
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2023 - 2024 Regular

Bill No: SB 728

Author: Limón

Version: 4/12/2023

Hearing Date: 4/26/2023

Urgency: No

Fiscal: No

Consultant: Brynn Cook

SUBJECT: Plastic gift cards: prohibition

DIGEST: Bans the manufacture and sale of plastic gift cards beginning January 1, 2026.

ANALYSIS:

Existing law:

- 1) Establishes the Integrated Waste Management Act of 1989 (IWMA), administered by the Department of Resources Recycling and Recovery (CalRecycle). The IWMA establishes a state recycling goal that 75% of solid waste should be diverted from landfill disposal through source reduction, recycling, and composting by 2020. (Public Resources Code (PRC) §§ 40000 et. seq.)
- 2) Establishes a statewide “bag ban” on stores that prohibits from providing a plastic single-use carryout bag to a customer at the point of sale unless it is a reusable, compostable bag sold at not less than \$0.10. (PRC §42283-42284)
- 3) Establishes a “plastic straw ban” that prohibits restaurants from providing single-use plastic straws to consumers unless requested by the consumer. (PRC § 42270)

This bill:

- 1) Bans the manufacture and sale of plastic gift cards beginning Jan 1, 2026.

Background

- 1) *California’s waste goals.* Under the IWMA, CalRecycle is tasked with reducing the amount of waste that gets landfilled in California. The IWMA establishes a goal that 75% of solid waste generated in the state be diverted from landfills through source reduction, recycling, and composting by 2020.

However, according to CalRecycle’s 2021 State of Disposal and Recycling, the State’s 2021 recycling rate was just 40%, down from a peak of 50% in 2014. The single largest contributor to the drop comes from recyclables that were exported out of the state, though that may change given new global policies like China’s National SWORD and the Basel Convention, which restrict the amount of foreign waste these countries will accept.

- 2) *The problem with plastic (and paths forward)*. Plastics pose a threat to the environment from origin to end-of-life. Plastics are petroleum-based and have a large carbon footprint. Plastic production is responsible for three and a half percent of all greenhouse gas emissions—more than the entire aviation sector. In 2021, global plastics production was estimated at 390.7 million metric tons, a four percent increase from the previous year. The United Nations Environment Programme reports that only nine percent of all plastic ever made has been recycled. A further 12% has been incinerated, and the remaining 79% has accumulated in landfills or natural environments.

Once plastics enter the environment, they remain there for hundreds to thousands of years. Plastics do not break down into their constituent parts, but instead break down into very small particles of plastic, or microplastics (plastics under five millimeters). Because they are so small, microplastics can travel in the air, and water, and can be easily absorbed by living things and accumulate up the food chain. Microplastics have been found in the most pristine natural environments on earth, including in the deep ocean, Antarctic sea ice, and human placentas. Laboratory studies have found that microplastics increase the risk of cancer and disrupt hormone pathways in lab rats.

To reduce plastic consumption and ultimately plastic waste, the Legislature passed the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54, Allen, Chapter 75, Statutes of 2022) which sets ambitious targets to reduce plastics in packaging and single-use serviceware, including requiring all of those items to be recyclable or compostable and meet a recycling rate of 65% by 2023. This landmark legislation is one of the most sweeping measures the state has enacted to address plastic waste,

- 3) *Significance of gift cards in the waste stream*. Products can cause problems in the waste stream when they exist in such high volumes that they strain waste infrastructure, or contaminate the waste stream.
 - a) *Amount of gift cards as plastic waste*. In 2021, nearly 3.5 billion gift cards were sold in the United States. Gift cards typically weigh 1-2 ounces, meaning in 2021, approximately 89 tons of gift card waste were generated.

Since California makes up roughly 10% of the population of the United States, this would translate to 8.9 tons of gift card waste in California per year – a drop in the waste bucket. CalRecycle estimates that in 2018 alone, 4.5 million tons of plastic entered landfills in California.

- b) *Gift cards as waste contaminants.* California does not consider gift cards, 70% of which are made from polyvinyl chloride (PVC) plastic, to be hazardous or toxic waste. However, in the early 2000s, PVC made headlines for its harm to human and environmental health. In a 2003 article, Greenpeace wrote “PVC is the single most environmentally damaging of all plastics.” New Jersey’s Department of Human Services wrote in 2008 that “PVC contains dangerous chemical additives...which can be toxic to your child's health.” In 2014, the Center for Biological Diversity (CBD) petitioned the U.S. Environmental Protection Agency (EPA) to classify discarded PVC as hazardous waste. After no movement, CBD ultimately sued EPA in 2021 in *Center for Biological Diversity v. U.S. Environmental Protection Agency, et al.* In 2022, CBD and EPA reached a settlement on this case.

Despite the longstanding concern that PVC is dangerous, only a handful of studies support this conclusion. Most notably, a study by the EPA found that PVC pipes can leach vinyl chloride, a human carcinogen, into drinking water. Additional studies found that when PVC is burned, it releases dangerous chemicals, including dioxin and pyrene (chemicals that are released from many plastics when they are burned) phosgene, and hydrogen chloride that becomes hydrochloric acid in human lungs. High concentrations of these chemicals can harm human lungs and livers, and can cause vomiting and unconsciousness. While properly maintained landfills safely retain these harmful chemicals, unexpected fires or leaks into groundwater could unleash PVC’s toxicity. However, there is no evidence that PVC would have an outsized impact compared to all other plastics in the case of a landfill catastrophe.

