

ASSEMBLY, No. 121

STATE OF NEW JERSEY

213th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2008 SESSION

Sponsored by:

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SYNOPSIS

The "Smart Container Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/23/2009)

1 AN ACT concerning beverage containers, and supplementing
2 P.L.1987, c.102 (C.13:1E-99.11 et al.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "Smart
8 Container Act."

9

10 2. The Legislature finds and declares that litter composed of
11 discarded beverage bottles and cans is a growing problem of public
12 concern and a direct threat to the health and safety of the citizens of
13 this State; that discarded beverage bottles and cans create a hazard
14 to vehicular traffic, a source of physical injury to pedestrians, farm
15 animals and machinery and an unsightly accumulation of litter
16 which must be disposed of at increasing public expense; that
17 beverage bottles and cans also create an unnecessary addition to the
18 State's already costly and overburdened solid waste management
19 system; that the indiscriminate disposal of such bottles and cans
20 creates an impediment to the efficient operation of New Jersey's
21 resource recovery incineration facilities; that the uninhibited discard
22 of beverage containers constitutes a waste of both mineral and
23 energy resources; and that requiring a deposit on all beverage
24 bottles and cans, along with certain other facilitating measures, will
25 provide a necessary incentive for the economically efficient and
26 environmentally benign collection and recycling of such containers.

27 The Legislature therefore determines that it serves the public
28 interest to provide that all beverage bottles and cans sold or offered
29 for sale in this State have a refund value, and to provide for the
30 convenient return and payment of the refund value of empty
31 beverage containers.

32

33 3. As used in this act:

34 "Beverage" means all carbonated and noncarbonated drinks in
35 liquid form intended for human consumption. "Beverage" shall not
36 include:

37 (1) Milk and dairy derived products. "Milk" means whole milk,
38 skim milk, low-fat milk, cream, cultured milk, yogurt or any
39 combination of those products. The term "dairy derived products"
40 includes any product of which the single largest ingredient is milk,
41 milk fat, cultured milk or yogurt;

42 (2) Rice milk or soy milk;

43 (3) Infant formula;

44 (4) Alcoholic beverages. The term "alcoholic beverage" shall
45 not include beer or other malt beverages, or wine products;

- 1 (5) A liquid that is a syrup, in a concentrated form, or typically
2 added as a minor flavoring ingredient in food or drink, such as
3 extracts, cooking additives, sauces or condiments;
- 4 (6) A liquid that is ingested in very small quantities and that is
5 consumed for medicinal purposes only;
- 6 (7) A liquid that is designed and consumed only as a nutritional
7 supplement and not as a beverage;
- 8 (8) A product that is frozen at the time of sale;
- 9 (9) A product that is designed to be consumed in a frozen state;
- 10 (10) An instant drink powder; or
- 11 (11) Seafood, meat or vegetable broths, or soups.
- 12 "Beverage container" means the individual, separate, sealed
13 glass, metal, aluminum, steel or plastic bottle, can or jar used for
14 containing less than one gallon or 3.8 liters at the time of sale of a
15 beverage intended for use or consumption in this State. A
16 "beverage container" shall not include a refillable container.
- 17 "Commissioner" means the Commissioner of Environmental
18 Protection.
- 19 "Department" means the Department of Environmental
20 Protection.
- 21 "Director" means the Director of the Division of Taxation in the
22 Department of the Treasury.
- 23 "Distributor" means any person who sells beverages in beverage
24 containers to a retailer.
- 25 "Division" means the Division of Taxation in the Department of
26 the Treasury.
- 27 "Malt beverage" means any beverage obtained by the alcoholic
28 fermentation or infusion or decoction of barley, malt, hops, or other
29 wholesome grain or cereal and water, including, but not limited to,
30 ale, stout or malt liquor.
- 31 "Redemption center" means a place or a business, and the owner
32 or operator thereof, which accepts empty beverage containers for
33 recycling and pays the refund value of beverage containers as
34 approved by the department pursuant to the provisions of this act.
- 35 "Refillable container" means a rigid plastic container that the
36 department determines is routinely returned to and refilled by the
37 product manufacturer at least five times with the original product
38 that is stored inside of the container.
- 39 "Retailer" means a person who engages in the sale within the
40 State of beverages in beverage containers to a consumer at retail for
41 off-premises use or consumption.
- 42 "Reverse vending machine" means an automated device that uses
43 a laser scanner, microprocessor, or other technology to accurately
44 recognize the universal product code to determine if a particular
45 beverage container is redeemable and accumulates information
46 regarding beverage containers redeemed, thereby enabling the

1 device to accept beverage containers from redeemers and to issue
2 scrip for their refund value.

