

AMENDED IN ASSEMBLY MARCH 23, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2026**

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**Introduced by Assembly Members Friedman and Ting**  
**(Principal coauthors: Assembly Members Bloom, Kalra, and Quirk)**  
(Principal coauthors: Senators Stern and Wiener)  
**(~~Coauthor:~~ (Coauthors: Assembly Member Members Bennett,**  
**Luz Rivas, and Stone)**

February 14, 2022

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An act to add Chapter 3.2 (commencing with Section 42100) to, and to add and repeal Chapter 5.1 (commencing with Section 42250) of, Part 3 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2026, as amended, Friedman. Recycling: plastic packaging and carryout bags.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste, including, among other solid waste, plastic packaging containers.

This bill would prohibit an online retailer that sells or offers for sale and ships purchased products in or into the state from using single-use plastic packaging that consists of shipping envelopes, cushioning, or void fill to package or transport the products, on and after January 1, 2024, for large online retailers, as defined, and on and after January 1, 2026, for small online retailers, as defined. The bill would prohibit 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 packaging to package or transport the products, except as provided.

The bill would make a violation of the foregoing requirements subject to civil penalties and would require penalties collected by the Attorney General to be deposited into the Plastic Packaging Reduction Penalty Account, which the bill would create, for expenditure by the Attorney General, upon appropriation by the Legislature, to enforce those requirements.

(2) Existing law prohibits stores, including convenience food stores, foodmarts, and other specified entities that have a specified amount of sales in dollars or retail floor space, from providing a single-use carryout bag to a customer and prohibits those stores from selling or distributing a recycled paper bag at the point of sale unless the store makes the bag available for purchase for not less than \$0.10.

This bill would establish the At-Store Recycling Program. The bill would require an operator of a store, as defined, to establish an at-store recycling program that provides customers the opportunity to return clean plastic carryout bags and clean reusable bags, as defined, to the store. The bill would require a plastic carryout bag or a reusable bag provided by a store to have specified information printed or displayed on the bag, and would require the placement of a collection bin in each store that is visible and easily accessible to the consumer. The bill would require a store to maintain records describing the collection, transport, and recycling of plastic bags pursuant to these provisions for 3 years and to make the records available to the department and the local jurisdiction, upon request. The bill would make a violation of these requirements subject to civil penalties and would require penalties collected by the Attorney General to be deposited into the At-Store Recycling Program Penalty Account, which the bill would create, for expenditure by the Attorney General, upon appropriation by the Legislature, to enforce those requirements. The bill would make these requirements, except for the records and civil penalty provisions, inoperative on January 1, 2031, and would repeal the provisions, including the records and civil penalty provisions, as of January 1, 2034.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Plastic packaging used for products sold by an online retailer,  
4 also known as e-commerce packaging, becomes plastic waste  
5 immediately after a package is opened. Almost all plastic waste  
6 is landfilled, is burned, or enters and pollutes the environment,  
7 including waterways and oceans, where plastic can harm marine  
8 life.

9 (2) Once discarded, plastic breaks up into smaller and smaller  
10 pieces that can starve or choke wildlife when ingested and acts as  
11 conduits for harmful pollutants that make their way into the food  
12 chain.

13 (3) More than 900 marine life species have ingested or become  
14 entangled in plastic and plastic has been detected in melting Arctic  
15 sea ice and found sitting at the deepest point of the ocean floor.

16 (4) Plastic is harming human health through every single stage  
17 of its life cycle, from extraction and production to consumer use.  
18 It is making its way into our food, water, and air.

19 (5) Local governments in California spend more than  
20 \$420,000,000 annually in efforts to clean up and prevent plastic  
21 and other litter from entering oceans and waterways. Ultimately,  
22 these costs are borne by ratepayers.

23 (6) Plastic is a major contributor to climate change. Life cycle  
24 assessments that favor plastic often do not fully consider the  
25 material's full environmental impact, particularly on the oceans.

26 (7) Plastic is a significant source of global greenhouse gas  
27 emissions that contribute to climate change, sea level rise, and  
28 ocean acidification. The environmental and public health impacts  
29 of plastic pollution are devastating, and the environmental  
30 externalities and public costs of cleaning up and mitigating plastic  
31 pollution are already staggering and continue to grow.

