

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 215

Short Title: Litter Reduction Act of 2007. (Public)

Sponsors: Senators Berger of Franklin; Cowell, Goss, Graham, and Kinnaird.

Referred to: Commerce, Small Business and Entrepreneurship.

February 20, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE ROADSIDE AND OTHER LITTERING AND TO
3 ENCOURAGE RECYCLING BY REQUIRING A DEPOSIT ON BEVERAGE
4 CONTAINERS AND REQUIRING REDEMPTION CENTERS TO ACCEPT
5 RETURNED BEVERAGE CONTAINERS AND REFUND THE DEPOSITS.

6 The General Assembly of North Carolina enacts:

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

9 "Part 2E. Beverage Container Deposits and Refunds.

10 "**§ 130A-309.90. Findings; intent.**

11 (a) The General Assembly finds that:

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

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

5 **"§ 130A-309.91. Definitions.**

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

- 8 (1) 'Beverage' means any ready-to-drink liquid intended for human
9 consumption. Beverage includes any malt beverage; spirituous liquor;
10 fortified wine; unfortified wine; wine cooler; soda or noncarbonated
11 water; and any nonalcoholic carbonated or noncarbonated drink in
12 liquid form.
- 13 (2) 'Beverage container' means the individual, separate bottle, can, jar,
14 carton, or other receptacle that has been sealed by a manufacturer,
15 contains a beverage, and is made of glass, metal, plastic, or other
16 material, or any combination of these materials. Beverage container
17 does not include cups or other similar open or loosely sealed
18 receptacles.
- 19 (3) 'Consumer' means an individual who purchases a beverage in a
20 beverage container for his or her use or consumption. Consumer
21 includes a lodging, eating, or drinking establishment.
- 22 (4) 'Convenience zone' means a zone designated by the Department under
23 G.S. 130A-309.95.
- 24 (5) 'Curbside program' means a recycling program that meets all of the
25 following criteria:
26 a. The program picks up recyclables from individual residences.
27 b. The program is operated by, or pursuant to a contract with, a
28 city, county, or other public agency.
29 c. The program accepts empty beverage containers from
30 consumers with the intent to recycle them.
- 31 (6) 'Distributor' means a person who engages in the sale of beverages in
32 beverage containers to a retailer in this State, including any person
33 who imports beverages from outside the State for sale to retailers or
34 consumers in this State.
- 35 (7) 'Drop-off or collection program' means any person, association,
36 nonprofit corporation, church, club, or other organization that meets
37 the requirements of the Department for a drop-off or collection
38 program and that accepts or collects empty beverage containers from
39 consumers with the intent to recycle them, but is not certified by the
40 Department as a redemption center and does not pay the refund value
41 to consumers. Drop-off or collection program does not include a
42 nonprofit drop-off program or a curbside program.
- 43 (8) 'Empty beverage container' means a beverage container that meets all
44 of the following requirements:

- 1 a. Has the seal or closure installed by the manufacturer broken or
2 removed.
- 3 b. Does not contain foreign materials other than the residue of the
4 beverage originally packaged in the beverage container by the
5 manufacturer.
- 6 c. Bears the message required under G.S. 130A-309.93 or is a
7 refillable beverage container.
- 8 d. Has a refund value established under G.S. 130A-309.93.
- 9 (9) 'Nonprofit drop-off program' means a recycling program that meets all
10 of the following criteria:
- 11 a. The program is organized under section 501(c) or section
12 501(d) of the Internal Revenue Code (26 U.S.C. § 501(c), §
13 501(d)), or operated by, or caused to be operated by, a city,
14 county, or other public agency.
- 15 b. The program is certified by the Department as a redemption
16 center under G.S. 130A-309.96.
- 17 c. The program accepts empty beverage containers from
18 consumers with the intent to recycle them.
- 19 (10) 'Operator of a vending machine' means its owner, the person who
20 refills it, or the owner or lessor of the property upon which it is
21 located.
- 22 (11) 'Redemption center' means an operation that is certified by the
23 Department and that accepts empty beverage containers from
24 consumers and pays, or provides the refund value, for empty beverage
25 containers.
- 26 (12) 'Redemption location' means a place, mobile unit, reverse vending
27 machine, or other device where a certified redemption center accepts
28 one or more types of empty beverage containers from consumers, and
29 pays, or provides the refund value, for one or more types of empty
30 beverage containers.
- 31 (13) 'Retailer' means a person who sells or offers for sale in this State to
32 consumers a beverage in a beverage container, including an operator of
33 a vending machine containing a beverage in a beverage container.
- 34 (14) 'Reverse vending machine' means a mechanical device that accepts one
35 or more types of empty beverage containers and issues a cash refund
36 or a redeemable credit slip with a value not less than the container's
37 refund value.
- 38 (15) 'Supermarket' means a full-line, self-service retail store with gross
39 annual sales of two million dollars (\$2,000,000) or more that sells a
40 line of dry goods, canned goods, or nonfood items and some perishable
41 items.
- 42 (16) 'Use or consumption' means the exercise of any right or power over a
43 beverage incident to the ownership thereof, other than the sale, storage,
44 or retention for the purposes of sale of a beverage.

