
A BILL FOR AN ACT

RELATING TO ENVIRONMENT.

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

1 **PART I**

2 **Single-Use Checkout Bag Fee**

3 SECTION 1. The legislature finds that the excessive use of
4 single-use checkout bags presents an unnecessary hazard to the
5 natural environment. Single-use checkout bags:

- 6 (1) Require crude oil, a polluting fossil fuel, for their
7 manufacture;
- 8 (2) Pose serious health risks to legally protected sea
9 turtles and marine mammals;
- 10 (3) Contribute to unsightly litter;
- 11 (4) Burden overcrowded landfills;
- 12 (5) Are recycled minimally;
- 13 (6) Contribute to deforestation and greenhouse gas
14 emissions; and
- 15 (7) Are manufactured using large quantities of water and
16 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.

12 "Mil" means one thousandth of one inch.

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

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

- 19 (1) Cloth or other machine-washable fabric; or
20 (2) Durable material suitable for reuse, including plastic
21 that is at least 2.25 mils thick.

22 "Single-use checkout bag":



- 1 (1) Means a bag made of plastic that is less than 2.25
2 mils thick, or a paper package or sack, whether
3 recyclable or non-recyclable, that is provided by a
4 business to a customer, and is designed for one-time
5 use to contain and transport merchandise; and
- 6 (2) Does not include:
- 7 (A) Bags used by customers inside a business to
8 package loose items, such as fruits, vegetables,
9 nuts, grains, or candies, or small hardware
10 items;
- 11 (B) Bags used to contain or wrap frozen foods, meat
12 or fish, flowers or potted plants, or other items
13 to contain dampness;
- 14 (C) Bags used to protect or transport prepared foods
15 or bakery goods;
- 16 (D) Bags provided by pharmacists to contain
17 prescription medications;
- 18 (E) Newspaper bags for home newspaper delivery;
- 19 (F) Door-hanger bags;
- 20 (G) Laundry, dry cleaning, or garment bags, including
21 bags provided by hotels to guests to contain wet
22 or dirty clothing;



1 (H) Bags sold in packages containing multiple bags
2 intended for use as garbage, pet waste, or yard
3 waste bags;

4 (I) Bags used to contain live animals, such as fish
5 or insects sold in pet stores; or

6 (J) Bags used to transport chemical pesticides,
7 drain-cleaning chemicals, or other caustic
8 chemicals sold at the retail level; provided that
9 this exemption shall be limited to one bag per
10 customer.

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

13 **§342H-B Distribution of single-use checkout bags; fee.**

14 (a) Beginning January 1, 2013, all businesses in the State
15 shall charge and collect a fee of 10 cents for each single-use
16 checkout bag that is provided to customers; provided that, if
17 after July 1, 2016, the department determines that the statewide
18 distribution of single-use checkout bags has not decreased by at
19 least seventy-five per cent from the effective date of this
20 part, the fee shall automatically increase to 25 cents on
21 January 1, 2017.



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

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

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

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

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

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

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

19 **§342H-C Remittance of fees.** (a) No later than the last
20 day of each month, each business subject to the requirements of
21 this part shall remit to the department the fees collected
22 pursuant to section 342H-B(a), less the amount retained pursuant



1 to section 342H-B(d), during the immediately preceding month;
2 provided that a small business may remit the fees on a quarterly
3 basis on the last day of the month following the end of a
4 quarter.

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

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

11 (d) The department shall deposit all fees collected under
12 this part into a special account in the environmental management
13 special fund established by section 342G-63; provided that of
14 the fees deposited:

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

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

20 (A) Twenty per cent shall be deposited into the
21 environmental response revolving fund established



1 under section 128D-2, to be expended by the
2 department; and

3 (B) Eighty per cent shall be deposited into the
4 natural area reserve fund established under
5 section 195-9, to be expended by the department
6 of land and natural resources for watershed
7 protection, restoration, and acquisition.

8 **§342H-D Violations.** (a) It shall be a violation of this
9 part for any business that is subject to the requirements of
10 this part to pay or otherwise reimburse a customer for any
11 portion of the fee required to be charged and collected pursuant
12 to section 342H-B.

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

16 **§342H-E Injunctive and other relief.** The director may
17 institute a civil action in any court of competent jurisdiction
18 for injunctive and other relief to correct or abate violation of
19 this part or any rule adopted pursuant to this part, to collect
20 administrative penalties, or to obtain other relief.

