

Single-Use Packaging Legislation

Global Push from Linear to Circular Systems

Packaging serves several functions in modern economies beyond merely distinguishing one brand from its competitors. Packaging also protects products from damage, extends product shelf lives, provides more efficient means to move goods through the economy and allows companies to communicate directly with and provide important product information to customers. While packaging provides critical functions in the market economy, when otherwise recyclable or compostable packaging is not properly disposed of, it becomes waste or pollution that could harm the natural environment.

Almost all economies around the world use a traditional linear economy, sometimes referred to as a “take, make, waste” model, where raw materials are extracted, used to create products and packaging, and eventually disposed of when no longer needed. In recent years, however, the linear model is being viewed increasingly by various nongovernmental organizations (NGOs), some governments and the general public as unsustainable and disfavored. Instead, circular approaches that aim to keep materials in use for as long as possible and avoid increased landfill waste are desired.

TRANSITION OF ECONOMIES

Governments around the world are beginning to force a transition of economies away from the “take, make, waste” approach. This transition will require significant upfront investments in educating consumers, research and development of new packaging/products, new infrastructure to collect and new technologies to process packing/products in order to change fundamentally how modern societies around the globe

operate. If the transition is done carelessly and disjointedly, a circular economy has the potential to significantly disrupt global supply chains, cause excess waste from food spoilage and product breakage, increase prices and make life more inconvenient for consumers. Conversely, not transitioning toward a more sustainable economy and continuing with a “take, make, waste” model could lead ultimately to resource depletions, more environmental pollution and ecological harm (including the prevalence of microplastics), additional government regulation and new liabilities for companies.

In a circular economy, resources are used, recovered, and re-used rather than discarded after use. The goal of a circular economy is to eliminate as much unnecessary waste and to promote the sustainable use of resources by keeping them in the economy for as long as possible, and then recycling the used packaging and products back into new ones rather than landfilling. In concept, a circular economy reduces the amount of raw resources extracted, improves energy efficiency, reduces landfill and incentivizes recycling. However, a paradigm shift in how modern society currently produces and distributes goods consumers rely upon has significant risks of raising costs to manufacture and deliver goods, disrupting global supply chains, or instigating regrettable substitutes that have their own negative externalities, like additional food waste or loss of sterility. Public policy driving the transition must appropriately balance the exigency of addressing environmental and public health goals with real world realities such as whether the technologies exist that can create circularity for that package or product, whether the consumers will accept it, major changes to how they consume and the likelihood of increased costs.

A phased transition to a circular economy that gives business sufficient time to adapt may have the potential to create new business opportunities in the future. However, there are too many variables, products, companies and known unknowns to predict accurately what the future holds for all sectors. In concept, a circular economy should reduce the need for new raw material by extending the life of existing packaging and products and reusing discarded material. This could help to lower the costs not only of production but also distribution, as

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products are designed for multiple uses or otherwise sold with options to refill. If new policies push disposal costs upstream to producers, circularity would be a cost-saving measure. Additionally, consumer sentiment for more sustainable goods could create additional market competitiveness for innovative companies and early adopters of circularity. Notably, how consumers respond to these changes will be very important for businesses. Surveys asking consumers whether they would give up single-use packaging and products for bulk bins and refill stations show mixed results as consumers weigh highly convenience and price.

CIRCULAR ECONOMY: NEW OPPORTUNITIES, NEW TECHNOLOGIES

The transition to a circular economy will inevitably stimulate innovation and create new markets for recycled packaging. New technologies, such as advanced recycling systems, should play an integral role in achieving circularity as production, distribution and recycling transition away from a linear systems approach. This is especially true for plastic packaging where mechanical systems cannot always recycle mixed plastics or plastics contaminated from use or disposal.

Advanced recycling would assist dramatically in the creation of circular economies for plastic packaging and products by breaking down plastic waste into its chemical building blocks that then can be used to make virgin-grade plastic packaging and products, such as food-grade packaging, medical supplies and homebuilding products. This type of recycling is promising because it can capture and recycle mixed plastic materials where mechanical recycling traditionally has been unable to or is prohibitively expensive. Advanced recycling reduces the demand for virgin resources where extraction and processing of raw materials often can have the highest financial and environmental impacts.

