
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1276
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Version: 5/27/2021
Urgency: No
Consultant: Genevieve M. Wong
Hearing Date: 7/1/2021
Fiscal: Yes

SUBJECT: Single-use food accessories

DIGEST: Expands and revises the statute that requires single-use plastic straws only be distributed upon request to apply to all single-use standard condiments and food serviceware distributed by food facilities or third-party food delivery platforms.

ANALYSIS:

Existing law:

- 1) Under the federal Marine Plastic Pollution Research and Control Act of 1987, prohibits the at-sea disposal of plastic and other solid materials for all navigable waters within the United States (Public Law 100-220, Title II, 1987, 101 Stat. 1460). The law also requires the US Environmental Protection Agency (US EPA), the National Oceanic and Atmospheric Administration, and the US Coast Guard to jointly conduct a public education program on the marine environment.
- 2) Requires the National Oceanic and Atmospheric Administration (NOAA) to develop a National Marine Debris Monitoring Program designed to assess the effectiveness of the current national marine debris legislation. Monitoring under this program takes place at designated beaches every 28 days. (33 U.S.C. §1951 et seq.)
- 3) Under the Integrated Waste Management Act (IWMA), requires that local governments divert at least 50% of solid waste from landfill disposal and establishes a statewide goal that 75% of solid waste be diverted from landfill disposal by 2020. (Public Resources Code §§41780, 41780.01)
 - a) Prohibits a full-service restaurant from providing a single-use plastic straw to a consumer unless requested by the consumer. Subjects the first and second violation to a notice of violation and each subsequent violation to an infraction and a fine of \$25 for each day the full-service restaurant is in

violation. Limits the fine to no more than \$300 annually. (PRC §42271)

- b) Prohibits a state food service facility from dispensing prepared food using a type of food service packaging unless the packaging is on a specified list maintained by the Department of Resources Recycling and Recovery (CalRecycle) and has been determined to be reusable, recyclable, or compostable. (PRC §§42370 et seq.)

This bill:

- 1) Expands the prohibition on food service facilities from distributing single-use plastic straws except upon request to include third-party food delivery platforms and single-use food accessories, as specified.
- 2) Defines terms used in the bill, including:
 - a) “Single-use food accessory” as any standard condiment in single-use packaging or single-use food service ware;
 - b) “Single-use food service ware” as specified single-use items provided alongside ready to-eat food, including utensils, chopsticks, napkins, condiment cups and packets, straws, stirrers, splash sticks, and cocktail sticks, which are designed for a single use; and
 - c) “Standard condiment” as relishes, spices, sauces, confections, or seasonings that require no additional preparation and that are usually used on a food item after preparation, including ketchup, mustard, mayonnaise, soy sauce, salsa, salt, pepper, sugar, and sugar substitutes.
- 3) Permits a food facility to ask a drive-through consumer if the consumer wants a single-use food accessory if that accessory is necessary for the consumer to consume ready-to-eat food, or to prevent spills of or safely transport ready-to-eat food.
- 4) Requires platforms to provide each of its ready-to-eat food vendors with the option to customize the vendor’s menu on the online food-ordering platform, with a list of the single-use food accessories offered by the vendor. If a consumer does not select any single-use food accessories, prohibits a single-use food accessory from being provided.
 - a) If a ready-to-eat food vendor chooses not to customize its menu, the platform shall post the following statement next to their menu: “This

restaurant has not listed single-use food accessories on its menu.”

- 5) States that the requirement to provide single-use food accessories only upon request do not do either of the following:
 - a) Prohibit a food facility from making unwrapped single-use food accessories available to a consumer using refillable self-service dispensers to allow for single-use food accessories to be obtained upon the consumer’s request. Encourages a facility that offers condiments to use bulk dispensers for the condiments rather than single-use condiments; and
 - b) Prevent a local government from adopting or implementing an ordinance or rule that would further restrict a food facility or third-party platform from providing single-use food accessories to a consumer.
- 6) On or before June 1, 2022, requires local governments to authorize an enforcement agency to enforce the bill’s requirements. Establishes that the first and second violations of this chapter result in a notice of violation, and any subsequent violations constitute infractions punishable by a fine of \$25 for each day of violation, not to exceed \$300 annually.
- 7) Exempts correctional institutions, health care facilities, residential care facilities, and public and private school cafeterias, as specified.

Background

- 1) *Waste management in California.* For three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through IWMA. Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal and over the years the Legislature has enacted various laws relating to increasing the amount of waste that is diverted from landfills.

