

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2336

Introduced by Assembly Member Mansoor

February 24, 2012

An act to amend ~~Section~~ *Sections 42357 and 42358* of, and to add Section 42357.2 to, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2336, as amended, Mansoor. Plastic products: labeling.

~~(1) Existing~~

Existing law, as of January 1, 2013, prohibits the sale of a plastic product, including plastic bags, labeled as “compostable,” “home compostable,” or “marine degradable” unless it meets certain specifications, certifications, or a standard adopted by the Department of Resources Recycling and Recovery. Existing law also prohibits the sale of a plastic product that is labeled as “biodegradable,” “degradable,” “decomposable,” or as otherwise specified, and imposes certain labeling requirements upon a manufacturer of a compostable plastic bag. Prior to January 1, 2013, existing law imposed those prohibitions on plastic bags and plastic food or beverage containers. Existing law provides for the imposition *by a city, a county, or the state* of a civil penalty for a violation of those prohibitions.

This bill would ~~prohibit a person from being subject to an enforcement action~~ *instead prohibit a manufacturer from selling a plastic product that does not meet those labeling requirements. The bill would delete the authority of a city or county to impose a civil penalty for a violation of those provisions. The bill would prohibit a civil penalty or other liability from being assessed, and would prohibit an action to enforce*

the labeling requirements from being commenced, continued, or maintained, unless the action is preceded by a written notice and the person is given an opportunity of not less than 30 days to remedy the violation. The bill would apply this prohibition to assessments and actions to enforce labeling requirements pursuant to the provisions regulating the labeling of plastic products on and after January 1, 2013, or plastic bags before that date, if the person manufacturing the plastic product submits an action plan to the department, city, or county and the plan is approved, as specified. The bill would provide that the action plan may allow the sale of a plastic product that is not in compliance until a date specified in the action plan. The bill would require the department, city, or county to approve the action plan within a specified time and the person would be required to agree to comply with the labeling requirements on or after the date specified in the action plan.

~~The person submitting the plan would be required to include a fee to reimburse the department, city, or county for its reasonable costs in reviewing the action plan. The department would be authorized to expend the fees, upon appropriation by the Legislature, to implement this section.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

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

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

1 SECTION 1. Section 42357 of the Public Resources Code, as
2 added by Section 1 of Chapter 594 of the Statutes of 2011, is
3 amended to read:
4 42357. (a) (1) Except as provided in paragraph (3) ~~and Section~~
5 ~~42357.2~~, a ~~person~~ *manufacturer* shall not sell a plastic product in
6 this state that is labeled with the term “compostable,” “home
7 compostable,” or “marine degradable” unless, at the time of sale,
8 the plastic product meets the applicable ASTM standard
9 specification, as specified in paragraph (1) of subdivision (b) of
10 Section 42356 or the Vincotte OK Compost HOME certification,
11 as provided in paragraph (4).

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

4 (3) Notwithstanding paragraph (1), a ~~person~~ *manufacturer* may
5 sell a plastic product in this state that is labeled with a qualified
6 claim for a term specified in paragraph (1), if the plastic product
7 meets the relevant standard adopted by the department pursuant
8 to Section 42356.2.

9 (4) (A) A plastic product shall not be labeled with the term
10 “home compostable” unless the manufacturer of that plastic product
11 holds a Vincotte OK Compost HOME certificate of conformity
12 with regard to that product, except as provided in subparagraph
13 (B) or (C).

14 (B) Notwithstanding paragraph (1), if the ASTM adopts a
15 standard specification for the term “home compostable” on or
16 before January 1, 2016, and the department determines that the
17 ASTM standard specification is at least equal to, or more stringent
18 than, the OK Compost HOME certification, a plastic product
19 labeled with the term “home compostable” shall meet that ASTM
20 standard specification. The department may also take the actions
21 specified in Section 42356.1 with regard to an ASTM standard for
22 home compostability.

23 (C) If the department adopts a standard pursuant to Section
24 42356.2, a plastic product labeled with the term “home
25 compostable” shall meet that standard and not the standard
26 specified in subparagraph (A) or (B).

27 (b) Except as provided in subdivision (a) and Section 42357.2,
28 a ~~person~~ *manufacturer* shall not sell a plastic product in this state
29 that is labeled with the term “biodegradable,” “degradable,” or
30 “decomposable,” or any form of those terms, or in any way imply
31 that the plastic product will break down, fragment, biodegrade, or
32 decompose in a landfill or other environment.

