

(Without Reference to File)

CONCURRENCE IN SENATE AMENDMENTS

AB 1201 (Ting, et al.)

As Amended September 3, 2021

Majority vote

SUMMARY

Expands product-labeling requirements related to biodegradability and compostability from plastic products to all products.

Senate Amendments

- 1) Expand this bill to include products from all material types, rather than just plastic.
- 2) Specify certain fiber products that are exempted from the requirements of this bill.
- 3) Clarify the requirements for third-party certification of products that meet a standard specification and specify that they only apply on and after January 1, 2024, and CalRecycle authorized a third-party certification entity at least one year prior to the sale of the product.
- 4) Require the Department of Resources Recycling and Recovery (CalRecycle), on or before January 1, 2024 and through a public stakeholder process, to determine whether it would be feasible to separate the collection of products in order to recover organic waste that is suitable for the use in organic agricultural applications from the collection of products not suitable for that purpose. If CalRecycle determines it is feasible, requires CalRecycle to adopt regulations adopting a bifurcated approach prior to January 1, 2026. Requires that products that are not suitable for use in organic agricultural applications comply with the regulations and are not subject to the requirements of this bill.
- 5) Makes technical and clarifying changes to the provisions relating to maximum organic fluorine levels.
- 6) Prohibits labeling a product "compostable" or "home compostable" unless the product is designed to be associated with the recovery of "desirable organic wastes" that are collected for composting.
- 7) Revise the requirement that compostable products are labeled in a manner that distinguishes them from noncompostable products upon "reasonable" inspection by consumers and to help enable efficient processing by solid waste facilities. Remove the requirement that compostable products be green or brown.
- 8) Make related technical and clarifying changes.

COMMENTS

California's labeling requirements for compostable plastic were crafted to ensure that environmental marketing claims are accurate and do not mislead consumers. Prior to the state adopting standards in 2004, plastic with misleading claims of biodegradability and compostability were widely marketed to consumers, even though the material does not break

down in the environment. These materials are also not recyclable and are instead a contaminant when mixed with recyclable plastic waste. The Legislature has enacted numerous bills that attempt to prevent misleading environmental marketing claims and ensure that the materials we use can be properly managed, including banning the use of terms like "biodegradable" for plastic products and requiring plastics labeled "compostable" to meet widely accepted standards for compostability. However, even with California's labeling standards for compostable plastic, the majority of compostable products are sorted out and landfilled. Lack of clear labeling and the potential for the material to include toxic compounds like perfluorinated and polyfluorinated substances (PFAS) make it challenging for processors to identify what can be safely included in compost feedstock. Misleading product labels damage composting facilities' ability to ensure that their feedstock will break down properly and be available for resale to end users. It is critical that products labeled as compostable meet the standards necessary to ensure it's safe to include in compost.

Unfair or deceptive acts or practices in or affecting commerce are illegal under federal law. The Federal Trade Commission (FTC) publishes the Green Guides to explain how the law applies to environmental labeling, advertising, and marketing, including the use of labels such as "degradable," "biodegradable," or "compostable."

The American Society for Testing and Materials (ASTM) has adopted over 12,000 voluntary standards for a wide range of materials, products, systems, and services. ASTM standards include two for compostable plastics. For plastics designed to be composted in industrial compost facilities (D6400) and for paper and other products coated in plastic or other polymers designed to be composted in industrial compost facilities (D6868) the standards provide consistency and clarity for consumers and producers who want to ensure that their products are compostable. The standards are imperfect. Composting technology has advanced since the adoption of the standards and material is processed more quickly, so thicker compostable items, like utensils, often have to be removed from the finished compost and landfilled. Composting is designed to manage organic waste, like yard clippings and leaves, and is not the ideal management option for plastic waste.

PFAS are a class of chemicals characterized by highly stable carbon-fluorine bonds that are used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. These coatings can be used in everything from clothing to food packaging. PFAS are a concern because they do not break down in the environment, can move through soils and contaminate waterways, and the bioaccumulate in fish and wildlife, which is why they are also known as "forever chemicals." The Centers for Disease Control (CDC) includes testing for PFAS in its National Report on Human Exposure to Environmental Chemicals, which includes biomonitoring data gathered since 1999 on participants in the National Health and Nutrition Examination Survey. The CDC scientists found PFAS in "nearly all" of the participants tested, indicating widespread exposure to PFAS in the United States population. PFAS have the potential to cause or contribute to significant and widespread adverse impacts to sensitive subpopulations, including fetuses, infants, young children, and workers; to environmentally sensitive habitats; and, to threatened and endangered species. The Department of Toxic Substances Control (DTSC) states that exposure to PFAS can lead to adverse health impacts to humans.