According to CalRecycle’s *State of Disposal and Recycling Report for 2019* report, published in February 2021, California’s 2019 statewide recycling rate was 37%. Approximately 77.5 million tons of material was generated in 2019; with about 55% sent to landfills; 19% exported as recyclables; 12% composted, anaerobically digested or mulched; and 6% either recycled or source reduced.

- 2) *The cost of plastic pollution.* According to a 2021 report published by the United Nations Environment Programme (UNEP), “*Neglected – Environmental Justice Impacts of Marine Litter and Plastic Pollution*,” 99 percent of plastics are produced from petrochemicals, which are sourced from fossil fuels.

Between 1950 and 2015, 8.3 billion metric tons of new plastic have been produced, less than 10% of which has been recycled. About 80 percent (4.9 billion metric tons) of this plastic is accumulating in landfills and the natural environment. Plastic pollution winds up in rivers, waterways and oceans, aggregating pollutants, harming wildlife, and impacting communities that depend on the ocean for their sustenance and livelihoods.

In 2017, the world's plastic production reached 348 million metric tons, a 20% increase in five years and a 20,000% (20-fold) increase since 2015. This increase in production has rapidly accelerated in the last few decades, and more than half of the plastics ever created were produced in the last 15 years. Without action, the annual plastic flows to the ocean are expected to grow from 11 million metric tons in 2016 to 29 million metric tons in 2040, with consequences to communities and ecosystems.

Plastic production. While the conversation around plastic has focused on its end of life, plastic pollution starts with fossil fuel extraction, and continues through manufacturing, transportation, usage, and finally disposal. Hundreds of petrochemical facilities throughout the United States create the pellets used in the production of plastic products. About 14% of oil is used in petrochemical manufacturing, a precursor to producing plastic. By 2050, it is predicted to account for 50% of oil and gas demand growth. California ranks third in the nation in oil refining capacity; our 17 refineries have a combined capacity of nearly 2 million barrels per day. Oil drilling and refining disproportionately impact low-income communities of color. In the United States, about 56% of the people who live within three kilometers of a large commercial hazardous waste facility are people of color. In California, that figure soars to 81%. In the Los Angeles area, over 580,000 people live within five blocks of an active oil or gas well. Every step in the production of plastic, from extraction to manufacturing, impacts air and water quality and human health.

Environmental costs. Plastic, most of which does not decompose, is a significant driver of climate change. According to the UNEP report, plastic, when discarded, does not break down and instead releases fillers as gas and contaminated liquid and break down into increasingly smaller pieces. This allows plastics to accumulate as toxins and microplastics in the environment. The manufacture of four plastic bottles alone releases the equivalent greenhouse gas emissions of driving one mile in a car, according to the World Economic Forum. The United States burns six times more plastic than it recycles, according to research in April 2019 by Jan Dell, a chemical engineer

and former vice chair of the U.S. Federal climate committee.

According to the report, *Plastic & Climate: The Hidden Costs of a Plastic Planet*, greenhouse gases are emitted at each stage of the plastic lifecycle: 1) fossil fuel extraction and transport, 2) plastic refining and manufacture, 3) managing plastic waste, and 4) its ongoing impact to oceans, waterways, and landscape. According to the report, greenhouse gas emissions from the plastic lifecycle threaten the ability of the global community to meet carbon emission targets. In 2019, the production and incineration of plastic will have added more than 850 million metric tons of greenhouse gases into the atmosphere, which is equal to the emissions from 189 five-hundred megawatt coal power plants.

Plastic is primarily landfilled, recycled, or incinerated – each of which produces varying amounts of greenhouse gas emissions. Landfilling emits the least greenhouse gas emissions on an absolute level, although it presents significant other risks. Recycling has a moderate emissions profile but displaces new virgin plastic on the market, making it advantageous from an emissions perspective. Incineration leads to extremely high emissions and is the primary driver of emissions for plastic waste management. Further, plastic packaging represents about 40% of plastic demand. It is estimated that in 2015, incineration of plastic packaging totaled 16 million metric tons of carbon dioxide equivalents.

Some, however, argue that other packaging products can cause more emissions than plastics; because plastic is light, it is indispensable for the world's consumers and can help reduce emissions. Some say that it is upon the governments to improve waste management infrastructure.

