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SYNOPSIS
The “Smart Container Act.”

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning beverage containers, and supplementing P.L.1987, c.102 (C.13:1E-99.11 et al.).

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

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

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

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

3. As used in this act:

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

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

(2) Rice milk or soy milk;

(3) Infant formula;

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

(5) A liquid that is a syrup, in a concentrated form, or typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces or condiments;
(6) A liquid that is ingested in very small quantities and that is consumed for medicinal purposes only;
(7) A liquid that is designed and consumed only as a nutritional supplement and not as a beverage;
(8) A product that is frozen at the time of sale;
(9) A product that is designed to be consumed in a frozen state;
(10) An instant drink powder; or
(11) Seafood, meat or vegetable broths, or soups.

"Beverage container" means the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar used for containing less than one gallon or 3.8 liters at the time of sale of a beverage intended for use or consumption in this State. A "beverage container" shall not include a refillable container.

"Commissioner" means the Commissioner of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Distributor" means any person who sells beverages in beverage containers to a retailer.

"Division" means the Division of Taxation in the Department of the Treasury.

"Malt beverage" means any beverage obtained by the alcoholic fermentation or infusion or decoction of barley, malt, hops, or other wholesome grain or cereal and water, including, but not limited to, ale, stout or malt liquor.

"Redemption center" means a place or a business, and the owner or operator thereof, which accepts empty beverage containers for recycling and pays the refund value of beverage containers as approved by the department pursuant to the provisions of this act.

"Refillable container" means a rigid plastic container that the department determines is routinely returned to and refilled by the product manufacturer at least five times with the original product that is stored inside of the container.

"Retailer" means a person who engages in the sale within the State of beverages in beverage containers to a consumer at retail for off-premises use or consumption.

"Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the universal product code to determine if a particular beverage container is redeemable and accumulates information regarding beverage containers redeemed, thereby enabling the device to accept beverage containers from redeemers and to issue scrip for their refund value.

“Smart container bar code” means a universal product code applied to a beverage container to identify the container as sold or offered for sale in this State.
“Universal product code" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a product. A “universal product code” may also mean any accepted industry barcode which replaces that code and that may be used to identify a product.

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

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

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

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

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

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

   b. Every distributor shall, on or before the first day of the first full fiscal quarter following the effective date of this act, and quarterly thereafter, render a return under oath to the State Treasurer, on such forms as may be prescribed by the director, indicating the total number of full beverage containers to be sold or offered for sale in this State in the ensuing quarter, and at that time shall pay the initial deposit on each full beverage container in an amount equal to the refund value due thereon pursuant to section 4 of this act.

   c. The director shall deposit all revenues collected pursuant to this section in the Smart Container Fund established pursuant to section 7 of this act. The director may use up to 1% of all revenues collected to defray the costs of administration and collection of the deposit revenues.
d. The director may require the maintenance of such accounts, records or documents relating to the sale of full beverage containers, by any distributor as the director may deem appropriate for the administration of this section. The director may make examinations, including the conduct of facility inspections during regular business hours, with respect to the accounts, records or documents required to be maintained under this subsection. The accounts, records and documents shall be preserved for a period of three years, except that the director may consent to their destruction within that period or may require that they be kept longer. The accounts, records and documents may be kept within the meaning of this subsection when reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original accounts, records or documents.

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

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

c. The director may require the maintenance of such accounts, records or documents relating to the redemption of empty beverage containers, by any retailer or redemption center as the director may deem appropriate for the administration of this section. The director may make examinations, including the conduct of facility inspections during regular business hours, with respect to the accounts, records or documents required to be maintained under this subsection. The accounts, records and documents shall be preserved for a period of three years, except that the director may consent to their destruction within that period or may require that they be kept longer. The accounts, records and documents may be kept within the meaning of this subsection when reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original accounts, records or documents.
7. a. The Smart Container Fund (hereinafter referred to as the "fund") is established as a nonlapsing, revolving fund. The fund shall be administered by the State Treasurer, and shall be credited with all revenues collected pursuant to section 5 of P.L., c. (pending in the Legislature as this bill), and all interest earned on moneys in the fund.

b. Moneys in the fund shall be allocated and used as follows:
   (1) To reimburse retailers and redemption centers the full amount for the total number of empty beverage containers redeemed and the actual amount paid for the redemption of those empty beverage containers;
   (2) To redistribute deposit revenues to retailers and redemption centers on a proportionate basis, in an amount equal to 25% of the aggregate dollar value of any unclaimed deposits retained by the State Treasurer, to defray handling costs;
   (3) To redistribute deposit revenues to the department, in an amount equal to 75% of the aggregate dollar value of any unclaimed deposits retained by the State Treasurer, to defray the costs of administration, public education and enforcement programs, and to provide grants for environmental projects. Any amounts received by the department as unclaimed deposits shall be deposited in the Clean Communities Program Fund established pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217). Moneys in the fund received as a result of the provisions of this subsection shall be allocated and used as provided by law.

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

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

8. a. Every retailer shall, upon presentation of an empty beverage container, refund to the bearer the refund value of the beverage container. No retailer shall refuse to accept at the retailer's place of business an empty beverage container from a person, or refuse to pay to a person the refund value of an empty beverage container.

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

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

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

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

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

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

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

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

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

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

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

b. The director shall adopt, pursuant to the provisions of the
“Administrative Procedure Act,” any rules or regulations necessary
to implement the provisions of this act.

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

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

13. a. There is established an advisory council, to be known as
the “Smart Container Act Public Advisory Council.” The advisory
council shall consist of 9 members, who shall be appointed by the
Governor, with the advice and consent of the Senate.

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

c. The advisory council shall organize as soon as practical after
the appointment of its members. The members of the advisory
council shall elect one of their number to serve as chairperson and
the advisory council may elect an executive director who need not
be a member of the advisory council.
d. The members of the advisory council shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

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

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

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

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

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

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

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

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

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

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

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

Each day during which the violation continues constitutes an
additional, separate and distinct offense. Any penalty imposed
pursuant to this subsection may be collected, with costs, in a
summary proceeding pursuant to the "Penalty Enforcement Law of
and the municipal court shall have jurisdiction to enforce the
provisions of the "Penalty Enforcement Law of 1999" in connection
with this act. The department is authorized to compromise and
settle a claim for a penalty under this act in an amount which the
department deems appropriate and equitable under all of the
circumstances.

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

STATEMENT

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

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

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

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

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

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

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

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