SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
Senator Allen, Chair
2021 - 2022 Regular

Bill No:	AB 2026		
Author:	Friedman and Ting		
Version:	6/9/2022	**Hearing Date:**	6/22/2022
Urgency:	No	**Fiscal:**	Yes
Consultant:	Genevieve M. Wong		

SUBJECT: Recycling: plastic packaging

DIGEST: Requires an e-commerce shipper that ships purchased products in or into the state to reduce the total weight and number of units (source reduce) of single-use plastic shipping envelopes, cushioning, and void fill it uses to ship or transport products, by no less than unspecified amounts by January 1, 2030, and by January 1, 2035; and prohibits expanded or extruded polystyrene from being used to package or transport products in or into the state except that expanded or extruded polystyrene may be used to package or transport televisions, printers, computer screens, and large appliances until January 1, 2025.

ANALYSIS:

Existing law:

1) Under the federal Marine Plastic Pollution Research and Control Act of 1987 (Public Law 100-220, Title II), prohibits the at-sea disposal of plastic and other solid materials for all navigable waters within the United States. 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) Under the federal Clean Water Act, requires the state to identify a list of impaired water-bodies and develop and implement Total Maximum Daily Loads for impaired water bodies.

3) Under the Porter Cologne Water Quality Control Act, regulates discharges of pollutants in stormwater and urban runoff by regulating, through the National Pollution Discharge Elimination System, industrial discharges and discharges through the municipal storm drain systems.

4) Establishes the Preproduction Plastic Debris Program, which requires the State Water Resources Control Board and regional boards to develop a program that requires plastic manufacturing, handling, and transportation facilities to

implement best management practices to control discharges of preproduction plastic pellets. The program includes inspections, stakeholder outreach efforts, and enforcement activities.

5) Under the Integrated Waste Management Act (IWMA), requires that local jurisdictions 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)

6) Requires local jurisdictions to prepare, adopt, and submit to the Department of Resources Recycling and Recovery (CalRecycle) a source reduction and recycling element (SRRE) that includes a program for the management of solid waste generated within the jurisdiction. The SRRE is focused on the implementation of all feasible source reduction, recycling, and composting programs and identifying the amount of landfill capacity needed for the jurisdiction.

7) 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 CalRecycle and has been determined to be reusable, recyclable, or compostable. (PRC §§42370 et seq.)

This bill:

1) Defines the following terms:

    a) "E-commerce shipper" as a business that meets all of the following:
        i) Either:
            a) Sells goods over the internet, or
            b) Provides e-commerce fulfillment services to package and ship goods by mail or parcel delivery in or into the state, either on behalf of itself or a third party seller.
        ii) Has annual gross sales greater than $15 million dollars in or into the state; and
        iii) Has more than 100 full-time equivalent employees.

    b) Species that an e-commerce shipper does not include either of the following:

        i) An online marketplace that satisfies all of the following:

a) Is an online or mobile application providing user services and facilitating sales solely from third-party sellers to third-party buyers;
b) Does not own any of the inventory for sale on the online marketplace;
c) Does not ship or control the distribution, packaging, or transport of any products on the online marketplace;
d) Facilitates and permits direct, unhindered communication between the third-party buyer and third-party seller;
e) Conspicuously displaces the third-party seller's location; and
f) Does not determine the price for the product offered on the online marketplace.

ii) A public or privately operated motor carrier that only transports a parcel that has been placed into packaging prior to the motor carrier's taking possession of the parcel and is not opened until after the motor carrier has delivered the parcel.

c) "E-commerce plastic packaging" as single-use plastic shipping envelopes, void fill, and cushioning added by the e-commerce shipper to ship to transport a product.

d) "Single-use plastic" as material that is wholly or partially made of plastic and is intended for single use; regularly discarded, recycled; or otherwise disposed of after a single use; or not reusable.

