

By: Johnson

S.B. No. 2419

A BILL TO BE ENTITLED

AN ACT

relating to an incentive program to promote beverage container recycling; imposing a fee.

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 RECYCLING REFUND PROGRAM

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.

(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. The term does not include a container that:

(A) has a fluid capacity of more than one gallon;

(B) contains milk or another dairy product;

(C) contains infant formula, including any liquid food sold as an alternative for human milk for the feeding of infants; or

(D) contains medical food, including:

(i) a liquid food that is formulated to be consumed or administered under the supervision of a physician and

1 that is intended for specific dietary management of diseases or
2 health conditions for which distinctive nutritional requirements,
3 based on recognized scientific principles, are established by
4 medical evaluation; and

5 (ii) a product that meets the definition of
6 a medical food under Section 5(b) of the Orphan Drug Act (21 U.S.C.
7 Section 360ee(b)).

8 (3) "Commission" means the Texas Commission on
9 Environmental Quality.

10 (4) "Consortium" means the Texas Beverage Container
11 Recycling Consortium established under this chapter.

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

19 (6) "Dealer" means a person in this state that sells to
20 a consumer a sealed beverage in a beverage container.

21 (7) "Distributor" means a person that sells beverages
22 in beverage containers to a dealer in this state. The term includes
23 a manufacturer or importer and a dealer that self-distributes its
24 own brand.

25 (8) "Manufacturer" means a person that fills beverage
26 containers for sale to a distributor or dealer.

27 (9) "Redemption center" means a manned or unmanned

1 operation approved by the consortium under this chapter that
2 redeems returned empty beverage containers by collecting beverage
3 containers from persons who deliver to the operation beverage
4 containers and issuing to a person delivering beverage containers a
5 refund for each with a value not less than the beverage container's
6 refund value.

7 (10) "Refund" means a payment by a redemption center
8 under Section 375.101 to a person who presents a beverage container
9 at the redemption center.

10 (11) "Refund program" means the beverage container
11 recycling program established under this chapter.

12 Sec. 375.002. RULES. The comptroller may adopt rules to
13 administer this chapter. The comptroller shall consult the
14 consortium, the advisory committee established under Section
15 375.003, and the commission in developing for proposal rules to
16 administer this chapter.

17 Sec. 375.003. ADVISORY COMMITTEE. (a) The comptroller
18 shall appoint an advisory committee to advise the comptroller and
19 the consortium on the implementation of this chapter. In
20 considering persons to appoint to the advisory committee, the
21 comptroller shall consult the consortium and the commission.

22 (b) The advisory committee is composed of the following nine
23 members:

- 24 (1) one distributor of alcoholic beverages;
25 (2) one distributor of nonalcoholic beverages;
26 (3) one recycler;
27 (4) one beverage retailer;

1 (5) one member representing the waste industry;

2 (6) one owner or operator of a redemption center;

3 (7) one member representing a container processor or
4 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 10,000 or more.

9 (c) A member of the advisory committee serves at the will of
10 the comptroller.

11 Sec. 375.004. ANNUAL REPORT. Not later than November 1 of
12 each year, the consortium shall submit a report to the lieutenant
13 governor, the speaker of the house of representatives, the
14 comptroller, the commission, and the committee in each house of the
15 legislature that has primary jurisdiction over environmental
16 matters about the progress and success of the refund program. The
17 report must be submitted electronically in a format prescribed by
18 the officer or entity to which the report is transmitted.

19 SUBCHAPTER B. TEXAS BEVERAGE CONTAINER RECYCLING CONSORTIUM

20 Sec. 375.051. CONSORTIUM AND APPROVED PLAN REQUIRED;
21 NON-JOINING DISTRIBUTORS; MEMBERSHIP FEES. (a) Distributors shall
22 form, and a distributor shall participate in, the Texas Beverage
23 Container Recycling Consortium. The consortium must be a nonprofit
24 corporation under Chapter 22, Business Organizations Code, that is
25 formed for the purpose of creating and implementing a plan to meet
26 the requirements of this chapter. The consortium's organizational
27 and operational structure must be approved by the comptroller.