32 (8) Most plastics are petrochemicals made from hydrocarbons  
33 derived from fossil fuels and the production of these materials  
34 furthers the reliance on nonrenewable resources. Litter of these  
35 plastics constitutes a form of oil pollution spilling into the oceans  
36 and contaminating the environment.

37 (9) Globally, the e-commerce industry used nearly  
38 2,900,000,000 pounds of plastic packaging in 2020, according to

1 analysts, and that number is estimated to more than double by  
2 2026.

3 (10) The highest growth by volume is expected for flexible  
4 plastic and plastic mailer markets over the medium term.

5 (11) More than a quarter of the world’s population is now buying  
6 online.

7 (12) According to industry analysts, in 2020, e-commerce  
8 businesses in the United States generated 601,300,000 pounds of  
9 plastic packaging waste.

10 (13) Plastic packaging, including, but not limited to, mailers,  
11 bubble wrap, and inflatable pillows, which is often referred to as  
12 plastic film, and expanded or extruded polystyrene packaging have  
13 little to no value on the recycling market. Most often, plastic film  
14 and expanded or extruded polystyrene packaging is landfilled, is  
15 burned, or pollutes the environment, including the oceans.  
16 Additionally, most municipal recycling programs in the United  
17 States do not accept plastic film or expanded or extruded  
18 polystyrene packaging.

19 (14) Expanded or extruded polystyrene, including loose fill  
20 packaging and molded foam, is rarely recycled. Once in the  
21 environment, it breaks up into small pieces that are nearly  
22 impossible to remove.

23 (15) Recycling alone is not enough to solve the plastic crisis.  
24 In the United States, less than 9 percent of all plastic waste created  
25 has been recycled.

26 (b) It is the intent of the Legislature in enacting this act to reduce  
27 the harmful environmental and economic impacts of plastic  
28 pollution caused by unnecessary single-use plastic film packaging  
29 and expanded or extruded polystyrene packaging used in  
30 e-commerce by phasing out shipping envelopes, void fill, and  
31 cushioning that contain single-use plastic.

32 SEC. 2. Chapter 3.2 (commencing with Section 42100) is added  
33 to Part 3 of Division 30 of the Public Resources Code, to read:

34

35 CHAPTER 3.2. PLASTIC PACKAGING

36

37 Article 1. Definitions

38

39 42100. For purposes of this chapter, the following definitions  
40 apply:

1 (a) “Cushioning” means material used to protect goods by  
2 absorbing shocks and vibrations during shipping. Plastic cushioning  
3 includes, but is not limited to, plastic bubble wrap and inflatable  
4 plastic pillows.

5 (b) “Expanded polystyrene packaging” means any packing  
6 material made of polystyrene that has been expanded or blown  
7 using a blowing agent into a solid foam, including, but not limited  
8 to, loose fill, often referred to as packing peanuts, and molded  
9 foam.

10 (c) “Extruded polystyrene packaging” means any packing  
11 material made of polystyrene that when manufactured is forced  
12 through a die, a process known as extrusion, then allowed to cool  
13 and expand into the desired shape to form a foam product.

14 (d) “Large online retailer” means an online retailer that has both  
15 of the following:

16 (1) Annual gross sales equal to or more than one million dollars  
17 (\$1,000,000) in or into the state.

18 (2) Equal to or more than 2,500 shipping units sold and  
19 transported in or into the state annually.

20 (e) (1) “Online retailer” means a business that sells goods over  
21 the internet and transports goods by mail or parcel delivery. An  
22 online retailer includes business-to-business and  
23 business-to-consumer sales of products.

24 (2) An online retailer does not include an online marketplace  
25 that satisfies all of the following:

26 (A) Is an online or mobile application providing user services  
27 and facilitating sales solely from third-party sellers to third-party  
28 buyers.

29 (B) Does not own any of the inventory for sale on the online  
30 marketplace.

31 (C) Does not ship or control the distribution, packaging, or  
32 transport of any products on the online marketplace.

33 (D) Facilitates and permits direct, unhindered communication  
34 between the third-party buyer and the third-party seller.

35 (E) Conspicuously displays the third-party seller’s location.

36 (F) Does not determine the price for the product offered on the  
37 online marketplace.

