

Introduced by Senator DeSaulnierFebruary 17, 2011

An act to repeal Chapter 5.8 (commencing with Section 42359) of, and to repeal and add Chapter 5.7 (commencing with Section 42355) of, Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 567, as introduced, DeSaulnier. Recycling: plastic products.

Existing law prohibits a person from selling a plastic bag or a plastic food or beverage container that is labeled as "compostable" or "marine degradable" unless that plastic bag or container meets certain American Society for Testing and Materials (ASTM) standard specifications or a standard adopted by the Department of Resources Recycling and Recovery. Existing law prohibits the sale of a plastic bag or plastic food or beverage container that is labeled as "biodegradable," "degradable," "decomposable," or as otherwise specified. Existing law provides for the imposition of a civil penalty for a violation of these prohibitions.

This bill would repeal those prohibitions and would instead prohibit the sale of a plastic product, as defined, labeled as "compostable" or "marine degradable" unless it meets those ASTM standard specifications or a standard adopted by the department, or unless the plastic product is labeled with a qualified claim for which the department has adopted an existing standard, and the plastic product meets that standard. The bill would prohibit the sale of a plastic product that is labeled as "biodegradable," "degradable," "decomposable," or as otherwise specified. The bill would provide for the imposition of a civil penalty for a violation of those prohibitions.

The bill would state legislative findings and declarations regarding plastic litter.

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. Chapter 5.7 (commencing with Section 42355)
2 of Part 3 of Division 30 of the Public Resources Code is repealed.

3 SEC. 2. Chapter 5.7 (commencing with Section 42355) is added
4 to Part 3 of Division 30 of the Public Resources Code, to read:

5

6

CHAPTER 5.7. PLASTIC PRODUCTS

7

8 42355. The Legislature finds and declares all of the following:

9 (a) Littered plastic products have caused and continue to cause
10 significant environmental harm and have burdened local
11 governments with significant environmental cleanup costs.

12 (b) It is the intent of the Legislature to ensure that environmental
13 marketing claims, including claims of biodegradation, do not lead
14 to an increase in environmental harm associated with plastic litter
15 by providing consumers with a false belief that certain plastic
16 products are less harmful to the environment if littered.

17 (c) A product’s ability to biodegrade is a function of both the
18 physical and chemical makeup of the product as well as the
19 environmental conditions to which it is subject.

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

26 (e) Given the complex nature of biodegradation and the fact
27 that most plastic products will travel through multiple environments
28 from the time of manufacture to the time of final disposition, and
29 given the intrinsic constraints of marketing claims, including the
30 space on the plastic product, there is no reasonable ability for
31 plastic product manufacturers to provide an adequate disclaimer
32 qualifying the use of these and like terms without relying on an
33 established scientific standard specification for the action claimed.

1 (f) Given these and other constraints, and the significant
2 environmental harm that is caused by plastic litter, the use of these
3 terms must be prohibited unless, or until the time as there is
4 established, an American Society for Testing and Materials
5 (ASTM) standard specification for the term claimed that has been
6 approved by the Legislature.

7 42355.5. The Legislature finds and declares that it is the public
8 policy of the state that environmental marketing claims, whether
9 explicit or implied, should be substantiated by competent and
10 reliable evidence to prevent deceiving or misleading consumers
11 about the environmental impact of plastic products. For consumers
12 to have accurate and useful information about the environmental
13 impact of plastic products, environmental marketing claims should
14 adhere to uniform and recognized standards, including those
15 standard specifications established by the American Society for
16 Testing and Materials.

17 42356. For purposes of this chapter, the following definitions
18 apply:

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

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

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

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

30 (C) The ASTM Standard Specification for Biodegradable
31 Plastics Used as Coatings on Paper and Other Compostable
32 Substrates D6868, as published in August 2003, except as specified
33 in subdivision (c) of Section 42356.1.

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

36 (c) “Department” means the Department of Resources Recycling
37 and Recovery.

38 (d) “Manufacturer” means a person, firm, association,
39 partnership, or corporation that produces a plastic product.

1 (e) “Plastic product” means a product made of plastic, whether
2 alone or in combination with other material, including, but not
3 limited to, paperboard. A plastic product includes, but is not limited
4 to, any of the following:

5 (1) (A) A consumer product.

6 (B) For purposes of this paragraph, “consumer product” means
7 a product or part of a product that is used, bought, or leased for
8 use by a person for any purpose.

9 (2) A package or a packaging component.

10 (3) A bag, sack, wrap, or other thin plastic sheet film product.

11 (4) A food or beverage container or a container component,
12 including, but not limited to, a straw, lid, or utensil.

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

15 (1) Sells, offers for sale, or offers for promotional purposes, a
16 plastic product that is used.

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

20 42356.1. (a) If an ASTM standard specification specified in
21 paragraph (1) of subdivision (b) of Section 42356 is subsequently
22 revised, the department shall review the new ASTM standard
23 specification as follows:

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

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

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

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

4 42356.2. The department may adopt an existing standard
5 different from an ASTM standard specification, as described in
6 paragraph (1) of subdivision (b) of Section 42356, if all the
7 following conditions are met:

8 (a) The existing standard is adopted or developed by a
9 standard-setting organization recognized by the department,
10 including, but not limited to, the ASTM or another similar
11 organization.

12 (b) The existing standard adds qualifications to an ASTM
13 standard specification, as described in paragraph (1) of subdivision
14 (b) of Section 42356, including, but not limited to, “home
15 compostable.”

16 (c) The department determines that the existing standard is more
17 stringent than the ASTM standard specification in paragraph (1)
18 of subdivision (b) of Section 42356 which that existing standard
19 qualifies.

20 42357. (a) (1) Except as provided in paragraph (3), a person
21 shall not sell a plastic product in this state that is labeled with the
22 term “compostable” or “marine degradable” unless, at the time of
23 sale, the plastic product meets the applicable ASTM standard
24 specification, as specified in paragraph (1) of subdivision (b) of
25 Section 42356.

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

29 (3) Notwithstanding paragraph (1), a person may sell a plastic
30 product in this state that is labeled with a qualified claim for a term
31 specified in paragraph (1), if the plastic product meets the relevant
32 standard adopted by the department pursuant to Section 42356.2.

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

39 (c) A manufacturer or supplier, upon the request of a member
40 of the public, shall submit to that member, within 90 days of the

1 request, information and documentation demonstrating compliance
2 with this chapter, in a format that is easy to understand and
3 scientifically accurate.

4 (d) A product that is in compliance with this chapter shall not,
5 solely as a result of that compliance, be deemed to be in compliance
6 with any other applicable marketing requirement or guideline
7 established under state law or by the Federal Trade Commission.

8 42358. (a) A city, a county, or the state may impose civil
9 liability in the amount of five hundred dollars (\$500) for the first
10 violation of this chapter, one thousand dollars (\$1,000) for the
11 second violation, and two thousand dollars (\$2,000) for the third
12 and any subsequent violation.

13 (b) Any civil penalties collected pursuant to subdivision (a)
14 shall be paid to the office of the city attorney, city prosecutor,
15 district attorney, or Attorney General, whichever office brought
16 the action. The penalties collected pursuant to this section by the
17 Attorney General may be expended by the Attorney General, upon
18 appropriation by the Legislature, to enforce this chapter.

19 (c) The remedies provided by this section are not exclusive and
20 are in addition to the remedies that may be available pursuant to
21 Chapter 5 (commencing with Section 17200) of Part 2 of Division
22 7 of the Business and Professions Code.

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