e) "Shipping envelope" as packaging used for the containment, protection, handling, or delivery or smaller goods by a manufacturer or retailer for the user or consumer. Specifies that a plastic shipping envelope includes, but is not limited to, plastic mailers, envelope mailers, lightweight plastic mailers, padded plastic mailers, poly mailers, poly bubble mailers, plastic shipping mailers, and paper mailers with plastic lining.

f) "Cushioning" as material used to protect goods by absorbing shocks and vibrations during shipping.

g) "Void fill" as filler material used to close up the free space in a shipping container and prevent excessive movement.

h) "Expanded polystyrene" means any material made of polystyrene that has been expanded or blown using a blowing agent into a solid foam, including, but not limited to, loose fill, often referred to as packing peanuts,

and molded foam.

i) "Extruded polystyrene" means any material made of polystyrene that when manufactured is forced through a die, a process known as extrusion, then allowed to cool and expand to the desired shape to form a foam product.

2) Requires an e-commerce shipper that ships purchased products in or into the state to reduce the total weight and number of units of the e-commerce plastic packaging it uses to ship or transport products in or into the state as follows:
   a) By January 1, 2030, requires an e-commerce shipper to reduce e-commerce plastic packaging by no less than an unspecified percentage.
   b) By January 1, 2035, requires an e-commerce shipper to reduce e-commerce plastic packaging by no less than an unspecified percentage.

3) Requires these reductions be measured against the total weight and number of units of e-commerce plastic packaging the e-commerce shipper shipped or transported in or into the state during the 2022 calendar year.

4) Prohibits a manufacturer, retailer, producer, or other distributor that sells or offers for sale and ships purchased products in or into the state from using expanded or extruded polystyrene to package or transport the products except that expanded or extruded polystyrene may be used to package or transport televisions, printers, computer screens, and large appliances until January 1, 2025.

5) Exempts from the bill's requirements:
   a) Single-use plastic shipping envelopes, cushioning, and void fill and expanded or extruded polystyrene that is used as primary packaging for raw, uncooked, or butchered meat, fish, poultry, or seafood sold for the purposes of cooking or preparing.
   b) Single-use plastic shipping envelopes, cushioning, and void fill and expanded or extruded polystyrene that is necessary to prevent the contamination or extends the shelf life of fresh produce.
   c) Single-use plastic shipping envelopes, cushioning, and void fill and expanded or extruded polystyrene that is used as packaging for a product regulated as a drug, medical device, or dietary supplement by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act or the federal Dietary Supplement Health and Education Act of 1994.
   d) Single-use plastic shipping envelopes, cushioning, and void fill and expanded or extruded polystyrene that is used as packaging for a product regulated as a drug, biologic, parasiticide, medical device, or diagnostic

used to treat, or administer to, animals under the Federal Food, Drug, and Cosmetic Act, by the United States Department of Agriculture under the federal Virus-Serum-Toxin Act, or by the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act.

6) Clarifies that the bill does not prohibit the adoption, implementation, or enforcement of a local ordinance, resolution, regulation, or rule governing curbside or dropoff recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency.

7) Permits the Attorney General, a county counsel, or a city attorney to impose civil liability on a person or entity that knowingly violated the requirements of the bill, in an amount not to exceed $50,000 per day. Requires civil penalties be deposited into the Plastic Packaging Reduction Penalty Account, which would be created by the bill.

8) Authorizes the Attorney General, county counsel, or city attorney to seek all costs and attorney's fees incurred as well as the costs incurred by the department or local agency investigating the matter.

Background

1) *Solid waste in California.* For over three decades, CalRecycle has been tasked with reducing disposal of municipal solid waste and promoting recycling in California through the IWMA. Under IWMA, the state has established a statewide 75 percent source reduction, recycling, and composting goal by 2020 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 most recent State of Disposal and Recycling report, 40 million tons of material were disposed into landfills in 2020.

2) *The cost of plastic pollution*. According to a 2021 report published by the United Nations Environment Progamme (UNEP), *"Neglected – Environmental Justice Impacts of Marine Litter and Plastic Pollution,"* 99 percent of plastics are produced from petrochemcials, 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. Most plastic is hard to recycle. 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% (200-fold) increase since 2015.

