

By: Callegari

H.B. No. 3244

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to water quality improvement and pollution reduction  
3 through beverage container recycling incentives; providing  
4 penalties; assessing a fee.

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

6 SECTION 1. Subtitle B, Title 5, Health and Safety Code, is  
7 amended by adding Chapter 376 to read as follows:

8 CHAPTER 376. TEXAS BEVERAGE CONTAINER RECYCLING INCENTIVE PROGRAM

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 376.001. DEFINITIONS. In this chapter:

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

14 (A) soda;

15 (B) water, including mineral water and vitamin  
16 water;

17 (C) carbonated water, including carbonated  
18 mineral water;

19 (D) carbonated soft drinks;

20 (E) noncarbonated soft drinks and sport drinks;

21 (F) noncarbonated fruit drinks;

22 (G) energy drinks;

23 (H) coffee and tea drinks; and

24 (I) carbonated fruit drinks.

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

4           (3) "Consortium" means the Texas Beverage Container  
5 Recycling Consortium.

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

12           (5) "Distributor" means a person who distributes  
13 beverages in beverage containers to retail dealers.

14           (6) "Incentive program" means the Texas beverage  
15 container recycling program established under this chapter.

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

18           (8) "Medical food" means a food or beverage that is  
19 formulated to be consumed or administered under the supervision of  
20 a physician and that is intended for specific dietary management of  
21 diseases or health conditions for which distinctive nutritional  
22 requirements, based on recognized scientific principles, are  
23 established by medical evaluation. The term also includes any  
24 product that meets the definition of "medical food" under Section  
25 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section  
26 360ee(b)(3)).

27           (9) "Redemption center" means an operation approved by

1 the consortium to redeem beverage containers under this chapter and  
2 includes a manned operation or a mechanical device that accepts  
3 empty beverage containers and issues a cash refund or a redeemable  
4 credit slip with a value not less than the container's refund value.

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

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

10 Sec. 376.002. TEXAS BEVERAGE CONTAINER RECYCLING  
11 CONSORTIUM. (a) The consortium is an association formed to  
12 administer the incentive program.

13 (b) The consortium consists of eight members appointed by  
14 the governor as follows:

15 (1) one distributor of nonalcoholic beverages;

16 (2) one recycler;

17 (3) one beverage retailer;

18 (4) one representative from the waste industry;

19 (5) one redemption center operator;

20 (6) one container processor or remanufacturer;

21 (7) one representative from the comptroller's office;

22 and

23 (8) one representative from the general public.

24 (c) The members serve staggered terms of three years with  
25 two members' terms expiring June 1 of each year.

26 (d) The members shall appoint an executive director to  
27 oversee the consortium's operation.

1        Sec. 376.003. ADMINISTRATION AND RULES. (a) In

2 administering the incentive program, the consortium shall:

3            (1) enter into appropriate agreements approving  
4 redemption centers under Section 376.151;

5            (2) enforce compliance with the provisions of this  
6 chapter;

7            (3) develop and implement a marketing plan to provide  
8 information and educate consumers about the incentive program;

9            (4) conduct any audit of the incentive program the  
10 comptroller determines is necessary;

11           (5) develop an operating budget for the incentive  
12 program;

13           (6) ensure the solvency of the incentive program's  
14 account;

15           (7) develop a system for reimbursement of deposits and  
16 refunds and for distribution of handling fees;

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

20           (9) develop a system to prevent fraudulent use of the  
21 incentive program;

22           (10) administer an account as provided by Section  
23 376.104;

24           (11) adopt procedures and forms necessary to implement  
25 this chapter; and

26           (12) develop and maintain a publicly accessible  
27 website to provide information about the program, including

1 redemption center locations.

2 (b) The comptroller, after consultation with the  
3 consortium, may adopt rules necessary to implement this chapter.

4 Sec. 376.004. CRIMINAL PENALTIES. A person commits an  
5 offense if the person knowingly violates Section 376.051, 376.101,  
6 376.102, 376.201, or 376.204. An offense under this section is a  
7 Class C misdemeanor.

8 Sec. 376.005. REPORT TO LEGISLATURE. Not later than  
9 November 1 of each year, the consortium shall submit a report to the  
10 governor, lieutenant governor, speaker of the house of  
11 representatives, the comptroller, the Texas Commission on  
12 Environmental Quality, and the committee in each house of the  
13 legislature that has primary jurisdiction over environmental  
14 matters about the progress and success of the incentive program.

15 SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

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

20 (1) has:

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

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

25 (2) is labeled as required by Section 376.052.

26 (b) A person may distribute, sell, or offer for sale in this  
27 state a beverage container that does not have a refund value if:

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

3           (2) the container contains:

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

6                   (B) medical food or infant formula.

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

11                   (1) the refund value of the container;

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

13                   (3) other language as required by the consortium.

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

17                   SUBCHAPTER C. COLLECTION OF DEPOSIT

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

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

26                   (c) A retail dealer who sells one or more beverage  
27 containers to a consumer shall list the beverage container deposit

1 paid as a separate line item on a receipt given to the consumer. The  
2 deposit may not be included in any sales tax calculation.

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

7 Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth  
8 day of each month, a distributor who collects a deposit under  
9 Section 376.101 shall report to the consortium, on a form approved  
10 by the consortium:

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

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

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

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

22 Sec. 376.104. INCENTIVE PROGRAM ACCOUNT. (a) Deposits  
23 collected under this chapter shall be deposited to the credit of an  
24 account maintained by the consortium. Money in the account may be  
25 allocated only for:

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

1           (2) administration of this chapter;

2           (3) providing information and educating consumers  
3 about the incentive program;

4           (4) the purposes authorized under Subsections (b) and  
5 (c); and

6           (5) implementation of the state's water infrastructure  
7 plan.

