



January 25, 2020

Senator Ben Allen
Chair, Senate Environmental Quality Committee
State Capitol
Room 5072
Sacramento, CA 95814

RE: Role of Beverage and Wine Industry in SB 372, EPR programs

Dear Senator Allen,

We write to set the record straight on SB 372 (D- Wieckowski), which would mend our broken bottle deposit law by putting the responsibility for the financing, creation and running of a bottle deposit system onto the beverage industry rather than California consumers and the state.

As you know, under the deposit system in crisis today, consumers are unable to redeem their bottle and can deposits directly about half the time (See our report Half A Nickel: <https://www.consumerwatchdog.org/report/half-nickel-how-california-consumers-get-ripped-every-bottle-deposit-they-pay>)

To make the system more convenient, SB 372 follows the model in 8 of the 10 other bottle deposit states. Hawaii and California are alone in having government-run systems. The other states put the responsibility on industry, modeling best practices from across the world. SB 372 follows this model, as explained below.

Opposition voiced by the wine, liquor and beverage distributor industries at last week's hearing are based on naked greed, nothing other than a wanton desire to

be free of responsibility to deal with climate change, disregard their stewardship roles and ignore the needs of consumers.

First, let's deal with the false claims of the beverage distributors.

In a hearing last week before your committee, beverage distributors complained that putting the responsibility onto them for building such a system would target "family businesses" and saddle them with a "tax." Victoria Horton, President of the California Beer and Beverage Distributors, said, "If they want some sort of stewardship program, look to the manufacturers. We're just small family businesses out here and you're talking about how many? Billions of containers.....we don't know how to do this."

The opposition of the distributors to SB 372 is in fact based not on bearing responsibilities that don't exist in the Extended Producer Responsibility (EPR) model programs in other states, but on losing an unjustified \$20 million pork barrel subsidy in the current CalRecycle program.

The beverage distributor's pork has grown over time. The bottle bill passed in 1986 and since then there have been at least 75 more amendments to it. In '86, the beverage industry insisted on a sweetener to support the bill. Lobbyists succeeded in inserting language that allowed them to skim 1% of all California Refund Value (CRV) charged on every beverage to compensate them for any "administrative costs" of participation in the program.

As the CRV value was increased—it began with a penny and today stands at a nickel or a dime respectively based on a container's size—lobbyists convinced lawmakers to boost the administrative fee by 50% to 1.5% in 2006 under AB 3056, a Natural Resources Committee bill. By the stroke of a pen, beverage distributors got the right to pocket millions of dollars more in CRV each year whether the program was actually working to raise redemption and recycling rates, or it wasn't.

"Skim" is not a pejorative term, but an accurate one. As distributors charge retailers for the CRV value with each bottle and can delivered to them, they collect the CRV and keep 1.5% of the value for themselves before remitting the rest to the state. Regardless of what happens to the program downstream, the distributors get to keep their 1.5% off the top.

Last year, CalRecycle reported a total CRV paid in of \$1.35 billion -- although evidence shows that beverage distributors are collecting more deposits that they do not report in their sales figures to the state. (See Half a Nickel report for the details). Using the rate of 1.5%, distributors today skimmed off roughly \$20 million from the collected CRV. The same interests that succeeded in structuring these unjustified subsidies continue to fight to protect them.

The subsidy is enumerated in CalRecycle financial reports such as the most recent quarterly report for the second quarter of FY2018-19.¹

A redesigned program would likely wipe out this subsidy since administrative costs for CRV collection are virtually non-existent. Distributors already have to label and track all of their beverages for sale to report those numbers to the state and in the case of recall, among other things.

In the bottle deposit programs in the other 8 states that are EPR models, distributors are responsible for running the system because they are the on-the-ground representatives for the brand and the product. In programs around the world, which are national in scope, the producer or the manufacturer is directly responsible for running the program, but US law generally requires the licensee of the brand in the individual state to be responsible. In many cases, the distributor owns the brand and is the producer/manufacturer.

Distributors and big producers who distribute their own products in particular handle the logistics of the beverage distribution system from warehousing to delivery and are in the ideal position to be responsible for a bottle deposit system. Giving them the responsibility for crafting the program with input from other stakeholders gives them a greater say in how the program is structured.

SB 372 defines distributors as “[every person who engages in the sale of beverages in beverage containers to a dealer in this state, including any *manufacturer* who engages in these sales.](#)” As explained below, in many cases, the distributors are the brand owners or producers such as Pepsico or Coca-Cola.

