

Assembly Bill No. 1972

Passed the Assembly August 13, 2008

Chief Clerk of the Assembly

Passed the Senate August 11, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 42356, 42357, 42359.5, and 42359.6 of, and to add Sections 42356.1 and 42359.7 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL’S DIGEST

AB 1972, DeSaulnier. Solid waste: plastic bags: food and beverage containers.

(1) Existing law prohibits a person from selling a plastic bag that is labeled as “compostable,” “biodegradable,” “degradable,” or as otherwise specified unless, at the time of sale, the bag meets a current American Society for Testing and Materials (ASTM) standard specification for the term used on the label.

This bill would, instead, prohibit the sale of a plastic bag that is labeled as “compostable” or “marine degradable,” unless that bag meets the ASTM Standard Specification for Compostable Plastics D6400, the ASTM Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment D7081, or a standard adopted by the California Integrated Waste Management Board, as specified. The bill also would prohibit the sale of a plastic bag that is labeled as “biodegradable,” “degradable,” “decomposable,” or as otherwise specified.

(2) Existing law prohibits a person from selling a plastic food or beverage container that is labeled as “biodegradable,” “compostable,” “degradable,” or as otherwise specified, unless, at the time of sale, the container meets the ASTM Standard Specification for Compostable Plastics D6400-04.

This bill would, instead, prohibit the sale of a food or beverage container, as defined, that is labeled as “compostable” or “marine degradable,” unless that container meets a specified ASTM standard specification or a standard adopted by the California Integrated Waste Management Board, as specified. The bill also would prohibit the sale of a food or beverage container that is labeled as “biodegradable,” “degradable,” “decomposable,” or as otherwise specified.

(3) This bill, for purposes of the provisions relating to labeling plastic bags and food and beverage containers, would require the

board to review revisions of specified ASTM standard specifications and would authorize the board, in some cases, to adopt those standards. The bill would authorize the board to review new ASTM standard specifications and other specified standards, and in certain circumstances, to make a recommendation to the Legislature.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Littered plastic bags and plastic containers have caused and continue to cause significant environmental harm and have burdened local governments with significant environmental cleanup costs.

(b) It is the intent of the Legislature to ensure that environmental marketing claims, including claims of biodegradation, do not lead to an increase in environmental harm associated with plastic bag and plastic container litter by providing consumers with a false belief that certain bags and containers are less harmful to the environment if littered.

(c) The ability of a plastic bag or a plastic container to biodegrade is a function of both the physical and chemical makeup of the bag or the container as well as the environmental conditions that the bag or container is subjected to.

(d) Use of the term “degradable,” “biodegradable,” “decomposable,” or other similar terms on plastic bags and plastic containers is inherently misleading unless the claim includes a thorough disclaimer providing necessary qualifying details including, but not limited to, the environments and timeframes in which the claimed action will take place.

(e) Given the complex nature of biodegradation and the fact that most plastic bags and plastic containers will travel through multiple environments from the time of manufacture to the time of final disposition, and given the intrinsic constraints of marketing claims, including the space on the packaging container or bag, there is no reasonable ability for plastic bag and plastic container manufacturers to provide an adequate disclaimer qualifying the use of these and like terms without relying on an established scientific standard specification for the action claimed.

(f) Given these and other constraints, and the significant environmental harm that is caused by plastic bag and container litter, the use of these terms must be prohibited unless, or until such time as, there is a standard for the term claimed that has been approved by the Legislature.

SEC. 2. Section 42356 of the Public Resources Code is amended to read:

42356. For purposes of this chapter, the following definitions apply:

(a) “ASTM” means the American Society for Testing and Materials.

(b) (1) “ASTM standard specification” means one of the following:

(A) The ASTM Standard Specification for Compostable Plastics D6400, as published in September 2004, except as provided in subdivision (c) of Section 42356.1.

(B) The ASTM Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment D7081, as published in August 2005, except as provided in subdivision (c) of Section 42356.1.

(2) “ASTM standard specification” does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.

(c) “Manufacturer” means a person, firm, association, partnership, or corporation that produces a plastic bag.

(d) “Supplier” means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a plastic bag that is used by a person to contain a product.

