

Amend CSSB 635 (house committee printing) by adding the following appropriately numbered section to the bill and renumbering subsequent sections of the bill appropriately:

SECTION _____. Subtitle B, Title 5, Health and Safety Code, is amended by adding Chapter 376 to read as follows:

CHAPTER 376. TEXAS CONTAINER RECYCLING INITIATIVE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 376.001. 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) wine coolers;
- (F) soda;
- (G) water, including mineral water;
- (H) carbonated water, including carbonated mineral water;
- (I) carbonated soft drinks;
- (J) noncarbonated soft drinks and sport drinks;
- (K) noncarbonated fruit drinks;
- (L) energy drinks;
- (M) coffee and tea drinks; and
- (N) carbonated fruit drinks.

(2) "Beverage container" means a glass, metal, or plastic vessel that is hermetically sealed or capped and that contains a beverage at the time it is sold or offered for sale.

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

(4) "Distributor" means a person who distributes

beverages in beverage containers to retail dealers.

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

(6) "Medical food" means a food or beverage that is formulated to be consumed or administered under the supervision of a physician and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. The term also includes any product that meets the definition of "medical food" under Section 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section 360ee).

(7) "Redemption center" means an operation approved by the commission to redeem beverage containers under this chapter and includes a manned operation or a mechanical device that accepts empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's refund value.

(8) "Redemption zone" means:

(A) the one-half-mile radius around a retail dealer with at least \$2 million in food-related sales each year who is located in a municipality with a population of more than 50,000; or

(B) the two-mile radius around a retail dealer with at least \$2 million in food-related sales each year who is not located in a municipality described by Paragraph (A).

(9) "Refund" means a payment by a redemption center under Section 376.201 to a person who presents a beverage container at the redemption center.

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

Sec. 376.002. ADMINISTRATION AND RULES. (a) The commission shall establish and administer the Texas container recycling initiative in accordance with this chapter.

(b) In administering the Texas container recycling initiative, the commission shall:

(1) approve redemption centers under Section 376.152;

(2) enforce compliance with the provisions of this

chapter;

(3) administer the infrastructure improvement grant program under Section 376.003;

(4) develop and implement a marketing plan to provide information and educate consumers about the initiative;

(5) conduct any audit of the initiative the commission determines is necessary;

(6) develop an operating budget for the initiative;

(7) ensure the solvency of the initiative's account;

(8) develop a system for reimbursement of deposits and refunds and for distribution of handling fees;

(9) develop a system for monitoring the number of containers sold by distributors and the number of containers returned to redemption centers and curbside recycling centers;

(10) administer the Texas container recycling initiative account as provided by Section 376.104; and

(11) adopt rules and forms necessary to implement this chapter.

Sec. 376.003. INFRASTRUCTURE IMPROVEMENT GRANT PROGRAM.

(a) The commission shall develop and administer a program to provide grants from money in the Texas container recycling initiative account to ensure sufficient infrastructure is available to increase the state recycling rate by expanding curbside recycling programs, municipal recycling facilities, and independent redemption centers.

(b) The total amount of money available each year under the grant program may not exceed five percent of the unencumbered money available in the account at the end of the preceding state fiscal year.

(c) Annually, the commission shall allocate the grant money to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the Texas Commission on Environmental Quality that takes into account population, area, solid waste fee generation, and public health needs.

(d) At the end of each state fiscal biennium:

(1) a municipal solid waste geographic planning region

that receives grant money under Subsection (c) shall issue a report to the legislature detailing how the grant money is used; and

(2) any unencumbered grant money must be returned to the Texas container recycling initiative account.

(e) The commission shall establish and implement any additional controls necessary to ensure that the grant money allocated under this section is used for the state purpose for which the money was intended.

(f) A project funded under this section must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(g) This section expires when the state recycling rate reaches 65 percent, as determined by the commission.

Sec. 376.004. CRIMINAL PENALTIES. A person commits an offense if the person knowingly violates Section 376.051, 376.101, 376.102, or 376.201. An offense under this section is a Class C misdemeanor.

Sec. 376.005. REPORT TO LEGISLATURE. Not later than November 1 of each year, the commission shall submit a report to the governor, lieutenant governor, speaker of the house of representatives, and committee in each house of the legislature that has primary jurisdiction over environmental matters about the progress and success of the Texas container recycling initiative established under this chapter.

[Sections 376.006-376.050 reserved for expansion]

SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Except as provided by Subsection (b), a person may not sell or offer for sale in this state a beverage container unless the container:

(1) has:

(A) a fluid capacity of less than 24 ounces and a refund value of 5 cents; or

(B) a fluid capacity of at least 24 ounces and a refund value of 10 cents; and

(2) is labeled as required by Section 376.052.

