

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1846

Introduced by Assembly Member Gordon
(Principal coauthor: Assembly Member Quirk)

February 19, 2014

An act to amend ~~Section 14594.5~~ *Sections 14538, 14539, 14591.2, 14594.5, and 14595.5* of, and to add *Section 14515.2* to, the Public Resources Code, relating to beverage containers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1846, as amended, Gordon. Beverage containers: enforcement.

The California Beverage Container Recycling and Litter Reduction Act requires a distributor of specified beverage containers to pay a redemption payment to the Department of Resources Recycling and Recovery for each beverage container sold or transferred, for deposit in the California Beverage Container Recycling Fund. ~~Existing~~ *The act requires the department to pay handling fees to supermarket sites, rural region recyclers, and nonprofit convenience zone recyclers for every beverage container redeemed by the certified recycling center.*

Existing law prohibits a certified recycling center or processor from paying any refund values, processing payments, or administrative fees on, or making claims on, empty beverage containers that the certified recycling center or processor knew or should have known were coming from out of state, or from making claims on beverage containers that the certified recycling center or processor knew, or should have known, were received from a noncertified recycler.

The bill would extend these prohibitions to beverage containers that the certified recycling center or processor knew, or should have known, are otherwise ineligible for redemption.

Existing law authorizes the department to take specified disciplinary actions against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of a certified or registered facility or program.

This bill would specify an additional disciplinary action, authorizing the department to suspend or permanently revoke eligibility of a supermarket site, rural region recycler, or a nonprofit convenience zone recycler to receive handling fees at one or more of a certificate holder's certified recycling centers.

Existing law imposes criminal and civil penalties for specified violations of the act, including as actions subject to criminal penalties, the redemption of out-of-state containers, as defined. Existing law generally authorizes the department to impose a civil penalty of up to \$1,000 or \$5,000 for each violation, but authorizes the department to assess a civil penalty of up to \$10,000 per transaction, or an amount equal to 3 times the damages, plus costs, for a person who redeems, or assists in the redemption of, previously redeemed containers.

This bill would additionally authorize the department to assess a civil penalty of up to \$10,000 per transaction or 3 times the damages, plus costs, upon a person who redeems, attempts to redeem, or aids in the redemption of, otherwise ineligible beverage containers, including, but not limited to, out-of-state containers and empty beverage container materials imported from out-of-state.

Existing law prohibits a person, with intent to defraud, from performing specified actions relating to container redemption.

This bill would instead prohibit a person from knowingly performing the specified actions, eliminating the element of intent to defraud, and thereby expanding the scope of a crime and imposing a state-mandated local program.

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: ~~no~~-yes.

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

1 *SECTION 1. Section 14515.2 is added to the Public Resources*
2 *Code, to read:*

3 14515.2. “Person” means any individual, corporation,
4 operation, or entity, whether or not certified or registered pursuant
5 to this division.

6 *SEC. 2. Section 14538 of the Public Resources Code is*
7 *amended to read:*

8 14538. (a) (1) The department shall certify ~~the operators an~~
9 operator of a recycling ~~centers~~ center pursuant to this section.

10 (2) The department shall review whether an application for
11 certification or renewal is complete within 30 working days of
12 receipt, including compliance with subdivision (c). If the
13 department deems an application complete, the department shall
14 approve or deny the application no later than 60 calendar days
15 after the date when the application was deemed complete.

16 (b) The director shall adopt, by regulation, a procedure for the
17 certification of recycling centers, including standards and
18 requirements for certification. These regulations shall require that
19 all information be submitted to the department under penalty of
20 perjury. A recycling center shall meet all of the standards and
21 requirements contained in the regulations for certification. The
22 regulations shall require, but shall not be limited to requiring, that
23 all of the following conditions be met for certification:

24 (1) The operator of the recycling center demonstrates, to the
25 satisfaction of the department, that the operator will operate in
26 accordance with this division.

27 (2) If one or more certified entities have operated at the same
28 location within the past five years, the operations at the location
29 of the recycling center exhibit, to the satisfaction of the department,
30 a pattern of operation in compliance with the requirements of this
31 division and regulations adopted pursuant to this division.

32 (3) The operator of the recycling center notifies the department
33 promptly of any material change in the nature of his or her
34 operations ~~which~~ that conflicts with information submitted in the
35 operator’s application for certification.

