

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS45009-LDx-11 (01/26)

Short Title: Litter Reduction Act of 2009.

(Public)

Sponsors: Senator Berger of Franklin.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE ROADSIDE AND OTHER LITTERING AND TO ENCOURAGE
3 RECYCLING BY REQUIRING A DEPOSIT ON BEVERAGE CONTAINERS AND
4 REQUIRING REDEMPTION CENTERS TO ACCEPT RETURNED BEVERAGE
5 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 by
8 adding a new Part to read:

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

10 "**§ 130A-309.130. Findings; intent.**

11 (a) The General Assembly finds that:

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

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

33 "**§ 130A-309.131. Definitions.**

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



* D R S 4 5 0 0 9 - L D X - 1 1 *

- 1 (1) 'Beverage' means any ready-to-drink liquid intended for human
2 consumption. Beverage includes any malt beverage; spirituous liquor;
3 fortified wine; unfortified wine; wine cooler; soda or noncarbonated water;
4 and any nonalcoholic carbonated or noncarbonated drink in liquid form.
- 5 (2) 'Beverage container' means the individual, separate bottle, can, jar, carton, or
6 other receptacle that has been sealed by a manufacturer, contains a beverage,
7 and is made of glass, metal, plastic, or other material, or any combination of
8 these materials. Beverage container does not include cups or other similar
9 open or loosely sealed receptacles.
- 10 (3) 'Consumer' means an individual who purchases a beverage in a beverage
11 container for his or her use or consumption. Consumer includes a lodging,
12 eating, or drinking establishment.
- 13 (4) 'Convenience zone' means a zone designated by the Department under
14 G.S. 130A-309.135.
- 15 (5) 'Curbside program' means a recycling program that meets all of the
16 following criteria:
17 a. The program picks up recyclables from individual residences.
18 b. The program is operated by, or pursuant to a contract with, a city,
19 county, or other public agency.
20 c. The program accepts empty beverage containers from consumers
21 with the intent to recycle them.
- 22 (6) 'Distributor' means a person who engages in the sale of beverages in
23 beverage containers to a retailer in this State, including any person who
24 imports beverages from outside the State for sale to retailers or consumers in
25 this State.
- 26 (7) 'Drop-off or collection program' means any person, association, nonprofit
27 corporation, church, club, or other organization that meets the requirements
28 of the Department for a drop-off or collection program and that accepts or
29 collects empty beverage containers from consumers with the intent to
30 recycle them, but is not certified by the Department as a redemption center
31 and does not pay the refund value to consumers. Drop-off or collection
32 program does not include a nonprofit drop-off program or a curbside
33 program.
- 34 (8) 'Empty beverage container' means a beverage container that meets all of the
35 following requirements:
36 a. Has the seal or closure installed by the manufacturer broken or
37 removed.
38 b. Does not contain foreign materials other than the residue of the
39 beverage originally packaged in the beverage container by the
40 manufacturer.
41 c. Bears the message required under G.S. 130A-309.133 or is a
42 refillable beverage container.
43 d. Has a refund value established under G.S. 130A-309.133.
- 44 (9) 'Nonprofit drop-off program' means a recycling program that meets all of the
45 following criteria:
46 a. The program is organized under section 501(c) or section 501(d) of
47 the Internal Revenue Code (26 U.S.C. § 501(c), § 501(d)), or
48 operated by, or caused to be operated by, a city, county, or other
49 public agency.
50 b. The program is certified by the Department as a redemption center
51 under G.S. 130A-309.136.

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

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

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

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

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

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

18 (15) 'Supermarket' means a full-line, self-service retail store with gross annual
19 sales of two million dollars (\$2,000,000) or more that sells a line of dry
20 goods, canned goods, or nonfood items and some perishable items.

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

24 **"§ 130A-309.132. Department to administer program; adoption of rules; scope of Part.**

25 (a) The Department shall administer this Part.

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

37 **"§ 130A-309.133. Deposit and refund value; requirements concerning beverage**
38 **containers.**

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

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

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

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

3 (e) Every five years, the Department shall determine the percentages of each category
4 of beverage containers, based on the composition of the container: aluminum, nonaluminum
5 metal, glass, plastic, or other materials or combination of materials, that are being returned. If
6 the Department finds that the return rate for any category is less than seventy-five percent
7 (75%), the Department may increase the refund rate for that category of beverage containers by
8 five cents (5¢).

9 **"§ 130A-309.134. Duties of retailers.**

10 (a) Every retailer shall pay to the distributor deposits equal to the value of the refunds
11 under G.S. 130A-309.133 when the retailer purchases beverages from a distributor and shall
12 receive deposits from consumers at the time of sale.

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

18 **"§ 130A-309.135. Redemption centers duties; additional duties of Department.**

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

26 (b) The redemption center and redemption location shall accept from any drop-off or
27 collection program and shall pay to the drop-off or collection program the refund value for all
28 types of empty beverage containers. The redemption center may pay the refund value based on
29 the weight of the empty beverage containers. No drop-off or collection program shall pay any
30 refund to the consumer.

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

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

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

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

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

23 **"§ 130A-309.136. Redemption centers; certification process.**

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

- 32 (1) The operator of the redemption center demonstrates to the satisfaction of the
33 Department that the operator will operate in accordance with this Part and
34 any rules adopted under this Part.
- 35 (2) The operator of the redemption center shall not knowingly pay a refund for
36 any food or packaging material or any beverage container or other product
37 that does not have a refund value under G.S. 130A-309.133.
- 38 (3) The operator of the redemption center shall take those actions that satisfy the
39 Department to prevent the payment of a refund for any food or packaging
40 material or any beverage container or other product that does not have a
41 refund value under G.S. 130A-309.133.
- 42 (4) The operator of the redemption center shall accept all empty beverage
43 containers, regardless of type, from consumers and from drop-off or
44 collection programs and shall pay the refund value for all empty beverage
45 containers, regardless of type.
- 46 (5) The operator of the redemption center shall notify the Department promptly
47 of any change in the nature of its operations that conflicts with information
48 submitted in the operator's application for certification.
- 49 (6) The operator of the redemption center shall be subject to an audit of empty
50 beverage container redemptions by the Department, in a manner determined

1 by the Department, to ensure that the operator is complying with this Part
2 and any rules adopted under this Part.

