

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 303 (Allen)  
Version: March 22, 2023  
Hearing Date: April 25, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Solid waste: Plastic Pollution Prevention and Packaging Producer Responsibility Act

**DIGEST**

This bill makes changes to the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act) including authorizing nonbinding arbitration if requested by an affected entity that asserts specific actions taken by the Producer Responsibility Organization (PRO), a producer, or entity under contract with the PRO are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements, as specified.

**EXECUTIVE SUMMARY**

Last year the Legislature enacted the Act (SB 54 (Allen, Ch. 75 Stats. 2022)) to establish an extended producer responsibility (EPR) program approach to meet ambitious targets to decrease single-use serviceware and packaging by way of source reduction and postconsumer recycled content. The Act was enacted in response to a ballot initiative that qualified for November 8, 2022, General Election that, among other things, placed requirements on producers to ensure that single-use plastic packaging and foodware is recyclable, reusable, refillable, or compostable by 2030. The initiative was withdrawn after the passage of the Act. This bill seeks to make some changes to the Act, including establishing a nonbinding arbitration procedure for an affected entity to assert that certain actions taken by the PRO, a producer, or entity under contract with the PRO are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities.

The bill is author sponsored. The bill is supported by A Voice for Choice Advocacy. There is no known opposition. The bill passed the Senate Environmental Quality Committee on a vote of 7 to 0.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act), which is to be administered by the Department of Resources Recycling and Recovery (Department), imposing minimum recycled content requirements and source reduction requirements for single-use packaging and plastic food serviceware that are to be achieved through an EPR program. (Pub. Res. Code § 42040 et. seq.)<sup>1</sup>
  - a) Prohibits a producer from selling, offering for sale, importing, or distributing covered materials in the state unless the producer is approved to participate in the producer responsibility plan of a producer responsibility organization (PRO), as prescribed, for the source reduction, collection, processing, and recycling of covered material, except as provided.
  - b) Requires a PRO plan to contain certain provisions, including, but not limited to:
    - i. How the plan is supplemental to, and not in conflict with, disruptive of, or adversely affecting, the performance of the solid waste network providing services in accordance with local solid waste handling requirements and the intent described in Section 40004,<sup>2</sup> and how the PRO will leverage and utilize existing collection programs and recycling, composting, sorting, and processing infrastructure. (§ 420051.1 (c)(3).)
    - ii. In accordance with Section 40059,<sup>3</sup> how the plan and the activities undertaken pursuant to the plan will be implemented in compliance with state and local laws, rules, and regulations applicable to solid waste handling and in a manner that does not violate existing franchise agreements. (*Id.* at (c)(4).)
    - iii. Prohibits the budget from proposing investing in activities in violation of Section 40004 or an agreement entered into pursuant to Section 40059, and requires it to include a mechanism to disburse funds for identified activities. (*Id.* at (i)(2).)

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<sup>1</sup> All further references are to the Public Resources Code unless specified otherwise.

<sup>2</sup> Section 40004 states it is the intent of the Legislature “to encourage the development of the additional solid waste processing and composting capacity that is needed to meet state objectives for decreasing solid waste disposal by identifying incentives for local governments to locate and approve new or expanded facilities that meet and exceed their capacity needs, and to recognize local agencies that make significant contributions to the state’s overall solid waste reduction and recycling objectives through the siting of facilities for the processing and composting of materials diverted from the solid waste stream.”

<sup>3</sup> Section 40059 provides that each county, city, district, or other local governmental agency may determine aspects of solid waste handling which are of local concern and whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, as specified.

- 2) Governs arbitrations in California, pursuant to the California Arbitration Act (CAA), including the enforcement of arbitration agreements, rules for neutral arbitrators, the conduct of arbitration proceedings, and the enforcement of arbitration awards. (Code Civ. Proc. §§ 1280 et. seq.)

This bill:

- 1) Makes various changes to the Act, including authorizing the Department to adopt regulations to establish standards for the PRO regarding responsible end markets for covered material and to establish criteria that prioritizes benefits to the environment and minimizes risks to public health and worker health and safety.
- 2) Provides that if an affected entity asserts that specific actions taken by the PRO, a producer, or an entity under contract with the PRO are not consistent with the provisions described in 1)b) of the existing law section above and those actions are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements the affected entity may initiate nonbinding arbitration after the advisory board offers its recommendation to resolve the issue.
  - a) Provides that this action is taken without prejudice to seeking judicial relief.
  - b) The arbitrator is to determine whether specific actions taken to meet the requirements of the Act are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements.
  - c) The arbiter is required to consider the information presented to the advisory board and any other information provided to the arbiter by the parties.
- 3) Provides that if the arbiter determines that specific actions are disruptive or otherwise have an adverse effect, the arbiter may order actions, to the extent feasible, to remedy the disruption or adverse effect, including, but not limited to, requiring a change to the producer responsibility plan causing the disruption or adverse effect.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

In June 2022, the Legislature and Governor approved SB 54 (Allen), the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which placed California at the forefront of tackling the environmental, health, and monetary

costs associated with plastics. SB 303 improves the new law to ensure implementation aligns with legislative intent. Ambiguity in the definitions of “recycling” and “responsible end markets,” as well as ambiguity in the dispute resolution process, require crucial clarifications to ensure the program is properly implemented. SB 303 makes three minor revisions including: a minor edit to the definition of “recycling” to clarify the PRO and producers are responsible for ensuring material meets CalRecycle criteria not local governments or waste haulers; clarification of the definition of “responsible end markets” to better articulate that the end market is where the material is actually reclaimed and reconstituted into new material, not the entire collection and recycling process (which starts with consumers placing the material into a recycling bin and continues with it being sorted at recovery facilities); more detail around the dispute resolution function to make clear that the advisory board, and not CalRecycle, will recommend solutions to any dispute that may arise between the PRO and local governments.

