

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 588 Session of 2009

INTRODUCED BY RAFFERTY, EICHELBERGER, FERLO, BROWNE, ORIE,
WASHINGTON, BRUBAKER, ERICKSON, GREENLEAF, VANCE, WAUGH AND
BOSCOLA, MARCH 6, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 6, 2009

AN ACT

1 Providing for the return of beverage containers and for the
2 powers and duties of the Department of Environmental
3 Protection; imposing a returnable beverage container
4 assessment on distributors; providing for duties of
5 returnable beverage distributors; establishing the Returnable
6 Beverage Container Fund; and providing for a returnable
7 deposit value on returnable beverage containers, for
8 redemption of empty returnable beverage containers, for
9 redemption centers, for payment of claims from the fund and
10 for annual report to General Assembly.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Returnable
15 Beverage Container Act.

16 Section 2. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Beverage." Any of the following:

21 (1) Soda water or similar carbonated soft drink.

1 (2) Noncarbonated drink, including, but not limited to,
2 mineral water, flavored and unflavored water, spring water,
3 vitamin water and any other water beverage, tea, sports
4 drink, isotonic drink, beer and other malt beverages.

5 (3) Any other nonalcoholic carbonated and noncarbonated
6 drink in liquid form that is intended for human consumption.
7 The term does not include milk or any beverage that is primarily
8 derived from a dairy product, infant formula and medicine
9 approved by the Food and Drug Administration.

10 "Consumer." A person who buys a beverage in a returnable
11 beverage container for use or consumption and pays the deposit.

12 "Dealer." A person who engages in the sale of beverages in
13 returnable beverage containers to a consumer for off-premises
14 consumption in this Commonwealth.

15 "Department." The Department of Environmental Protection of
16 the Commonwealth.

17 "Fund." The Returnable Beverage Container Fund established
18 under section 5.

19 "On-premises consumption." The consumption of returnable
20 beverages by a patron immediately and within the area under
21 control of an establishment, including, but not limited to, a
22 bar, restaurant, passenger ship or airplane.

23 "Patron." A person who buys a beverage in a returnable
24 beverage container for use or consumption and does not pay the
25 deposit.

26 "Person." An individual, partnership, firm, association,
27 public or private corporation, Federal agency, the Commonwealth
28 or any of its political subdivisions, trust or any other legal
29 entity.

30 "Recycling facility." The contiguous land and structures and

1 other appurtenances and improvements on the land used for the
2 collection, separation, recovery and sale or reuse of secondary
3 resources that would otherwise be disposed of as solid waste and
4 are an integral part of a manufacturing process aimed at
5 producing a marketable product made of postconsumer material.

6 "Redeemer." A person, other than a dealer or distributor,
7 who demands the refund value in exchange for an empty returnable
8 beverage container.

9 "Redemption center." An operation that accepts from
10 consumers and provides the refund value for empty returnable
11 beverage containers intended to be recycled and ensures that the
12 empty returnable beverage containers are properly recycled.

13 "Redemption rate." The percentage of returnable beverage
14 containers redeemed over a reporting period. The percentage is
15 calculated by dividing the number of returnable beverage
16 containers redeemed by the number of returnable beverage
17 containers sold and then multiplying that number by one hundred.

18 "Refillable beverage container." Any returnable beverage
19 container that ordinarily is returned to the manufacturer to be
20 refilled and resold.

21 "Returnable beverage container." Any sealable bottle, can,
22 jar or carton which is primarily composed of glass, metal,
23 plastic or any combination of those materials and is produced
24 for the purposes of containing a beverage which, at the time of
25 sale, contains 28 ounces or less of a beverage. The term does
26 not include any sealable bottle, can, jar or carton which is
27 composed of paper-based biodegradable material and aseptic
28 multimaterial packaging.

29 "Returnable beverage distributor" or "distributor." A person
30 who:

1 (1) is a manufacturer of beverages in returnable
2 beverage containers in this Commonwealth; or

3 (2) imports and engages in the sale of filled returnable
4 beverage containers to a dealer or consumer in this
5 Commonwealth.

6 The term includes a Federal agency and military distributor but
7 does not include an airline or shipping company that merely
8 transports returnable beverage containers.