38 (G) Is not a large online retailer.

39 (3) An online retailer does not include a public or privately  
40 operated motor carrier, as defined in Section 13102 of Title 49 of

1 the United States Code, that only transports a parcel that has been  
2 placed into packaging prior to the motor carrier's taking possession  
3 of the parcel and is not opened until after the motor carrier has  
4 delivered the parcel.

5 (f) "Packaging" includes, but is not limited to, all of the  
6 following:

7 (1) Primary packaging that most closely protects the product or  
8 sales unit and is the last piece of packaging the consumer opens.

9 (2) Secondary packaging that is the outermost layer or layers  
10 of packaging around a sales unit or sales units shipped to  
11 consumers that may contain a single product or be used to group  
12 products during transit.

13 (3) Tertiary packaging or dunnage such as cushioning and void  
14 fill used to facilitate the protection, handling, and transportation  
15 of a sales unit or sales units to consumers.

16 (g) "Plastic film" means thin flexible sheets of plastic, sold in  
17 thicknesses of up to 10 ~~millimeters~~, *mils*, of which the majority  
18 produced are made of polyethylene resins. Plastic film is used to  
19 produce, and includes, shipping envelopes, cushioning, and void  
20 fill.

21 (h) "Reusable packaging" means packaging that is all of the  
22 following:

23 (1) Designed for reuse in the same or similar application, or for  
24 another purposeful packaging use in a supply chain.

25 (2) Highly durable to function properly in its original condition  
26 for multiple trips and its lifetime is measured in years.

27 (3) Repeatedly recovered, inspected, and repaired, if necessary,  
28 and reissued into the supply chain for reuse.

29 (4) Prevented, at the end of its life, from becoming solid waste  
30 with a process in place for recovery and recycling at the final  
31 destination of the packaging.

32 (i) "Shipping envelope" means packaging used for the  
33 containment, protection, handling, or delivery of smaller goods  
34 by a manufacturer or retailer for the user or consumer. A plastic  
35 shipping envelope includes, but is not limited to, plastic mailers,  
36 envelope mailers, lightweight plastic mailers, padded plastic  
37 mailers, poly mailers, poly bubble mailers, plastic shipping mailers,  
38 and paper mailers with plastic lining.

39 (j) "Single-use packaging" means packaging that satisfies any  
40 of the following:

- 1 (1) Is intended for a single use.
- 2 (2) Is regularly discarded, recycled, or otherwise disposed of
- 3 after a single use.
- 4 (3) Is not reusable packaging.
- 5 (k) “Small online retailer” means an online retailer that has
- 6 either of the following:
- 7 (1) Annual gross sales of less than one million dollars
- 8 (\$1,000,000) in or into the state.
- 9 (2) Less than 2,500 shipping units sold and transported in or
- 10 into the state annually.
- 11 (l) “Void fill” means a filler material used to close up the free
- 12 space in a shipping container and prevent excessive movement.
- 13 Plastic void fill includes, but is not limited to, sealed air and
- 14 expanded or extruded polystyrene packaging.

15  
16 Article 2. Plastic Packaging

- 17
- 18 42101. (a) (1) An online retailer that sells or offers for sale
- 19 and ships purchased products in or into the state shall not use
- 20 single-use plastic packaging that consists of shipping envelopes,
- 21 cushioning, or void fill to package or transport the products.
- 22 (2) A large online retailer shall comply with this subdivision
- 23 on and after January 1, 2024.
- 24 (3) A small online retailer shall comply with this subdivision
- 25 on and after January 1, 2026.
- 26 (b) (1) Except as provided in paragraphs (2) and (3), a
- 27 manufacturer, retailer, producer, or other distributor that sells or
- 28 offers for sale and ships purchased products in or into the state
- 29 shall not use expanded or extruded polystyrene packaging to
- 30 package or transport the products.
- 31 (2) A manufacturer, retailer, producer, or other distributor that
- 32 sells or offers for sale and ships purchased products in or into the
- 33 state may use expanded or extruded polystyrene packaging to
- 34 package or transport televisions, printers, computer screens, and
- 35 large appliances until January 1, 2025.
- 36 (3) A manufacturer, retailer, producer, or other distributor that
- 37 sells or offers for sale and ships purchased products in or into the
- 38 state may use expanded or extruded polystyrene packaging to
- 39 package or transport any of the following items:
- 40 (A) Prescription drugs that require cold storage.

