

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS75070-LDx-7C (11/17)

Short Title: Litter Reduction Act of 2007.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REDUCE ROADSIDE AND OTHER LITTERING AND TO  
ENCOURAGE RECYCLING BY REQUIRING A DEPOSIT ON BEVERAGE  
CONTAINERS AND REQUIRING REDEMPTION CENTERS TO ACCEPT  
RETURNED BEVERAGE CONTAINERS AND REFUND THE DEPOSITS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 9 of Chapter 130A of the General Statutes is amended  
by adding a new Part to read:

"Part 2E. Beverage Container Deposits and Refunds.

**"§ 130A-309.90. Findings; intent.**

(a) The General Assembly finds that:

- (1) Beverage containers constitute a major source of nondegradable litter and solid waste in this State.
- (2) Litter remains a large problem in North Carolina despite other efforts to discourage littering and to establish criminal penalties under G.S. 14-399 for first-time and subsequent offenses of littering.
- (3) The collection and disposal of litter imposes a great financial burden on the citizens of North Carolina.
- (4) A more concerted effort to reduce litter is needed in North Carolina.
- (5) Beverage containers should be reused or recycled.
- (6) Other states' experience shows that beverage container deposit legislation is successful in reducing litter and increasing recycling of discarded beverage containers.
- (7) Beverage container deposit legislation is consistent with the State's policy, set forth in G.S. 130A-309.04, to promote methods of solid waste management that are alternatives to disposal in landfills.

1           (8) The program under this Part will contribute significantly to the  
2           reduction of the beverage container component of the litter in this  
3           State.

4           (b) It is the intent of the General Assembly to address the blight that litter  
5           imposes on the highways and lands of this State, while creating incentives for  
6           manufacturers, distributors, retailers, and consumers of beverages in beverage  
7           containers to recycle and reuse beverage containers.

8           **"§ 130A-309.91. Definitions.**

9           Unless a different meaning is required by the context, the following definitions  
10          apply throughout this Part:

11          (1) 'Beverage' means any ready-to-drink liquid intended for human  
12          consumption. Beverage includes any malt beverage; spirituous liquor;  
13          fortified wine; unfortified wine; wine cooler; soda or noncarbonated  
14          water; and any nonalcoholic carbonated or noncarbonated drink in  
15          liquid form.

16          (2) 'Beverage container' means the individual, separate bottle, can, jar,  
17          carton, or other receptacle that has been sealed by a manufacturer,  
18          contains a beverage, and is made of glass, metal, plastic, or other  
19          material, or any combination of these materials. Beverage container  
20          does not include cups or other similar open or loosely sealed  
21          receptacles.

22          (3) 'Consumer' means an individual who purchases a beverage in a  
23          beverage container for his or her use or consumption. Consumer  
24          includes a lodging, eating, or drinking establishment.

25          (4) 'Convenience zone' means a zone designated by the Department under  
26          G.S. 130A-309.95.

27          (5) 'Curbside program' means a recycling program that meets all of the  
28          following criteria:

29           a. The program picks up recyclables from individual residences.

30           b. The program is operated by, or pursuant to a contract with, a  
31           city, county, or other public agency.

32           c. The program accepts empty beverage containers from  
33           consumers with the intent to recycle them.

34          (6) 'Distributor' means a person who engages in the sale of beverages in  
35          beverage containers to a retailer in this State, including any person  
36          who imports beverages from outside the State for sale to retailers or  
37          consumers in this State.

38          (7) 'Drop-off or collection program' means any person, association,  
39          nonprofit corporation, church, club, or other organization that meets  
40          the requirements of the Department for a drop-off or collection  
41          program and that accepts or collects empty beverage containers from  
42          consumers with the intent to recycle them, but is not certified by the  
43          Department as a redemption center and does not pay the refund value

1 to consumers. Drop-off or collection program does not include a  
2 nonprofit drop-off program or a curbside program.

3 (8) 'Empty beverage container' means a beverage container that meets all  
4 of the following requirements:

5 a. Has the seal or closure installed by the manufacturer broken or  
6 removed.

