A lawsuit alleging the use of erythritol renders a product not "natural," proposed laws on organic imports and lab-created butter, a "health-washing" complaint challenging the calorie content of baked goods, and more.

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SPOTLIGHT

California Packaging and Plastics Extended Producer Responsibility Law Challenged in Multiple Lawsuits; Oregon EPR Case Set for Trial in July

By Joseph Zaleski

On June 22, a coalition of 17 state attorneys general and the National Association of Wholesaler-Distributors filed a complaint in California federal court to block implementation of California's packaging and plastics Extended Producer Responsibility (EPR) law. The state plaintiffs are Nebraska, Alabama, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Missouri, Montana, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah and West Virginia.

California's EPR law—formally called the Plastic Pollution Prevention and Packaging Producer Responsibility Act and codified at Cal. Pub. Res. Code §§ 42040-42084—was enacted in June 2022. EPR laws generally shift the cost and responsibility for managing post-consumer waste from governments to producers. Like similar EPR laws recently enacted in Oregon, Colorado, Minnesota, Maryland, Maine and Washington, California's statute generally requires producers of regulated packaging and plastic products to report the amounts and weights of those materials entering the state and to pay annual program administration fees to defray the administrative costs to manage the waste and recycling.

The California law also establishes a series of ambitious performance targets. Among other requirements, it mandates a 25% reduction in all single-use packaging and food service ware entering the state by 2032, requires a 65% recycling rate for covered materials, and provides that 100% of such items must be either recyclable or compostable. While the California Department of Resources Recycling and Recovery (CalRecycle) is the state agency tasked with enforcing the law, California has also designated the Circular Action Alliance as the official third-party "producer responsibility organization" responsible for administering the program, including coordinating data collection, reporting and fee payments from obligated producers.

The state and trade association lawsuit challenges the California law on a number U.S. and California constitutional grounds, including alleged violations of the Commerce Clause (by improperly burdening interstate commerce), Due Process Clause and the First Amendment (including compelled speech), as well as claims that the law unlawfully delegates regulatory authority to a private entity. The plaintiffs also assert related claims under California's constitution, including nondelegation principles.

This federal suit follows closely on the heels of another legal challenge to the California EPR program that three environmental advocacy organizations—the Natural Resources Defense Council, Californians Against Waste Foundation, and Oceana, Inc.—filed on June 2 in San Francisco Superior Court. Unlike the state and trade association challenge in federal court, the state case alleges that

CalRecycle's implementing regulations, finalized in May 2026, do not go far enough and fail to fully implement the statute's requirements.

California is not the only state to have its EPR law challenged on constitutional grounds in recent months. In 2025, the National Association of Wholesaler-Distributors also brought suit against Oregon's state EPR law in federal district court. In February 2026, the court issued a limited injunction against implementation of the state EPR program only as to the association and its members while allowing the program to proceed more broadly. The court also scheduled a date for trial on the merits to begin on July 13.

The California and Oregon federal lawsuits are primed to have significant impacts well beyond those states. EPR programs in Colorado, Minnesota, Maryland, Washington and Maine are structured similarly—particularly in their reliance on a third-party "producer responsibility organization" like the Circular Action Alliance. Accordingly, the legal theories and constitutional challenges being tested in the California and Oregon lawsuits may apply with equal force to other state EPR programs that have not yet been challenged.

Also, if the federal district court in California chooses to issue a preliminary injunction to stop enforcement of the EPR program while considering the merits of the challenge, that injunction may be extended to producers in all 17 states that have joined the suit as well as to the National Association of Wholesaler-Distributors and its members—a much broader and more significant stay than the limited injunction granted as to the Oregon EPR program.

This article originally appeared in Material Concerns: Legal Updates on Substances of Emerging Concern. Shook's Environmental team's proactive approach to protecting clients' business interests and avoiding expensive litigation includes monitoring industry trends, legislative and regulatory developments, key judicial cases, plaintiffs' bar activities and the latest scientific literature. To learn more about Shook's environmental capabilities, please contact Practice Co-Chairs Thomas J. Grever or James F. Thompson, or for more information about Material Concerns please contact Partner Jennifer E. Hackman.

Congressmen Introduce REAL Butter Act

A bipartisan team of U.S. Representatives has introduced the Recognizing Engineered Alternatives as Lab-Created (REAL) Butter Act (H.R. 9387), which seeks to require labels for lab-grown butter. Reps. Tony Wied (R-WI) and Josh Riley (D-NY) say the legislation would promote transparency, protect consumer choice and support dairy farmers. Wied said in a statement that lab-created butter is no longer hypothetical, pointing to Savor, a startup seeking to make butter with carbon dioxide rather than milk. “The REAL Butter Act would simply require that it be clearly labeled as ‘lab-created butter’ directly on the product,” he said. “America's dairy farmers put in the work every day to keep our families fed, our rural communities strong, and our agricultural heritage alive. They should not have to compete with products that hide behind vague or misleading labels.”