1 (B) Fragile medical devices.

2 (C) Drugs that are used for animal medicines that require cold  
3 storage, including, but not limited to, parasiticide products for  
4 animals.

5 (D) Medical food, as defined pursuant to Section 360ee(b)(3)  
6 of Title 21 of the United States Code, that requires cold storage.

7 (E) Fortified oral nutritional supplements used for persons who  
8 require supplemental or sole source nutrition to meet nutritional  
9 needs due to special dietary needs directly related to cancer, chronic  
10 kidney disease, diabetes, or other medical conditions as determined  
11 by the department that require cold storage.

12 (c) This chapter does not apply to any of the following:

13 (1) Packaging that is used as primary packaging for raw,  
14 uncooked, or butchered meat, fish, poultry, or seafood sold for the  
15 purpose of cooking or preparing.

16 (2) Packaging that is necessary to prevent the contamination or  
17 extends the shelf life of fresh produce.

18 (3) Packaging for which the application of this chapter would  
19 conflict with regulations issued by the United States Food and  
20 Drug Administration or the United States Department of Food and  
21 Agriculture or pursuant to the federal FDA Food Safety  
22 Modernization Act (21 U.S.C. Sec. 2201 et seq.).

23

24 Article 3. Enforcement

25

26 42105. This chapter does not prohibit the adoption,  
27 implementation, or enforcement of a local ordinance, resolution,  
28 regulation, or rule governing curbside or dropoff recycling  
29 programs operated by, or pursuant to a contract with, a city, county,  
30 or other public agency, including any action relating to fees for  
31 these programs.

32 42106. (a) An action to enforce this chapter may be brought  
33 by the Attorney General upon a complaint from the department,  
34 or brought by a county counsel, or city attorney from a city or city  
35 and county with a full-time city prosecutor, upon a complaint by  
36 a local agency, resident located within the jurisdiction, the  
37 department, or the Statewide Commission on Recycling Markets  
38 and Curbside Recycling.

39 (b) An entity authorized to bring an action pursuant to  
40 subdivision (a) may impose civil liability on a person or entity that



1 knowingly violated this chapter, in the amount of one thousand  
2 dollars (\$1,000) per day for the first violation of this chapter, two  
3 thousand dollars (\$2,000) per day for the second violation, and  
4 five thousand dollars (\$5,000) per day for the third and subsequent  
5 violations of this chapter, if the entity is a small online retailer.

6 (c) An entity authorized to bring an action pursuant to  
7 subdivision (a) may impose civil liability in the amount not to  
8 exceed fifty thousand dollars (\$50,000) per day for a violation of  
9 this chapter, if the entity is a large online retailer.

10 (d) Any civil penalties collected pursuant to this section shall  
11 be paid to the office of the Attorney General, county counsel, or  
12 city attorney, whichever office brought the action. The penalties  
13 collected pursuant to this section by the Attorney General shall be  
14 deposited into the Plastic Packaging Reduction Penalty Account,  
15 which is hereby created in the State Treasury. Moneys in the  
16 account may be expended by the Attorney General, upon  
17 appropriation by the Legislature, to enforce this chapter.

18 (e) In addition to any civil penalties collected in accordance  
19 with this section, the Attorney General, county counsel, or city  
20 attorney may seek all costs and attorney's fees incurred by the  
21 prosecuting entity as well as the costs incurred by the department  
22 or a local agency in investigating the matter.

23 42107. The provisions of this chapter are severable. If any  
24 provision of this chapter or its application is held invalid, that  
25 invalidity shall not affect other provisions or applications that can  
26 be given effect without the invalid provision or application.

27 SEC. 3. Chapter 5.1 (commencing with Section 42250) is added  
28 to Part 3 of Division 30 of the Public Resources Code, to read:

29

30

CHAPTER 5.1. AT-STORE RECYCLING PROGRAM

31

32 42250. For purposes of this chapter, the following definitions  
33 apply:

34 (a) "Manufacturer" means the producer of a plastic carryout  
35 bag sold to a store.

