

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

SB 707 (Newman)
Version: April 11, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Responsible Textile Recovery Act of 2023

DIGEST

This bill requires producers of textiles to establish an extended producer responsibility (EPR) or stewardship program for the collection, transportation, recycling, and the safe and proper management of apparel, textiles, or textile articles in California.

EXECUTIVE SUMMARY

Textiles and textile articles make up a growing percentage of California's solid waste, contribute to global warming, and cause environmental degradation to soil and water. This bill is intended to address these issues by establishing an EPR program for apparel, textiles, and textile articles. The bill is sponsored by the California Products Stewardship Council and supported by numerous environmental and other organizations. The bill opposed by the California Manufacturers & Technology Association. This bill passed the Senate Environmental Quality Committee on a vote of 5 to 2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) The California Integrated Waste Management Act (IWMA) of 1989, administered by the Department of Resources Recycling and Recovery (CalRecycle), generally regulates the disposal, management, and recycling of solid waste. The act establishes extended producer responsibility (EPR) programs for various products, including, among others, carpet, mattresses, and pharmaceutical and sharps waste. (Pub. Res. Code § 40000 et. seq.)
 - a) Establishes under IWMA a state recycling goal that 75% of solid waste generated is to be diverted from landfill disposal through source reduction, recycling, and composting by 2020. (Pub. Res. Code § 41780.01)

- 2) Requires CalRecycle to establish a three-year pilot project located in the Los Angeles and Ventura Counties partnering with garment manufacturers to study and report on the feasibility of recycling fabric. (Pub. Res. Code § 40512)
- 3) Establishes, upon appropriation from the Legislature, a Zero-eWaste equity grant program that can be used for repair and extending the life of products including textiles. (Pub. Res. Code § 42999.5).

This bill:

- 1) Establishes the Responsible Textile Recovery Act (Act) of 2023, which creates an EPR program for a covered product, which includes any apparel, textiles, or textile articles.
- 2) Defines “covered product” to include any apparel, textile (e.g. cloth), or textile article (e.g. bed sheets, curtains, etc.) exempting carpets and mattresses that are already in other EPR programs.
- 3) Requires CalRecycle to set regulations to implement this chapter by December 31, 2025, and authorizes CalRecycle to adjust regulations pertaining to collection sites and minimum recycling efficiency rate for covered products collected and recycled by program operators beginning January 1, 2032.
- 4) Requires CalRecycle to establish an advisory body no later than 90 days after the effective date of adopted regulations.
- 5) Establishes a producer responsibility organization (PRO) that would submit to CalRecycle a stewardship plan within 12 months of regulations being developed. CalRecycle must review the plan and approve, disprove, or conditionally approve the plan.
- 6) Requires the stewardship program to submit an annual report to the department, under penalty of perjury, and requires the department to post online a list of producers that are in compliance with the program requirements.
- 7) Prohibits a retailer, importer, or distributor from selling, distributing, or importing covered products into the state unless the producer is on the list of producers in compliance with program requirements.
- 8) Authorizes the department to impose an administrative civil penalty on a producer, PRO, or importer manufacturer, distributor, or retailer that does not meet the requirements of the Act. The administrative civil penalty cannot exceed \$10,000 per day, but if the violation is intentional, knowing, or reckless the penalty cannot exceed \$50,000 per day.

COMMENTS

1. Stated need for the bill

The author writes:

The fashion industry is considered a top industrial polluter, accounting for approximately 10% of global carbon emissions. As textiles decompose, they emit high levels of methane gas, a major contributor to global warming. The phenomenon of “fast fashion,” which revolves around the marketing and sale of low-cost, low-quality garments that go out of vogue with increasing speed, is a major contributor to this alarming environmental trend.

A well-designed and effectively administered statewide textile extended producer responsibility (EPR) program has the potential to develop previously untapped or underutilized upcycled and recycled clothing and fiber markets, as well as to support ongoing efforts to encourage the repair and reuse of clothing and other textiles in California. In so doing, SB 707 will facilitate a transition to a sustainable, market-aligned, circular economy for textiles that will unlock new production and consumption opportunities to the benefit of the environment, all at a relatively low cost to both the State and consumers alike.

