

ASSEMBLY, No. 2281

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

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District 37 (Bergen)

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SYNOPSIS

The “Smart Container Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/5/2016)

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;

46 (5) A liquid that is a syrup, in a concentrated form, or typically
47 added as a minor flavoring ingredient in food or drink, such as
48 extracts, cooking additives, sauces or condiments;

1 (6) A liquid that is ingested in very small quantities and that is
2 consumed for medicinal purposes only;

3 (7) A liquid that is designed and consumed only as a nutritional
4 supplement and not as a beverage;

5 (8) A product that is frozen at the time of sale;

6 (9) A product that is designed to be consumed in a frozen state;

7 (10) An instant drink powder; or

8 (11) Seafood, meat or vegetable broths, or soups.

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

14 "Commissioner" means the Commissioner of Environmental
15 Protection.

16 "Department" means the Department of Environmental
17 Protection.

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

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

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

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

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

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

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

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

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

1 “Universal product code” means a standard for encoding a set of
2 lines and spaces that can be scanned and interpreted into numbers to
3 identify a product. A “universal product code” may also mean any
4 accepted industry barcode which replaces that code and that may be
5 used to identify a product.

6
7 4. a. Every beverage container sold or offered for sale in this
8 State shall have a refund value when empty. Beverage containers
9 with a minimum capacity of eight ounces, or its equivalent volume,
10 and a maximum capacity of less than twenty four ounces, or its
11 equivalent volume, shall have a refund value of \$0.10 each.
12 Beverage containers with a minimum capacity of twenty four
13 ounces, or its equivalent volume, and a maximum capacity of less
14 than one gallon or 3.8 liters, or its equivalent volume, shall have a
15 refund value of \$0.20 each.

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

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

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

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

31
32 5. a. Every distributor shall, within 30 days of the effective
33 date of this act, register with the State Treasurer on forms
34 prescribed by the director.

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

44 c. The director shall deposit all revenues collected pursuant to
45 this section in the Smart Container Fund established pursuant to
46 section 7 of this act. The director may use up to 1% of all revenues
47 collected to defray the costs of administration and collection of the
48 deposit revenues.

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

16

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

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

33 c. The director may require the maintenance of such accounts,
34 records or documents relating to the redemption of empty beverage
35 containers, by any retailer or redemption center as the director may
36 deem appropriate for the administration of this section. The
37 director may make examinations, including the conduct of facility
38 inspections during regular business hours, with respect to the
39 accounts, records or documents required to be maintained under this
40 subsection. The accounts, records and documents shall be
41 preserved for a period of three years, except that the director may
42 consent to their destruction within that period or may require that
43 they be kept longer. The accounts, records and documents may be
44 kept within the meaning of this subsection when reproduced by any
45 photographic, photostatic, microfilm, micro-card, miniature
46 photographic or other process which actually reproduces the
47 original accounts, records or documents.

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

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

8 (1) To reimburse retailers and redemption centers the full
9 amount for the total number of empty beverage containers redeemed
10 and the actual amount paid for the redemption of those empty
11 beverage containers;

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

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

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

29 c. The State Treasurer shall report to the department, on or
30 before the first day of the second full fiscal quarter following the
31 effective date of this act, and quarterly thereafter, on the volume of
32 beverage sales, empty beverage container redemptions, and
33 unclaimed deposits.
34

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

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

45 c. Redemptions of refund value shall be in legal tender. The
46 use or presence of a reverse vending machine shall not relieve a
47 retailer of any obligations imposed pursuant to this section. If a
48 retailer utilizes a reverse vending machine to redeem empty

1 beverage containers, the retailer shall provide redemption of empty
2 beverage containers when the reverse vending machine is full,
3 broken, under repair or does not accept a type of beverage container
4 sold by the retailer. On any day that the retail establishment is open
5 for less than twenty-four hours, the retailer may restrict or refuse
6 the payment of refund values during the first and last hour the
7 retailer is open for business.

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

12
13 9. a. A retailer shall conspicuously post and maintain, at the
14 point of sale, a legible sign informing customers of the refund value
15 of empty beverage containers.

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

23
24 10. a. A person may apply to the department for approval to
25 establish a redemption center, including a mobile redemption
26 center, subject to applicable provisions of law and in accordance
27 with the provisions of this act, at which consumers may return
28 empty beverage containers and receive payment of the refund value
29 of the beverage containers.

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

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

47 d. The department may review at any time an approval of a
48 redemption center. After affording written notice and hearing to the

1 owner or operator of the redemption center, and to retailers served
2 by the redemption center, the department may withdraw approval of
3 the redemption center if the department finds, in writing, that the
4 center has failed to comply with the conditions set forth in the order
5 approving the center or if the redemption center no longer provides
6 a convenient service to the public.

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

12

13 11. a. The commissioner shall adopt, pursuant to the provisions
14 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
15 1 et seq.), any rules or regulations conditioning and controlling the
16 sale and labeling of beverage containers which shall be designed to
17 further the purposes of this act.

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

21

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

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

33

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

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

43 c. The advisory council shall organize as soon as practical after
44 the appointment of its members. The members of the advisory
45 council shall elect one of their number to serve as chairperson and
46 the advisory council may elect an executive director who need not
47 be a member of the advisory council.

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

4

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

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

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

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

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

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

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

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

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

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

46

47 15. Any person who violates the provisions of this act or any
48 rule or regulation adopted pursuant to this act shall be liable to a

1 penalty of not more than \$500 per day to be collected in a civil
2 action commenced by a local board of health, a county health
3 department, or the commissioner.

4 Each day during which the violation continues constitutes an
5 additional, separate and distinct offense. Any penalty imposed
6 pursuant to this subsection may be collected, with costs, in a
7 summary proceeding pursuant to the "Penalty Enforcement Law of
8 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
9 and the municipal court shall have jurisdiction to enforce the
10 provisions of the "Penalty Enforcement Law of 1999" in connection
11 with this act. The department is authorized to compromise and
12 settle a claim for a penalty under this act in an amount which the
13 department deems appropriate and equitable under all of the
14 circumstances.

15

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

18

19

20

STATEMENT

21

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

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

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

42 The Smart Container Act would authorize the Department of
43 Environmental Protection (DEP) to license and regulate the
44 establishment of privately-owned and operated beverage container
45 redemption centers, where consumers and retailers could bring
46 empty containers for refund. The redeemed containers would be the
47 property of the redemption center or the retailer accepting the
48 returned empty containers, as the case may be, and would be

1 available for sale to interested parties at market prices. Retailers
2 would be required to accept up to 24 empty beverage containers per
3 customer per transaction.

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

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

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

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