

AMENDED IN SENATE MAY 20, 2009
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 14588.1 and 14588.2~~ *Section 14551* of, and to ~~add Section 14588.3 to repeal Section 14523.5 of,~~ the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

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

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 words 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.

~~(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.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

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

1 SECTION 1. ~~Section 14523.5 of the Public Resources Code is~~
2 ~~repealed.~~

3 ~~14523.5. “Redemption rate” means the proportion of empty~~
4 ~~beverage containers returned to processors measured in the manner~~
5 ~~prescribed in Section 14551.~~

6 SEC. 2. ~~Section 14551 of the Public Resources Code is~~
7 ~~amended to read:~~

8 14551. (a) The department shall establish reporting periods
9 for the reporting of ~~redemption rates and~~ recycling rates. Each
10 reporting period shall be six months. The department shall
11 determine all of the following for each reporting period and shall
12 issue a report on its determinations, within 130 days of the end of
13 each reporting period:

14 (1) Sales of beverages in aluminum beverage containers, bimetal
15 beverage containers, glass beverage containers, plastic beverage
16 containers, and other beverage containers in this state, including
17 refillable beverage containers.

18 (2) Returns for recycling, and returns not for recycling, of empty
19 aluminum beverage containers, bimetal beverage containers, glass
20 beverage containers, plastic beverage containers, and other
21 beverage containers in this state, including refillable beverage
22 containers returned to distributors pursuant to Section 14572.5.
23 These numbers shall be calculated using the average current
24 weights of beverage containers, as determined and reported by the
25 department. ~~To these numbers shall be added and separately~~
26 ~~reported the following, if greater than, or equal to, zero:~~

27 ~~(A) All empty postfilled aluminum, glass, and plastic food or~~
28 ~~drink packaging materials sold in the state, returned for recycling,~~
29 ~~and reported by weight to the department which do not have a~~
30 ~~refund value less the number specified in subparagraph (B).~~

1 ~~(B) The number of beverage containers which comprise the first~~
2 ~~five percentage points of the redemption rate without including~~
3 ~~the empty postfilled aluminum, glass, and plastic food or drink~~
4 ~~packaging materials sold in the state, returned for recycling and~~
5 ~~reported by weight to the department which do not have a refund~~
6 ~~value.~~

7 ~~(3) An aluminum beverage container redemption rate, the~~
8 ~~numerator of which shall be the number of empty aluminum~~
9 ~~beverage containers returned, including refillable aluminum~~
10 ~~beverage containers and empty postfilled aluminum food or drink~~
11 ~~packaging material included in paragraph (2), and the denominator~~
12 ~~of which shall be the number of aluminum beverage containers~~
13 ~~sold in this state.~~

14 ~~(4)~~

15 (3) An aluminum beverage container recycling rate, the
16 numerator of which shall be the number of empty aluminum
17 beverage containers returned for recycling, including refillable
18 aluminum beverage containers, and the denominator of which shall
19 be the number of aluminum beverage containers sold in this state.

20 ~~(5) A bimetal beverage container redemption rate, the numerator~~
21 ~~of which shall be the number of empty bimetal beverage containers~~
22 ~~returned, and the denominator of which shall be the number of~~
23 ~~bimetal beverage containers sold in this state.~~

24 ~~(6)~~

25 (4) A bimetal beverage container recycling rate, the numerator
26 of which shall be the number of empty bimetal containers returned
27 for recycling, including refillable bimetal beverage containers, and
28 the denominator of which shall be the number of bimetal beverage
29 containers sold in this state.

30 ~~(7) A glass beverage container redemption rate, the numerator~~
31 ~~of which shall be the number of empty glass beverage containers~~
32 ~~returned, including refillable glass beverage containers and empty~~
33 ~~postfilled food or drink packaging materials included in paragraph~~
34 ~~(2), and the denominator of which shall be the number of glass~~
35 ~~beverage containers sold in this state.~~

36 ~~(8)~~

37 (5) A glass beverage container recycling rate, the numerator of
38 which shall be the number of empty glass beverage containers
39 returned for recycling, including refillable glass beverage

1 containers, and the denominator of which shall be the number of
2 glass beverage containers sold in this state.

3 ~~(9) A plastic beverage container redemption rate, the numerator~~
4 ~~of which shall be the number of empty plastic beverage containers~~
5 ~~returned, including refillable plastic beverage containers and empty~~
6 ~~postfilled food or drink packaging materials included in paragraph~~
7 ~~(2), and the denominator of which shall be the number of plastic~~
8 ~~beverage containers sold in this state.~~

9 ~~(10)~~

10 (6) A plastic beverage container recycling rate, the numerator
11 of which shall be the number of empty plastic beverage containers
12 returned for recycling, including refillable plastic beverage
13 containers, and the denominator of which shall be the number of
14 plastic beverage containers sold in this state.

