

Senate Bill No. 1454

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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 1454, 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.

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

SECTION 1. Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of the Public Resources Code is repealed.

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

CHAPTER 5.7. PLASTIC PRODUCTS

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

(a) Littered plastic products 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 litter by providing consumers with a false belief that certain plastic products are less harmful to the environment if littered.

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

(d) Use of the term "degradable," "biodegradable," "decomposable," or other like terms on plastic products 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 products 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 plastic product, there is no reasonable ability for plastic product 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 litter, the use of these terms must be prohibited unless, or until the time as there is established, an American Society for Testing and Materials (ASTM) standard specification for the term claimed that has been approved by the Legislature.

42355.5. The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and

reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. For consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards, including those standard specifications established by the American Society for Testing and Materials.

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.

(C) 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 42356.1.

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

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

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

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

(1) (A) A consumer product.

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

(2) A package or a packaging component.

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

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

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

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

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

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

(1) If the department 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 department may adopt the new standard.

(2) If the department 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 department 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 department may review the new standard and, if the department 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 department 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.

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

(a) The existing standard is adopted or developed by a standard-setting organization recognized by the department,

including, but not limited to, the ASTM or another similar organization.

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

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

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

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

(b) Except as provided in subdivision (a), a person shall not sell a plastic product 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 plastic product 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.

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

42358. (a) A city, a county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the

second violation, and two thousand dollars (\$2,000) for the third and any subsequent violation.

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

(c) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to Sections 17200 to 17210, inclusive, of the Business and Professions Code.

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

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

Approved _____, 2010

Governor