This bill is intended to remove the barriers faced by compost producers and enable products that are labeled compostable to truly be compostable. This bill will also prevent manufacturers from intentionally adding PFAS and other known harmful chemicals to compostable food packaging.

According to the Author

AB 1201 ensures that California's compost stream is safe from harmful chemicals and that what is labeled as compostable actually is compostable. A majority of compostable packaging is currently sorted then disposed of in landfills. Californians are paying higher costs for their food to come in compostable containers and even more for their waste collector to sort these erroneously marked materials, only to end up in the landfill rather than a compost facility. This practice also results in higher environmental costs. It's crucial that claims of compostability reflect the realities of the infrastructure where these products are managed and that we do not allow harmful "forever chemicals" to impact our health through the compost process.

Arguments in Support

According to Californians Against Waste:

Misleading end-of-life claims are especially damaging in plastic products given the serious environmental harm caused by plastic litter. Plastic litter chokes birds, turtles and other sensitive marine species, congregates in ocean gyres, and persists indefinitely in the environment. Non-compostable products being indistinguishable from those that are compostable and break down in municipal compost facilities with no residual or toxic contamination. The proliferation of these products has led to significant contamination in both composting and recycling systems, and long-term damage to soil and farmland.

AB 1201 updates California's environmental advertising laws to reflect the current best practices around third party certification and labeling which includes: requiring independent, third-party certification of compliance with degradability requirements, and prohibiting products with PFAS ("forever chemicals") from being labeled as compostable. AB [1201] also directs CalRecycle to develop labeling requirements for compostable products to ensure that they are readily identifiable by both consumers and composting facilities, and to issue guidance on compliance with this chapter to help manufacturers avoid making illegal marketing claims

Adding these refinements to existing legislation will help build upon California's efforts in ensuring proper use and disposal of compostable items and enforcing and standardizing product labeling requirements.

Arguments in Opposition

According to the Rural County Representatives of California:

The September 3 amendments, specifically the additions to Public Resources Code Section 42357(g)(1)(B), require CalRecycle to modify their newly-adopted organic waste recycling regulations and impose a completely new dual stream collection system for organic waste if it determines that it is feasible to do so. Under this new system, local governments and the solid waste industry will have to split their organic waste into two streams: one that separates organic waste that is suitable for use in agricultural applications and one for organic waste that is not suitable for agricultural applications...

While we appreciate that CalRecycle would first have to determine that it would be feasible to bifurcate the organic waste recycling stream, experience has shown that what may be "feasible" in some parts of the state is completely unworkable in others. We also fear that product manufacturers may try to show that the bifurcated system is theoretically feasible, while downplaying the fact that the costs of the new system and infrastructure will simply be passed on to local governments and ratepayers – thereby subsidizing the end-of-life management of the products manufacturers introduce into the marketplace.

RCRC shares your objectives to improve the quality of organic waste to make it easier to recycle. We also applaud your efforts to make it easier for consumers to determine what is compostable and what is not. At the same time, we have grave concerns that the new amendments for AB 1201 will require the state to expose local governments and ratepayers to even greater costs to achieve these new organic waste sorting and processing requirements – even before they have determined how to implement the existing regulatory framework.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) Ongoing cost pressure of about \$120,000 annually (Integrated Waste Management Account [IWMA]) for CalRecycle to promulgate regulations if necessary.
- 2) To the extent that CalRecycle is responsible for the implementation and enforcement of the provisions of this bill, it would result in additional costs of approximately \$125,000 annually (IWMA).

VOTES:

ASM NATURAL RESOURCES: 10-0-1

YES: Luz Rivas, Flora, Chau, Friedman, Cristina Garcia, Mathis, Muratsuchi, Seyarto, Stone, Wood

ABS, ABST OR NV: McCarty

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

ASSEMBLY FLOOR: 77-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Cristina Garcia, Maienschein

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