By: Ellis S.B. No. 1450

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; creating a criminal offense.
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	<pre>mineral water;</pre>

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1	(T) garbonatod coft drinks
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 or
13	receives a beverage in a beverage container for the person's own use
14	or consumption. The term includes a lodging, eating, or drinking
15	establishment if beverages are generally consumed on the
16	establishment's premises and does not include a person who
17	purchases the beverage from the establishment for consumption on
18	the premises.
19	(5) "Distributor" means a person who distributes
20	beverages in beverage containers to retail dealers.
21	(6) "Incentive program" means the Texas beverage
22	container recycling program established under this chapter.
23	(7) "Infant formula" means any liquid food sold as an
24	alternative for human milk for the feeding of infants.
25	(8) "Manufacturer" means any person who fills beverage
26	containers for sale to distributors or retail dealers.
27	(9) "Medical food" means a food or heverage that is

- 1 formulated to be consumed or administered under the supervision of
- 2 a physician and that is intended for specific dietary management of
- 3 diseases or health conditions for which distinctive nutritional
- 4 requirements, based on recognized scientific principles, are
- 5 established by medical evaluation. The term also includes any
- 6 product that meets the definition of "medical food" under Section
- 7 <u>5(b)(3)</u>, the Food, Drug, and Cosmetic Act (21 U.S.C. Section
- 8 360ee).
- 9 (10) "Redemption center" means an operation approved
- 10 by the consortium to redeem beverage containers under this chapter
- 11 and includes a manned operation or a mechanical device that accepts
- 12 empty beverage containers and issues a cash refund or a redeemable
- 13 credit slip with a value not less than the container's refund value.
- 14 (11) "Refund" means a payment by a redemption center
- 15 under Section 376.201 to a person who presents a beverage container
- 16 at the redemption center.
- 17 <u>(12)</u> "Retail dealer" means a person who sells a
- 18 beverage in a beverage container to a consumer and includes the
- 19 owner or operator of a beverage vending machine.
- 20 Sec. 376.002. TEXAS BEVERAGE CONTAINER RECYCLING
- 21 CONSORTIUM. (a) The consortium is an association formed to
- 22 administer the incentive program.
- 23 (b) The consortium consists of nine voting members
- 24 appointed by the governor as follows:
- 25 (1) one distributor of alcoholic beverages;
- 26 (2) one distributor of nonalcoholic beverages;
- 27 (3) one recycler;

1	(4) one beverage retailer;
2	(5) one representative of the waste industry;
3	(6) one redemption center owner or operator;
4	(7) one container processor or remanufacturer;
5	(8) one representative of a municipality with a
6	population of less than 10,000; and
7	(9) one representative of a municipality with a
8	population of at least 10,000.
9	(c) The voting members serve staggered terms of two years
10	with four or five members' terms, as applicable, expiring June 1 of
11	each year.
12	(d) The voting members annually shall designate one member
13	of the consortium to serve as presiding officer.
14	(e) The voting members shall appoint an executive director
15	to oversee the consortium's operation under the supervision of the
16	consortium.
17	(f) The executive director may employ personnel necessary
18	to the operation of the consortium.
19	(g) The comptroller or the comptroller's designee and the
20	chair of the Texas Commission on Environmental Quality or the
21	chair's designee serve as ex officio nonvoting members of the
22	consortium.
23	Sec. 376.003. ADMINISTRATION AND RULES. (a) Ir
24	administering the incentive program, the consortium shall:
25	(1) after consultation with the comptroller and the
26	Texas Commission on Environmental Quality regarding standards and