36 (c) (1) ~~On and after January 1, 2014, an~~ An applicant for
37 certification as a recycling center, and a recycling center applying
38 for renewal of a certification, shall complete the precertification

1 training program required by this subdivision and meet all other
2 qualification requirements prescribed by the department, which
3 may include, but are not limited to, requiring the applicant to obtain
4 a passing score on an examination administered by the department.

5 (2) The department may use staff or industry experts, or may
6 seek expertise available in other state agencies, to provide the
7 training program required by this subdivision, which shall include
8 providing technical assistance to better prepare recycling centers
9 for successful participation in this division, thereby reducing the
10 potential for errors, fraud, or other activities that compromise the
11 integrity of the implementation of this division.

12 (d) A certified recycling center shall comply with all of the
13 following requirements for operation:

14 (1) The operator of the recycling center shall not pay a refund
15 value for, or receive a refund value from any processor for, any
16 food or drink packaging material or any beverage container or
17 other product that does not have a refund value established pursuant
18 to Section 14560.

19 (2) The operator of a recycling center shall take ~~those~~ actions
20 that satisfy the department to prevent the payment of a refund value
21 for any food or drink packaging material or any beverage container
22 or other product that does not have a refund value established
23 pursuant to Section 14560.

24 (3) Unless exempted pursuant to subdivision (b) of Section
25 14572, a certified recycling center shall accept, and pay at least
26 the refund value for, all empty beverage containers, regardless of
27 type.

28 (4) A certified recycling center shall not pay any refund values,
29 processing payments, or administrative fees to a noncertified
30 recycler.

31 (5) A certified recycling center shall not pay any refund values,
32 processing payments, or administrative fees on empty beverage
33 containers or other containers that the certified recycling center
34 knew, or should have known, were coming into the state from out
35 of the state, *or are otherwise ineligible for redemption.*

36 (6) A certified recycling center shall not claim refund values,
37 processing payments, or administrative fees on empty beverage
38 containers that the certified recycling center knew, or should have
39 known, were received from noncertified recyclers or on beverage
40 containers that the certified recycling center knew, or should have

1 known, come from out of the state, *or are otherwise ineligible for*
2 *redemption.*

3 (7) A certified recycling center shall prepare and maintain the
4 following documents involving empty beverage containers, as
5 specified by the department by regulation:

6 (A) Shipping reports that are required to be prepared by the
7 recycling center, or that are required to be obtained from other
8 recycling centers.

9 (B) Consumer transaction receipts.

10 (C) Consumer transaction logs.

11 (D) Rejected container receipts on materials subject to this
12 division.

13 (E) Receipts for transactions with beverage manufacturers on
14 materials subject to this division.

15 (F) Receipts for transactions with beverage distributors on
16 materials subject to this division.

17 (G) Documents authorizing the recycling center to cancel empty
18 beverage containers.

19 (H) Weight tickets.

20 (8) In addition to the requirements of paragraph (7), a certified
21 recycling center shall cooperate with the department and make
22 available its records of scrap transactions when the review of these
23 records is necessary for an audit or investigation by the department.

24 (e) The department may recover, in restitution pursuant to
25 paragraph (5) of subdivision (c) of Section 14591.2, payments
26 made from the fund to the certified recycling center pursuant to
27 Section 14573.5 that are based on the documents specified in
28 paragraph (7), that are not prepared or maintained in compliance
29 with the department's regulations, and that do not allow the
30 department to verify claims for program payments.

31 (f) The department may certify a recycling center that will
32 operate less than 30 hours a week, as specified in paragraph (2) of
33 subdivision (b) of Section 14571.

34 *SEC. 3. Section 14539 of the Public Resources Code is*
35 *amended to read:*

36 14539. (a) (1) The department shall certify processors pursuant
37 to this section.

38 (2) The department shall review whether an application for
39 certification or renewal is complete within 30 working days of
40 receipt, including compliance with subdivision (c). If the

1 department deems an application complete, the department shall
2 approve or deny the application no later than 60 calendar days
3 after the date when the application was deemed complete.

4 (b) The director shall adopt, by regulation, requirements and
5 standards for certification. The regulations shall require, but shall
6 not be limited to requiring, that all of the following conditions be
7 met for certification:

8 (1) The processor demonstrates to the satisfaction of the
9 department that the processor will operate in accordance with this
10 division.

