

AMENDED IN SENATE MAY 13, 2009

AMENDED IN SENATE APRIL 22, 2009

SENATE BILL

No. 55

Introduced by Senator Corbett

January 15, 2009

~~An act to amend Sections 14504, 14551, 14575, 14581, and 14585 of, to add Section 14575.5 to, and to repeal Section 14523.5 of, the Public Resources Code, relating to recycling, and making an appropriation therefor. An act to amend Sections 14588.1 and 14588.2 of, and to add Section 14588.3 to, the Public Resources Code, relating to recycling.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 55, as amended, Corbett. Recycling: ~~California redemption value containers. handling fees: supermarket sites.~~

(1) Under existing law, the California Beverage Container Recycling and Litter Reduction Act, every beverage container sold or offered for sale in this state is required to have a minimum refund value. A distributor is required to pay a redemption payment for every beverage container sold or offered for sale in the state to the Department of Conservation and the department is required to deposit those amounts in the California Beverage Container Recycling Fund. The money in the fund is continuously appropriated to the department for the payment of refund values and processing fees. A violation of the act is a crime. *Existing law requires the department to adopt guidelines and methods for paying handling fees to supermarket sites. To ensure that handling fees paid to the supermarket site are not used for the purpose of engaging in unfair and predatory pricing, existing law requires an audit*

upon certain complaints filed with the department and sets forth a procedure for handling the audit.

This bill would revise the auditing procedure and would revise the definition of “unfair and predatory pricing.”

(2) Existing law requires the department to convene an informal hearing if the director of the department determines there is probable cause that a supermarket site has engaged in unfair and predatory pricing. Existing law allows the respondent to rebut the presumption of unfair and predatory pricing by demonstrating specified facts to the director.

This bill would eliminate this opportunity to rebut the presumption of unfair predatory pricing.

(3) Existing law prohibits a supermarket site from receiving handling fees for a period of 6 months to 5 years, depending on certain criteria, if the director determines that a supermarket site has engaged in unfair and predatory pricing.

This bill would decrease the period of time that a supermarket site is ineligible to receive handling fees to a period of 2 months to 3 years, depending on certain criteria, if the director determines that the supermarket site has engaged in unfair and predatory pricing.

(4) Existing law establishes the amount that a beverage distributor shall pay the department for each beverage container sold or offered for sale in this state.

This bill would prohibit a certified recycling center that receives handling fees from paying scrap value for redeemed beverage containers and instead would require the recycling center to pay only the refund value established in statute for each type of beverage container. The bill would impose a state-mandated local program by creating a new crime relating to beverage containers.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Beverage is defined, for purposes of the act, to include, among other things, beer and other malt beverages, wine and distilled spirit coolers, carbonated mineral and soda waters, noncarbonated fruit drinks, and vegetable juices, in liquid form that are intended for human consumption, but excludes from that definition vegetable drinks in~~

~~beverage containers of more than 16 ounces. The act also excludes, from the definition of beverage, any product sold in a container that is not an aluminum beverage container, a glass container, a plastic beverage container, or a bimetal container.~~

~~This bill would revise the term beverage to include vegetable, nut, grain, or soy drinks that contain any percentage of juice, and would delete the requirement that a vegetable drink subject to the act be sold in a container of 16 ounces or less. The bill would delete the exclusion from the term beverage, for a product that is not sold in the above-specified types of containers. The bill would additionally exclude from the definition a beverage in a flexible foil, plastic pouch, or aseptic container delivering 7 or less fluid ounces. The bill would also make conforming changes to other definitions, for purposes of the act.~~

~~Since the payments for the plastic beverage containers and other beverage containers that this bill would make subject to the act would be deposited in a continuously appropriated fund, the bill would make an appropriation. The bill would also impose a state-mandated local program by creating new crimes relating to beverage containers.~~

~~(2) The Department of Conservation is required to establish reporting periods of 6 months each for redemption rates and recycling rates for specified types of beverage containers. The act also requires the department to determine the redemption rates and recycling rates for those beverage containers for each reporting period and to issue a report on those determinations. The act defines various terms for purposes of those provisions, including redemption rate.~~

~~This bill would delete the provisions that require the department to establish reporting periods for redemption rates and that require the department to determine redemption rates for specified types of beverage containers. The bill also would delete the definition of redemption rate.~~

~~(3) The act requires the department to calculate a processing fee and a processing payment for each beverage container with a specified scrap value. The processing fee is required to be paid by beverage manufacturers for each beverage container sold or transferred to a dealer. Existing law authorizes, subject to the availability of funds, a reduction in the processing fee paid by beverage manufacturers for container types with certain recycling rates. Existing law requires the department to pay processing payments for redeemed containers to processors, for each type of beverage container, in a specified manner. The department is also required to pay a handling fee to specified recyclers.~~

