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FIRST REPRINT

S.B. 397

SENATE BILL NO. 397—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions relating to the use of certain plastic bags. (BDR 40-1143)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.CONTAINS UNFUNDED MANDATE (§§ 6, 7)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade regulations; imposing a fee, for a certain period, on the use of certain plastic bags; banning the use of certain plastic bags; authorizing certain inspections by local health authorities; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 4** of this bill imposes a fee to be paid by a customer for the retailer's
- 2 distribution of certain nonbiodegradable and noncompostable plastic bags to the
- 3 customer between October 1, 2009, and June 30, 2013.
- 4 **Section 5** of this bill imposes a ban, beginning July 1, 2013, on the distribution
- 5 by a retailer of certain nonbiodegradable and noncompostable plastic bags to a
- 6 customer and imposes administrative fines for violations of the ban.
- 7 **Section 6** of this bill authorizes local health authorities to inspect retail
- 8 establishments for the purposes of enforcing the ban.
- 9 **Section 7** of this bill authorizes a local health authority to issue a citation for
- 10 violations of the ban. **Section 7** also sets forth the required contents of and means
- 11 of appealing a citation.
- 12 **Section 8** of this bill authorizes the Division of Environmental Protection of the
- 13 State Department of Conservation and Natural Resources to collect payments
- 14 which are in default in any manner provided by law for the enforcement of a
- 15 judgment.
- 16 **Section 10** of this bill authorizes the Division to award grants for projects for
- 17 the cleanup of solid waste.



* S B 3 9 7 R 1 *

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 444A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. *As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires:*

1. *"Checkout" means point of sale.*

2. *"Division" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.*

3. *"Health authority" means the officers and agents of the local boards of health.*

4. *"Plastic bag" means a bag composed of plastic, latex or polypropylene. The term does not include bags that are:*

(a) *Used to cover clothes which have been dry cleaned; or*

(b) *Composed of plastic which meets the current specifications of the American Society for Testing and Materials for biodegradability or compostability.*

5. *"Retail establishment" means any place, structure, premises, vehicle or vessel, or any part thereof, in which a retailer makes sales as described in subsection 8.*

6. *"Retailer" includes:*

(a) *Every seller who makes any retail sale or sales of tangible personal property, and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.*

(b) *Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.*

(c) *Every person making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.*

Sec. 3. (Deleted by amendment.)

Sec. 4. 1. *A retailer who provides to a customer a plastic bag at checkout for the purpose of storing, carrying or transporting purchased goods shall collect from the customer a fee of 10 cents per plastic bag.*

2. *The retailer shall account separately for all money owed to and held in trust for the State pursuant to subsection 1. In accordance with the regulations adopted pursuant to this section, the retailer shall transmit 90 percent of the money held in trust*



pursuant to this subsection to the Department of Taxation for deposit with the State Treasurer for credit to the Solid Waste Management Account in the State General Fund. The remaining 10 percent and all interest and income which accrue on the money while in trust with the retailer become the property of the retailer on the day the balance for the month is transmitted to the Department of Taxation and may be retained by the retailer to cover his related administrative costs.

3. The Director of the Department of Taxation shall adopt regulations establishing acceptable methods for accounting for and transmitting to the Department money required to be paid by retailers pursuant to this section. The regulations must include a designation of the persons responsible for payment. The regulations must, in appropriate situations, allow for the transmission of that money together with the payment of the applicable sales and use taxes.

4. In collecting the fee, the Department of Taxation may employ any administrative and legal powers conferred upon it for the collection of the sales and use taxes by chapters 360 and 372 of NRS.

Sec. 5. 1. A retailer shall not provide a plastic bag to a customer at checkout for the purpose of storing, carrying or transporting purchased goods.

2. A retailer who violates the provisions of subsection 1 shall be punished:

(a) For the first violation, by an administrative fine of \$250.

(b) For the second violation within 120 days after the first violation, by an administrative fine of \$500.

(c) For the third or subsequent violation within 120 days after the first violation, by an administrative fine of \$1,000.

3. Each day on which a violation occurs constitutes a separate violation.

4. All fines imposed pursuant to this section must be paid to the Division to be held in trust for the State. In accordance with the regulations adopted pursuant to subsection 5, the Division shall transmit the money held in trust pursuant to this subsection to the State Treasurer for deposit in and credit to the State General Fund.

5. The Division, in consultation with the State Treasurer, shall adopt regulations establishing acceptable methods for accounting for and transmitting to the State Treasurer money required to be paid by the Division pursuant to this section.

Sec. 6. 1. At least once every year, the applicable health authority shall inspect each retail establishment located in the State.



