

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 529

Introduced by Senator Leno

(Coauthors: Assembly Members Bloom, Chesbro, and Williams)

February 21, 2013

An act to add Chapter 6.6 (commencing with Section 42391) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

SB 529, as amended, Leno. Recycling: fast food facilities.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires every rigid plastic packaging container, as defined, sold or offered for sale in this state to generally meet one of specified criteria.

This bill would enact the Plastic and Marine Pollution Reduction, Recycling, and Composting Act and would define terms for the purposes of that act.

The bill would define the term "fast food facility" ~~with reference to~~ *as a facility that is subject to* specified federal requirements for the posting of calories and nutrients imposed upon restaurants and other retail food establishments, *and that meets other specified requirements with regard to the dispensing and preparation of food.* The bill would prohibit a fast food facility, on and after July 1, 2014, from distributing disposable food service packaging or a single-use carryout bag to a consumer, unless the *type of* disposable food service packaging or single-use carryout bag meets the criteria for either compostable packaging or recyclable packaging specified in the bill. The bill would also prohibit such a facility, on and after July 1, 2016, from distributing disposable food service packaging or a single-use carryout bag to a

consumer, unless the fast food facility demonstrates it is demonstrated to the satisfaction of the department that the type of disposable food service packaging or single-use carryout bag is recovered for composting or recovered for recycling at a rate of 25 percent or more, at a rate of 50 percent on and after July 1, 2018, and at a rate of 75 percent or more on or after July 1, 2020. The bill would specify requirements for the demonstration of that composting or recycling rate.

The bill would provide for the imposition of a civil penalty upon a person in violation of the act and would require the department to publish annually a list setting forth any penalties that have been levied against a violator of this act.

This bill would require the department to deposit all penalties paid pursuant to the act into the Marine Pollution Reduction Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury. The bill would authorize the department to expend the moneys deposited in the account, upon appropriation by the Legislature, to provide public education and assist local governmental agencies in efforts to reduce plastic waste and marine pollution, and for the department’s costs of implementing the act.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Plastic and packaging waste represents a significant and
- 4 fast-growing component of the state’s waste stream. California
- 5 disposes of more than three million tons of plastic packaging waste
- 6 annually. Plastic is the fastest growing component of generated
- 7 waste, increasing from less than 5 percent in 1980 to more than
- 8 11 percent in 2003.
- 9 (b) With the sole exception of plastic beverage containers
- 10 covered by the California Beverage Containers Container
- 11 Recycling and Litter Reduction Act, little of generated plastic is
- 12 currently recycled. Excluding beverage containers, less than 5
- 13 percent of plastic packaging is currently recycled.
- 14 (c) Disposable food service packaging is used “on the go” when
- 15 access to trash and recycling receptacles is most limited. Plastics
- 16 generally can become inadvertent litter even if initially properly

1 discarded, and are carried by wind from uncovered trash cans and
2 dumpsters, vehicles, and solid waste facilities, including landfills.

3 (d) Compounding the problem of plastic packaging waste is
4 that this material is nonbiodegradable.

5 (e) The United States Environmental Protection Agency
6 estimates that upwards of 80 percent of litter and marine pollution
7 originates from land-based human activities, including littering,
8 stormwater runoff, and ineffective waste disposal practices.

9 (f) Data collected during California’s annual Coastal Cleanup
10 Day indicate that plastic and other disposable food service
11 packaging represent some of the most commonly littered items.

12 (g) Each year thousands of Californians volunteer countless
13 hours to clean up plastic and other disposable food service
14 packaging litter from public roadways, beaches, parks, and other
15 areas of the state.

16 (h) Under a consent decree entered into by the Region IX of the
17 United States Environmental Protection Agency and several
18 environmental groups on March 22, ~~1999~~, 1999 (Heal the Bay et
19 al v. Browner (98-4825 SBA)), among other things, a ~~Total~~
20 ~~Maximum Daily Load~~ *total maximum daily load* (TMDL) for trash
21 is required to be developed for all impaired waters within the state
22 within the next decade. Adopted and proposed TMDLs have
23 required that the amount of trash be reduced to zero to protect
24 beneficial uses. The State Water Resources Control Board is also
25 drafting a statewide policy on trash.

26 (i) The costs to state agencies and local governments to comply
27 with existing TMDL requirements, pending TMDL requirements,
28 or the TMDL requirements yet to be developed, will run into
29 billions of dollars.

30 (j) The benefits of reducing, recycling, and composting plastic
31 and other disposable food service packaging will have a direct
32 positive impact on the California economy.