7 b. Does not contain foreign materials other than the residue of the  
8 beverage originally packaged in the beverage container by the  
9 manufacturer.

10 c. Bears the message required under G.S. 130A-309.93 or is a  
11 refillable beverage container.

12 d. Has a refund value established under G.S. 130A-309.93.

13 (9) 'Nonprofit drop-off program' means a recycling program that meets all  
14 of the following criteria:

15 a. The program is organized under section 501(c) or section  
16 501(d) of the Internal Revenue Code (26 U.S.C. § 501(c), §  
17 501(d)), or operated by, or caused to be operated by, a city,  
18 county, or other public agency.

19 b. The program is certified by the Department as a redemption  
20 center under G.S. 130A-309.96.

21 c. The program accepts empty beverage containers from  
22 consumers with the intent to recycle them.

23 (10) 'Operator of a vending machine' means its owner, the person who  
24 refills it, or the owner or lessor of the property upon which it is  
25 located.

26 (11) 'Redemption center' means an operation that is certified by the  
27 Department and that accepts empty beverage containers from  
28 consumers and pays, or provides the refund value, for empty beverage  
29 containers.

30 (12) 'Redemption location' means a place, mobile unit, reverse vending  
31 machine, or other device where a certified redemption center accepts  
32 one or more types of empty beverage containers from consumers, and  
33 pays, or provides the refund value, for one or more types of empty  
34 beverage containers.

35 (13) 'Retailer' means a person who sells or offers for sale in this State to  
36 consumers a beverage in a beverage container, including an operator of  
37 a vending machine containing a beverage in a beverage container.

38 (14) 'Reverse vending machine' means a mechanical device that accepts one  
39 or more types of empty beverage containers and issues a cash refund  
40 or a redeemable credit slip with a value not less than the container's  
41 refund value.

42 (15) 'Supermarket' means a full-line, self-service retail store with gross  
43 annual sales of two million dollars (\$2,000,000) or more that sells a

1 line of dry goods, canned goods, or nonfood items and some perishable  
2 items.

3 (16) 'Use or consumption' means the exercise of any right or power over a  
4 beverage incident to the ownership thereof, other than the sale, storage,  
5 or retention for the purposes of sale of a beverage.

6 **"§ 130A-309.92. Department to administer program; adoption of rules; scope of**  
7 **Part.**

8 (a) The Department shall administer this Part.

9 (b) The Department and the Commission for Health Services may adopt any  
10 rules necessary or useful to implement this Part, and the Department may adopt any  
11 rules necessary or useful to carry out any of its duties imposed under this Part. The  
12 Department shall determine, by rule, whether any refund value applies to, or shall be  
13 paid for, a refillable beverage container under this Part. The Department may establish,  
14 by rule, criteria prescribing an obligation for the pickup or transfer of empty, unbroken,  
15 and reasonably clean beverage containers from redemption centers. The obligation may  
16 be fulfilled through a contracted agent. Any rules adopted under this subsection shall  
17 allocate the burdens associated with the handling, storage, and transportation of empty  
18 containers to prevent unreasonable financial or other hardship. These rules may require  
19 a redemption center to transport all returned containers to a material recovery facility or  
20 a recycling firm for sale at market or scrap value.

21 **"§ 130A-309.93. Deposit and refund value; requirements concerning beverage**  
22 **containers.**

23 (a) Every consumer who purchases a beverage in a beverage container shall pay  
24 a deposit equal to the refund value under subsection (b) of this section.

25 (b) Subject to subsection (e) of this section, every beverage container sold or  
26 offered for sale to a consumer in this State that contains no more than four liters and no  
27 less than 50 milliliters of a beverage shall have a refund value of ten cents (10¢).

