

Assembly Bill No. 1846

Passed the Assembly August 18, 2014

Chief Clerk of the Assembly

Passed the Senate August 11, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 certified 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.

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

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

14515.2. "Person" means any individual, corporation, operation, or entity, whether or not certified or registered pursuant to this division.

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

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

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

(b) The director shall adopt, by regulation, a procedure for the certification of recycling centers, including standards and requirements for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. A recycling center shall meet all of the standards and

requirements contained in the regulations for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

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

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

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

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

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

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

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

(2) The operator of a recycling center shall take actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container

or other product that does not have a refund value established pursuant to Section 14560.

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

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

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

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

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

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

(B) Consumer transaction receipts.

(C) Consumer transaction logs.

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

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

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

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

(H) Weight tickets.

(8) In addition to the requirements of paragraph (7), a certified recycling center shall cooperate with the department and make

available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

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

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

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

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

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

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

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

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

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

(c) (1) An applicant for certification as a processor and a processor applying for renewal of a certification shall complete

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

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

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

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

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

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

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

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

(6) A processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received

from noncertified recyclers or on beverage containers that the processor knew, or should have known, come from out of the state, or are otherwise ineligible for redemption. A processor may claim refund values, processing payments, or administrative fees on any empty beverage container that does not come from out of the state and that is received from any entity that is identified by the department on its list of certified recycling centers.

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

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

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

(B) Processor invoice reports.

(C) Cancellation verification documents.

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

(E) Processor-to-processor transaction receipts.

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

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

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

(I) Weight tickets.

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

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

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

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

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

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

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

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

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

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

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

(2) Immediate suspension of the certificate or registration for a specified period of time, or suspension of the certificate or registration as of a specific date in the future. Notwithstanding subdivision (a), the department may impose a suspension of five days or less through an informal notice, if the action is subject to a stay on appeal, pending an informal hearing convened in accordance with Article 10 (commencing with Section 11445.10)

of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

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

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

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

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

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

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

(3) (A) If, pursuant to notice and a hearing conducted by the director or the director's designee in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the department determines that the continued operation of a certified or registered entity poses an immediate and significant threat to the fund, the department may order the immediate suspension of the certificate holder or registrant, pending revocation of the certificate or registration, or the issuance of a probationary certificate imposing reasonable terms and conditions. The department shall record the testimony at the hearing and, upon request, prepare a transcript.

For purposes of this section, an immediate and significant threat to the fund means any of the following:

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

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

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

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

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

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

for the proposed revocation of a certificate or registration into one proceeding.

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

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

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

(b) For purposes of this section, the act of labeling a beverage container pursuant to subdivision (a) of Section 14561 shall not, in and of itself, be deemed to aid in the redemption of ineligible beverage containers.

Approved _____, 2014

Governor