Date of Hearing: April 14, 2021

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Luz Rivas, Chair
AB 478 (Ting) – As Amended March 18, 2021

SUBJECT: Solid waste: thermoform plastic containers: postconsumer recycled plastic

SUMMARY: Establishes minimum recycled content requirements for thermoform plastic containers (thermoforms).

EXISTING LAW:

1) Establishes the California Beverage Container Recycling and Litter Reduction Act (Bottle Bill), which:

   a) Requires beverage containers sold in this state to have a California redemption value (CRV) of 5 cents for containers that hold fewer than 24 ounces and 10 cents for containers that hold 24 ounces or more and requires a distributor to pay a redemption payment to CalRecycle. Continuously appropriates these funds to CalRecycle for the payment of refund values and processing fees.

   b) Defines "beverage" to include soda, beer and other malt beverages, wine and distilled spirit coolers, carbonated mineral and soda waters, noncarbonated fruit drinks, and vegetable juices in liquid form that are intended for human consumption. Excludes from the definition of beverage, vegetable drinks in beverage containers of more than 16 ounces, milk, medical food, and any product sold in a container that is not an aluminum beverage container, a glass container, a plastic beverage container, or a bimetal container.

   c) Requires that each new glass container manufactured in the state contain a minimum of 35% postfilled (recycled food container cullet) glass. Requires every glass food, drink, or beverage container manufacturer in the state to report the amount of tons of new glass and the tons of postfilled glass used in the manufacturing of those containers to CalRecycle every month.

   d) Provides that any person convicted of a violation is guilty of an infraction punishable by a fine of up to $100 and not more than $1,000 per violation.

   e) Requires, between January 1, 2022, and December 31, 2024, the total number of plastic beverage containers subject to the CRV for sale in the state to, on average, contain no less than 10 percent postconsumer recycled plastic per year. Increases that amount to 25 percent between January 1, 2025, and December 31, 2029; and 50 percent on and after January 1, 2030.

2) Establishes the Rigid Plastic Packaging Container (RPPC) law, which requires that specified plastic containers that are made of plastic, capable of at least one closure, and hold a product sold in California to meet one of the following compliance options:

a) Contain a minimum of 25% postconsumer recycled content;

b) Be source reduced by at least 10%, as specified;

c) Be routinely reused or refilled at least 5 times;

d) Achieve a 45% recycling rate; or,

e) The product manufacturer consumes sufficient California-generated postconsumer recycled content equivalent to achieving a 25% postconsumer recycling rate.

THIS BILL:

1) Defines terms used in the bill, including:

   a) "Postconsumer recycled plastic" as plastic produced from the recovery, separation, collection, and reprocessing of a thermoform plastic container that would otherwise be discarded or disposed after consumer use.

   b) "Producer" as the person who manufactures the thermoform in the state under that person's own name or brand and who sells or offers for sale the thermoform in the state. If there is no person who meets this requirement, the producer is the person who imports the thermoform as the owner or licensee of a trademark or brand under which it is sold or distributed in the state. If there is no person who meets this requirement, the producer is the person or company that offers for sale, sells, or distributes the thermoform in the state.

   c) "Thermoform plastic container" as a plastic container, such as a clamshell, cup, tub, lid, box, tray, egg carton, or similar rigid, nonbottle packaging, formed from sheets of extruded resin and used to package items such as fresh produce, baked goods, nuts, and deli items. Specifies that thermoforms do not include lids or seals of a different type of plastic; medical devices, sterile medical products, prescription medicine, and related packaging; refillable containers; beverage containers subject to the Bottle Bill; thermoforms of a packaging type and resin type for which the total amount of the packaging type and resin type sold in California is less than an unspecified amount.

2) Requires that the total thermoforms sold by a producer in the state shall, on average, contain a minimum amount of recycled content:

   a) From January 1, 2024 through December 31, 2026, no less than 10% postconsumer recycled plastic per year;

   b) From January 1, 2027 through December 31, 2029, no less than 20% postconsumer recycled plastic per year; and,

   c) On and after January 1, 2030, no less than 30% postconsumer recycled plastic per year.

3) Beginning January 1, 2024, a producer that does not meet the minimum amount of postconsumer recycled plastic requirements is subject to an annual administrative penalty. Beginning March 1, 2025, the penalty shall be collected annually, as specified.

4) Allows a producer to pay the penalties in quarterly installments or to arrange an alternative payment schedule subject to the approval of the Department of Resources Recycling and Recovery (CalRecycle), not to exceed a 12-month payment plan. Authorizes an extension due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

5) Authorizes CalRecycle to conduct audits and investigations and take an enforcement action against a producer to enforce the bill's provisions, including against a producer that fails to pay or underpays the administrative penalty after notice and hearing, as specified.

6) Requires CalRecycle to keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment and specifies that this information is not subject to the California Public Records Act.

7) Requires CalRecycle to consider granting a reduction of the administrative penalties assessed after considering anomalous market conditions, disruption or lack of supply of recycled plastic, and other factors that have prevented a producer from meeting the requirements.

