

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3120

BY DELEGATES DOYLE, PYLES AND HANSEN

[Introduced February 12, 2019; Referred
to the Committee on Industry and Labor then Government
Organization.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-
 3 17-8, §20-17-9, §20-17-10, §20-17-11, §20-17-12, §20-17-13, and §20-17-14, all relating
 4 to requiring the use of returnable containers for soft drinks, soda water, carbonated natural
 5 or mineral water, other nonalcoholic carbonated drinks and for beer, ale or other malt
 6 drinks of any alcoholic content and for certain other beverage containers; requiring the
 7 use of unredeemed bottle deposits; prescribing the powers and duties of certain state
 8 agencies and officials; and prescribing penalties and remedies.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 17. WEST VIRGINIA BEVERAGE CONTAINER RECYCLING AND LITTER
 CONTROL ACT.**

§20-17-1. Legislative findings and purpose.

1 (a) The Legislature declares that in order for the State of West Virginia to encourage
 2 recycling, it is imperative that new opportunities for recycling, particularly in rural areas of the
 3 state, be developed.

4 (b) The Legislature finds that containers, are the most valuable and recyclable commodity
 5 in the waste stream and that the discarding of these containers is an unnecessary addition to the
 6 state’s litter problem and its already overburdened solid waste disposal system.

7 (c) The Legislature further finds that it is in the public interest to establish a program for
 8 the recycling of containers which:

9 (1) Stimulates statewide creation of new jobs and wider employment in the recycling
 10 industry;

11 (2) Reduces the volume of waste and litter;

12 (3) Increases opportunities for recycling and provides financial incentives for consumers
 13 to do so; and

14 (4) Builds upon existing recycling infrastructure.

§20-17-2. Definitions.

1 As used in this article:

2 (a) "Beverage" means beer, ale, or other drink produced by fermenting malt, mixed spirits,
3 mixed wine, tea and coffee drinks regardless of dairy delivered product content, soda, or
4 noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human
5 consumption that is contained in a beverage container.

6 (b) "Beverage container" means an airtight metal, glass, paper or plastic container or a
7 container composed of a combination of these materials, which, at the time of sale, contains one
8 gallon or less of a beverage.

9 (c) "Empty returnable container" means a beverage container which contains nothing
10 except the residue of its original contents.

11 (d) "Returnable container" means a beverage container upon which a deposit of at least
12 10 cents has been paid, or is required to be paid upon the removal of the container from the sale
13 or consumption area, and for which a refund of at least 10 cents in cash is payable by every dealer
14 or distributor in this state of that beverage in beverage containers, as further provided in this
15 section.

16 (e) "Nonreturnable container" means a beverage container upon which no deposit or a
17 deposit of less than 10 cents has been paid, or is required to be paid upon the removal of the
18 container from the sale or consumption area, or for which no cash refund or a refund of less than
19 10 cents is payable by a redemption center in this state of that beverage in beverage containers,
20 as further provided in this section.

21 (f) "Person" means an individual, partnership, corporation, association or other legal entity.

22 (g) "Dealer" means a person or business who sells or offers for sale to consumers within
23 this state a beverage in a beverage container.

24 (h) "Operator of a vending machine" means equally its owner, the person who refills it and

25 the owner or lessee of the property upon which it is located.

26 (i) "Distributor" means a person who sells beverages in beverage containers to a dealer
27 within this state and includes a manufacturer who engages in those sales.

28 (j) "Redemption Center" means an operation which accepts from consumers and provides
29 the refund value for empty deposit beverage containers intended to be recycled and ensures that
30 the empty deposit beverage containers are properly recycled.

31 (k) "Manufacturer" means a person who bottles, cans or otherwise places beverages in
32 beverage containers for sale to distributors, dealers or consumers.

33 (l) "Reverse vending machine" means a mechanical device, which accepts one or more
34 types of empty deposit beverage containers and issues a redeemable credit slip with a value of
35 not less than the container's refund value.