1 **"§ 130A-309.92. Department to administer program; adoption of rules; scope of**
2 **Part.**

3 (a) The Department shall administer this Part.

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

16 **"§ 130A-309.93. Deposit and refund value; requirements concerning beverage**
17 **containers.**

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

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

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

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

35 (e) Every five years, the Department shall determine the percentages of each
36 category of beverage containers, based on the composition of the container: aluminum,
37 nonaluminum metal, glass, plastic, or other materials or combination of materials, that
38 are being returned. If the Department finds that the return rate for any category is less
39 than seventy-five percent (75%), the Department may increase the refund rate for that
40 category of beverage containers by five cents (5¢).

41 **"§ 130A-309.94. Duties of retailers.**

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

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

7 **"§ 130A-309.95. Redemption centers duties; additional duties of Department.**

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

15 (b) The redemption center and redemption location shall accept from any drop-
16 off or collection program and shall pay to the drop-off or collection program the refund
17 value for all types of empty beverage containers. The redemption center may pay the
18 refund value based on the weight of the empty beverage containers. No drop-off or
19 collection program shall pay any refund to the consumer.

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

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

35 (e) If the Department determines that subsection (a) of this section cannot be
36 fulfilled in a particular convenience zone due to factors beyond the control of the
37 Department, the Department may establish by rule an alternative minimum convenience
38 requirement for that convenience zone that shall not conflict with the purposes of this
39 Part.

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

- 42 (1) The Secretary may grant an exemption only for individual convenience
43 zones. The Secretary shall not grant a blanket exemption to areas
44 larger than a single convenience zone.

- 1 (2) An exemption may be granted only to further the purposes of this Part.
2 (3) An exemption may be granted only after the Department holds a public
3 hearing.
4 (4) An exemption may only be granted to prevent the creation of excessive
5 redemption locations resulting in severe adverse local market
6 conditions for recycled materials or if, after a public hearing, a city,
7 county, or city and county request an exemption for an existing
8 nonprofit recycling center for its location.
9 (5) The total number of exemptions shall not be more than ten percent
10 (10%) of all redemption locations that would otherwise be created
11 under this Part, as calculated by the Department.
12 (6) The Secretary shall not grant an exemption that would significantly
13 decrease the ability of consumers to conveniently return empty
14 beverage containers and receive payments for the refund value.
15 (7) In areas where curbside programs collect and recycle beverage
16 containers, the Secretary shall not grant an exemption for the benefit of
17 the curbside program unless the local agency administering the
18 program requests the Department to grant an exemption and the
19 program collects and recycles all types of beverage containers from
20 households at least weekly.

21 **§ 130A-309.96. Redemption centers; certification process.**

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

- 30 (1) The operator of the redemption center demonstrates to the satisfaction
31 of the Department that the operator will operate in accordance with
32 this Part and any rules adopted under this Part.
33 (2) The operator of the redemption center shall not knowingly pay a
34 refund for any food or packaging material or any beverage container or
35 other product that does not have a refund value under
36 G.S. 130A-309.93.
37 (3) The operator of the redemption center shall take those actions that
38 satisfy the Department to prevent the payment of a refund for any food
39 or packaging material or any beverage container or other product that
40 does not have a refund value under G.S. 130A-309.93.
41 (4) The operator of the redemption center shall accept all empty beverage
42 containers, regardless of type, from consumers and from drop-off or
43 collection programs and shall pay the refund value for all empty
44 beverage containers, regardless of type.

1 (5) The operator of the redemption center shall notify the Department
2 promptly of any change in the nature of its operations that conflicts
3 with information submitted in the operator's application for
4 certification.

5 (6) The operator of the redemption center shall be subject to an audit of
6 empty beverage container redemptions by the Department, in a manner
7 determined by the Department, to ensure that the operator is
8 complying with this Part and any rules adopted under this Part.

9 (b) The Department may review and verify all applications for certification of
10 redemption centers and may conduct an investigation of any applicant in any manner
11 that the Department deems necessary to promote the purposes of this Part.

12 (c) After notice and hearing, the Department may revoke, suspend, or refuse to
13 renew a certificate granted under this section or may impose a civil penalty on the
14 operator holding the certificate for any one or more of the following reasons:

15 (1) The operator is convicted of any crime substantially related to the
16 qualifications, functions, and duties of an operator of a redemption
17 center.

18 (2) The operator engaged in fraud or deceit to obtain a certificate for a
19 redemption center.

20 (3) The operator engaged in dishonesty and substantial incompetence or
21 fraud performing the functions and duties of an operator of a
22 redemption center.