2. This bill establishes the Responsible Textile Recovery Act of 2023

This bill intends to address the growing problem of textile waste by establishing and EPR program for any apparel, textile (e.g. cloth), or textile article (e.g. bed sheets, curtains, etc.). Carpets and mattresses that are already covered under other EPR programs in the state are exempt from the Act’s provisions.

a. Extended producer responsibility (EPR) programs

The Senate Environmental Quality Committee’s analysis of this bill provides useful background on product stewardship programs or extended producer responsibility (EPR), which is at the heart of this bill:

[EPR] is a strategy that places shared responsibility for end-of-life product management on the producers and all entities involved in the product chain, instead of on the general public and local governments. EPR programs rely on industry, formalized in a product stewardship organization, to develop and implement approaches to create a circular economy that makes business sense, with oversight and enforcement provided by the government. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that

bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals.¹

California currently has five statewide EPR programs for paint, carpet, mattresses, pharmaceutical and sharps waste, and plastic packaging, and single-use plastic items.²

b. Growing problem of textile waste and its effects on the environment

The Senate Environmental Quality Committee’s analysis explored the growing problem of textile waste and its effects on the environment. The analysis notes:

- Textiles, including apparel, textile (cloth), and textile articles (such as linens, curtains, etc.) were the sixth most prevalent material type disposed of by single-family residences in 2018;
- In 2018, Californians disposed of nearly 1.2 million metric tons of textiles accounting for about 3% of California’s total waste stream;
- Dealing with textile waste is expensive costing California taxpayers more than \$70 million dollars in disposal costs in 2021 to dispose of approximately 1.2 million tons of textiles.
- Textile and garment industries account for between 6 to 8% of total global carbon emissions, which is 1.7 billion tons in carbon emissions per year; and
- CalRecycle found that 95% of California’s textile waste is reusable or recyclable but the current recovery rate for textiles in the United States is approximately 15%, while the remaining 85% are sent to landfills or incineration.³

c. The Dormant Commerce Clause

Section 8 of Article I of the United States Constitution grants the United States Congress the power to regulate interstate commerce.⁴ The converse proposition – that states may not usurp Congress’s express power to regulate interstate commerce – is known as the “Dormant Commerce Clause.”⁵ The Dormant Commerce Clause serves as an absolute bar to regulations that discriminate against interstate commerce, i.e., by favoring in-state businesses or excluding out-of-state businesses.⁶ But “[s]tate laws that ‘regulat[e] even-handedly [across all in-state and out-of-state businesses] to effectuate a legitimate local public interest...will be upheld unless the burden imposed upon such commerce is clearly excessive in relation to the putative local benefits.’ ”⁷ This bill’s provisions apply

¹ Sen. Environmental Quality Comm. analysis of SB 707 (2023-24 reg. sess.) as amended Mar. 20, 2023 at p. 4.

² *Ibid.*

³ *Id.* at p. 2-3.

⁴ U.S. Const., art. I, § 8, cl. 3.

⁵ See *Gibbons v. Ogden* (1824) 22 U.S. 1.

⁶ E.g., *Dean Milk Co. v. Madison* (1951) 340 U.S. 349, 354.

⁷ *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.

equally to producers who manufacture a covered product (any apparel, textile, or textile article) and who owns or is the licensee of the brand or trademark under which that covered product is sold, offered for sale, or distributed for sale in or into the state. As such, the bill does not favor in-state businesses over out-of-state businesses.

A statute may also violate the dormant Commerce Clause, even if it "regulates even handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental" and the burden imposed on commerce "is clearly excessive in relation to the putative local benefits." (*Pike v. Bruce Church, Inc.* (1970) 397 U.S. 137, 142.) As this bill's provisions are intended to address the serious environmental impacts posed by covered products, this bill would likely not be found to excessively burden interstate commerce in violation of the Dormant Commerce Clause.

d. Access to records

The bill also provides that while an approved stewardship plan is a public record, financial or sales data reported to CalRecycle by the program operator is not a public record for purposes of the California Public Records Act and is not open to public inspection. It authorizes CalRecycle to release this data in summary form only, so it cannot be attributable to a specific entity. As this imposes a limitation on the public's right of access to this information, the bill provides the following justification: "It is in the best interest of the public to provide limited protection of certain financial, production, and sales data of program participants, in order to protect the interests of businesses and the privacy of their data regarding their customers."

The bill also prohibits CalRecycle from disclosing any confidential proprietary information contained in audits. Producers and stewardship organizations are required to make their annual reports publicly available free of charge, but if the report contains trade secrets or confidential information protected under existing law, they need only provide a description of the information and its relevance to the stewardship program omitting any of the trade secret or confidential information.

e. Antitrust immunity

As with most of the EPR schemes provided for in California law, this bill includes express exemptions from various laws regulating anticompetitive behavior and unfair competition and practices. The bill provides that certain activities engaged in by producers and stewardship organizations, including the creation, implementation, management, cost assessments, and structuring of a stewardship plan and the establishment, administration, collection, or disbursement of a charge associated with funding the implementation of this bill are categorically exempt from being considered violations of the Cartwright Act (California's primary antitrust law), the Unfair Practices Act, or the Unfair Competition Law.

Concerns have been raised about the monopolistic possibilities inherent in stewardship programs, and strong government oversight is critical to ensure this regulatory scheme is operated in an evenhanded manner and results in the ambitious goals it sets out to accomplish. These laws are extremely important to ensuring consumers are protected and free and fair competition is fostered. Mitigating these concerns to an extent, the bill specifically provides that the exemptions do not apply to an agreement that does the following:

- fixes a price of or for covered products, except for an agreement related to costs or charges associated with participation in a stewardship plan approved or conditionally approved by the department and otherwise in accordance with the Act;
- fixes the output or production of covered products; or
- restricts the geographic area in which, or customers to whom, covered products will be sold.

