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AB-792 Recycling: plastic containers: minimum recycled content and labeling. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 792

**Introduced by Assembly Members Ting and Irwin
 (Coauthor: Assembly Member Mark Stone)
 (Coauthors: Senators Skinner and Wiener)**

February 20, 2019

An act to amend Sections 14549.2 and 14549.3 of, and to add Sections 14547 and 18017 to, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 792, 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 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 per year pursuant to a tiered plan that would require the total number of plastic beverage containers to contain, on average, no less than 50% postconsumer recycled plastic content per year on and after January 1, 2030, except as specified. The bill would impose civil penalties, in specified amounts, on a beverage manufacturer for a violation of these requirements, except as specified. The bill would authorize the department to enforce these provisions and would authorize the department to conduct audits and investigations of a beverage manufacturer for the purpose of ensuring compliance. The bill would exempt from the California Public Records Act information resulting from those audits and investigations. 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 for the sole purpose of supporting the recycling, infrastructure, collection, and processing of plastic beverage containers in this state. The bill would require the department to contract with a research university for a specified study and would authorize the department to allocate moneys from the California Beverage Container Recycling Fund, upon appropriation, for the study. The bill would require the study to be completed by May 1, 2025. The bill would prohibit a city, county, or other local government jurisdiction from adopting an ordinance regulating the minimum recycled plastic content requirements for plastic beverage containers. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(2) The act requires the department to pay a market development payment to a reclaimer, as defined, for empty plastic beverage containers that have been collected for recycling in the state, and that the reclaimer washes and processes into flake, pellet, sheet, or any other form that is then usable as input for the manufacture of new plastic products, as defined, by product manufacturers in the state. The act also requires the department to pay a market development payment to a product manufacturer, as defined, for plastic flake, pellet, sheet, or any other form of plastic purchased from a reclaimer and used by that product manufacturer to manufacture a plastic product in the state. The act makes these provisions inoperative on July 1, 2022.

This bill, for when the department is determining which entity to make a market development payment to, would require the department to prioritize allocations that increase the collection, production, procurement, and usage of beverage-grade recycling plastic in beverage containers, as specified.

(3) 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 would require, beginning March 1, 2020, and annually thereafter, a plastic material reclaimer to report to the department, under penalty of perjury, the number of empty plastic beverage containers, as specified, that the plastic material reclaimer has collected and sold in the previous calendar year. The bill also would require, beginning March 1, 2020, and annually thereafter, a manufacturer of postconsumer recycled plastic to report to the department, under penalty of perjury, the amount in pounds of "food-grade" flake, pellet, sheet, fines, or other forms that were sold in the previous calendar year and their capacity to produce "food-grade" material, as specified. 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. The bill would require the department to post on its internet website, beginning July 1, 2020, a specified summary annually, and, beginning September 1, 2020, a specified analysis biennially.

(4) 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.

(5) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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) Between January 1, 2021, 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 10 percent postconsumer recycled plastic per year.

(2) Between January 1, 2025, 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 25 percent postconsumer recycled plastic per year.

(3) On and after January 1, 2030, 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 per year.

(4) (A) At least annually or at the petition of the beverage manufacturing industry not more than semiannually, the director shall consider whether the minimum recycled content requirements required pursuant to paragraphs (1) to (3), inclusive, should be waived or reduced. If the director receives a petition from the beverage manufacturing industry, the director shall consider the petition within 60 days. If the director makes a finding that a minimum recycled content requirement pursuant to this subdivision should be adjusted, the adjusted rate for the requirement shall be in effect until a new determination for the requirement is made or upon the expiration of the requirement's effective period, whichever occurs first. The director shall not adjust the minimum recycled content requirements above the minimum postconsumer recycled plastic content percentages required pursuant to paragraphs (1) to (3), inclusive. In making a determination pursuant to this paragraph, the director shall consider, at a minimum, all of the following:

(i) Changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability.

(ii) Recycling rates.

(iii) The availability of recycled plastic suitable to meet the minimum recycled content requirements pursuant to paragraphs (1) to (3), inclusive, including the availability of high-quality recycled plastic, and food grade recycled plastic from beverage container recycling programs.

(iv) The capacity of recycling or processing infrastructure.

(v) The progress made by beverage manufacturers in achieving the goals of this subdivision.