3 "Smart container bar code" means a universal product code
4 applied to a beverage container to identify the container as sold or
5 offered for sale in this State.

6 "Universal product code" means a standard for encoding a set of
7 lines and spaces that can be scanned and interpreted into numbers to
8 identify a product. A "universal product code" may also mean any
9 accepted industry barcode which replaces that code and that may be
10 used to identify a product.

11

12 4. a. Every beverage container sold or offered for sale in this
13 State shall have a refund value when empty. Beverage containers
14 with a minimum capacity of eight ounces, or its equivalent volume,
15 and a maximum capacity of less than twenty four ounces, or its
16 equivalent volume, shall have a refund value of \$0.10 each.
17 Beverage containers with a minimum capacity of twenty four
18 ounces, or its equivalent volume, and a maximum capacity of less
19 than one gallon or 3.8 liters, or its equivalent volume, shall have a
20 refund value of \$0.20 each.

21 b. Every beverage container sold or offered for sale in this State
22 shall be clearly identified by a stamp, label or other mark securely
23 affixed to the beverage container, bearing the inscription "New
24 Jersey" or "N.J." and indicating the refund value of the beverage
25 container.

26 c. Every beverage container sold or offered for sale in this State
27 shall be embossed with a smart container bar code.

28 d. A person shall not sell or offer for sale a beverage container
29 in this State unless the deposit on the beverage container is or has
30 been paid to the State Treasurer by a distributor and unless the
31 beverage container has a refund value of not less than \$0.10 which
32 is clearly indicated thereon as provided in this section.

33 e. Every redeemed empty beverage container shall be the
34 property of the retailer or redemption center accepting the empty
35 beverage container for redemption.

36

37 5. a. Every distributor shall, within 30 days of the effective date
38 of this act, register with the State Treasurer on forms prescribed by
39 the director.

40 b. Every distributor shall, on or before the first day of the first
41 full fiscal quarter following the effective date of this act, and
42 quarterly thereafter, render a return under oath to the State
43 Treasurer, on such forms as may be prescribed by the director,
44 indicating the total number of full beverage containers to be sold or
45 offered for sale in this State in the ensuing quarter, and at that time
46 shall pay the initial deposit on each full beverage container in an

1 amount equal to the refund value due thereon pursuant to section 4
2 of this act.

3 c. The director shall deposit all revenues collected pursuant to
4 this section in the Smart Container Fund established pursuant to
5 section 7 of this act. The director may use up to 1% of all revenues
6 collected to defray the costs of administration and collection of the
7 deposit revenues.

8 d. The director may require the maintenance of such accounts,
9 records or documents relating to the sale of full beverage
10 containers, by any distributor as the director may deem appropriate
11 for the administration of this section. The director may make
12 examinations, including the conduct of facility inspections during
13 regular business hours, with respect to the accounts, records or
14 documents required to be maintained under this subsection. The
15 accounts, records and documents shall be preserved for a period of
16 three years, except that the director may consent to their destruction
17 within that period or may require that they be kept longer. The
18 accounts, records and documents may be kept within the meaning of
19 this subsection when reproduced by any photographic, photostatic,
20 microfilm, micro-card, miniature photographic or other process
21 which actually reproduces the original accounts, records or
22 documents.

23

24 6. a. Every retailer and redemption center shall, within 30 days
25 of the effective date of this act, register with the State Treasurer on
26 forms prescribed by the director.

27 b. Every retailer and redemption center shall, on or before the
28 first day of the first full fiscal quarter following the effective date of
29 this act, and monthly thereafter, render a return under oath to the
30 State Treasurer, on such forms as may be prescribed by the director,
31 indicating the total number of empty beverage containers redeemed
32 during the previous month, the total amount paid for redeemed
33 empty beverage containers, and the disposition of redeemed empty
34 beverage containers. The director shall credit the proper amount to
35 the retailer or redemption center upon receipt of written
36 documentation of the total number of empty beverage containers
37 redeemed and the actual amount paid for the redemption of those
38 empty beverage containers, and at that time shall reimburse the
39 retailer or redemption center the full amount therefor.

