



The Honorable Chair Isaac Bryan
 Assembly Natural Resources Committee
 1020 N Street, Room 164
 Sacramento, CA 95814

June 28, 2024

Re: OPPOSE SB 1231 (Allen) Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising (An act to amend Sections 42061 and 42355.51 of the Public Resources Code, relating to solid waste.)

Dear Assemblymember Bryan & Assembly Natural Resources Committee,

On February 15, 2024, Senator Ben Allen introduced a new lobbying loophole in SB 1231.¹

This act to amend Sections 42061 and 42355.51 of the Public Resources Code, relating to solid waste, is now up for a hearing by the Assembly Natural Resources Committee.

While we, the undersigned organizations and businesses, appreciate the time and effort Senator Allen and his staff have made to manage plastic packaging and pollution in the state, SB 1231, that is being called a “clean up” bill for SB 54 (Allen, 2022) Plastic Pollution Prevention and Packaging Producer Responsibility Act, will not help California achieve that goal.

¹ Senator Ben Allen “CA Leg Information” Bill Text-SB 1231 Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising, (2/15/24)
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB_1231

The act was meant to “fix” SB 54 by providing a new loophole that the plastics industry and other packaging industries can exploit to continue creating a massive amount of plastic waste. It also delays implementation of SB 343 (Allen, 2021) Accurate Recycling Labels, which is a serious mistake, given the urgency of this issue. It is no surprise that plastics lobbyist organizations, like the American Chemistry Council, are supporting SB 1231.² Out of the 21 quarters since 2019, the American Chemistry Council has reported lobbying expenditures on SB 54 in 20 quarters, as seen in the California Secretary of State’s Cal-Access website. In May, they sued the California State Attorney General to block the State’s subpoena in the plastic recycling fraud investigation.³

We urge the committee to oppose SB 1231 Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising (An act to amend Sections 42061 and 42355.51 of the Public Resources Code, relating to solid waste.)

A major weakness in SB 54 is the existing loopholes. The net result will be that all types of unrecyclable plastic packaging could be falsely counted as recyclable under SB 54. This bill makes the loopholes worse.

Let’s first take a look at a lesson learned. The unfortunate futility of California’s eight year old plastic bag law SB 270 (Padilla, 2016) to reduce the use of plastic bags and plastic waste has been deemed a failure due to the loophole⁴ of allowing thicker plastic bags to be sold (*even though the sale/distribution of thicker plastic bags, which are not recyclable, is in violation of SB 270*⁵). New plastic bag bans AB 2236 (Bauer-Kahan) and SB 1053 (Blakespear, Allen) have passed the House of Origin⁶ to close the plastic pollution loophole in SB 270. This is an important lesson: loopholes must be prohibited in plastic reduction legislation from the start. We do not want to wait eight years to watch the failure of SB 54 due to the introduction of more loopholes now.

SB 54 has been touted by lawmakers, some environmental organizations and members of the media as the nation’s “toughest” set of rules aimed at regulating plastic packaging and single-use plastic foodware to date. That description misses the mark—as the law does not go far enough or fast enough.⁷

SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Details:

1. A key part of the current SB 54 Law is found in PRC 42061⁸. It references SB 343 requirements for what can be claimed as “recyclable”—which are found in 42355.51⁹ It also allows CalRecycle to make exceptions under SB 54 for what is deemed recyclable under that EPR program, but that assessment must be instigated by CalRecycle and based on SB 343 (42355.51). Thankfully, exceptions made under SB 54 do not appear to apply to the Accurate Recycling Labels (42355.51).

