



## **MODEL COMPOSTABLE PLASTICS LABELING BILL\***

revision 3-9-18

### **Legislative Findings:**

1. Environmental marketing claims made through labeling on plastic products whether explicit or implied, should be substantiated by competent and reliable evidence so that consumers are not deceived or misled about the environmental impact of the products.
2. Use of the term "degradable," "biodegradable," "decomposable," or other like terms on plastic products is inherently misleading unless the claim includes a thorough disclaimer providing necessary qualifying details, including, but not limited to, the environments and timeframes in which the claimed action will take place.
3. Compostable plastic products should be readily and easily identifiable in order to facilitate efficient operation of composting systems.
4. Claims of compostability or degradability must conform to the Federal Trade Commission's "Green Guide", 16 CFR Part 260
5. Commercial, on-farm or on-site composting facilities may or may not choose to accept compostable plastics products, regardless of whether the products meet the ASTM standards for compostability. That decision could relate to economics, logistics, permit restrictions, or other factors.
6. By adopting this legislation, the state's Attorney General will be authorized to pursue false or misleading environmental claims and "greenwashing"
7. The legislation relies, wherever possible, on standards set by ASTM International, an international standards organization that develops and publishes voluntary consensus technical standards. Where ASTM standards do not yet exist, as in the case of residential composting, the private standards company, Vincotte, are used. This legislation will be updated as ASTM standards evolve and new ones adopted.

### **Summary:**

1. Prohibits manufacturers and suppliers from using environmental marketing claims on labels that are unsubstantiated on plastic products, including food or beverage packaging and film products.
2. Provides that manufacturers and suppliers may not sell or offer for sale plastic products,

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\* This Model Bill is the product of the Compostable Products Task Force (CPTF) and approved by the US Composting Council (USCC). The CPTF is co-chaired by the USCC and the Biodegradable Products Institute, and includes composters, resin producers, product manufacturers and distributors, regulators and other stakeholders. It will be updated periodically as warranted. For information on the CPTF send an email to [uscc@compostingcouncil.org](mailto:uscc@compostingcouncil.org).

including food or beverage packaging and film products, labeled with certain designations unless the plastic products meet certain specifications.

3. Provides that manufacturers and suppliers of compostable plastic bags may not sell or offer for sale compostable plastic bags unless the bags are readily and easily identifiable through color and labeling.

### Section 1. Definitions:

- A. "ASTM" means the American Society for Testing and Materials, an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems and services.
- B. (1) "ASTM Standard Specification" means one of the following:
  1. ASTM D6400 – Standard Specification Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities;
  2. ASTM D6868 – Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities;(2) "ASTM Standard Specification" does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.
- C. "Compostable" means capable of undergoing aerobic biological decomposition in a compost system, such that the material becomes visually indistinguishable and breaks down into carbon dioxide, water, inorganic compounds, and biomass. Use of this term on a label or in a product description requires conforming to Section 3 of this Bill, "Allowed labels".
- D. "Federal Trade Commission (FTC)" means the apolitical United States federal agency that develops policy and research tools to protect consumers and promote competition.
- E. "Food or beverage packaging" means a product, including, but not limited to, cups, containers, foodservice ware and utensils (including straws and lids), that is used for food or drink offered for retail sale or use, and is composed of plastic or paper with a plastic coating or additive.
- F. "International Organization for Standardization (ISO)" means the Geneva-based non-governmental organization that works to develop technical standards for products and services sold around the world.
- G. "Manufacturer" means a person, firm, association, partnership, or corporation that produces a product.
- H. "OK Biodegradable SOIL" means conformity with the existing Vincotte certification OK Biodegradable Soil Certification as in effect on January 1, 2011.
- I. "OK Home Compost" means conformity with the existing Vincotte certification "OK Compost HOME" Certification, which, as of January 1, 2011, uses European Norm (EN) 13432 standard adapted to low-temperature composting in accordance with the Vincotte program "OK 2-Home Compostability of Products."
- J. "Plastic Film Product" means a bag, sack, wrap, or other thin plastic sheet film product.
- K. "Plastic Product" means a product made of plastic, whether alone or in combination

with another material, including, but not limited to paperboard. A plastic product includes, but is not limited to, any of the following:

1. A consumer product. For purposes of this paragraph, "consumer product" means a product or part of a product that is used, bought, or leased for use by a person for any purpose.
  2. A package or a packaging component.
  3. A film product.
  4. Food or beverage packaging.
- L. "Soil-degradable agricultural mulch film" means film plastic used as a technical tool in commercial farming and home gardening applications that biodegrades in soil after being used, and that meets the following criteria: (1A) or (1B), in addition to (2). Compliance with any of the following specifications will conclusively prove that these materials will biodegrade and not negatively impact the ability of the soil to grow plants, and that these products will not introduce high levels of regulated metals.
- 1A. Meet the requirements of Vincotte's "OK Biodegradable Soil" standard.
  - 1B. At ambient temperatures and in soil, show at least 90 percent biodegradation absolute or relative to microcrystalline cellulose in less than two years' time, tested according to ISO 17556 or ASTM 5988 standard test methods.
  2. Film product fulfills plant growth and regulated metals requirements of section 6.4 of ASTM Standard Specification D6400.
- M. "Supplier" means a person, firm, association, partnership, or corporation that sells, offers for sale, offers for promotional purposes, or takes title to a product.
- N. "Vincotte certification" means a certification of a European Norm (EN) standard adopted by the Belgian-accredited inspection and certification organization Vincotte.