requirements for redemption centers, enter into appropriate

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- 1 agreements approving redemption centers under Section 376.151;
- 2 (2) enforce compliance with the provisions of this
- 3 <u>chapter;</u>
- 4 (3) develop and implement a marketing plan to provide
- 5 information and educate consumers about the incentive program;
- 6 (4) conduct any audit of the incentive program the
- 7 <u>comptroller determines is necessary;</u>
- 8 <u>(5) develop an operating budget for the incentive</u>
- 9 program;
- 10 (6) ensure the solvency of the incentive program's
- 11 account;
- 12 (7) develop a system for reimbursement of deposits and
- 13 refunds and for distribution of handling fees;
- 14 (8) develop a system for monitoring the number of
- 15 containers sold by distributors and the number of containers
- 16 returned to redemption centers and curbside recycling centers;
- 17 (9) develop a system to prevent fraudulent use of the
- 18 incentive program, including payment by voucher for the redemption
- 19 of beverage containers if the consortium determines that vouchers
- 20 will be an effective fraud prevention measure;
- 21 (10) administer an account as provided by Section
- 22 376.105;
- 23 (11) adopt procedures and forms necessary to implement
- 24 this chapter; and
- 25 (12) develop and maintain a publicly accessible
- 26 website to provide information about the program, including
- 27 redemption center locations.

- (b) The comptroller, after consultation with the 1 2 consortium, may adopt rules necessary to implement this chapter. Sec. 376.004. CRIMINAL PENALTIES. A person commits an 3 offense if the person knowingly violates Section 376.051, 376.101, 4 5 376.102, 376.201, or 376.204. An offense under this section is a Class C misdemeanor. 6 Sec. 376.005. REPORT TO LEGISLATURE. Not later than 7 8 November 1 of each year, the consortium shall submit a report to the lieutenant governor, the speaker of the house of representatives, 9 10 the comptroller, the Texas Commission on Environmental Quality, and the committee in each house of the legislature that has primary 11 12 jurisdiction over environmental matters about the progress and success of the incentive program. The report must be submitted 13 electronically in a format prescribed by the officer or entity to 14 15 which the report is transmitted. SUBCHAPTER B. REFUND VALUE AND LABELING OF BEVERAGE CONTAINERS 16 17 Sec. 376.051. REFUND VALUE AND LABEL REQUIRED. (a) Except as provided by Subsection (b), a person may not distribute, sell, or 18 19 offer for sale in this state a beverage container unless the 20 container:
- 21 <u>(1) has:</u>
- (A) a fluid capacity of less than 24 ounces and a
- 23 refund value of five cents; or
- 24 (B) a fluid capacity of at least 24 ounces and a
- 25 refund value of 10 cents; and
- 26 (2) is labeled as required by Section 376.052.
- 27 (b) A person may distribute, sell, or offer for sale in this

- 1 state a beverage container that does not have a refund value if: 2 (1) the container has a fluid capacity of more than one 3 gallon; or 4 (2) the container contains: 5 (A) a beverage that consists of milk or of 100 percent fruit or vegetable juice; or 6 7 (B) medical food or infant formula. Sec. 376.052. LABELING. (a) A beverage container required 8 to have a refund value under Section 376.051 that is distributed or 9 10 offered for sale in this state must have legibly stamped, labeled, or embossed on the container: 11 (1) "TxR"; and 12 13 (2) other language as required by the consortium. 14 (b) A beverage container intended for sale in this state 15 must be printed, embossed, stamped, labeled, or otherwise marked
- 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

with a universal product code or similar machine-readable indicium.

- 21 <u>each beverage container that the distributor sells to the retail</u>
- 22 <u>dealer.</u>

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- (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 <u>(c) A retail dealer who sells one or more beverage</u>
 27 <u>containers to a consumer for off-premise consumption shall list the</u>