~~The bill would make changes with regard to the processing fee reductions for container types with certain recycling rates. The bill would include provisions for determining a supplemental processing payment, based on the volume of redeemed containers, which would be paid to processors and ultimately to recyclers.~~

~~This bill would revise the provisions for the payment of handling fees with regard to payments for beverage containers with a 24-ounce capacity.~~

~~(4) The department is authorized to make other specified expenditures from the moneys remaining in the fund after the moneys for certain purposes have been set aside, including \$10,500,000 annually for payments to cities and counties for beverage container recycling and litter cleanup activities. Existing law requires the department to expend \$15,000,000 annually, plus a proportional cost-of-living adjustment, for grants for eligible community conservation corps beverage container litter reduction and recycling programs.~~

~~This bill would increase the payments to cities and counties to \$15,000,000 to be paid as specified. The bill would require the department to expend \$17,500,000 annually, plus a proportional cost-of-living adjustment, for grants for eligible community conservation corps beverage container litter reduction and recycling programs.~~

~~(5) The department is authorized to expend up to \$20,000,000 to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers.~~

~~This bill would additionally include, as activities eligible for these grants, the upgrading or retrofitting of existing facilities or construction of new facilities that process or use postconsumer beverage container material and payments to manufacturers located in this state who utilize material from the types of recycled beverage containers that are generated in this state and that became subject to the act pursuant to this bill.~~

~~(6) The bill would make conforming changes.~~

~~(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 14588.1 of the Public Resources Code is
2 amended to read:

3 14588.1. (a) As used in this chapter, “unfair and predatory
4 pricing” means the payment to consumers by a supermarket site,
5 that receives handling fees for the redemption of beverage
6 containers, in an amount that exceeds ~~the sum of both of the~~
7 ~~following:~~

8 ~~(1) The the California refund value for that container.~~

9 ~~(2) (A) If the supermarket site is not located in a rural region,
10 the average scrap value paid per pound for that container type by
11 specified certified recycling centers located within a five-mile
12 radius of the supermarket site on the date of the alleged occurrence,
13 the day before the alleged occurrence, and the day after the alleged
14 occurrence.~~

15 ~~(B) If the supermarket site is located in a rural region, the
16 average scrap value paid per pound for that container type by
17 specified certified recycling centers located within a 10-mile radius
18 of the supermarket site on the date of the alleged occurrence, the
19 day before the alleged occurrence, and the day after the alleged
20 occurrence.~~

21 ~~(b) In calculating the three-day average price paid by recyclers
22 within the specified distance of a recycler alleged to have engaged
23 in predatory pricing, as required by subdivision (a), the department
24 shall only survey those recyclers who did not receive handling
25 fees in three or more of the 12 whole months immediately
26 preceding the date of the allegation of predatory pricing.~~

27 ~~(e)~~

28 (b) For purposes of this chapter, “rural region” means a
29 nonurban area identified by the department on an annual basis
30 using the loan eligibility criteria of the Rural Housing Service of
31 the United States Department of Agriculture, Rural Development
32 Administration, or its successor agency. Those criteria include,
33 but are not limited to, places, open country, cities, towns, or census
34 designated places with populations that are less than 10,000
35 persons. The department may designate an area with population
36 of between 10,000 and 50,000 persons as a rural region, unless the
37 area is identified as part of, or associated with, an urban area, as
38 determined by the department on an individual basis.

1 *SEC. 2. Section 14588.2 of the Public Resources Code is*
2 *amended to read:*

3 14588.2. (a) To ensure that handling fees paid to a supermarket
4 site are not used for the purpose of engaging in unfair and predatory
5 pricing, and to otherwise further the intent of this chapter, the
6 department shall follow all of the requirements of this section upon
7 the complaint of either of the following:

8 (1) Any certified recycler located within five miles of the
9 supermarket site alleged to have engaged in unfair and predatory
10 pricing if not located in a rural region.

11 (2) Any certified recycler located within 10 miles of the
12 supermarket site alleged to have engaged in unfair and predatory
13 pricing if located in a rural region.

14 (b) (1) Within 50 days of receiving the complaint, the
15 department shall complete an audit of the payments for the
16 redemption of beverage containers being paid by the supermarket
17 site, ~~and by all other certified recycling centers as specified in~~
18 ~~Section 14588.1,~~ for the purpose of determining whether the
19 supermarket site is engaged in unfair and predatory pricing.

20 (2) The department shall withhold from public disclosure any
21 proprietary information collected by the department in the course
22 of the audit mandated by paragraph (1). The department shall
23 exercise its discretion in determining what information is
24 proprietary.

25 (c) (1) If the director determines there is probable cause that a
26 supermarket site, against which a complaint has been made, has
27 engaged in unfair and predatory pricing, the director shall, within
28 60 days of receiving the complaint, convene an informal hearing
29 before the director, or the director's designee.

30 (2) At least 10 days before the hearing, the director shall forward
31 the results of the audit to the complainant and respondent.

