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# A BILL FOR AN ACT

RELATING TO ENVIRONMENTAL PROTECTION.

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

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

4           (1) Require crude oil, a polluting fossil fuel, for their  
5 manufacture;

6           (2) Pose serious health risks to legally protected sea  
7 turtles and marine mammals;

8           (3) Contribute to unsightly litter;

9           (4) Burden overcrowded landfills;

10          (5) Are recycled minimally;

11          (6) Contribute to deforestation; and

12          (7) Are manufactured with non-renewable energy.

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



1           The legislature finds that the State has a compelling  
2 interest in protecting its precious natural environment.  
3 Several countries and both international and domestic cities  
4 have successfully implemented laws that have resulted in a  
5 significant reduction in non-reusable checkout bag usage.  
6 Because the people of Hawaii depend on the preservation of the  
7 natural environment for economic, social, and cultural reasons,  
8 the public's health and welfare will benefit immensely from a  
9 significant reduction of non-reusable checkout bag waste and  
10 litter.

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

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

18           **"PART           .   NON-REUSABLE CHECKOUT BAG OFFSET FEE**

19           **§342H-           Definitions.** As used in this part:

20           "Business" means any commercial enterprise or establishment  
21 that distributes non-reusable checkout bags in any county,  
22 including:



1 (1) Sole proprietorships, joint ventures, partnerships,  
2 and corporations, or any other legal entity, whether  
3 for profit or not for profit; and

4 (2) All employees, principals, owners, partners, or  
5 directors of a business doing business with the  
6 entities under paragraph (1), including independent  
7 contractors.

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

- 16 (1) Raw meat, poultry, fish, frozen food, flowers, or  
17 other items that contain dampness;
- 18 (2) Bulk food products sold without packaging;
- 19 (3) Fresh produce;
- 20 (4) Baked goods sold over-the-counter without packaging;
- 21 (5) Prepared food for take-out or transport from  
22 restaurants;



- 1 (6) Live animals;
- 2 (7) Newspapers for home delivery; and
- 3 (8) Laundry or dry-cleaning.

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

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

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

11 **§342H- Distribution of checkout bags; offset fee. (a)**

12 Beginning July 1, 2012, any business having a gross annual  
13 income of \$ or more shall charge and collect an offset  
14 fee of cents for each non-reusable checkout bag provided  
15 to a customer. Each business shall add the amount of the offset  
16 fee to the total price of the customer's purchase. The offset  
17 fee shall be stated separately and prominently on any sales  
18 receipt, invoice, or other record of the sale or other transfer  
19 of the non-reusable checkout bag.

20 (b) A business may retain per cent of the  
21 offset fees collected as revenue that shall be subject to income



1 taxes; provided that the offset fee shall not be subject to  
2 chapter 237.

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

5 (1) The number of non-reusable checkout bags the business  
6 has purchased, been provided with, or otherwise  
7 acquired; and

8 (2) The amount of offset fee collected from the  
9 distribution of non-reusable checkout bags that are  
10 provided to or sold to consumers.

11 The record shall be submitted to the department on a quarterly  
12 basis or as directed by the department. The department may  
13 inspect the record for enforcement purposes.

14 (d) No later than the last day of each month, each  
15 business shall remit to the department an amount equal to  
16 per cent of the offset fees collected during the  
17 previous month. The department shall provide forms to document  
18 the remittance. Of the amount collected by the department under  
19 this subsection:

20 (1) per cent shall be deposited into the general  
21 fund; and



1           (2)           per cent shall be deposited into a special  
2                           account in the state general fund for expenditure by  
3                           the department for expenses related to the  
4                           administration and enforcement of this part; provided  
5                           that any funds in excess of those expenses shall be  
6                           expended by the department to:

7           (A)   Perform community outreach and education relating  
8                           to the impact of non-reusable checkout bags on  
9                           the environment; and

10          (B)   Fund litter cleanups.

11          **§342H- Penalties.** Any business that violates this part  
12 shall be subject to a fine of:

13          (1)   \$           for a first violation;

14          (2)   \$           for a second violation occurring within one  
15                           year of the first violation; and

16          (3)   \$           for any subsequent violation after the second  
17                           violation.

18          **§342H- Injunctive and other relief.** The director may  
19 institute a civil action in any court of competent jurisdiction  
20 for injunctive and other relief to correct or abate violation of  
21 this part or any rule adopted pursuant to this part, to collect  
22 administrative penalties, or to obtain other relief.



1           **§342H- Rules.** The director shall adopt rules under  
2 chapter 91 necessary for the purposes of this part.

3           **§342H- Exemptions.** The director may exempt from the  
4 requirements of this part any business that sufficiently  
5 demonstrates that the offset fee will cause an undue hardship;  
6 provided that:

7           (1) No exemption shall exceed one year; and

8           (2) No business shall receive more than one exemption.

9           **§342H- County ordinances.** (a) Nothing in this part  
10 shall be construed to supersede or in any manner affect a county  
11 plastic or non-reusable checkout bag ordinance.

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

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

18           (1) An assessment of the effectiveness of this Act in  
19 reducing the use of non-reusable checkout bags; and

20           (2) Recommendations for proposed legislation to further  
21 reduce the use of non-reusable checkout bags.



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

4 SECTION 5. This Act shall take effect on July 1, 2050.





**Report Title:**

Environmental Protection; Plastic Checkout Bags

**Description:**

Requires businesses to collect an unspecified offset fee for distribution of every non-reusable checkout bag. Provides for DOH to collect a percentage of the offset fee for administration and enforcement. Allows businesses to retain a percentage of the offset fee as taxable income. Exempts the offset fee from general excise tax. Effective 07/01/2050. (SD2)

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