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VETO

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Bill No: SB 728  
Author: Limón (D)  
Amended: 9/7/23  
Vote: 27

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SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-2, 4/26/23  
AYES: Allen, Gonzalez, Hurtado, Menjivar, Skinner  
NOES: Dahle, Jones

SENATE FLOOR: 31-9, 5/22/23  
AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener  
NOES: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk

SENATE FLOOR: 30-9, 9/13/23  
AYES: Allen, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Min, Newman, Padilla, Portantino, Roth, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener  
NOES: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk  
NO VOTE RECORDED: Caballero

ASSEMBLY FLOOR: 53-18, 9/12/23 - See last page for vote

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**SUBJECT:** Plastic gift cards: prohibition

**SOURCE:** Author

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**DIGEST:** This bill prohibits plastic gift cards from being sold, offered for sale, or distributed in the state on and after January 1, 2027, except that retailers are

authorized to sell their existing stock until January 1, 2028. These provisions are enforced through a civil penalty up to \$100 per day.

### **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 a retail from selling, distributing, or offering for sale, plastic gift cards beginning Jan 1, 2027.
- 2) Allows a retailer to continue to sell, offer for sale, or distribute an existing stock of gift cards through January 1, 2028.
- 3) Authorizes the Attorney General, a district attorney, a county counsel, or a city attorney to enforce the bill and sets civil penalties of \$25 for the first day a violation occurs and \$100 per day for any subsequent violations.
- 4) Defines "gift card" to exclude any gift card usable with multiple sellers of goods or services, provided the expiration date is printed on the card.

### **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 Program 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 one to two 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.

*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) *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, there may be related items, either by use or material type, that should be included in a plastic gift card ban to increase the impact and efficacy of this measure.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, the Department of Justice anticipates minor and absorbable costs as a result of this bill.

**SUPPORT:** (Verified 10/12/23)

Californians Against Waste

**OPPOSITION:** (Verified 10/12/23)

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:** Californians Against Waste writes in support of this bill:

The billions of gift cards sold each year are almost entirely made from hard plastic. The vast majority of these plastic gift cards, around 70 percent, are made from polyvinyl chloride plastic (PVC), considered by Greenpeace to be the “single most environmentally damaging of all plastics.” PVC produces CO<sub>2</sub> upon its creation and contains certain chemicals deemed hazardous by the United States Environmental Protection Agency that can pose environmental issues and concerns when discarded improperly.

Plastic gift cards are also difficult to recycle. They can be melted down and shaped into new gift cards but there are serious concerns with chemical releases in this process. Also, many local recycling centers do not accept PVC gift cards due to their small and thin size interacting poorly with recycling machinery so cards intended for recycling may end up in a landfill as waste.

SB 728 focuses the plastic removal effort on a long ignored and overlooked supply of harmful plastic waste and an industry that already has safe and sustainable alternatives to plastic. By prohibiting the sale of plastic gift cards, this bill may also reduce the overall plastic waste disposed in landfills, both in the United States and the plastic PVC waste exported abroad.

**ARGUMENTS IN OPPOSITION:** According to the Plastics Industry Association:

While some retailers, grocers, and restaurants have moved to alternative products for gift cards, many continue to use plastic gift cards because they are a popular choice among consumers for their durability. Further, they are less likely to be damaged or rendered unusable. In addition, while digital gift cards seem like a viable alternative, this is simply not a feasible option for many. There are a substantial number of Californians, especially disadvantaged communities, who do not have access to or are not comfortable with the use of digital platforms.

**GOVERNOR'S VETO MESSAGE:**

This bill prohibits the sale or distribution of plastic gift cards in the state after January 2027, and enforces the ban through civil penalties of up to \$100 per day.

While I support the author's goal to reduce our reliance on single-use plastic materials, I am concerned that an outright ban without any incentives for compliance will disproportionately impact the state's small business community, as digital gift cards may not be a feasible option for many businesses or consumers.

California has successfully implemented many programs to reduce our reliance on single-use plastic while incentivizing businesses to transition towards more sustainable products and materials. I encourage the Legislature to consider alternatives to a statutory, single-product ban to help meet the state's plastic waste reduction goals.

ASSEMBLY FLOOR: 53-18, 9/12/23

AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Grayson, Haney, Hart, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Rendon, Reyes, Luz Rivas, Blanca Rubio, Santiago, Schiavo, Ting, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas

NOES: Alanis, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta, Waldron, Wallis

NO VOTE RECORDED: Bains, Jackson, Stephanie Nguyen, Pacheco, Ramos, Rodriguez, Soria, Valencia, Villapudua

Prepared by: Brynn Cook / E.Q. / (916) 651-4108  
10/25/23 15:29:59

\*\*\*\* END \*\*\*\*