

AMENDED IN SENATE JUNE 24, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

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 Sections 14538, 14539, 14591.2, and 14594.5 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. 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, were 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 under specified circumstances.

This bill would specify an additional disciplinary action, authorizing the department under those circumstances 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.

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

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:

1 14538. (a) (1) The department shall certify an operator of a
2 recycling center pursuant to this section.

3 (2) The department shall review whether an application for
4 certification or renewal is complete within 30 working days of
5 receipt, including compliance with subdivision (c). If the
6 department deems an application complete, the department shall
7 approve or deny the application no later than 60 calendar days
8 after the date when the application was deemed complete.

9 (b) The director shall adopt, by regulation, a procedure for the
10 certification of recycling centers, including standards and
11 requirements for certification. These regulations shall require that
12 all information be submitted to the department under penalty of
13 perjury. A recycling center shall meet all of the standards and
14 requirements contained in the regulations for certification. The
15 regulations shall require, but shall not be limited to requiring, that
16 all of the following conditions be met for certification:

17 (1) The operator of the recycling center demonstrates, to the
18 satisfaction of the department, that the operator will operate in
19 accordance with this division.

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

25 (3) The operator of the recycling center notifies the department
26 promptly of any material change in the nature of his or her
27 operations that conflicts with information submitted in the
28 operator's application for certification.

29 (c) (1) An applicant for certification as a recycling center, and
30 a recycling center applying for renewal of a certification, shall
31 complete the precertification training program required by this
32 subdivision and meet all other qualification requirements prescribed
33 by the department, which may include, but are not limited to,
34 requiring the applicant to obtain a passing score on an examination
35 administered by the department.

36 (2) The department may use staff or industry experts, or may
37 seek expertise available in other state agencies, to provide the
38 training program required by this subdivision, which shall include
39 providing technical assistance to better prepare recycling centers
40 for successful participation in this division, thereby reducing the

1 potential for errors, fraud, or other activities that compromise the
2 integrity of the implementation of this division.

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

5 (1) The operator of the recycling center shall not pay a refund
6 value for, or receive a refund value from any processor for, any
7 food or drink packaging material or any beverage container or
8 other product that does not have a refund value established pursuant
9 to Section 14560.

10 (2) The operator of a recycling center shall take actions that
11 satisfy the department to prevent the payment of a refund value
12 for any food or drink packaging material or any beverage container
13 or other product that does not have a refund value established
14 pursuant to Section 14560.

15 (3) Unless exempted pursuant to subdivision (b) of Section
16 14572, a certified recycling center shall accept, and pay at least
17 the refund value for, all empty beverage containers, regardless of
18 type.

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

22 (5) A certified recycling center shall not pay any refund values,
23 processing payments, or administrative fees on empty beverage
24 containers or other containers that the certified recycling center
25 knew, or should have known, were coming into the state from out
26 of the state, or are otherwise ineligible for redemption.

27 (6) A certified recycling center shall not claim refund values,
28 processing payments, or administrative fees on empty beverage
29 containers that the certified recycling center knew, or should have
30 known, were received from noncertified recyclers or on beverage
31 containers that the certified recycling center knew, or should have
32 known, come from out of the state, or are otherwise ineligible for
33 redemption.

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

37 (A) Shipping reports that are required to be prepared by the
38 recycling center, or that are required to be obtained from other
39 recycling centers.

40 (B) Consumer transaction receipts.

1 (C) Consumer transaction logs.

2 (D) Rejected container receipts on materials subject to this
3 division.

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

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

8 (G) Documents authorizing the recycling center to cancel empty
9 beverage containers.

10 (H) Weight tickets.

11 (8) In addition to the requirements of paragraph (7), a certified
12 recycling center shall cooperate with the department and make
13 available its records of scrap transactions when the review of these
14 records is necessary 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, payments
17 made from the fund to the certified recycling center pursuant to
18 Section 14573.5 that are based on the documents specified in
19 paragraph (7), that are not prepared or maintained in compliance
20 with the department's regulations, and that do not allow the
21 department to verify claims for program payments.

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

25 SEC. 3. Section 14539 of the Public Resources Code is
26 amended to read:

27 14539. (a) (1) The department shall certify processors pursuant
28 to this section.

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

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

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

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

9 (3) The processor notifies the department promptly of any
10 material change in the nature of the processor's operations that
11 conflicts with the information submitted in the operator's
12 application for certification.

13 (c) (1) An applicant for certification as a processor and a
14 processor applying for renewal of a certification shall complete
15 the precertification training program required by this subdivision
16 and meet all other qualification requirements prescribed by the
17 department, which may include, but are not limited to, requiring
18 the applicant to obtain a passing score on an examination
19 administered by the department.

20 (2) The department may use staff or industry experts, or may
21 seek expertise available in other state agencies, to provide the
22 training program required by this subdivision, which shall include
23 providing technical assistance to better prepare processors for
24 successful participation in this division, thereby reducing the
25 potential for errors, fraud, or other activities which compromise
26 the integrity of the implementation of this division.

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

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

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

38 (3) Unless exempted pursuant to subdivision (b) of Section
39 14572, the processor shall accept, and pay at least the refund value

1 for, all empty beverage containers, regardless of type, for which
2 the processor is certified.