36 (b) "Operator" means a person in control of, or having daily  
37 responsibility for, the daily operation of a store, which may include,  
38 but is not limited to, the owner of the store.

1 (c) “Plastic carryout bag” means a plastic carryout bag provided  
 2 by a store to a customer at the point of sale, including, but not  
 3 limited to, plastic reusable bags.

4 (d) “Reusable bag” is a bag that meets the criteria described in  
 5 subdivision (a) of Section 42281.

6 (e) “Store” means a retail establishment that provides plastic  
 7 carryout bags to its customers as a result of the sale of a product  
 8 and that meets either of the following requirements:

9 (1) Meet the definition of a “supermarket” in Section 14526.5.

10 (2) Has over 10,000 square feet of retail space that generates  
 11 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales  
 12 and Use Tax Law (Part 1.5 (commencing with Section 7200) of  
 13 Division 2 of the Revenue and Taxation Code) and has a pharmacy  
 14 licensed pursuant to Chapter 9 (commencing with Section 4000)  
 15 of Division 2 of the Business and Professions Code.

16 42251. (a) The operator of a store shall establish an at-store  
 17 recycling program pursuant to this chapter that provides an  
 18 opportunity for a customer to return to the store clean plastic  
 19 carryout bags and clean reusable bags.

20 (b) A retail establishment that does not meet the definition of a  
 21 store and that provides plastic carryout bags to customers at the  
 22 point of sale may also adopt an at-store recycling program, as  
 23 specified in this chapter.

24 42252. An at-store recycling program provided by the operator  
 25 of a store shall include all of the following:

26 (a) A plastic carryout bag or reusable bag provided by the store  
 27 shall have printed or displayed on the bag, in a manner visible to  
 28 a consumer, the words “PLEASE RETURN TO A  
 29 PARTICIPATING STORE FOR RECYCLING.”

30 (b) A collection bin for plastic carryout bags and reusable bags  
 31 shall be placed at each store and shall be visible, easily accessible  
 32 to the consumer, and clearly marked that the collection bin is  
 33 available for the purpose of collecting and recycling plastic carryout  
 34 bags and reusable bags.

35 (c) All plastic bags collected by the store shall be collected,  
 36 transported, and recycled in a manner that does not conflict with  
 37 the local jurisdiction’s source reduction and recycling element,  
 38 pursuant to Chapter 2 (commencing with Section 41000) and  
 39 Chapter 3 (commencing with Section 41300) of Part 2.

1 (d) The store shall maintain records describing the collection,  
2 transport, and recycling of plastic bags collected for a minimum  
3 of three years and shall make the records available to the  
4 department and the local jurisdiction, upon request, to demonstrate  
5 compliance with this chapter.

6 42253. (a) This chapter does not prohibit the adoption,  
7 implementation, or enforcement of any local ordinance, resolution,  
8 regulation, or rule governing curbside or dropoff recycling  
9 programs operated by, or pursuant to a contract with, a city, county,  
10 or other public agency, including any action relating to fees for  
11 these programs.

12 (b) This chapter does not affect any contract, franchise, permit,  
13 license, or other arrangement regarding the collection or recycling  
14 of solid waste or household hazardous waste.

15 42254. (a) A city, a county, or the Attorney General may  
16 impose civil liability in the amount of five hundred dollars (\$500)  
17 for the first violation of this chapter, one thousand dollars (\$1,000)  
18 for the second violation of this chapter, and two thousand dollars  
19 (\$2,000) for the third and any subsequent violation of this chapter.

20 (b) Any civil penalties collected pursuant to subdivision (a)  
21 shall be paid to the office of the city attorney, city prosecutor,  
22 district attorney, or Attorney General, whichever office brought  
23 the action. The penalties collected pursuant to this section by the  
24 Attorney General shall be deposited into the At-Store Recycling  
25 Program Penalty Account, which is hereby created in the State  
26 Treasury. Moneys in the account may be expended by the Attorney  
27 General, upon appropriation by the Legislature, to enforce this  
28 chapter.

29 42255. (a) This chapter, except for subdivision (d) of Section  
30 42252 and for Section 42254, shall become inoperative on January  
31 1, 2031.

32 (b) This chapter shall remain in effect only until January 1,  
33 2034, and as of that date is repealed.