1 (b) The consortium shall develop a plan in accordance with
2 Section 375.052 and submit the plan to the comptroller for
3 approval. The comptroller's approval of the consortium's plan
4 submitted under this subsection constitutes the comptroller's
5 initial approval of the nonprofit corporation for purposes of
6 Subsection (a). The comptroller may approve the initial plan on a
7 provisional basis and require an amended plan to be submitted not
8 later than a date established by the comptroller.

9 (c) A distributor may not sell or supply beverages in
10 beverage containers in this state if the distributor has not joined
11 the consortium.

12 (d) The consortium may sue a distributor that has not joined
13 the consortium in an appropriate court to require compliance with
14 the duty to join the consortium and to enforce Subsection (c). The
15 consortium may recover court costs and attorney's fees if it
16 prevails in a suit brought under this subsection.

17 (e) The consortium shall assess and collect membership fees
18 from its members in accordance with Section 375.054.

19 Sec. 375.052. PLAN REQUIREMENTS. To be approved under this
20 subchapter, a plan must:

21 (1) be based on objective and measurable criteria to
22 the extent possible;

23 (2) include provisions sufficient to enable the
24 comptroller to determine:

25 (A) whether the consortium, distributors,
26 redemption centers, and other affected persons are in compliance
27 with the plan and this chapter; and

1 (B) whether the plan is cost-effective and
2 sufficiently convenient to the public;

3 (3) establish reasonable standards and guidelines to
4 ensure that redemption centers are efficient, cost-effective, and
5 convenient for the public;

6 (4) show how the consortium will encourage public
7 participation in the program and require distributor compliance
8 with this chapter;

9 (5) include a marketing plan to provide information
10 and educate consumers about the refund program;

11 (6) include requirements to ensure transparency and
12 adequate recordkeeping to facilitate audits of the refund program
13 by the comptroller or the consortium;

14 (7) include an operating budget for the refund
15 program;

16 (8) show how the consortium will ensure the solvency
17 of the recycling refund trust fund;

18 (9) provide for a system for payment of the deposit by
19 consumers at point of sale and transferring the deposit to the
20 recycling refund trust fund;

21 (10) provide for a system for monitoring the number of
22 beverages in beverage containers sold by distributors in or into
23 this state and the number of beverage containers returned to
24 redemption centers and curbside recycling programs;

25 (11) provide for a system to prevent fraudulent use of
26 the refund program through current statutes prohibiting fraud and
27 theft that includes cost-effective measures to ensure to the extent

1 possible that beverage containers purchased outside of this state
2 are not returned for refund under this chapter;

3 (12) describe how the consortium will administer the
4 recycling refund trust fund under Section 375.056;

5 (13) prescribe procedures and forms necessary to
6 implement the plan and this chapter;

7 (14) provide a link to a publicly accessible Internet
8 website developed and maintained by the consortium that provides
9 information about the program, including redemption center
10 locations;

11 (15) prescribe labeling standards for manufacturers
12 and distributors;

13 (16) include standards and procedures for payment by
14 the consortium to curbside collection programs for beverage
15 containers collected at curbside based on the number of containers
16 collected and the quality of those containers as compared to the
17 quality of containers collected at redemption centers;

18 (17) include standards for efficiently and
19 cost-effectively approving redemption centers operated by a local
20 government or private operator;

21 (18) include standards for making refund payments
22 based on the weight of returned beverage containers;

23 (19) include standards for material acceptance and
24 refusal by redemption centers;

25 (20) establish requirements and standards for
26 information necessary to compute a recycling rate for beverage
27 containers collected through redemption centers; and

1 (21) to the extent feasible, establish requirements
2 and standards for information necessary to compute a recycling rate
3 for beverage containers collected through curbside recycling
4 programs and other means.

5 Sec. 375.053. PLAN APPROVAL; APPLICABILITY OF APPROVED
6 PLAN. (a) Before approving the consortium's plan submitted under
7 Section 375.051(b), the comptroller:

8 (1) shall consult the advisory committee;

9 (2) shall publish notice and the text of the proposed
10 plan on the comptroller's Internet website;

11 (3) shall provide a reasonable period for and solicit
12 comments from the public, distributors, dealers, manufacturers,
13 and other interested persons, including local government entities
14 and other persons involved in collection efforts;

15 (4) may hold workshops or informal hearings on the
16 proposed plan; and

17 (5) may allow the consortium to amend the proposed
18 plan in response to comments from the comptroller or the public.

