

ASSEMBLY BILL

No. 1358

**Introduced by Assembly Members Hill and Nava
(Coauthor: Assembly Member Brownley)**

February 27, 2009

An act to add Part 9 (commencing with Section 49700) to Division 30 of the Public Resources Code, relating to product management.

LEGISLATIVE COUNSEL'S DIGEST

AB 1358, as introduced, Hill. Product management: disposable food containers.

The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, among other things, prohibits a person from selling a food or beverage container in this state that is labeled with the term “compostable” or “marine degradable,” unless the food or beverage container meets certain requirements.

This bill would define terms for its purposes and prohibit a food vendor, restaurant, or retail food vendor from dispensing prepared food to a customer in a disposable expanded polystyrene food container, a disposable nonrecyclable plastic food container, or a disposable nonrecycled paper container. The bill would authorize a food vendor, restaurant, or retail food vendor to dispense prepared food to a customer in a compostable plastic container in a jurisdiction where organic waste is collected curbside for composting, and to dispense prepared food in a recyclable plastic container or a recycled paper container. The bill would prohibit a state facility from using a polystyrene foam or expanded polystyrene foam food service container, and would prohibit a state department or state agency from purchasing or acquiring

polystyrene foam or expanded polystyrene foam disposable food service ware for use at state facilities. A state-managed concession, state-sponsored event, or event with a permit issued by the state would be prohibited from distributing or utilizing disposable food service ware containing expanded polystyrene, polystyrene, nonrecyclable plastic, or nonrecycled paper, and an agent, contractor, or vendor doing business with the state would be prohibited from using polystyrene foam, expanded polystyrene foam, nonrecycled paper, or nonrecyclable plastic disposable food service ware in state facilities or on state projects within the state. The bill would include legislative findings and declarations that the matters covered by the bill are matters of statewide interest and concern.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Part 9 (commencing with Section 49700) is added
2 to Division 30 of the Public Resources Code, to read:

3
4 PART 9. PRODUCT MANAGEMENT

5
6 CHAPTER 1. DEFINITIONS

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8 CHAPTER 2. POWERS AND DUTIES

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10 CHAPTER 3. ENFORCEMENT AND PENALTIES

11
12 CHAPTER 5. TAKE OUT FOOD CONTAINERS

13
14 49760. For the purposes of this chapter, the following terms
15 have the following meanings:

16 (a) "Compostable" means all materials in the product or package
17 will breakdown into, or otherwise become part of, usable compost,
18 including, but not limited to, soil-conditioning material and mulch,
19 in a safe and timely manner consistent with the composting facility
20 used by the jurisdiction that collects organic waste. To comply
21 with this definition, compostable disposable food service ware
22 shall meet ASTM standard D6400 for compostability and shall be
23 clearly labeled.

1 (b) “Customer” means a person obtaining prepared food from
2 a restaurant or retail food vendor.

3 (c) “Disposable food service ware” means all containers, bowls,
4 plates, trays, cartons, cups, lids, straws, forks, spoons, knives, and
5 other items that are designed for one-time use and on or in which
6 a restaurant or retail food vendor directly places or packages
7 prepared foods or that are used to consume foods. “Disposable
8 food service ware” includes, but is not limited to, service ware for
9 takeout foods or leftovers from partially consumed meals prepared
10 at a restaurant or retail food vendor.

11 (d) “Expanded polystyrene food container” means a rigid plastic
12 packaging container, as defined in Section 42301, that meets all
13 of the following conditions:

14 (1) Polystyrene is the sole resin used to produce the rigid plastic
15 packaging container.

16 (2) The container is required to be labeled with a “6” pursuant
17 to subdivision (a) of Section 18015.

18 (3) The container is used, or is intended to be used, to contain
19 food, as defined in Section 109935 of the Health and Safety Code.

20 (e) “Food vendor” means a restaurant or retail food and beverage
21 vendor located or operating within the state.

22 (f) “Nonrecyclable plastic food container” means a plastic food
23 container not made from Polyethylene terephthalate (PET or PETE)
24 identified as number “1,” or High Density Polyethylene (HDPE)
25 identified as number “2,” using resin codes established by the
26 American Chemistry Council. The Legislature finds and declares
27 that these are the most common types of plastics recycled in
28 California.

