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AB-793 Recycling: plastic beverage containers: minimum recycled content. (2019-2020)

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Assembly Bill No. 793

CHAPTER 115

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

[Approved by Governor September 24, 2020. Filed with Secretary of State September 24, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 793, Ting. Recycling: plastic beverage containers: minimum recycled content.

(1) 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 act requires each glass container manufacturer to use a minimum percentage of 35% of postfilled glass in the manufacturing of its glass food, drink, or beverage containers, except as specified.

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, 2022, would require the total number of plastic beverage containers filled with a beverage sold 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 annual administrative penalties, calculated as prescribed, on a beverage manufacturer for violating these requirements, except as specified. The bill would authorize the department to enforce these provisions and conduct audits and investigations of a beverage manufacturer for the purpose of ensuring compliance. The bill would exempt from the California Public Records Act certain trade secrets and proprietary information resulting from those audits and investigations. The bill would require administrative 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 the state. The bill would authorize the department, if the Legislature makes an appropriation before June 15, 2027, for this purpose, to contract with a research university to study specified markets and would authorize the department to allocate moneys from the California Beverage Container Recycling Fund, upon that appropriation, for the study if certain conditions are met. If that appropriation is made and the department undertakes the study, the bill would require the study to be completed by May 1, 2028.

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) 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, 2024, and annually thereafter, a plastic material reclaimer to report to the department the amount in pounds and by resin type of empty plastic beverage containers subject to the California Redemption Value that the plastic material reclaimer has collected and sold in the previous calendar year. The bill would require, beginning March 1, 2024, and annually thereafter, a manufacturer of postconsumer recycled plastic to 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 its capacity to produce food-grade material, as specified. The bill would require a plastic material reclaimer and a manufacturer of postconsumer recycled plastic to report the required information under penalty of perjury. By requiring that the information be submitted under penalty of perjury, the bill would expand the crime of perjury and impose a state-mandated local program.

(3) Existing law requires all rigid plastic bottles and rigid plastic containers sold in California to be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container.

This bill would exempt 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 from the labeling requirement described above.

(4) 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.

(5) 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), the state 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) The state's recycling facilities are struggling to find markets for recycled materials, resulting in the stockpiling of these materials.

(6) The state must reduce its reliance on unpredictable foreign markets for its recycled materials.

(7) The state has established minimum recycled content requirements for glass containers, rigid plastic packaging containers, newsprint, trash bags, and other products. However, the state 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) On April 22, 2020, Governor Gavin Newsom signed an executive order suspending for 60 days several regulations, including the requirement for beverage container redemption centers to operate. On June 22, 2020, Governor Gavin Newsom signed another executive order extending the 60-day suspension for certain beverage container redemption center requirements for another 60 days. Most states with bottle bills have suspended their programs or regulation enforcement for a limited time during the pandemic.

(11) The state has experienced an estimated 30 percent drop in the volume of beverage containers reclaimed through its deposit program from March 14, 2020, to May 22, 2020, inclusive, compared with 2019, according to preliminary data from the Department of Resources Recycling and Recovery.

(12) The drop in redeemed beverage container volume is believed to be caused by a combination of temporary redemption centers closures and consumers voluntarily avoiding venturing into public spaces. The shift equates to about a \$61 million reduction in the amount of deposit money redeemed.

(13) The requirements imposed by this act 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 the state.

(b) It is the intent of the Legislature that any moneys collected as administrative penalties for violations of this act be appropriated in the annual Budget Act for 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, 2022, 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 15 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) Beginning January 1, 2025, the director may, on an annual basis, review and determine to adjust the minimum postconsumer recycled content percentage required pursuant to paragraphs (2) and (3). The director's review may be initiated by the director or at the petition of the beverage manufacturing industry not more than annually. The department shall adopt regulations to establish the petition process and requirements. The director shall not adjust the minimum postconsumer recycled content requirements above the minimum postconsumer recycled plastic content percentages required pursuant to paragraphs (2) and (3). In making a determination pursuant to this paragraph, the director shall consider, at a minimum, all of the following factors:

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

(ii) Recycling rates.

(iii) The availability of recycled plastic suitable to meet the minimum recycled content requirements pursuant to paragraphs (2) and (3), including the availability of high-quality recycled plastic, and food-grade recycled plastic from the state's and other 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) Notwithstanding subparagraph (A), the director shall not review or adjust a minimum postconsumer recycled content standard while the department is reducing payments pursuant to subdivision (c) of Section 14581.