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

8 (5) A processor shall not pay any refund values, processing
9 payments, or administrative fees on empty beverage containers or
10 other containers that the processor knew, or should have known,
11 were coming into the state from out of the state, or are otherwise
12 ineligible for redemption.

13 (6) A processor shall not claim refund values, processing
14 payments, or administrative fees on empty beverage containers
15 that the processor knew, or should have known, were received
16 from noncertified recyclers or on beverage containers that the
17 processor knew, or should have known, come from out of the state,
18 or are otherwise ineligible for redemption. A processor may claim
19 refund values, processing payments, or administrative fees on any
20 empty beverage container that does not come from out of the state
21 and that is received from any entity that is identified by the
22 department on its list of certified recycling centers.

23 (7) A processor shall take the actions necessary and approved
24 by the department to cancel containers to render them unfit for
25 redemption.

26 (8) A processor shall prepare or maintain the following
27 documents involving empty beverage containers, as specified by
28 the department by regulation:

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

31 (B) Processor invoice reports.

32 (C) Cancellation verification documents.

33 (D) Documents authorizing recycling centers to cancel empty
34 beverage containers.

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

36 (F) Rejected container receipts on materials subject to this
37 division.

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

1 (H) Receipts for transactions with distributors on materials
2 subject to this division.

3 (I) Weight tickets.

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

8 (e) The department may recover, in restitution pursuant to
9 paragraph (5) of subdivision (c) of Section 14591.2, any payments
10 made by the department to the processor pursuant to Section 14573
11 that are based on the documents specified in paragraph (8) of
12 subdivision (d), that are not prepared or maintained in compliance
13 with the department’s regulations, and that do not allow the
14 department to verify claims for program payments.

15 SEC. 4. Section 14591.2 of the Public Resources Code is
16 amended to read:

17 14591.2. (a) The department may take disciplinary action
18 against any party responsible for directing, contributing to,
19 participating in, or otherwise influencing the operations of a
20 certified or registered facility or program. A responsible party
21 includes, but is not limited to, the certificate holder, registrant,
22 officer, director, or managing employee. Except as otherwise
23 provided in this division, the department shall provide a notice
24 and hearing in accordance with Chapter 5 (commencing with
25 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
26 Code before taking any disciplinary action against a certificate
27 holder.

28 (b) All of the following are grounds for disciplinary action, in
29 the form determined by the department in accordance with
30 subdivision (c):

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

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

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

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

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

7 (1) Immediate revocation of the certificate or registration, or
8 revocation of a certificate or registration as of a specific date in
9 the future.

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

19 (3) Imposition on the certificate or registration of any condition
20 that the department determines would further the goals of this
21 division.

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

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

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

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

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

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

39 (2) If the responsible party is an officer, director, partner,
40 manager, employee, or the owner of a controlling ownership

1 interest of another certificate holder or registrant, that other
2 operator's certificate or registration may also be revoked,
3 suspended, or conditioned by the department in the same
4 proceeding, if the other certificate holder or registrant is given
5 notice of that proceeding, or in a subsequent proceeding.

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

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

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

25 (iii) A pattern of deceit, fraud, or intentional misconduct in
26 carrying out the duties and responsibilities of a certificate holder
27 during the six-month period immediately preceding the order of
28 suspension. For purposes of this section, a pattern of deceit, fraud,
29 or intentional misconduct in carrying out the duties of a certificate
30 holder includes, but is not limited to, the destruction or concealment
31 of any records six months immediately preceding the order of
32 suspension.

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

37 (B) An order of suspension or probation may be issued to any
38 or all certified or registered facilities or programs operated by a
39 person or entity that the department determines to be culpable or

1 responsible for the loss or conduct identified pursuant to
2 subparagraph (A).

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

19 (D) Nothing in this section shall prohibit the department from
20 immediately revoking a probationary certificate pursuant to
21 subdivision (b) of Section 14541 or from taking other disciplinary
22 action pursuant to Section 14591.2.

23 SEC. 5. Section 14594.5 of the Public Resources Code is
24 amended to read:

25 14594.5. (a) Notwithstanding Section 14591.1, the department
26 may assess upon any person, entity, or operation that redeems,
27 attempts to redeem, or aids in the redemption of, empty beverage
28 containers that have already been redeemed, or redeems, attempts
29 to redeem, or aids in the redemption of, otherwise ineligible
30 beverage containers, including, but not limited to, out-of-state
31 containers or empty beverage container materials imported from
32 out-of-state, a civil penalty of up to ten thousand dollars (\$10,000)
33 per transaction, or an amount equal to three times the damage or
34 potential damage, whichever is greater, plus costs as provided in
35 Section 14591.3, pursuant to notice and hearing in accordance
36 with Chapter 5 (commencing with Section 11500) of Part 1 of
37 Division 3 of Title 2 of the Government Code.

38 (b) *For purposes of this section, the act of labeling a beverage*
39 *container pursuant to subdivision (a) of Section 14561 shall not,*

- 1 *in and of itself, be deemed to aid in the redemption of ineligible*
- 2 *beverage containers.*

O