

Assembly Bill No. 1201

CHAPTER 504

An act to amend Sections 42356, 42356.1, and 42357 of, and to amend the heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.

[Approved by Governor October 5, 2021. Filed with Secretary of State October 5, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1201, Ting. Solid waste: products: labeling: compostability and biodegradability.

Existing law prohibits a person from selling a plastic product that is labeled as “compostable” or “home compostable” unless, at the time of sale, the plastic product meets a specified specification or has a specified certification, as provided. Existing law prohibits the sale of a plastic product that is labeled as “biodegradable,” “degradable,” or “decomposable,” and prohibits implying that a plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment, unless the plastic product meets one of several specified standards relating to environmental marketing claims. Existing law authorizes a person to sell commercial agricultural mulch film labeled with the term “soil biodegradable” only if the Department of Resources Recycling and Recovery has adopted a certain specification and the commercial agricultural mulch film is certified to meet both that specification and the ASTM standard specification for compostability.

Existing law authorizes the Director of Resources Recycling and Recovery to issue guidelines for determining whether a plastic product is not compliant with these labeling requirements, and whether a plastic product is designed, pigmented, or advertised in a manner that is misleading to consumers.

Existing law defines “plastic product” for these purposes to mean a product made of plastic, whether alone or in combination with other material.

This bill would repeal that definition of “plastic product” and replace certain references to “plastic product” in those and related provisions with “product,” which includes, but is not limited to, a consumer product, as defined, a package or packaging component, a thin plastic sheet film product, and a food or beverage container. The bill would additionally prohibit a person from offering for sale a product that is labeled as “compostable” or “home compostable” unless, at the time of sale or offering for sale, the product meets that specified specification or has that specified certification and would additionally prohibit a person from offering for sale a product that is labeled as “biodegradable,” “degradable,” or “decomposable,” unless the product meets one of those specified standards relating to environmental

marketing claims. The bill would additionally authorize a person to offer for sale commercial agricultural mulch film labeled with the term “soil biodegradable” if the department adopts that specification and the film has that certification. The bill would exempt from the requirement to comply with an ASTM standard specification pursuant to these provisions fiber products that are demonstrated to not incorporate any plastics or polymers.

This bill would prohibit a person from selling or offering for sale a product that is labeled with the term “compostable” or “home compostable” unless the product satisfies specified criteria. As part of that criteria, the bill would require the department, by January 1, 2024, to make a specified determination, and on or before January 1, 2026, to adopt certain regulations depending on the results of that determination. The bill would authorize the department to adopt regulations for determining whether products are labeled in a manner that distinguishes the products from noncompostable products upon reasonable inspection by consumers and to help enable efficient processing by solid waste processing facilities.

This bill would also make conforming changes and revise a related definition of “supplier.”

The people of the State of California do enact as follows:

SECTION 1. The heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of the Public Resources Code is amended to read:

CHAPTER 5.7. PRODUCTS

SEC. 2. Section 42356 of the Public Resources Code is amended to read: 42356. For purposes of this chapter, the following definitions apply:

- (a) “ASTM” means the ASTM International.
- (b) (1) “ASTM standard specification” means either of the following:
 - (A) The ASTM Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities D6400, as published in 2019, except as provided in subdivision (c) of Section 42356.1.
 - (B) The ASTM Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities D6868, as published in 2019, except as specified in subdivision (c) of Section 42356.1.
- (2) “ASTM standard specification” does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.
- (c) “Department” means the Department of Resources Recycling and Recovery.
- (d) “Director” means the Director of Resources Recycling and Recovery.

(e) “Manufacturer” means a person, firm, association, partnership, or corporation that produces a product.

(f) “OK compost HOME certification” means certification of conformity with the existing TUV Austria certification “OK compost HOME certification” which, as of January 1, 2011, uses European Norm 13432 standard adapted to low-temperature composting in accordance with the TUV Austria program “OK 2-Home Compostability of Products.”

(g) “Product” includes, but is not limited to, any of the following:

(1) (A) A consumer product.

(B) For purposes of this paragraph, “consumer product” means a product or part of a product that is used, bought, or leased for use by a person for any purpose.

(2) A package or a packaging component.

(3) A bag, sack, wrap, or other thin plastic sheet film product.

(4) A food or beverage container or a container component, including, but not limited to, a straw, lid, or utensil.

(h) “Supplier” means a person who does one or more of the following:

(1) Sells, offers for sale, or offers for promotional purposes a product.

(2) Takes title to a product, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

SEC. 3. Section 42356.1 of the Public Resources Code is amended to read:

42356.1. (a) If an ASTM standard specification specified in paragraph (1) of subdivision (b) of Section 42356 is subsequently revised, the department shall review the new ASTM standard specification as follows:

(1) If the department determines that the new standard, when compared to the ASTM standard specification prior to its revision, is more stringent and more protective of public health, public safety, and the environment, and is reflective of and consistent with state policies and programs, the department may adopt the new standard.

(2) If the department determines that the new standard, when compared to the ASTM standard specification prior to its revision, is not as stringent and does not protect public health, public safety, and the environment, and is not reflective of and consistent with state policies and programs, the department shall not adopt the new standard.

(b) If the ASTM, or any other entity, develops a new standard specification or other applicable standard for any of the terms prohibited under subdivision (a) of Section 42357, the department may review the new standard and, if the department determines that the new standard for the prohibited term, when compared to the current ASTM standard in effect, is more stringent and more protective of public health, public safety, and the environment, and is reflective of and consistent with state policies and programs, the department may make a recommendation to the Legislature.

(c) Compliance with a standard adopted pursuant to paragraph (1) of subdivision (a) shall be deemed to be in compliance with this chapter.

