

[First Reprint]

ASSEMBLY, No. 2281

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Co-Sponsored by:

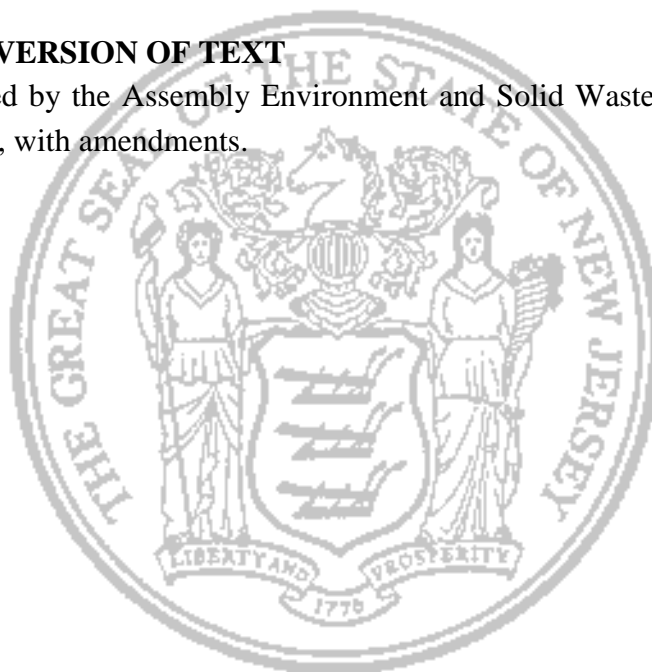
**Assemblywomen Muoio, Oliver, Assemblymen Caputo, Gusciora and
Assemblywoman Pinkin**

SYNOPSIS

The “Smart Container Act.”

CURRENT VERSION OF TEXT

As reported by the Assembly Environment and Solid Waste Committee on
April 4, 2016, with amendments.



(Sponsorship Updated As Of: 4/15/2016)

1 AN ACT concerning beverage containers, and supplementing
2 ¹[P.L.1987, c.102 (C.13:1E-99.11 et al.)] Title 13 of the Revised
3 Statutes¹ .
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. This act shall be known and may be cited as the "Smart
9 Container Act."
10

11 2. The Legislature finds and declares that litter composed of
12 discarded beverage bottles and cans is a growing problem of public
13 concern and a direct threat to the health and safety of the citizens of
14 this State; that discarded beverage bottles and cans create a hazard
15 to vehicular traffic, a source of physical injury to pedestrians, farm
16 animals and machinery ^{1,1} and an unsightly accumulation of litter
17 which must be disposed of at increasing public expense; that
18 beverage bottles and cans also create an unnecessary addition to the
19 State's already costly and overburdened solid waste management
20 system; that the indiscriminate disposal of such bottles and cans
21 creates an impediment to the efficient operation of New Jersey's
22 resource recovery incineration facilities; that the uninhibited discard
23 of beverage containers constitutes a waste of both mineral and
24 energy resources; and that requiring a deposit on all beverage
25 bottles and cans, along with certain other facilitating measures, will
26 provide a necessary incentive for the economically efficient and
27 environmentally benign collection and recycling of such containers.

28 The Legislature therefore determines that it serves the public
29 interest to provide that all beverage bottles and cans sold or offered
30 for sale in this State have a refund value, and to provide for the
31 convenient return and payment of the refund value of empty
32 beverage containers.
33

34 3. As used in this act:

35 "Beverage" means all carbonated and noncarbonated drinks in
36 liquid form intended for human consumption. "Beverage" shall not
37 include:

38 (1) Milk and dairy derived products. "Milk" means whole milk,
39 skim milk, low-fat milk, cream, cultured milk, yogurt ^{1,1} or any
40 combination of those products. The term "dairy derived products"
41 includes any product of which the single largest ingredient is milk,
42 milk fat, cultured milk ^{1,1} or yogurt;

43 (2) Rice milk or soy milk;

44 (3) Infant formula;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted April 4, 2016.