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. Scientists at the Australian Research Council Centre of Excellence for Coral Reef Studies at James Cook University have 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.

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.

Environmental justice considerations. Plastic production and use disproportionately impacts disadvantaged communities through the world. Oil extraction and refining result in habitat destruction, polluted runoff, waste, and oil spills that directly impact indigenous and disadvantaged communities. Refineries emit toxic air contaminants, including benzene, formaldehyde, hydrogen sulfide, sulfur dioxide, and sulfuric acid. In the Los Angeles area, more than 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.

Ocean plastic pollution doesn't only threaten ocean ecosystems, it also impacts

the people that rely on them. Plastic debris on beaches and snorkeling spots discourages tourism to those areas, damaging local economies. Globally, 820 million people rely on fishing for income. Plastics not only impact the quality of the fish, but also causes lower yields.

Environmental costs. Plastic, most of which does not decompose, is a significant driver of climate change. 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.

Health costs. Additives and chemicals 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 the 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.

Comments

1) *Purpose of Bill.* According to the author, "As an online retail consumer, I have been appalled at the amount of plastic packaging that accompanies my orders. No one wants these materials. We can't put them in our recycling bins, and they are overflowing curbside trash bins and taken to landfills at a huge expense to local governments. We know we can do better here in California because alternatives to single-use plastic packaging already exist and are being implemented elsewhere. AB 2026 will reduce the unnecessary and unacceptable amount of single-use plastic used in the e-commerce marketplace by phasing out the amount of shipping envelopes, bubble wrap, air pillows and other shipment packaging that contains plastic — including loose-fill (commonly known as packing peanuts) and banning molded foam packaging made from expanded polystyrene — for shipments in and into California."

2) *Need for bill*. The United States Environmental Protection Agency estimates that 14.5 million tons of plastic containers and packaging were generated in the country in 2018. While some plastic packaging is technically recyclable, markets for this material are scarce and it is not accepted in curbside recycling programs. According to the author, plastic packaging and film make up more than 10% of residual waste from material recovery facilities in California, because consumers continue to throw these materials into their recycling bins in the hope they will be recycled. When consumers put plastic mailers, for example, into their curbside recycling, they end up a contaminant in the recycling stream. Plastic film jams up equipment and requires time and labor to stop the machinery and retrieve the plastic. Additionally, plastic film gets into bales of paper bound for recycling, contaminating entire bundles. According to a 2017 report by Closed Loop, only 7% of plastic bags accrued by households is recycled through collection programs at grocery and big-box stores, and only 3% of non-retail bag film is collected for recycling. The rest

winds up in landfills, or is littered and contributes to plastic pollution in the environment.

This bill reduces the amount of plastic packaging generated by requiring e-commerce shippers to source reduce their e-commerce plastic packaging.

3) *How did you know?* This bill requires e-commerce shippers to source reduce their e-commerce plastic packaging based on the total weight and number of e-commerce plastic packaging that the e-commerce shipper shipped or transported in or into the state during the 2022 calendar year. However, this bill does not take effect until January 1, 2023. While, according to the author, Amazon has been tracking such data, it is impossible to know if every entity that will be subject to the bill's source reduction requirements has been.

The committee may wish to amend the bill to change the baseline year to 2023.

4) *Current enforcement provisions are not applicable.* Current enforcement provisions of the bill provide that an action may be brought by the Attorney General upon a complaint by CalRecycle, or brought by a county counsel or by a city attorney upon a complaint by a local agency, a resident within the jurisdiction, CalRecycle, or the Statewide Commission on Recycling Markets. While this enforcement structure may have been appropriate for a prior version of the bill, it no longer makes sense in the context of source reduction.