40 c. The director may require the maintenance of such accounts,
41 records or documents relating to the redemption of empty beverage
42 containers, by any retailer or redemption center as the director may
43 deem appropriate for the administration of this section. The
44 director may make examinations, including the conduct of facility
45 inspections during regular business hours, with respect to the
46 accounts, records or documents required to be maintained under this
47 subsection. The accounts, records and documents shall be

1 preserved for a period of three years, except that the director may
2 consent to their destruction within that period or may require that
3 they be kept longer. The accounts, records and documents may be
4 kept within the meaning of this subsection when reproduced by any
5 photographic, photostatic, microfilm, micro-card, miniature
6 photographic or other process which actually reproduces the
7 original accounts, records or documents.

8
9 7. a. The Smart Container Fund (hereinafter referred to as the
10 "fund") is established as a nonlapsing, revolving fund. The fund
11 shall be administered by the State Treasurer, and shall be credited
12 with all revenues collected pursuant to section 5 of
13 P.L. , c. (C.)(pending in the Legislature as this bill), and
14 all interest received on moneys in the fund.

15 b. Moneys in the fund shall be allocated and used as follows:

16 (1) To reimburse retailers and redemption centers the full
17 amount for the total number of empty beverage containers redeemed
18 and the actual amount paid for the redemption of those empty
19 beverage containers;

20 (2) To redistribute deposit revenues to retailers and redemption
21 centers on a proportionate basis, in an amount equal to 25% of the
22 aggregate dollar value of any unclaimed deposits retained by the
23 State Treasurer, to defray handling costs;

24 (3) To redistribute deposit revenues to the department, in an
25 amount equal to 75% of the aggregate dollar value of any
26 unclaimed deposits retained by the State Treasurer, to defray the
27 costs of administration, public education and enforcement
28 programs, and to provide grants for environmental projects. Any
29 amounts received by the department as unclaimed deposits shall be
30 deposited in the Clean Communities Program Fund established
31 pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217). Moneys in
32 the fund received as a result of the provisions of this subsection
33 shall be allocated and used as provided by law.

34 As used herein, "unclaimed deposits" shall mean any amounts in
35 excess of the costs of redemption which have accrued to the fund on
36 or after the thirtieth day after which a deposit has been initiated.

37 c. The State Treasurer shall report to the department, on or
38 before the first day of the second full fiscal quarter following the
39 effective date of this act, and quarterly thereafter, on the volume of
40 beverage sales, empty beverage container redemptions, and
41 unclaimed deposits.

42
43 8. a. Every retailer shall, upon presentation of an empty
44 beverage container, refund to the bearer the refund value of the
45 beverage container. No retailer shall refuse to accept at the
46 retailer's place of business an empty beverage container from a

1 person, or refuse to pay to a person the refund value of an empty
2 beverage container.

3 b. A retailer may limit the number of empty beverage containers
4 to be accepted for redemption at the retailer's place of business to
5 not less than 24 empty beverage containers per visit, per redeemer,
6 per day.

7 c. Redemptions of refund value shall be in legal tender. The use
8 or presence of a reverse vending machine shall not relieve a retailer
9 of any obligations imposed pursuant to this section. If a retailer
10 utilizes a reverse vending machine to redeem empty beverage
11 containers, the retailer shall provide redemption of empty beverage
12 containers when the reverse vending machine is full, broken, under
13 repair or does not accept a type of beverage container sold by the
14 retailer. On any day that the retail establishment is open for less
15 than twenty-four hours, the retailer may restrict or refuse the
16 payment of refund values during the first and last hour the retailer is
17 open for business.

18 d. Every redeemed empty beverage container shall be the
19 property of the retailer accepting the empty beverage containers for
20 redemption. Every retailer shall ensure that all empty beverage
21 containers redeemed at the facility are properly recycled.

22
23 9. a. A retailer shall conspicuously post and maintain, at the
24 point of sale, a legible sign informing customers of the refund value
25 of empty beverage containers.

26 b. A retailer that does not sell or offer for sale in this State
27 alcoholic beverages shall not be required to accept at the retailer's
28 place of business from a redeemer any empty beverage containers
29 used for containing beer or other malt beverages, or wine products.
30 The retailer shall conspicuously post and maintain, at the point of
31 sale, a legible sign informing customers of the exemption from the
32 deposit and refund system established pursuant to this act.

33
34 10. a. A person may apply to the department for approval to
35 establish a redemption center, including a mobile redemption
36 center, subject to applicable provisions of law and in accordance
37 with the provisions of this act, at which consumers may return
38 empty beverage containers and receive payment of the refund value
39 of the beverage containers.

