

ASSEMBLY THIRD READING

AB 478 (Ting, et al.)

As Amended April 21, 2021

Majority vote

SUMMARY

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

Major Provisions

1) Defines terms used in this bill, including:

- a) "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.
- b) "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; and thermoforms comprised of a resin type for which the total amount of resin is less than 1 million pounds annually or less than 50,000 pounds annually of expanded polystyrene.

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) 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.

- 5) 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.
- 6) 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, collection, and processing infrastructure of thermoforms in the state.
- 7) 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.
- 8) 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.

COMMENTS

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.

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.

According to the Author

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.

Arguments in Support

According to the sponsor of this bill, rPlanet Earth:

PET thermoform containers have contained the most California recycled content of any food package in the United States. The recycled content, however, consisted primarily of recycled plastic beverage bottles. As the beverage industry moves to increase their own recycled content to comply with AB 793 (Ting), [Chapter 115, Statutes of 2020], the thermoform industry recognizes the need to transition to closing the loop on their own thermoform containers.

AB 478 represents a unique situation where the thermoform industry is demonstrating leadership to encourage the collection of California-processed post-consumer thermoformed plastic feedstock needed to make new thermoform containers for a closed-loop system; reduce greenhouse gas emissions and landfill disposal; and, provide a level playing field.

Arguments in Opposition

The Plastics Industry Association states, "we do not believe that there will be enough recycled content to meet the mandates of this legislation. While this bill would develop end markets for plastic materials, there needs to be an equal emphasis on improving the collection and sortation of these materials to get more recyclable plastics to these markets."

FISCAL COMMENTS

According the Assembly Appropriations Committee:

- 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.

VOTES**ASM NATURAL RESOURCES: 8-0-3**

YES: Luz Rivas, Chau, Friedman, Cristina Garcia, McCarty, Muratsuchi, Stone, Wood

ABS, ABST OR NV: Flora, Mathis, Seyarto

ASM JUDICIARY: 8-1-2

YES: Stone, Chau, Chiu, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

NO: Davies

ABS, ABST OR NV: Smith, Kiley

ASM APPROPRIATIONS: 12-3-1

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies

ABS, ABST OR NV: Fong

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