(C) The department may enter into a contract for the services required to implement this section and related regulations developed by the department.

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

(b) (1) Beginning January 1, 2023, a beverage manufacturer that does not meet the minimum recycled plastic content requirements pursuant to subdivision (a) shall be subject to an annual administrative penalty pursuant to this subdivision. Beginning March 1, 2024, the administrative penalty shall be collected annually, if a reduction has not been approved pursuant to subdivision (e), and calculated in accordance with subdivision (c).

(2) 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, not to exceed a 12-month payment plan unless an extension is needed due to unforeseen circumstances, such as a public health emergency, state of emergency, or natural disaster.

(c) Beginning March 1, 2024, and annually thereafter, the department shall invoice any assessed administrative penalties for the previous calendar year based on the postconsumer recycled plastic content requirement of the previous calendar year. The department shall calculate the amount of the penalty based upon the amount in pounds in the aggregate of virgin and postconsumer recycled plastic material used by the beverage manufacturer to produce beverage containers sold or offered for sale in the state, in accordance with the following:

(1) The annual administrative penalty amount assessed to a beverage manufacturer shall equal the product of both of the following:

(A) The total pounds of plastic used multiplied by the relevant minimum postconsumer recycled plastic percentage, less the pounds of postconsumer recycled plastic used.

(B) Twenty cents (\$0.20).

(2) For purposes of paragraph (1), both of the following shall apply:

(A) The total pounds of plastic used shall equal the sum of the amount of virgin plastic and postconsumer recycled plastic used by the beverage manufacturer, as reported pursuant to subdivision (a) of Section 14549.3.

(B) If the product calculated pursuant to paragraph (1) is equal to or less than zero, an administrative penalty shall not be assessed.

(d) (1) The department may conduct audits and investigations and take an enforcement action against a beverage manufacturer for the purpose of ensuring compliance with this section and the information reported pursuant to Section 14549.3. The department may take an enforcement action against a beverage manufacturer that fails to pay or underpays the assessed or audited administrative penalty only after notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(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). Business trade secrets and proprietary information obtained 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 a copy of the department's audit of that beverage manufacturer conducted pursuant to paragraph (1).

(e) (1) The department shall consider granting a reduction of the administrative penalties assessed pursuant to subdivision (b) for the purpose of meeting the minimum recycled content requirements required pursuant to paragraphs (1) to (3), inclusive, of subdivision (a).

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

(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.

(3) In order to receive a reduction of the administrative penalty, a beverage manufacturer shall submit to the department a corrective action plan detailing the reasons why the beverage manufacturer will fail to meet or has failed to meet the minimum postconsumer recycled content standard and the steps the beverage manufacturer will take to comply with the minimum postconsumer recycled content standard within the next reporting year. The department may approve the corrective action plan, and may reduce the administrative penalties once it approves the corrective action plan and the beverage manufacturer implements the plan. Administrative penalties shall accrue from the point of noncompliance with the minimum postconsumer recycled content standard if the department disapproves the corrective action plan or if the beverage manufacturer fails to implement the plan.

(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, administrative 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 the state.

(g) (1) If the Legislature makes an appropriation in the annual Budget Act before June 15, 2027, for this purpose, the department may 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) If the Legislature makes the appropriation specified in paragraph (1) and the department undertakes the study, the study shall be completed no later than May 1, 2028.

(3) The department may allocate moneys from the fund, upon appropriation by the Legislature as specified in paragraph (1), for the study by June 30, 2027, if all of the following apply:

(A) The department finds that there are sufficient moneys in the fund.

(B) The fund is not operating at a deficit.

(C) The director is not exercising authority to implement proportional reductions subject to the requirements of subdivision (c) of Section 14581.

(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 does not apply to either 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, as that section read on January 1, 2020.

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

SEC. 3. Section 14549.3 of the Public Resources Code is amended to read:

14549.3. (a) 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.

(b) On or before March 1, 2024, and annually thereafter, a plastic material reclaimer shall report to the department the amount in pounds and by resin type 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 in pounds and by resin type of empty plastic containers sold in the 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.

(c) On or before March 1, 2024, 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 in pounds of material that meets beverage manufacturer specifications for bottle-grade material. The report shall include the amount in pounds of food-grade material sold in the 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.

(d) The department shall post the information reported pursuant to subdivision (a) within 45 days on the department's internet website.

(e) This section does not apply to a refillable plastic beverage container.

SEC. 4. Section 18017 is added to the Public Resources Code, immediately following Section 18016, 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. 5. 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. 6. 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.