

By: Chavez

H.B. No. 2530

A BILL TO BE ENTITLED

AN ACT

relating to beverage container redemption and recycling in border counties; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 375 to read as follows:

CHAPTER 375. BEVERAGE CONTAINER REDEMPTION AND RECYCLING IN BORDER COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. DEFINITIONS. In this chapter:

(1) "Beverage" means an alcoholic, nonalcoholic, carbonated, or noncarbonated drink prepared in liquid, ready-to-drink form and intended for human consumption. The term includes:

(A) beer;

(B) ale;

(C) malt liquor;

(D) other drinks produced by fermenting malt;

(E) spirits;

(F) wine;

(G) wine coolers;

(H) soda;

(I) water, including mineral water;

(J) carbonated water, including carbonated

1 mineral water;

2 (K) carbonated soft drinks;

3 (L) noncarbonated soft drinks and sport drinks;

4 (M) noncarbonated fruit drinks;

5 (N) coffee and tea drinks; and

6 (O) carbonated fruit drinks.

7 (2) "Beverage container" means a glass, metal, or
8 plastic vessel that is hermetically sealed or capped and that
9 contains a beverage at the time it is sold or offered for sale. The
10 term does not include cans or cups made primarily of aluminum.

11 (3) "Border county" means a county that borders the
12 United Mexican States.

13 (4) "Commission" means the Texas Commission on
14 Environmental Quality.

15 (5) "Consumer" means a person who purchases a beverage
16 in a beverage container for the person's own use or consumption.
17 The term includes a lodging, eating, or drinking establishment if
18 beverages are generally consumed on the establishment's premises
19 and does not include a person who purchases the beverage from the
20 establishment for consumption on the premises.

21 (6) "Infant formula" means any liquid food sold as an
22 alternative for human milk for the feeding of infants.

23 (7) "Medical food" means a food or beverage that is
24 formulated to be consumed or administered under the supervision of
25 a physician and that is intended for specific dietary management of
26 diseases or health conditions for which distinctive nutritional
27 requirements, based on recognized scientific principles, are

1 established by medical evaluation. The term also includes any
2 product that meets the definition of "medical food" under the Food,
3 Drug, and Cosmetic Act, 21 U.S.C. Section 360ee(b)(3).

4 (8) "Redemption center" means an operation certified
5 by the commission or by a border county under Section 375.154 to
6 redeem beverage containers under this chapter.

7 (9) "Refund" means a payment by a redemption center
8 under Section 375.201 to a person who presents a beverage container
9 at the redemption center.

10 (10) "Retail dealer" means a person who sells a
11 beverage in a beverage container to a consumer.

12 Sec. 375.002. PROGRAM ADMINISTRATION. The commission shall
13 establish a beverage container redemption and recycling program to
14 be administered only in border counties in accordance with this
15 chapter. The commission shall administer and enforce this chapter
16 and may adopt rules and forms necessary to carry out the purposes of
17 this chapter.

18 Sec. 375.003. CRIMINAL PENALTIES. A person commits an
19 offense if the person knowingly violates Section 375.051, 375.101,
20 375.156, or 375.201. An offense under this section is a Class C
21 misdemeanor.

22 Sec. 375.004. REPORT TO LEGISLATURE. The commission shall
23 include information on the beverage container redemption and
24 recycling program established under this chapter as part of its
25 annual report to the legislature under Section 5.178, Water Code.

26 [Sections 375.005-375.050 reserved for expansion]

1 SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

2 Sec. 375.051. REFUND VALUE AND LABEL REQUIRED. (a) Except
3 as provided by Subsection (b), a person may not sell or offer for
4 sale in a border county a beverage container unless the container
5 has a refund value of five cents or more and is labeled as required
6 by Section 375.052.

7 (b) A person may sell or offer for sale in a border county a
8 beverage container that does not have a refund value if:

9 (1) the container has a fluid capacity of more than one
10 gallon;

11 (2) the container contains:

12 (A) a beverage that consists of milk or of 100
13 percent fruit or vegetable juice; or

14 (B) medical food or infant formula; or

15 (3) the container is sold for use by a common carrier
16 in conducting passenger transport.