28 (c) Every beverage container that contains a beverage that is sold or offered for  
29 sale in this State shall clearly indicate by embossing or imprinting on the normal  
30 product label, or in the case of metal beverage containers, on the top of the container the  
31 words 'North Carolina' or the initials 'N.C.' and the refund value of the container in not  
32 less than one-quarter inch type size. This subsection does not apply to any permanently  
33 labeled glass beverage container having a refund value of not less than ten cents (10¢)  
34 prior to the effective date of this Part and having a brand name permanently marked  
35 thereon, unless the glass beverage container contains spirituous liquors, fortified or  
36 unfortified wines, or malt beverages.

37 (d) Every beverage container that contains a beverage that is sold or offered for  
38 sale in this State shall be made of materials that are recyclable or made of recycled  
39 materials.

40 (e) Every five years, the Department shall determine the percentages of each  
41 category of beverage containers, based on the composition of the container: aluminum,  
42 nonaluminum metal, glass, plastic, or other materials or combination of materials, that  
43 are being returned. If the Department finds that the return rate for any category is less

1 than seventy-five percent (75%), the Department may increase the refund rate for that  
2 category of beverage containers by five cents (5¢).

3 **"§ 130A-309.94. Duties of retailers.**

4 (a) Every retailer shall pay to the distributor deposits equal to the value of the  
5 refunds under G.S. 130A-309.92 when the retailer purchases beverages from a  
6 distributor and shall receive deposits from consumers at the time of sale.

7 (b) Every retailer shall identify, by a clear and conspicuous sign at the retailer's  
8 place of business, the address of at least the redemption center or redemption location  
9 nearest to the retailer that redeems all types of empty beverage containers at one  
10 location during at least 30 hours per week with a minimum of five hours of operation  
11 occurring during periods other than from Monday to Friday, from 9:00 A.M. to 5:00  
12 P.M.

13 **"§ 130A-309.95. Redemption centers duties; additional duties of Department.**

14 (a) There shall be at least one certified redemption center or redemption location  
15 within every convenience zone. The redemption center and redemption location shall  
16 accept from any consumer and shall pay to the consumer the refund value in cash at one  
17 location for all types of empty beverage containers during at least 30 hours per week  
18 with a minimum of five hours of operation occurring during periods other than from  
19 Monday to Friday, from 9:00 A.M. to 5:00 P.M. The redemption center may pay the  
20 refund value based on the weight of the empty beverage containers.

21 (b) The redemption center and redemption location shall accept from any drop-  
22 off or collection program and shall pay to the drop-off or collection program the refund  
23 value for all types of empty beverage containers. The redemption center may pay the  
24 refund value based on the weight of the empty beverage containers. No drop-off or  
25 collection program shall pay any refund to the consumer.

26 (c) The Department shall, on a statewide basis, designate all convenience zones,  
27 including convenience zones in underserved areas, and shall prepare a map showing  
28 these convenience zones. The Department shall update convenience zone designations  
29 and maps as necessary. The Department shall develop and maintain a list of  
30 supermarkets and shall identify supermarket locations only for the purpose of providing  
31 a reference point in the establishment of convenience zones. The Department shall not  
32 designate more than one convenience zone per 10,000 residents in nonrural underserved  
33 areas or more than one convenience zone per 7,000 residents in rural underserved areas.  
34 The redemption location in underserved areas shall be located within one mile of a  
35 retailer. The Department shall not designate a convenience zone in an underserved area  
36 that would require establishing a redemption center or a redemption location in an area  
37 adjacent to, or conveniently accessible to, an established convenience zone.

38 (d) The Department shall attempt to enter into agreements with established  
39 recycling centers to provide redemption centers or redemption locations that satisfy the  
40 requirements under subsection (a) of this section in each convenience zone.

41 (e) If the Department determines that subsection (a) of this section cannot be  
42 fulfilled in a particular convenience zone due to factors beyond the control of the  
43 Department, the Department may establish by rule an alternative minimum convenience

1 requirement for that convenience zone that shall not conflict with the purposes of this  
2 Part.

3 (f) The Secretary may grant an exemption to the requirements of subsection (a)  
4 of this section if all of the following conditions exist:

5 (1) The Secretary may grant an exemption only for individual convenience  
6 zones. The Secretary shall not grant a blanket exemption to areas  
7 larger than a single convenience zone.