- 1 beverage container deposit paid as a separate line item on a receipt
- 2 given to the consumer. The deposit may not be included in any sales
- 3 tax calculation.
- 4 Sec. 376.102. REMITTANCE OF DEPOSITS BY DISTRIBUTOR. Not
- 5 later than the fifth day of each month, a distributor shall remit to
- 6 the consortium the deposits collected by the distributor under
- 7 Section 376.101 during the preceding month.
- 8 Sec. 376.103. MONTHLY REPORT. (a) Not later than the fifth
- 9 day of each month, a distributor who collects a deposit under
- 10 Section 376.101 shall report to the consortium, on a form approved
- 11 by the consortium:
- 12 (1) the total amount of deposits collected during the
- 13 preceding month; and
- 14 (2) the number of beverage containers sold during the
- 15 preceding month separated by deposit amount and material of
- 16 <u>container</u>.
- 17 (b) The consortium may require a distributor to include in
- 18 the report required by Subsection (a) other information the
- 19 consortium considers necessary.
- 20 (c) The information contained in the report required by this
- 21 section is confidential and may not be disclosed by the consortium
- 22 or an officer or employee of the consortium unless required by law.
- Sec. 376.104. DONATIONS. A manufacturer or distributor who
- 24 donates beverage containers covered by this chapter shall pay the
- 25 requisite deposit for the donated beverage containers to the
- 26 consortium using the method prescribed by the consortium.
- Sec. 376.105. RECYCLING REFUND TRUST ACCOUNT. (a)

- 1 Deposits collected under this chapter shall be deposited to the
- 2 credit of the recycling refund trust account maintained by the
- 3 consortium. Money in the account may be allocated only for:
- 4 (1) reimbursements and handling fees paid to
- 5 redemption centers or curbside recycling programs, as applicable;
- 6 (2) administration of this chapter;
- 7 (3) providing information and educating consumers
- 8 about the incentive program;
- 9 <u>(4) the purposes authorized under Subsections (b) and</u>
- 10 (c); and
- 11 (5) matching grants or low-interest loans to fund
- 12 water quality, waste reduction, recycling, or curbside redemption
- 13 programs.
- 14 (b) On the last day of each state fiscal biennium, the
- 15 consortium shall send to the comptroller a fee in the amount
- 16 <u>necessary for the comptroller to fulfill the comptroller's</u>
- 17 obligations under this chapter.
- (c) On the last day of each state fiscal biennium, the
- 19 consortium shall send to the Texas Commission on Environmental
- 20 Quality a fee in the amount necessary to reimburse that agency for
- 21 the agency's participation in the program.
- (d) On the last day of each state fiscal biennium, the
- 23 consortium shall send to the comptroller a fee in the amount of two
- 24 and one-half percent of the unencumbered balance of the account for
- 25 deposit in the state treasury to the credit of the Texas Commission
- 26 on Environmental Quality. Money deposited under this subsection
- 27 may be appropriated only for the purposes of Section 361.014(b).

- 1 The money must be allocated as provided by that subsection and each
- 2 planning region shall include in the biennial report issued under
- 3 that subsection information detailing how the money is spent.
- 4 SUBCHAPTER D. REDEMPTION CENTERS
- 5 Sec. 376.151. ESTABLISHMENT OF REDEMPTION CENTER
- 6 AGREEMENTS. (a) To facilitate the return of empty beverage
- 7 containers, a local government or independent entity may establish,
- 8 own, and operate a redemption center at which empty containers may
- 9 be returned for their refund value.
- 10 (b) The local government or independent entity must file an
- 11 application for approval of a redemption center with the
- 12 consortium. The application must provide:
- (1) the name, mailing address, telephone number,
- 14 e-mail address, and title of the person responsible for the
- 15 <u>establishment and operation of the redemption center;</u>
- 16 (2) the physical address of the redemption center;
- 17 (3) the applicant's federal tax identification number
- 18 or social security number if a tax identification number is not
- 19 required by federal law; and
- 20 (4) any additional information the consortium
- 21 requires as necessary or convenient for the implementation of this
- 22 section.
- 23 <u>(c) The consortium shall approve a redemption center if it</u>
- 24 finds the redemption center will provide a convenient service to
- 25 persons for the return of empty beverage containers.
- 26 (d) The consortium at any time may review its approval of a
- 27 redemption center. After written notice to the person responsible