17 Sec. 375.052. LABELING. (a) A beverage container required
18 to have a refund value under Section 375.051 that is offered for
19 sale in a border county must have legibly stamped, labeled, or
20 embossed on the container:

21 (1) the words "return for refund";

22 (2) the refund value of the container;

23 (3) the name "Texas" or the abbreviation "TX" or
24 "Tex."; and

25 (4) other language as required by the commission.

26 (b) The commission may require that any beverage container
27 intended for sale in a border county be printed, embossed, stamped,

1 labeled, or otherwise marked with a universal product code or
2 similar machine-readable indicia.

3 (c) Subsection (a) does not apply to the sale of a
4 refillable glass beverage container that contains water or a soft
5 drink and that has a brand name permanently marked on the container.

6 [Sections 375.053-375.100 reserved for expansion]

7 SUBCHAPTER C. COLLECTION OF REDEMPTION FEE

8 Sec. 375.101. COLLECTION AND REMITTANCE BY RETAIL DEALER.

9 (a) A retail dealer in a border county shall collect a redemption
10 fee of five cents from a consumer for each beverage container that
11 the retail dealer sells to the consumer.

12 (b) The retail dealer shall remit to the comptroller 4.75
13 cents of each five-cent redemption fee the retail dealer collects
14 under Subsection (a). The retail dealer may retain one quarter of
15 one cent for the retail dealer's administrative costs.

16 (c) Subject to Subsection (d), the comptroller by rule shall
17 adopt procedures for remitting the redemption fee under Subsection
18 (b).

19 (d) A retail dealer may, on approval of the comptroller,
20 elect to remit the redemption fee annually if the retail dealer's
21 projected remittance for a calendar year totals less than \$10,000.
22 The retail dealer shall make an annual redemption remittance under
23 this subsection not later than February 1 of the year following the
24 year for which the remittance is being made. A retail dealer shall
25 notify the comptroller of its intent to make an annual redemption
26 remittance under this subsection not later than January 31 of the
27 year for which the annual remittance will be made.

1 Sec. 375.102. ANNUAL REPORT. (a) Not later than March 1 of
2 each year a retail dealer who collects a redemption fee under
3 Section 375.101 shall report to the comptroller, on a form approved
4 by the comptroller, the total amount of fees collected under
5 Section 375.101 for the calendar year preceding the year in which
6 the report is filed.

7 (b) The comptroller may require the retail dealer to include
8 in the report required by Subsection (a) other information the
9 comptroller considers necessary to ensure timely and accurate
10 remittance under Section 375.101.

11 Sec. 375.103. TEXAS BEVERAGE REDEMPTION AND RECYCLING
12 ACCOUNT. (a) Fees collected under this subchapter shall be
13 deposited to the credit of the Texas beverage redemption and
14 recycling account in the general revenue fund and may be
15 appropriated to the commission only for:

16 (1) reimbursement and handling fees paid to redemption
17 centers;

18 (2) administration of this chapter; and

19 (3) the purposes authorized under Subsection (b).

20 (b) Each quarter, after setting aside amounts for
21 reimbursement and handling fees paid to redemption centers, for the
22 administration of this chapter, and for a reserve amount
23 established under Subsection (c), the commission shall allocate
24 money in the Texas beverage container redemption and recycling
25 account under this section for:

26 (1) grants to border counties to:

27 (A) operate the program under this chapter; and

1 (B) finance the purchase of redemption center
2 infrastructure;

3 (2) grants to local governments in border counties to
4 promote litter abatement and encourage recycling;

5 (3) research and development of markets for and
6 products made from used beverage containers redeemed under this
7 chapter;

8 (4) public education in border counties about the
9 program established under this chapter; and

10 (5) other litter reduction strategies employed in
11 border counties.

12 (c) The commission shall ensure that the Texas beverage
13 container redemption and recycling account contains a reserve
14 amount to be used for contingencies that is equal to:

15 (1) five percent of the total amount paid to
16 redemption centers under Section 375.204 in the preceding calendar
17 year; and

18 (2) any amount of interest earned on the amount
19 reserved under Subdivision (1).

20 [Sections 375.104-375.150 reserved for expansion]

21 SUBCHAPTER D. REDEMPTION CENTERS

22 Sec. 375.151. DELEGATION TO BORDER COUNTIES. (a) The
23 commission may delegate to a border county the establishment and
24 certification of redemption centers.

