
31 as provided in this section.

32 (2) On January 1, 2014, until June 30, 2015, a store may provide
33 to a customer a reusable grocery bag, as defined in paragraph (1)
34 of subdivision (d) of Section 42280.

35 (3) On and after July 1, 2015, a store shall only provide to a
36 customer a reusable grocery bag, as defined in paragraph (2) of
37 subdivision (d) of Section 42280, that meets the requirements of
38 Section 42287.

39 (c) A store may make reusable grocery bags available for
40 purchase by a customer.

(d) Notwithstanding any other law, on and after January 1, 2014, 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.

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

(f) Notwithstanding subdivision (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 both of the following requirements are met in the jurisdiction where the compostable bag is sold:

(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.

42282. On and after July 1, 2015, a store as defined in paragraph (3) of subdivision (g) of Section 42280, shall comply with the same requirements of this article that are imposed upon a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42880.

Article 3. Plastic Bag Collection

42283. (a) (1) On and after January 1, 2013, a store, as defined in paragraphs (1) and (2) of subdivision (g) of Section 42280, shall place a plastic bag collection bin at the store in a manner that is visible and easily accessible to the customer, and that is clearly marked to notify customers that the collection bin is available for the purpose of collection and recycling of plastic single-use carryout bags and plastic reusable bags.

1 (2) *The requirement of this subdivision shall apply to a store*
2 *notwithstanding that the store is prohibited from providing*
3 *single-use carryout bags to its customers.*

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

9
10 Article 4. *Reusable Grocery Bags*

11
12 42287. (a) *On and after July 1, 2015, a reusable grocery bag*
13 *shall meet all of the following requirements:*

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

16 (B) *For purposes of this paragraph, "125 uses" means the*
17 *capability of carrying a minimum of 22 pounds 125 times over a*
18 *distance of at least 175 feet.*

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

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

24 (A) *The name of the manufacturer.*

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

26 (C) *A recycling symbol or end-of-life management instructions.*

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

28 (4) *It shall not contain lead, cadmium, or any other heavy metal*
29 *in toxic amounts. This requirement shall not affect any authority*
30 *of the Department of Toxic Substances Control pursuant to Article*
31 *14 (commencing with Section 25251) of Chapter 6.5 of Division*
32 *20 of the Health and Safety Code and, notwithstanding subdivision*
33 *(c) of Section 25257.1 of the Health and Safety Code, the reusable*
34 *grocery bag shall not be considered as a product category already*
35 *regulated or subject to regulation.*

36 (5) *If the reusable grocery bag producer makes a claim that it*
37 *is recyclable, the producer shall demonstrate compliance with the*
38 *regulations adopted by the Federal Trade Commission.*

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

4 (1) On and after July 1, 2016, be made from a minimum of 20
5 percent postconsumer recycled material, except as provided in
6 subdivision (d).

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

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

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

15 (c) A plastic reusable grocery bag that also meets the
16 specifications of the American Society of Testing and Materials
17 (ASTM) Standard Specification for Compostable Plastics D6400,
18 as published in September 2004, is not required to meet the
19 requirements of paragraph (1) of subdivision (b), but shall be
20 labeled in accordance with the applicable state law regarding
21 compostable plastics.

22 (d) (1) If a plastic reusable grocery bag producer is unable to
23 obtain sufficient amounts of postconsumer recycled material to
24 comply with this article within a reporting period because of
25 unavailability, the producer shall demonstrate to the department
26 the actions taken by that plastic reusable grocery bag producer
27 to find that postconsumer recycled material.

28 (2) A plastic reusable grocery bag producer making the
29 demonstration in paragraph (1) shall make a reasonable effort to
30 identify available supplies of postconsumer recycled material
31 before submitting a certification containing this information to
32 the department pursuant to Section 42288.

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

38 42288. (a) On or before January 1, 2015, and on January 1
39 every two years thereafter on a schedule and in a manner
40 determined by the department, a reusable grocery bag producer

1 shall submit a certification to the department for each type of
2 reusable grocery bag that is manufactured, imported, sold, or
3 distributed in the state and provided to a store for sale or
4 distribution that meets the requirements of Section 42287.