19 (b) The comptroller may approve the plan only if the
20 comptroller determines that the plan:

21 (1) complies with Section 375.052;

22 (2) is supported by the available evidence; and

23 (3) will accomplish the purposes of this chapter in a
24 manner that is feasible, well-founded, cost-effective, and
25 convenient to the public.

26 (c) Standards, procedures, guidelines, and requirements
27 established in a plan approved by the comptroller are binding, as

1 applicable, on:

2 (1) persons engaged in commerce involving beverage
3 containers in this state, to the extent allowed under federal law;

4 (2) persons and local government entities engaged in
5 collecting or sorting for recycling or other disposition used
6 beverage containers; and

7 (3) redemption centers.

8 (d) Plan amendments must be approved by the comptroller in
9 accordance with this section.

10 Sec. 375.054. CONSORTIUM FINANCES; FEES PAID BY CONSORTIUM
11 MEMBERS. (a) The consortium shall charge distributors a
12 membership fee. The fee must be set in an amount that is sufficient
13 to cover the cost to the consortium of implementing the plan and
14 administering this chapter, including the cost of:

15 (1) operating and maintaining, or providing for the
16 operation and maintenance of, redemption centers built or operated
17 under this chapter; and

18 (2) paying to the comptroller an amount equal to the
19 comptroller's costs and the commission's costs incurred in
20 administering this chapter, as directed by the comptroller.

21 (b) The consortium shall provide to the comptroller a
22 description of how the consortium computes and sets the membership
23 fee and the process by which the consortium collects the fee from
24 distributors.

25 (c) The amount of the membership fee to be paid by a
26 distributor must be:

27 (1) generally proportional to the relative number of

1 beverage containers that the distributor introduces into the stream
2 of commerce in this state; and

3 (2) based on a reasonable estimate and consideration
4 of the cost to the consortium of collecting and processing for
5 recycling or other disposal the distributor's beverage containers.

6 (d) The consortium shall add to the amount of the membership
7 fee to be paid by a distributor the consortium's best reasonable
8 estimate of the cost to the consortium of:

9 (1) collecting, processing, and disposing of beverage
10 containers the distributor introduces into the stream of commerce
11 in this state that are difficult to recycle or unsuitable for
12 recycling; and

13 (2) higher payments made to curbside collection
14 programs due to containers described by Subdivision (1).

15 (e) The consortium shall establish a date on which the
16 membership fee charged to a distributor under this section is due.
17 If a distributor is more than 180 days delinquent in payment of a
18 fee, the consortium may bring suit to recover the fee, court costs,
19 and reasonable attorney's fees.

20 Sec. 375.055. CERTAIN BEVERAGE DONATIONS. A manufacturer
21 or distributor that donates beverages shall pay to the consortium
22 the required deposit for the donated beverage containers in the
23 manner prescribed by the consortium.

24 Sec. 375.056. RECYCLING REFUND TRUST FUND. Deposits
25 collected under this chapter, including deposits collected under
26 Section 375.055, and membership fees collected from distributors
27 shall be deposited to the credit of a recycling refund trust fund

1 maintained by the consortium in a depository chosen by the
2 consortium. Except as provided by Section 375.152(b), money in the
3 trust fund may be allocated and expended only for:

4 (1) construction, operation, and maintenance of
5 redemption centers;

6 (2) operation of technology-based redemption centers,
7 including reverse vending machines and bag-drop receptacles, that
8 provide convenient cost-effective methods of paying refunds;

9 (3) leasing agreements and liability insurance on
10 redemption centers;

11 (4) appropriate payments to curbside recycling
12 programs for beverage containers that, based on reliable data
13 submitted to the consortium by a program, meet quality standards
14 determined by the consortium and are ultimately recycled;

15 (5) making refund payments to persons who return a
16 beverage container to a redemption center and receive a refund;

17 (6) reimbursing a local government entity or
18 independent entity operating a redemption center, as authorized by
19 the consortium, for refunds paid to persons returning beverage
20 containers;

21 (7) providing information to and educating consumers
22 about the refund program; and

23 (8) administering this chapter and reimbursing the
24 comptroller and the commission for costs incurred in administering
25 this chapter.