For example, how will any of the enforcing or complaining entities know if there has been a violation? In other words, how will a person or entity know whether an e-commerce shipper has reduced their e-commerce plastic packaging by a certain percentage? This is not something that can be determined on its face value and without the collection and verification of data. How will that information be collected? How will it be verified? Would it be more appropriate for a single entity to be charged with enforcement? How will the enforcing entity (or entities) know who will be subject to this bill?

The author will need to consider all of this, and more. This bill is double referred to Senate Judiciary Committee and elements of this bill which are a part of that committee's jurisdiction, which may include penalties, may be discussed.

5) *Continued discussions*. A previous version of the bill prohibited single-use plastic shipping envelopes, cushioning, and void fill from being used to ship or transport products. To address stakeholder concerns, recent amendments

changed the bill from a prohibition to a gradual source reduction of single-use plastic shipping envelopes, cushioning, and void fill through 2035. As such, the bill needs various adjustments. Besides enforcement, other substantive issues that need addressing are the required source reduction percentages, which are currently undefined by the bill, and appropriate monitoring mechanisms to ensure adequate enforcement.

According to the author, stakeholder conversations are ongoing to flush out these issues, and more.

6) *Authors amendments.* To further address stakeholder concerns, the author has proposed amendments that would also require e-commerce shippers to source reduce the amount of, instead of prohibit, expanded and extruded polystyrene it uses to ship or transport products in the state. Proposed author amendments also remove the requirement that an e-commerce shipper source reduce e-commerce plastic packaging by no less than an unspecified amount by January 1, 2035.

7) *Committee amendments. **Staff recommends the committee adopt the bolded amendment contained in comment 3and the author amendment contained in comment 6***. Due to timing constraints, Senate Judiciary Committee has agreed to take these amendments when it is heard in its committee.

Related/Prior Legislation

SB 54 (Allen, 2021) establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which would require producers of single-use packaging and plastic single-use food service ware (collectively, covered material), through a producer responsibility organization (PRO), to source reduce plastic covered material, ,to ensure that covered material offered for sale, distributed, or imported in or into the state on or after January 1, 2032, is recyclable, or compostable, and to ensure that covered material meets specified recycling and composting rates. The bill, as a part of these requirements, requires the PRO to source reduce no less than 10% of its plastic covered material by 2027, 20% by 2030, and 25% by 2032. SB 54 passed out of this committee with a vote of 5-1 and is currently referred to the Assembly Natural Resources Committee.

AB 1371 (Friedman, 2021) prohibited 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; prohibited manufacturers, retailers, producers, and other distributors from using expanded polystyrene packaging to

package or transport products; and imposed various requirements to online retailers for the collection of plastic film and expanded polystyrene packaging. AB 1371 established the At-Store Recycling Program, which would have required operators of stores to establish an at-store recycling program for plastic carryout bags and durable plastic bags, as specified. AB 1371 died on the Assembly Floor.

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 Judiciary Committee.

SOURCE: Oceana

SUPPORT:

1000 Grandmothers for Future Generations
350 Bay Area
350 Bay Area Action
350 Humboldt
350 Silicon Valley
350 Southland Legislative Alliance
350 Ventura County Climate Hub
7th Generation Advisors
Active San Gabriel Valley
Ban Sup (single Use Plastic)
Ban Sup Refill
California Environmental Voters (formerly Clcv)
California Institute for Biodiversity
California Interfaith Power & Light
California Product Stewardship Council
California Wildlife Center
Californians Against Waste
Calpirg
Center for Food Safety; the
Chop Wood Carry Water CA Newsletter
Climate Reality Project, San Fernando Valley
Climate Reality Project, Silicon Valley
Defenders of Wildlife
East Bay Municipal Utility District
Ecology Center
Environment California
Ethos