8) In order to receive a reduction of the administrative penalty, requires a producer to submit a corrective action plan to CalRecycle that details the reasons the producer will fail to meet, or has failed to meet, the minimum content requirements and the steps the producer will take to comply with the requirement within the next reporting year. Authorizes CalRecycle to approve the corrective action plan and, if approved, to reduce the administrative penalties. Specifies that administrative penalties accrue from the point of noncompliance if the corrective action plan is not approved.

9) Requires a corrective action plan to include a compliance deadline not to exceed 24 months from the date of the original notice of violation; a description of each action the producer shall take to remedy the violation and the applicable compliance deadline for each action; and, the penalties that may be imposed if a producer fails to comply.

10) Establishes the Recycling Enhancement Penalty Account (Account) in the State Treasury and requires that penalties be deposited into the Account. Specifies that the Account may be expended, upon appropriation, for the sole purpose of supporting the recycling, infrastructure, collection, and processing of thermoforms in the state.

11) Requires producers to report the amount in pounds by resin type of virgin plastic and postconsumer recycled plastic used to manufacture thermoforms sold or offered for sale in California for the previous calendar year. Requires CalRecycle to post this information on its website.

12) Specifies that any action to increase the collection, processing, and recycling taken by CalRecycle or any person or entity that affects scrap values, the quantities of materials being recycled, or the method of invoicing the sale of thermoforms pursuant to the bill is not a violation of the Cartwright Act.

13) Makes related legislative findings.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's statement**:

> Since shipping recyclables overseas is no longer a viable option, California must develop its own markets for recycled content materials. Thermoform containers, or clamshells, have a low collection rate and are infrequently recycled. As the state is making strides towards increasing minimum recycled content in plastic bottles, thermoforms must do the same. This bill encourages efficient use of recyclable plastics and moves California towards a closed loop recycling system for polyethylene terephthalate (PET) bottles and PET thermoforms. AB 478 sets a minimum recycled content standard for thermoform containers used in food and beverage applications in California.

2) **California's waste management goals**. An estimated 35 million tons of waste are disposed of in California's landfills annually. CalRecycle is tasked with diverting at least 75% of solid waste from landfills statewide by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. AB 341 (Chesbro), Chapter 476, Statutes of 2011, requires commercial waste generators, including multi-family dwellings, to arrange for recycling services for the material they generate and requires local governments to implement commercial solid waste recycling programs designed to divert solid waste generated by businesses out of the landfill. A follow up bill, AB 1826 (Chesbro), Chapter 727, Statutes of 2014, requires generators of organic waste (i.e., food waste and yard waste) to arrange for recycling services for that material to keep the material out of the landfill. California's recent recycling rate, which reached 50% in 2014, dropped to 37% in 2019.

3) **Ocean plastic pollution**. Plastics are estimated to comprise 60-80% of all marine debris and 90% of all floating debris. By 2050, by weight there will be more plastic than fish in the ocean if we keep producing (and failing to properly manage) plastics at predicted rates, according to *The New Plastics Economy: Rethinking the Future of Plastics*, a January 2016 report by the World Economic Forum.

   California Coastal Cleanup Day was first organized by the California Coastal Commission in 1985. The Coastal Commission continues to organize the event annually and track the items collected. According to the Coastal Commission, the top 10 items collected since 1984 are cigarette butts; food wrappers and containers; caps and lids; bags; cups, plates, and utensils; straws; glass bottles; plastic bottles; cans; and construction material.

   Ocean plastic pollution is driven by ocean currents and accumulates in certain areas throughout the ocean. The North Pacific Central Gyre is the ultimate destination for much of the marine debris originating from the California coast. However, plastic generated in California pollutes oceans across the globe, as bales of plastic collected for recycling are exported for processing and recycling. The plastic with value is collected and recycled, and the rest is discarded or incinerated. In countries with inadequate waste management systems, this plastic enters waterways and flows to the ocean. Approximately 150 million metric tons

of plastic is already circulating in the marine environment and an estimated 8 million metric tons enter the oceans annually.

Most plastic marine debris exists as small plastic particles due to excessive UV radiation exposure and subsequent photo-degradation. Expanded polystyrene breaks down more rapidly into these smaller particles than rigid plastics. These plastic pieces are confused with small fish, plankton, or krill and ingested by birds and marine animals. Over 600 marine animal species have been negatively affected by ingesting plastic worldwide.

In addition to the physical impacts of plastic pollution, hydrophobic chemicals present in the ocean in trace amounts (e.g., from contaminated runoff and oil and chemical spills) bind to plastic particles where they enter and accumulate in the food chain.

4) **Recycling markets**. In spite of generating the most plastic waste in the world, the United States has not developed significant processing or markets for recycled plastic. Approximately 50% of plastic waste collected for recycling in the United States is exported; in 2016, 88% of that material was exported to countries that lack the infrastructure to properly manage it. After sorting out the material with value, the rest, an estimated 0.15 to 0.99 million metric tons of plastic exported by the United States for recycling. In most cases, the material is shipped to countries that lack the infrastructure to safely manage solid waste and the material that is not recycled ends up in the environment through open disposal or open burning contributing to ocean plastic pollution and toxic air and greenhouse gas emissions.