8 (2) An exemption may be granted only to further the purposes of this Part.

9 (3) An exemption may be granted only after the Department holds a public  
10 hearing.

11 (4) An exemption may only be granted to prevent the creation of excessive  
12 redemption locations resulting in severe adverse local market  
13 conditions for recycled materials or if, after a public hearing, a city,  
14 county, or city and county request an exemption for an existing  
15 nonprofit recycling center for its location.

16 (5) The total number of exemptions shall not be more than ten percent  
17 (10%) of all redemption locations that would otherwise be created  
18 under this Part, as calculated by the Department.

19 (6) The Secretary shall not grant an exemption that would significantly  
20 decrease the ability of consumers to conveniently return empty  
21 beverage containers and receive payments for the refund value.

22 (7) In areas where curbside programs collect and recycle beverage  
23 containers, the Secretary shall not grant an exemption for the benefit of  
24 the curbside program unless the local agency administering the  
25 program requests the Department to grant an exemption and the  
26 program collects and recycles all types of beverage containers from  
27 households at least weekly.

28 **"§ 130A-309.96. Redemption centers; certification process.**

29 (a) The Department shall certify redemption centers pursuant to this section. The  
30 Department shall certify any nonprofit drop-off program that meets the requirements  
31 established by the Department and the purposes of this Part. The Department shall not  
32 certify any drop-off or collection program as a redemption program. The Secretary shall  
33 adopt by rule a procedure for the self-certification of redemption centers, including  
34 standards for certification. These rules shall require that all information be submitted to  
35 the Department under penalty of perjury. These rules shall require that at least all of the  
36 following conditions be satisfied for certification:

37 (1) The operator of the redemption center demonstrates to the satisfaction  
38 of the Department that the operator will operate in accordance with  
39 this Part and any rules adopted under this Part.

40 (2) The operator of the redemption center shall not knowingly pay a  
41 refund for any food or packaging material or any beverage container or  
42 other product that does not have a refund value under  
43 G.S. 130A-309.93.

- 1           (3)    The operator of the redemption center shall take those actions that  
2           satisfy the Department to prevent the payment of a refund for any food  
3           or packaging material or any beverage container or other product that  
4           does not have a refund value under G.S. 130A-309.93.
- 5           (4)    The operator of the redemption center shall accept all empty beverage  
6           containers, regardless of type, from consumers and from drop-off or  
7           collection programs and shall pay the refund value for all empty  
8           beverage containers, regardless of type.
- 9           (5)    The operator of the redemption center shall notify the Department  
10          promptly of any change in the nature of its operations that conflicts  
11          with information submitted in the operator's application for  
12          certification.
- 13          (6)    The operator of the redemption center shall be subject to an audit of  
14          empty beverage container redemptions by the Department, in a manner  
15          determined by the Department, to ensure that the operator is  
16          complying with this Part and any rules adopted under this Part.
- 17          (b)    The Department may review and verify all applications for certification of  
18          redemption centers and may conduct an investigation of any applicant in any manner  
19          that the Department deems necessary to promote the purposes of this Part.
- 20          (c)    After notice and hearing, the Department may revoke, suspend, or refuse to  
21          renew a certificate granted under this section or may impose a civil penalty on the  
22          operator holding the certificate for any one or more of the following reasons:
- 23               (1)    The operator is convicted of any crime substantially related to the  
24               qualifications, functions, and duties of an operator of a redemption  
25               center.
- 26               (2)    The operator engaged in fraud or deceit to obtain a certificate for a  
27               redemption center.
- 28               (3)    The operator engaged in dishonesty and substantial incompetence or  
29               fraud performing the functions and duties of an operator of a  
30               redemption center.
- 31               (4)    The operator willfully violated G.S. 130A-309.95(a), 130A-309.95(b),  
32               or 130A-309.103(c).
- 33          (d)    In making a determination under subsection (c) of this section, the  
34          Department may do any of the following:
- 35               (1)    Immediately revoke the certificate.
- 36               (2)    Immediately suspend the certificate for a specified period of time.
- 37               (3)    Permit the operator to continue operation as a certified redemption  
38               center until a specified date, at which time the revocation or  
39               suspension shall become effective.
- 40               (4)    Permit the operator to continue operation as a certified redemption  
41               center on condition of complying with any conditions that the  
42               Department determines would further the purposes of this Part.

