An act to amend and repeal Section 14549.3 of, and to add Sections 14547 and 18017 to, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL’S DIGEST

AB 792, as amended, Ting. Recycling: plastic containers: minimum recycled content and labeling.

(1) Existing law, the California Beverage Container Recycling and Litter Reduction Act, requires every beverage container sold or offered for sale in this state to have a minimum refund value. Under the act, the Department of Resources Recycling and Recovery is required to calculate a processing fee for each beverage container with a specified scrap value, which is required to be paid by beverage manufacturers for each beverage container sold or transferred to a distributor or dealer. The department is required to calculate the processing fee in a specified manner so that the actual processing fee generally equals 65% of the
processing payment that the department is required to pay to processors if the scrap value of the container having a refund value pursuant to the act is less than the cost of recycling.

Existing law provides that a violation of the act or a regulation adopted pursuant to the act is a crime.

This bill, on and after January 1, 2021, would require a plastic beverage container the total number of plastic beverage containers filled with a beverage by a beverage manufacturer, as specified, to contain, on average, specified amounts of postconsumer recycled plastic content pursuant to a tiered plan that would require the beverage container total number of plastic beverage containers to contain, on average, no less than 75% postconsumer recycled plastic content on and after January 1, 2030. The bill would impose administrative civil penalties, in specified amounts, on a beverage manufacturer for a violation of these requirements. The bill would authorize the department to enforce these provisions and would authorize the department to conduct audits and inspections of a beverage manufacturer for the purpose of ensuring compliance. The bill would authorize the department to assess additional administrative civil penalties, if violations are found, based on the audits and annual report submitted to the department by beverage manufacturers, as prescribed. The bill would require penalties collected to be deposited in the Recycling Enhancement Penalty Account, which the bill would create. The bill would require moneys in the Recycling Enhancement Penalty Account to be expended upon appropriation by the Legislature. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires a manufacturer of a beverage sold in a plastic beverage container subject to the California Redemption Value, as specified, to annually report to the department the amount of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers subject to the California Redemption Value for sale in the state in the previous calendar year.

This bill instead would require, beginning March 1, 2022, and annually thereafter, a manufacturer of a beverage sold in a plastic beverage container to report to the department, under penalty of perjury, in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used in the plastic beverage containers filled with a beverage by the beverage manufacturer in the previous year that are sold in the state. By requiring that the information be
submitted under penalty of perjury, this bill would expand the crime of perjury and impose a state-mandated local program.

(3) Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code indicating the resin used to produce the rigid plastic bottle or rigid plastic container.

This bill would specify that the above labeling requirement does not apply to rigid plastic containers or rigid plastic bottles that are medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.


The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:
(1) Sustainable and resilient markets for recycled materials are essential to any successful recycling system.
(2) Since the inception of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code), California has depended on foreign markets to accept the recyclable materials that are collected for recycling in the state.
(3) Developing domestic markets for recycled materials benefits the environment and the state’s economy and is critical due to the loss of foreign markets.
(4) China’s 2018 National Sword policy bans the importation of recycled mixed paper and certain types of recycled plastic and imposes a stringent 0.5 percent contamination limit on all other recycled material imports.
(5) California’s recycling facilities are struggling to find markets for recycled materials, resulting in the stockpiling of these materials.
(6) California must reduce its reliance on unpredictable foreign markets for its recycled materials.
(7) California has established minimum recycled content requirements for glass containers, rigid plastic packaging containers, newsprint, trash bags, and other products. However, California does not require the use of recycled content in plastic containers regulated under the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500) of the Public Resources Code).

(8) Plastic bottles can be recycled and can contain recycled content to close the loop in the recycling stream. Other products manufactured using recycled plastic beverage containers are generally not recycled and, therefore, do not provide the same closed-loop system.

(9) Many companies have already taken the initiative at closing the loop by using plastic bottles that contain 100 percent recycled content. Since November 2010, Naked Juice Company has been using bottles made with 100 percent postconsumer recycled content for all of its juices and juice smoothies. In January 2018, Danone, which owns the natural spring water brand Evian, announced that it will make all its bottles from 100 percent recycled plastic by 2025.

(10) The requirements imposed by this bill are reasonable and are achievable at minimal cost relative to the burden imposed by the continued excessive use of virgin materials in beverage containers in California.

(b) It is the intent of the Legislature that any moneys collected as penalties for violations of this act be appropriated in the annual Budget Act for the purposes of market development and increasing the recycling of plastic beverage containers, including, but not limited to, for funding processing payments not covered by processing fees and for funding market development payments.

SEC. 2. Section 14547 is added to the Public Resources Code, to read:

14547. (a) (1) No later than March 1, 2022, and annually thereafter, every beverage manufacturer shall report to the department in pounds and by resin type the amount of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage containers subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state in the previous calendar year. The manufacturer
shall submit this information to the department under penalty of perjury.

