

**LOS ANGELES COUNTY SOLID WASTE MANAGEMENT
COMMITTEE/INTEGRATED WASTE MANAGEMENT TASK FORCE
LEGISLATIVE OVERVIEW
July 2, 2021**

BILL ANALYZED: Senate Bill 38 - Beverage Container Recycling Act of 2021

VERSION ANALYZED: June 30, 2021

SENATE BILL 38 SUMMARY:

Senate Bill 38 (SB 38) (Wieckowski, 2021) would establish the Beverage Container Recycling Program (BCRP) which would be administered by CalRecycle and a beverage container stewardship organization (BCSO) replacing the current California Beverage Container Recycling and Litter Reduction Act (Bottle Bill), which sunsets July 1, 2024.

BACKGROUND:

- Currently California law requires consumers of beverages sold in a beverage container, as defined, sold in-state to pay a CRV of \$0.05 for containers that hold fewer than 24 ounces and \$0.10 for containers that hold 24 ounces or more. In order for consumers to get their money back, consumers must travel to a recycling center to return the container.
- More than half of the recycling centers in California have closed. In August 2019, rePlanet, which was the largest recycling network in California, closed all 284 of its recycling centers in California. According to CalRecycle, as of February 26, 2021, there are 1,224 recycling centers in the state.
- The current Bottle Bill requires distributors to pay a redemption payment to the CalRecycle for every beverage container sold in the state.
 - These funds are continuously appropriated to CalRecycle for the payment of refund values and processing fees which provide funding to local governments, waste haulers, and facilities
- According to CalRecycle the recycling rate for the first half of 2020 was 71 percent. The second half calendar year recycling rate was lower at 67 percent and is consistent with the seasonal downward trend observed over the life of the recycling program.
 - The overall recycling rate for calendar year 2020 was 68 percent; 7 percentage points lower when compared to calendar year 2019 at 75 percent. The lower recycling rate is a result of a significant increase in the number of containers sold and a slight decrease in the number of containers recycled. During 2020, Californians recycled over 18 billion beverage containers.

BILL ANALYSIS:

Requires beverage distributors to form a beverage container stewardship organization, develop a plan, annual report, and budget for the recovery and recycling of empty beverage containers.

The bill also establishes:

- a stewardship fee paid by distributors for costs to implement the program
- reimbursement to CalRecycle for the enforcement of the program
 - to establish processes for the payment and collection of minimum refund values by the organization
 - to establish no less than 10,000 points of redemption in the state by July 1, 2026
- a handling fee to be paid by the organization to redemption centers for each empty beverage container redeemed by the redemption center
- a payment to be paid by the organization to a processor to help ensure the processor is not operating at a loss
- that the stewardship retains refund values not redeemed and use those moneys to administer the beverage container stewardship program and for specified purposes relating to the recycling of beverage containers.
- CalRecycle to deposit all funds in the Beverage Container Stewardship Fund for administering and enforcement, and reimbursement of outstanding loans

SB 38 SPECIFICS:

- Requires CalRecycle to appoint an advisory committee for consultation purposes, including forming the BCSO and creating a beverage container stewardship plan.
- On or before July 1, 2023, CalRecycle, in consultation with the BCSO and other interested stakeholders, shall adopt regulations for the orderly transition from the current Bottle Bill program to the Beverage Container Recycling Program with full implementation no later than July 1, 2024.
- Establishes the state beverage container redemption goal of 85 percent per beverage container type. If CalRecycle determines that the redemption rate for any beverage container type drops below 85 percent in 2025, the refund value of that beverage container type increases to \$0.10 commencing January 1, 2027.
 - Beginning January 1, 2025, the director of CalRecycle may review and determine to adjust the minimum post-consumer recycled content percentage but not above the minimum post-consumer recycled plastic content percentages.
 - The director's review may be initiated at the petition of the beverage manufacturing industry not more than annually.
- Requires dealers in unserved convenience zones to redeem all empty beverage containers at all open cash registers or through a reverse vending machine (RVM), removes the option for dealers in unserved convenience zones to pay CalRecycle \$100 per day instead of redeeming empty beverage containers until a recycling location has been established in the convenience zone.

- Requires distributors to register with CalRecycle and to form a BCSO to develop, implement, and administer the BCSP, by October 1, 2022.
 - Requires BCSO to develop and submit a plan which must include specified goals and elements, including stewardship fee to be paid by distributor members and to be used to fund the program; an annual budget with specified information; quarterly reimbursement to CalRecycle for costs directly related to implementing and enforcing BCSO's activities.
- Permits redemption centers not located on a dealer premises to pay the refund value either on a per-container basis or on a weight basis. Requires redemption centers located on a dealer premises to pay the refund value on a per-container basis.
 - Allows electronic payments for handling fees, refund value, processing fee or processing payments in addition to requiring payments made to consumers be made within five business days of receipt of materials.
- Requires unredeemed refund values to be retained by BCSO and be used for the specified purposes relating to recycling.
- Specifies beginning January 1, 2023, a beverage manufacturer that does not meet the minimum recycled plastic content requirements shall be subject to an annual administrative penalty as calculated by CalRecycle based upon the amount in pounds in the aggregate of virgin and postconsumer recycled plastic material used by the beverage manufacturer to produce beverage container sold or offered for sale in the state.
 - Specifies penalties collected shall be deposited into the Recycling Enhancement Penalty Account which are to be expended for the sole purpose of supporting the recycling, infrastructure, collection and processing of plastic beverage containers in the state.
- Requires beverage manufacturers to register all products and labels with the BCSO
- Includes "Reusable beverage container" to the definition and is returned whole and intact to a recycler for reuse as a beverage container.
- Redemption center shall accept from a consumer or dropoff or collection program any empty beverage container and shall pay to the consumer or dropoff or collection program the refund value of the beverage container.
 - A redemption center not located on a dealer premises shall pay the refund value on a per-container basis of the total number of returned containers or on a weight basis.
 - A redemption center located on a dealer premises shall pay the refund value on a per-container basis of the total number of returned containers.