32 (3) At the hearing, the director, or the director's designee, shall
33 review the audit conducted pursuant to subdivision (b) and any
34 evidence presented by the complainant that a supermarket site has
35 engaged in unfair and predatory pricing. The director, or the
36 director's designee, shall also review any evidence presented by
37 the respondent that the respondent has not engaged in unfair and
38 predatory pricing.

39 ~~(4) The respondent shall be given the opportunity to rebut the~~
40 ~~presumption of unfair and predatory pricing imposed by Section~~

1 14588.1 by demonstrating to the satisfaction of the director, or the
2 director's designee, that the respondent did both of the following:

3 (A) The respondent made a good faith effort to determine the
4 average scrap value paid per pound for that container type by
5 certified recycling centers located within a five-mile or 10-mile
6 radius of the supermarket site, pursuant to subdivision (a) of
7 Section 14588.1, within 30 days before the date of the alleged
8 violation.

9 (B) The three-day average scrap value the respondent paid per
10 pound for that container type was within 2.5 percent of the
11 three-day average scrap value paid per pound determined by the
12 department pursuant to subdivision (a).

13 (5)

14 (4) The director, or the director's designee, may dismiss a
15 complaint made pursuant to subdivision (a) upon determining
16 either of the following:

17 (A) The complaint is without basis.

18 (B) The complaint is repetitious of prior similar complaints
19 against the same supermarket site for which the director or the
20 director's designee has determined that no unfair and predatory
21 pricing occurred.

22 (d) Within 20 days of the completion of the hearing, the director,
23 or the director's designee, shall determine whether the supermarket
24 site has engaged in unfair and predatory pricing. This determination
25 shall be based upon the audit conducted pursuant to subdivision
26 (b), and upon any clear and convincing evidence of unfair and
27 predatory pricing presented at the hearing.

28 (e) During the time period from the date of the receipt of a
29 complaint pursuant to subdivision (a), until the date the director
30 makes a determination pursuant to subdivision (d), the supermarket
31 site against which the allegation of unfair and predatory pricing is
32 made shall not receive handling fees that were earned during the
33 period commencing with the date of the alleged unfair and
34 predatory pricing. However, nothing in this subdivision shall affect
35 the payment of handling fees to a supermarket site that is found
36 not to have engaged in unfair and predatory pricing pursuant to
37 this section, or to the activities of a supermarket site prior to the
38 date of the alleged unfair and predatory pricing.

39 (f) If, after complying with the procedure established pursuant
40 to this section, the director, or the director's designee, determines

1 that a supermarket site has engaged in unfair and predatory pricing,
2 the site is ineligible to receive handling fees as specified by this
3 section.

4 (1) If the determination of unfair and predatory pricing is the
5 first for the site, the site is ineligible to receive handling fees for
6 ~~six~~ *two* months from the date that the respondent is found to have
7 engaged in unfair and predatory pricing.

8 (2) If the determination of unfair and predatory pricing is the
9 second for the site, the site is ineligible to receive handling fees
10 for ~~one year~~ *six months* from the date that the respondent is found
11 to have engaged in unfair and predatory pricing.

12 (3) If the determination of unfair and predatory pricing is the
13 third or more for the site, the site is ineligible to receive handling
14 fees for ~~five~~ *three* years after the date that the respondent is found
15 to have engaged in unfair and predatory pricing.

16 (g) The complainant or respondent may obtain a review of the
17 determination made pursuant to this section by filing in the superior
18 court a petition for a writ of mandate within 30 days following the
19 issuance of the determination. Section 1094.5 of the Code of Civil
20 Procedure shall govern judicial proceedings pursuant to this
21 subdivision, except that the court shall exercise its independent
22 judgment. If a petition for a writ of mandate is not filed within the
23 time limits set forth in this subdivision, the determination made
24 pursuant to this subdivision is not subject to review by any court
25 or agency.

26 (h) If either party appeals the determination of the director, or
27 the director's designee, pursuant to subdivision (g), and the
28 department prevails, the department may recover any costs
29 associated with its defense of the complaint.

30 *SEC. 3. Section 14588.3 is added to the Public Resources Code,*
31 *to read:*

32 *14588.3. If a certified recycling center receives handling fees,*
33 *it shall not pay scrap value for redeemed beverage containers, but*
34 *shall only pay the refund value established for each beverage*
35 *container pursuant to Section 14560.*

36 *SEC. 4. No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution because*
38 *the only costs that may be incurred by a local agency or school*
39 *district will be incurred because this act creates a new crime or*
40 *infraction, eliminates a crime or infraction, or changes the penalty*

1 *for a crime or infraction, within the meaning of Section 17556 of*
2 *the Government Code, or changes the definition of a crime within*
3 *the meaning of Section 6 of Article XIII B of the California*
4 *Constitution.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate April 22, 2009. (JR11)**

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