## Section 2. Prohibited Labels

- A. A manufacturer or supplier shall not sell in this state a plastic product, a plastic film product, or food or beverage packaging as defined in Section 1 (D, I, and J), that is labeled with the term "biodegradable," "degradable," "decomposable," "oxo-degradable" or any like form of those terms, or in any way imply that the product will break down, fragment, biodegrade, or decompose in a landfill or other environment.
- B. This prohibition does not apply to "soil-degradable agricultural mulch film" as defined in Section 1 (K), which meets the required testing and has the appropriate third-party certifications.

## Section 3. Allowed Labels

- A. A manufacturer or supplier may sell in this state a plastic product, plastic film product, or food or beverage packaging, as defined in Section 1 (D, I, and J) labeled:
  1. "Compostable," if the product is certified by an independent third party to meet either ASTM Standard Specification D6400 or D6868;
  2. "Home compostable," if the product meets, and is certified under, the Vincotte

"OK Compost HOME" Certification or a future appropriate ASTM standard specification

- B. A manufacturer or supplier may sell in this state a plastic product labeled according to Section 3 (A) if the product meets labeling requirements established under the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims (Green Guides).
- C. A manufacturer or supplier may sell in this state soil-degradable agricultural mulch film if the film product meets requirements defined in Section 1 (K).
- D. A product that is in compliance with this chapter shall not, solely as a result of that compliance, be deemed to be in compliance with any other applicable marketing requirement or guideline established under state law or by the Federal Trade Commission.

#### **Section 4. Compostable Plastic Bags: Identification**

- A. A manufacturer or supplier of a compostable plastic bag distributed or sold by retailers, and meeting ASTM Standard Specification D6400, shall ensure that the compostable plastic bag is readily and easily identifiable from other plastic bags in a manner that is consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations). Bags approved and distributed or sold as part of a collection program established by the waste hauler, municipality or county are exempt from Section B (2).
- B. For purposes of this section, "readily and easily identifiable" means labeling that meets both of the following requirements:
  - 1. Labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification if the bag has been certified as meeting that standard by a recognized third-party independent verification body.
  - 2. Labeled in accordance with one of the following:
    - a. The bag is made of a uniform color of green and labeled with the word "compostable" on one side of the bag, and the label shall be at least one inch in height.
    - b. Labeled with the word "compostable" on both sides of the bag and the label shall be one of the following:
      - 1. Green color lettering at least one inch in height.
      - 2. Within a contrasting green color band of at least one inch in height on both sides of the bag with color contrasting lettering of at least one-half inch in height.

3. Notwithstanding paragraph (1.) of subdivision (ii), if the bag is smaller than 14 inches by 14 inches, the lettering and stripe shall be in proportion to the size of the bag.
- C. A compostable plastic bag sold or distributed in this state shall not display a chasing arrow resin identification code or recycling type of symbol in any form.
- D. Plastic bags that do not meet the definition of compostable shall be prohibited from tinting the bags green
- E. A manufacturer or supplier is required to comply with this section only to the extent that the labeling requirements do not conflict with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).

#### **Section 5. Compostable Plastic Food or Beverage Packaging: Identification**

- A. A manufacturer or supplier of food or beverage packaging defined in Section 1 (D) of this statute, meeting ASTM Standard Specification D6400 or ASTM D6868, shall ensure that the items are readily and easily identifiable from other food or beverage products in a manner that is consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).
- B. For purposes of this section, "readily and easily identifiable" means labeling that meets one or both of the following requirements:
  1. Labeled with a logo indicating the food or beverage product has been certified by a recognized third-party independent verification body as meeting the ASTM Standard Specification as defined in Section 1 (B).
  2. Labeled with the word "compostable," where possible, indicating the food or beverage packaging or film product has been tested by a recognized third-party independent body and meets the ASTM Standard Specification as defined in Section 1 (B).
- C. A manufacturer or supplier is required to comply with this section only to the extent that the labeling requirements do not conflict with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).

#### **Section 6. Public Information Request**

- A. A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within 90 days of the request, non-confidential business information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

### **Section 7. Penalties**

- A. A city, a county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and any subsequent violation.
- B. Any civil penalties collected pursuant to this subdivision shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.
- C. The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to Consumer Environmental Advertising Laws (if your state has this law).
- D. The costs incurred by a state agency in carrying out this chapter shall be recoverable by the Attorney General, upon the request of the agency, from the liable manufacturer or supplier.