

THE THIRTY-FIRST LEGISLATURE OF AMERICAN SAMOA

Third Regular Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the eleventh day of January
two thousand and ten

AN ACT PROHIBITING SUPPLYING OF PLASTIC BAGS TO CONSUMERS;
CREATING SECTION 25.2034 A.S.C.A.Preamble:

It has been clearly shown that, for several reasons, fossil-fuel based plastic shopping bags provided to customers by retail establishments, restaurants and grocery stores pose a hazard to the natural environment.

Because this type of plastic takes decades to break down, the damage to the natural environment can be especially long lasting. These plastic shopping bags require fossil-fuel to manufacture, contribute to litter, crowd landfills with non-biodegradable waste, and are dangerous to wildlife. Plastic shopping bags are extremely aerodynamic, often being caught in trees and shrubs. Even when properly disposed of, they often pollute surrounding areas by blowing out of trash receptacles and landfills.

Plastic shopping bags that enter the ocean pose hazards to marine life and contribute to the pollution of the ocean. Endangered species of sea turtles mistake clear plastic bags for jellyfish. Birds swallow indigestible shards of plastic, which may become lodged in their stomachs, ultimately causing death. Plastic debris causes the death of 1,000,000 sea birds a year and 100,000 marine mammals.

Currently, scientists are monitoring a patch of pollution, consisting mainly of discarded plastic, floating in the Pacific Ocean between Hawaii and San Francisco. Covering an area twice the size of Texas, it is estimated to weigh about three million tons. It has been discovered that per cubic meter of sea water there are more tiny bits of plastic by weight than plankton in this area. Petroleum and fossil-fuel based plastic grocery bags are one source of this pollution and their continued use adds to the contamination.

Plastic bags litter our landscape, fill our streams and find their way to the ocean. It is difficult, if not, impossible for small craft to anchor in Pago Pago Harbor due to layers of plastic bags that cover the floor of our harbor.

The Legislature also finds that many cities and states in our country have either banned or discouraged the use of fossil-fuel based plastic shopping bags. Numerous others are considering similar measures. This movement to prohibit

non-biodegradable plastic bags is also seen on a global scale where several foreign countries and major international cities also have banned, or are seeking to ban, the use of such bags.

Certainly, American Samoa has an interest in protecting its natural environment and beauty and in decreasing the amount of waste flowing into its landfills and ocean. Therefore, it is natural for American Samoa to follow the emerging international and domestic trend to ban the use of petroleum and fossil-fuel based plastic shopping bags.

In order to allow a reasonable time for the transition required by this act, it shall become effective on the one-hundred eightieth (180th) day after passage by the Legislature and approval by the Governor.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. There is created a section 25.2034 A.S.C.A. which reads:

“25.2034 Prohibition on plastic shopping bags.

(a) No wholesale or retail establishment located or doing business in the Territory of America Samoa shall, directly or indirectly, give, provide, or make available plastic shopping bags to customers or consumers.

(b) The American Samoa Environmental Protection Agency (“ASEPA”) is designated as the agency responsible for implementation and administration of this section to include coordinating enforcement efforts. Notwithstanding the effective date of this act, ASEPA is authorized to immediately undertake, pursuant to the Administrative Procedures Act, A.S.C.A. 4.1001, et seq., promulgation of any rules and regulations necessary to implement the provisions of this act on its effective date on or before such date.

(c) Enforcement procedures and penalty provisions contained in this chapter shall apply to this section. Pursuant to section 25.2010, a sanitarian or other authorized person, including members of the Department of Public Safety or authorized employees of the solid waste agency, ASEPA or the Department of Commerce, may issue citations for violations of this section.

(d) In addition to other enforcement provisions and penalties, where there is reasonable cause to believe that a violation of this section, or rule adopted pursuant to it, has occurred, or is occurring, those persons designated in paragraph (c) above may issue a stop order to the person or establishment responsible for the violation. The stop order must detail the facts alleged to constitute a violation and may include an order that necessary corrective action be taken within a reasonable time and must be served on the person, persons or establishment in violation of this section. Further, those persons designated in paragraph (c) above may seize any supply or inventory

of plastic shopping bags in conjunction with issuance and service of a stop order. In the event of the failure of the person, persons or establishment to comply with the order, the director of ASEPA may apply to the High Court for injunctive relief and, in the event a seizure has occurred, shall include a claim for forfeiture of the seized plastic shopping bags.

(e) The following are exempt from this section:

(1) Shopping bags produced entirely from non-petroleum-based biodegradable plastic, as verified by ASEPA;

(2) Compostable plastic bags, as verified by ASEPA; and

(3) Additional exemptions established by ASEPA in accordance with the Administrative Procedures Act, A.S.C.A. 4.1001, et seq.

(f) ASEPA may issue category variances for the following products:

(1) Raw meat, poultry, or fish;

(2) Frozen foods;

(3) Fresh produce; and

(4) Prepared meals in takeout containers.

(g) As used in this section, unless the context requires otherwise:

(1) “Biodegradable plastic” means plastic made of cellulose based or other substances that undergo significant changes in their chemical structure as a result of the action of naturally occurring microorganisms such as bacteria, fungi, and algae. The ultimate products of this process should be carbon dioxide, water, or compost (humus). This biodegradation process shall not generate any intermediate or final products that would be detrimental to public health.

(2) “Compostable plastic bag” means a plastic bag that conforms to the American Society for Testing and Materials (“ASTM”) International Standard D6400 for compostable plastic, as such standard may be amended and/or revised from time to time.

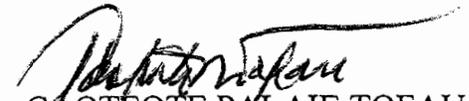
(3) “Retail establishment” means a place where goods, food, food products, wares, or products are offered to the public for sale or lease, including but not limited to markets, grocery, and retail merchandise stores. “Retail establishment” shall also include, but not be limited to, any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, and sold or offered for sale to a customer or the ultimate consumer, including but not limited to restaurants, dining areas, fast food businesses, road-side food sales and farmers’ markets.

(4) “Shopping bag” means any container distributed to consumers at the point of sale at a retail establishment intended for use in the transport of purchased or acquired items.

(5) “Wholesale establishment” means an operation that prepares, processes, manufacturers, packages, labels or handles goods, including food, primarily for wholesaling or sale in large or bulk quantity to retailers or jobbers for resale.”

Sec 2. Effective date.

In order to allow a reasonable time for the transition required by this act, it shall become effective on the one-hundred eightieth (180th) day after passage by the Legislature and approval by the Governor.


GAOTEOTE PALAIE TOFAU
President of the Senate


SAVALI TALAVOU ALE
Speaker, House of Representatives