

Senate Bill No. 528

Passed the Senate September 13, 2001

Secretary of the Senate

Passed the Assembly September 10, 2001

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 14536, 14537, 14538, 14539, 14541, 14549.1, 14549.6, 14571.3, 14588.1, 14588.2, 14591.2, and 14591.6 of, and to repeal Section 19524 of, the Public Resources Code, and to amend Section 9 of Chapter 817 of the Statutes of 1999, relating to recycling, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 528, Sher. Department of Conservation: beverage containers: fees: enforcement.

(1) The existing California Beverage Container Recycling and Litter Reduction Act requires the Department of Conservation to undergo a selective audit of entities making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing payments are being paid out properly by the department. Existing law requires the selective audit to be made a part of an annual report, copies of which are required to be submitted to the Governor and the Legislature.

This bill would delete the requirement that the selective audit is made part of an annual report, with copies submitted to the Governor and the Legislature.

(2) The existing act requires the department to certify recycling centers and processors and imposes specified requirements as a condition of certification. The act authorizes the department to issue a certificate as a probationary certificate that is limited to a specified period and allow a probationary certificate holder to request a hearing subsequent to the revocation of such a certificate.

This bill would additionally require, as a condition of certification, that if one or more certified entities have operated at the same location within the past 5 years, the operations at the location of the recycling center or processor, as applicable, exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of the act. The bill would authorize the department to recovery, from a party requesting a



hearing on a revoked probationary certificate, any costs incurred by the department associated with preparing for, or conducting the hearing, if the party requesting the hearing does not appear on the date scheduled and does not notify the department, as specified.

(3) The existing act requires a distributor of specified beverage containers to pay a redemption payment to the department, for each beverage container, as defined, sold or transferred, for deposit in the California Beverage Container Recycling Fund. The money in the fund is continuously appropriated to the department to pay, among other things, glass incentive payments to operators of curbside recycling programs, in an amount of up to \$300,000,000 annually. Existing law repeals that authority to make these payments on January 1, 2003.

This bill would authorize the department to make those payments to an operator of a curbside recycling program or any other entity that is certified under the act, if the operator or entity color sorts glass beverage containers. The bill would delete the repeal of the payment authority, thereby authorizing the department to make those payments indefinitely, and making an appropriation.

(4) The existing act requires the department to pay a total of \$15,000,000 per fiscal year to operators of curbside programs and neighborhood dropoff programs and requires the amount of the payment to be calculated based upon the volume of beverage containers collected during the fiscal year by curbside and neighborhood dropoff programs and reported to the department by processors during the reporting period of October 1 to December 31, inclusive. A violation of the act is a crime.

This bill would require these payments to be made only if the curbside or neighborhood dropoff program accepts all types of empty beverage containers for recycling and would change the reporting period to the fiscal year for which those payments are made.

The bill would require the operator of a curbside program or neighborhood dropoff program to make specified records available for inspection and review by the department, thereby imposing a state-mandated local program by creating new crimes.

(5) The act provides that the money in the fund is continuously appropriated to the department to pay, among other things, handling fees to supermarket sites. Existing provisions of the act



specify the method for determining whether certain payments made by a supermarket site that receives handling fees constitute “unfair and predatory pricing” under the act. Other provisions of the act establish procedures for the consideration of complaints alleging unfair and predatory pricing.

This bill would amend the definition of “unfair and predatory pricing” for the purposes of the act by adjusting the methods through which the department is required to obtain pricing data and to make calculations based on that data. The bill would revise the procedures required for the consideration of complaints alleging unfair and predatory pricing, including specifying which certified recyclers may bring a complaint against a supermarket site, deleting the requirement that the respondent have the burden of proof in demonstrating that it has not engaged in unfair and predatory pricing, and requiring that the respondent to a complaint be given an opportunity, as prescribed, to rebut a presumption that unfair and predatory pricing has taken place. The bill would specify a method for determining the amount of time a supermarket site that has been determined to have engaged in unfair and predatory pricing is ineligible to receive handling fees. The bill would provide for the retroactive application of these changes, under specified circumstances.

Because this bill would revise the methods for expending funds from the continuously appropriated California Beverage Container Recycling Fund, it would constitute an appropriation.

