

## ASSEMBLY THIRD READING

AB 2253 (Boerner)

As Amended April 8, 2026

Majority vote

**SUMMARY**

This bill requires a recycled content claim to be based on the actual physical recycled content used in the production of the product without the use of credit-based mass balance accounting.

**Major Provisions**

- 1) Repeals the definition of "plastic food container product" and instead defines "postconsumer" to mean a material that would otherwise be destined for disposal, having completed its intended end use and product life cycle, and provides that "postconsumer" does not include materials or byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.
- 2) Expands the application of a provision in existing law relating to recycled content claims from a "plastic food container product" to any product.
- 3) Revises the reference to the Federal Trade Commission Guides for the Use of Environmental Marketing Claims to specifically refer to those guides as they read on January 1, 2026.
- 4) Requires a recycled content claim be based on the actual physical recycled content used in the production of the product, as calculated by methods including segregated model, controlled blending model, and rolling average percentage, without the use of credit-based mass balance accounting, including proportional credit and nonproportional credit allocation, "book-and-claim" accounting, or similar approaches not based on the actual physical recycled content used in the production of the product.

**COMMENTS**

*Recycled content.* The United States has not developed significant markets for recycled content materials, including plastic. Historically, China has been the largest importer of recyclable materials. In an effort to improve the quality of the materials it accepts and to combat the country's significant environmental challenges, China established Operation National Sword in 2017, which included inspections of imported recyclable materials and a filing with the World Trade Organization indicating its intent to ban the import of 24 types of scrap, including polyethylene terephthalate (PET), high density polyethylene (HDPE), polyvinyl chloride (PVC), and polystyrene (PS) beginning January 1, 2018. In November 2017, China announced that imports of recyclable materials that are not banned will be required to include no more than 0.5% contamination. Following China's actions, other Southeast Asian countries have enacted policies limiting or banning the importation of recyclable plastic materials. Last year, Malaysia and Vietnam implemented import restrictions. India and Thailand have also banned scrap plastic imports.

These limitations are important to reducing plastic pollution worldwide, as these countries have received low-quality mixed plastic waste that is challenging to recycle and has little to no scrap value. The plastic is sorted to remove the materials that can be easily recycled, and the rest is left to be burned or otherwise disposed. In countries with inadequate waste management

systems, this can include being left on beaches or otherwise dumped into the environment, contributing to the ocean plastic pollution crisis. For the United States, this has significantly limited our recycling options for plastics. In order to foster markets for recycled materials, the state has established recycled content requirements for various products. The Rigid Plastic Packaging Container (RPPC) Law requires that RPPCs contain at least 25% postconsumer material, have a recycling rate of 45%, be reusable or refillable, or be a source-reduced container. Plastic beverage containers subject to the state's Bottle Bill are required to contain a minimum of 25% postconsumer recycled plastic through 2029, and 50% on and after January 1, 2030. Statute requires that newsprint contain a minimum of 25% recycled content. Plastic trash bag manufacturers are required to ensure that the bags contain a quantity of postconsumer recycled content equal to 10% of the weight of the regulated bag or ensure that at least 30% of the weight of material used in all of its plastic products is postconsumer recycled content.

*Mass balance.* Generally, mass balance is a term used to describe chain of custody systems used in the industry to track materials through the production process. Mass balance is widely used to trace materials in supply chains where it is not feasible to physically separate materials. As one chemical producer describes it, "The mass balance approach supports positive environmental impact by substitution of conventional feedstock while not focusing on measurable content in the end product." Book and claim is similar to mass balance, but differs in that it does not follow the physical path of a material. Book and claim is more similar to a credit trading system where no amount of physical recycled content may be used in the production process at all, but a "credit" for the amount used elsewhere is claimed as recycled content. The International Organization for Standardization (ISO) has developed standards to govern the use of mass balance claims. The current ISO standards include:

- 1) Segregated model, which requires physical separation to track actual physical recycled content in a finished product.
- 2) Controlled blending model, which tracks controlled blending of physical recycled content to determine the actual physical recycled content in a finished product.
- 3) Rolling average percentage model, which uses the rolling average percentage to track physical recycled content, but allows for physical recycled content fluctuations in individual products. This method is currently used in numerous industries to calculate recycled content for finished products.
- 4) Proportional credit allocation, allows the use of credits for recycled input into the production process and allows for the allocation of that credit to be distributed proportionally to the various products produced. Fuels can be counted as recycled inputs under this standard.
- 5) Free credit allocation, allows the use of credits for recycled input into any part of the production process, whether or not any portion of recycled content is in the finished product.
- 6) Book and claim model, where the recycled content claim is completely decoupled from the physical product. This method is widely used in the renewable energy space, where renewable energy sources are supplied to the grid (booked) and customers downstream can "claim" the renewable energy even though no actual renewable electricity reached their home or business. Fuels can be counted as recycled inputs under this standard.

*Federal guidance.* Under federal law, unfair or deceptive acts or practices in or affecting commerce are declared unlawful. The Federal Trade Commission (FTC) has published guidelines (Green Guides) that help explain how the guidelines apply to environmental advertising and marketing, such as claims regarding degradability and recycling content.