Colorado Gov. Signs Meat Plant Worker PPE, Restroom Bill

Colorado Gov. Jared Polis has signed into law SB 26-160, which prohibits employers from making deductions from employee wages or compensation for personal protective equipment. The law also requires employers with 500 or more employees engaged in the slaughter of livestock or the rendering or packaging of meat to provide employees reasonable access to restrooms. The law, which takes effect immediately under a safety clause, allows for a $100 fine per employee per violation of the restroom provision of the law, capped at $200 per employee per week.

Lawmakers Introduce Organic Imports Verification Act

U.S. Reps. Shontel Brown (D-OH) and Zach Nunn (R-IA) have introduced the Organic Imports Verification Act, a bill they say seeks to protect American organic farmers and consumers from fraudulent organic imports. According to a news release, the bill authorizes the U.S. Department of Agriculture to stop the sale of organic imports that test positive for residue contaminants and to submit an agency report to Congress on residue testing for all imported organic feedstuffs shipped in bulk to the United States. Sens. Pete Ricketts (R-NE) and Tina Smith (D-MN) introduced companion litigation in the Senate in 2025. "When Americans buy organic, they need to know and trust that they are getting the highest quality product," Brown said in a statement. "Unfortunately, many imported products are labelled as organic, but do not meet the high standard that the USDA has set, hurting American farmers and consumers. The Organic Imports Verification Act would help ensure that organic labels are accurate, improving food quality and ensuring fairness for American farmers."

LITIGATION

Consumers Allege Probiotic Soda's "No Artificial Sweetener" Claims Are False

Cove Drinks, Inc. faces claims that it falsely advertises its probiotic sodas as containing no artificial sweeteners when they contain erythritol, which they allege is manufactured rather than naturally occurring. *Williams v. Cove Drinks, Inc.*, No. 26-3374 (S.D. Cal., filed June 3, 2026). The plaintiffs assert that Cove labels its products as containing "no artificial sweeteners" and describes the products as "naturally sweetened" in marketing. They allege the "no artificial sweeteners" claim is false because the products use erythritol as a sweetener.

“The erythritol used in the Products—and used in every mass-produced food—is commercially manufactured through industrial fermentation and multi-step processing,” the plaintiffs argue. “Reasonable consumers would not understand such an ingredient to be consistent with a representation that the Products contain ‘No artificial Sweeteners.’”

Low-Carb Product Labeling Prompts ‘Health-Washing’ Claim Against Royo Bread Co.

A group of six consumers from across the country has brought a putative class action alleging Royo Bread Co. engages in “health-washing” in marketing its low-carb baked goods. *Salley v. Royo Bread Co.*, No. 26-3220 (E.D.N.Y., filed May 28, 2026). The plaintiffs allege that the caloric values in Royo's products are not consistent with commonly accepted science for the Nutrition Facts found on product labels. They point to the company's Everything Keto-Friendly Bagels, which claim to contain a total of 38 grams of carbohydrates, 1.5 grams of total fat and 10 grams of protein, which they allege should add up to about 204 calories per serving; the product claims 80 calories per serving.

The plaintiffs say the case is classic "health-washing." “Here, Defendant uses false advertising and deceptive conduct which promises health-related benefits,” they allege. “The misrepresentations made on the Products are not only potentially harmful but command a price premium consistent with these misrepresentations that Plaintiffs and Class members would not have paid had they known that Defendant’s representations are false and misleading.”

More to Explore

- Lexology has named 17 Shook Partners to its **Index Report: Product Regulation & Liability**, which identifies the leading practitioners covering non-

medical product regulation as well as those with experience in the defense of product liability claims.

- **John Johnson III**, a partner in Shook's Washington, D.C., office, has been **named** co-chair of the firm's **Food and Beverage Practice Group**, joining **Lindsey Heinz** and **James Muehlberger**. Johnson's practice involves counseling and representing food companies about the laws administered by the Food and Drug Administration, U.S. Department of Agriculture, Customs and Border Protection, and other federal and state agencies.

- The previous issue of the ***Food and Beverage Litigation and Regulatory Update*** focused on a "health-washing" lawsuit for a reduced-sugar sports drink, an appeals court reversal in litigation about DL malic acid, states focusing on the online food delivery industry, and more.

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