36 (m)"Within this state" means within the exterior limits of the State of West Virginia and
37 includes the territory within these limits owned by or ceded to the United States of America.

38 (n) "Sale or consumption area" means the premises within the property of the dealer or of
39 the dealer's lessor where the sale is made, within which beverages in returnable containers may
40 be consumed without payment of a deposit, and, upon removing a beverage container from which,
41 the customer is required by the dealer to pay the deposit.

42 (o) "Nonrefillable container" means a returnable container which is not intended to be
43 refilled for sale by a manufacturer.

44 (p) "Mixed wine drink" means a drink or similar product marketed as a wine cooler and
45 containing less than seven percent alcohol by volume, consisting of wine and plain, sparkling or
46 carbonated water and containing any one or more of the following:

47 (1) Nonalcoholic beverages;

48 (2) Flavoring;

49 (3) Coloring materials;

50 (4) Fruit juices;

51 (5) Fruit adjuncts;

52 (6) Sugar;

53 (7) Carbon dioxide;

54 (8) Preservatives.

55 (g) "Mixed spirit drink" means a drink containing ten percent or less alcohol by volume
56 consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials
57 and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide or
58 preservatives; or any spirits-based beverage, regardless of the percent of alcohol by volume, that
59 is manufactured for sale in a metal container.

§20-17-3. Nonreturnable containers; deposits; refunds; etc.

1 (a) A dealer within this state may not sell, offer for sale or give to a consumer a
2 nonreturnable container or a beverage in a nonreturnable container.

3 (b) A dealer who regularly sells beverages for consumption off the dealer's premises shall
4 collect a deposit on containers equal to 10 cents. Collected deposits will be submitted to the State
5 Treasury on a monthly basis.

6 (c) Regional or county centers for the redemption of returnable containers will provide a
7 means whereby the containers of any kind, size and brand sold or offered for sale by the dealer
8 may be returned, and the deposit refunded in cash to any person.

9 (d) A dealer who does not require a deposit on a returnable container when the contents
10 are consumed in the dealer's sale or consumption area is not required to pay a refund for
11 accepting that empty container.

12 (e) Each beverage container sold or offered for sale by a dealer within this state shall
13 clearly indicate by embossing or by a stamp, a label or other method securely affixed to the
14 beverage container, the refund value of the container and the name of this state. A dealer,
15 distributor or redemption center may, but is not required to, refuse to accept from a person an
16 empty returnable container which does not state on the container the refund value of the container

17 and the name of this state. This subsection does not apply to a refillable container having a refund
18 value of not less than 10 cents, having a brand name permanently marked on it, having a securely
19 affixed method of indicating that it is a returnable container.

20 (f) A person, dealer, distributor or manufacturer may not return an empty container to a
21 redemption center for a refund of the deposit if a redemption center has already refunded the
22 deposit on that returnable container. This subsection does not prohibit a redemption center from
23 refunding the deposit on an empty returnable container each time the returnable container is
24 sanitized by the manufacturer and reused as a beverage container.

25 (g) A redemption center may accept, but is not required to accept, from a person, empty
26 returnable containers for a refund in excess of \$25 on any given day.

27 (h) The State Treasurer will refund the deposit to the redemption center plus a three cent
28 per container handling fee.

§20-17-4. Redemption centers.

1 (a) Prior to operation, redemption centers shall be certified by the commission.

2 (b) Applicants for certification as a redemption center shall be filed with the Department of
3 Health and Human Resources on forms prescribed by the department.

4 (c) The state, at any time, may review the certification of a redemption center. After written
5 notice to the person responsible for the establishment and operation of the redemption center and
6 to the dealers served by the redemption center, the state may withdraw the certification of the
7 center if it finds that there has not been compliance with applicable laws, rules, permit conditions,
8 or certification requirements.

9 (d) Redemption centers shall:

10 (1) Accept all types of empty deposit beverage containers for which a deposit has been
11 paid.