1           (5) Impose a civil penalty of not more than one hundred dollars (\$100.00)  
2 per violation. Each day that a violation occurs shall be considered a  
3 separate violation.

4 **"§ 130A-309.97. Reimbursement to redemption centers and other programs.**

5       (a) The Department shall reimburse the redemption center the refund value for  
6 every empty beverage container received by the redemption center from consumers and  
7 from drop-off or collection programs, plus two percent (2%) of the refund value for  
8 administrative costs.

9       (b) The Department shall reimburse the nonprofit drop-off program the refund  
10 value for every empty beverage container received by the drop-off program from  
11 consumers. A nonprofit drop-off program may pay refunds to the consumers, and, if it  
12 does, the Department shall also pay to the nonprofit drop-off two percent (2%) of the  
13 refund value for administrative costs.

14       (c) The Department shall reimburse the curbside program the refund value for  
15 every empty beverage container received by the curbside program from consumers. No  
16 curbside program shall pay any refund to the consumer, and no curbside program is  
17 eligible to receive any sum for administrative costs.

18 **"§ 130A-309.98. Duties of distributors.**

19       Within 10 days of the end of each month and in a form and manner to be determined  
20 by the Department, a distributor shall pay to the Department the refund value of every  
21 beverage container sold or transferred to a retailer, less one percent (1%) for the  
22 distributor's administrative costs.

23 **"§ 130A-309.99. Retailer acting as distributor.**

24       Whenever any retailer or group of retailers receives a shipment or consignment of,  
25 or in any other manner acquires, beverage containers outside the State for sale to  
26 consumers in the State, such retailer shall comply with this Part as if the retailer were a  
27 distributor, as well as a retailer.

28 **"§ 130A-309.100. Redemption arrangements for vending machines.**

29       Any operator of a vending machine may elect to arrange with a certified redemption  
30 center, within five miles of the location of the vending machine, to redeem beverage  
31 containers from the vending machine. The vending machine operator shall post on each  
32 vending machine the name and address of the redeeming redemption center.

33 **"§ 130A-309.101. Beverage Container Litter Reduction Account.**

34       (a) The Beverage Container Litter Reduction Account is created in the  
35 Department, to be administered by the Department. The Beverage Container Litter  
36 Reduction Account is a nonreverting fund that consists of refund values remitted by  
37 distributors to the Department under G.S. 130A-309.98 and credited to the Account.  
38 Interest earned shall accrue to the Account.

39       (b) The Beverage Container Litter Reduction Account shall be used to fund the  
40 following:

41           (1) The costs to the Department for administering this Part.

42           (2) Payments by the Department to certified redemption centers, nonprofit  
43 drop-off programs, and curbside programs as reimbursement for

1           refund values and for any administrative costs required under  
2           G.S. 130A-309.97.

3           (3) A reserve for contingencies in the following amount:

4           a. A reasonable and prudent amount determined by the  
5           Department, not to exceed one million dollars (\$1,000,000).

6           b. During any calendar year, the reserve shall not be greater than  
7           an amount equal to one-fourth of the total amount paid as  
8           reimbursements under subdivision (2) of this subsection during  
9           the preceding calendar year, plus any interest on that amount.

10          (c) The Unredeemed Beverage Container Deposits Account is created in the  
11 Department, to be administered by the Department. After all expenditures under  
12 subsection (b) of this section have been made, the balance remaining in the Beverage  
13 Container Litter Reduction Account shall be credited to the Unredeemed Beverage  
14 Container Deposits Account. The Unredeemed Beverage Container Deposits Account  
15 may be used for all of the following purposes:

16           (1) For urban, rural, and recreational litter abatement and recycling  
17           activities or grants.

18           (2) For recycling information, education, and promotion.