Health costs. A problem not often discussed are the additives and chemicals that can be found in plastics, some of which could have negative impacts on human health. According to the report *Plastic & Health: The Hidden Cost of a Plastic Planet*, plastic poses distinct risks to human health at every stage of its lifecycle. This includes the extraction and transport of fossil feedstocks for plastic; the refining and production of plastic resins and additives; consumer products and packaging; toxic releases from plastic waste management; fragmenting and microplastics; additional exposure to plastic additives as plastic degrades; and ongoing environmental exposures by contaminating and accumulating in food chain through agricultural soils, terrestrial and aquatic food chains, and water supply.

The report recognizes, however, that there are gaps in knowledge that prevent researchers from being able to fully evaluate the health impacts of plastic. These include not knowing exactly what chemicals are in plastic and its production processes; limited research into the impacts and movement of plastic and microplastics through terrestrial environments, marine ecosystems, and food chains; and limited understanding of the impacts of microfibers and other plastic microparticles that are increasingly being documented in human tissues.

Costs to California's economy. A National Oceanic and Atmospheric Administration Marine Debris Program economic study published in 2014 examined the costs of marine debris to Californians. The study focused on Orange County, and found that residents lose millions of dollars each year avoiding littered, local beaches in favor of choosing cleaner beaches that are farther away and more costly to reach. In one scenario, the study found that reducing marine debris by just 25% would save Orange County residents \$32 million in June-August; eliminating marine debris entirely would save an estimated \$148 million.

A 2013 report produced for the Natural Resources Defense Council by Keir Associates estimates that Californians are shouldering \$428 million annually to try to prevent litter from becoming marine debris that damages the environment, tourism, and other economic activities.

Costs to the ocean and marine life. Plastics are estimated to comprise 60-80% of all marine debris and 90% of all floating debris. According to the California Coastal Commission (Commission), the primary source of marine debris is urban runoff (i.e., litter). By 2050, by weight there will be more plastic than fish in the ocean if we keep producing (and failing to properly manage) plastics at predicted rates, according to *The New Plastics Economy: Rethinking the Future of Plastics*, a January 2016 report by the World Economic Forum.

According to the Ocean Protection Council (OPC), ocean litter, also commonly referred to as "marine debris," is a persistent and growing problem worldwide that significantly impacts the health and beauty of our oceans and beaches. It poses serious threats to marine wildlife, including sea birds, turtles, and mammals such as dolphins and whales, as well as human health and welfare.

According to a recent report, 24 expeditions from 2007-2013 estimated that there are approximately 96,400 metric tons of floating plastic in the Northern Pacific Ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. A study by the

Algalita Marine Research Foundation found an average of more than 300,000 plastic pieces per square mile of the Gyre and that the mass of plastic was six times greater than zooplankton floating on the water's surface.

Most plastic marine debris exists as small plastic particles due to excessive UV radiation exposure and subsequent photo-degradation. These plastic pieces are confused with small fish, plankton, or krill and ingested by birds and marine animals. Over 600 marine animal species have been negatively affected by ingesting plastic worldwide. Last year, scientists at the Australian Research Council Centre of Excellence for Coral Reef Studies at James Cook University found that corals are also ingesting small plastic particles, which remain in their small stomach cavities and impede their ability to consume and digest normal food.

In addition to the physical impacts of plastic pollution, hydrophobic chemicals present in the ocean in trace amounts (e.g., from contaminated runoff and oil and chemical spills) have an affinity for, and can bind to, plastic particles where they enter and accumulate in the food chain.

Source reduction is considered the preferred way to reduce ocean litter because it decreases the amount of trash there is to control, clean up, and dispose. According to NOAA, approximately 80% of marine debris comes from land based sources, with food and beverage packaging making up the largest component of that debris. These food and beverage containers can enter the marine environment in a number of ways: through inefficient or improper waste management, intentional or accidental littering, and through stormwater runoff. Once in the marine environment, litter is not just an eyesore, but can damage habitats, harm wildlife through entanglement and ingestion, and have negative economic impacts on coastal communities.

Comments

- 1) *Purpose of Bill.* According to the author, "The COVID-19 pandemic has increased takeout and food delivery, which restaurants are relying upon to stay afloat. However, the use of disposable food accessories like plastic forks, spoons, and knives has led to a rise in single-use plastics and waste. AB 1276 is an important step to significantly reduce plastic waste that pollutes our oceans, harms marine life, harms our environment, and hurts low income communities of color, while simultaneously providing financial savings to restaurants and local governments. This bill will build on California's existing efforts to combat waste from single-use items by ensuring food and beverage

accessories are provided only upon request to customers.”