11 (2) If one or more certified entities have operated at the same
12 location within the past five years, the operations at the location
13 of the processor exhibit, to the satisfaction of the department, a
14 pattern of operation in compliance with the requirements of this
15 division and regulations adopted pursuant to this division.

16 (3) The processor notifies the department promptly of any
17 material change in the nature of the processor's operations that
18 conflicts with the information submitted in the operator's
19 application for certification.

20 (c) ~~On and after January 1, 2014, an~~ An applicant for
21 certification as a processor and a processor applying for renewal
22 of a certification shall complete the precertification training
23 program required by this subdivision and meet all other
24 qualification requirements prescribed by the department, which
25 may include, but are not limited to, requiring the applicant to obtain
26 a passing score on an examination administered by the department.

27 (2) The department may use staff or industry experts, or may
28 seek expertise available in other state agencies, to provide the
29 training program required by this subdivision, which shall include
30 providing technical assistance to better prepare processors for
31 successful participation in this division, thereby reducing the
32 potential for errors, fraud, or other activities which compromise
33 the integrity of the implementation of this division.

34 (d) A certified processor shall comply with all of the following
35 requirements for operation:

36 (1) The processor shall not pay a refund value for, or receive a
37 refund value from the department for, any food or drink packaging
38 material or any beverage container or other product that does not
39 have a refund value established pursuant to Section 14560.

1 (2) The processor shall take those actions that satisfy the
2 department to prevent the payment of a refund value for any food
3 or drink packaging material or any beverage container or other
4 product that does not have a refund value established pursuant to
5 Section 14560.

6 (3) Unless exempted pursuant to subdivision (b) of Section
7 14572, the processor shall accept, and pay at least the refund value
8 for, all empty beverage containers, regardless of type, for which
9 the processor is certified.

10 (4) A processor shall not pay any refund values, processing
11 payments, or administrative fees to a noncertified recycler. A
12 processor may pay refund values, processing payments, or
13 administrative fees to any entity that is identified by the department
14 on its list of certified recycling centers.

15 (5) A processor shall not pay any refund values, processing
16 payments, or administrative fees on empty beverage containers or
17 other containers that the processor knew, or should have known,
18 were coming into the state from out of the ~~state~~ *state, or are*
19 *otherwise ineligible for redemption.*

20 (6) A processor shall not claim refund values, processing
21 payments, or administrative fees on empty beverage containers
22 that the processor knew, or should have known, were received
23 from noncertified recyclers or on beverage containers that the
24 processor knew, or should have known, come from out of the ~~state~~
25 *state, or are otherwise ineligible for redemption.* A processor may
26 claim refund values, processing payments, or administrative fees
27 on any empty beverage container that does not come from out of
28 the state and that is received from any entity that is identified by
29 the department on its list of certified recycling centers.

30 (7) A processor shall take the actions necessary and approved
31 by the department to cancel containers to render them unfit for
32 redemption.

33 (8) A processor shall prepare or maintain the following
34 documents involving empty beverage containers, as specified by
35 the department by regulation:

36 (A) Shipping reports that are required to be prepared by the
37 processor or that are required to be obtained from recycling centers.

38 (B) Processor invoice reports.

39 (C) Cancellation verification documents.

1 (D) Documents authorizing recycling centers to cancel empty
2 beverage containers.

3 (E) Processor-to-processor transaction receipts.

4 (F) Rejected container receipts on materials subject to this
5 division.

6 (G) Receipts for transactions with beverage manufacturers on
7 materials subject to this division.

8 (H) Receipts for transactions with distributors on materials
9 subject to this division.

10 (I) Weight tickets.

11 (9) In addition to the requirements of paragraph (7), a processor
12 shall cooperate with the department and make available its records
13 of scrap transactions when the review of these records is necessary
14 for an audit or investigation by the department.

15 (e) The department may recover, in restitution pursuant to
16 paragraph (5) of subdivision (c) of Section 14591.2, any payments
17 made by the department to the processor pursuant to Section 14573
18 that are based on the documents specified in paragraph (8) of
19 subdivision ~~(b) of this section~~ (d), that are not prepared or
20 maintained in compliance with the department’s regulations, and
21 that do not allow the department to verify claims for program
22 payments.