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

38 (d) A product that is in compliance with this chapter shall not,
39 solely as a result of that compliance, be deemed to be in compliance

1 with any other applicable marketing requirement or guideline
 2 established under state law or by the Federal Trade Commission.

3 SEC. 2. Section 42357.2 is added to the Public Resources Code,
 4 to read:

5 ~~42357.2. (a) A person shall not be subject to an enforcement~~
 6 ~~action pursuant to this chapter, or A civil penalty or other liability~~
 7 ~~shall not be assessed under former Chapter 5.7 (commencing with~~
 8 ~~Section 42355), as it read on January 1, 2012, if the person submits~~
 9 ~~an action plan to the department, city, or county that is approved~~
 10 ~~pursuant to this section. The action plan may allow the sale of a~~
 11 ~~plastic product that is not in compliance with this chapter, or former~~
 12 ~~Chapter 5.7 (commencing with Section 42355), as it read on~~
 13 ~~January 1, 2012, until a date specified in the action plan and an~~
 14 ~~action to enforce those provisions shall not be initiated,~~
 15 ~~commenced, continued, or maintained, unless the action is~~
 16 ~~preceded by a written notice of violation by certified mail, with~~
 17 ~~return receipt requested, and the person is given an opportunity~~
 18 ~~of not less than 30 days after receipt of the notice to remedy the~~
 19 ~~violation.~~

20 ~~(b) The department, city, or county shall approve the action~~
 21 ~~plan, or give a reason for its disapproval, within 60 days after the~~
 22 ~~plan is submitted.~~

23 ~~(c) A person shall agree to comply with the requirements~~
 24 ~~imposed pursuant to this chapter with regard to all plastic products~~
 25 ~~manufactured on or after the date specified in the action plan.~~

26 ~~(d) Notwithstanding subdivision (a) and Section 42357, a person~~
 27 ~~who fails to comply with an approved action plan may be subject~~
 28 ~~to enforcement action pursuant to this chapter or former Chapter~~
 29 ~~5.7 (commencing with Section 42355), as it read on January 1,~~
 30 ~~2012.~~

31 ~~(e) A person submitting an action plan shall include a fee to~~
 32 ~~reimburse the department, city, or county for its reasonable costs~~
 33 ~~in reviewing the action plan, in the amount set by that agency~~
 34 ~~reviewing the action plan. The department may expend the fees~~
 35 ~~collected by the department pursuant to this subdivision, upon~~
 36 ~~appropriation by the Legislature, to implement this section.~~

37 SEC. 3. Section 42358 of the Public Resources Code, as added
 38 by Section 1 of Chapter 594 of the Statutes of 2011, is amended
 39 to read:

1 42358. (a) ~~A city, a county, or the state~~ *The state* may impose
 2 civil liability in the amount of five hundred dollars (\$500) for the
 3 first violation of this chapter, one thousand dollars (\$1,000) for
 4 the second violation, and two thousand dollars (\$2,000) for the
 5 third and any subsequent violation.

6 (b) Any civil penalties collected pursuant to subdivision (a)
 7 shall be paid to the ~~office of the city attorney, city prosecutor,~~
 8 ~~district attorney, or Attorney General, whichever office brought~~
 9 ~~the action. The penalties collected pursuant to this section by the~~
 10 ~~Attorney General~~ *and* may be expended by the Attorney General,
 11 upon appropriation by the Legislature, to enforce this chapter.

12 (c) The remedies provided by this section are not exclusive and
 13 are in addition to the remedies that may be available pursuant to
 14 Chapter 5 (commencing with Section 17200) of Part 2 of Division
 15 7 of the Business and Professions Code.

16 (d) The costs incurred by a state agency in carrying out this
 17 chapter shall be recoverable by the Attorney General, upon the
 18 request of the agency, from the liable person or persons.

19 (e) *A civil penalty or other liability shall not be assessed under*
 20 *this section, and an action to enforce this chapter shall not be*
 21 *commenced, continued, or maintained, unless the action is*
 22 *preceded by a written notice of violation by certified mail, with*
 23 *return receipt requested, and the person is given an opportunity*
 24 *of not less than 30 days after receipt of the notice to remedy the*
 25 *violation.*

26 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
 27 ~~Section 6 of Article XIII B of the California Constitution because~~
 28 ~~a local agency or school district has the authority to levy service~~
 29 ~~charges, fees, or assessments sufficient to pay for the program or~~
 30 ~~level of service mandated by this act, within the meaning of Section~~
 31 ~~17556 of the Government Code.~~