(6) Existing law requires the Director of Conservation to adopt regulations to implement specified provisions of the act, and authorizes the director to adopt these regulations as emergency regulations, which are filed with, but not repealed by, the Office of Administrative Law and which remain in effect until revised by the director.

This bill would additionally include the adoption of regulations to implement the unfair and predatory pricing procedures within this provision.

(7) Existing law imposes criminal and civil penalties for specified violations of the act, including submission of false or fraudulent claims for payment. Existing law authorizes the department to take specified disciplinary actions, including ordering the immediate suspension of a certificate holder if there is, among other things, a pattern of deceit, fraud, or intentional



misconduct in carrying out the duties and responsibilities of a certificate holder during the 6-month period immediately preceding the order of suspension.

Existing law also authorizes the department to issue a cease and desist order when a person is engaged in recycling activity that violates the act and prescribes procedures for requesting a hearing regarding an order.

This bill would specify, for purposes of this immediate suspension, that 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.

The bill would revise the procedures for requesting a hearing regarding the issuance of a cease and desist order. The bill would also correct erroneous references and make conforming changes.

(8) The existing Fiberglass Recycled Content Act of 1991 requires the department to include in its annual report to the Legislature a discussion of the progress toward achieving maximum use of cullet in the manufacture of fiberglass sold in the state, as specified.

This bill would delete that requirement.

(9) Existing law, requires the department to contract with the University of California for the preparation and submittal to the department, by January 1, 2002, of a specified recycling study.

This bill would extend the date for the submittal of the report to January 1, 2003.

(10) 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.

(11) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.



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

SECTION 1. Section 14536 of the Public Resources Code is amended to read:

14536. (a) Except as provided in subdivision (b), the director shall adopt, amend, or repeal all rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) (1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14550, 14561, 14574, 14575, 14588.1, 14588.2, and 14591.

(2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.

SEC. 2. Section 14537 of the Public Resources Code is amended to read:

14537. The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts are subject to an annual audit by an auditing firm selected by the department. The auditing firm or the department shall also conduct a selective audit of entities making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing payments are being paid out properly by the department.

SEC. 3. Section 14538 of the Public Resources Code is amended to read:



14538. (a) The department shall certify the operators of recycling centers pursuant to this section. 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 which conflicts with information submitted in the operator's application for certification.

(b) 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 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, 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.

(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.

(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.

(c) 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.

(d) 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. 4. Section 14539 of the Public Resources Code is amended to read:

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

(b) 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.

(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. 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.

(10) 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), 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. 5. Section 14541 of the Public Resources Code is amended to read:

14541. (a) The department may issue a certificate pursuant to an initial or renewal application for certification as probationary, and the department may issue any other certificate as probationary pursuant to an enforcement action.

(b) A probationary certificate issued pursuant to this section shall be issued for a limited period of not more than two years. Before the end of the probationary period, the department shall issue a nonprobationary certificate, extend the probationary period for not more than one year, or, after notice to the probationary certificate holder, revoke the probationary certificate. Subsequent to the revocation, the former probationary certificate holder may request a hearing, which, notwithstanding, Section 11445.20 of the Government Code, shall be conducted in the same form as a hearing for an applicant whose original application for certification is denied.

(c) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing fails to appear on the date scheduled, and does not notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other cost associated with preparing for, or conducting, the hearing.

(d) If conditions are imposed on the certificate holder as part of a disciplinary proceeding conducted pursuant to Section 14591.2, the certificate shall be considered probationary. If, at any time, the certificate holder violates any term or condition of the probationary certificate, the certificate may be revoked or



suspended, after three days' notice, without any further hearing by the department.

SEC. 6. Section 14549.1 of the Public Resources Code is amended to read:

14549.1. In order to improve the quality and marketability of glass containers collected for recycling in the state by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to either an operator of a curbside recycling program registered pursuant to Section 14551.5, or to any other entity certified pursuant to this division, that color sorts glass beverage containers for recycling. The total amount paid by the department pursuant to this section shall not exceed three million dollars (\$3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(a) The amount of the quality glass incentive payment shall be up to twenty-five dollars (\$25) per ton, as determined by the department.

(b) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(c) The department shall make a quality glass incentive payment only for glass beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or any other entity certified pursuant to this division.

(d) Only one payment shall be made for each color-sorted glass beverage container collected.