19           (3) For incentive payments to encourage the establishment of certified  
20           redemption centers in convenience zones in underserved or rural areas.

21           (4) For public education programs directed at reducing litter.

22 **"§ 130A-309.102. Additional penalties.**

23          (a) A person may be assessed a civil penalty not to exceed one thousand dollars  
24 (\$1,000) per violation if the person does any of the following:

25           (1) Sells or offers for sale beverages in containers not labeled in  
26           accordance with G.S. 130A-309.93.

27           (2) Operates a redemption center without obtaining a certificate under  
28           G.S. 130A-309.96.

29           (4) Makes a report pursuant to G.S. 130A-309.103 that is false.

30          (b) The Department may examine the accounts and records of distributors and  
31 may assess a penalty of ten percent (10%) per year, plus interest, for underpayments of  
32 the refund value for beverage containers to be credited to the Beverage Container Litter  
33 Reduction Account. The Department may also impose a civil penalty of fifteen percent  
34 (15%) of the amount due for payments up to a month late and a five percent (5%)  
35 additional penalty for each month the payments continue to be unremitted.

36 **"§ 130A-309.103. Reports.**

37          (a) Every distributor who sells or offers for sale in this State beverages in  
38 beverage containers shall report to the Department no later than April 15, 2008, and  
39 quarterly thereafter, the number of beverages in beverage containers sold, by material  
40 type and size and weight, and by any other manner prescribed by the Department.

41          (b) No later than July 1, 2008, and annually thereafter, the Department shall  
42 determine and shall include in its report all of the following:

43           (1) A summary of the information contained in the distributors' reports  
44           under subsection (a) of this section.

- 1           (2)   The status of beverage container recycling opportunities throughout  
2           the State, together with any recommendations on methods to enhance  
3           the opportunities for all consumers in every region of the State to  
4           return empty beverage containers conveniently, efficiently, and  
5           economically.
- 6           (3)   An analysis of the total amount of funds used for program  
7           administration and for reimbursement payments to redemption centers,  
8           nonprofit drop-off programs, and curbside programs and an analysis of  
9           how funds in the Unredeemed Beverage Containers Deposit Account  
10           are distributed and used under G.S. 130A-309.101(c).
- 11           (4)   The economic impact of this Part on North Carolina retailers,  
12           distributors, and manufacturers of beverages and their containers.
- 13           (5)   The problems, if any, incurred in the distribution, sale, and return of  
14           beverage containers attributed to the enactment of this Part.
- 15           (6)   The effectiveness of this Part in reducing the proportion of empty  
16           beverage containers in litter found along the State's roads and  
17           highways and along its streams and rivers.
- 18           (7)   The effectiveness of this Part in increasing recycling or reuse of  
19           beverage containers.
- 20           (8)   The costs incurred in the administration of this Part.
- 21           (9)   Any recommendations or administrative or legislative proposals  
22           considered appropriate to improving the effectiveness of this Part in  
23           achieving its purposes.
- 24           (10) Any other information the Department determines is pertinent to  
25           achieving the purposes of this Part.

26           (c)   The Department may require any retailer, distributor, or certified redemption  
27           center to provide that information concerning its compliance with this Part that will  
28           enable the Department to prepare its report under this section."

29           **SECTION 2.** In order to be assured that sufficient funds have accrued in the  
30 Beverage Container Litter Reduction Account created in G.S. 130A-309.101, as enacted  
31 in Section 1 of this act, for the payment of refunds for beverage containers under Part  
32 2E of Article 9 of Chapter 130A of the General Statutes, as enacted in Section 1 of this  
33 act, the Department of Environment and Natural Resources shall establish the date, no  
34 later than July 1, 2008, for redemptions of beverage containers to commence.

35           **SECTION 3.** G.S. 130A-309.95(a), 130A-309.95(b), 130A-309.97, and  
36 130A-309.101(b), as enacted in Section 1 of this act, become effective April 1, 2008.  
37 The remainder of this act becomes effective January 1, 2008, and applies to beverage  
38 containers sold or offered for sale on or after that date.