

# California Environmental Laws Set The Trend For Other States

By **Stephanie Sheridan, Meegan Brooks and Lia Metreveli**

For years, California has been home to some of the most robust environmental laws in the country. While well-intentioned, some of these laws have become fodder for serial plaintiffs.

Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, has resulted in a plethora of lawsuits and the development of a cottage industry. Other environmental laws, such as California's ban on plastic bags, have led to similar laws in other states. These environmental laws will impact retailers not only within the Golden State, but also in states following California's lead.

## Plastic Bags

In August 2014, California became the first state to enact legislation imposing a statewide ban on single-use plastic bags at large retail stores. The ban was upheld by voters in a 2016 referendum.

Following California's lead, multiple other states have passed plastic bag bans and corresponding paper bag fees. Several of these laws will go into effect in 2020: Oregon (effective Jan. 1; five-cent minimum), New York (effective March 1; flat five-cent fee optional but not required — cities and counties can decide on whether to impose the five-cent fee) and Maine (effective April 22; five-cent minimum).

Single-use plastic bags are also scheduled to be banned in Delaware, effective Jan. 1, 2021, and Connecticut, effective July 1, 2021. Hawaii has had a de facto statewide ban since at least 2015, as most populous counties prohibit non-biodegradable plastic bags at checkout, as well as paper bags containing less than 40% recycled material. Since 2009, the District of Columbia has charged 5 cents for each paper or plastic bag.

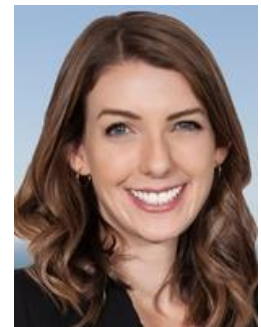
## Plastic Straws

In September 2018, the California legislature passed a bill curbing the use of single-use plastic straws in California. The bill prohibits full-service restaurants from providing single-use plastic straws to consumers unless specifically requested. Businesses that do not comply receive two warnings before being fined up to \$300 per year.

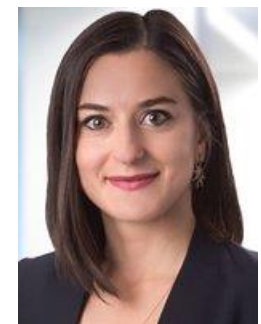
Adoption of the California ban immediately led to efforts in Oregon to adopt similar laws. The cities of Seattle, Washington, and Washington, D.C., have had plastic straw bans since 2018 and 2019, respectively.



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## **Styrofoam**

California has prohibited the sale of styrofoam packing peanuts since Jan. 1, 2012. In subsequent years, several of California's biggest cities — including Los Angeles, San Francisco, Santa Barbara, Culver City and Long Beach — have enacted restrictions on businesses' use of styrofoam, including prohibitions on styrofoam products like single-use takeout containers, coolers, buoys and egg cartons.

New York City followed suit on Jan. 1 of this year. New York City's ban covers styrofoam containers for takeout or large beverages and the sale of packing peanuts. Maryland and Maine have also enacted bans on single-use styrofoam containers, which will go into effect on July 1, 2020, and Jan. 1, 2021, respectively.

Vermont has enacted sweeping legislation that, effective July 1, 2020, will prohibit retailers and restaurants from providing customers with single-use carryout bags, plastic stirrers or cups, and takeout or other food containers made from styrofoam. Straws may be provided to customers upon request.

## **Alligator and Crocodile Products**

Effective Jan. 1, 2020, California Penal Code Section 653o will make it illegal to import into California for commercial purposes, to possess with intent to sell or to sell within the state the dead body, or any part or product thereof, of an alligator or crocodile.

On Oct. 12, Gov. Gavin Newsom signed into law A.B. 1260, which amends Section 653o to also criminalize the import and sale of other exotic skins, such as iguana, skink, caiman and various lizards, beginning on Jan. 1, 2022. Violators of Section 653o will be guilty of a misdemeanor and subject to a \$1,000–\$5,000 fine and/or up to six months imprisonment in county jail. Existing inventories of these animal products are not addressed by either Section 653o or A.B. 1260.

## **Fur Products**

California is the first state in the nation to ban fur sales. A.B. 44, which was also signed into law by Gov. Gavin Newsom on Oct. 12, prohibits the manufacture, sale and distribution of fur products, such as clothing, shoes and handbags, within California. A.B. 44 will go into effect on Jan. 1, 2023. Those who contravene the ban will be subject to civil penalties of \$500 for the first violation and \$750 or \$1,000 for subsequent violations committed within the same year.

California's statewide ban follows the lead of West Hollywood, which banned fur in 2013, Berkeley, which has prohibited fur since 2017, and San Francisco and Los Angeles, which passed similar laws in March and September 2018, respectively. Hawaii and New York City considered similar fur bans in 2019.

## **Animal Testing**

Beginning on Jan. 1, California will be the first state in the country to ban the sale of cosmetics tested on animals. S.B. 1249, which passed on Sept. 28, 2018, makes it unlawful to sell or offer for sale "any cosmetic, if the cosmetic was developed or manufactured using an animal test." Penalties for noncompliance start at \$5,000, with an additional \$1,000 for each day that the violation continues.

The new law will only effect products for which animal testing was conducted or contracted after Jan. 1, 2020. Cosmetics that were already sold in California before that date are grandfathered in, even if a particular batch of the cosmetic was manufactured after that date. The law also includes other exclusions, such as where tests are conducted to comply with federal law, where the ingredient cannot be replaced with an alternative, where the need for the test is based on a substantiated human health problem and where no acceptable alternative test exists.

Previously, California was the first state in the nation to ban actual animal testing (but not sale of the products tested on animals). New York, New Jersey and Virginia have similar laws barring animal testing.

### **Bills That Have Failed (For Now)**

California has considered several bills relating to microfibers in clothing products. A.B. 2379, which was introduced on April 25, 2018, and died on inactive file on Nov. 30, 2018, would have required a conspicuous warning label on all garments that contain more than 50% polyester, explaining that the garment sheds plastic microfibers when washed.

Similarly, A.B. 129, which is currently in committee, would require the state board to take specified actions relating to microfiber pollution and to identify best practices for clothing manufacturers to reduce the amount of microfibers released into the environment. The bill would also require public and private entities to install filtration systems to capture microfibers that are shed during washing.

In Connecticut, the legislature passed a law similar to A.B. 129 in March 2018, after failing to enact a labeling requirement similar to that considered under A.B. 2379.

This year, California also considered a ban on paper receipts. A.B. 161 (the "Skip the Slip" bill) was introduced on Jan. 7, and proposed restricting retailers' use of paper receipts. The bill would prohibit businesses from using paper receipts containing bisphenol A or bisphenol B, and from issuing paper receipts unless specifically requested by the customer.

A.B. 161 does not provide for a private right of action, stating that the attorney general, a district attorney or a city attorney will be responsible for enforcement. Businesses that do not comply will receive two warnings before being fined up to \$300 per year. A.B. 161 is being held under submission in committee. Connecticut banned the use of paper receipts containing bisphenol A in 2011.

### **Ramifications**

Retailers should take steps to comply with the new laws in California. Compliance is generally straightforward, but keeping track of the changing legal and regulatory landscape may be challenging. California's new laws indicate the legislature's interest in green policies and may signal the enactment of additional similar laws. The legislatures of other states will be sure to follow California's lead. So retailers will do well to monitor the development of green legislation in California and other states.

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