SEC. 7. Section 14549.6 of the Public Resources Code is amended to read:

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars (\$15,000,000) per fiscal year to operators of curbside programs and neighborhood dropoff programs that accept all types of empty beverage containers for recycling. The payments shall be for each container collected by the curbside or neighborhood dropoff programs and properly reported to the department by processors, based upon all of the following:



(1) The payment amount shall be calculated based upon the volume of beverage containers collected during the fiscal year by curbside and neighborhood dropoff programs.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars (\$15,000,000).

(3) The amount to be paid to each operator of a curbside and neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the curbside program's total reported beverage container volume during the fiscal year for which those payments are made.

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not sooner than the 6th month of the fiscal year following the fiscal year for which the payments are being made, subject to the availability of funds.

(d) The operator of a curbside program or neighborhood dropoff program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

SEC. 8. Section 14571.3 of the Public Resources Code is amended to read:

14571.3. (a) The department shall continuously assist any certified recycler to achieve greater service to the public in an economical and cost-effective manner. This assistance shall include, but not be limited to, advice on all of the following:

(1) Methods to enhance public participation in recycling.

(2) The most beneficial location, siting, and image of a recycling location.

(3) Methods to reduce costs and optimize efficiencies of existing resources.

(b) The department shall conduct regular, unannounced inspections of certified recycling centers for the purpose of determining that the requirements of this division are satisfied. The department shall assess civil penalties pursuant to Section 14591.1 for violations at certified recycling centers.



SEC. 9. Section 14588.1 of the Public Resources Code is amended to read:

14588.1. (a) As used in this chapter, “unfair and predatory pricing” means the payment to consumers by a supermarket site, that receives handling fees for the redemption of beverage containers, in an amount that exceeds the sum of both of the following:

(1) The California refund value for that container.

(2) (A) If the supermarket site is not located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a five-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(B) If the supermarket site is located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a 10-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(b) In calculating the three-day average price paid by recyclers within the specified distance of a recycler alleged to have engaged in predatory pricing, as required by subdivision (a), the department shall only survey those recyclers who did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the allegation of predatory pricing.

(c) For purposes of this chapter, “rural region” means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

SEC. 10. Section 14588.2 of the Public Resources Code is amended to read:

14588.2. (a) To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this



chapter, the department shall follow all of the requirements of this section upon the complaint of either of the following:

(1) Any certified recycler located within five miles of the supermarket site alleged to have engaged in unfair and predatory pricing if not located in a rural region.

(2) Any certified recycler located within 10 miles of the supermarket site alleged to have engaged in unfair and predatory pricing if located in a rural region.

(b) (1) Within 50 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being paid by the supermarket site, and by all other certified recycling centers as specified in Section 14588.1, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

(2) The department shall withhold from public disclosure any proprietary information collected by the department in the course of the audit mandated by this paragraph. The department shall exercise its discretion in determining what information is proprietary.

(c) (1) If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 60 days of receiving the complaint, convene an informal hearing before the director, or the director's designee.

(2) At least 10 days before the hearing, the director shall forward the results of the audit to the complainant and respondent.

(3) At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (b) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing.

(4) The respondent shall be given the opportunity to rebut the presumption of unfair and predatory pricing imposed by Section 14588.1 by demonstrating to the satisfaction of the director, or the director's designee, that the respondent did both of the following:

(A) The respondent made a good faith effort to determine the average scrap value paid per pound for that container type by certified recycling centers located within a five-mile or 10-mile



radius of the supermarket site, pursuant to subdivision (a) of Section 14588.1, within 30 days before the date of the alleged violation.

(B) The three-day average scrap value the respondent paid per pound for that container type was within 2.5 percent of the three-day average scrap value paid per pound determined by the department pursuant to subdivision (a).

(5) The director, or the director's designee, may dismiss a complaint made pursuant to subdivision (a) upon determining either of the following:

(A) The complaint is without basis.

(B) The complaint is repetitious of prior similar complaints against the same supermarket site for which the director or the director's designee has determined that no unfair and predatory pricing occurred.

(d) Within 20 days of the completion of the hearing, the director, or the director's designee, shall determine whether the supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (b), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

(e) During the time period from the date of the receipt of a complaint pursuant to subdivision (a), until the date the director makes a determination pursuant to subdivision (d), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees that were earned during the period commencing with the date of the alleged unfair and predatory pricing. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

(f) (1) If, after complying with the procedure established pursuant to this section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees as specified by this section.