- 2) *Reduce, reuse, recycle.* This bill is focused on source-reduction. California’s solid waste hierarchy places source reduction at the top of the hierarchy, followed by reuse, then recycle. By limiting the distribution of single use food accessories to only when requested, this bill will reduce the amount of single-use food accessories that have been automatically distributed to customers, whether or not the customer actually wants or uses it. Unless asked for, the single-use food accessory is thrown out *unused*, creating needless waste. AB 1276 minimizes this by limiting handing out items to instances where the customer actually requests them. This will also help food facilities save money by not habitually handing out food serviceware or condiments that ultimately get thrown out unused.
- 3) *What have other jurisdictions done?* A few local jurisdictions have enacted their own ordinances specifying which single-use or disposable foodware should be available only upon request.

In the City of Los Angeles, “disposable foodware accessory” includes, but is not limited to, utensils, condiment packets, disposable plastic drinking straws and all other disposable straws, stirrers, splash sticks, cocktail sticks, toothpicks, napkins, *wet wipes, cup lids, cup sleeves, and beverage trays*. Utensils means a fork, spoon, spork, knife, chopstick, or other implement used to serve a person or to eat food. “Condiment” includes, but is not limited to, ketchup, mustard, mayonnaise, barbecue sauce, dressings, sauerkraut, salsa, soy sauce, wasabi, ginger, *hot sauce*, grated cheese, syrup, jam, jelly, butter, salt, sugar, cream, pepper, or chili pepper.

In the County of Los Angeles, “single-use foodware accessory” includes straws, stirrers, knives, forks, spoons, chopsticks, condiment packets, condiment containers, napkins, *cup lids, spill plugs, and hot beverage sleeves*. “Condiment” includes foods such as ketchup, mustard, mayonnaise, sauerkraut, soy sauce, salsa, syrup, sugar, cream, pepper, chili-pepper or cheese topping.

In Berkley, “accessory disposable foodware item” includes straws, stirrers, napkins and utensils; condiment cups and packets; *cup sleeves, tops, lids, and spill plugs*; and other similar accessory or accompanying disposable foodware items used as part of food or beverage service or packaging.

To further achieve the goals of source reduction, *the author may wish to consider* also adding common items that local jurisdiction ordinances cover such as spill plugs, wet wipes, cup lids, cup sleeves, and beverage trays to the

definition of single-use food serviceware.

The committee may wish to amend the bill to provide that utensils means forks, knives, spoons, and sporks; and to add “hot sauce” to the definition of standard condiment.

- 4) *Refillable self-service dispensers.* AB 1276 specifies that food facilities may make unwrapped single-use food accessories available to consumers through a refillable self-service dispenser. However, AB 1276 defines “single-use food accessory” as either (1) standard condiments in single-use packaging or (2) single-use food serviceware. To uphold the underlying goal of the bill, which is to reduce needless waste, different considerations may go into self-service dispensers for standard condiments in comparison to single-use food serviceware. Additionally, a dispenser for *unwrapped* single-use standard condiments implies that a facility would not be able to distribute packets of condiments through a refillable self-service dispenser.

The author may wish to consider parsing out these refillable self-service dispenser provisions to consider the varying nuances when it comes to distributing single-use food serviceware versus condiments.

- 5) *Actual deterrence.* As currently written, AB 1276 imposes minimal penalties for violations of its provisions. Specifically, the first and second violations result in a “notice of violation” (aka warning), and any subsequent violation is an infraction punishable by a fine of \$25 for each day in violation, not to exceed \$300 annually. A prior version of the bill imposed a \$100 per day fine following the notices of violation with a maximum penalty of \$1,000 annually. *If this bill is to have a meaningful impact on the operations of food facilities and third-party food delivery platforms and discourage the automatic distribution of single-use food accessories, a penalty that would deter the food facilities and third-party food delivery platforms from violations should be included. A \$25 penalty would likely not even cover the cost of the enforcement agency to enforce this law.*
- 6) *Choosing to do more.* This bill sets the minimum steps a restaurant or food delivery platform shall take to help address our ocean pollution problem. However, if a restaurant or food delivery platform chooses to, the entity could take additional steps to help society operate in a more sustainable manner.

The committee may wish to amend the bill to provide that food facilities are encouraged, although not required, to take additional actions that would support the goal of reducing the use of and waste generated by single-use

food accessories.

Related/Prior Legislation

SB 54 (Allen) prohibits producers of single-use, disposable packaging or single-use, disposal food service ware from offering for sale, selling, distributing, or importing in or into the state those products manufactured after January 1, 2032, unless it is recyclable or compostable. SB 54 passed out of this committee with a vote of 5-1 and is currently on the Senate Inactive File.

