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SB-1046 Solid waste: precheckout and carryout bags. (2021-2022)

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Senate Bill No. 1046

CHAPTER 991

An act to amend Section 42357 of, and to add Section 42281.2 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1046, Eggman. Solid waste: precheckout and carryout bags.

Existing law enacts provisions regulating the sale and distribution of reusable grocery bags to customers and prohibits a store, as defined, from providing a single-use carryout bag to a customer at the point of sale, except a compostable bag under specified conditions. Existing law defines a "single-use carryout bag" for this purpose to mean a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag, as defined, or a reusable grocery bag that meets specified requirements.

This bill would additionally prohibit, on and after January 1, 2025, a store, as defined, from providing a precheckout bag to a customer if the bag is not either a compostable bag, as described, or a recycled paper bag. The bill would define a "precheckout bag" for this purpose to mean a bag provided to a customer before the customer reaches the point of sale, that is designed to protect a purchased item from damaging or contaminating other purchased items in a checkout bag, or to contain an unwrapped food item.

Existing law prohibits, unless the product meets specified standards, a person from selling or offering 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 implies that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

This bill would define the term "implies" for that purpose to include using green, beige, or brown tinting or color schemes on a plastic precheckout or carryout bag that is not eligible to be labeled with the terms "compostable" or "home compostable."

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 42281.2 is added to the Public Resources Code, to read:

42281.2. (a) On and after January 1, 2025, a store, as defined in Section 42280, shall not provide a precheckout bag to a customer if the bag is not one of the following:

(1) A compostable bag that meets all of the following criteria:

(A) Complies with the standards described in Section 42357.5.

(B) Is eligible to be labeled with the terms “compostable” or “home compostable” pursuant to Section 42357.

(C) Has a minimum 15-inch mouth width.

(2) A recycled paper bag.

(b) For purposes of this section, a “precheckout bag” means a bag provided to a customer before the customer reaches the point of sale, that is designed to protect a purchased item from damaging or contaminating other purchased items in a checkout bag, or to contain an unwrapped food item, such as, but not limited to, loose produce, meat or fish, nuts, grains, candy, and bakery goods. “Precheckout bag” does not include a bag used to prepackage items prior to their arrival in a store.

SEC. 2. 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) (1) 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 implies that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(2) For purposes of this subdivision, “implies” includes, but is not limited to, using green, beige, or brown tinting or color schemes on a plastic precheckout or carryout bag that is not eligible to be labeled with the terms “compostable” or “home compostable” pursuant to this section.

(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.