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# A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

**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. While counties have enacted ordinances  
4 that either have or will prohibit businesses from providing  
5 plastic bags at the point of sale, other single-use checkout  
6 bags, such as paper bags:

7           (1) Require crude oil, a polluting fossil fuel, for their  
8 manufacture;

9           (2) Burden overcrowded landfills;

10          (3) Are recycled minimally;

11          (4) Contribute to deforestation and greenhouse gas  
12 emissions; and

13          (5) Are manufactured using large quantities of water and  
14 non-renewable energy.

15 Prohibitions on use of plastic bags may increase reliance on  
16 paper bags that also are damaging to the environment. An  
17 environmentally friendly alternative to the single-use checkout



1 bag is the reusable bag that consumers can easily acquire,  
2 clean, and store.

3       The legislature finds that the State has a compelling  
4 interest in protecting its precious natural environment.  
5 Several countries and both international and domestic cities  
6 have successfully implemented similar laws that have resulted in  
7 a significant reduction in single-use checkout bag usage and  
8 have used collected fees for environmental protection programs.  
9 Because the people of Hawaii depend on the preservation of the  
10 natural environment for economic, social, and cultural reasons,  
11 the public's health and welfare will benefit immensely from a  
12 significant reduction of single-use checkout bag waste and  
13 resource use for their manufacture and disposal.

14       The production of single-use checkout bags also requires  
15 the consumption and combustion of large quantities of fossil  
16 fuels, trees, and water. While plastic bags require large  
17 amounts of crude oil to produce, production of paper bags can  
18 use twenty times as much fresh water and four times as much  
19 energy than plastic bags. In the United States alone, over  
20 fourteen million trees are used to create paper bags, causing  
21 significant greenhouse gas emissions by removing forests that  
22 absorb large quantities of carbon dioxide. Disposing both paper



1 and plastic bags by burning further increases greenhouse gas  
2 emissions.

3       The legislature further finds that protecting Hawaii's  
4 forests from damage from invasive species helps to mitigate the  
5 climate change caused by the production and disposal of single-  
6 use checkout bags. The intergovernmental panel on climate  
7 change considers reducing or preventing deforestation as the  
8 climate mitigation option with the largest and most immediate  
9 carbon stock impact in the short term.

10       Forest protection also increases Hawaii's resilience to the  
11 likely effects of climate change caused by burning fossil fuels  
12 worldwide. Major consequences of climate change for Hawaii's  
13 water supplies are predicted, including drought from higher  
14 temperatures, reduced rainfall, and rising sea levels salting  
15 coastal freshwater aquifers. Climate change may also result in  
16 severe storm events, causing flooding and erosion. Through Act  
17 152, Session Laws of Hawaii 2000, the legislature recognized  
18 that fresh water is not an infinite resource and its high  
19 quality, quantity, and sustainability depend upon forested  
20 watersheds. Hawaii's forests significantly increase water  
21 capture and break the impact of heavy rains, reducing flooding  
22 and erosion and siltation of reefs and fisheries. Protecting



1 watersheds is crucial for Hawaii's resiliency to climate change  
2 by ensuring water availability and buffering severe storm  
3 events.

4 The purpose of this Act is to reduce the adverse impact of  
5 single-use checkout bag waste on Hawaii's precious and unique  
6 natural environment by establishing an offset fee for the  
7 distribution of single-use checkout bags and funding programs to  
8 mitigate against damaging effects of single-use checkout bags by  
9 improving water quality and resilience to climate change.

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

13 **"PART . SINGLE-USE CHECKOUT BAG FEE**

14 **§342H-A Definitions.** As used in this part, unless the  
15 context otherwise requires:

16 "Business" means any commercial enterprise or  
17 establishment, including sole proprietorships, joint ventures,  
18 partnerships, and corporations, or any other legally cognizable  
19 entity, whether for profit or not for profit, and includes all  
20 employees of the business; provided that food donation  
21 organizations shall not be considered a business for purposes of  
22 this part.



1 "Mil" means one thousandth of one inch.

2 "Proprietary information" means business information  
3 covered by any of the exceptions to public disclosure under  
4 chapter 92F.