If the goal of transitioning to a circular economy is to reuse products and packaging over and over again, advanced recycling is the most promising technology to achieve it. Some environmental NGOs, however, oppose the technology on the basis that it could obscure how much material is actually being recycled, is too expensive or has other negative externalities. These alleged issues can be addressed easily through legislation and regulations that force industry to bear all costs, require technologies not produce hazardous wastes, and establish guard rails to ensure inputs and outputs are tracked accurately. With any new technology, there always will be naysayers — but to achieve circularity, innovative 21st century technologies

that transition global supply chains and revamp waste disposal systems will be essential.

CALIFORNIA LEADS ON CIRCULAR ECONOMY

SB 54 (Allen; D-Santa Monica), titled the California Circular Economy and Plastic Pollution Reduction Act, was first introduced in December 2018 and quickly amended to focus on achieving unprecedented recycling rates for single-use plastic packaging and single-use plastic service ware. The bill was amended further to broaden the scope of what is regulated from single-use plastic packaging to all single-use packaging of any material type, rendering the bill material-neutral. For a number of reasons, the California Chamber of Commerce, numerous agricultural organizations, some waste haulers and virtually all of the business community opposed the bill.

After numerous defeats year after year in the California Legislature, Bay Area waste hauler Recology and environmental groups filed a proposed ballot initiative in December 2019 for a single-use plastic tax and ban of certain plastic food packaging. The proponents qualified the initiative for the ballot in July 2021, all but ensuring California voters would see it on the November 2022 ballot — unless a legislative solution emerged before then that could convince the proponents to pull their measure from the ballot.

The plastic tax ballot initiative required that all producers of single-use plastic packaging, individually, be taxed up to \$0.01 per plastic package or certain plastic products. The tax, which ultimately would be borne by the consumer through higher prices, would apply to just about every conceivable consumer good, including food products. A prominent business organization conducted a study that estimated the cost of the ballot initiative to be approximately \$9 billion annually, or approximately \$900 per family of four per year, with \$3 billion of the money permanently diverted to special interest groups. (See report at <https://centerforjobs.org/cal/special-reports/regulation-and-recycling-report>, noting “Direct Annual Costs of \$8.9 Billion. ... direct costs to California businesses and households are estimated at \$8.9 billion annually consisting of: (1) \$4.3 billion in higher taxes; (2) \$4.1 billion in higher other direct costs to expand required recycling collection and sorting, comply with the extensive data and reporting requirements, and maintain general fund expenditures at specified state agencies; and (3) \$0.5 billion based on expected costs to replace non-complying materials on a lowest-cost alternative basis.”)

Additionally, the initiative included a source reduction mandate of 25% by weight and 25% by number of items

for all single-use plastic packaging regardless of technological feasibility. Further, the initiative picked winners and losers by banning certain packaging regardless of source reduction or recycling targets, setting a dangerous precedent and eliminating packaging used by tens of thousands of businesses. Finally, the initiative delegated broad authority to CalRecycle to effectively act as a packaging czar to ban or create additional requirements at the sole discretion of the agency. These issues, and the reality that should the ballot initiative pass there would be no plausible way to amend inevitable issues that arise, motivated a coalition of business interests to seek a compromise with the ballot proponents and other environmental NGOs.

After seven months of negotiations with virtually all stakeholders, the California Legislature passed SB 54 and the ballot proponents pulled their initiative from the 2022 ballot. SB 54 became California's model for creating a circular economy in the Golden State. Notably, it allowed businesses to create producer responsibility organizations to develop statewide plans to achieve legislative mandates.

Under this "extended producer responsibility" program, the law created a more flexible source reduction mandate, mandated over 10 years that all packaging be recyclable or

compostable, incentivized recycling by creating a phased approach to reaching 65% recycling rates by 2032, allowed industry to work together to figure out compliance, provided limited CalRecycle oversight, contained no bans, and created a plastic clean-up fund of \$500 million annually versus the \$3 billion in the ballot.

Most stakeholders and the California Legislature ultimately agreed that the compromise, while not perfect, tried to balance the exigency of addressing environmental and public health concerns without destroying local and state economies and the tens of thousands of jobs directly and indirectly affected by this policy.

CALCHAMBER POSITION

The CalChamber supports cost effective recycling programs that the regulated community can comply with, that are scalable and that yield environmental benefits. In making statewide policy decisions regarding the management of California's waste, the Legislature must balance a plethora of policy impacts on businesses, supply chains, and the cost of living for California consumers against the perceived environmental benefits. The CalChamber supports maintaining strong legislative oversight to ensure that any proposed regulations are balanced properly against other state goals and policies.



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