

AMENDED IN ASSEMBLY AUGUST 15, 2022
AMENDED IN ASSEMBLY AUGUST 2, 2022
AMENDED IN ASSEMBLY JUNE 20, 2022
AMENDED IN ASSEMBLY FEBRUARY 14, 2022
AMENDED IN ASSEMBLY JUNE 30, 2021
AMENDED IN SENATE MAY 26, 2021
AMENDED IN SENATE MAY 20, 2021
AMENDED IN SENATE MARCH 17, 2021
AMENDED IN SENATE MARCH 1, 2021
AMENDED IN SENATE FEBRUARY 12, 2021

SENATE BILL

No. 38

Introduced by Senator Wieckowski

December 7, 2020

An act to amend ~~Sections 14547 and~~ *Section* 14573.5 of, and to add Section 14549.4 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 38, as amended, Wieckowski. Beverage containers.

The California Beverage Container Recycling and Litter Reduction Act requires every beverage container sold or offered for sale in this state to have a minimum refund value. Under the act, the Department of Resources Recycling and Recovery is required to calculate a processing fee for each beverage container with a specified scrap value, which is required to be paid by beverage manufacturers for each

beverage container sold or transferred to a distributor or dealer, and requires a processor to pay a certified recycling center or other program the refund value, a percentage of the refund value for administrative costs, and the processing payment. The act provides that a violation of the act or a regulation adopted pursuant to the act is a crime.

This bill would require a processor to make those payments by check or electronic fund transfer, and not by cash payment. By increasing the scope of a crime relating to beverage containers, this bill would impose a state-mandated local program.

~~Existing law requires the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer, as specified, to contain, on average, specified amounts of postconsumer recycled plastic content per year pursuant to a tiered plan that would require the total number of plastic beverage containers to contain, on average, no less than 50% postconsumer recycled plastic content per year on and after January 1, 2030, except as specified. The act exempts from this requirement certain beverage manufacturers with limited projected processing fees, as provided.~~

~~This bill would instead exempt from that requirement a beverage manufacturer that sells fewer than 2,000,000 beverage containers in a calendar year.~~

Existing law requires each glass container manufacturer to use a minimum percentage of 35% of postfilled glass in the manufacturing of its glass food, drink, or beverage containers, except as specified.

This bill would require the Department of Resources Recycling and Recovery to study and develop a system or process to address the issue of glass contamination to improve the quality of glass material collected.

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.

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

- 1 SECTION 1. ~~Section 14547 of the Public Resources Code, as~~
- 2 ~~amended by Section 375 of Chapter 615 of the Statutes of 2021,~~
- 3 ~~is amended to read:~~

1 ~~14547. (a) (1) Between January 1, 2022, and December 31,~~
2 ~~2024, inclusive, the total number of plastic beverage containers~~
3 ~~filled with a beverage sold by a beverage manufacturer subject to~~
4 ~~the California Redemption Value, pursuant to Chapter 5~~
5 ~~(commencing with Section 14560), for sale in the state shall, on~~
6 ~~average, contain no less than 15 percent postconsumer recycled~~
7 ~~plastic per year.~~

8 ~~(2) Between January 1, 2025, and December 31, 2029, inclusive,~~
9 ~~the total number of plastic beverage containers filled with a~~
10 ~~beverage sold by a beverage manufacturer subject to the California~~
11 ~~Redemption Value, pursuant to Chapter 5 (commencing with~~
12 ~~Section 14560), for sale in the state shall, on average, contain no~~
13 ~~less than 25 percent postconsumer recycled plastic per year.~~

14 ~~(3) On and after January 1, 2030, the total number of plastic~~
15 ~~beverage containers filled with a beverage sold by a beverage~~
16 ~~manufacturer subject to the California Redemption Value, pursuant~~
17 ~~to Chapter 5 (commencing with Section 14560), for sale in the~~
18 ~~state shall, on average, contain no less than 50 percent~~
19 ~~postconsumer recycled plastic per year.~~