(2) Takes title to a plastic bag produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

SEC. 3. Section 42356.1 is added to the Public Resources Code, to read:

42356.1. (a) If an ASTM standard specification specified in paragraph (1) of subdivision (b) of Section 42356 is subsequently revised, the board shall review the new ASTM standard specification as follows:

(1) If the board determines that the new standard is more stringent and more protective of the public health, safety, and the

environment, and is reflective of and consistent with state policies and programs, the board may adopt the new standard.

(2) If the board determines that the new standard is not as stringent and does not protect the public health, safety, and the environment, and is not reflective of and consistent with state policies and programs, the board shall not adopt the new standard.

(b) If the ASTM, or any other entity, develops a new standard specification or other applicable standard for any of the terms prohibited under subdivision (a) of Section 42357, the board may review the new standard and, if the board determines that the new standard for the prohibited term is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may make a recommendation to the Legislature.

(c) Compliance with a standard adopted pursuant to paragraph (1) of subdivision (a) shall be deemed to be in compliance with this chapter.

SEC. 4. Section 42357 of the Public Resources Code is amended to read:

42357. (a) (1) A person shall not sell a plastic bag in this state that is labeled with the term “compostable” or “marine degradable,” unless, at the time of sale, the plastic bag meets the applicable ASTM standard specification, as specified in paragraph (1) of subdivision (b) of Section 42356.

(2) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (1).

(b) Except as provided in subdivision (a), a person shall not sell a plastic bag in this state that is labeled with the term “biodegradable,” “degradable,” or “decomposable,” or any form of those terms, or in any way imply that the bag will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(c) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

SEC. 5. Section 42359.5 of the Public Resources Code is amended to read:

42359.5. For purposes of this chapter, the following definitions apply:

(a) “ASTM” means the American Society for Testing and Materials.

(b) “ASTM standard specification” means one of the following:

(1) The ASTM Standard Specification for Compostable Plastics D6400, as published in September 2004, except as specified in subdivision (c) of Section 42359.7.

(2) The ASTM Standard Specification for Non-Floating Biodegradable Plastics in the Marine Environment D7081, as published in August 2005, except as specified in subdivision (c) of Section 42359.7.

(3) The ASTM Standard Specification for Biodegradable Plastics Used as Coatings on Paper and Other Compostable Substrates D6868, as published in August 2003, except as specified in subdivision (c) of Section 42359.7.

(c) “Food or beverage container” means a product that contains food or drink items, or utensils, for retail sale and is composed of one or more of the following:

(1) Plastic.

(2) Paper with plastic coatings.

(3) Paper with plastic modifiers.

(4) Molded fiber.

(d) “Manufacturer” means a person, firm, association, partnership, or corporation that produces a food or beverage container.

(e) “Supplier” means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes, a food or beverage container that is used by a person to contain a product.

(2) Takes title to a food or beverage container produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

SEC. 6. Section 42359.6 of the Public Resources Code is amended to read:

42359.6. (a) (1) A person shall not sell a food or beverage container in this state that is labeled with the term “compostable” or “marine degradable,” unless, at the time of sale, the food or

beverage container meets the applicable ASTM standard specification, as specified in subdivision (b) of Section 42359.5.

(2) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (1).

(b) Except as provided in subdivision (a), a person shall not sell a food or beverage container in this state that is labeled with the term “biodegradable,” “degradable,” or “decomposable,” or any form of those terms, or in any way imply that the food or beverage container will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(c) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

SEC. 7. Section 42359.7 is added to the Public Resources Code, to read:

42359.7. (a) If an ASTM standard specification specified in subdivision (b) of Section 42359.5 is subsequently revised, the board shall review the new ASTM standard specification as follows:

(1) If the board determines that the new standard is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may adopt the new standard.

(2) If the board determines that the new standard is not as stringent and does not protect the public health, safety, and the environment, and is not reflective of and consistent with state policies and programs, the board shall not adopt the new standard.

(b) If the ASTM, or any other entity, develops a new standard specification, or another applicable standard, for any of the terms prohibited under subdivision (a) of Section 42359.6, the board may review the new standard and, if the board determines that the new standard for that prohibited term is more stringent and more protective of the public health, safety, and the environment, and is reflective of and consistent with state policies and programs, the board may make a recommendation to the Legislature.

(c) Compliance with a standard adopted pursuant to paragraph (1) of subdivision (a) shall be deemed to be in compliance with this chapter.

Approved _____, 2008

Governor