8           (b) At the end of each state fiscal biennium, two percent of  
9 the money in the account that is unencumbered must be redistributed  
10 to beverage distributors in proportion to the amount that each  
11 distributor contributed to the account.

12           (c) On the last day of each state fiscal biennium, the  
13 consortium shall send to the comptroller a fee in the amount of two  
14 and one-half percent of the unencumbered balance of the account for  
15 deposit in the state treasury to the credit of the Texas Commission  
16 on Environmental Quality. Money deposited under this subsection  
17 may be appropriated only for the purposes of Section 361.014(b).  
18 The money must be allocated as provided by that subsection and each  
19 planning region shall include in the biennial report issued under  
20 that subsection information detailing how the money is spent. This  
21 subsection expires when the state recycling rate reaches 65  
22 percent, as determined by the comptroller based on information  
23 available from the consortium and local governments and regional  
24 planning commissions that receive money allocated as provided by  
25 Section 361.014(b).

26                   SUBCHAPTER D. REDEMPTION CENTERS

27           Sec. 376.151. ESTABLISHMENT OF REDEMPTION CENTER



1 AGREEMENTS. (a) To facilitate the return of empty beverage  
2 containers, a retail dealer, local government, or independent  
3 entity may establish, own, and operate a redemption center at which  
4 empty containers may be returned for their refund value.

5 (b) The retail dealer, local government, or independent  
6 entity must file an application for approval of a redemption center  
7 with the consortium. The application must provide:

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

11 (2) the physical address of the redemption center;

12 (3) the applicant's federal tax identification number,  
13 if applicable; and

14 (4) any additional information the consortium  
15 requires as necessary or convenient for the implementation of this  
16 section.

17 (c) The consortium shall approve a redemption center if it  
18 finds the redemption center will provide a convenient service to  
19 persons for the return of empty beverage containers.

20 (d) The consortium at any time may review its approval of a  
21 redemption center. After written notice to the person responsible  
22 for the establishment and operation of the redemption center and to  
23 each retail dealer located within a two-mile radius of the  
24 redemption center, the consortium may, after providing the owner or  
25 operator an opportunity for a hearing to verify facts and resolve  
26 the matter at issue, withdraw approval of a redemption center if the  
27 consortium finds the redemption center has violated any terms of

1 the approval of the redemption center.

2 (e) The consortium and applicant shall establish the  
3 required hours of operation for a redemption center in the approval  
4 under Subsection (c).

5 (f) The consortium may not limit the number of redemption  
6 centers within a geographic area.

7 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

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

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

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

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

22 Sec. 376.203. REDEMPTION BY WEIGHT. (a) The consortium  
23 shall establish:

24 (1) a procedure for providing a reimbursement based on  
25 the weight of the beverage containers presented to be used in  
26 circumstances in which the number of containers is so large that  
27 counting the containers individually would be burdensome on a

1 redemption center or curbside recycling program;

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

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

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

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

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

16 Sec. 376.204. RECYCLING OF BEVERAGE CONTAINERS BY  
17 REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption  
18 center or curbside recycling program shall recycle the returned  
19 used beverage containers by:

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

23 (2) another method prescribed by the consortium.

24 Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY  
25 CONSORTIUM; HANDLING FEE. (a) On submission of a completed invoice  
26 of refunds paid by a redemption center on a form adopted by the  
27 consortium, the consortium shall pay to the redemption center an

1 amount equal to the redemption value established by Section 376.051  
2 or 376.203, as applicable, plus a handling fee of:

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

5 (2) the per pound amount determined under Section  
6 376.203 for beverage containers redeemed in the manner described by  
7 that section.

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

12 (c) The consortium may adjust a handling fee to account for  
13 changes in market conditions. The consortium may periodically  
14 conduct research to determine if an adjustment is necessary.

15 Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM  
16 BY CONSORTIUM. (a) On submission of a completed report, on a form  
17 adopted by the consortium, indicating the number or weight, as  
18 applicable, of beverage containers collected by a curbside  
19 recycling program that are covered under this chapter, the  
20 consortium shall pay to the curbside recycling program an amount  
21 equal to the redemption value established by Section 376.203.

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

26 Sec. 376.207. REPORTING REQUIREMENTS. Each redemption  
27 center and curbside recycling program shall submit a report with

1 the submission of the completed invoice required under Sections  
2 376.205 and 376.206, respectively, to the consortium, on a form  
3 approved by the consortium, that provides:

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

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

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

11 Sec. 376.208. NOTICE. The consortium must provide to each  
12 redemption center and curbside recycling program, as applicable,  
13 written notice at least 30 days before implementation of a change in  
14 per pound rates under Section 376.203 or handling fees under  
15 Section 376.205.

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

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

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

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

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

27 (4) finance, carrying and service charges, or interest

1 from credit extended on sales of taxable items under a conditional  
2 sales contract or other contract providing for the deferred payment  
3 of the purchase price;

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

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

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

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

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

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

22 SECTION 3. (a) Not later than September 1, 2014, the  
23 comptroller of public accounts, after consultation with the Texas  
24 Beverage Container Recycling Consortium, shall adopt any rules  
25 necessary to implement Chapter 376, Health and Safety Code, as  
26 added by this Act.

27 (b) The requirements of and penalties imposed by Chapter

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1 376, Health and Safety Code, as added by this Act, do not apply to  
2 any person before January 1, 2015.

3 SECTION 4. This Act takes effect September 1, 2013.