20 ~~(4) (A) Beginning January 1, 2025, the director may, on an~~
21 ~~annual basis, review and determine to adjust the minimum~~
22 ~~postconsumer recycled content percentage required pursuant to~~
23 ~~paragraphs (2) and (3). The director's review may be initiated by~~
24 ~~the director or at the petition of the beverage manufacturing~~
25 ~~industry not more than annually. The department shall adopt~~
26 ~~regulations to establish the petition process and requirements. The~~
27 ~~director shall not adjust the minimum postconsumer recycled~~
28 ~~content requirements above the minimum postconsumer recycled~~
29 ~~plastic content percentages required pursuant to paragraphs (2)~~
30 ~~and (3). In making a determination pursuant to this paragraph, the~~
31 ~~director shall consider, at a minimum, all of the following factors:~~

32 ~~(i) Changes in market conditions, including supply and demand~~
33 ~~for postconsumer recycled plastics, collection rates, and bale~~
34 ~~availability both domestically and globally.~~

35 ~~(ii) Recycling rates.~~

36 ~~(iii) The availability of recycled plastic suitable to meet the~~
37 ~~minimum recycled content requirements pursuant to paragraphs~~
38 ~~(2) and (3), including the availability of high-quality recycled~~
39 ~~plastic, and food-grade recycled plastic from the state's and other~~
40 ~~beverage container recycling programs.~~

1 ~~(iv) The capacity of recycling or processing infrastructure.~~
2 ~~(v) The progress made by beverage manufacturers in achieving~~
3 ~~the goals of this subdivision.~~
4 ~~(B) Notwithstanding subparagraph (A), the director shall not~~
5 ~~review or adjust a minimum postconsumer recycled content~~
6 ~~standard while the department is reducing payments pursuant to~~
7 ~~subdivision (e) of Section 14581.~~
8 ~~(C) The department may enter into a contract for the services~~
9 ~~required to implement this section and related regulations~~
10 ~~developed by the department.~~
11 ~~(D) For purposes of this paragraph, “beverage manufacturing~~
12 ~~industry” means an association that represents companies that~~
13 ~~manufacture beverages.~~
14 ~~(b) (1) Beginning January 1, 2023, a beverage manufacturer~~
15 ~~that does not meet the minimum recycled plastic content~~
16 ~~requirements pursuant to subdivision (a) shall be subject to an~~
17 ~~annual administrative penalty pursuant to this subdivision.~~
18 ~~Beginning March 1, 2024, the administrative penalty shall be~~
19 ~~collected annually, if a reduction has not been approved pursuant~~
20 ~~to subdivision (e), and calculated in accordance with subdivision~~
21 ~~(e):~~
22 ~~(2) A beverage manufacturer that is assessed penalties pursuant~~
23 ~~to this subdivision may pay those penalties to the department in~~
24 ~~quarterly installments or arrange an alternative payment schedule~~
25 ~~subject to the approval of the department, not to exceed a 12-month~~
26 ~~payment plan unless an extension is needed due to unforeseen~~
27 ~~circumstances, such as a public health emergency, state of~~
28 ~~emergency, or natural disaster.~~
29 ~~(e) Beginning March 1, 2024, and annually thereafter, the~~
30 ~~department shall invoice any assessed administrative penalties for~~
31 ~~the previous calendar year based on the postconsumer recycled~~
32 ~~plastic content requirement of the previous calendar year. The~~
33 ~~department shall calculate the amount of the penalty based upon~~
34 ~~the amount in pounds in the aggregate of virgin and postconsumer~~
35 ~~recycled plastic material used by the beverage manufacturer to~~
36 ~~produce beverage containers sold or offered for sale in the state,~~
37 ~~in accordance with the following:~~
38 ~~(1) The annual administrative penalty amount assessed to a~~
39 ~~beverage manufacturer shall equal the product of both of the~~
40 ~~following:~~

1 ~~(A) The total pounds of plastic used multiplied by the relevant~~
2 ~~minimum postconsumer recycled plastic percentage, less the~~
3 ~~pounds of postconsumer recycled plastic used.~~

4 ~~(B) Twenty cents (\$0.20).~~

5 ~~(2) For purposes of paragraph (1), both of the following shall~~
6 ~~apply:~~

