
THIRD READING

Bill No: AB 1276
Author: Carrillo (D) and Lorena Gonzalez (D), et al.
Amended: 9/3/21 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-2, 7/1/21
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NOES: Bates, Dahle

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 7/8/21
AYES: McGuire, Nielsen, Durazo, Hertzberg, Skinner

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 58-14, 6/1/21 - See last page for vote

SUBJECT: Single-use foodware accessories and standard condiments

SOURCE: Clean Seas Lobbying Coalition

DIGEST: This bill expands and revises the statute that requires single-use plastic straws only be distributed upon request to apply to specified single-use foodware accessories and standard condiments distributed by food facilities or third-party food delivery platforms.

Senate Floor Amendments of 9/3/21 clarify that if a food facility uses a third-party delivery platform for ready-to-eat food and the consumer does not select any single-use foodware or standard condiments, that the food facility is prohibited from providing any single-use foodware accessories or standard condiments for the ready-to-eat food.

ANALYSIS:

Existing law:

- 1) Requires, under the Integrated Waste Management Act (IWMA), 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)
- 2) 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)
- 3) 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 single-use foodware accessories and standard condiments, as specified. Applies this prohibition to both on-premises dining and when using a third-party food delivery platform.
- 2) Prohibits single-use foodware accessories and standard condiments packaged for single use provided by food facilities for use by consumers to not be bundled or packaged in a manner that prohibits a consumer from taking only the type of single-use foodware accessory or standard condiment desired without also having to take a different type of single-use foodware accessory or standard condiment.
- 3) Permits a food facility to ask a drive-through consumer if the consumer wants a single-use foodware 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 third-party food delivery platforms to provide consumers with the option to request single-use foodware accessories or standard condiments.

- 5) Requires a food facility that uses a third-party delivery platform for ready-to-eat food to customize its menu with a list of available single-use foodware accessories and standard condiments.
- 6) States that the requirement to provide single-use foodware accessories and standard condiments only upon request do not do either of the following:
 - a) Prohibit a food facility from making standard condiments and unwrapped single-use foodware accessories available to a consumer using refillable self-service dispensers, as specified. Encourages a facility that offers standard condiments to use bulk dispensers for the condiments rather than condiments packaged for single use; 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 foodware accessories or standard condiments to a consumer.
- 7) Requires, on or before June 1, 2022, local governments to authorize an enforcement agency to enforce this bill's requirements. Establishes that the first and second violations of this bill 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.
- 8) 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.

Plastic production. 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. California ranks third in the nation in oil refining capacity; our 17 refineries have a combined capacity of nearly two 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.

Environmental costs. According to the report, *Plastic & Climate: The Hidden Costs of a Plastic Planet*, greenhouse gases are emitted at each stage of the plastic lifecycle: (a) fossil fuel extraction and transport, (b) plastic refining and manufacture, (c) managing plastic waste, and (d) 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 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.

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 National Oceanic and Atmospheric Administration, 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 foodware accessories and condiments to only when requested, this bill will reduce the amount of these items that are automatically distributed to customers, whether or not the customer actually wants or uses it. Unless asked for, the single-use foodware accessory or standard condiment is thrown out *unused*, creating needless waste. AB 1276 minimizes this by limiting the handing out of these items to instances when the customer actually requests it, also helping food facilities save money by not habitually handing out food foodware accessories or condiments gratuitously.
- 3) *Low penalties for noncompliance.* 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 this bill imposed a \$100 per day fine following the notices of violation with a maximum penalty of \$1,000 annually.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, to the extent the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service associated with the requirement for cities and counties to authorize a local law enforcement agency to enforce this bill, there are unknown but potentially significant costs (General Fund) to reimburse local government claims made pursuant to existing statutory provisions.

SUPPORT: (Verified 9/3/21)

Clean Seas Lobbying Coalition (source)
350 Humboldt: Grass Roots Climate Action
Active San Gabriel Valley
Agromin
Audubon California
Azul
Ban SUP
Breast Cancer Prevention Partners
Cafe Aquatica
California Alliance of Nurses for Healthy Environments
California Association of Zoos & Aquariums

California Catholic Conference
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,
City of Arcata
City of Berkeley
City of Beverly Hills
City of Half Moon Bay
City of Sunnyvale
City of Thousand Oaks
Clean Water Action
Climate Reality Project, Los Angeles Chapter
Community Environmental Council
Compost Manufacturing Alliance
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 Councilmember Mitch O'farrell, 13th District
Los Angeles Councilmember Paul Koretz, 5th District
Los Angeles Councilmember Paul Krekorian
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
Seventh Generation Advisors
Shizen and Tataki Restaurants
Sierra Club California
Sierra Nevada Brewing Company
Surfrider Foundation
Sustain LA
Sustainable St. Helena
Technet-technology Network
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: (Verified 9/3/21)

None received

ASSEMBLY FLOOR: 58-14, 6/1/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Choi, Megan Dahle, Davies, Fong, Gallagher, Gray, Kiley, Lackey, Nguyen, Patterson, Smith, Valladares, Voepel

NO VOTE RECORDED: Chen, Flora, Frazier, Mathis, Mayes, Quirk-Silva, Seyarto

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108
9/7/21 16:56:07

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