40 b. An application for approval to establish a redemption center
41 shall include the name and address of the person responsible for the
42 establishment and operation of the redemption center; the kind,
43 size, and brand names of beverage containers which will be
44 accepted at the redemption center; the addresses of the retailers to
45 be served by the redemption center; and any additional information
46 which the department may require.

1 c. The department shall approve an application to establish a
2 redemption center if the department finds, in writing, that the
3 redemption center will provide a convenient service to consumers
4 for the return of empty beverage containers. The order of the
5 department approving the establishment of a redemption center
6 shall state the retailers to be served by the redemption center; the
7 kind, size, and brand names of empty beverage containers which the
8 redemption center shall accept; and any other requirements which
9 the department deems necessary to insure that the redemption center
10 will provide a convenient service to the public.

11 d. The department may review at any time an approval of a
12 redemption center. After affording written notice and hearing to the
13 owner or operator of the redemption center, and to retailers served
14 by the redemption center, the department may withdraw approval of
15 the redemption center if the department finds, in writing, that the
16 center has failed to comply with the conditions set forth in the order
17 approving the center or if the redemption center no longer provides
18 a convenient service to the public.

19 e. Every redeemed empty beverage container shall be the
20 property of the owner or operator of the redemption center
21 accepting the empty beverage containers for redemption. Every
22 redemption center shall ensure that all empty beverage containers
23 redeemed at the facility are properly recycled.

24
25 11. a. The commissioner shall adopt, pursuant to the provisions
26 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
27 1 et seq.), any rules or regulations conditioning and controlling the
28 sale and labeling of beverage containers which shall be designed to
29 further the purposes of this act.

30 b. The director shall adopt, pursuant to the provisions of the
31 "Administrative Procedure Act," any rules or regulations necessary
32 to implement the provisions of this act.

33
34 12. a. The commissioner shall establish a public education
35 program to disseminate information regarding implementation of
36 this act. The information shall include, but need not be limited to,
37 publication of information specifying the procedures necessary to
38 establish a redemption center as provided in section 10 of this act;
39 and publication of information delineating the relevant rights and
40 responsibilities of distributors, retailers and redemption centers
41 under the provisions of this act.

42 b. The department shall report to the Governor and the
43 Legislature on the success of the public education in New Jersey not
44 later than August 30 of each year.

45
46 13. a. There is established an advisory council, to be known as
47 the "Smart Container Act Public Advisory Council." The advisory

1 council shall consist of 9 members, who shall be appointed by the
2 Governor, with the advice and consent of the Senate.

3 b. The members of the advisory council shall include: one
4 representative of an organization whose prime function is the
5 enhancement of the environmental quality of the State; two
6 distributors; two county or municipal recycling coordinators; two
7 retailers and two operators of redemption centers.

8 c. The advisory council shall organize as soon as practical after
9 the appointment of its members. The members of the advisory
10 council shall elect one of their number to serve as chairperson and
11 the advisory council may elect an executive director who need not
12 be a member of the advisory council.

13 d. The members of the advisory council shall receive no
14 compensation for their services, but shall be allowed their actual
15 and necessary expenses incurred in the performance of their duties.

16

17 14. a. The Smart Container Act Public Advisory Council is
18 empowered to:

19 (1) Serve as a working forum for the exchange of views,
20 concerns, ideas, information and recommendations relating to
21 implementation of this act;

22 (2) Request the attendance at any meeting of the advisory
23 council of any personnel of the department or of other State
24 agencies as may be necessary to provide information and otherwise
25 assist the advisory council and request such information from the
26 department or other State agencies as the advisory council may
27 require in fulfilling its responsibility under this section;

28 (3) Monitor, review and make recommendations concerning the
29 objectives, methods and strategies of the department and other State
30 agencies in implementing and pursuing programs designed to meet
31 the objectives of this act;

32 (4) Request and receive, upon reasonable notice, reports from
33 the department and other State agencies concerning the
34 implementation of the provisions of this act;

35 (5) Make recommendations to the Governor and the Legislature
36 concerning the awarding of grants for various environmental
37 projects, including land preservation, litter cleanup and public area
38 beautification activities, from the amounts received by the
39 department as unclaimed deposits and deposited in the Clean
40 Communities Program Fund pursuant to section 7 of this act; and

41 (6) Perform other activities or services as may be necessary to
42 fulfill the purposes of this section.