23 *SEC. 4. Section 14591.2 of the Public Resources Code is*
24 *amended to read:*

25 14591.2. (a) The department may take disciplinary action
26 against any party responsible for directing, contributing to,
27 participating in, or otherwise influencing the operations ~~of,~~ of a
28 certified or registered facility or program. A responsible party
29 includes, but is not limited to, the certificate holder, registrant,
30 officer, director, or managing employee. Except as otherwise
31 provided in this division, the department shall provide a notice
32 and hearing in accordance with Chapter 5 (commencing with
33 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
34 Code before taking any disciplinary action against a certificate
35 holder.

36 (b) All of the following are grounds for disciplinary action, in
37 the form determined by the department in accordance with
38 subdivision (c):

39 (1) The responsible party engaged in fraud or deceit to obtain
40 a certificate or registration.

1 (2) The responsible party engaged in dishonesty, incompetence,
2 negligence, or fraud in performing the functions and duties of a
3 certificate holder or registrant.

4 (3) The responsible party violated this division or any regulation
5 adopted pursuant to this division, including, but not limited to, any
6 requirements concerning auditing, reporting, standards of operation,
7 or being open for business.

8 (4) The responsible party is convicted of any crime of moral
9 turpitude or fraud, any crime involving dishonesty, or any crime
10 substantially related to the qualifications, functions, or duties of a
11 certificate holder.

12 (c) The department may take disciplinary action pursuant to this
13 section, by taking any one of, or any combination of, the following:

14 (1) Immediate revocation of the certificate or registration, or
15 revocation of a certificate or registration as of a specific date in
16 the future.

17 (2) Immediate suspension of the certificate or registration for a
18 specified period of time, or suspension of the certificate or
19 registration as of a specific date in the future. Notwithstanding
20 subdivision (a), the department may impose a suspension of five
21 days or less through an informal notice, if the action is subject to
22 a stay on appeal, pending an informal hearing convened in
23 accordance with Article 10 (commencing with Section 11445.10)
24 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
25 Code.

26 (3) Imposition on the certificate or registration of any condition
27 that the department determines would further the goals of this
28 division.

29 (4) Issuance of a probationary certificate or registration with
30 conditions determined by the department.

31 (5) Collection of amounts in restitution of any money improperly
32 paid to the certificate holder or registrant from the fund.

33 (6) Imposition of civil penalties pursuant to Section 14591.1.

34 (7) *Suspension for a specified period of time or permanent*
35 *revocation of eligibility of a supermarket site, rural region recycler,*
36 *or a nonprofit convenience zone recycler to receive handling fees*
37 *at one or more of the certificate holder's certified recycling centers.*

38 (d) The department may do any of the following in taking
39 disciplinary action pursuant to this section:

1 (1) If a certificate holder or registrant holds certificates or is
2 registered to operate at more than one site or to operate in more
3 than one capacity at one location, such as an entity certified as
4 both a processor and a recycling center, the department may
5 simultaneously revoke, suspend, or impose conditions upon some,
6 or all of, the certificates held by the responsible party.

7 (2) If the responsible party is an officer, director, partner,
8 manager, employee, or the owner of a controlling ownership
9 interest of another certificate holder or registrant, that other
10 operator's certificate or registration may also be revoked,
11 suspended, or conditioned by the department in the same
12 proceeding, if the other certificate holder or registrant is given
13 notice of that proceeding, or in a subsequent proceeding.

14 (3) (A) If, pursuant to notice and a hearing conducted by the
15 director or the director's designee in accordance with Article 10
16 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of
17 Division 3 of Title 2 of the Government Code, the department
18 determines that the continued operation of a certified or registered
19 entity poses an immediate and significant threat to the fund, the
20 department may order the immediate suspension of the certificate
21 holder or registrant, pending revocation of the certificate or
22 registration, or the issuance of a probationary certificate imposing
23 reasonable terms and conditions. The department shall record the
24 testimony at the hearing and, upon request, prepare a transcript.
25 For purposes of this section, an immediate and significant threat
26 to the fund means any of the following:

27 (i) A loss to the fund of at least ten thousand dollars (\$10,000)
28 during the six-month period immediately preceding the order of
29 suspension.

30 (ii) Missing or fraudulent records associated with a claim or
31 claims totaling at least ten thousand dollars (\$10,000) during the
32 six-month period immediately preceding the order of suspension.