9 Section 3. Returnable beverage container assessment on
10 distributors.

11 (a) General rule.--Beginning January 1, 2010, a returnable
12 beverage distributor shall pay to the department, on a monthly
13 basis, a returnable beverage container assessment on each
14 returnable beverage container manufactured in or imported into
15 this Commonwealth. The returnable beverage container assessment
16 shall not apply to returnable beverage containers exported for
17 sale outside of this Commonwealth.

18 (b) Amount of assessment.--The returnable beverage container
19 assessment shall be 5¢ per returnable beverage container and may
20 be imposed only once on the same returnable beverage container.

21 (c) State preemption.--No municipality may impose or collect
22 any assessment or fee on returnable beverage containers for the
23 same or similar purpose that is the subject of this act.

24 Section 4. Returnable beverage distributors.

25 (a) Duty to register.--

26 (1) On or before September 1, 2009, each returnable
27 beverage distributor shall register with the department,
28 using forms prescribed by the department, and shall notify
29 the department of any change in address or other information
30 previously submitted.

1 (2) After September 1, 2009, any person who desires to
2 conduct business in this Commonwealth as a returnable
3 beverage distributor shall register with the department no
4 later than one month prior to the commencement of the
5 business.

6 (b) Maintenance of records.--

7 (1) A returnable beverage distributor shall maintain
8 records reflecting the manufacture of beverages in returnable
9 beverage containers or the importation and the sale of filled
10 returnable beverage containers, as applicable.

11 (2) The records shall be made available, upon request,
12 for inspection by the department; provided that any
13 proprietary information obtained by the department shall be
14 kept confidential and shall not be disclosed to any other
15 person, except:

16 (i) as may be reasonably required in an
17 administrative or judicial proceeding to enforce any
18 provision of this act or any rule adopted pursuant to
19 this act; or

20 (ii) under an order issued by a court.

21 Section 5. Returnable Beverage Container Fund.

22 (a) Establishment.--The Returnable Beverage Container Fund
23 is established in the State Treasury. All revenues generated
24 from the returnable beverage container assessment shall be
25 deposited into the fund.

26 (b) Use of fund.--

27 (1) The moneys in the fund shall be used to pay valid
28 returnable deposit claims submitted by returnable beverage
29 distributors and redemption centers under section 14.

30 (2) After the payment of claims under paragraph (1), 75%

of the fund shall be transferred on a monthly basis to the Hazardous Sites Cleanup Fund established under section 901 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

Section 6. Inventory report.

(a) General rule.--Except as otherwise provided under subsection (e), beginning February 1, 2010, and continuing each month thereafter, a returnable beverage distributor shall file an inventory report with the department.

(b) Content.--The inventory report required under subsection (a) shall include documentation in sufficient detail to identify:

(1) The number of beverages in returnable beverage containers, by container size and type, manufactured in or imported into this Commonwealth during the reporting period.

(2) The number of these returnable beverage containers, by container size and type, exported and intended for consumption outside this Commonwealth during the reporting period.

All information contained in an inventory report, including confidential commercial and financial information, shall be deemed confidential and protected from public disclosure to the extent allowed by law.

(c) Calculation of payment.--The payment due from a returnable beverage distributor for the assessment imposed under section 3 shall be equal to the net number of returnable beverage containers imported or manufactured into this Commonwealth, the total number of containers imported or manufactured less the total number of containers exported for consumption outside this Commonwealth, multiplied by 5¢.

(d) Filing deadline.--The inventory report and payment shall be filed with the department no later than the 15th day of the month following the end of the payment period of the previous month.

(e) Semiannual reporting.--A returnable beverage distributor who annually imports or manufactures in this Commonwealth less than 100,000 returnable beverage containers may submit reports and payments required under this act on a semiannual basis; provided that the semiannual report and payment period shall end on June 30 and December 31 of each year.

Section 7. Returnable deposit value of returnable beverage containers.

Beginning January 1, 2010, each returnable beverage container sold in this Commonwealth shall have a returnable deposit value of 5¢, and the returnable deposit value shall be clearly indicated on it as provided under section 9.

Section 8. Sales of beverages in returnable beverage containers.

(a) Pass-through from distributors.--Beginning January 1, 2010, a returnable beverage distributor who pays the returnable beverage container assessment to the department may add the amount of the assessment to the cost of each returnable beverage container paid by the dealer or consumer. The addition of the amount of the assessment may appear as a separate line item on the invoice prepared by the distributor.

