

JAN 20 2012

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 single-use checkout bags presents an unnecessary hazard to the
3 natural environment. Single-use 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 greenhouse gas
12 emissions; and
- 13 (7) Are manufactured using large quantities of water and
14 non-renewable energy.

15 An environmentally friendly alternative to the single-use
16 checkout bag is the reusable bag which consumers can easily
17 acquire, clean, and store.



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 similar laws that have resulted in
5 a significant reduction in single-use checkout bag usage and
6 used the fees for environmental protection programs. Because
7 the people of Hawaii depend on the preservation of the natural
8 environment for economic, social, and cultural reasons, the
9 public's health and welfare will benefit immensely from a
10 significant reduction of single-use checkout bag waste and
11 litter.

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



1 The legislature also finds that production of both paper
2 and plastic single-use checkout bags requires the consumption
3 and combustion of large quantities of fossil fuels, trees, and
4 water. Plastic bags require large amounts of crude oil to
5 produce, and the production of paper bags can use twenty times
6 more fresh water and four times more energy than plastic bags.
7 In the United States alone, over 14 million trees are used to
8 create paper bags, causing significant greenhouse gas emissions
9 by removing forests that absorb large quantities of carbon
10 dioxide. Disposing paper and plastic bags by burning further
11 increases greenhouse gas emissions.

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

19 Forest protection also increases Hawaii's resilience to the
20 likely effects of climate change caused by burning fossil fuels.
21 Major threats of climate change to Hawaii's water supplies are
22 predicted, including drought from higher temperatures, reduced



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

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

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

21 "PART . SINGLE-USE CHECKOUT BAG FEE



1 **§342H-A Definitions.** As used in this part, unless the
2 context otherwise requires:

3 "Business" means any commercial enterprise or
4 establishment, including sole proprietorships, joint ventures,
5 partnerships, and corporations, or any other legally cognizable
6 entity, whether for profit or not for profit, and includes all
7 employees of the business or any independent contractors
8 associated with the business.

9 "Mil" means one thousandth of one inch.

10 "Reusable bag" means a bag with handles that is
11 specifically designed and manufactured for multiple reuse and is
12 made of:

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

16 "Single-use checkout bag":

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

- 22 (2) Does not include:



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- 1 (A) Bags used by customers inside a business to
- 2 package loose items, such as fruits, vegetables,
- 3 nuts, grains, or candies, or small hardware
- 4 items;
- 5 (B) Bags used to contain or wrap frozen foods, meat
- 6 or fish, flowers or potted plants, or other items
- 7 to contain dampness;
- 8 (C) Bags used to protect or transport prepared foods
- 9 or bakery goods;
- 10 (D) Bags provided by pharmacists to contain
- 11 prescription medications;
- 12 (E) Newspaper bags for home newspaper delivery;
- 13 (F) Door-hanger bags;
- 14 (G) Laundry, dry cleaning, or garment bags, including
- 15 bags provided by hotels to guests to contain wet
- 16 or dirty clothing;
- 17 (H) Bags sold in packages containing multiple bags
- 18 intended for use as garbage, pet waste, or yard
- 19 waste bags; or
- 20 (I) Bags used to contain live animals, such as fish
- 21 or insects sold in pet stores.



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

3 **§342H-B Distribution of single-use checkout bags; fee.**

4 (a) Beginning January 1, 2013, all businesses in the State
5 shall charge and collect a fee of 10 cents for each single-use
6 checkout bag that is provided to customers; provided that, if
7 after July 1, 2016, the department determines that the statewide
8 distribution of single-use checkout bags has not decreased by at
9 least seventy-five per cent from the effective date of this Act,
10 then the fee shall automatically increase to 25 cents on
11 January 1, 2017.

12 (b) Businesses subject to the requirements of this part
13 shall indicate on each customer transaction receipt the number
14 of single-use checkout bags provided and the amount of the fee
15 charged.

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

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

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

1 (2) Up to ten per cent from January 1, 2014, and
2 thereafter;
3 provided that all fees retained shall be subject to chapters 235
4 and 237.

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

8 **§342H-C Remittance of fees.** (a) No later than the last
9 day of each month, each business subject to the requirements of
10 this part shall remit to the department the fees collected
11 pursuant to section 342H-B(a), less the amount retained pursuant
12 to section 342H-B(d), during the immediately preceding month;
13 provided that a small business may remit the fees on a quarterly
14 basis on the last day of the month following the end of a
15 quarter.

16 (b) Payments and receipts of fees shall be reported on
17 forms prescribed by the director. Any proprietary information
18 obtained by the department shall be kept confidential and shall
19 not be disclosed to any other person.

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



1 (d) All fees collected by the department pursuant to this
2 part shall be deposited as follows:

3 (1) \$800,000 of the fees collected annually shall be
4 deposited into a special account in the general fund
5 to be expended by the department for administrative,
6 audit, compliance, and enforcement activities
7 associated with collection of the single-use checkout
8 bag fee; provided that any funds in excess of those
9 expenses shall be expended by the department to
10 conduct educational outreach to retailers regarding
11 the single-use checkout bag fee program;

12 (2) \$11,000,000 of the fees collected annually shall be
13 deposited into the natural area reserve fund to be
14 expended by the department of land and natural
15 resources for watershed protection, restoration, and
16 acquisition; and

17 (3) Any remaining fees collected shall be deposited in the
18 general fund.

19 **§342H-D Violations.** (a) It shall be a violation of this
20 part for any business that is subject to the requirements of
21 this part to pay or otherwise reimburse a customer for any



1 portion of the fee required to be charged and collected pursuant
2 to section 342H-B.

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

6 **§342H-E Injunctive and other relief.** The director may
7 institute a civil action in any court of competent jurisdiction
8 for injunctive and other relief to correct or abate violation of
9 this part or any rule adopted pursuant to this part, to collect
10 administrative penalties, or to obtain other relief.

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

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

20 **§342H-G Business reporting.** By March 31 of each year, all
21 businesses that are required to charge and collect the single-
22 use checkout bag fee pursuant to section 342H-B shall submit to



1 the department, on forms prescribed by the department, an annual
2 report for the previous calendar year containing the following
3 information:

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

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

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

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

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

19 **§342H-I Rules.** The director shall adopt rules, pursuant
20 to chapter 91, as may be necessary for the purposes of this
21 part.



1 **§342H-J Annual report.** The department shall submit to the
2 legislature an annual report, no later than twenty days prior to
3 the convening of each regular session, which shall include the
4 department's efforts to effectuate this chapter, the number of
5 single-use bags distributed, the statewide reduction rate in the
6 amount of single-use bags distributed, and any recommended
7 policy changes needed to better effectuate the purpose of this
8 part."

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

16 SECTION 4. If any provision of this Act, or the
17 application thereof to any person or circumstance is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act, which can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



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1 SECTION 5. 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 6. In codifying the new sections added by section
 5 2 of this Act, the revisor of statutes shall substitute
 6 appropriate section numbers for the letters used in designating
 7 the new sections in this Act.

8 SECTION 7. The revisor of statutes shall insert the
 9 effective date of this Act in the appropriate place in section 2
 10 of this Act.

11 SECTION 8. This Act shall take effect on July 1, 2012.

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Report Title:

Environmental Protection; Single-use Checkout Bags; Fee

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 \$800,000 annually of fees into a special account in the general fund for costs relating to the single-use checkout buy fee, \$11,000,000 into the natural area reserves fund, and the remainder into the general fund. Requires reports to the legislature.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