26 Sec. 375.057. COMPTROLLER OVERSIGHT; RESERVES. The
27 comptroller may:

1 deposit refunds.

2 Sec. 375.103. REDEMPTION CENTERS. (a) A person or local
3 governmental entity may not operate a redemption center without the
4 consortium's approval.

5 (b) A person or local governmental entity that operates a
6 redemption center must do so according to standards and guidelines
7 established by the consortium.

8 SUBCHAPTER D. RECYCLING TARGETS

9 Sec. 375.151. RECYCLING TARGETS FOR BEVERAGE CONTAINERS.

10 (a) The consortium shall implement a plan approved under this
11 chapter to meet the following recycling rates for beverage
12 containers sold or distributed in this state:

13 (1) not less than 35 percent, beginning January 1,
14 2027;

15 (2) not less than 50 percent, beginning January 1,
16 2031;

17 (3) not less than 65 percent, beginning January 1,
18 2035; and

19 (4) an average rate of not less than 65 percent during
20 each four-year period after January 1, 2035.

21 (b) The recycling rate is computed by dividing the number of
22 beverage containers that are recovered and recycled in a year by the
23 total number of beverage containers sold or distributed in this
24 state during that year.

25 (c) The number of beverage containers that are recovered and
26 recycled in a year is the sum of:

27 (1) the number of beverage containers that are

1 recovered at redemption centers and recycled in accordance with
2 this chapter; and

3 (2) the comptroller's estimated number of beverage
4 containers recovered and ultimately recycled as a result of
5 curbside collection, commercial contracts for collection and
6 recycling, and other recycling methods in this state not described
7 by Subdivision (1).

8 (d) The comptroller by rule may establish an alternative
9 method of computing the recycling rate as necessary for accuracy
10 and feasibility of implementation.

11 Sec. 375.152. FAILURE TO MEET RECYCLING TARGETS. (a) If
12 the consortium does not meet a year's recycling rate target
13 provided by Section 375.151, the consortium shall take additional
14 steps to raise the recycling rate, including making increases to:

15 (1) public outreach;
16 (2) the number of redemption centers; and
17 (3) the deposit and refund to 10 cents per beverage
18 container.

19 (b) If the consortium does not meet the recycling rate
20 target provided by Section 375.151 before the second anniversary of
21 the date the consortium was required to take additional steps under
22 Subsection (a), the comptroller may require the consortium to remit
23 to the state all or part of the money in the recycling refund trust
24 fund established under Section 375.056. The comptroller shall hold
25 money remitted under this subsection until the consortium or
26 another organization provides to the comptroller a corrective plan
27 to meet the recycling targets under this chapter.

1 (c) The comptroller shall consult with the advisory
2 committee before approving the corrective plan and releasing the
3 money remitted and held under Subsection (b) to the consortium or
4 other organization responsible for the approved corrective plan.

5 (d) The comptroller may audit the consortium for accuracy
6 and adherence to recycling targets under this chapter. The
7 consortium shall reimburse the comptroller for the cost incurred by
8 the comptroller in the audit process.

9 SECTION 2. (a) Not later than September 1, 2024, the
10 comptroller shall adopt rules for the implementation of Chapter
11 375, Health and Safety Code, as added by this Act. To facilitate
12 the approval of the structure and organization of the Texas
13 Beverage Container Recycling Consortium and the consortium's
14 initial plan, the comptroller may adopt the initial rules in the
15 manner provided by law for emergency rules.

16 (b) Except as otherwise provided by this Act, a dealer,
17 distributor, manufacturer, redemption center, or other person
18 subject to requirements imposed by the consortium plan adopted and
19 approved under Chapter 375, Health and Safety Code, as added by this
20 Act, shall comply with those requirements beginning January 1,
21 2025.

22 (c) The consortium shall submit the initial report required
23 by Section 375.004, Health and Safety Code, as added by this Act,
24 not later than November 1, 2025.

25 SECTION 3. (a) Except as provided by Subsections (b) and
26 (c) of this section, this Act takes effect September 1, 2023.

27 (b) Section 375.051(c), Health and Safety Code, as added by

1 this Act, takes effect October 1, 2025.

2 (c) Section 375.058, Health and Safety Code, as added by

3 this Act, takes effect January 1, 2025.