33 (iii) A pattern of deceit, fraud, or intentional misconduct in
34 carrying out the duties and responsibilities of a certificate holder
35 during the six-month period immediately preceding the order of
36 suspension. For purposes of this section, a pattern of deceit, fraud,
37 or intentional misconduct in carrying out the duties of a certificate
38 holder includes, but is not limited to, the destruction or concealment
39 of any records six months immediately preceding the order of
40 suspension.

1 (iv) At least three claims submitted for ineligible material in
2 violation of this division, including, but not limited to, a violation
3 of Section 14595.5, during the six-month period immediately
4 preceding the order of suspension.

5 (B) An order of suspension or probation may be issued to any
6 or all certified or registered facilities or programs operated by a
7 person or entity that the department determines to be culpable or
8 responsible for the loss or conduct identified pursuant to
9 subparagraph (A).

10 (C) The order of suspension or issuance of a probationary
11 certificate imposing terms or conditions shall become effective
12 upon written notice of the order to the certificate holder or
13 registrant. Within 20 days after notice of the order of suspension,
14 the department shall file an accusation seeking revocation of any
15 or all certificates or registrations held by the certificate holder or
16 registrant. The certificate holder or registrant may, upon receiving
17 the notice of the order of suspension or probation, appeal the order
18 by requesting a hearing in accordance with Chapter 5 (commencing
19 with Section 11500) of Part 1 of Division 3 of Title 2 of the
20 Government Code. A request for a hearing or appeal from an order
21 of the department does not stay the action of the department for
22 which the notice of the order is given. The department may
23 combine hearings to appeal an order of suspension and a hearing
24 for the proposed revocation of a certificate or registration into one
25 proceeding.

26 (D) Nothing in this section shall prohibit the department from
27 immediately revoking a probationary certificate pursuant to
28 subdivision (b) of Section 14541 or from taking other disciplinary
29 action pursuant to Section 14591.2.

30 **SECTION 1.**

31 *SEC. 5.* Section 14594.5 of the Public Resources Code is
32 amended to read:

33 14594.5. Notwithstanding Section 14591.1, the department
34 may assess upon any person, entity, or operation that redeems,
35 attempts to redeem, or aids in the redemption of, empty beverage
36 containers that have already been redeemed, or redeems, attempts
37 to redeem, or aids in the redemption of, otherwise ineligible
38 beverage containers, including, but not limited to, out-of-state
39 containers or empty beverage container materials imported from
40 out-of-state, a civil penalty of up to ten thousand dollars (\$10,000)

1 per transaction, or an amount equal to three times the damage or
2 potential damage, whichever is greater, plus costs as provided in
3 Section 14591.3, pursuant to notice and hearing in accordance
4 with Chapter 5 (commencing with Section 11500) of Part 1 of
5 Division 3 of Title 2 of the Government Code.

6 *SEC. 6. Section 14595.5 of the Public Resources Code is*
7 *amended to read:*

8 14595.5. (a) (1) ~~No~~A person shall *not* pay, claim, or receive
9 any refund value, processing payment, handling fee, or
10 administrative fee for any of the following:

11 (A) Beverage container material that the person knew, or should
12 have known, was imported from out of state.

13 (B) A previously redeemed container, rejected container, line
14 breakage, or other ineligible material.

15 (2) ~~No~~A person shall, ~~with intent to defraud,~~ *not knowingly* do
16 any of the following:

17 (A) Redeem or attempt to redeem an out-of-state container,
18 rejected container, line breakage, previously redeemed container,
19 or other ineligible material.

20 (B) Return a previously redeemed container ~~to the marketplace~~
21 for redemption.

22 (C) Bring an out-of-state container, rejected container, line
23 breakage, or other ineligible material ~~to the marketplace~~ *California*
24 for redemption.

25 (D) Receive, store, transport, distribute, or otherwise facilitate
26 or aid in the redemption of a previously redeemed container,
27 out-of-state container, rejected container, line breakage, or other
28 ineligible material.

29 (b) For purposes of implementing subdivision (a), the
30 department shall take all reasonable steps to exclude beverage
31 container material imported from out of state, previously redeemed
32 containers, rejected containers, and line breakage, when conducting
33 surveys to determine a commingled rate pursuant to Section
34 14549.5.

35 *SEC. 7. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution because*
37 *the only costs that may be incurred by a local agency or school*
38 *district will be incurred because this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

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

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