25 (b) A border county may apply for and use grant funds from
26 the commission to establish and certify redemption centers under
27 this section.

1 Sec. 375.152. REDEMPTION ZONES AND LOCATION OF REDEMPTION
2 CENTERS. (a) The commission annually shall designate redemption
3 zones throughout the border counties and shall ensure that at least
4 one redemption center is located in each redemption zone. The
5 commission may consult with border counties in designating
6 redemption zones under this section.

7 (b) If practicable, the commission shall designate as a
8 redemption zone an area within a one-half mile radius of a retail
9 food store, as that term is defined under Section 437.001.

10 (c) If designation under Subsection (b) is not practicable,
11 the commission may designate redemption zones based on other
12 appropriate criteria, including population ratios and the number of
13 retail dealers located in an area.

14 Sec. 375.153. ESTABLISHMENT OF REDEMPTION CENTERS. (a) The
15 commission on its own or through a border county shall contract with
16 a private entity, including a retail dealer, a nonprofit entity, or
17 a local government or a combination of private, nonprofit, or local
18 government entities to operate a certified redemption center in
19 each redemption zone.

20 (b) The commission shall establish temporary alternative
21 redemption options for a redemption zone without a redemption
22 center until the commission or the border county contracts with
23 another entity to establish and operate a redemption center.

24 (c) The commission or a border county shall establish and
25 enforce audit procedures to ensure that a redemption center is in
26 compliance with the contract between the redemption center and the
27 commission or the border county.

1 (d) A border county that contracts with a private entity to
2 establish a redemption center shall ensure that the private entity
3 complies with commission rules relating to certification of
4 redemption centers under Section 375.154.

5 Sec. 375.154. CERTIFICATION OF REDEMPTION CENTERS. (a) The
6 commission by rule shall adopt a procedure for the certification of
7 redemption centers, including standards and requirements for
8 certification.

9 (b) The commission may delegate certification of redemption
10 centers to individual border counties.

11 (c) Rules adopted under Subsection (a) shall require the
12 operator of a redemption center to:

13 (1) provide any information required for
14 certification under the penalty of perjury;

15 (2) demonstrate that the operator will operate the
16 redemption center in accordance with this chapter; and

17 (3) promptly notify the commission or county, as
18 appropriate, of any material change in the nature of the operation
19 that conflicts with information submitted in the operator's
20 application for certification.

21 Sec. 375.155. OPERATION OF REDEMPTION CENTERS. (a) The
22 commission shall adopt rules for the operation of a redemption
23 center.

24 (b) Rules adopted under Subsection (a) shall require a
25 redemption center to:

26 (1) reject for refund drink packaging material or a
27 beverage container or other product that does not have the refund

1 value established by Section 375.051;

2 (2) act to prevent payment of a refund for a beverage
3 container that does not have a refund value established by Section
4 375.051;

5 (3) reject for refund a beverage container that the
6 redemption center knows or should know was purchased in a county
7 other than a border county;

8 (4) reject for refund a beverage container for which
9 the redemption center knows or should know a redemption fee was not
10 paid at the time the beverage container was purchased from a retail
11 dealer;

12 (5) prepare and maintain records regarding the
13 processing and disposal of empty beverage containers under Section
14 375.203;

15 (6) make the redemption center's records of
16 transactions related to empty beverage containers available for
17 review during a commission audit or investigation; and

18 (7) to the extent practicable, use reverse vending
19 machines or other machinery that will immediately crush or shred a
20 beverage container on acceptance by the redemption center.

21 Sec. 375.156. REDEMPTION CENTER LOCATION NOTICE. A retail
22 dealer that sells beverage containers for which a refund value is
23 required by Section 375.051 shall post, in a conspicuous place at
24 the retail dealer's premises or on the vending machine, a notice to
25 purchasers of the refund value of a used beverage container and the
26 location of the nearest redemption center at which the container
27 may be returned for a refund.

1 [Sections 375.157-375.200 reserved for expansion]

2 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

3 Sec. 375.201. USED BEVERAGE CONTAINER REDEMPTION. Except as
4 provided by Section 375.202, a redemption center shall accept a
5 used beverage container that has a refund value as established by
6 Section 375.051 and shall pay the refund value of the container in
7 cash to the person presenting the container if:

8 (1) the brand and refund value are ascertainable from
9 the container; or

10 (2) the container is an unbroken refillable glass
11 beverage container that is widely known to have a refund value of
12 five cents or more.