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

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

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

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

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

15 (4) The operator willfully violated G.S. 130A-309.135(a), 130A-309.135(b), or
16 130A-309.143(c).

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

19 (1) Immediately revoke the certificate.

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

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

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

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

30 **"§ 130A-309.137. Reimbursement to redemption centers and other programs.**

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

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

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

42 **"§ 130A-309.138. Duties of distributors.**

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

47 **"§ 130A-309.139. Retailer acting as distributor.**

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

51 **"§ 130A-309.140. Redemption arrangements for vending machines.**

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

5 **"§ 130A-309.141. Beverage Container Litter Reduction Account.**

6 (a) The Beverage Container Litter Reduction Account is created in the Department, to
7 be administered by the Department. The Beverage Container Litter Reduction Account is a
8 nonreverting fund that consists of refund values remitted by distributors to the Department
9 under G.S. 130A-309.138 and credited to the Account. Interest earned shall accrue to the
10 Account.

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

- 13 (1) The costs to the Department for administering this Part.
- 14 (2) Payments by the Department to certified redemption centers, nonprofit
15 drop-off programs, and curbside programs as reimbursement for refund
16 values and for any administrative costs required under G.S. 130A-309.137.
- 17 (3) A reserve for contingencies in the following amount:
 - 18 a. A reasonable and prudent amount determined by the Department, not
19 to exceed one million dollars (\$1,000,000).
 - 20 b. During any calendar year, the reserve shall not be greater than an
21 amount equal to one-fourth of the total amount paid as
22 reimbursements under subdivision (2) of this subsection during the
23 preceding calendar year, plus any interest on that amount.

24 (c) The Unredeemed Beverage Container Deposits Account is created in the
25 Department, to be administered by the Department. After all expenditures under subsection (b)
26 of this section have been made, the balance remaining in the Beverage Container Litter
27 Reduction Account shall be credited to the Unredeemed Beverage Container Deposits Account.
28 The Unredeemed Beverage Container Deposits Account may be used for all of the following
29 purposes:

- 30 (1) For urban, rural, and recreational litter abatement and recycling activities or
31 grants.
- 32 (2) For recycling information, education, and promotion.
- 33 (3) For incentive payments to encourage the establishment of certified
34 redemption centers in convenience zones in underserved or rural areas.
- 35 (4) For public education programs directed at reducing litter.

36 **"§ 130A-309.142. Additional penalties.**

37 (a) A person may be assessed a civil penalty not to exceed one thousand dollars
38 (\$1,000) per violation if the person does any of the following:

- 39 (1) Sells or offers for sale beverages in containers not labeled in accordance
40 with G.S. 130A-309.133.
- 41 (2) Operates a redemption center without obtaining a certificate under
42 G.S. 130A-309.136.
- 43 (3) Makes a report pursuant to G.S. 130A-309.143 that is false.

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

50 **"§ 130A-309.143. Reports.**

1 (a) Every distributor who sells or offers for sale in this State beverages in beverage
2 containers shall report to the Department no later than April 15, 2010, and quarterly thereafter,
3 the number of beverages in beverage containers sold, by material type and size and weight, and
4 by any other manner prescribed by the Department.

5 (b) No later than July 1, 2010, and annually thereafter, the Department shall determine
6 and shall include in its report all of the following:

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

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

13 (3) An analysis of the total amount of funds used for program administration
14 and for reimbursement payments to redemption centers, nonprofit drop-off
15 programs, and curbside programs and an analysis of how funds in the
16 Unredeemed Beverage Containers Deposit Account are distributed and used
17 under G.S. 130A-309.141(c).

18 (4) The economic impact of this Part on North Carolina retailers, distributors,
19 and manufacturers of beverages and their containers.

20 (5) The problems, if any, incurred in the distribution, sale, and return of
21 beverage containers attributed to the enactment of this Part.

22 (6) The effectiveness of this Part in reducing the proportion of empty beverage
23 containers in litter found along the State's roads and highways and along its
24 streams and rivers.

25 (7) The effectiveness of this Part in increasing recycling or reuse of beverage
26 containers.

27 (8) The costs incurred in the administration of this Part.

28 (9) Any recommendations or administrative or legislative proposals considered
29 appropriate to improving the effectiveness of this Part in achieving its
30 purposes.

31 (10) Any other information the Department determines is pertinent to achieving
32 the purposes of this Part.

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

36 **SECTION 2.** In order to be assured that sufficient funds have accrued in the
37 Beverage Container Litter Reduction Account created in G.S. 130A-309.141, as enacted in
38 Section 1 of this act, for the payment of refunds for beverage containers under Part 2E of
39 Article 9 of Chapter 130A of the General Statutes, as enacted in Section 1 of this act, the
40 Department of Environment and Natural Resources shall establish the date, no later than July 1,
41 2010, for redemptions of beverage containers to commence.

42 **SECTION 3.** G.S. 130A-309.135(a), 130A-309.135(b), 130A-309.137, and
43 130A-309.141(b), as enacted in Section 1 of this act, become effective April 1, 2010. The
44 remainder of this act becomes effective January 1, 2010, and applies to beverage containers
45 sold or offered for sale on or after that date.