29 (g) “Nonrecycled paper container” means a food container
30 containing less than 100 percent post consumer recycled paper
31 content.

32 (h) “Prepared food” means food or beverages, that are served,
33 packaged, cooked, chopped, sliced, mixed, brewed, frozen,
34 squeezed, or otherwise prepared for consumption. “Prepared food”
35 does not include raw, butchered meats, fish, or poultry, sold from
36 a butcher case or similar retail appliance. “Prepared food” may be
37 eaten either on or off the premises, and includes take-out food.

38 (i) “Recyclable plastic food container” means a plastic food
39 container made from Polyethylene terephthalate (PET or PETE)
40 identified as number “1,” or High Density Polyethylene (HDPE)

1 identified as number “2,” using resin codes established by the
2 American Chemistry Council. The Legislature finds and declares
3 that these are the most common types of plastics recycled in
4 California.

5 (j) “Recycled paper container” means a food container
6 containing 100 percent post consumer recycled paper content.

7 (k) “Restaurant” means an establishment located within the state
8 that sells prepared food for consumption on, near, or off its
9 premises by a customer. “Restaurant” includes itinerant restaurants,
10 pushcarts, and vehicular food vendors.

11 (l) “Retail food vendor” means a store, shop, sales outlet, or
12 other establishment, including a grocery store or a delicatessen,
13 other than a restaurant, located within the state that sells prepared
14 food.

15 (m) “State facility” means a building, structure, or vehicle owned
16 or operated by the state or its agencies, departments, or integrated
17 waste franchisee, that is located within the state.

18 (n) “Take-out food container” means a container used to contain
19 food taken “to go” from a restaurant or retail food vendor, including
20 left-over food from meals eaten on the premises of a restaurant
21 and food packaged to be eaten outside the premises of the restaurant
22 or retail food vendor.

23 49761. (a) Except as provided in paragraph (1) of subdivision
24 (b), a food vendor, restaurant, or retail food vendor shall not
25 dispense prepared food to a customer in a disposable expanded
26 polystyrene food container, a disposable nonrecyclable plastic
27 food container, or a disposable nonrecycled paper container.

28 (b) (1) (A) A food vendor, restaurant, or retail food vendor
29 may dispense prepared food to a customer in a compostable plastic
30 container in a jurisdiction where organic waste is collected curbside
31 for composting.

32 (B) To comply with subparagraph (A), a compostable plastic
33 container shall be labeled with the number “7” resin code
34 established by the American Chemistry Council and clearly labeled
35 as “compostable meeting ASTM D6400.”

36 (2) A food vendor, restaurant, or retail food vendor may dispense
37 prepared food in a recyclable plastic food container or a recycled
38 paper container.

39 (c) (1) A state facility shall not use a polystyrene foam or
40 expanded polystyrene foam food service container.

1 (2) A state department or agency shall not purchase or acquire
2 polystyrene foam or expanded polystyrene foam disposable food
3 service ware for use at state facilities.

4 (d) A state-managed concession, state-sponsored event, or event
5 with a permit issued by the state shall not distribute or utilize
6 disposable food service ware containing expanded polystyrene,
7 polystyrene, nonrecyclable plastic, or nonrecycled paper.

8 (e) An agent, contractor, or vendor doing business with the state
9 shall not use polystyrene foam, expanded polystyrene foam,
10 nonrecycled paper, or nonrecyclable plastic disposable food service
11 ware in state facilities or on state projects within the state.

12 49762. The Legislature finds and declares that the matters
13 addressed in this chapter are matters of statewide concern.

14 49763. If a section, subdivision, sentence, clause, or phrase of
15 this chapter is held to be invalid or unconstitutional by a court of
16 competent jurisdiction, the decision shall not affect the validity of
17 the remaining portions of this chapter. The Legislature finds and
18 declares that it would have passed this chapter and each and every
19 section, subdivision, sentence, clause, and phrase not declared
20 invalid or unconstitutional without regard to whether any portion
21 of the chapter subsequently would be declared invalid or
22 unconstitutional.