- 1 for the establishment and operation of the redemption center and to
- 2 each retail dealer located within a two-mile radius of the
- 3 redemption center, the consortium may, after providing the owner or
- 4 operator an opportunity for a hearing to verify facts and resolve
- 5 the matter at issue, withdraw approval of a redemption center if the
- 6 consortium finds the redemption center has violated any terms of
- 7 the approval of the redemption center.
- 8 <u>(e) The consortium and applicant shall establish the</u>
- 9 required hours of operation for a redemption center in the approval
- 10 under Subsection (c).
- 11 (f) The consortium may not limit the number of redemption
- 12 centers within a geographic area.
- 13 <u>(g) To be eligible to receive handling fees and</u>
- 14 reimbursements for redemptions under Section 376.205, a redemption
- 15 <u>center owner and operator must complete a biennial training program</u>
- 16 <u>established by the consortium.</u>
- 17 SUBCHAPTER E. BEVERAGE CONTAINER REDEMPTION
- 18 Sec. 376.201. USED BEVERAGE CONTAINER REDEMPTION. Except
- 19 as provided by Sections 376.202 and 376.203, and subject to any
- 20 additional antifraud requirements developed by the consortium
- 21 under Section 376.003(a)(9), a redemption center shall accept a
- 22 used beverage container that has a refund value as established by
- 23 <u>Section 376.051 and shall pay the refund value of</u> the container in
- 24 cash, check, or, if permitted by consortium rule, voucher to the
- 25 person presenting the container if the container is stamped,
- 26 labeled, or embossed with "TxR."
- Sec. 376.202. REFUSAL PERMITTED. A redemption center may

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1 refuse to accept for refund: 2 (1) a glass bottle that is broken; 3 (2) a used beverage container that contains part of its original contents or other foreign matter to the extent that it 4 5 could present health or sanitation problems; or 6 (3) a used beverage container that is not legibly marked "TxR." 7 8 Sec. 376.203. REDEMPTION BY WEIGHT. (a) The consortium shall establish: 9 10 (1) a procedure and reimbursement rates for providing a reimbursement based on the weight and material of the beverage 11 12 containers presented to be used in circumstances in which the number of containers is so large that counting the containers 13 individually would be burdensome on a redemption center or curbside 14 recycling program; and 15 (2) a handling fee to be paid to redemption centers for 16 17 containers redeemed in the manner described by Subdivision (1). (b) Not more than every six months the consortium may adjust 18 19 the reimbursement rates described by Subsection (a). Sec. 376.204. RECYCLING OF BEVERAGE CONTAINERS 20 ВҮ REDEMPTION CENTER AND CURBSIDE RECYCLING PROGRAM. A redemption 21 22 center or curbside recycling program shall recycle the returned used beverage containers by: 23 24 (1) selling the material to a processor or other end

(2) another method prescribed by the consortium.

Sec. 376.205. REIMBURSEMENT OF REDEMPTION CENTERS

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user; or

- 1 CONSORTIUM; HANDLING FEE. (a) On submission of a completed invoice
- 2 of refunds paid by a redemption center on a form adopted by the
- 3 consortium, the consortium shall pay to the redemption center an
- 4 amount equal to the redemption value established by Section 376.051
- 5 or 376.203(a)(1), as applicable, plus a handling fee of:
- 6 (1) one and one-half cents for each beverage container
- 7 redeemed by the redemption center under Section 376.201; or
- 8 (2) the amount determined under Section 376.203(a)(2)
- 9 for beverage containers redeemed in the manner described by that
- 10 section.
- 11 (b) The consortium shall reimburse a redemption center
- 12 under Subsection (a) not later than the fifth working day after the
- 13 date the consortium receives the invoice submitted by the
- 14 redemption center.
- 15 (c) The consortium may adjust a handling fee to account for:
- 16 (1) changes in market conditions for recycled
- 17 materials; and
- 18 (2) different market conditions for recycled
- 19 materials based on population or geographic location.
- Sec. 376.206. REIMBURSEMENT OF CURBSIDE RECYCLING PROGRAM
- 21 BY CONSORTIUM. (a) On submission of a completed report, on a form
- 22 adopted by the consortium, indicating the number or weight, as
- 23 <u>applicable</u>, of <u>beverage containers</u> collected by a curbside
- 24 recycling program that are covered under this chapter, the
- 25 consortium shall pay to the curbside recycling program an amount
- 26 equal to the redemption value established by Section 376.203.
- 27 (b) The consortium shall reimburse a curbside recycling