## 2. Plastic Pollution Prevention and Packaging Producer Responsibility Act

Last year the Legislature enacted the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act) (SB 54 (Allen, Ch. 75 Stats. 2022).). The Act uses an EPR program approach to reach ambitious targets to decrease single-use serviceware and packaging by way of source reduction and postconsumer recycled content. As the Senate Environmental Quality Committee analysis explains, an EPR program is a program that relies on “industry, formalized in a product stewardship organization (PRO), to develop and implement approaches to create a circular economy that make business sense, with oversight and enforcement provided by the government. EPR programs require producers to factor in costs associated with disposal. In doing so, EPR programs incentivize industry to design products with waste minimization in mind.”<sup>4</sup> Six statewide EPR programs currently exist in California for paint, carpets, mattresses, pharmaceutical and sharps waste, batteries, and packaging and single-use plastic serviceware items.

## 3. Non-binding arbitration

This bill authorizes nonbinding arbitration to be initiated by an affected entity that asserts specific actions taken by the PRO, a producer, or an entity under contract with the PRO are not consistent with the specified provisions of Act and those actions are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements. Those specified provision of the Act are described in Existing Law 1)b) above. Essentially they are actions that adversely affect the performance of a solid waste

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<sup>4</sup> Sen. Environmental Quality Comm. analysis SB 303 (2023-24 reg. sess.) as amended Mar. 22, 2023 at p. 3.

network providing services in accordance with local solid waste handling requirements, including adversely affecting an existing franchise agreement. The bill specifies that the nonbinding arbitration does not prejudice either party and must be consistent with the procedures under the CAA. The bill provides that, if the arbiter determines those specific actions are disruptive or otherwise have an adverse effect, then the arbiter can order actions, to the extent feasible, to remedy the disruption or adverse effect. These include requiring a change to the producer responsibility plan causing the disruption or adverse effect.

It is unclear under the bill what effect the nonbinding arbitration would have if one party chooses to initiate nonbinding arbitration but the other party does not want to participate. Is the initiating party's only recourse to then pursue their action in court or with the Department? Additionally, since the arbitration is nonbinding, it is unclear what force the arbiter's determination would have on the parties. Do the parties have a certain amount of days to accept the arbiter's determination? If they do accept the arbiter's determination, does it then become binding on the parties? The author may wish to address these issues to ensure that it is clear how the nonbinding arbitration provisions of the bill are intended to function.

#### 4. Proposed amendments

The author may wish to amend the bill to address the issues raised regarding nonbinding arbitration. The specific amendments are as follows:

##### Amendment 1

On page 17, in line 11, strike out "federal" and insert:

Federal

##### Amendment 2

On page 20, in line 34, strike out "arbitration," and insert:

arbitration by a neutral arbitrator with the consent of all parties,

##### Amendment 3

On page 20, in line 38, strike out "to meet the requirements of this chapter are", strike out lines 39 and 40, on page 21, strike out lines 1 and 2, in line 3, strike out "requirements." and insert:

by the PRO, a producer, or an entity under contract with the PRO are not consistent with paragraph (3) or (4) of subdivision (c) of, or paragraph (2) of subdivision (i) of, Section 42051.1 and are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste

recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements.

Amendment 4

On page 21, in line 7, strike out “are disruptive or otherwise have an adverse effect,” and insert:

taken by the PRO, a producer, or an entity under contract with the PRO are not consistent with paragraph (3) or (4) of subdivision (c) of, or paragraph (2) of subdivision (i) of, Section 42051.1 and are disrupting or otherwise adversely affecting the sustained operation or commercial viability of solid waste collection programs, solid waste recycling facilities, or composting facilities providing services in accordance with local solid waste handling requirements,

Amendment 5

On page 21, in line 11, after the period insert:

The arbitrator’s decision in a nonbinding arbitration is final unless within 30 days after the arbitrator delivers the decision to the advisory board a party requests that the department conduct a de novo adjudicative proceeding.

Amendment 6

On page 21, in line 11, strike out “The” and insert:

(4) The

5. Statements in support

A Voice for Choice Advocacy rites in support stating:

We support this measure to authorize the Department of Resources Recycling and Recovery to adopt regulations to identify responsible end markets, and to establish criteria regarding benefits to the environment while minimizing risks to public health and worker health and safety.

**SUPPORT**

A Voice for Choice Advocacy

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: AB 1526 (Assembly Committee on Natural Resources, 2023), among other things, makes changes to the Act to require a producer responsibility plan to include arrangements with processors or recyclers to ensure that covered materials are collected and recycled at a viable responsible end market if not collected otherwise, and places a surcharge on a producer not in a PRO, as provided. AB 1526 is currently pending in the Assembly Natural Resources Committee.

Prior Legislation:

SB 54 (Allen Ch. 75, Stats. 2022) establishes the Plastic Pollution Prevention and Packaging Producer Responsibility Act, which imposes minimum content and source reduction requirements for plastic single-use packaging and food service ware through an EPR program.

AB 1080 (Gonzalez, 2019) would have enacted the California Circular Economy and Pollution Reduction Act, which would impose a comprehensive regulatory scheme on producers, retailers, and wholesalers of single-use packaging, overseen by CalRecycle. This bill died at the desk before coming up for Assembly concurrence vote.

**PRIOR VOTES:**

Senate Environmental Quality Committee (7 Ayes, 0 Noes)

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