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# A BILL FOR AN ACT

RELATING TO ENVIRONMENT.

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

**PART I**

**Single-Use Checkout Bag Fee**

SECTION 1. The legislature finds that the excessive use of single-use checkout bags presents an unnecessary hazard to the natural environment. Single-use 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 greenhouse gas emissions; and
- (7) Are manufactured using large quantities of water and non-renewable energy.



1 An environmentally friendly alternative to the single-use  
2 checkout bag is the reusable bag, which consumers can easily  
3 acquire, clean, and store.

4 The legislature finds that the State has a compelling  
5 interest in protecting its precious natural environment.  
6 Through the implementation of fees several countries, as well as  
7 international and domestic cities, have successfully implemented  
8 laws that have resulted in a significant reduction in single-use  
9 checkout bag usage, with the associated fees expended on  
10 environmental protection programs. The health and welfare of  
11 the people of Hawaii would benefit from a significant reduction  
12 of single-use checkout bag waste and litter.

13 The legislature further finds that the improper disposal of  
14 bags, particularly plastic bags, pollutes Hawaii's streams and  
15 coral reefs and strangles and starves endangered marine animals.  
16 Increasing the resilience of these ecosystems to these threats  
17 requires litter removal, strengthening water quality measures  
18 such as reducing discharge of pollutants in developed areas and  
19 controlling erosion caused by deforestation and invasive  
20 species, and reducing erosion and sedimentation of reefs.  
21 Protecting Hawaii's streams and marine areas from these high-



1 priority threats will help offset the damage caused by  
2 ubiquitous single-use checkout bags.

3       The legislature also finds that production of paper and  
4 plastic single-use checkout bags requires the consumption and  
5 combustion of large quantities of fossil fuels, trees, and  
6 water. Plastic bags require large amounts of crude oil to  
7 produce, and the production of paper bags can use twenty times  
8 more fresh water and four times more energy than plastic bags.  
9 In the United States alone, over fourteen million trees are used  
10 to create paper bags, causing significant greenhouse gas  
11 emissions and removing forests that absorb large quantities of  
12 carbon dioxide. Disposing paper and plastic bags by burning  
13 further increases greenhouse gas emissions.

14       The legislature further finds that protecting Hawaii's  
15 forests from damage from invasive species helps to mitigate the  
16 climate change caused by the production and disposal of single-  
17 use checkout bags. The intergovernmental panel on climate  
18 change considers reducing or preventing deforestation as the  
19 climate mitigation option with the largest and most immediate  
20 carbon stock impact in the short term.

21       Forest protection also increases Hawaii's resilience to the  
22 likely effects of climate change caused by burning fossil fuels.



1 Major threats of climate change to Hawaii's water supplies are  
2 predicted, including drought from higher temperatures, reduced  
3 rainfall, and rising sea levels salting coastal freshwater  
4 aquifers. Climate change may also result in severe storm  
5 events, causing flooding and erosion. Through Act 152, Session  
6 Laws of Hawaii 2000, the legislature recognized that fresh water  
7 is not an infinite resource and its high quality, quantity, and  
8 sustainability depend upon forested watersheds. Hawaii's  
9 forests significantly increase water capture and break the  
10 impact of heavy rains, reducing flooding and erosion and  
11 siltation of reefs and fisheries. Protecting watersheds is  
12 crucial for Hawaii's resiliency to climate change by ensuring  
13 water availability and buffering severe storm events.

14 The purpose of this part is to reduce the adverse impact of  
15 single-use checkout bag waste on Hawaii's precious and unique  
16 natural environment by establishing an offset fee for the  
17 distribution of single-use checkout bags and directing use of  
18 the fee revenues to fund programs to mitigate the damaging  
19 effects of single-use checkout bags by improving water quality  
20 and resilience to climate change.



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

4 "PART . SINGLE-USE CHECKOUT BAG FEE

5 §342H-A Definitions. As used in this part, unless the  
6 context otherwise requires:

7 "Business" means any commercial enterprise or  
8 establishment, including sole proprietorships, joint ventures,  
9 partnerships, and corporations, or any other legally cognizable  
10 entity, whether for profit or not for profit, and includes all  
11 employees of the business; provided that food donation  
12 organizations shall not be considered a business for purposes of  
13 this part.

14 "Mil" means one thousandth of one inch.

15 "Proprietary information" means business information  
16 covered by any of the exceptions to public disclosure under  
17 chapter 92F.

18 "Reusable bag" means a bag with handles that is  
19 specifically designed and manufactured for multiple reuse and is  
20 made of:

21 (1) Cloth or other machine-washable fabric; or



1 (2) Durable material suitable for reuse, including plastic  
2 that is at least 2.25 mils thick.