(A) If the determination of unfair and predatory pricing is the first for the site, the site is ineligible to receive handling fees for



six months from the date that the respondent is found to have engaged in unfair and predatory pricing.

(B) If the determination of unfair and predatory pricing is the second for the site, the site is ineligible to receive handling fees for one year from the date that the respondent is found to have engaged in unfair and predatory pricing.

(C) If the determination of unfair and predatory pricing is the third or more for the site, the site is ineligible to receive handling fees for five years after the date that the respondent is found to have engaged in unfair and predatory pricing.

(2) The penalties specified by this section shall be applied retroactively to all determinations of unfair and predatory pricing made by the director, or the director's designee, during the period from January 1, 2000, to January 1, 2002, inclusive.

(g) The complainant or respondent may obtain a review of the determination made pursuant to this section by filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination. Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

(h) If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (g), and the department prevails, the department may recover any costs associated with its defense of the complaint.

SEC. 11. 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.



(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. 12. Section 14591.6 of the Public Resources Code is amended to read:

14591.6. (a) When a person is engaged in recycling activity that violates this division, any regulation adopted pursuant to this division, or an order issued under this division, the department may issue an order to that person to cease and desist from that activity.

(b) If a request for a hearing is filed in writing within 10 days of the date of service of the order described in subdivision (a), a



hearing shall be held 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 director or the director's designee shall determine whether to sustain or reverse the cease and desist order. If sustained, the order shall become effective and final upon the issuance and service of the order.

(c) If no written request for a hearing is filed within 10 days of the date of service of the order described in subdivision (a), or if a party requesting the hearing does not appear at the hearing, the order shall be deemed the final order of the department and is not subject to review by any court or agency. This order shall become effective and final after the expiration of the 10-day period within which a hearing may be requested.

(d) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing does not appear on the date scheduled, and fails to notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other costs associated with preparing for, or conducting, the hearing.

(e) Upon the failure of any person or persons to comply with any cease and desist order issued by the department, the Attorney General, upon request of the department, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person from continuing the activity in violation of the cease and desist order.

(f) The court shall issue an order directing defendants to appear before the court at a certain time and place and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be warranted.

SEC. 13. Section 19524 of the Public Resources Code is repealed.

SEC. 14. The changes made to Sections 14588.1 and 14588.2 of the Public Resources Code by Sections 9 and 10 of this act shall apply retroactively to any complaint that was filed with the department before July 1, 2001, but was not decided before the effective date of these changes.

SEC. 15. Section 9 of Chapter 817 of the Statutes of 1999 is amended to read:



Sec. 9. The Department of Conservation, using funds from the California Beverage Container Recycling Fund, shall contract with the University of California for preparation and submittal to the department, on or before January 1, 2003, of a study that the department shall transmit to the Governor and the Legislature on or before that date, that does all of the following:

(a) Reviews whether the inclusion of plastic beverage containers made of resins other than polyethelene terathate has substantially increased the recycling rate of those containers.

(b) Compares the recycling rates for like types of beverage containers covered by the California Beverage Container Recycling and Litter Reduction Act with like types of beverage containers not covered by the act.

(c) Compares the net cost of recycling containers covered by the act at recycling centers, supermarket sites, and curbside recycling programs, and estimates the cost of collection and disposal of those containers not covered by the act and not recycled.

(d) Compares the economic benefit and impact on the state's economy of the act with an "Oregon style" nickel deposit law, and with the situation if the act were repealed.

(e) Reports the scope of curbside recycling in California, along with an evaluation of the benefits and cost impact of the act on curbside recycling programs.

(f) Recommends any modifications to the act, including, but not limited to, the fiscal and recycling impact of repealing the act; the fiscal and recycling impact of expanding the act; and any products or materials that should be included or excluded from the coverage of the act.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety



within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Department of Conservation is in the process of implementing the predatory provisions of the California Beverage Container Recycling and Litter Reduction Act and has determined that there will be significant additional costs if this act is not enacted as soon as possible. Therefore, it is necessary that this act take effect immediately.



Approved _____, 2001

Governor