² Support letter by industry groups <https://ct3.blob.core.windows.net/23blobs/aaf5ceda-3f37-46ac-831b-cec1abdfd127>

³ Clark Mindock, Groups fight California attorney general's document demands in plastics pollution probe, May 24, 2024, <https://www.reuters.com/legal/groups-fight-california-attorney-generals-document-demands-plastics-pollution-2024-05-24/>

⁴ Susanne Rust “California’s War on Plastic Bag Use Seems to Have Backfired” latimes.com, Los Angeles Times (2/12/24) <https://www.latimes.com/environment/story/2024-02-12/californias-war-on-plastic-bag-use-seems-to-have-backfired>

⁵ Plastic Pollution Coalition “Lawsuits Allege Plastic Bags are Non-Recyclable & Therefore Illegal in California” [plasticpollutioncoalition.org](https://www.plasticpollutioncoalition.org) (6/6/22)

<https://www.plasticpollutioncoalition.org/blog/2022/06/06/lawsuits-allege-plastic-bags-illegal-california>

⁶ Senator Catherine Blakespear “Legislation To Ban Plastic Bags Passes Senate” SB 1053 Press release (MAY 21, 2024) <https://sd38.senate.ca.gov/news/legislation-ban-plastic-bags-passes-senate>

⁷ Plastic Pollution Coalition “California’s New Plastic Reduction Rules Aren’t “Tough”—and Don’t Go Far Enough” [plasticpollutioncoalition.org](https://www.plasticpollutioncoalition.org/blog/2022/07/21/california-sb-54) (7/21/22) <https://www.plasticpollutioncoalition.org/blog/2022/07/21/california-sb-54>

⁸ 2023 US Law US Codes and Statutes California Code 2023 California Code Public Resources Code - PRC DIVISION 30 WASTE MANAGEMENT PART 3 - STATE PROGRAMS CHAPTER 3 - Plastic Pollution Prevention and Packaging Producer Responsibility Act ARTICLE 3 - Program Administration › Section 42061. <https://law.justia.com/codes/california/code-prc/division-30/part-3/chapter-3/article-3/section-42061/>

⁹ FindLaw.com - California Code, Public Resources Code - PRC § 42355.51 - last updated January 01, 2023 | <https://codes.findlaw.com/ca/public-resources-code/prc-sect-42355-51/>

2. During the CalRecycle SB 343 webinar on February 13, 2024, we heard many packaging producers ask questions about the need for exceptions to SB 54 for “trending” products. They want exceptions because the stakes are high on SB 54 because products that aren’t characterized as “recyclable” will have higher producer fees.
3. As was documented in the Fact Briefing report¹⁰ by The Last Beach Cleanup and the Basel Action Network, submitted to CalRecycle on February 12, 2024, no type of plastic waste can be claimed as recyclable under SB 343 (42355.51). (Other than CRV bottles).
 - a. That means that CalRecycle would have to do an exemption study for every material type and form of plastic. They are not likely to do that quickly, or at all.
4. The new big loophole is that companies are now authorized to petition CalRecycle for an exception to the SB 54 recyclable characterization and CalRecycle must respond in 60 days. **SB 1231 provides no guardrails or process for CalRecycle determining whether they grant the industry's petitions**

See SB 1231 text¹¹ below.

(3) (A) For the department’s first material characterization study conducted pursuant to paragraph (2), which the department shall complete on or before July 1, 2025, the department shall conduct disposal-based characterization studies to determine the approximate amount of covered material disposed of in California landfills.

~~(B) The department shall, on or before January 1, 2024, report to the Legislature in compliance with Section 9795 of the Government Code on the status of material types relative to the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51. When updating information pursuant to clause (ii) of subparagraph (B) of paragraph (1) of subdivision (d) of Section 42355.51, the department may~~ *A producer or group of producers may petition the department to identify materials material types and forms* that are trending toward meeting the requirements in subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51 and measurable increase of statewide collection and sorting rates through either statewide recycling programs or alternative programs, such as take-back systems, and for which the continued increase in the collection, sorting, and viable responsible end market development the department determines will be disrupted by a loss of a recyclable designation. ~~Those~~ *The department shall approve or deny a petition within 60 days of receipt of the petition. In reviewing a petition, the department may consider information provided in the petition as well as information received through the department’s characterization study. A denial shall be accompanied by a written statement detailing the reasons for the denial and additional information that may be helpful in approving future petitions. Identified* material types and forms shall be considered recyclable in the state and may be labeled as recyclable, notwithstanding subparagraphs (A) and (B) of paragraph (2) of subdivision (d) of Section 42355.51, so long as the material types and forms satisfy subparagraphs (A) to (D), inclusive, of paragraph (3) of subdivision (d) of Section 42355.51 and until the material types and forms are a part of, and in compliance with, a program described in paragraph (6) of subdivision (d) of Section 42355.51.