3 "Single-use checkout bag":

4 (1) Means a bag made of plastic that is less than 2.25  
5 mils thick, or a paper package or sack, whether  
6 recyclable or non-recyclable, that is provided by a  
7 business to a customer, and is designed for one-time  
8 use to contain and transport merchandise; and

9 (2) Does not include:

10 (A) Bags used by customers inside a business to  
11 package loose items, such as fruits, vegetables,  
12 nuts, grains, or candies, or small hardware  
13 items;

14 (B) Bags used to contain or wrap frozen foods, meat  
15 or fish, flowers or potted plants, or other items  
16 to contain dampness;

17 (C) Bags used to protect or transport prepared foods  
18 or bakery goods;

19 (D) Bags provided by pharmacists to contain  
20 prescription medications;

21 (E) Newspaper bags for home newspaper delivery;

22 (F) Door-hanger bags;



- 1 (G) Laundry, dry cleaning, or garment bags, including  
2 bags provided by hotels to guests to contain wet  
3 or dirty clothing;
- 4 (H) Bags sold in packages containing multiple bags  
5 intended for use as garbage, pet waste, or yard  
6 waste bags;
- 7 (I) Bags used to contain live animals, such as fish  
8 or insects sold in pet stores; or
- 9 (J) Bags used to transport chemical pesticides,  
10 drain-cleaning chemicals, or other caustic  
11 chemicals sold at the retail level; provided that  
12 this exemption shall be limited to one bag per  
13 customer.

14 "Small business" means a business that grossed \$500,000 or  
15 less in revenues in the previous year.

16 **§342H-B Distribution of single-use checkout bags; fee.**

17 (a) Beginning January 1, 2013, all businesses in the State  
18 shall charge and collect a fee of 10 cents for each single-use  
19 checkout bag that is provided to customers; provided that, if  
20 after July 1, 2016, the department determines that the statewide  
21 distribution of single-use checkout bags has not decreased by at  
22 least seventy-five per cent from the effective date of this



1 part, the fee shall automatically increase to 25 cents on  
2 January 1, 2017.

3 (b) Businesses subject to the requirements of this part  
4 shall indicate on each customer transaction receipt the number  
5 of single-use checkout bags provided and the amount of the fee  
6 charged.

7 (c) Nothing in this part shall preclude businesses from  
8 making reusable bags available for sale to customers.

9 (d) Of the fees collected pursuant to subsection (a), a  
10 business may retain:

11 (1) Up to twenty per cent from January 1, 2013, through  
12 December 31, 2013; and

13 (2) Up to ten per cent from January 1, 2014, and  
14 thereafter;

15 provided that all fees retained shall be subject to chapters 235  
16 and 237; provided further that any taxes imposed on the fees  
17 retained shall not be charged to any consumer.

18 (e) Businesses subject to the requirements of this part  
19 shall conduct educational outreach to their customers regarding  
20 the single-use checkout bag fee program.

21 **§342H-C Remittance of fees.** (a) No later than the last  
22 day of each month, each business subject to the requirements of





1 this part shall remit to the department the fees collected  
2 pursuant to section 342H-B(a), less the amount retained pursuant  
3 to section 342H-B(d), during the immediately preceding month;  
4 provided that a small business may remit the fees on a quarterly  
5 basis on the last day of the month following the end of a  
6 quarter.

7 (b) Payments and receipts of fees shall be reported on  
8 forms prescribed by the director. Any proprietary information  
9 obtained by the department shall be kept confidential and shall  
10 not be disclosed to any other person.

11 (c) Businesses shall be subject to penalties and interest  
12 for late or underpaid fees.

13 (d) From January 1, 2013, through December 31, 2013, the  
14 department shall deposit all fees collected under this part into  
15 a special account in the environmental management special fund  
16 established by section 342G-63; provided that of the fees  
17 deposited:

18 (1) The first \$800,000 per year shall be expended by the  
19 department for administrative, education, audit,  
20 compliance, and enforcement activities associated with  
21 collection of the single-use checkout bag fee; and

22 (2) Any remaining balance shall be distributed as follows:



- 1           (A) Twenty per cent shall be deposited into the
- 2                   environmental response revolving fund established
- 3                   under section 128D-2, to be expended by the
- 4                   department; and
- 5           (B) Eighty per cent shall be deposited into the
- 6                   natural area reserve fund established under
- 7                   section 195-9, to be expended by the department
- 8                   of land and natural resources for watershed
- 9                   protection, restoration, and acquisition.
- 10          (e) Beginning January 1, 2014, the department shall
- 11          deposit all fees collected under this part as follows:
- 12           (1) Ten per cent shall be deposited in the:
- 13                   (A) Public access, open space, and natural resources
- 14                   preservation fund of Kauai county;
- 15                   (B) Public access, open space, and natural resources
- 16                   preservation fund of Hawaii county;
- 17                   (C) Clean water and natural lands fund of the city
- 18                   and county of Honolulu; and
- 19                   (D) Open space, natural resources, cultural
- 20                   resources, and scenic views preservation fund of
- 21                   Maui county;