AB 962 (Kamlager) authorizes processors that are certified under California's Bottle Bill program and approved by CalRecycle to handle reusable glass beverage containers to satisfy statutory operation requirements by transferring the reusable beverage container to a CalRecycle-approved washer. AB 962 is set to be heard in this committee on June 29, 2021. At the time this analysis was written, AB 962 had not yet been heard.

AB 1371 (Friedman) prohibits online retailers from using single-use plastic packaging that consists of shipping envelopes, cushioning, or void fill to package or transport the products commencing January 1, 2023, for large online retailers and January 1, 2025, for small online retailers; prohibits manufacturers, retailers, producers, and other distributors from using expanded polystyrene packaging to package or transport products; and imposes various requirements to online retailers for the collection of plastic film and expanded polystyrene packaging. AB 1371 establishes the At-Store Recycling Program, which would require operators of stores to establish an at-store recycling program for plastic carryout bags and durable plastic bags, as specified, and requires those bags to have certain information printed on them. AB 1371 has been held on the Assembly Floor.

AB 161 (Ting, 2020) would have prohibited businesses from providing paper receipts to consumers except upon request. AB 161 was held in the Senate Appropriations Committee.

AB 793 (Ting, Chapter 115, Statutes of 2020) requires plastic beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act to contain minimum amounts of postconsumer recycling plastic annually, beginning with 15 percent by 2022, and increasing to 35 percent by 2029 and 50 percent by 2030.

AB 1884 (Calderon, Chapter 576, Statutes of 2018) prohibited full service restaurants from providing a single-use plastic straw to a customer unless requested.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Governance and Finance Committee.

SOURCE: Clean Seas Lobbying Coalition

SUPPORT:

350 Humboldt: Grass Roots Climate Action
Active San Gabriel Valley
Agromin
Audubon California
Azul
Ban Sup (single Use Plastic)
Berkeley; City of
Breast Cancer Prevention Partners
Cafe Aquatica
California Alliance of Nurses for Healthy Environments
California Association of Zoos & Aquariums
California Coastkeeper Alliance
California Compost Coalition
California Interfaith Power & Light
California League of Conservation Voters
California Product Stewardship Council
California Reuse Collective
Californians Against Waste
Calpirg
Center for Biological Diversity
Center for Environmental Health
Chicoeco, Inc, Dba Chicobag Company
City of Half Moon Bay
City of Sunnyvale
Clean Seas Lobbying Coalition
Clean Water Action
Climate Reality Project, Los Angeles Chapter
Community Environmental Council
Compost Manufacturing Alliance
Councilmember Mitch O'farrell, 13th District, City of Los Angeles
Councilmember Paul Koretz, 5th District, City of Los Angeles
Councilmember Paul Krekorian, City of Los Angeles
County of Los Angeles Board of Supervisors

Courage California
Ecology Center
Facts: Families Advocating for Chemical & Toxins Safety
Friends Committee on Legislation of California
Goodwerks
Green Valley Community Farm
Greentown Los Altos
Grubhub
Habits of Waste
Heal the Bay
Joshua Tree Music Festival
Klean Kanteen
League to Save Lake Tahoe
Los Angeles City Councilmember Paul Koretz
Marin Sanitary Service
Maury's Bagels & Appetizing
Monterey Bay Aquarium Foundation
Muuse
Napa Climate Now
Napa Recycling and Waste Services
National Stewardship Action Council
Natural Resources Defense Council
Northern California Recycling Association
Ocean Conservancy
Oceana
Orange County Coastkeeper
Pier 23 Cafe Restaurant & Bar
Plastic Oceans International
Plastic Pollution Coalition
Ponce's Mexican Restaurant
Race to Zero Waste
Rainbow Grocery Cooperative, INC.
Raise High Road Restaurants
Real Good Fish
Recology
Resource Renewal Institute
Rethinkwaste
Robin's Restaurant
Santa Barbara Channelkeeper
Save Our Shores
Sea Hugger
Seventh Generation Advisors
Shizen and Tataki Restaurants
Sierra Club California

Sierra Nevada Brewing Company
Surfrider Foundation
Sustain LA
Sustainable St. Helena
The 5 Gyres Institute
The Bay Foundation
The Center for Oceanic Awareness, Research, and Education
The Last Plastic Straw
The Nectary
The Refill Shoppe
The Story of Stuff Project
The Trust for Public Land
Town of San Anselmo
Uber Technologies, INC.
Upstream
Wisdom Supply Co.
Wishtoyo Chumash Foundation
Zanker Recycling
Zero Waste USA

OPPOSITION:

None received

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