(b) Pass-through from dealers.--Beginning January 1, 2010, a dealer who purchased a returnable beverage container from a distributor who added the amount of the returnable beverage container assessment to the cost of the returnable beverage container paid by the dealer and which dealer sells the

returnable beverage container to a consumer may indicate the cost of the assessment as a separate line item on the invoice prepared by the dealer.

Section 9. Returnable beverage container requirements.

(a) General rule.--Except as provided in subsection (b), each returnable beverage container sold in this Commonwealth shall clearly indicate the returnable deposit value of the container and the word "Pennsylvania" or the letters "PA." The names or letters representing the names of other states with comparable deposit laws may also be included in the indication of the returnable deposit value. The returnable deposit value on every returnable beverage container shall be clearly, prominently and indelibly marked by painting, printing, scratch embossing, raised letter embossing or securely affixed stickers and shall appear on the top or side of the container in letters at least one-eighth inch in size.

(b) Nonapplicability.--Subsection (a) shall not apply to any type of refillable glass returnable beverage container that has a brand name permanently marked on it and the equivalent of a refund value of at least 5¢ which is paid upon receipt of the container by a dealer or returnable beverage distributor.

Section 10. Redemption of empty returnable beverage containers.

(a) General rule.--Except as provided in subsection (b), a dealer shall:

(1) Operate a redemption center by July 1, 2010, and shall accept all types of empty returnable beverage containers that bear a valid returnable deposit value for this Commonwealth under this act.

(2) Pay to any person who presents an empty returnable beverage container, except as otherwise provided under

1 section 13, the amount of the returnable deposit value for
2 the returnable beverage container, if it bears a valid
3 returnable deposit value for this Commonwealth under this
4 act.

5 (3) Ensure each returnable beverage container collected
6 is recycled and forward documentation necessary to support
7 claims for payment from the fund as stated in section 14 or
8 the regulations adopted under this act.

9 (b) Nonapplicability.--Subsection (a) shall not apply to any
10 dealer:

11 (1) who is located in a high density population area as
12 defined by regulation of the department and within two miles
13 of a certified redemption center that is operated
14 independently of a dealer;

15 (2) who is located in a rural area as defined by
16 regulation of the department;

17 (3) who subcontracts with a certified redemption center
18 to be operated on the dealer's premises;

19 (4) whose sales of returnable beverage containers are
20 only via vending machines;

21 (5) whose place of business is less than 5,000 square
22 feet of interior space;

23 (6) who can demonstrate physical or financial hardship,
24 or both, based on specific criteria established by regulation
25 of the department; or

26 (7) who meets other criteria established by the
27 department.

28 Notwithstanding the provisions of paragraphs (1) and (2), the
29 department may allow the placement of redemption centers at
30 greater than prescribed distances to accommodate geographical

1 features while ensuing adequate consumer convenience.

2 (c) Signs of closest redemption center.--Regardless of the
3 square footage of a dealer's place of business, a dealer that is
4 not a redemption center or has not subcontracted with a
5 redemption center shall post a clear and conspicuous sign at the
6 primary public entrance of the dealer's place of business that
7 specifies the name, address and hours of operation of the
8 closest redemption center location.

9 (d) On-premise consumption.--A person engaged in the
10 business of selling beverages in returnable beverage containers
11 for on-premises consumption shall collect the used returnable
12 beverage containers from its patrons and either use a certified
13 redemption center for the collection of containers or become a
14 certified redemption center.

15 Section 11. Redemption centers.

16 (a) Certification required.--Prior to operation, a
17 redemption center must be certified by the department.

18 (b) Applications.--An application for certification as a
19 redemption center shall be filed with the department on forms
20 prescribed by the department.

21 (c) Discretionary review of certification.--The department,
22 at any time, may review the certification of a redemption
23 center. After written notice to the person responsible for the
24 establishment and operation of the redemption center and to the
25 dealers served by the redemption center, the department, after
26 it has afforded the person a hearing in accordance with
27 applicable law, may withdraw the certification of the center if
28 it finds that there has not been compliance with applicable
29 laws, rules, permit conditions or certification requirements.