12 (2) Verify that all containers to be redeemed bear a valid West Virginia refund value;

13 (3) Pay to the redeemer at minimum the full refund value for all beverage containers,

14 except as provided in §20-17-6 of this code;

15 (4) Crush or destroy all deposit beverage containers that are accepted at the time of
16 redemption;

17 (5) Ensure each container collected is recycled through a contractual agreement with an
18 out of state recycler or an in-state recycling facility permitted by the department: *Provided*, That
19 this paragraph shall not apply if the redemption center is operated by a recycler permitted by the
20 department; and

21 (6) Forward the documentation necessary to support claims for payment as stated in §20-
22 17-6 of this code.

23 (e) Redemption centers' redemption areas shall be maintained in full compliance with
24 applicable laws and with the orders and rules of the department, including permitting
25 requirements, if deemed necessary.

§20-17-5. Reverse vending machine requirements.

1 Reverse vending machines may be used by redemption centers provided that the reverse
2 vending machine shall accept any type of empty deposit beverage container and pay out
3 appropriate refunds via a redeemable voucher for those containers that bear a valid West Virginia
4 refund value. The reverse vending machine shall be routinely serviced to ensure proper operation
5 and continuous acceptance of containers and payment of refunds. All deposit beverage
6 containers accepted by a reverse vending machine shall either be crushed or destroyed at the
7 point of redemption.

§20-17-6. Refusal of refund value payment for a deposit beverage container.

1 Redemption centers shall refuse to pay the refund value on any broken, corroded,
2 dismembered, flattened deposit beverage container, or any deposit beverage container which:

3 (1) Contains a free flowing liquid;

4 (2) Does not properly indicate a refund value; or

5 (3) Contains a significant amount of foreign material.

§20-17-7. Redemption center reporting.

1 The State Treasurer shall pay certified redemption centers handling fees and refund
2 values as described in §20-17-3 of this code, based on collection reports submitted by the
3 redemption centers. All redemption centers shall submit to the department information on forms
4 prescribed by the department. Information shall include at a minimum:

5 (1) The amount and type of containers accepted and rejected;

6 (2) The amount of refunds paid out;

7 (3) The amount and weight of each type of container transported out of state, or to a
8 permitted recycling facility;

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

13 The requests for payment shall be no more frequent than two times per month. Beginning
14 January 1, 2020, each center shall report the previous quarter's information no later than 30 days
15 after the end of that quarter so that the handling rate can be calculated. Failure to timely submit
16 the report shall postpone payment for those containers until they are timely submitted for a
17 subsequent quarter.

§20-17-8. Report; filing; form and contents.

1 (a) A dealer that originates a deposit on a beverage container must file a report with the
2 State Treasurer, not later than March 1, 2021, and March 1 of each year thereafter, containing
3 the information required by subsection (b) of this section.

4 (b) The report required to be filed pursuant to subsection (a) of this section must indicate
5 for the period of January 1, 2020, to December 31, 2020, and for the time period of January 1 to
6 December 31 each year thereafter, the dollar value of both the total deposits collected by the
7 dealer on beverage containers sold within this state.

§20-17-9. Bottle deposit fund; creation; administration; deposits; annual disbursement; report of information; rules.

1 (a) There is created in the State Treasury a bottle deposit fund which is a revolving fund
2 administered by the State Treasurer. The money in the bottle deposit fund may not revert to the
3 General Revenue Fund.

4 (b) The amount paid to the Tax Division of the Department of Revenue by dealers shall
5 be deposited by the Tax Commissioner in the bottle deposit fund created in subsection (a) of this
6 section for annual disbursement by the State Treasurer in the following manner:

7 (1) Thirteen cents per container to certified redemption centers;

8 (2) One million dollars to remain in revolving fund to administer program;

9 (3) Remaining funds to go to the community litter control fund;

10 (c) The State Treasurer shall publish and make available to the public, not later than June
11 1 of each year, information related to §20-17-8 of this code and send a report of that information
12 to the Legislature.

