

By: Ellis

S.B. No. 645

A BILL TO BE ENTITLED

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

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 an alcoholic, nonalcoholic,
12 carbonated, or noncarbonated drink prepared in liquid,
13 ready-to-drink form and intended for human consumption. The term
14 includes:

15 (A) beer;

16 (B) ale;

17 (C) malt liquor;

18 (D) other drinks produced by fermenting malt;

19 (E) wine coolers;

20 (F) soda;

21 (G) water, including mineral water and vitamin
22 water;

23 (H) carbonated water, including carbonated
24 mineral water;

1 (I) carbonated soft drinks;

2 (J) noncarbonated soft drinks and sport drinks;

3 (K) noncarbonated fruit drinks;

4 (L) energy drinks;

5 (M) coffee and tea drinks; and

6 (N) 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.

10 (3) "Consortium" means the Texas Beverage Container
11 Recycling Consortium.

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

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

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

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

24 (8) "Medical food" means a food or beverage that is
25 formulated to be consumed or administered under the supervision of
26 a physician and that is intended for specific dietary management of
27 diseases or health conditions for which distinctive nutritional

1 requirements, based on recognized scientific principles, are
2 established by medical evaluation. The term also includes any
3 product that meets the definition of "medical food" under Section
4 5(b)(3), the Food, Drug, and Cosmetic Act (21 U.S.C. Section
5 360ee).

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

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

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

16 Sec. 376.002. TEXAS BEVERAGE CONTAINER RECYCLING
17 CONSORTIUM. (a) The consortium is an association formed to
18 administer the incentive program.

19 (b) The consortium consists of nine members appointed by the
20 governor as follows:

- 21 (1) one distributor of alcoholic beverages;
- 22 (2) one distributor of nonalcoholic beverages;
- 23 (3) one recycler;
- 24 (4) one beverage retailer;
- 25 (5) one representative from the waste industry;
- 26 (6) one redemption center operator;
- 27 (7) one container processor or remanufacturer;

1 (8) one representative from the comptroller's office;

2 and

3 (9) one representative from the general public.

4 (c) The members serve staggered terms of three years with
5 three members' terms expiring June 1 of each year.

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

8 Sec. 376.003. ADMINISTRATION AND RULES. (a) In
9 administering the incentive program, the consortium shall:

10 (1) enter into appropriate agreements approving
11 redemption centers under Section 376.151;

12 (2) enforce compliance with the provisions of this
13 chapter;

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

16 (4) conduct any audit of the incentive program the
17 comptroller determines is necessary;

18 (5) develop an operating budget for the incentive
19 program;

20 (6) ensure the solvency of the incentive program's
21 account;

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

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

27 (9) develop a system to prevent fraudulent use of the

1 incentive program;

2 (10) administer an account as provided by Section
3 376.104;

4 (11) adopt procedures and forms necessary to implement
5 this chapter; and

6 (12) develop and maintain a publicly accessible
7 website to provide information about the program, including
8 redemption center locations.

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

11 Sec. 376.004. CRIMINAL PENALTIES. A person commits an
12 offense if the person knowingly violates Section 376.051, 376.101,
13 376.102, 376.201, or 376.204. An offense under this section is a
14 Class C misdemeanor.

15 Sec. 376.005. REPORT TO LEGISLATURE. Not later than
16 November 1 of each year, the consortium shall submit a report to the
17 governor, lieutenant governor, speaker of the house of
18 representatives, the comptroller, the Texas Commission on
19 Environmental Quality, and the committee in each house of the
20 legislature that has primary jurisdiction over environmental
21 matters about the progress and success of the incentive program.

22 SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS

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

27 (1) has:

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

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

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

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

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

10 (2) the container contains:

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

13 (B) medical food or infant formula.

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

18 (1) the refund value of the container;

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

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

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

24 SUBCHAPTER C. COLLECTION OF DEPOSIT

25 Sec. 376.101. COLLECTION OF DEPOSIT BY DISTRIBUTOR AND
26 RETAIL DEALER. (a) A distributor shall collect a deposit of 5 or 10
27 cents, as established by Section 376.051, from a retail dealer for

1 each beverage container that the distributor sells to the retail
2 dealer.

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

6 (c) A retail dealer who sells one or more beverage
7 containers to a consumer shall list the beverage container deposit
8 paid as a separate line item on a receipt given to the consumer. The
9 deposit may not be included in any sales tax calculation.

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

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

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

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

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

26 (c) The information contained in the report required by this
27 section is confidential and may not be disclosed by the consortium

1 or an officer or employee of the consortium.

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

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

8 (2) administration of this chapter;

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

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

13 (5) implementation of the state's water infrastructure
14 plan.

15 (b) At the end of each state fiscal biennium, two percent of
16 the money in the account that is unencumbered must be redistributed
17 to beverage distributors in proportion to the amount that each
18 distributor contributed to the account.