43 b. The advisory council shall meet as frequently as it deems
44 necessary, keep a record of its proceedings, and determine the rules
45 of its own procedures. Five members of the advisory council shall
46 constitute a quorum for the transaction of any business of the
47 advisory council.

1 c. Staff services, including recording of advisory council
2 proceedings, shall be performed by personnel of the department, or
3 such State agencies as the chairperson deems appropriate or
4 desirable.

5 d. The department shall provide the advisory council with such
6 facilities, assistance, and data as will enable the advisory council to
7 carry out its powers and duties. All other State agencies shall, at
8 the request of the chairperson, provide the advisory council with
9 such facilities, assistance, and data as will enable the advisory
10 council to carry out its powers and duties.

11

12 15. Any person who violates the provisions of this act or any
13 rule or regulation adopted pursuant to this act shall be liable to a
14 penalty of not more than \$500 per day to be collected in a civil
15 action commenced by a local board of health, a county health
16 department, or the commissioner.

17 Each day during which the violation continues constitutes an
18 additional, separate and distinct offense. Any penalty imposed
19 pursuant to this subsection may be collected, with costs, in a
20 summary proceeding pursuant to the "Penalty Enforcement Law of
21 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
22 and the municipal court shall have jurisdiction to enforce the
23 provisions of the "Penalty Enforcement Law of 1999" in connection
24 with this act. The department is authorized to compromise and
25 settle a claim for a penalty under this act in an amount which the
26 department deems appropriate and equitable under all of the
27 circumstances.

28

29 16. This act shall take effect 12 months following enactment,
30 except that section 11 shall take effect immediately.

31

32

33

STATEMENT

34

35 The proposed "Smart Container Act" would require a 10-cent
36 deposit on all plastic and glass bottles and aluminum cans (other
37 than refillable containers) less than 24 oz. and a 20-cent deposit on
38 such beverage containers over 24 oz. up to 3 liters. The proposal
39 would include juice, sports drinks, and bottled waters as well as
40 soda, wine and beer containers. All such containers would be
41 identified by so-called smart bar coding technology.

42 Under a conventional deposit and refund system, the distributor
43 initiates the deposit by collecting the refund value of each empty
44 beverage container from the retailer when the full containers are
45 delivered to the retail establishment. The retailer collects the
46 deposit from the consumer when the container is sold and refunds
47 the deposit to the consumer when the empty container is returned.

1 The distributor refunds the deposit paid by the retailer when the
2 empty containers are picked up from the retailer.

3 Under the Smart Container Act, the distributor would pay the
4 initial deposit on each full beverage container to be sold in New
5 Jersey to the State Treasurer on a quarterly basis. The retailer
6 would collect the deposit from the consumer when the beverage is
7 sold and reimburse the distributor.

8 The Smart Container Act would authorize the Department of
9 Environmental Protection (DEP) to license and regulate the
10 establishment of privately-owned and operated beverage container
11 redemption centers, where consumers and retailers could bring
12 empty containers for refund. The redeemed containers would be the
13 property of the redemption center or the retailer accepting the
14 returned empty containers, as the case may be, and would be
15 available for sale to interested parties at market prices. Retailers
16 would be required to accept up to 24 empty beverage containers per
17 customer per transaction.

18 Every redemption center and retailer would be required to submit
19 a certified monthly report to the State Treasurer detailing the
20 number of containers redeemed, the amount paid out for redeemed
21 containers, and the disposition of redeemed beverage containers.
22 Redemption centers and retailers would be reimbursed by the State
23 Treasurer upon receipt of certified reports of the total number of
24 empty beverage containers redeemed and the amounts paid to those
25 returning empty containers.

26 Under the Smart Container Act, the State Treasurer would be
27 required to report to the DEP on the volume of beverage sales,
28 beverage container redemptions, and unredeemed deposits in New
29 Jersey on a quarterly basis.

30 The proposal's escheat provision requires that 75 percent of the
31 unclaimed deposits would be kept by the State while the other 25
32 percent would be redistributed proportionately to retailers and
33 redemption centers by the State Treasurer for handling costs, based
34 on the total number of beverage container redeemed as provided in
35 the certified monthly reports.

36 The State's unclaimed deposits would be deposited in an
37 environmental fund to defray the costs of administration, public
38 education and enforcement programs, and to provide grants for
39 various environmental projects, including land preservation, litter
40 cleanup and public area beautification activities.