1 provided that the amount deposited in each fund shall  
2 be proportionate to the ratio of the county's  
3 population to the State's population as a whole, as  
4 determined in accordance with the latest United States  
5 census; provided further that no fees shall be  
6 deposited in a fund administered by a county that has  
7 not appropriated to its respective island-based  
8 invasive species committee at least fifty per cent of  
9 the amount deposited in the fund pursuant to this  
10 paragraph during the previous calendar year; and

11 (2) Eighty per cent shall be deposited into a special  
12 account in the environmental management special fund  
13 established by section 342G-63 and shall be expended  
14 as provided in subsection (d)(1) and (2).

15 **§342H-D Violations.** (a) It shall be a violation of this  
16 part for any business that is subject to the requirements of  
17 this part to pay or otherwise reimburse a customer for any  
18 portion of the fee required to be charged and collected pursuant  
19 to section 342H-B.

20 (b) Violations of this part or any rule adopted pursuant  
21 to this part shall be subject to a fine of not less than \$1,000  
22 for each violation.



1           **§342H-E Injunctive and other relief.** The director may  
2 institute a civil action in any court of competent jurisdiction  
3 for injunctive and other relief to correct or abate violation of  
4 this part or any rule adopted pursuant to this part, to collect  
5 administrative penalties, or to obtain other relief.

6           **§342H-F County ordinances.** (a) Nothing in this part  
7 shall be construed to preempt or in any manner affect a county  
8 ordinance prohibiting or restricting single-use checkout bags;  
9 provided that the fee established under section 342H-B shall be  
10 applicable to single-use checkout bags that are not prohibited  
11 or restricted by a county 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 single-use checkout bags than this part.

15           **§342H-G Business reporting.** By March 31 of each year, all  
16 businesses that are required to charge and collect the single-  
17 use checkout bag fee pursuant to section 342H-B shall submit to  
18 the department, on forms prescribed by the department, an annual  
19 report for the previous calendar year containing the following  
20 information:

21           (1) The number of single-use checkout bags provided to  
22 customers; and



1 (2) The number of reusable bags provided to customers.

2 **§342H-H Audit authority.** The records of each business  
3 subject to this part shall be made available, upon request, for  
4 inspection by the department or a duly authorized agent of the  
5 department. Any proprietary information obtained by the  
6 department or its duly authorized agent shall be kept  
7 confidential and shall not be disclosed to any other person,  
8 except:

9 (1) As may be reasonably required in an administrative or  
10 judicial proceeding to enforce any provision of this  
11 part or any rule adopted pursuant to this part; or

12 (2) Under an order issued by a court or administrative  
13 agency hearings officer.

14 **§342H-I Rules.** The director shall adopt rules, pursuant  
15 to chapter 91, as may be necessary for the purposes of this  
16 part.

17 **§342H-J Annual report.** The department shall submit to the  
18 legislature an annual report, no later than twenty days prior to  
19 the convening of each regular session, which shall include the  
20 department's efforts to effectuate this chapter, the number of  
21 single-use bags distributed, the statewide reduction rate in the  
22 number of single-use bags distributed, and any recommended



1 policy changes needed to better effectuate the purpose of this  
2 part."

3 SECTION 3. Section 342G-63, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) The department shall expend moneys contained in the  
6 environmental management special fund to:

- 7 (1) Partially fund the operating costs of the program  
8 including its regulatory functions and the development  
9 of waste reduction and diversion activities as  
10 mandated by chapter 342G;
- 11 (2) Fund statewide education, demonstration, and market  
12 development programs, through direct contract or  
13 direct transfer of funds to the counties and the  
14 department of business, economic development, and  
15 tourism, or under a grant program that may be  
16 developed under rules pursuant to chapter 91; ~~and~~
- 17 (3) Provide for annual training for municipal solid waste  
18 operators in compliance with 40 Code of Federal  
19 Regulations Part 258 and chapter 11-58, Hawaii  
20 Administrative Rules [-];
- 21 (4) Fund administrative, audit, compliance, and  
22 enforcement activities associated with the single-use



1 checkout bag fee established by part \_\_\_\_\_, chapter  
2 342H; and

3 (5) Fund educational outreach regarding the single-use  
4 checkout bag fee program established by part \_\_\_\_\_,  
5 chapter 342H."