While the Green Guides do not explicitly prohibit the use of mass balance claims, they do provide specific examples of how to apply the guidelines. Code of Federal Regulations 260.13 (d) specifies that recycling claims based on the "annual weighted average" (aka, rolling average) of recycled material purchased from the sources after accounting for loss during the production process are not deceptive. In 2023, the FTC began a process to revise the Green Guides and requested input from the US Environmental Protection Agency (USEPA). In its comment letter to the FTC, dated April 20, 2023, the USEPA states that it "does not recommend that the Green Guides promote the mass balance approach as it is not widely implemented or accepted worldwide." The comment further states that the current weighted average calculation "allows a producer to buy a certain amount of recycled material, but there is no requirement to use the recycled material. Allowing a producer to advertise that a product contains 'recycled content' based on the annual amount of recycled material purchased is deceptive. It would be clearer to focus on calculations that involve the actual amount of material used." Efforts to revise the guidelines stalled after the change in administration in 2024.

*People v. Exxon Mobil Corp.* In 2024, the California Department of Justice (DOJ) filed suit against ExxonMobil and related plastic industry groups based on allegations that the industry has, and continues to, "mislead consumers by engaging in an aggressive campaign to deceive the public and perpetuate the myth that recycling will solve the crisis of plastic pollution." According to the DOJ:

- 1) The vast majority—92%—of plastic waste processed through ExxonMobil's "advanced recycling" technology does not become recycled plastic, but rather primarily fuels;
- 2) The plastics that are produced through ExxonMobil's "advanced recycling" process contain so little plastic that they are effectively virgin plastics deceptively marketed as "circular" and sold at a premium;
- 3) ExxonMobil's "advanced recycling" process cannot handle large amounts of post-consumer plastic waste without risking the safety and performance of its equipment; and,
- 4) Plastics produced through ExxonMobil's "advanced recycling" program, in its best case scenario, will only account for less than one percent of its total virgin plastic production capacity, which continues to grow.

Sierra Club, Surfrider Foundation, Heal the Bay, and Baykeeper have also filed a lawsuit against the plastics industry raising similar issues. Both lawsuits are continuing to move through the legal process.

*This bill.* This bill is intended to ensure that the recycled content claims made by producers of products, as specified, accurately reflect the amount of postconsumer plastic in the finished product. This bill builds upon an existing requirement for plastic food containers by expanding it to other consumer products and specifying that recycled content claims must indicate the "actual physical recycled content" in the product. Updating these requirements at the state level is necessary to prevent deceptive recycling claims made by the plastics industry, which is

especially important as the state implements ambitious new recycling and recycled content requirements.

### **According to the Author**

AB 2253 ensures that consumers know whether the products they are purchasing actually contain recycled content. Currently, companies can utilize accounting to obscure the actual recycled content of their products. This practice of greenwashing means that Californians who think they are making better choices for the environment actually aren't. And, Californians are not only being misled by these fraudulent claims, but are also paying more for the false belief they are doing good because of misleading claims. California has always been the leader in the nation in protecting consumers and the environment. Californians shouldn't be bamboozled by these companies' false marketing on products that are not green. AB 2253 would protect consumers from deceptive recycled content claims by requiring companies that advertise recycled content in their products to maintain and make available written documentation proving the recycled material was diverted from the waste stream and demonstrate that their claims comply with the Federal Trade Commission standards.

### **Arguments in Support**

According to the Natural Resources Defense Council, "consumers should be able to trust the labels they see on store shelves and businesses should be able to trust the claims associated with the materials they buy. AB 2253 ensures that recycled content claims reflect the actual materials used in products, restores integrity to the marketplace, protects California's real recyclers, and protects consumers' right to make informed, environmentally responsible purchasing decisions."

### **Arguments in Opposition**

According to a coalition of opponents, "AB 2253 runs directly counter to the intent and spirit of the state's leading efforts to increase the amount of recycled material used in the production of new products."

## **FISCAL COMMENTS**

- 1) Existing law requires a manufacturer or supplier making an environmental marketing claim related to the recycled content of a plastic food container product to maintain certain information and documentation in support of that claim and authorizes a city, a county, or the state to impose specified civil penalties on violators. Current law authorizes the Attorney General to expend, upon appropriation by the Legislature, any civil penalties it collects to enforce existing law. The prohibitions in and requirements of this bill are subject to the same civil liability and enforcement mechanism.
  - a) This bill may result in cost pressures (Trial Court Trust Fund) of an unknown amount, potentially in excess of \$150,000, to the courts to adjudicate enforcement actions. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The state budget provides annual General Fund backfills to the Trial Court Trust Fund to offset revenue reductions, totaling approximately \$117.3 million in 2025-

26. The Legislative Analyst's Office recently warned of General Fund structural deficits of around \$35 billion per year in the 2027-28 fiscal year and ongoing.

- 2) The Department of Justice anticipates minor and absorbable costs.
- 3) The Department of Resources Recycling and Recovery (CalRecycle) anticipates minor and absorbable costs as a result of this bill because the bill affects only the legality of marketing claims and does not impact CalRecycle's existing compliance- or enforcement-related authority, nor does the bill give the department any new authority.

**VOTES**

**ASM NATURAL RESOURCES: 10-4-0**

**YES:** Bryan, Connolly, Garcia, Haney, Kalra, Boerner, Pellerin, Schultz, Wicks, Zbur

**NO:** Ellis, Alanis, Hoover, Macedo

**ASM APPROPRIATIONS: 10-4-1**

**YES:** Wicks, Aguiar-Curry, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

**NO:** Hoover, Dixon, Ta, Tangipa

**ABS, ABST OR NV:** Calderon

**UPDATED**

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CONSULTANT: Elizabeth MacMillan / NAT. RES. / (916) 319-2092

FN: 0002661