SB 38 Pros and Cons

Possible Pros:

- (42984.51 (c)) Imposes administrative penalties for violations and deposits funds into the Beverage Container Stewardship Penalty Account.
 - Would limit moneys received by CalRecycle under the program to penalties for violating these provisions and charges to fund CalRecycle's administration of the program.
 - Amends Section of PRC 14571.6, beginning January 1, 2022, and until July 1, 2024, the current Bottle Bill program to remove the option for dealers in unserved convenience zones (areas that are not served by a recycling location) to pay CalRecycle \$100 per day in lieu of redeeming empty beverage containers until a recycling location has been established in the convenience zone. Instead requires dealers in unserved convenience zones to redeem all empty beverage containers at all open cash registers or through a reverse vending machine (RVM).

[According to a 2017 Consumer Watchdog audit, up to two thirds of retailers responsible for redemption where no centers exist may be refusing to take bottles back in store. If caught by CalRecycle, the penalty is between \$100 and \$1,000, depending on whether it is a repeat offense, and chances are retailers will never be inspected. A retailer in an unserved convenience zone (one without a functioning redemption center) may choose, after a 60-day grace period, to pay CalRecycle \$100 per day in lieu of redeeming containers on site or establishing a redemption center in the convenience zone. The above SB 38 provisions are meant to eliminate loopholes that allows dealers to avoid offering recycling. If not audited many dealers do not even face consequences.]

- (14560) Allows CalRecycle to increase the refund value for certain beverage container-based redemption rates based on an unspecified threshold.

[As recycling declines, CalRecycle can increase the refund value to encourage more recycling. Not clear if CalRecycle will raise the deposit at the cash register.

***Possible amendment:** amend the bill to specify the threshold for increasing the refund value such as \$0.05 to \$0.10 and \$0.10 to \$0.20 and clarify if increased refund values will directly translate to increased deposits at purchase.]*

- (14571.6) Requires dealers in unserved convenience zones to redeem all empty beverage containers at all open cash registers or through a reverse vending machine (RVM).

[This provision provides more options for consumers to redeem CRV containers.]

Possible Amendment: Staff recommends amending bill language to require the BCSO to provide assistance to redemption centers that are reopening in underserved areas.

- (14577) Establishes a minimum post-consumer recycled plastic content standard of, on average, contain no less than:
 - 15 percent postconsumer recycled plastic between January 1, 2022, and December 31, 2024.
 - 25 percent between January 1, 2025, and December 31, 2029
 - 50 percent on and after January 1, 2030

[These provisions are intended to create a viable market for recycled scrap materials and are consistent with AB 793 (2020) minimum post-consumer recycled content requirements.]

- (14577. (4) Allows the director of CalRecycle to review and determine to adjust the minimum post-consumer recycled content percentage based on specified factors (A):
 - Changes in market conditions, including supply and demand for postconsumer recycled plastics, collection rates, and bale availability both domestically and globally.
 - Recycling rates.
 - The availability of recycled plastic suitable to meet the minimum recycled content requirements
 - including the availability of high-quality recycled plastic, and food-grade recycled plastic from the states and other beverage container recycling programs.
 - The capacity of recycling or processing infrastructure.
 - The progress made by beverage manufacturers in achieving the goals of this subdivision.

[These provisions are intended to provide necessary flexibility for CalRecycle.]

- (17001(a) – (b) After July 1, 2024 funding for the Electronic Waste Recovery and Recycling Account in addition to the waste tire program shall be appropriated to CalRecycle in the annual Budget Act for administrative overhead costs payment of costs for collection, making refunds, and auditing revenues.

- Allows CalRecycle to expend eight million dollars (\$8,000,000) each fiscal year from the funds in the Electronic Waste Recovery and Recycling Account, upon appropriation by the Legislature, for grants to implement programs relating to the collection and recovery of covered electronic waste, including education and outreach.
- five million dollars (\$5,000,000) each fiscal year from the funds in the California Tire Recycling Management Fund for grants to implement programs relating to clean up and abate waste tires and to reuse and recycle waste tires, including, but not limited to, the tire recycling program including education and outreach July 1, 2024.
- two million dollars (\$2,000,000) each fiscal year from the funds in the California Used Oil Recycling Fund for grants to implement programs relating to the collection of used oil, including education and outreach.

[Section 12476 of the PRC specifies upon appropriation funding from the annual Budget Act will continue to fund, among other things, the Electronic Waste Recover and Recycling Account]

Possible Cons:

- (14570.5) Permits BCSO to authorize a **processor** to pay an operator of a curbside program the refund value for **segregated** beverage containers received by the processor from the curbside program **if economic or other circumstances warrant**.

*[A **processor** is defined as an entity that receives empty beverage containers from recycler; sorts, cleans, and consolidates the recyclable materials; and sells them to container manufacturers or other end users who make new bottles, cans, and other products from these materials. The uncertainty of receiving a refund which will be based on economic or other circumstances could lead to impacts to curbside collection programs including increased costs passed on to customers.]*

Possible amendment: *“Permits BCSO to authorize a processor to pay an operator of a curbside program the refund value for segregated beverage containers received by the processor from the curbside program ~~if economic or other circumstances warrant~~.”* This will ensure curbside programs continue to be funded or reimbursed not just if and when economic or other circumstances warrant.

- Repeals section 17001(b)(1) as of 7/1/2024. Which would eliminate grants to implement beverage container litter reduction programs and beverage container recycling programs, including education and outreach. This funding primarily went to local jurisdictions.