(B) The beverage manufacturing industry or a beverage manufacturer may appeal the director's decision made pursuant to this paragraph to the Office of Administrative Hearings within 45 days of the director's decision. An administrative law judge shall hear the appeal within 45 days of the request for an appeal. The administrative law judge's review shall be de novo.

(C) For purposes of this subdivision, "beverage manufacturing industry" means an association that represents companies that manufacture beverages.

(b) (1) Beginning January 1, 2022, a beverage manufacturer that does not meet the minimum recycled plastic content requirements pursuant to subdivision (a) shall be subject to an annual civil penalty pursuant to this subdivision. Beginning March 1, 2023, the violation level and penalty shall be collected annually, if a waiver has not been granted pursuant to paragraph (4) of subdivision (a), and calculated, based upon the amount in pounds, and in the aggregate, by which the beverage manufacturer does not meet the minimum recycled content requirements required pursuant paragraphs (1) to (3), inclusive, of subdivision (a), according to the following:

(A) If a beverage manufacturer has an overall compliance rate of at least 75 percent but less than 100 percent of the minimum recycled plastic content requirements pursuant to subdivision (a), that shall be a Level 1 violation.

(B) If a beverage manufacturer has an overall compliance rate of at least 50 percent but less than 75 percent of the minimum recycled plastic content requirements pursuant to subdivision (a), that shall be a Level 2 violation.

(C) If a beverage manufacturer has an overall compliance rate of at least 25 percent but less than 50 percent of the minimum recycled plastic content requirements pursuant to subdivision (a), that shall be a Level 3 violation.

(D) If a beverage manufacturer has an overall compliance rate of at least 15 percent but less than 25 percent of the minimum recycled plastic content requirements pursuant to subdivision (a), that shall be a Level 4 violation.

(E) If a beverage manufacturer has an overall compliance rate that is less than 15 percent of the minimum recycled plastic content requirements pursuant to subdivision (a), that shall be a Level 5 violation.

(2) The penalty amounts assessed pursuant to this subdivision shall be as follows:

(A) For a Level 1 violation, the penalty range shall be five cents (\$0.05) to fifteen cents (\$0.15) per pound.

(B) For a Level 2 violation, the penalty range shall be ten cents (\$0.10) to twenty cents (\$0.20) per pound.

(C) For a Level 3 violation, the penalty range shall be fifteen cents (\$0.15) to twenty-five cents (\$0.25) per pound.

(D) For a Level 4 violation, the penalty range shall be twenty cents (\$0.20) to thirty cents (\$0.30) per pound.

(E) For a Level 5 violation, the penalty range shall be twenty-five cents (\$0.25) to thirty cents (\$0.30) per pound.

(3) In lieu of or in addition to assessing a penalty, the department may require a beverage manufacturer to submit a corrective action plan to the department detailing how the beverage manufacturer will come into compliance with subdivision (a).

(4) The department, in determining whether to assess a penalty and the amount of the penalty, shall consider, prior to assessing a penalty, all of the following:

(A) The nature, circumstances, extent, and gravity of the violation or conditions giving rise to the violation and the various remedies and penalties that are appropriate in the given circumstances, with the primary emphasis on protecting the public health and safety and the environment.

(B) Whether the violation or conditions giving rise to the violation have been corrected in a timely fashion or whether reasonable progress is being made to correct the violation or conditions giving rise to the violation.

(C) Whether the violation or conditions giving rise to the violation demonstrate a chronic pattern of noncompliance with subdivision (a).

(D) Whether the violation or conditions giving rise to the violation were intentional.

(E) Whether the violation or conditions giving rise to the violation were voluntarily and promptly reported to the department before the commencement of an investigation or audit by the department.

(F) Whether the violation or conditions giving rise to the violation were due to circumstances beyond the reasonable control of the beverage manufacturer or were otherwise unavoidable under the circumstances, including, but not limited to, unforeseen changes in market conditions.

(G) The size and economic condition of the beverage manufacturer.

(5) A beverage manufacturer that is assessed penalties pursuant to this subdivision may pay those penalties to the department in quarterly installments or arrange an alternative payment schedule subject to the approval of the department.

(6) Penalties assessed pursuant to this subdivision may be appealed to the Office of Administrative Hearings.