6 SECTION 4. No later than March 31, 2013, each business, as  
7 defined in section 2 of this Act, that is required to charge and  
8 collect the single-use checkout bag fee pursuant to this part  
9 shall submit to the department of health a one-time report  
10 listing the number of single-use checkout bags and reusable bags  
11 provided to customers by that business for the 2012 calendar  
12 year.

13 SECTION 5. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$800,000 or so much  
15 thereof as may be necessary for fiscal year 2012-2013 for  
16 initiating and administering all components of the single-use  
17 checkout bag fee program.

18 The sum appropriated shall be expended by the department of  
19 health for the purposes of this Act.

20 PART II  
21 Deposit Beverage Container Program



1 SECTION 6. The purpose of this part is to include energy  
2 beverage containers in the deposit beverage container program.

3 SECTION 7. Section 342G-101, Hawaii Revised Statutes, is  
4 amended by amending the definition of "deposit beverage" to read  
5 as follows:

6 "Deposit beverage" means beer, ale, or other drink  
7 produced by fermenting malt, mixed spirits, mixed wine, tea and  
8 coffee drinks regardless of dairy-derived product content, soda,  
9 or noncarbonated water, and all nonalcoholic drinks in liquid  
10 form and intended for internal human consumption that is  
11 contained in a deposit beverage container.

12 The term "deposit beverage" excludes the following:

13 (1) A liquid [~~which~~] that is:

14 (A) A syrup;

15 (B) In a concentrated form; or

16 (C) Typically added as a minor flavoring ingredient  
17 in food or drink, such as extracts, cooking  
18 additives, sauces, or condiments;

19 (2) A liquid [~~which~~] that is a drug, medical food or  
20 infant formula as defined by the Federal Food, Drug,  
21 and Cosmetic Act (21 U.S.C. §301 et seq.);





- 1 (3) A liquid [~~which~~] that is designed and consumed only as  
2 a dietary supplement and not as a beverage as defined  
3 in the Dietary Supplement Health and Education Act of  
4 1994 (P.L. 103-417); provided that this exemption  
5 shall not apply to deposit beverages that contain  
6 caffeine or carbonated water;
- 7 (4) Products frozen at the time of sale to the consumer,  
8 or, in the case of institutional users such as  
9 hospitals and nursing homes, at the time of sale to  
10 the users;
- 11 (5) Products designed to be consumed in a frozen state;
- 12 (6) Instant drink powders;
- 13 (7) Seafood, meat, or vegetable broths, or soups, but not  
14 juices; and
- 15 (8) Milk and all other dairy-derived products, except tea  
16 and coffee drinks with trace amounts of these  
17 products."

18 **PART III**

19 **Miscellaneous Provisions**

20 SECTION 8. If any provision of this Act, or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity does not affect other provisions or



1 applications of the Act, which can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 9. Nothing in this Act shall be interpreted or  
5 applied so as to create any requirement, power, or duty in  
6 conflict with any federal or state law.

7 SECTION 10. In codifying the new sections added by section  
8 2 of this Act, the revisor of statutes shall substitute  
9 appropriate section numbers for the letters used in designating  
10 the new sections in this Act.

11 SECTION 11. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 12. The revisor of statutes shall insert the  
14 effective date of part I of this Act in the appropriate place in  
15 section 2 of this Act.

16 SECTION 13. This Act shall take effect on July 1, 2012;  
17 provided that part II of this Act shall take effect on January  
18 1, 2013.



**Report Title:**

Environmental Protection; Single-use Checkout Bags; Fee; Deposit Beverage Container Program; Dietary Supplements; Appropriation

**Description:**

Requires businesses in the State to collect a fee for single-use checkout bags provided to a customer. Allows businesses to keep twenty per cent of the fees for the first year of the program and ten per cent of the fees thereafter, subject to income and general excises taxes. Requires fees to be collected on single-use checkout bags not prohibited by county ordinance. From 1/1/13 to 12/31/13, deposits all fees not retained by businesses into a special account in the environmental management special fund; requires first \$800,000 of all fees collected to be expended by DOH for costs relating to administrative, education, audit, compliance, and enforcement activities associated with the fee; and requires any remaining fees collected to be deposited in the environmental response revolving fund and the natural area reserve fund. From 1/1/14, requires ten per cent of all fees collected to be deposited in enumerated county environmental funds and requires eighty per cent of all fees collected to be deposited in the same manner as all fees deposited by the State from 1/1/13 to 12/31/13. Requires reports to the legislature. Makes dietary supplements that contain caffeine or carbonated water subject to the requirements of the deposit beverage container program beginning 1/1/2013. Appropriates funds for administration of single-use checkout bag fee program. (SD1)

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