33 (k) In 2012, the California Ocean Protection Council determined
34 that ocean-dependent industries add more than forty billion dollars
35 (\$40,000,000,000) to California’s economy. A 2005 report by the
36 National Ocean Economics Program estimated more than 400,000
37 jobs are based on coastal tourism and recreation, with combined
38 wages of nearly ten billion dollars (\$10,000,000,000).

39 (l) Nondegradable plastics, including, but not limited to,
40 polystyrene and other disposable food service packaging, and the

1 resulting marine pollution pose a threat to water quality and marine
 2 wildlife through ingestion and entanglement. A 2012 study by the
 3 Convention on Biological Diversity estimated that 663 species
 4 were affected by plastic marine pollution through entanglement
 5 or ingestion, a 40 percent increase from 1998 estimates.

6 (m) It is the intent of the Legislature, in adopting this act, to
 7 reduce a primary source of marine pollution by increasing the
 8 diversion of plastic and other disposable food service packaging.

9 SEC. 2. Chapter 6.6 (commencing with Section 42391) is added
 10 to Part 3 of Division 30 of the Public Resources Code, to read:

11
 12 CHAPTER 6.6. PLASTIC AND MARINE POLLUTION REDUCTION,
 13 RECYCLING, AND COMPOSTING ACT

14
 15 Article 1. General Provisions

16
 17 42391. This chapter shall be known, and may be cited, as the
 18 “Plastic and Marine Pollution Reduction, Recycling, and
 19 Composting Act.”

20 42392. It is the intent of the Legislature, consistent with the
 21 number one recommendation in the state-funded report
 22 “Eliminating Land-based Discharges of Marine Debris in
 23 California,” to designate responsibility and authority for reduction
 24 of marine debris and its sources to a state agency.

25
 26 Article 2. Definitions

27
 28 42393. For the purposes of this chapter, the following terms
 29 have the following meanings:

30 (a) “Compostable packaging” means a material that meets ~~all~~
 31 *both* of the following criteria:

32 ~~(1) The packaging distributed with food for in-store consumption~~
 33 ~~by the fast food facility is accepted back for composting by that~~
 34 ~~fast food facility.~~

35 ~~(2)~~
 36 (1) The packaging is accepted for composting in a residential
 37 collection program available to at least ~~75~~ 60 percent of the
 38 households in the jurisdiction in which it is distributed, as
 39 determined by the department.

40 ~~(3)~~

1 (2) The packaging is made of a material that meets the American
2 Society for Testing and Materials (ASTM) Standard Specification
3 for Compostable Plastics D6400, as published in September 2004.
4 For purposes of this paragraph, an ASTM standard specification
5 does not include an ASTM Standard Guide, a Standard Practice,
6 or a Standard Test Method.

7 (b) (1) “Disposable food service packaging” means single-use
8 disposable products used by a fast food facility for serving or
9 transporting prepared and ready-to-consume food or beverages.

10 (2) “Disposable food service packaging” includes, but is not
11 limited to, plates, cups, bowls, trays, and hinged or lidded
12 containers.

13 (e)

14 (3) “Disposable food service packaging” does not include such
15 single-use disposable items such as straws, cup lids, or utensils,
16 or single-use disposable packaging for unprepared foods.

17 ~~(d) “Fast food facility”~~

18 (c) (1) *Except as provided in paragraph (2), “fast food facility”*
19 *means a food facility—subject that meets all of the following*
20 *conditions:*

21 (A) *The food facility is subject to Section 343(q)(5)(H) of Title*
22 *21 of the United States Code or subject to Section 114094 of the*
23 *Health and Safety Code, as it read on January 1, 2013.*

24 (B) *The food facility dispenses food for consumption both on*
25 *and off the premises.*

26 (C) *The food facility has a limited menu.*

27 (D) *The food facility prepares items either in advance or for*
28 *quick heating.*

29 (E) *The food facility does not provide for the ordering of food*
30 *at the tables on the premises.*

31 (F) *The food facility serves the food primarily in disposable*
32 *wrappings or containers.*

33 (2) *“Fast food facility” does not include any of the following:*

34 (A) *An establishment that meets the definition of a supermarket,*
35 *as specified in Section 14526.5.*

36 (B) *A convenience food store, foodmart, or other entity that is*
37 *engaged in the retail sale of a limited line of goods, generally*
38 *including milk, bread, soda, and snack foods.*

39 (C) *An eating establishment where the food is served primarily*
40 *using reusable, nondisposable tableware.*

1 (e)
2 (d) “Food facility” has the same meaning as defined in Section
3 113789 of the Health and Safety Code.

4 (e) “PET packaging” means packaging labeled with a “1”
5 pursuant to Section 18015.

6 (f) (1) “Prepared food” means ready-to-consume food or
7 beverage prepared on the fast food facility’s premises, using a
8 cooking or food preparation technique.