(d) Fiber products that are demonstrated to not incorporate any plastics or polymers, including, but not limited to, through lamination, extrusion,

or mixing, are not required to comply with an ASTM standard specification pursuant to this chapter.

SEC. 4. Section 42357 of the Public Resources Code is amended to read:

42357. (a) (1) Except as provided in paragraph (3), a person shall not sell or offer for sale a product in this state that is labeled with the term “compostable” or “home compostable” unless, at the time of sale or offering for sale, the product meets the applicable ASTM standard specification, as specified in paragraph (1) of subdivision (b) of Section 42356, or, if applicable, the product has OK compost HOME certification, as provided in paragraph (4).

(2) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (1).

(3) Notwithstanding paragraph (1), a person may sell or offer for sale a product in this state that is labeled with a qualified claim for a term specified in paragraph (1), if the product meets the relevant standard adopted by the department pursuant to Section 42356.2.

(4) (A) A product shall not be labeled with the term “home compostable” unless the manufacturer of that product holds OK compost HOME certification with regard to that product, except as provided in subparagraph (B) or (C).

(B) Notwithstanding paragraph (1), if the ASTM adopts a standard specification for the term “home compostable” on or before January 1, 2016, and the department determines that the ASTM standard specification is at least equal to, or more stringent than, the OK compost HOME certification, a product labeled with the term “home compostable” shall meet that ASTM standard specification. The department may also take the actions specified in Section 42356.1 with regard to an ASTM standard for home compostability.

(C) If the department adopts a standard pursuant to Section 42356.2, a product labeled with the term “home compostable” shall meet the standard adopted by the department and not the standard specified in subparagraph (A) or (B).

(b) Except as provided in subdivision (a) or (f), a person shall not sell or offer for sale a product in this state that is labeled with the term “biodegradable,” “degradable,” or “decomposable,” or any form of those terms, or in any way imply that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(c) The director may issue guidelines, consistent with this chapter, for determining whether a product is not compliant with the labeling requirements of this section, and whether a product is designed, pigmented, or advertised in a manner that is misleading to consumers.

(d) A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

(e) A product that is in compliance with this chapter shall not, solely as a result of that compliance, be deemed to be in compliance with any other applicable marketing requirement or guideline established under state law or by the Federal Trade Commission.

(f) (1) The department may adopt the European Committee for Standardization’s standard specification EN 17033:2018 entitled “Plastics—Biodegradable mulch films for use in agriculture and horticulture—Requirements and test methods” or may adopt a standard that is equivalent to, or more stringent than, that standard, as it read on January 1, 2020.

(2) A person may sell or offer for sale commercial agricultural mulch film labeled with the term “soil biodegradable” only if the department has adopted the standard specification, or an equivalent or more stringent standard, pursuant to paragraph (1) and the commercial agricultural mulch film is certified to meet both that specification and the ASTM standard specification for compostability.

(3) For purposes of this subdivision, “commercial agricultural mulch film” means film plastic that is used only as a technical tool in commercial farming applications.

(g) (1) A person shall not sell or offer for sale a product in this state that is labeled with the term “compostable” or “home compostable” unless the product satisfies all of the following:

(A) If any standard specification is applicable to the product pursuant to this chapter and the department has approved a third-party certification entity to certify products according to that standard specification, the product shall have certification that it meets at least one such standard from an approved third-party certification entity for the standard. This requirement shall only apply on and after January 1, 2024, and it shall not apply unless there is, and has been for at least one year immediately prior to the product being sold or offered for sale, a third-party certification entity approved by the department to provide the applicable certification.

(B) On and after January 1, 2026, is an allowable agricultural organic input under the requirements of the United States Department of Agriculture National Organic Program. By January 1, 2024, the department, through a public stakeholder process, shall determine whether, for purposes of this section, it would be feasible to separate the collection of products in order to recover organic waste that is suitable for use in organic agricultural applications from the collection of products not suitable for use in organic agricultural applications. If the department determines that such bifurcation is feasible and would enable efficient processing by solid waste processing facilities, the department shall adopt regulations on or before January 1, 2026, to establish a bifurcated approach, and products that are not collected for the purpose of recovering organic waste that is suitable for use in organic agricultural applications shall comply with the department’s regulations and are not subject to the requirements of this subparagraph. The director may grant a five-year extension for complying with this requirement if either of the following apply:

(i) The product or substance has or will soon be, as determined by the director, included as allowed on the National List of Allowed and Prohibited Substances (Sections 205.600 to 205.607, inclusive, of Title 7 of the Code of Federal Regulations).

(ii) The product or substance has or will soon be, as determined by the director, included as an allowable organic input for compost under federal law.

(C) Does not have a total organic fluorine concentration of greater than 100 parts per million, unless the department adopts a different standard that it determines would more effectively limit the presence of perfluoroalkyl or polyfluoroalkyl substances.

(D) Is labeled in a manner that distinguishes the product from a noncompostable product upon reasonable inspection by consumers and to help enable efficient processing by solid waste processing facilities.

(E) Is designed to be associated with the recovery of desirable organic wastes, such as food scraps and yard trimmings, that are collected for composting, unless the product complies with the department's regulations pursuant to subparagraph (B), to the extent the department elects to adopt such regulations.

(2) The department may adopt regulations for determining whether products comply with the requirements of subparagraph (D) of paragraph (1). The department, in adopting regulations pursuant to this subdivision, may consider whether the regulations are consistent with the product labeling requirements of other states, stakeholder input, and industry-standard guidelines. The regulations may include requirements that products are not designed, pigmented, or advertised in a manner that is misleading to consumers.