15 ~~(11) A redemption rate for other beverage containers, the~~
16 ~~numerator of which shall be the number of empty beverage~~
17 ~~containers other than those containers specified in paragraphs (1)~~
18 ~~to (10), inclusive, returned, and the denominator of which shall be~~
19 ~~the number of beverage containers, other than those containers~~
20 ~~specified in paragraphs (1) to (10), inclusive, sold in this state.~~

21 ~~(12)~~

22 (7) A recycling rate for other beverage containers, the numerator
23 of which shall be the number of empty beverage containers other
24 than those containers specified in paragraphs (1) to ~~(10)~~ (6),
25 inclusive, returned for recycling, and the denominator of which
26 shall be the number of beverage containers, other than those
27 containers specified in paragraphs (1) to ~~(10)~~ (6), inclusive, sold
28 in this state.

29 ~~(13)~~

30 (8) The department may define categories of other beverage
31 containers, and report ~~a redemption rate and~~ a recycling rate for
32 ~~each such category of those categories of~~ other beverage containers.

33 ~~(14)~~

34 (9) The volumes of materials collected from certified recycling
35 centers, by city or county, as requested by the city or county, if
36 the reporting is consistent with the procedures established pursuant
37 to Section 14554 to protect proprietary information.

38 (b) The department shall determine the manner of collecting
39 the information for the reports specified in subdivision (a),

1 including establishing procedures, to protect any proprietary
2 information concerning the sales and purchases.

3 ~~SECTION 1. Section 14588.1 of the Public Resources Code~~
4 ~~is amended to read:~~

5 ~~14588.1. (a) As used in this chapter, “unfair and predatory~~
6 ~~pricing” means the payment to consumers by a supermarket site,~~
7 ~~that receives handling fees for the redemption of beverage~~
8 ~~containers, in an amount that exceeds~~
9 ~~the California refund value for that container.~~

10 ~~(b) For purposes of this chapter, “rural region” means a~~
11 ~~nonurban area identified by the department on an annual basis~~
12 ~~using the loan eligibility criteria of the Rural Housing Service of~~
13 ~~the United States Department of Agriculture, Rural Development~~
14 ~~Administration, or its successor agency. Those criteria include,~~
15 ~~but are not limited to, places, open country, cities, towns, or census~~
16 ~~designated places with populations that are less than 10,000~~
17 ~~persons. The department may designate an area with population~~
18 ~~of between 10,000 and 50,000 persons as a rural region, unless the~~
19 ~~area is identified as part of, or associated with, an urban area, as~~
20 ~~determined by the department on an individual basis.~~

21 ~~SEC. 2. Section 14588.2 of the Public Resources Code is~~
22 ~~amended to read:~~

23 ~~14588.2. (a) To ensure that handling fees paid to a supermarket~~
24 ~~site are not used for the purpose of engaging in unfair and predatory~~
25 ~~pricing, and to otherwise further the intent of this chapter, the~~
26 ~~department shall follow all of the requirements of this section upon~~
27 ~~the complaint of either of the following:~~

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

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

34 ~~(b) (1) Within 50 days of receiving the complaint, the~~
35 ~~department shall complete an audit of the payments for the~~
36 ~~redemption of beverage containers being paid by the supermarket~~
37 ~~site for the purpose of determining whether the supermarket site~~
38 ~~is engaged in unfair and predatory pricing.~~

39 ~~(2) The department shall withhold from public disclosure any~~
40 ~~proprietary information collected by the department in the course~~

1 of the audit mandated by paragraph (1). The department shall
2 exercise its discretion in determining what information is
3 proprietary.

4 (e) (1) If the director determines there is probable cause that a
5 supermarket site, against which a complaint has been made, has
6 engaged in unfair and predatory pricing, the director shall, within
7 60 days of receiving the complaint, convene an informal hearing
8 before the director, or the director's designee.

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

11 (3) At the hearing, the director, or the director's designee, shall
12 review the audit conducted pursuant to subdivision (b) and any
13 evidence presented by the complainant that a supermarket site has
14 engaged in unfair and predatory pricing. The director, or the
15 director's designee, shall also review any evidence presented by
16 the respondent that the respondent has not engaged in unfair and
17 predatory pricing.

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

21 (A) The complaint is without basis.

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

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

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

1 this section, or to the activities of a supermarket site prior to the
2 date of the alleged unfair and predatory pricing.

3 (f) If, after complying with the procedure established pursuant
4 to this section, the director, or the director's designee, determines
5 that a supermarket site has engaged in unfair and predatory pricing,
6 the site is ineligible to receive handling fees as specified by this
7 section.

8 (1) If the determination of unfair and predatory pricing is the
9 first for the site, the site is ineligible to receive handling fees for
10 two months from the date that the respondent is found to have
11 engaged in unfair and predatory pricing.

12 (2) If the determination of unfair and predatory pricing is the
13 second for the site, the site is ineligible to receive handling fees
14 for six months from the date that the respondent is found to have
15 engaged in unfair and predatory pricing.

16 (3) If the determination of unfair and predatory pricing is the
17 third or more for the site, the site is ineligible to receive handling
18 fees for three years after the date that the respondent is found to
19 have engaged in unfair and predatory pricing.

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

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

34 SEC. 3. Section 14588.3 is added to the Public Resources Code,
35 to read:

36 14588.3. If a certified recycling center receives handling fees,
37 it shall not pay scrap value for redeemed beverage containers, but
38 shall only pay the refund value established for each beverage
39 container pursuant to Section 14560.

1 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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