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- 1 program under Subsection (a) not later than the fifth working day
- 2 after the date the consortium receives the invoice submitted by the
- 3 curbside recycling program.
- 4 Sec. 376.207. REPORTING REQUIREMENTS. Each redemption
- 5 center and curbside recycling program shall submit a report with
- 6 the submission of the completed invoice required under Sections
- 7 376.205 and 376.206, respectively, to the consortium, on a form
- 8 approved by the consortium, that provides:
- 9 (1) the redemption value of beverage containers
- 10 collected by the redemption center or curbside recycling program;
- 11 (2) the number or weight of beverage containers
- 12 collected by the center or curbside recycling program; and
- 13 (3) an invoice or other documentation that provides
- 14 proof that the collected recycled material was recycled in a manner
- described by Section 376.204.
- Sec. 376.208. NOTICE. The consortium must provide to each
- 17 redemption center and curbside recycling program, as applicable,
- 18 written notice at least 30 days before implementation of a change in
- 19 rates under Section 376.204 or handling fees under Section 376.205.
- SECTION 2. Section 151.007(c), Tax Code, is amended to read
- 21 as follows:
- (c) "Sales price" or "receipts" does not include any of the
- 23 following if separately identified to the customer by such means as
- 24 an invoice, billing, sales slip or ticket, or contract:
- 25 (1) a cash discount allowed on the sale;
- 26 (2) the amount charged for tangible personal property
- 27 returned by a customer if the total amount charged is refunded by

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- 1 cash or credit;
- 2 (3) a refund of the charges for the performance of a
- 3 taxable service;
- 4 (4) finance, carrying and service charges, or interest
- 5 from credit extended on sales of taxable items under a conditional
- 6 sales contract or other contract providing for the deferred payment
- 7 of the purchase price;
- 8 (5) the value of tangible personal property that:
- 9 (A) is taken by a seller in trade as all or part
- 10 of the consideration for a sale of a taxable item; and
- 11 (B) is of a type of property sold by the seller in
- 12 the regular course of business;
- 13 (6) the face value of United States coin or currency in
- 14 a sale of that coin or currency in which the total consideration
- 15 given by the purchaser exceeds the face value of the coin or
- 16 currency; [or]
- 17 (7) a voluntary gratuity or a reasonable mandatory
- 18 charge for the service of a meal or food products, including soft
- 19 drinks and candy, for immediate human consumption when the service
- 20 charge is separated from the sales price of the meal or food product
- 21 and identified as a gratuity or tip and when the total amount of the
- 22 service charge is disbursed by the employer to employees who
- 23 customarily and regularly provide the service; or
- 24 (8) a beverage container redemption deposit under
- 25 Chapter 376, Health and Safety Code.
- SECTION 3. (a) Not later than September 1, 2016, the
- 27 comptroller of public accounts, after consultation with the Texas

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- 1 Beverage Container Recycling Consortium and the Texas Commission on
- 2 Environmental Quality, shall adopt any rules necessary to implement
- 3 Chapter 376, Health and Safety Code, as added by this Act.
- 4 (b) The requirements of and penalties imposed by Chapter
- 5 376, Health and Safety Code, as added by this Act, do not apply to
- 6 any person before January 1, 2017.
- 7 (c) The remittance and report requirements imposed by
- 8 Sections 376.102 and 376.103, Health and Safety Code, as added by
- 9 this Act, do not apply to any person before March 5, 2017.
- 10 (d) The Texas Beverage Container Recycling Consortium may
- 11 not adjust a handling fee under Section 376.205(c), Health and
- 12 Safety Code, as added by this Act, until January 1, 2018.
- 13 SECTION 4. This Act takes effect September 1, 2015.