5 "Reusable bag" means a bag with handles that is  
6 specifically designed and manufactured for multiple reuse and is  
7 made of:

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

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

11 "Single-use checkout bag":

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

17 (2) Does not include:

18 (A) Bags used by customers inside a business to  
19 package loose items, such as fruits, vegetables,  
20 nuts, grains, or candies, or small hardware  
21 items;



- 1 (B) Bags used to contain or wrap frozen foods, meat  
2 or fish, flowers or potted plants, or other items  
3 to contain dampness;
- 4 (C) Bags used to protect or transport prepared foods  
5 or bakery goods;
- 6 (D) Bags provided by pharmacists to contain  
7 prescription medications;
- 8 (E) Newspaper bags for home newspaper delivery;
- 9 (F) Door-hanger bags;
- 10 (G) Laundry, dry cleaning, or garment bags, including  
11 bags provided by hotels to guests to contain wet  
12 or dirty clothing;
- 13 (H) Bags sold in packages containing multiple bags  
14 intended for use as garbage, pet waste, or yard  
15 waste bags;
- 16 (I) Bags used to contain live animals, such as fish  
17 or insects sold in pet stores;
- 18 (J) Bags used to transport chemical pesticides,  
19 drain-cleaning chemicals, or other caustic  
20 chemicals sold at the retail level; provided that  
21 this exemption shall be limited to one bag per  
22 customer; or



1           (K) Bags provided to customers by a business to  
2           package loose-lid beverages, including fountain  
3           drinks, coffee, or other beverages served in a  
4           disposable container with a separate lid;  
5           provided that the beverage is prepared in or by  
6           and purchased from that business.

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

9           **§342H-B Distribution of single-use checkout bags; fee.**

10          (a) Beginning January 1, 2014, all businesses in the State  
11          shall charge and collect a fee of ten cents for each single-use  
12          checkout bag that is provided to customers; provided that:

13           (1) A business may provide single-use checkout bags free  
14           of charge to any customer participating in federally  
15           approved nutrition assistance programs, including the  
16           supplemental nutrition assistance program and the  
17           special supplemental nutrition program for women,  
18           infants, and children; and

19           (2) If after July 1, 2016, the department determines that  
20           the statewide distribution of single-use checkout bags  
21           has not decreased by at least seventy-five per cent  
22           from the effective date of Act           , Regular Session



1 of 2013, then the fee for each single-use checkout bag  
2 shall automatically increase to 25 cents on January 1,  
3 2017.

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

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

10 (d) Of the fees collected pursuant to subsection (a), a  
11 business may retain up to twenty per cent from January 1, 2014,  
12 to December 31, 2015, and ten per cent from January 1, 2016, and  
13 thereafter, to reimburse the business for the costs of  
14 implementing this section; provided that all fees retained shall  
15 be subject to chapters 235 and 237; provided further that any  
16 taxes imposed on the fees retained shall not be charged to any  
17 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 may be subject to penalties and interest  
12 for late or underpaid fees.

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

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

21 (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; watershed restoration, including  
10 removal of invasive species; and watershed  
11 acquisition.

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

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

20 **§342H-E Injunctive and other relief.** The director may  
21 institute a civil action in any court of competent jurisdiction  
22 for injunctive and other relief to correct or abate violation of



1 this part or any rule adopted pursuant to this part, to collect  
2 administrative penalties, or to obtain other relief.

3       **§342H-F County ordinances.** (a) Nothing in this part  
4 shall be construed to preempt or in any manner affect a county  
5 ordinance prohibiting or restricting single-use checkout bags;  
6 provided that the fee established under section 342H-B shall  
7 apply to single-use checkout bags that are not prohibited or  
8 restricted by a county ordinance and to single-use checkout bags  
9 for which county prohibitions or restrictions have not yet taken  
10 effect until the county prohibitions and restrictions take  
11 effect.

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 part, 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 11-58.1, 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, 2014, 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 shall submit to the  
 9 department of health a one-time report listing the number of  
 10 single-use checkout bags and reusable bags provided to customers  
 11 by that business for the 2013 calendar year.

12           SECTION 5. There is appropriated out of the general  
 13 revenues of the State of Hawaii the sum of \$800,000 or so much  
 14 thereof as may be necessary for fiscal year 2013-2014 for  
 15 initiating and administering all components of the single-use  
 16 checkout bag fee program.

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

19           SECTION 6. If any provision of this Act, or the  
 20 application thereof to any person or circumstance, is held  
 21 invalid, the invalidity does not affect other provisions or  
 22 applications of the Act that can be given effect without the

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 7. Nothing in this Act shall be interpreted or  
4 applied so as to create any requirement, power, or duty in  
5 conflict with any federal or state law.

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

10 SECTION 9. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect on July 1, 2112.



**Report Title:**

Environment; Single-Use Checkout Bags; Fee; Appropriation

**Description:**

Establishes single-use checkout bag program and fee. Directs use of fee revenues to mitigate the effects of single-use checkout bags and protect Hawaii's fresh water supply. Appropriates funds. Effective July 1, 2112. (HB357 HD2)

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