19 (c) On the last day of each state fiscal biennium, the
20 consortium shall send to the comptroller a fee in the amount of two
21 and one-half percent of the unencumbered balance of the account for
22 deposit in the state treasury to the credit of the Texas Commission
23 on Environmental Quality. Money deposited under this subsection
24 may be appropriated only for the purposes of Section 361.014(b).
25 The money must be allocated as provided by that subsection and each
26 planning region shall include in the biennial report issued under
27 that subsection information detailing how the money is spent. This

1 subsection expires when the state recycling rate reaches 65
2 percent, as determined by the comptroller based on information
3 available from the consortium and local governments and regional
4 planning commissions that receive money allocated as provided by
5 Section 361.014(b).

6 SUBCHAPTER D. REDEMPTION CENTERS

7 Sec. 376.151. ESTABLISHMENT OF REDEMPTION CENTER
8 AGREEMENTS. (a) To facilitate the return of empty beverage
9 containers, a retail dealer, local government, or independent
10 entity may establish, own, and operate a redemption center at which
11 empty containers may be returned for their refund value.

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

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

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

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

21 (4) any additional information the consortium
22 requires as necessary or convenient for the implementation of this
23 section.

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

27 (d) The consortium at any time may review its approval of a

1 redemption center. After written notice to the person responsible
2 for the establishment and operation of the redemption center and to
3 each retail dealer located within a two-mile radius of the
4 redemption center, the consortium may, after providing the owner or
5 operator an opportunity for a hearing to verify facts and resolve
6 the matter at issue, withdraw approval of a redemption center if the
7 consortium finds the redemption center has violated any terms of
8 the approval of the redemption center.

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

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

14 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION

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

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

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

26 (2) a used beverage container that contains part of
27 its original contents or other foreign matter to the extent that it

1 could present health or sanitation problems.

2 Sec. 376.203. REDEMPTION BY WEIGHT. (a) The consortium
3 shall establish:

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

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

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

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

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

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

23 Sec. 376.204. RECYCLING OF BEVERAGE CONTAINERS BY
24 REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption
25 center or curbside recycling program shall recycle the returned
26 used beverage containers by:

27 (1) selling the material generated by the crushed or

1 shredded used beverage containers to a processor or other end user;

2 or

3 (2) another method prescribed by the consortium.

4 Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS BY

5 CONSORTIUM; HANDLING FEE. (a) On submission of a completed invoice

6 of refunds paid by a redemption center on a form adopted by the

7 consortium, the consortium shall pay to the redemption center an

8 amount equal to the redemption value established by Section 376.051

9 or 376.203, as applicable, plus a handling fee of:

10 (1) one and one-half cents for each beverage container

11 redeemed by the redemption center under Section 376.201; or

12 (2) the per pound amount determined under Section

13 376.203 for beverage containers redeemed in the manner described by

14 that section.

15 (b) The consortium shall reimburse a redemption center

16 under Subsection (a) not later than the fifth working day after the

17 date the consortium receives the invoice submitted by the

18 redemption center.

19 (c) The consortium may adjust a handling fee to account for

20 changes in market conditions. The consortium may periodically

21 conduct research to determine if an adjustment is necessary.

22 Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM

23 BY CONSORTIUM. (a) On submission of a completed report, on a form

24 adopted by the consortium, indicating the number or weight, as

25 applicable, of beverage containers collected by a curbside

26 recycling program that are covered under this chapter, the

27 consortium shall pay to the curbside recycling program an amount

1 equal to the redemption value established by Section 376.203.

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

6 Sec. 376.207. REPORTING REQUIREMENTS. Each redemption
7 center and curbside recycling program shall submit a report with
8 the submission of the completed invoice required under Sections
9 376.205 and 376.206, respectively, to the consortium, on a form
10 approved by the consortium, that provides:

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

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

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

18 Sec. 376.208. NOTICE. The consortium must provide to each
19 redemption center and curbside recycling program, as applicable,
20 written notice at least 30 days before implementation of a change in
21 per pound rates under Section 376.204 or handling fees under
22 Section 376.205.

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

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

- 1 (1) a cash discount allowed on the sale;
- 2 (2) the amount charged for tangible personal property
3 returned by a customer if the total amount charged is refunded by
4 cash or credit;
- 5 (3) a refund of the charges for the performance of a
6 taxable service;
- 7 (4) finance, carrying and service charges, or interest
8 from credit extended on sales of taxable items under a conditional
9 sales contract or other contract providing for the deferred payment
10 of the purchase price;
- 11 (5) the value of tangible personal property that:
 - 12 (A) is taken by a seller in trade as all or part
13 of the consideration for a sale of a taxable item; and
 - 14 (B) is of a type of property sold by the seller in
15 the regular course of business;
- 16 (6) the face value of United States coin or currency in
17 a sale of that coin or currency in which the total consideration
18 given by the purchaser exceeds the face value of the coin or
19 currency; ~~or~~
- 20 (7) a voluntary gratuity or a reasonable mandatory
21 charge for the service of a meal or food products, including soft
22 drinks and candy, for immediate human consumption when the service
23 charge is separated from the sales price of the meal or food product
24 and identified as a gratuity or tip and when the total amount of the
25 service charge is disbursed by the employer to employees who
26 customarily and regularly provide the service; or
- 27 (8) a beverage container redemption deposit under

1 Chapter 376, Health and Safety Code.

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

7 (b) The requirements of and penalties imposed by Chapter
8 376, Health and Safety Code, as added by this Act, do not apply to
9 any person before January 1, 2015.

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