13 (d) The State Treasurer shall propose rules for legislative approval in accordance with the
14 provisions of §29-3-1 et seq., of this code, to implement §20-17-8 and §20-17-9 of this code.

§20-17-10. Unclaimed deposits.

1 Unclaimed deposits on returnable containers are considered to be the property of the
2 person purchasing the returnable container and are not the property of the dealer who originated
3 the deposit.

§20-17-11. Community Litter Control Fund.

1 (a) The Community Litter Control Fund is hereby created within the Division of Natural
2 Resources.

3 (b) The Division of Natural Resources may receive money or other assets from any source
4 for deposit into the Community Litter Control Fund. The Division of Natural Resources shall direct
5 the investment of the Community Litter Control Fund. The Division of Natural Resources shall

6 credit to the Community Litter Control Fund interest and earnings from fund investments.

7 (c) Money in the Community Litter Control Fund at the close of the fiscal year must remain
8 in the Community Litter Control Fund and may not lapse to the General Revenue Fund.

9 (d) The Division of Natural Resources may expend interest and earnings of the Community
10 Litter Control Fund only, upon appropriation, for grants for the purpose of creating and expanding
11 recycling programs. The Division of Natural Resources may enter into contractual agreements
12 with grant recipients, who include county governments, local health departments, municipalities,
13 and regional planning agencies. Activities to be performed by grant recipients and program
14 objectives and deliverables must be specified in the contractual agreements. Grant recipients
15 must provide a financial match of not less than 25 percent. Not more than \$100,000 may be
16 granted in any fiscal year to a single recipient.

17 (e) The Division of Natural Resources shall annually prepare a report summarizing the
18 grants made under this section, contractual commitments made and achieved and a preliminary
19 evaluation of the effectiveness of this section not later than September 30, 2020, and September
20 30 each year thereafter, and shall provide a copy of this report to the chairs of the House and
21 Senate Appropriations Subcommittees for the Division of Natural Resources.

§20-17-12. Violation; penalty; separate offense.

1 Except as provided in §20-17-13 of this code, a person, dealer, distributor or manufacturer
2 who violates this article is subject to a fine of not less than \$100 or more than \$1,000 and is liable
3 for the costs of prosecution. Each day a violation occurs, a separate offense is committed.

§20-17-13. Prohibited return; violation; penalty.

1 (a) A person may not return or attempt to return to a dealer for a refund one or more of
2 the following:

3 (1) A beverage container that the person knows or should know was not purchased in this
4 state as a filled returnable container.

5 (2) A beverage container that the person knows or should know did not have a deposit

6 paid for it at the time of purchase.

7 (b) A person who violates subsection (a) above is subject to one of the following:

8 (1) If the person returns 25 or more but not more than 100 nonreturnable containers, the
9 person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

10 (2) If the person returns more than 100 nonreturnable containers or violates subdivision
11 (a) above for a second or subsequent time, the person is guilty of a misdemeanor and, upon
12 conviction thereof, shall be fined not more than \$500.

13 (c) A person found guilty under this section shall be ordered by the court to pay restitution
14 equal to the amount of loss caused by the violation.

§20-17-14. Posting notice on redemption center's premises; failure to comply; penalty.

1 A redemption center shall post a notice in that portion of the redemption center's premises
2 where returnable containers are redeemed stating the following: "A person who returns for refund
3 an out of state nonreturnable container is subject to a fine of \$500 and restitution." A redemption
4 center that fails to comply with this section is subject to a fine of not more than \$50.

NOTE: The purpose of this bill is to require the use of returnable containers for soft-drinks, soda water, carbonated natural or mineral water, other nonalcoholic carbonated drinks and for beer, ale or other malt drinks of any alcoholic content and for certain other beverage containers; to require the use of unredeemed bottle deposits; prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and remedies.

This article is new; therefore, strike throughs and underscoring have been omitted.