   China, historically the largest importer of recycled plastic, enacted Operation Green Fence in 2013, under which it increased inspections of imported bales of recyclables and returned bales that did not meet specified requirements at the exporters' expense. In 2017, China established Operation National Sword, which included additional inspections of imported recycled materials and a filing with the World Trade Organization (WTO) indicating its intent to ban the import of 24 types of scrap, including mixed paper and paperboard, PET, polyethylene (PE), polyvinyl chloride (PVC), and polystyrene (PS) beginning January 1, 2018. In November 2017, China announced that imports of recycled materials that are not banned would be required to include no more than 0.5% contamination. In January 2019, China announced that it would be expanding its ban even further – to encompass 32 types of scraps for recycling and reuse, including post-consumer plastics such as shampoo and soda bottles.

   Following China's actions, other Southeast Asian countries have enacted policies limiting or banning the importation of recycled materials, primarily plastic and mixed paper. Last year, Malaysia and Vietnam implemented import restrictions. Last year, India announced that it would ban scrap plastic imports. Thailand has announced a ban that will go into effect this year. These policies create serious challenges for recyclers.

5) **Thermoforms**. Thermoforms include a wide range of plastic packaging created by heating sheets of plastic and then formed into a specific shape in a mold. Common thermoforms include plastic "clamshell" trays used for take-out food, plastic egg cartons, and bakery trays. Most thermoforms are PET, but can be made from a wide range of plastic resins, including polypropylene (PP), and PS, including expanded polystyrene (EPS). In California, thermoforms have included relatively high quantities of recycled content; however, the

source of PET has been PET bottles, not thermoforms. While providing an important market for recycled bottle plastic, this is recycled once and then discarded. Under AB 793 (Ting), Chapter 115, Statutes of 2020, bottle manufacturers are required to include recycled content to ensure that bottles are recycled back into bottles. This bill takes the next step to require that thermoforms are recycled back into thermoforms.

In jurisdictions that accept thermoforms in curbside recycling, only thermoforms made out of PET are usually accepted. The majority of PET thermoforms collected are baled with other PET, primarily bottles, even though bottles and thermoforms generally cannot be recycled together. As a result, recyclers separate the thermoforms from the bottles and the thermoforms are discarded. This bill would create demand for recycled thermoforms in California to ensure that PET thermoforms that are collected are recycled and to encourage the collection and recycling of non-PET thermoforms. This bill would also benefit California's plastic processors, who provide economic benefits and green jobs within the state.

6) **Suggested amendments**. The *committee may wish to make the following amendments* to the bill:

   a) This bill exempts plastic containers of "a package type and resin type" from the definition of thermoform, but does not specify the maximum amount of plastic for this exclusion. The committee may wish to amend the bill to specify that this exemption is only by resin type, not package type, and specify that the maximum quantity for the exemption is 1,000,000 pounds for all resins except EPS, and 50,000 pounds for EPS.

   b) This bill allows for the possibility of an extension when penalties are assessed, but does not clarify CalRecycle's authority to grant an extension. The committee may wish to amend the bill to specify that CalRecycle may grant one extension of up to 12 months due to unforeseen circumstances, at its discretion.

   c) This bill does not specify an amount used to determine penalties. The committee may wish to amend the bill to replace the blank on page 5, line 37 with "20 cents." The committee may also wish to remove a provision that refers to penalties that are "equal to or less than zero," which is not possible if a manufacturer is out of compliance.

   d) This bill requires CalRecycle to consider reducing penalties due to specified factors, including disruption in, or lack of, supply of recycled plastic. The purpose of increasing recycled content requirements is in large part to increase demand for recycled plastic. Allowing penalty relief due to lack of supply potentially creates a loophole in the requirements. The committee may wish to amend the bill to specify that lack of supply can only be a factor in reducing penalties if it is due to an unforeseen circumstance or event, such as a natural disaster.

   e) The committee may also wish to amend the bill to reword a phrase on page 7, lines 22-24 for clarity, to read, "… for the sole purpose of supporting the recycling, collection, and processing *infrastructure* of thermoform plastic containers in the state."

7) **Previous legislation**. AB 793 (Ting), Chapter 115, Statutes of 2020, requires plastic beverage containers subject to the Bottle Bill to contain minimum amounts of postconsumer recycled plastic annually, beginning with 15% by January 1, 2022 and increasing to 35% by

2029 and 50% by January 1, 2030.

8) **Double referral**. This bill has also been referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

350 Silicon Valley
California Alliance of Nurses for Healthy Environments
Elders Climate Action, NorCal and SoCal Chapters
National Stewardship Action Council
rPlanet Earth

Opposition

Foodservice Packaging Institute
Plastics Industry Association

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