7 ~~(A) The total pounds of plastic used shall equal the sum of the~~
8 ~~amount of virgin plastic and postconsumer recycled plastic used~~
9 ~~by the beverage manufacturer, as reported pursuant to subdivision~~
10 ~~(a) of Section 14549.3.~~

11 ~~(B) If the product calculated pursuant to paragraph (1) is equal~~
12 ~~to or less than zero, an administrative penalty shall not be assessed.~~

13 ~~(d) (1) The department may conduct audits and investigations~~
14 ~~and take an enforcement action against a beverage manufacturer~~
15 ~~for the purpose of ensuring compliance with this section and the~~
16 ~~information reported pursuant to Section 14549.3. The department~~
17 ~~may take an enforcement action against a beverage manufacturer~~
18 ~~that fails to pay or underpays the assessed or audited administrative~~
19 ~~penalty only after notice and hearing in accordance with Chapter~~
20 ~~5 (commencing with Section 11500) of Part 1 of Division 3 of~~
21 ~~Title 2 of the Government Code.~~

22 ~~(2) The department shall keep confidential all business trade~~
23 ~~secrets and proprietary information about manufacturing processes~~
24 ~~and equipment that the department gathers or becomes aware of~~
25 ~~through the course of conducting audits or investigations pursuant~~
26 ~~to paragraph (1). Business trade secrets and proprietary information~~
27 ~~obtained pursuant to this subdivision shall not be subject to the~~
28 ~~California Public Records Act (Division 10 (commencing with~~
29 ~~Section 7920.000) of Title 1 of the Government Code).~~

30 ~~(3) A beverage manufacturer may obtain a copy of the~~
31 ~~department's audit of that beverage manufacturer conducted~~
32 ~~pursuant to paragraph (1).~~

33 ~~(e) (1) The department shall consider granting a reduction of~~
34 ~~the administrative penalties assessed pursuant to subdivision (b)~~
35 ~~for the purpose of meeting the minimum recycled content~~
36 ~~requirements required pursuant to paragraphs (1) to (3), inclusive,~~
37 ~~of subdivision (a).~~

38 ~~(2) In determining whether to grant the reduction pursuant to~~
39 ~~paragraph (1), the department shall consider, at a minimum, all of~~
40 ~~the following factors:~~

- 1 ~~(A) Anomalous market conditions.~~
- 2 ~~(B) Disruption in, or lack of supply of, recycled plastics.~~
- 3 ~~(C) Other factors that have prevented a beverage manufacturer~~
- 4 ~~from meeting the requirements.~~

5 ~~(3) In order to receive a reduction of the administrative penalty,~~
6 ~~a beverage manufacturer shall submit to the department a corrective~~
7 ~~action plan detailing the reasons why the beverage manufacturer~~
8 ~~will fail to meet or has failed to meet the minimum postconsumer~~
9 ~~recycled content standard and the steps the beverage manufacturer~~
10 ~~will take to comply with the minimum postconsumer recycled~~
11 ~~content standard within the next reporting year. The department~~
12 ~~may approve the corrective action plan, and may reduce the~~
13 ~~administrative penalties once it approves the corrective action plan~~
14 ~~and the beverage manufacturer implements the plan. Administrative~~
15 ~~penalties shall accrue from the point of noncompliance with the~~
16 ~~minimum postconsumer recycled content standard if the department~~
17 ~~disapproves the corrective action plan or if the beverage~~
18 ~~manufacturer fails to implement the plan.~~

19 ~~(f) The Recycling Enhancement Penalty Account is hereby~~
20 ~~created in the State Treasury. Notwithstanding subdivision (d) of~~
21 ~~Section 14580 and paragraph (3) of subdivision (a) of Section~~
22 ~~14591.1, administrative penalties collected pursuant to this section~~
23 ~~shall be deposited into the Recycling Enhancement Penalty~~
24 ~~Account. Moneys in the Recycling Enhancement Penalty Account~~
25 ~~shall be expended upon appropriation by the Legislature in the~~
26 ~~annual Budget Act for the sole purpose of supporting the recycling,~~
27 ~~infrastructure, collection, and processing of plastic beverage~~
28 ~~containers in the state.~~