5 (b) A reusable grocery bag producer shall submit a fee, as
6 established pursuant to subdivision (e), to the department with
7 each certification submitted.

8 (c) The department shall provide a system to submit
9 certifications online.

10 (d) On and after July 1, 2015, the department shall publish a
11 list on its Internet Web site that includes both of the following:

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

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

17 (e) The department shall establish a certification fee schedule
18 that will generate fee revenues sufficient to cover all of the
19 department's costs to enforce this article. Fee revenues shall not
20 exceed the amount necessary to cover the department's reasonable
21 costs to enforce this article.

22 (f) The department may inspect and audit a reusable bag
23 producer subject to this article with all costs associated with the
24 audit being paid for by the reusable grocery bag producer.

25 (g) The department may test any reusable bag manufactured
26 by a reusable bag producer and provided to a store for sale or
27 distribution for compliance with this article and the regulations
28 adopted pursuant to this article.

29 (h) The department may enter into an agreement with other
30 state entities that conduct inspections to provide necessary
31 enforcement of this article.

32 (i) Notwithstanding Section 42289.5, any violation of this article
33 shall be subject to an administrative civil penalty assessed by the
34 department in an amount not to exceed five hundred dollars (\$500)
35 for the first violation. A subsequent violation may be subject to an
36 increased penalty of up to five hundred dollars (\$500) per
37 violation, not to exceed five thousand dollars (\$5,000) per
38 violation.

39 (j) The department shall deposit all certification fees paid
40 pursuant to this article into the Reusable Bag Account, which is

1 hereby created in the Integrated Waste Management Fund in the
2 State Treasury. The moneys deposited in the Reusable Bag Account
3 shall be expended by the department, upon appropriation by the
4 Legislature, to assist the department with its costs of implementing
5 this article.

6 (k) The department shall deposit all penalties collected pursuant
7 to subdivision (i) for a violation of this article into the Penalty
8 Subaccount, which is hereby created in the Reusable Bag Account.
9 The moneys in the Penalty Subaccount shall be expended by the
10 department, upon appropriation by the Legislature, to assist the
11 department with its costs of implementing this article.

12 13 Article 5. Reporting Requirements

14
15 42289. (a) On or before January 1, 2016, the department shall
16 submit a report to the Legislature in accordance with Section 9795
17 of the Government Code, regarding the effectiveness of this chapter
18 and recommendations for statutory changes to increase
19 effectiveness, which shall include all of the following:

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

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

24 (3) An evaluation of the requirements for reusable bags specified
25 in Section 42287.

26 (4) Distribution of recycled paper bags.

27 (5) Number and type of violations.

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

32 (c) Pursuant to Section 110231.5 of the Government Code, this
33 section is repealed on January 1, 2017.

34 35 Article 6. Enforcement

36
37 42289.5. (a) A city, a county, a city and county, or the state
38 may impose civil liability in the amount of five hundred dollars
39 (\$500) for the first violation of this chapter, one thousand dollars

1 (\$1,000) for the second violation, and two thousand dollars
2 (\$2,000) for the third and subsequent violations.

3 (b) Any civil penalties collected pursuant to subdivision (a)
4 shall be paid to the office of the city attorney, city prosecutor,
5 district attorney, or Attorney General, whichever office brought
6 the action. The penalties collected pursuant to this section by the
7 Attorney General may be expended by the Attorney General, upon
8 appropriation by the Legislature, to enforce this chapter.

9 (c) This section does not apply to a violation of Article 4
10 (commencing with Section 42287).

11 SECTION 1. ~~The Legislature finds and declares all of the~~
12 ~~following:~~

13 ~~(a) Despite local and state efforts to minimize land-based sources~~
14 ~~of pollution, and increasing efforts worldwide to protect water~~
15 ~~quality, the quantity of plastic pollution in the world's aquatic~~
16 ~~environments is increasing.~~

17 ~~(b) Recycled content paper carryout bags, while not without~~
18 ~~their environmental impacts, when made with 40 percent or more~~
19 ~~postconsumer content, are a high-value recyclable collected in~~
20 ~~every curbside and community recycling program in California.~~