(2) The department shall post the information reported pursuant to this subdivision on the department’s internet website.

(b) (1) Between January 1, 2021, and December 31, 2022, inclusive, the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state shall, on average, contain no less than 25 percent postconsumer recycled plastic.

(2) Between January 1, 2023, and December 31, 2024, inclusive, the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state shall, on average, contain no less than 25 percent postconsumer recycled plastic.

(3) Between January 1, 2025, and December 31, 2026, inclusive, the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state shall, on average, contain no less than 50 percent postconsumer recycled plastic.

(4) Between January 1, 2027, and December 31, 2029, inclusive, the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state shall, on average, contain no less than 50 percent postconsumer recycled plastic.

(5) On and after January 1, 2030, a plastic beverage container the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), for sale in the state shall, on average, contain no less than 75 percent postconsumer recycled plastic.

(c) (1) A beverage manufacturer that does not meet the minimum recycled plastic content requirements pursuant to
subdivision (b) shall be subject to an administrative civil penalty pursuant to this subdivision. The amount of the penalty shall be as follows for each plastic beverage container for which the beverage manufacturer pays a processing fee pursuant to subdivision (g) of Section 14575:

(A) (i) Between January 1, 2021, and December 31, 2034, two and one-half mills ($0.0025) for each plastic beverage container reported when the overall compliance rate is at least 75 percent but less than 100 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(ii) On and after January 1, 2035, two and one-half mills ($0.0025) for each plastic beverage container reported when the overall compliance rate is at least 75 percent but less than 90 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(B) Five mills ($0.005) for each plastic beverage container reported when the overall compliance rate is at least 50 percent but less than 75 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(C) One cent ($0.01) for each plastic beverage container reported when the overall compliance rate is at least 25 percent but less than 50 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(D) One and one-half cents ($0.015) for each plastic beverage container reported when the overall compliance rate is at least 15 percent but less than 25 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(E) Two cents ($0.02) for each plastic beverage container reported when the overall compliance rate is less than 15 percent of the required recycled plastic content percentage pursuant to subdivision (b).

(2) The penalty amounts assessed pursuant to this subdivision shall be adjusted to reflect the changes in the California Consumer Price Index, as defined in Section 21311 of the Government Code, whenever the change is more than 5 percent higher than any previous adjustment.

(d) A beverage manufacturer shall pay the penalties assessed pursuant to this section, as applicable, based on the information reported to the department pursuant to subdivision (a) on the date the annual report is due to the department.
(e) The department may conduct audits and inspections and take disciplinary enforcement action pursuant to Chapter 8 (commencing with Section 14590) against a beverage manufacturer for the purpose of ensuring compliance with this section.

(f) (1) If a penalty is assessed on a beverage manufacturer pursuant to this section for failing to meet the applicable postconsumer recycled plastic content percentage through an audit or inspection that reveals that the actual average postconsumer recycled plastic content used by the manufacturer was lower than the percentage reported pursuant to this section, the beverage manufacturer shall pay, in addition to any penalties assessed for inaccurate reporting, an administrative civil penalty of 115 percent of the difference between the manufacturer’s audited actual average postconsumer recycled plastic content percentage and the percentage reported pursuant to this section.

(2) A beverage manufacturer that is assessed penalties pursuant to this subdivision shall pay those penalties to the department in quarterly installments.

(g) The Recycling Enhancement Penalty Account is hereby created in the State Treasury. Penalties collected pursuant to this section shall be deposited into the Recycling Enhancement Penalty Account. Moneys in the Recycling Enhancement Penalty Account shall be expended upon appropriation by the Legislature in the annual Budget Act.

(h) The penalties assessed pursuant to this section are in addition to any other applicable civil or criminal penalties.

(i) This section shall not apply to a refillable plastic beverage container.

(j) The Legislature encourages beverage manufacturers to use plastic beverage containers that contain 100 percent recycled plastic content.

SEC. 3. Section 14549.3 of the Public Resources Code is amended to read:

14549.3. (a) On or before March 1 of each year, a manufacturer of a beverage sold in a plastic beverage container subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), shall report to the department the amount in pounds and by resin type of virgin plastic and postconsumer recycled plastic used by the manufacturer for plastic beverage
containers subject to the California Redemption Value for sale in the state in the previous calendar year. The manufacturer shall submit this information to the department under penalty of perjury.

(b) The department shall post the information reported pursuant to subdivision (a) on the department’s internet website.

(c) This section shall not apply to a refillable plastic beverage container.

(d) This section shall become inoperative on March 1, 2022, and, as of January 1, 2023, is repealed.

SEC. 4. Section 18017 is added to the Public Resources Code, to read:

18017. This division does not apply to rigid plastic containers or rigid plastic bottles that are medical devices, medical products that are required to be sterile, prescription medicine, and packaging used for those products.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.