30 (d) Duties of redemption centers.--A redemption center

1 shall:

2 (1) Accept all types of empty returnable beverage
3 containers from consumers or other persons, unless excepted
4 under section 13.

5 (2) Pay to any consumer or other person who presents an
6 empty returnable beverage container, except as otherwise
7 provided under section 13, the amount of the returnable
8 deposit value for the returnable beverage container, if it
9 bears a valid returnable deposit value for this Commonwealth
10 under this act.

11 (3) Ensure each returnable beverage container collected
12 is recycled and forward documentation necessary to support
13 claims for payment from the fund as stated in section 14 or
14 the regulations adopted under this act.

15 (e) Compliance with laws.--The redemption area of a
16 redemption center shall be maintained in full compliance with
17 applicable laws and with the orders and rules of the department,
18 including permitting requirements, if deemed necessary by the
19 department.

20 Section 12. Development of procedures.

21 The department shall develop procedures to facilitate the
22 exchange of information between returnable beverage container
23 manufacturers, distributors and retailers and certified
24 redemption centers. The procedures developed by the department
25 shall allow for a reasonable time period between the
26 introduction of a new returnable beverage product and the
27 deadline for submitting universal product code information to
28 certified redemption centers operating reverse vending machines.

29 Section 13. Refusal of refund value payment for a returnable
30 beverage container.

1 A retailer or redemption center may refuse to pay the
2 returnable deposit value on any broken, corroded or dismembered
3 returnable beverage container or any returnable beverage
4 container that:

- 5 (1) contains a free-flowing liquid;
- 6 (2) does not properly indicate a refund value; or
- 7 (3) contains a significant amount of foreign material.

8 Section 14. Claims for reimbursement from the fund.

9 (a) General rule.--A dealer or redemption center that
10 accepts a returnable beverage container from a consumer or other
11 person and pays the returnable deposit value to the consumer or
12 other person may submit to the department a claim for
13 reimbursement from the fund.

14 (b) Amount of claim.--The department shall pay to each
15 dealer or redemption center that submits a claim under
16 subsection (a) 2¢ for each returnable beverage container that is
17 not returned.

18 (c) Alternative payment approach.--The department may choose
19 to pay the reimbursement amount on the basis of the total weight
20 of the containers received by material type and the average
21 weight of each container type, rather than on a per returnable
22 beverage container basis.

23 (d) Limitation.--Reimbursement from the fund may only occur
24 once for each returnable beverage container.

25 Section 15. Redemption center reporting.

26 In order for its claim to be approved by the department, a
27 dealer or redemption center shall submit to the department the
28 following information on forms prescribed by the department.

- 29 (1) The number or weight of returnable beverage
30 containers of each material type accepted at the redemption

center for the reporting period.

(2) The amount of refunds paid out by material type.

(3) The number or weight of returnable beverages containers of each material type transported out of this Commonwealth or to a permitted recycling facility.

(4) Copies of out-of-Commonwealth transport and weight receipts or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-Commonwealth transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

(5) Any other information deemed necessary by the department.

Section 16. Departmental inspections.

The records of a returnable beverage distributor, dealer, redemption center and recycling facility shall be made available, upon request, for inspection by the department or a duly authorized agent of the department. Any proprietary information obtained during the inspection shall be kept confidential and shall not be disclosed to any other person, except:

(1) as may be reasonably required in an administrative or judicial proceeding to enforce any provision of this act or any regulation adopted pursuant to this act; or

(2) under an order issued by a court.

Section 17. Annual report to General Assembly.

The department shall file a report with the General Assembly on an annual basis. The report shall include:

(1) Information on the administration of this act.

(2) Detailed financial information on the payment of

1 claims from the Returnable Beverage Container Fund and the
2 monthly transfers to the Hazardous Sites Cleanup Fund.

3 (3) Recommendations from the department as to whether
4 the actual claim experience of the Returnable Beverage
5 Container Fund necessitates adjustment of the percentage of
6 monthly transfers set forth in section 5(b)(2) in order for
7 the Returnable Beverage Container Fund to be fiscally sound
8 for the continued payment of claims pursuant to this act.

9 Section 18. Regulations.

10 The department may promulgate rules and regulations to
11 administer and enforce this act.

12 Section 19. Effective date.

13 This act shall take effect immediately.