(c) A beverage manufacturer shall pay the penalties assessed pursuant to this section, as applicable, based on the information reported to the department pursuant to Section 14549.3 in the form and manner prescribed by the department.

(d) (1) The department may conduct audits and investigations and take an enforcement action pursuant to Chapter 8 (commencing with Section 14590) against a beverage manufacturer for the purpose of ensuring compliance with this section based on the information reported pursuant to Section 14549.3.

(2) The department shall keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment that the department gathers or becomes aware of through the course of conducting audits or investigations pursuant to paragraph (1). Information submitted pursuant to this subdivision shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) A beverage manufacturer may obtain copies of the department's audit or investigation of that beverage manufacturer conducted pursuant to paragraph (1).

(e) (1) The department shall consider granting a waiver, reduction, or extension of the penalties assessed pursuant to subdivision (b) for the purposes of meeting the minimum recycled content requirements required pursuant to paragraphs (1) to (3), inclusive, of subdivision (a) to a beverage manufacturer that has demonstrated progress toward meeting those requirements in either of the following circumstances:

(A) The beverage manufacturer has failed to meet the minimum recycled content requirements required pursuant to paragraphs (1) to (3), inclusive, of subdivision (a).

(B) The beverage manufacturer anticipates it will not be able to meet the minimum recycled content requirements required pursuant to paragraphs (1) to (3), inclusive, of subdivision (a).

(2) In determining whether to grant the waiver, reduction, or extension pursuant to paragraph (1), the department shall consider, at a minimum, all of the following:

(A) Anomalous market conditions.

(B) Disruption in, or lack of supply of, recycled plastics.

(C) Other factors that have prevented a beverage manufacturer from meeting the requirements.

(f) The Recycling Enhancement Penalty Account is hereby created in the State Treasury. Notwithstanding subdivision (d) of Section 14580 and paragraph (3) of subdivision (a) of Section 14591.1, 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 for the sole purpose of supporting the recycling, infrastructure, collection, and processing of plastic beverage containers in this state.

(g) (1) The department shall contract with a research university to study the polyethylene terephthalate and high-density polyethylene markets for all of the following:

(A) Analyzing market conditions and opportunities in the state's recycling industry for meeting the minimum recycled plastic content requirements for plastic beverage containers required pursuant to subdivision (a).

(B) Determining the data needs and tracking opportunities to increase the transparency and support of a more effective, fact-based public understanding of the recycling industry.

(C) Recommending further policy modifications and measures to achieve the state's recycling targets with the least cost and optimal efficiency.

(2) The study shall be completed no later than May 1, 2025.

(3) The department shall allocate moneys from the fund, upon appropriation by the Legislature, for the study.

(h) A city, county, or other local government jurisdiction shall not adopt an ordinance regulating the minimum recycled plastic content requirements for plastic beverage containers.

(i) This section shall not apply to both of the following:

(1) A refillable plastic beverage container.

(2) A beverage manufacturer that meets the requirements of subparagraph (A) of paragraph (3) of subdivision (g) of Section 14575.

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

SEC. 3. Section 14549.2 of the Public Resources Code is amended to read:

14549.2. (a) For purposes of this section, the following definitions shall apply:

(1) "Certified entity" means a recycling center, processor, or dropoff or collection program certified pursuant to this division.

(2) "Plastic product" means a finished plastic product that requires no further thermoforming, shaping, or processing before being sold for its specified use. "Plastic product" does not include plastic flake, pellet, sheet, or any other form that is an output from a reclaimer's processing of empty plastic beverage containers.

(3) "Product manufacturer" means a person who manufactures a plastic product in this state.

(4) "Reclaimer" means a certified entity that purchases empty plastic beverage containers that have been collected for recycling in the state, and that washes and processes, in the state, those empty plastic beverage

containers into flake, pellet, sheet, or any other form that is then usable as input for the manufacture of new plastic products by product manufacturers in the state.

(b) In order to develop California markets for empty plastic beverage containers collected for recycling in the state, the department may, consistent with Section 14581 and subject to the availability of funds, pay a market development payment to a reclaimer for empty plastic beverage containers collected and managed pursuant to this section and to a product manufacturer for plastic flake, pellet, sheet, or any other form of plastic purchased from a reclaimer pursuant to this section.