13 Sec. 375.202. REFUSAL PERMITTED. A redemption center may
14 refuse to accept for refund:

15 (1) a glass bottle that is broken to the extent that it
16 would present a safety hazard when handled;

17 (2) a used beverage container that contains part of
18 its original contents or other foreign matter to the extent that it
19 could present health or sanitation problems; or

20 (3) more than 240 used beverage containers presented
21 by a single person in one day.

22 Sec. 375.203. DISPOSAL OF BEVERAGE CONTAINERS BY REDEMPTION
23 CENTER. (a) A redemption center shall dispose of the returned used
24 beverage containers redeemed under Section 375.201 by:

25 (1) selling the material generated by the crushed or
26 shredded used beverage containers to a processor or other end user;

27 or

1 (2) disposing of the material in another manner
2 prescribed by the commission.

3 (b) To promote the reuse and recycling of the glass,
4 plastic, and metal materials of beverage containers redeemed under
5 this chapter, the commission in conjunction with the border
6 counties shall encourage the development in this state of markets
7 for the materials or products that can be manufactured using those
8 materials.

9 Sec. 375.204. REIMBURSEMENT OF REDEMPTION CENTERS BY
10 COMMISSION; HANDLING FEE. (a) On submission of a completed invoice
11 of refunds paid by a redemption center on a form adopted by the
12 commission, the commission shall pay to the redemption center an
13 amount equal to the redemption value of five cents plus a handling
14 fee of one-half of one cent for each beverage container redeemed by
15 the redemption center under Section 375.201.

16 (b) The commission shall reimburse a redemption center
17 under Subsection (a) not later than three working days after the
18 commission receives the invoice submitted by the redemption center.

19 (c) If a border county has contracted with a private entity
20 for the operation of a redemption center under Section 375.155, the
21 redemption center shall submit its invoice of refunds paid under
22 Section 375.201 to the county. The county shall promptly submit the
23 invoice to the commission for payment to the redemption center
24 under this section.

25 SECTION 2. Section 151.007(c), Tax Code, is amended to read
26 as follows:

27 (c) "Sales price" or "receipts" does not include any of the

1 following if separately identified to the customer by such means as
2 an invoice, billing, sales slip or ticket, or contract:

3 (1) a cash discount allowed on the sale;

4 (2) the amount charged for tangible personal property
5 returned by a customer if the total amount charged is refunded by
6 cash or credit;

7 (3) a refund of the charges for the performance of a
8 taxable service;

9 (4) finance, carrying and service charges, or interest
10 from credit extended on sales of taxable items under a conditional
11 sales contract or other contract providing for the deferred payment
12 of the purchase price;

13 (5) the value of tangible personal property that:

14 (A) is taken by a seller in trade as all or part
15 of the consideration for a sale of a taxable item; and

16 (B) is of a type of property sold by the seller in
17 the regular course of business;

18 (6) the face value of United States coin or currency in
19 a sale of that coin or currency in which the total consideration
20 given by the purchaser exceeds the face value of the coin or
21 currency; ~~or~~

22 (7) a voluntary gratuity or a reasonable mandatory
23 charge for the service of a meal or food products, including soft
24 drinks and candy, for immediate human consumption when the service
25 charge is separated from the sales price of the meal or food product
26 and identified as a gratuity or tip and when the total amount of the
27 service charge is disbursed by the employer to employees who

1 customarily and regularly provide the service; or
2 (8) a beverage container redemption fee under Chapter
3 375, Health and Safety Code.

4 SECTION 3. (a) Not later than September 1, 2006, the Texas
5 Commission on Environmental Quality and the comptroller of public
6 accounts shall adopt the rules necessary to implement Chapter 375,
7 Health and Safety Code, as added by this Act.

8 (b) The requirements of and penalties imposed by Chapter
9 375, Health and Safety Code, as added by this Act, do not apply to
10 any person before January 1, 2007.

11 (c) A retail dealer is not required to submit a report to the
12 Texas Commission on Environmental Quality under Section 375.102,
13 Health and Safety Code, as added by this Act, before March 1, 2008.

14 SECTION 4. This Act takes effect September 1, 2005.