WEST virginia legislature

2021 regular session

Introduced

House Bill 2105

By Delegates Doyle and Barach

[Introduced February 10, 2021; Referred to the Committee on Workforce Development then Government Organization

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-19-1, §20-19-2, §20-19-3, §20-19-4, §20-19-5, §20-19-6, §20-19-7, §20-19-8, §20-19-9, §20-19-10, §20-19-11, §20-19-12, §20-19-13, and §20-19-14, all relating to requiring 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; requiring the use of unredeemed bottle deposits; prescribing the powers and duties of certain state agencies and officials; and prescribing penalties and remedies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. WEST VIRGINIA BEVERAGE CONTAINER RECYCLING AND LITTER CONTROL ACT.

§20-19-1. Legislative findings and purpose.

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

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

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

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

(2) Reduces the volume of waste and litter;

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

(4) Builds upon existing recycling infrastructure.

§20-19-2. Definitions.

As used in this article:

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

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

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

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

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

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

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

(h) “Operator of a vending machine” means equally its owner, the person who refills it, and the owner or lessee of the property upon which it is located.

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

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

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

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

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

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

(o) “Nonrefillable container” means a returnable container that is not intended to be refilled for sale by a manufacturer.

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

(1) Nonalcoholic beverages;

(2) Flavoring;

(3) Coloring materials;

(4) Fruit juices;

(5) Fruit adjuncts;

(6) Sugar;

(7) Carbon dioxide;

(8) Preservatives.

(q) “Mixed spirit drink” means a drink containing 10 percent or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide or preservatives; or any spirits-based beverage, regardless of the percent of alcohol by volume, that is manufactured for sale in a metal container.

§20-19-3. Nonreturnable containers; deposits; refunds; etc.

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

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

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

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

(e) Each beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container, and the name of this state. A dealer, distributor or redemption center may, but is not required to, refuse to accept from a person an empty returnable container that does not state on the container the refund value of the container and the name of this state. This subsection does not apply to a refillable container having a refund value of not less than 10 cents, having a brand name permanently marked on it, having a securely affixed method of indicating that it is a returnable container.

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

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

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

§20-19-4. Redemption centers.

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

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

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

(d) Redemption centers shall:

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

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

(3) Pay to the redeemer at minimum the full refund value for all beverage containers, except as provided in §20-19-6 of this code;

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

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

(6) Forward the documentation necessary to support claims for payment as stated in §20-19-6 of this code.

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

§20-19-5. Reverse vending machine requirements.

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

§20-19-6. Refusal of refund value payment for a deposit beverage container.

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

(1) Contains a free-flowing liquid;

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

(3) Contains a significant amount of foreign material.

§20-19-7. Redemption center reporting.

The State Treasurer shall pay certified redemption centers handling fees and refund values as described in §20-19-3 of this code, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department information on forms prescribed by the department. Information shall include at a minimum:

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

(2) The amount of refunds paid out;

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

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

The requests for payment shall be no more frequent than two times per month. Beginning January 1, 2022, each center shall report the previous quarter’s information no later than 30 days after the end of that quarter so that the handling rate can be calculated. Failure to timely submit the report shall postpone payment for those containers until they are timely submitted for a subsequent quarter.

§20-19-8. Report; filing; form and contents.

(a) A dealer that originates a deposit on a beverage container must file a report with the State Treasurer, not later than March 1, 2023, and March 1 of each year thereafter, containing the information required by subsection (b) of this section.

(b) The report required to be filed pursuant to subsection (a) of this section must indicate for the period of January 1, 2022, to December 31, 2022, and for the time period of January 1 to December 31 each year thereafter, the dollar value of both the total deposits collected by the dealer on beverage containers sold within this state.

§20-19-9. Bottle deposit fund; creation; administration; deposits; annual disbursement; report of information; rules.

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

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

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

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

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

(c) The State Treasurer shall publish and make available to the public, not later than June 1 of each year, information related to §20-19-8 of this code and send a report of that information to the Legislature.

(d) The State Treasurer shall propose rules for legislative approval in accordance with the provisions of §29-3-1 *et seq.* of this code, to implement §20-19-8 and §20-19-9 of this code.

§20-19-10. Unclaimed deposits.

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

§20-19-11. Community Litter Control Fund.

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

(b) The Division of Natural Resources may receive money or other assets from any source for deposit into the Community Litter Control Fund. The Division of Natural Resources shall direct the investment of the Community Litter Control Fund. The Division of Natural Resources shall credit to the Community Litter Control Fund interest and earnings from fund investments.

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

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

(e) The Division of Natural Resources shall annually prepare a report summarizing the grants made under this section, contractual commitments made and achieved, and a preliminary evaluation of the effectiveness of this section not later than September 30, 2022 and September 30 each year thereafter, and shall provide a copy of this report to the chairs of the House and Senate Appropriations Subcommittees for the Division of Natural Resources.

§20-19-12. Violation; penalty; separate offense.

Except as provided in §20-19-13 of this code, a person, dealer, distributor or manufacturer who violates this article is subject to a fine of not less than $100 or more than $1,000 and is liable for the costs of prosecution. Each day a violation occurs, a separate offense is committed.

§20-19-13. Prohibited return; violation; penalty.

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

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

(2) A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

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

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

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

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

§20-19-14. Posting notice on redemption center’s premises; failure to comply; penalty.

A redemption center shall post a notice in that portion of the redemption center’s premises where returnable containers are redeemed stating the following: “A person who returns for refund an out of state nonreturnable container is subject to a fine of $500 and restitution.” A redemption 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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.