(c) The department shall make a market development payment to a reclaimer or product manufacturer in accordance with this section only if the plastic beverage container is collected, washed, and processed into flake, pellet, sheet, or any other form, and is used in manufacturing, in the state, as follows:

(1) The department shall make a market development payment to a reclaimer for empty plastic beverage containers that are collected, washed, and processed as specified in paragraph (4) of subdivision (a), including to a reclaimer that uses the services of a third party to process the empty plastic beverage containers into a form usable for the manufacture of new plastic products.

(2) The department shall make a market development payment to a product manufacturer for plastic flake, pellet, sheet, or any other form of plastic purchased from a reclaimer and used by that product manufacturer to manufacture a plastic product in the state, including to a product manufacturer that uses the services of a third party to process the plastic purchased from a reclaimer in manufacturing the plastic product.

(3) The department shall determine the amount of the market development payment, which may be set at a different level for a reclaimer and a product manufacturer, but shall not exceed one hundred fifty dollars (\$150) per ton. In setting the amount of the market development payment for both reclaimers and product manufacturers, the department shall consider all of the following:

(A) The minimum funding level needed to encourage the in-state washing and processing of empty plastic beverage containers collected for recycling in this state.

(B) The minimum funding level needed to encourage in-state manufacturing that utilizes flake, pellet, sheet, or any other form processed from empty plastic beverage containers collected for recycling in this state.

(C) The total amount of funds projected to be available for plastic market development payments, and the desire to maintain the minimum funding level needed throughout the year.

(4) The department may make a market development payment to both a reclaimer and a product manufacturer for both the empty plastic beverage container and for the flake, pellet, sheet, or any other form processed by the reclaimer from that same empty plastic beverage container.

(d) When determining which entity to make a market development payment to, the department shall prioritize the allocation of moneys available pursuant to this section to increase the collection, production, procurement, and usage of beverage-grade recycling plastic in beverage containers subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560).

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

SEC. 4. Section 14549.3 of the Public Resources Code is amended to read:

14549.3. (a) (1) For the purposes of this section, "bottle grade" means a material that is safe and suitable for use as input for the manufacture of new plastic beverage containers and that meets all of the following standards:

(A) The standards in Section 170.39 of Title 21 of the Code of Federal Regulations.

(B) The minimum standards for material generally deemed acceptable by beverage manufacturers to be used in beverage containers based on the type of beverage in that particular type of beverage container.

(C) All state and federal health and safety standards for food.

(b) 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 pursuant to standardized forms in the form and manner prescribed by the department.

(c) On or before March 1, 2020, and annually thereafter, a plastic material reclaimer shall report to the department the number of empty plastic beverage containers subject to the California Redemption Value, pursuant to Chapter 5 (commencing with Section 14560), that the plastic material reclaimer has collected and sold in the previous calendar year. The report shall specify the amount of empty plastic containers sold in this state for beverage processing. The plastic material reclaimer shall submit this information to the department under penalty of perjury pursuant to standardized forms in the form and manner prescribed by the department.

(d) On or before March 1, 2020, and annually thereafter, a manufacturer of postconsumer recycled plastic shall report to the department the amount in pounds of "food-grade" flake, pellet, sheet, fines, or other forms that were sold in the previous calendar year and their capacity to produce "food-grade" material. The report shall specify the amount of material that meets beverage manufacturer specifications for "bottle grade" material. The report shall include the amount of "food-grade" material sold in this state for beverage processing. The manufacturer shall submit this information to the department under penalty of perjury pursuant to standardized forms in the form and manner prescribed by the department.

(e) The department shall post the information reported pursuant to subdivisions (b) to (d), inclusive, within 45 days on the department's internet website.

(f) No later than July 1 of each year, the department shall post on its internet website a summary of the information described in subdivisions (b) to (d), inclusive. Beginning September 1, 2020, the department shall biennially post on its internet website a summary analysis of the information described in subdivisions (b) to (d), inclusive.

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

SEC. 5. 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. 6. The Legislature finds and declares that Section 2 of this act, which adds Section 14547 to the Public Resources Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to appropriately protect the trade secrets and other proprietary materials of businesses, it is necessary to limit access to the proprietary information of businesses complying with the recycled content mandates.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B 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 XIII B of the California Constitution.