(b) A person may sell or offer for sale a beverage container

that does not have a refund value if:

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

(2) the container contains:

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

(B) medical food or infant formula.

Sec. 376.052. LABELING. (a) A beverage container required to have a refund value under Section 376.051 that is offered for sale in this state must have legibly stamped, labeled, or embossed on the container:

(1) the refund value of the container;

(2) the name "Texas" or the abbreviation "TX"; and

(3) other language as required by the commission.

(b) Any beverage container intended for sale in this state must be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

[Sections 376.053-376.100 reserved for expansion]

SUBCHAPTER C. COLLECTION OF DEPOSIT

Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND RETAIL DEALER. (a) A distributor shall collect a deposit of 5 or 10 cents, as established by Section 376.051, from a retail dealer for each beverage container that the distributor sells to the retail dealer.

(b) A retail dealer shall collect a deposit of 5 or 10 cents, as established by Section 376.051, from a consumer for each beverage container that the retail dealer sells to the consumer.

(c) The invoice for a beverage container sold by a retail dealer to a consumer must list the beverage container deposit as a separate line item. The deposit may not be included in the sales tax calculation.

Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Not later than the fifth day of each month, a distributor shall remit to the commission the deposits collected by the distributor under Section 376.101 during the preceding month.

Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth day of each month, a distributor who collects a deposit under

Section 376.101 shall report to the commission, on a form approved by the commission:

(1) the total amount of deposits collected during the preceding month; and

(2) the number of beverage containers sold during the preceding month separated by deposit amount and material of container.

(b) The commission may require a distributor to include in the report required by Subsection (a) other information the commission considers necessary.

(c) The information contained in the report required by this section is confidential and may not be disclosed by the commission or an officer or employee of the commission.

Sec. 376.104. TEXAS CONTAINER RECYCLING INITIATIVE ACCOUNT. (a) Deposits collected under this chapter shall be deposited to the credit of the Texas container recycling initiative account in the general revenue fund. Money in the account may be appropriated only for:

(1) reimbursements and handling fees paid to redemption centers or curbside recycling programs, as applicable;

(2) administration of this chapter;

(3) providing information and educating consumers about the Texas container recycling initiative; and

(4) the purposes authorized under Section 376.003.

(b) At the end of each state fiscal biennium, any money in the account that is unencumbered must be distributed as follows:

(1) 15 percent must be retained in the account for unforeseen costs associated with a higher than expected recycling rate; and

(2) 85 percent must be transferred to the undedicated portion of the general revenue fund.

Sec. 376.105. FINANCING START-UP COSTS. (a) The commission may apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source to cover the start-up costs of the Texas container recycling initiative.

(b) The commission shall deposit revenue collected under this section to the credit of the Texas container recycling

initiative account in the general revenue fund.

[Sections 376.106-376.150 reserved for expansion]

SUBCHAPTER D. REDEMPTION CENTERS AND REDEMPTION ZONES

Sec. 376.151. REDEMPTION ZONES. (a) A retail dealer may not sell a beverage in a beverage container eligible for redemption under this chapter to a consumer if there is not a redemption center within the retail dealer's redemption zone unless the retail dealer is located in a county with a population of less than 3,000.

(b) On petition by a retail dealer, the commission may exempt the dealer from the requirements of this section if the commission determines that extenuating circumstances support the exemption.

(c) A redemption center within a redemption zone may be owned and operated by a retail dealer, local government, or independent entity.

(d) A retail dealer who owns and operates a redemption center shall register with the commission in the manner described by Section 376.152.

Sec. 376.152. REDEMPTION CENTERS. (a) To facilitate the return of empty beverage containers, a retail dealer, local government, or independent entity may establish a redemption center at which empty containers may be returned for their refund value.

(b) The retail dealer, local government, or independent entity must file an application for approval of a redemption center with the commission. The application must state:

(1) the name, mailing address, telephone number, e-mail address, and title of the person responsible for the establishment and operation of the redemption center;

(2) the physical address of the redemption center;

(3) the name and address of each retail dealer in whose redemption zone the redemption center is located;

(4) the applicant's federal tax identification number, if applicable; and

(5) any additional information the commission by rule requires as necessary or convenient for the implementation of this section.

(c) The commission by order shall approve a redemption

center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The commission may include in the order other provisions that the commission determines are necessary to ensure that the redemption center will provide a convenient service to the public.

(d) The commission at any time may review its approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to each retail dealer in whose redemption zone the redemption center is located, the commission may, after a hearing, withdraw approval of a redemption center if the commission finds the redemption center has violated the order approving the redemption center.