21 **§342H-F County ordinances.** (a) Nothing in this part
22 shall be construed to preempt or in any manner affect a county



1 ordinance prohibiting or restricting single-use checkout bags;
2 provided that the fee established under section 342H-B shall be
3 applicable to single-use checkout bags that are not prohibited
4 or restricted by a county ordinance.

5 (b) Nothing in this part shall prohibit a county from
6 enacting ordinances that are more stringent in the control or
7 prohibition of single-use checkout bags than this part.

8 **§342H-G Business reporting.** By March 31 of each year, all
9 businesses that are required to charge and collect the single-
10 use checkout bag fee pursuant to section 342H-B shall submit to
11 the department, on forms prescribed by the department, an annual
12 report for the previous calendar year containing the following
13 information:

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

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

17 **§342H-H Audit authority.** The records of each business
18 subject to this part shall be made available, upon request, for
19 inspection by the department or a duly authorized agent of the
20 department. Any proprietary information obtained by the
21 department or its duly authorized agent shall be kept



1 confidential and shall not be disclosed to any other person,
2 except:

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

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

8 **§342H-I Rules.** The director shall adopt rules, pursuant
9 to chapter 91, as may be necessary for the purposes of this
10 part.

11 **§342H-J Annual report.** The department shall submit to the
12 legislature an annual report, no later than twenty days prior to
13 the convening of each regular session, which shall include the
14 department's efforts to effectuate this chapter, the number of
15 single-use bags distributed, the statewide reduction rate in the
16 number of single-use bags distributed, and any recommended
17 policy changes needed to better effectuate the purpose of this
18 part."

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

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



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



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

8 **PART II**

9 **Deposit Beverage Container Program**

10 SECTION 5. The purpose of this part is to include energy
11 beverage containers in the deposit beverage container program.

12 SECTION 6. Section 342G-101, Hawaii Revised Statutes, is
13 amended by amending the definition of "deposit beverage" to read
14 as follows:

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

21 The term "deposit beverage" excludes the following:

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



- 1 (A) A syrup;
- 2 (B) In a concentrated form; or
- 3 (C) Typically added as a minor flavoring ingredient
4 in food or drink, such as extracts, cooking
5 additives, sauces, or condiments;
- 6 (2) A liquid [~~which~~] that is a drug, medical food or
7 infant formula as defined by the Federal Food, Drug,
8 and Cosmetic Act (21 U.S.C. §301 et seq.);
- 9 (3) A liquid [~~which~~] that is designed and consumed only as
10 a dietary supplement and not as a beverage as defined
11 in the Dietary Supplement Health and Education Act of
12 1994 (P.L. 103-417); provided that this exemption
13 shall not apply to deposit beverages that contain
14 caffeine or carbonated water;
- 15 (4) Products frozen at the time of sale to the consumer,
16 or, in the case of institutional users such as
17 hospitals and nursing homes, at the time of sale to
18 the users;
- 19 (5) Products designed to be consumed in a frozen state;
- 20 (6) Instant drink powders;
- 21 (7) Seafood, meat, or vegetable broths, or soups, but not
22 juices; and



1 (8) Milk and all other dairy-derived products, except tea
2 and coffee drinks with trace amounts of these
3 products."

4 **PART III**

5 **Miscellaneous Provisions**

6 SECTION 7. If any provision of this Act, or the
7 application thereof to any person or circumstance is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act, which can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 8. Nothing in this Act shall be interpreted or
13 applied so as to create any requirement, power, or duty in
14 conflict with any federal or state law.

15 SECTION 9. In codifying the new sections added by section
16 2 of this Act, the revisor of statutes shall substitute
17 appropriate section numbers for the letters used in designating
18 the new sections in this Act.

19 SECTION 10. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 11. The revisor of statutes shall insert the
2 effective date of part I of this Act in the appropriate place in
3 section 2 of this Act.

4 SECTION 12. This Act shall take effect on July 1, 2012;
5 provided that part II of this Act shall take effect on January
6 1, 2013.



Report Title:

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

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. Deposits all fees 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. Requires any remaining fees collected to be deposited in the environmental response revolving fund and the natural area reserve fund. Requires reports to the legislature. Makes dietary supplements that contain caffeine or carbonated water subject to the requirements of the deposit beverage container program. Part relating to dietary supplements takes effect 1/1/2013. (Proposed SD1)

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