23 (4) The operator willfully violated G.S. 130A-309.95(a), 130A-309.95(b),
24 or 130A-309.103(c).

25 (d) In making a determination under subsection (c) of this section, the
26 Department may do any of the following:

27 (1) Immediately revoke the certificate.

28 (2) Immediately suspend the certificate for a specified period of time.

29 (3) Permit the operator to continue operation as a certified redemption
30 center until a specified date, at which time the revocation or
31 suspension shall become effective.

32 (4) Permit the operator to continue operation as a certified redemption
33 center on condition of complying with any conditions that the
34 Department determines would further the purposes of this Part.

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

38 **"§ 130A-309.97. Reimbursement to redemption centers and other programs.**

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

43 (b) The Department shall reimburse the nonprofit drop-off program the refund
44 value for every empty beverage container received by the drop-off program from

1 consumers. A nonprofit drop-off program may pay refunds to the consumers, and, if it
2 does, the Department shall also pay to the nonprofit drop-off two percent (2%) of the
3 refund value for administrative costs.

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

8 **"§ 130A-309.98. Duties of distributors.**

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

13 **"§ 130A-309.99. Retailer acting as distributor.**

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

18 **"§ 130A-309.100. Redemption arrangements for vending machines.**

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

23 **"§ 130A-309.101. Beverage Container Litter Reduction Account.**

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

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

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

32 (2) Payments by the Department to certified redemption centers, nonprofit
33 drop-off programs, and curbside programs as reimbursement for
34 refund values and for any administrative costs required under
35 G.S. 130A-309.97.

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

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

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

43 (c) The Unredeemed Beverage Container Deposits Account is created in the
44 Department, to be administered by the Department. After all expenditures under

1 subsection (b) of this section have been made, the balance remaining in the Beverage
2 Container Litter Reduction Account shall be credited to the Unredeemed Beverage
3 Container Deposits Account. The Unredeemed Beverage Container Deposits Account
4 may be used for all of the following purposes:

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

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

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

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

11 **"§ 130A-309.102. Additional penalties.**

12 (a) A person may be assessed a civil penalty not to exceed one thousand dollars
13 (\$1,000) per violation if the person does any of the following:

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

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

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

19 (b) The Department may examine the accounts and records of distributors and
20 may assess a penalty of ten percent (10%) per year, plus interest, for underpayments of
21 the refund value for beverage containers to be credited to the Beverage Container Litter
22 Reduction Account. The Department may also impose a civil penalty of fifteen percent
23 (15%) of the amount due for payments up to a month late and a five percent (5%)
24 additional penalty for each month the payments continue to be unremitted.

25 **"§ 130A-309.103. Reports.**

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

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

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

34 (2) The status of beverage container recycling opportunities throughout
35 the State, together with any recommendations on methods to enhance
36 the opportunities for all consumers in every region of the State to
37 return empty beverage containers conveniently, efficiently, and
38 economically.

39 (3) An analysis of the total amount of funds used for program
40 administration and for reimbursement payments to redemption centers,
41 nonprofit drop-off programs, and curbside programs and an analysis of
42 how funds in the Unredeemed Beverage Containers Deposit Account
43 are distributed and used under G.S. 130A-309.101(c).

- 1 (4) The economic impact of this Part on North Carolina retailers,
2 distributors, and manufacturers of beverages and their containers.
3 (5) The problems, if any, incurred in the distribution, sale, and return of
4 beverage containers attributed to the enactment of this Part.
5 (6) The effectiveness of this Part in reducing the proportion of empty
6 beverage containers in litter found along the State's roads and
7 highways and along its streams and rivers.
8 (7) The effectiveness of this Part in increasing recycling or reuse of
9 beverage containers.
10 (8) The costs incurred in the administration of this Part.
11 (9) Any recommendations or administrative or legislative proposals
12 considered appropriate to improving the effectiveness of this Part in
13 achieving its purposes.
14 (10) Any other information the Department determines is pertinent to
15 achieving the purposes of this Part.

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

19 **SECTION 2.** In order to be assured that sufficient funds have accrued in the
20 Beverage Container Litter Reduction Account created in G.S. 130A-309.101, as enacted
21 in Section 1 of this act, for the payment of refunds for beverage containers under Part
22 2E of Article 9 of Chapter 130A of the General Statutes, as enacted in Section 1 of this
23 act, the Department of Environment and Natural Resources shall establish the date, no
24 later than July 1, 2008, for redemptions of beverage containers to commence.

25 **SECTION 3.** G.S. 130A-309.95(a), 130A-309.95(b), 130A-309.97, and
26 130A-309.101(b), as enacted in Section 1 of this act, become effective April 1, 2008.
27 The remainder of this act becomes effective January 1, 2008, and applies to beverage
28 containers sold or offered for sale on or after that date.