In any case, a redesigned system might wipe out the distributors’ pork barrel subsidy, but it would not put a “tax” on distributors.

¹ See: Quarterly Report on the Status of the Beverage Container Recycling Fund (FY 2018-19—Second Quarter) (DRRR-2019-1659) at <https://www2.calrecycle.ca.gov/Publications/Details/1659>

The recycling costs, a tenth of a cent, are recovered today from consumers, as they would be tomorrow under SB 372, and not paid as a tax by distributors. The cost is built into the price of the product.

Nestle Waters North America explains. “Any bottle deposit program incurs costs that are eventually born by consumers,” the company states.² “A strong program uses an efficient model to minimize those costs by....centralizing administrative and operational functions through the use of a stewardship model responsible for deposit collection administration, deposit fund administration, setting deposit system fee rates, and reporting to the regulatory...”

In today’s CalRecycle program, consumers leave more than a half billion dollars of their deposit money on the table unredeemed because there is the most inefficient model imaginable to recover their nickels and dimes. In an efficient system, hundreds of millions of dollars more would flow back into consumer pockets, more than offsetting the minimal recycling costs already built into the product.

Nor are most California distributors a “family business.” Far from Mom and Pop operations, they are the muscle behind a multi-billion-dollar a year business upon which the biggest beverage makers in the world depend. For example, private distributor Reyes Holdings, with \$30 billion in revenues, has snapped up smaller companies to become the biggest beer distributor in the United States as well as a West Coast bottler and distributor of Coca-Cola products. In addition, big producers such as CocaCola and Pepsico are also their own distributors.

The beverage and food processing sectors generate \$220 billion in total output value annually to the California economy, and beverage distributors alone contribute \$43.4 billion.³

It is only right that the beverage companies take responsibility for the end-of-life of the empties their products become.

² (See: <https://www.nestle-watersna.com/en/planet/packaging/us-bottle-deposit-laws>.)

³ See: http://clfp.com/wp-content/uploads/CLFP_FINAL_Report_1_29_15.pdf

And

<https://www.prnewswire.com/news-releases/beer-industry-contributes-43-4-billion-annually-to-californias-economy-300854691.html>

Nor should consumers or legislators cry tears for a wine and liquor industry that has effectively evaded a deposit and recycling requirement despite being a big part of the problem for our environment.

The wine industry exploits vast amounts of Californians' water, soil and land for its products, but fails to participate in mandatory recycling of its bottles, which are very carbon-intensive to produce. In addition, the breaking of and resulting tiny shards of wine bottles in single-stream curbside recycling containers unnecessarily contaminate loads so that they cannot be recycled and must go to landfills.

Why would winemakers not want to participate in a bottle deposit program that preserves a cheap supply of glass? Bottle deposit recycling is 98% uncontaminated because of how the products are handled as opposed to extraordinary contamination rates curbside.

The only answer is the scions of California wine, which accounts for 90% of the nation's wine production, don't want to be good environmental stewards or told what to do after years of failing to come up with a voluntary industry solution. Shame on Gallo, Mondavi, and the other first families of wine that have gotten rich off California but refuse to give back to its fight against climate change.

Iowa, Maine and Vermont's wine industries participate in a bottle deposit program. California's wine industry continues to fight it by believing its political spending will continue to buy it an outrageous exemption from recycling.

Southern Glazer's Wine & Spirits, EJ Gallo and associations representing distributors and producers donated roughly \$1.3 million to individual lawmakers between 2017 and 2019 to continue to be exempt from the bottle deposit program.

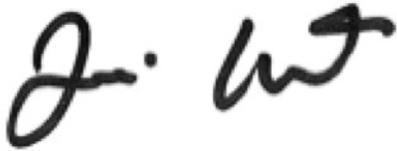
The nonprofit Container Recycling Institute has calculated that the state could generate an additional \$100 million annually for the recycling program if wine and liquor are included (Iowa and Maine deposit programs include liquor as well as wine).

The wine industry's sour grapes over recycling is not based on sound policy, but pure greed and disregard for the best interests of California. We urge you to invite these wine scions to the capitol for additional testimony about the true

basis of their opposition. Wine money in politics should not be enough to exempt this critical industry from recycling programs.

We hope this clarifies concerns raised at the hearing and stand ready to answer any questions.

Sincerely

Handwritten signature of Jamie Court in black ink, featuring a stylized 'J' and 'C'.

Jamie Court

Handwritten signature of Liza Tucker in black ink, written in a cursive style.

Liza Tucker