

Date of Hearing: May 19, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 478 (Ting) – As Amended April 21, 2021

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| Policy Committee: | Natural Resources | Vote: | 8 - 0 |
| | Judiciary | | 8 - 1 |

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill establishes minimum recycled content requirements for thermoform plastic containers, and authorizes CalRecycle to enforce the provisions of the bill.

Specifically, this bill:

- 1) Requires thermoforms sold by a producer in the state to contain, on average, the following minimum amounts of postconsumer recycled content from collected and recycled thermoforms:
 - a) From January 1, 2024 through December 31, 2026, no less than 10% per year.
 - b) From January 1, 2027 through December 31, 2029, no less than 20% per year.
 - c) On and after January 1, 2030, no less than 30% per year.
- 2) Requires producers to report the amount of virgin plastic and postconsumer recycled plastic used to manufacture thermoforms sold or offered for sale in California. Requires CalRecycle to post this information on its website.
- 3) Specifies a producer of thermoforms that does not meet the required minimum amount of postconsumer recycled plastic would be subject to an annual administrative penalty, which could be reduced under specified conditions subject to approval by CalRecycle and compliance with a corrective action plan. Any penalties would be deposited into the Recycling Enhancement Penalty Account, which could expended, upon appropriation by the Legislature, for the sole purpose of supporting the recycling, collection and processing infrastructure of thermoforms in the state.
- 4) Requires CalRecycle to keep confidential all business trade secrets and proprietary information about manufacturing processes and equipment, and exempts trade secret information from disclosure through the California Public Records Act.
- 5) Specifies certain actions by a producer of thermoforms solely to increase the collection, processing and recycling of scrap plastic materials, and the formation of a nonprofit organization, as provided, that establishes specifications for different grades or classifications of thermoform plastics, do not constitute a violation of the Cartwright Act or the Unfair Practices Act.

FISCAL EFFECT:

- 1) One-time costs to CalRecycle of \$539,000 in Fiscal Year 2022-23, and \$660,000 in Fiscal year 2024-25, for additional staff to develop applicable regulations and reporting mechanisms for thermoform producers, and assist with data analysis and corrective action plans.
- 2) Ongoing annual administration and implementation costs beginning in Fiscal Year 2025-26 to CalRecycle of \$658,000.
- 3) Unknown but potentially significant enforcement costs to CalRecycle to ensure compliance with this bill.

Without an alternative specified funding source, these costs are expected to be borne by the Integrated Waste Management Account (IWMA). The IWMA currently has a structural imbalance of millions of dollars, and the major revenue source of the IWMA, the tipping fee, is already at the statutory maximum of \$1.40 per ton of disposed solid waste at landfills. As additional solid waste is diverted from the waste stream, revenue from the tipping fee is expected to continue to decline. The IWMA supports a number of state agencies in addition to CalRecycle including activities at the State Water Resources Control Board, the Office of Environmental Health Hazard Assessment, and CalEPA. Additional costs would worsen the deficit of the IWMA.

COMMENTS:

- 1) **Background.** The Integrated Waste Management Act of 1989 (IWMA), established a state recycling goal of 75% of solid waste generated to be diverted from landfill disposal through source reduction, recycling and composting by 2020. Local governments have been required to divert 50% of the waste generated within the jurisdiction from landfill disposal since 2000. California's recent recycling rate, which reached 50% in 2014, dropped to 37% in 2019.

Due to a lack of domestic markets for recycled content materials, California traditionally exports approximately one-third of its recyclable material. Approximately 50% of plastic waste collected for recycling in the United States is exported. In most cases, the material is then 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 GHG. Historically, the majority of exported recyclable material from California was exported to China. However, in 2017, China implemented the National Sword policy to restrict the material types and contamination rates of allowable recycling imports. This policy, along with subsequent actions by Southeast Asian countries to limit or ban the import of recyclable materials has led to a significant decline in markets for exported recyclable materials, particularly plastic.

The author contends:

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.

In California, thermoforms such as “clamshell” food trays have included relatively high quantities of recycled content from sources such as PET beverage containers, but generally have not had markets to be recycled themselves.

- 2) **Purpose.** This bill would require thermoforms sold by a producer in the state to contain specified minimum amounts of postconsumer recycled plastic from thermoforms in order to create demand for recycled thermoform material. The goal is to create and support a circular economy which produces, collects, recycles, and reprocesses material, in order to reduce waste and reliance on virgin materials.
- 3) **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.

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