9 (2) “Prepared food” does not include raw uncooked meat, fish,
10 or eggs, unless the item is provided for consumption without further
11 food preparation.

12 (g) “Recyclable packaging” means ~~a material that meets all of~~
13 ~~the following criteria:~~

14 ~~(1) The packaging distributed with food for in-store consumption~~
15 ~~by the fast food facility is accepted back for recycling by that fast~~
16 ~~food facility.~~

17 ~~(2) The packaging that is accepted for recycling in a residential~~
18 ~~collection program available to at least 75 60 percent of the~~
19 ~~households in the jurisdiction in which it is distributed, as~~
20 ~~determined by the department.~~

21 (h) “Single-use carryout bag” means a carryout bag provided
22 by a fast food facility to a customer to contain prepared food at
23 the point of sale.

24

25 Article 3. Packaging Waste Reduction and Recycling
26 Responsibilities

27

28 42394. (a) On and after July 1, 2014, a fast food facility shall
29 not distribute disposable food service packaging or a single-use
30 carryout bag to a consumer, unless the *type of* disposable food
31 service packaging or single-use carryout bag meets the criteria for
32 either compostable packaging or recyclable packaging.

33 (b) On and after July 1, 2016, a fast food facility shall not
34 distribute disposable food service packaging or a single-use
35 carryout bag to a consumer, unless ~~the fast food facility~~
36 ~~demonstrates it has been demonstrated~~ to the satisfaction of the
37 department that the *type of* disposable food service packaging or
38 single-use carryout bag is recovered for composting or recovered
39 for recycling at a rate of 25 percent or more.

1 (c) On and after July 1, 2018, a fast food facility shall not
 2 distribute disposable food service packaging or a single-use
 3 carryout bag to a consumer, unless ~~the fast food facility~~
 4 ~~demonstrates it has been demonstrated~~ to the satisfaction of the
 5 department that the *type of* disposable food service packaging or
 6 single-use carryout bag is recovered for composting or recovered
 7 for recycling at a rate of 50 percent or more.

8 (d) On and after July 1, 2020, a fast food facility shall not
 9 distribute disposable food service packaging or a single-use
 10 carryout bag to a consumer, unless ~~the fast food facility~~
 11 ~~demonstrates it has been demonstrated~~ to the satisfaction of the
 12 department that the *type of* disposable food service packaging or
 13 single-use carryout bag is recovered for composting or recovered
 14 for recycling at a rate of 75 percent or more.

15 42395. (a) *For the purposes of demonstrating that the*
 16 *composting or recycling rate requirements specified in Section*
 17 *42394 are met for any type of packaging or type of carryout bag,*
 18 *the demonstration may include data comparing the amount of that*
 19 *type of packaging or type of carryout bag that is diverted for*
 20 *recycling or composting in this state or in a city, county, or other*
 21 *local agency during a specified period of time, with the amount of*
 22 *that type of packaging or type of carryout bag that is distributed*
 23 *in this state or that city, county, or other local agency during the*
 24 *same specified period of time.*

25 (b) *The demonstration made pursuant to Section 42394 shall*
 26 *comply with the following requirements:*

27 (1) *All thermoformed PET packaging shall be considered as*
 28 *the same type of packaging when demonstrating the recycling rate*
 29 *for thermoformed PET packaging.*

30 (2) *All polycoated papers and paperboards shall be considered*
 31 *as the same type of packaging when demonstrating the recycling*
 32 *rates for polycoated papers and paperboards.*

33 (3) *All compostable plastic packaging shall be considered as*
 34 *the same type of packaging when demonstrating the composting*
 35 *rates for compostable plastic packaging.*

36

37

Article 4. Penalties

38

39

42395.—

1 42396. (a) A person who violates this chapter is subject to a
2 civil penalty of not more than one hundred dollars (\$100) for each
3 day the person is in violation of this chapter.

4 (b) The total annual penalties assessed upon a violator of this
5 chapter shall not exceed ten thousand dollars (\$10,000).

6 (c) On or before July 1, 2015, and on or before July 1 annually
7 thereafter, the department shall publish a list setting forth any
8 penalties that have been levied against a violator of this chapter
9 in the preceding calendar year, for failure to comply with the
10 requirements of this chapter.

11 (d) The department shall deposit all penalties or fines paid
12 pursuant to this section into the Marine Pollution Reduction
13 Account, which is hereby created in the Integrated Waste
14 Management Fund in the State Treasury. The moneys deposited
15 in the Marine Pollution Reduction Account may be expended by
16 the department, upon appropriation by the Legislature, to provide
17 public education and assist local governmental agencies in efforts
18 to reduce plastic waste and marine debris, and for the department's
19 costs of implementing this chapter.