Feminists in Action
Fillgood
Friends Committee on Legislation of California
Greenpeace USA
Greentown Los Altos
Habits of Waste
Heal the Bay
Indivisible Alta Pasadena
Indivisible California Green Team
Indivisible South Bay LA
Interfaith Solidarity Network
League to Save Lake Tahoe
Lemon Frog Shop Vintage Bazaar
Marine Mammal Care Center LA
Mountain Lion Foundation
Napa Climate Now
National Stewardship Action Council
Natural Resources Defense Council (NRDC)
Northern California Recycling Association
Ocean Conservancy
Oceana
Pacific Marine Mammal Center
Plastic Oceans International
Plastic Pollution Coalition
Sacramento Area Congregations Together
Sailors for The Sea
San Diego 350
San Diego Coastkeeper
Save Our Shores
Save the Albatross Coalition
Sea and Sage Audubon Society
Semco
Shark Stewards
Sierra Club California
Surfrider Foundation
Sustainable St. Helena
The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education
The Climate Center
The Democrats of Rossmoor
The Last Plastic Straw
The Nature Conservancy
The Nela Climate Collective
The Plot

The Refill Shoppe
Urban Ecology
Wholly H2o
Wildcoast
Wishtoyo Chumash Foundation
Wrench & Rodent Seabasstropub
Zero Waste USA

OPPOSITION:

Air Conditioning, Heating and Refrigeration Institute
American Apparel & Footwear Association
American Chemistry Council
American Cleaning Institute
American Institute for Packaging and Environment (AMERIPEN)
Association of Home Appliance Manufacturers
Auto Care Association
California Business Roundtable
California Chamber of Commerce
California League of Food Producers
California Manufacturers & Technology Association
California Retailers Association
Cawa
Civil Justice Association of California
Consumer Technology Association
EPS Industry Alliance
Flexible Packaging Association
National Federation of Independent Business (NFIB)
National Marine Manufacturers Association
Personal Care Products Council
Plastics Industry Association
Pregis
Tekni-plex Industries
The Toy Association
Western Plastics Association

ARGUMENTS IN SUPPORT: According to Oceana, "AB 2026 will significantly curb plastic pollution by requiring that single-use plastic shipping envelopes, cushioning, and void fill added to online purchases for shipment in and into California be reduced by weight and number from 2022 calendar year levels by 2030, with further reductions to be achieved by 2035. These measures will result in a shift to non-plastic packaging that is recyclable, compostable, or reusable and accepted in curbside bins. This transition away from single-use plastic

is possible because it is already being done in other countries and practical packaging alternatives are already used here in California. Consumers have expressed concerns with the plastic packaging their orders are shipped in and want plastic-free choices. As worldwide e-commerce continues to increase in volume, it is essential that the state establish provisions ensuring packages sent in and into the state are packaged sustainably and responsibly.

"While California represents 12% of the U.S. population (6), we currently represent 27% of the country's total plastic waste exports. (7) Without bold actions, the plastics crisis, and subsequent harmful impacts, will only worsen. As an environmental leader and one of the world's largest economies, California has the opportunity and the responsibility to tackle this pressing issue."

ARGUMENTS IN OPPOSITION: According to Tekni-Plex, Inc., "…AB 2026 singles polystyrene out for being banned in California as a packaging material with specified exceptions. This is a drastic step that will have myriad implications that are not good for consumers. For example, there already is a significant shortage in the United States and in California of egg cartons for shipping and retail purposes in stores and supermarkets. This is due in part to the pandemic shifting egg consumption from restaurants to residences driving higher demand for retail packaging. Your bill would eliminate polystyrene egg cartons and while there are alternatives, the ramp up time to get them on-line would result in shortages in the marketplace for up to a couple of years denying consumers from being able to purchase eggs conveniently at a reasonable price. A polystyrene egg carton ban would further increase egg prices in the stores and supermarkets resulting in tens of millions of dollars more coming out of California consumer pockets each year just for eggs. There are many more examples like this.

"Further, this ban on polystyrene products does not consider that they are recyclable and the main reason they are not being recycled more in California is due to lack of infrastructure. Rather than banning a safe packaging product and turning to more expensive and less effective materials, why not support expanding the state's recycling infrastructure? Then we can build on a circular economy that keeps the benefits of these products while also addressing the need to recycle them."

-- END --