This language is also similar to that found in other EPR programs.

3. Statements in support

The California Product Stewardship Council, sponsor of the bill, writes in support:

Textiles have been identified as a top material, and fastest growing category, in residential and commercial waste streams in California. Local governments face costly challenges expanding textile collection and sorting since the materials can absorb, tangle, and combust if mixed into plastic recycling systems. The cost burden for managing unusable textiles has fallen on thrifts, collectors, and secondhand markets, while producers keep making products with no plan for what to do with them when they are no longer wearable. Local governments have attempted to include textiles in curbside programs, but costs and logistics are burdensome. San Francisco's program resulted in high-contamination rates and consumer confusion. Castro Valley experienced high rates of unusable textiles collected curbside.

SB 707 (Newman) would require producers of textiles and textile articles to design and fund an extended producer responsibility program to collect, repair, and recycle these items. The program would use California's network of thrift and secondhand businesses to collect unwanted textiles for sorting and recycling, with textiles that can be reused or repaired being sorted for those purposes. The bill would have strong oversight by state regulators and a robust education and outreach requirement to ensure that consumers know how to access the program.

California continues to lead by holding producers accountable for planning and funding an ongoing repair and recycling program for managing unusable textiles and apparel. California has the opportunity to make a global impact by establishing a first-of-its kind EPR program for textiles that builds on the precedent set in the

state by other EPR programs. Currently, France is the only one to have a textile EPR program in the entire world, however it needs improvements on internalizing waste costs, global accountability, and transparency. It's up to California, a top global waste generator, to take impactful actions to address textile waste and sets the stage for as a center for sustainable fashion.

4. Statements in opposition

The California Manufacturers & Technology Association is opposed unless amended writing:

As currently structured, SB 707 is largely unworkable and overly burdensome. It establishes a costly extended producer responsibility (EPR) program for manufacturers and consumers of covered products. We are significantly concerned that SB 707 is poorly defined in terms of the scope of products subject to the EPR, extends potential liability and safety concerns for manufactured products, and ultimately establishes what can only be considered "mini waste disposal sites" across cities and counties in California.

They highlight as areas of concerns where they would like to see changes being:

- The scope of covered products, stating the bill includes items beyond clothing and accessories.
- An exclusion for children's apparel and textile products with potentially detachable components or falling under the Federal Small Parts Ban (16 CFR § 1501.3) and products with restrictions on Lead (16 CFR part 1303) and/or Phthalates (16 CFR part 1307).
- Challenges in establishing collection sites under the bill's current provisions.
- Increased workload for CalRecycle.

SUPPORT

California Product Stewardship Council (sponsor)

5 Gyres Institute

Accelerating Circularity, Inc.

Ambercycle

Aquafil Carpet Recycling

California Environmental Voters

California Resource Recovery Association

Californians Against Waste

CALPIRG, California Public Interest Research Group

Castro Valley Sanitary District

CBU Productions

Changing Markets Foundation

Circ, Inc.
Cirtex
City of Roseville
City of San Jose
City of Sunnyvale
City of Thousand Oaks
Center for Oceanic Awareness, Research, and Education (COARE)
County of Santa Clara
Environmental Working Group
Fashion Revolution USA
Fibershed
Fort Ord Environmental Justice Network
Friends Committee on Legislation of California
Heal the Bay
Mara Hoffman Inc.
Marmot
Materevolve
National Stewardship Action Council
Northern California Recycling Association
Ouros Industries
Plastic Oceans International
Plastic Pollution Coalition
Product Stewardship Institute
R3 Consulting Group, Inc.
Ravel
Recology
Reformation
Renewcell AB
Repeat Reuse, Inc.
Republic Services Inc.
Resource Recovery Coalition of California
ReThink Waste (South Bayside Waste Management Authority)
Roboro
Salinas Valley Solid Waste Authority
Santa Barbara County Resource Recovery & Waste Management Authority
Santa Clara County Recycling and Waste Reduction Commission
Seventh Generation Advisors
ScullySpark
Sea Hugger
Sierra Club CA
Sortile
St. Catherine University
Stand Up to Trash
Sustainable Works

The Fashion Connection

Upcycle It Now

US Again

Western Placer Waste Management Authority (WPWMA)

Wishtoyo Chumash Foundation

Zero Waste Company

Zero Waste San Diego

Zero Waste Sonoma

OPPOSITION

California Manufacturers & Technology Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 1187 (Kamlager, Ch. 616, Stats. 2022) requires CalRecycle to establish a three-year pilot project located in the Los Angeles and Ventura Counties partnering with garment manufacturers to study and report on the feasibility of recycling fabric.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 5, Noes 2)