5. This is a dangerous loophole for many reasons. EVERY type of packaging producer could submit a petition, even on products that have no recyclable market such as multilayer plastic pouches and polystyrene.
 - a. There will be intense lobbying by producers on CalRecycle because millions of dollars are at stake. The packaging lobbying on a similar law in the EU created the most significant, vile lobbying in EU Commission history.¹²

¹⁰ The Last Beach Cleanup and Basel Action Network “Fact Briefing: California State’s Own Data Reveals Consumer Plastics are not Recyclable and are Being Exported Illegally” (February 12, 2024) <https://wiki.ban.org/images/9/9d/FactBriefingCaliforniaPlasticWaste.pdf>

¹¹ Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising Bill Text: CA SB 1231 https://legiscan.com/CA/text/SB_1231/id/2930742

¹² Leonie Cater, “Parliament probing lobbyists who fought sustainable packaging rules” Politico PRO, Politico (1/26/2024) <https://www.politico.eu/article/eu-parliament-qatargate-climate-lobbyists-sustainable-packaging-rules/>

- b. Millions of California taxpayer dollars will be wasted on responding to frivolous petitions. CalRecycle will be flooded with requests and will have to hire many additional staff to respond to the petitions. California is dealing with significant budget cuts.
 - c. CalRecycle - not the producers - should make the decision on which exceptions to consider.
 - d. A 60-day timeframe is too short. The producers will submit their own sometimes flawed data and CalRecycle won't have time to do a thorough investigation. They may have to approve bad requests for fear of being sued.
 - e. CalRecycle is already over-burdened and understaffed.
 - f. Producers could repeatedly submit petitions.
6. The existing loopholes that let CalRecycle give exceptions on SB 54 is already bad enough and should never have been allowed, but at least CalRecycle is legally required to use SB 343 as a basis and selectively investigate and give exceptions. And SB 1231 will open the floodgates.

SB 343 Accurate Recycling Labels Details:

SB 1231 also seeks to delay implementation of SB 343 from 18 months to 24 months. This just gives producers 6 more months to mislead the public. SB 343 was signed by the Governor on Oct 5, 2021¹³ with a label removal date of Fall 2024, so the producers will already have had 3 years to remove false labels. They don't need another 6 months. In fact, many companies are already removing the false labels.

As currently written, we do not believe that SB 1231 will achieve the laudable goals we share of reducing plastic pollution nor will it mitigate the climate and pollution impacts of single-use plastic packaging, as well as the environmental justice impacts

Adding loopholes that allow plastics to be incorrectly claimed as recyclable under SB 54 will give the false appearance of progress or success in achieving SB 54's mandated recycling rates. But in reality, nothing has changed and the loopholes will defeat real reduction in plastic waste and pollution.

We urge the committee to reject, with no consent, SB 1231 Plastic Pollution Prevention and Packaging Producer Responsibility Act: environmental advertising (An act to amend Sections 42061 and 42355.51 of the Public Resources Code, relating to solid waste.)

For the reasons outlined above, we respectfully remain opposed to SB 1231. Thank you for considering our views.

Sincerely,

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¹³ George Gigounas, Vanessa Adriance, Greg Sperla, Jesse Medlong, Sean Newland, Isabella Neal "New California law adds significant restrictions for recycling claims on products and packaging: action steps" DLA Piper, US dilapiper.com (1/6/2022)
<https://www.dlapiper.com/en-us/insights/publications/2022/1/new-california-law-adds-significant-restrictions-for-recycling-claims-on-products-and-packaging>

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