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2. The health authority, after he has properly identified himself, must be permitted to enter, at any reasonable time, any retail establishment within the State for the purpose of making any inspection to determine compliance with the provisions of sections 2 to 9, inclusive, of this act. He must be permitted to examine the records of the retail establishment to obtain pertinent information pertaining to bags purchased, received or provided to customers of the retailer.

3. The health authority shall make as many additional inspections and reinspections as are necessary for the enforcement of sections 2 to 9, inclusive, of this act.

4. A person shall not interfere with the health authority in the performance of his duties pursuant to sections 2 to 9, inclusive, of this act.

Sec. 7. 1. If a health authority makes an inspection of a retail establishment and discovers that the provisions of sections 2 to 9, inclusive, of this act have been violated, he shall notify the retailer of the violation by means of a citation. The citation must:

(a) Set forth the specific violation found; and

(b) State that an opportunity for appeal from the citation will be provided if a written request for a hearing is filed with the health authority within the period established in the citation.

2. A citation provided for in subsection 1 shall be deemed to have been properly served when the original of the citation has been delivered personally to the retailer or person in charge of the retail establishment, or the citation has been sent by registered or certified mail, return receipt requested, to the last known address of the retailer. A copy of the citation must be filed with the records of the health authority.

Sec. 8. The Division may collect all payments due the Division pursuant to sections 2 to 9, inclusive, of this act which are in default, in any manner provided by law for the enforcement of a judgment.

Sec. 9. Nothing in sections 2 to 9, inclusive, of this act shall be construed as prohibiting a retailer from providing bags made of nonplastic materials to a customer at checkout.

Sec. 10. NRS 444A.110 is hereby amended to read as follows:

444A.110 1. The Division shall develop a program of public education to provide information, increase public awareness of the individual responsibility of properly disposing of solid waste and encouraging public participation in recycling, reuse and waste reduction. The program must be designed in accordance with the plans to provide for a solid waste management system approved pursuant to NRS 444.510 to communicate the importance of conserving natural resources, in addition to the importance of



1 protecting public health and the environment. The program must
2 include promotion of the private and public efforts to accomplish
3 conservation, recovery and reuse.

4 2. The Division shall encourage the reduction of waste and
5 litter by:

6 (a) Providing, upon request, advice to persons regarding
7 techniques to reduce waste and general information on recycling.

8 (b) Establishing a computer database to process related
9 information.

10 (c) Establishing a toll-free telephone line to assist in the
11 dissemination of information.

12 (d) Sponsoring or cosponsoring technical workshops and
13 seminars on waste reduction.

14 (e) Assisting local programs for the research and development of
15 plans to reduce waste.

16 (f) Coordinating the dissemination of publications on waste
17 reduction, regardless of the source of those publications.

18 (g) Assisting in the development and promotion of programs of
19 continuing education for educators and administrators to enable
20 them to teach and encourage methods of waste reduction.

21 (h) Developing an emblem to signify and advertise the efforts in
22 Nevada to encourage recycling.

23 (i) Recommending to educational institutions courses and
24 curricula relating to recycling and the reduction of waste.

25 (j) Assisting state agencies, upon request, to develop and carry
26 out programs for recycling within state buildings.

27 (k) Encouraging the Nevada System of Higher Education to
28 research and develop methods for the reduction, reclamation and
29 conversion of solid waste, including, without limitation,
30 encouraging the Nevada System of Higher Education to seek money
31 from public and private sources for that purpose.

32 3. The Division shall coordinate the technical assistance
33 available from the various state agencies. The Administrator of the
34 Division shall prepare and deliver biennial reports to the Governor
35 regarding the progress of the program.

36 4. The Division may award grants to municipalities,
37 educational institutions and nonprofit organizations for projects that
38 enhance solid waste management systems , *including, without*
39 *limitation, projects for the cleanup of solid waste*, and promote the
40 efficient use of resources. The Division shall consult a solid waste
41 management authority before awarding a grant for a project within
42 the jurisdiction of that solid waste management authority.

43 5. The State Environmental Commission shall adopt
44 regulations governing the administration of grants awarded pursuant
45 to subsection 4.



1 6. As used in this section, unless the context otherwise
2 requires, “Division” means the Division of Environmental
3 Protection of the State Department of Conservation and Natural
4 Resources.

5 **Sec. 11.** 1. This section and sections 1 to 4, inclusive, and 6
6 to 10, inclusive, of this act become effective on October 1, 2009.

7 2. Section 4 of this act expires by limitation on June 30, 2013.

8 3. Section 5 of this act becomes effective on July 1, 2013.