21 ~~(c) Plastics made from biobased sources that are marketed as~~
22 ~~"compostable" or "biodegradable" are not environmentally sound~~
23 ~~alternatives to plastic carryout bags because they have not been~~
24 ~~shown to degrade in aquatic environments and require conditions~~
25 ~~only available in composting facilities to rapidly break down into~~
26 ~~constituents that assimilate back into the environment. Most~~
27 ~~Californians lack access to composting facilities capable of~~
28 ~~accepting compostable plastic bags.~~

29 ~~(d) On February 8, 2007, the California Ocean Protection~~
30 ~~Council approved a resolution to call for statewide action to reduce~~
31 ~~the amount of land-based sources of marine debris. The resulting~~
32 ~~implementation strategy, adopted by the California Ocean~~
33 ~~Protection Council in November 2008, called for aggressive actions~~
34 ~~to reduce the use of single-use plastic products, including plastic~~
35 ~~bags.~~

36 ~~(e) In California and other states, many cities have already~~
37 ~~introduced or enacted bans on single-use carryout bags, creating~~
38 ~~a patchwork of rules and regulations governing the use and disposal~~
39 ~~of these bags.~~

1 SEC. 2. ~~Chapter 5.2 (commencing with Section 42280) is added~~
2 ~~to Part 3 of Division 30 of the Public Resources Code, to read:~~

3
4 CHAPTER 5.2. REUSABLE BAGS

5
6 42280. ~~For purposes of this chapter, the following definitions~~
7 ~~shall apply:~~

8 (a) ~~“Manufacturer” means a producer of a reusable bag or a~~
9 ~~person that purchases a reusable bag from a producer for resale or~~
10 ~~redistribution in this state.~~

11 (b) ~~“Reusable bag” means a bag with handles that is specifically~~
12 ~~designed and manufactured for multiple reuse and meets all of the~~
13 ~~following requirements:~~

14 (1) ~~Has a minimum lifetime of 125 uses, which for purposes of~~
15 ~~this subdivision, means the capability of carrying a minimum of~~
16 ~~22 pounds 125 times over a distance of at least 175 feet.~~

17 (2) ~~Has a minimum volume of 15 liters.~~

18 (3) ~~Is machine washable or is made from a material that can be~~
19 ~~cleaned or disinfected.~~

20 (4) ~~Does not contain lead, cadmium, or any other heavy metal~~
21 ~~in toxic amounts, as defined by applicable state and federal~~
22 ~~standards and regulations for packaging or reusable bags.~~

23 (5) ~~Has printed on the bag, or on a tag that is permanently~~
24 ~~affixed to the bag, the name of the manufacturer, the location~~
25 ~~(country) where the bag was manufactured, a statement that the~~
26 ~~bag does not contain lead, cadmium, or any other heavy metal in~~
27 ~~toxic amounts, and the percentage of postconsumer recycled~~
28 ~~material used, if any.~~

29 (6) ~~If made of plastic, is a minimum of at least 2.25 mils thick.~~

30 (c) ~~“Store” means a retail establishment that meets any of the~~
31 ~~following requirements:~~

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

36 (2) ~~Has over 10,000 square feet of retail space that generates~~
37 ~~sales or use tax pursuant to the Bradley-Burns Uniform Local Sales~~
38 ~~and Use Tax Law (Part 1.5 (commencing with Section 7200) of~~
39 ~~Division 2 of the Revenue and Taxation Code) and has a pharmacy~~

1 licensed pursuant to Chapter 9 (commencing with Section 4000)
2 of Division 2 of the Business and Professions Code.

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

8 42281. A manufacturer shall not sell or distribute a reusable
9 bag in this state if the reusable bag is designed or intended to be
10 sold or distributed to a store's customers, unless guidelines for
11 cleaning and disinfecting the reusable bag are printed on the bag,
12 or on a tag attached to the bag, in a manner visible to the consumer.

13 42282. Nothing in this chapter shall affect the authority of the
14 Department of Toxic Substances Control pursuant to Article 14
15 (commencing with Section 25251) of Chapter 6.5 of Division 20
16 of the Health and Safety Code and, notwithstanding subdivision
17 (c) of Section 25257.1 of the Health and Safety Code, a reusable
18 grocery bag shall not be considered as a product category already
19 regulated or subject to regulation.