- 4) *Non-plastic alternatives to gift cards.* There are several alternatives to plastic gift cards already on the market, including electronic, paper, bioplastic, and even gift cards made from wooden chips. Retailers, including Amazon, Target, and iTunes, also allow customers to purchase gift codes that can be used online or through a mobile app.

Comments

- 1) *Purpose of Bill.* According to the author, “More than 3.4 billion gift cards were sold in the United States in 2021. The majority of these gift cards are made

from PVC, which is not typically accepted for recycling. These cards often end up in the waste stream after only a single use, which is why some companies have made the switch away from plastic gift cards opting for paper, cardboard, sustainable wood, and bamboo options. SB 728 will transition from the use of plastic gift cards and ensure that businesses continue this towards more sustainable products.”

- 2) *A small step forward.* While plastic gift cards make up just a small portion of the total plastic waste going to landfills and do not seem to be an outsized contaminant in the waste stream, they are low-hanging fruit. Given that alternatives to plastic gift cards are already on the market, banning plastic cards could be a small step towards helping the state meet its waste reduction goals.
- 3) *Where are the teeth?* SB 728 does not have an enforcement mechanism. Other bills that ban single items have used fines, enforced by local entities or the Attorney General (AG), to make businesses follow the law. For example, the plastic straw ban fines stores up to \$300 a day if they give out plastic straws that were not requested by customers. The fines are enforced by local environmental health regulatory agencies. The plastic bag ban, which prohibits stores from providing customers with single-use carryout plastic bags at checkout, does not specify a fine amount, relying instead on local jurisdictions or the state to set and impose those fines.

To ensure SB 728 can be implemented, the committee may wish to direct the author to develop a clear enforcement mechanism for the bill.

- 4) *SB 54, the bill to end all bans.* In 2022, the Legislature passed the Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). This bill marked a significant shift in California's legislative approach to plastic-reduction policy. Rather than targeting just one waste item per bill, SB 54 encompassed a broad swath of items, including all packaging and single-use serviceware. By targeting a number of products based on their use, SB 54 avoids the “whack-a-mole” pitfall that bans can face when new products, with equivalent impacts on the waste stream, emerge to take the space of banned items.

Because there are already non-plastic alternatives to gift cards on the market, SB 728 may be justified in its single focus. However, the committee may wish to direct the author to consider if there are related items, either by use (like transit passes or event badges) or material type (PVC), that should be included in a plastic gift card ban to increase the impact and efficacy of this measure.

- 5) *What is a gift card?* SB 728 currently does not define ‘gift card’. Without that definition, it is unclear whether “open” gift cards (which can be spent at many different shops like VISA or Master gift cards) are included in the bill.

To clarify the scope of the bill, the committee and author may wish to include a definition of “gift card” using the definition of “gift certificate” in current law which excludes open gift cards.

- 6) *Committee amendments. Staff recommends the committee adopt the bolded amendment contained in comment 5 above.*

Related/Prior Legislation

AB 1347 (Ting, 2023) would ban BPA/BPS coated receipts, and require businesses to only print paper receipts upon request. The bill passed out of the Assembly Natural Resources Committee and is set for hearing in the Assembly Privacy and Consumer Protection Committee.

AB 954 (Brownley, 2008) would have banned businesses from selling any polyvinyl chloride packaging container beginning January 1, 2009. The bill was held by the author in its first committee.

SOURCE: Author

SUPPORT:

None

OPPOSITION:

California Chamber of Commerce
California Fuels and Convenience Alliance
California Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
Incomm Payments
Plastics Industry Association

ARGUMENTS IN SUPPORT:

ARGUMENTS IN OPPOSITION: InComm payments, a global payments technology company that manufactures and distributes gift cards writes in opposition saying: “[SB 728] does not include any definition of “gift card.” If the intention is to exclude gift cards that apply to multiple sellers of goods, a cross reference should be included to Civil Code section 1749.45. If this is not the intention, a definition of gift card should be included. Is a rebate card a gift card? Is a stimulus payment a gift card? Without a definition, it is unclear what is covered by this language.”

“Another reason some cards need to be plastic is for the physical rigidity. When consumers go to a gas station, grocery store or any other location that requires a card to be inserted, the point-of-sale device requires contact on both sides to read the magnetic stripes. This creates a tight physical contact with the card. A non-plastic card would not hold up to the force required to insert the card and have it read. Non-plastic cards would easily be destroyed, and the value of the card lost.”

The California Retailers and coalition members write in opposition saying: “...many [retailers] use plastic gift cards because consumers like them and they are less likely to be damaged or rendered unusable. Under California law, gift cards cannot expire. If a customer loses a gift card without utilizing the total dollar amount of the card, they may be unable to receive the full value.”

“Lastly, while digital gift cards may seem like a viable alternative, this is simply not a feasible option for many. There are a substantial number of Californians, especially disadvantaged communities, that do not have access or are not comfortable with the use of digital platforms.”

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