29 ~~(g) (1) If the Legislature makes an appropriation in the annual~~
30 ~~Budget Act before June 15, 2027, for this purpose, the department~~
31 ~~may contract with a research university to study the polyethylene~~
32 ~~terephthalate and high-density polyethylene markets for all of the~~
33 ~~following:~~

34 ~~(A) Analyzing market conditions and opportunities in the state's~~
35 ~~recycling industry for meeting the minimum recycled plastic~~
36 ~~content requirements for plastic beverage containers required~~
37 ~~pursuant to subdivision (a).~~

38 ~~(B) Determining the data needs and tracking opportunities to~~
39 ~~increase the transparency and support of a more effective,~~
40 ~~fact-based public understanding of the recycling industry.~~

1 ~~(C) Recommending further policy modifications and measures~~
2 ~~to achieve the state’s recycling targets with the least cost and~~
3 ~~optimal efficiency.~~

4 ~~(2) If the Legislature makes the appropriation specified in~~
5 ~~paragraph (1) and the department undertakes the study, the study~~
6 ~~shall be completed no later than May 1, 2028.~~

7 ~~(3) The department may allocate moneys from the fund, upon~~
8 ~~appropriation by the Legislature as specified in paragraph (1), for~~
9 ~~the study by June 30, 2027, if all of the following apply:~~

10 ~~(A) The department finds that there are sufficient moneys in~~
11 ~~the fund.~~

12 ~~(B) The fund is not operating at a deficit.~~

13 ~~(C) The director is not exercising authority to implement~~
14 ~~proportional reductions subject to the requirements of subdivision~~
15 ~~(e) of Section 14581.~~

16 ~~(h) A city, county, or other local government jurisdiction shall~~
17 ~~not adopt an ordinance regulating the minimum recycled plastic~~
18 ~~content requirements for plastic beverage containers.~~

19 ~~(i) This section does not apply to either of the following:~~

20 ~~(1) A refillable plastic beverage container.~~

21 ~~(2) A beverage manufacturer that sells fewer than 2,000,000~~
22 ~~beverage containers in a calendar year.~~

23 ~~(j) The Legislature encourages beverage manufacturers to use~~
24 ~~plastic beverage containers that contain 100 percent recycled plastic~~
25 ~~content.~~

26 ~~SEC. 2.~~

27 ~~SECTION 1.~~ Section 14549.4 is added to the Public Resources
28 Code, to read:

29 14549.4. The department shall study and develop a system or
30 process to address the issue of glass contamination to improve the
31 quality of glass material collected.

32 ~~SEC. 3.~~

33 ~~SEC. 2.~~ Section 14573.5 of the Public Resources Code is
34 amended to read:

35 14573.5. (a) Except as provided in Section 14573.6, a
36 processor shall pay, by check or electronic transfer, to a certified
37 recycling center, dropoff or collection program, or curbside
38 program, for all types of empty beverage containers, by type of
39 beverage container, received by the processor from a recycling
40 center, curbside program, or dropoff or collection program, upon

1 receipt by the certified processor of a shipping report from the
2 supplier of the material, in the form adopted by the regulations
3 adopted by the department. A processor shall not make the payment
4 in cash. The payment shall include the sum of all of the following
5 amounts:

- 6 (1) The refund value.
- 7 (2) Three-fourths of 1 percent of the refund value for
8 administrative costs.
- 9 (3) The processing payment established pursuant to Section
10 14575.

11 (b) The processor shall make the payment required in
12 subdivision (a) within two working days of the date that the
13 processor receives these empty beverage containers, or within the
14 time which the department determines to be necessary and
15 adequate. Under the procedures authorized by the department, the
16 department may authorize a certified recycling center to cancel
17 containers, and a certified processor may authorize a certified
18 recycling center to cancel containers on behalf of the certified
19 processor.

20 (c) If the department has set up an accounts receivable procedure
21 or other procedure for seeking the payment of money improperly
22 obtained by a certified recycling center from the fund, the
23 department may reimburse the processor for its payments to that
24 certified recycling center.

25 ~~SEC. 4.~~

26 *SEC. 3.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.