

AMENDED IN ASSEMBLY AUGUST 16, 2011

AMENDED IN SENATE APRIL 11, 2011

SENATE BILL

No. 567

Introduced by Senator DeSaulnier

February 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 amended, 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"~~ "compostable," "home compostable," or "marine degradable" unless it meets those ASTM standard specifications, *the OK Compost HOME certification, as specified*, 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2 of Part 3 of Division 30 of the Public Resources Code is repealed.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

1 plastic product manufacturers to provide an adequate disclaimer
2 qualifying the use of these and like terms without relying on an
3 established scientific standard specification for the action claimed.

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

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

20 42356. For purposes of this chapter, the following definitions
21 apply:

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

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

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

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

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

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

39 (c) “Department” means the Department of Resources Recycling
40 and Recovery.

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

3 (e) “OK home compost” means conformity with the existing
4 Vincotte certification “OK Compost HOME certification” which,
5 as of January 1, 2011, uses European Norm 13432 standard
6 adapted to low-temperature composting in accordance with the
7 Vincotte program “OK 2-Home Compostability of Products.”

8 ~~(e)~~

9 (f) “Plastic product” means a product made of plastic, whether
10 alone or in combination with other material, including, but not
11 limited to, paperboard. A plastic product includes, but is not limited
12 to, any of the following:

13 (1) (A) A consumer product.

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

17 (2) A package or a packaging component.

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

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

21 ~~(f)~~

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

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

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

29 (h) “Vincotte certification” means a certification of a European
30 norm (EN) standard adopted by the Belgian-accredited inspection
31 and certification organization Vincotte.

32 42356.1. (a) If an ASTM standard specification specified in
33 paragraph (1) of subdivision (b) of Section 42356 is subsequently
34 revised, the department shall review the new ASTM standard
35 specification as follows:

36 (1) If the department determines that the new standard, *when*
37 *compared to the ASTM standard specification prior to its revision,*
38 *is more stringent and more protective of public health, public*
39 *safety, and the environment, and is reflective of and consistent*

1 with state policies and programs, the department may adopt the
2 new standard.

3 (2) If the department determines that the new standard, *when*
4 *compared to the ASTM standard specification prior to its revision,*
5 is not as stringent and does not protect public health, public safety,
6 and the environment, and is not reflective of and consistent with
7 state policies and programs, the department shall not adopt the
8 new standard.

9 (b) If the ASTM, or any other entity, develops a new standard
10 specification or other applicable standard for any of the terms
11 prohibited under subdivision (a) of Section 42357, the department
12 may review the new standard and, if the department determines
13 that the new standard for the prohibited term, *when compared to*
14 *the current ASTM standard in effect,* is more stringent and more
15 protective of public health, public safety, and the environment,
16 and is reflective of and consistent with state policies and programs,
17 the department may make a recommendation to the Legislature.

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

21 42356.2. The department may adopt an existing standard
22 different from an ASTM standard specification, as described in
23 paragraph (1) of subdivision (b) of Section 42356, if all the
24 following conditions are met:

25 (a) The existing standard is adopted or developed by a
26 standard-setting organization recognized by the department,
27 including, but not limited to, the ASTM or another similar
28 organization.

29 (b) The existing standard adds qualifications to an ASTM
30 standard specification, as described in paragraph (1) of subdivision
31 (b) of Section 42356, including, but not limited to, “home
32 compostable.”

33 (c) The department determines that the existing standard is more
34 stringent than the ASTM standard specification in paragraph (1)
35 of subdivision (b) of Section 42356 which that existing standard
36 qualifies.

37 42357. (a) (1) Except as provided in paragraph (3), a person
38 shall not sell a plastic product in this state that is labeled with the
39 term—~~“compostable”~~ “*compostable,*” “*home compostable,*” or
40 “marine degradable” unless, at the time of sale, the plastic product

1 meets the applicable ASTM standard specification, as specified
2 in paragraph (1) of subdivision (b) of Section 42356 *or the Vincotte*
3 *OK Compost HOME certification, as provided in paragraph (4).*

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

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

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

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

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

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

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

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

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

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

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

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

23 SEC. 3. Chapter 5.8 (commencing with Section 42359) of Part
24 3 of Division 30 of the Public Resources Code is repealed.