(e) The commission by rule shall establish the required hours of operation for a redemption center.

(f) The commission may not limit the number of redemption centers within a redemption zone.

(g) Only a redemption center in a redemption zone that has been registered with the commission for the longest period may receive handling fees for returned used beverage containers.

[Sections 376.153-376.200 reserved for expansion]

SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Except as provided by Sections 376.202 and 376.203, a redemption center shall accept a used beverage container that has a refund value as established by Section 376.051 and shall pay the refund value of the container in cash to the person presenting the container if the container is stamped, labeled, or embossed with the refund value and the name "Texas" or the abbreviation "TX."

Sec. 376.202. REFUSAL PERMITTED. A redemption center may refuse to accept for refund:

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

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

Sec. 376.203. REDEMPTION BY WEIGHT. (a) The commission by rule shall establish:

(1) a procedure for providing a reimbursement based on the weight of the beverage containers presented to be used in circumstances in which the number of containers is so large that counting the containers individually would be burdensome on a redemption center or curbside recycling program;

(2) a per pound redemption value for containers composed of each material covered by this chapter that are redeemed in the manner described by Subdivision (1);

(3) a per pound redemption value for unsorted containers composed of any material covered by this chapter that are collected as part of a single-stream recycling program and redeemed in the manner described by Subdivision (1);

(4) a per pound handling fee to be paid to redemption centers and curbside recycling programs for containers redeemed in the manner described by Subdivision (1); and

(5) procedures for regulating the accuracy of scales used to weigh containers under this section.

(b) Not more than every six months the commission by rule may adjust the per pound rates described by Subsection (a).

Sec. 376.204. DISPOSAL OF BEVERAGE CONTAINERS BY REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption center or curbside recycling program shall dispose of the returned used beverage containers by:

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

(2) recycling the material in another manner prescribed by the commission.

Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY COMMISSION; HANDLING FEE. (a) On submission of a completed invoice of refunds paid by a redemption center on a form adopted by the commission, the commission shall pay to the redemption center an amount equal to the redemption value established by Section 376.051 or 376.203, as applicable, plus, for a redemption center eligible under Section 376.152(g), a handling fee of:

(1) one and one-half cents for each beverage container redeemed by the redemption center under Section 376.201; or

(2) the per pound amount determined under Section 376.203 for beverage containers redeemed in the manner described by that section.

(b) The commission shall reimburse a redemption center under Subsection (a) not later than the fifth working day after the date the commission receives the invoice submitted by the redemption center.

(c) The commission by rule may adjust a handling fee to account for changes in market conditions. The commission may periodically conduct research to determine if an adjustment is necessary.

Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM BY COMMISSION. (a) On submission of a completed report, on a form adopted by the commission, indicating the number or weight, as applicable, of beverage containers collected by a curbside recycling program that are covered under this chapter, the commission shall pay to the curbside recycling program an amount equal to the redemption value established by Section 376.051 or 376.203, as applicable, plus a handling fee of:

(1) one-half of one cent for each beverage container collected by the curbside recycling program; or

(2) the per pound amount determined under Section 376.203 for beverage containers redeemed in the manner described by that section.

(b) The commission shall reimburse a curbside recycling program under Subsection (a) not later than the fifth working day after the date the commission receives the invoice submitted by the curbside recycling program.

(c) The commission by rule may adjust a handling fee to account for changes in market conditions. The commission may periodically conduct research to determine if an adjustment is necessary.

Sec. 376.207. REPORTING REQUIREMENTS. Each redemption center and curbside recycling program shall submit a report with the submission of the completed invoice required under Sections 376.205 and 376.206, respectively, to the commission, on a form approved by the commission, that provides:

(1) the redemption value of beverage containers collected by the redemption center or curbside recycling program;

(2) the number or weight of beverage containers collected by the center or curbside recycling program; and

(3) an invoice or other documentation that provides proof that the collected recycled material was recycled in a manner described under Section 376.204.

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

(c) "Sales price" or "receipts" does not include any of the following if separately identified to the customer by such means as an invoice, billing, sales slip or ticket, or contract:

(1) a cash discount allowed on the sale;

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

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

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

(5) the value of tangible personal property that:

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

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

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

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

customarily and regularly provide the service; or

(8) a beverage container redemption fee under Chapter 376, Health and Safety Code.

SECTION _____. (a) Not later than September 1, 2012, the commission shall adopt the rules necessary to implement Chapter 376, Health and Safety Code, as added by this Act.

(b) The requirements of and penalties imposed by Chapter 376, Health and Safety Code, as added by this Act, do not apply to any person before January 1, 2013.