- 1 (4) Alcoholic beverages. The term "alcoholic beverage" shall
2 not include beer or other malt beverages, or wine products;
- 3 (5) A liquid that is a syrup, in a concentrated form, or typically
4 added as a minor flavoring ingredient in food or drink, such as
5 extracts, cooking additives, sauces ¹/₂ or condiments;
- 6 (6) A liquid that is ingested in very small quantities and that is
7 consumed for medicinal purposes only;
- 8 (7) A liquid that is designed and consumed only as a nutritional
9 supplement and not as a beverage;
- 10 (8) A product that is frozen at the time of sale;
- 11 (9) A product that is designed to be consumed in a frozen state;
- 12 (10) An instant drink powder; or
- 13 (11) Seafood, meat ¹ **[or]** ¹ vegetable broths, or soups.
- 14 "Beverage container" means the individual, separate, sealed
15 glass, metal, aluminum, steel ¹/₂ or plastic bottle, can ¹/₂ or jar used
16 for containing less than one gallon or 3.8 liters at the time of sale of
17 a beverage intended for use or consumption in this State. A
18 "beverage container" shall not include a refillable container.
- 19 "Commissioner" means the Commissioner of Environmental
20 Protection.
- 21 "Department" means the Department of Environmental
22 Protection.
- 23 "Director" means the Director of the Division of Taxation in the
24 Department of the Treasury.
- 25 "Distributor" means any person who sells beverages in beverage
26 containers to a retailer.
- 27 "Division" means the Division of Taxation in the Department of
28 the Treasury.
- 29 "Malt beverage" means any beverage obtained by the alcoholic
30 fermentation or infusion or decoction of barley, malt, hops, or other
31 wholesome grain or cereal and water, including, but not limited to,
32 ale, stout ¹/₂ or malt liquor.
- 33 "Redemption center" means a place or a business, and the owner
34 or operator thereof, which accepts empty beverage containers for
35 recycling and pays the refund value of beverage containers as
36 approved by the department pursuant to the provisions of this act.
- 37 "Refillable container" means a rigid plastic container that the
38 department determines is routinely returned to and refilled by the
39 product manufacturer at least five times with the original product
40 that is stored inside of the container.
- 41 "Retailer" means a person who engages in the sale within the
42 State of beverages in beverage containers to a consumer at retail for
43 off-premises use or consumption.
- 44 "Reverse vending machine" means an automated device that uses
45 a laser scanner, microprocessor, or other technology to accurately
46 recognize the universal product code to determine if a particular
47 beverage container is redeemable and accumulates information
48 regarding beverage containers redeemed, thereby enabling the

1 device to accept beverage containers from redeemers and to issue
2 scrip for their refund value.

3 “Smart container bar code” means a universal product code
4 applied to a beverage container to identify the container as sold or
5 offered for sale in this State.

6 “Universal product code” means a standard for encoding a set of
7 lines and spaces that can be scanned and interpreted into numbers to
8 identify a product. A “universal product code” may also mean any
9 accepted industry barcode which replaces that code and that may be
10 used to identify a product.

11

12 4. a. Every beverage container sold or offered for sale in this
13 State shall have a refund value when empty. Beverage containers
14 with a minimum capacity of eight ounces, or its equivalent volume,
15 and a maximum capacity of less than ¹ ~~twenty four~~ ¹ 24¹ ounces, or
16 its equivalent volume, shall have a refund value of \$0.10 each.
17 Beverage containers with a minimum capacity of ¹ ~~twenty four~~ ¹
18 24¹ ounces, or its equivalent volume, and a maximum capacity of
19 less than one gallon or 3.8 liters, or its equivalent volume, shall
20 have a refund value of \$0.20 each.

21 b. Every beverage container sold or offered for sale in this
22 State shall be clearly identified by a stamp, label ¹,¹ or other mark
23 securely affixed to the beverage container, bearing the inscription
24 "New Jersey" or "N.J." ¹or "NJ"¹ and indicating the refund value of
25 the beverage container.

26 c. Every beverage container sold or offered for sale in this
27 State shall be embossed with a smart container bar code.

28 d. A person shall not sell or offer for sale a beverage container
29 in this State unless the deposit on the beverage container is or has
30 been paid to the State Treasurer by a distributor and unless the
31 beverage container has a refund value of not less than \$0.10 which
32 is clearly indicated thereon as provided in this section.

33 e. Every redeemed empty beverage container shall be the
34 property of the retailer or redemption center accepting the empty
35 beverage container for redemption.

36

37 5. a. Every distributor shall, within 30 days ¹ ~~of~~ ¹ after¹ the
38 effective date of this ¹ ~~act~~ ¹ section¹, register with the State
39 Treasurer on forms prescribed by the director.

40 b. Every distributor shall, on or before the first day of the first
41 full fiscal quarter following the effective date of this ¹ ~~act~~ ¹
42 section¹, and quarterly thereafter, render a return under oath to the
43 State Treasurer, on such forms as may be prescribed by the director,
44 indicating the total number of full beverage containers to be sold or
45 offered for sale in this State in the ensuing quarter, and at that time
46 shall pay the initial deposit on each full beverage container in an
47 amount equal to the refund value due thereon pursuant to section 4
48 of this act.

1 c. The director shall deposit all revenues collected pursuant to
2 this section in the Smart Container Fund established pursuant to
3 section 7 of this act. The director may use up to ¹~~1%~~ one
4 percent¹ of all revenues collected to defray the costs of
5 administration and collection of the deposit revenues.

6 d. The director may require the maintenance of such accounts,
7 records ¹₂¹ or documents relating to the sale of full beverage
8 containers, by any distributor as the director may deem appropriate
9 for the administration of this section. The director may make
10 examinations, including the conduct of facility inspections during
11 regular business hours, with respect to the accounts, records ¹₂¹ or
12 documents required to be maintained under this subsection. The
13 accounts, records ¹₂¹ and documents shall be preserved for a period
14 of three years, except that the director may consent to their
15 destruction within that period or may require that they be kept
16 longer. The accounts, records ¹₂¹ and documents may be kept
17 within the meaning of this subsection when reproduced by any
18 electronic¹, photographic, photostatic, microfilm, micro-card,
19 miniature photographic ¹₂¹ or other process which actually
20 reproduces the original accounts, records ¹₂¹ or documents.

21
22 6. a. Every retailer and redemption center shall, within 30 days
23 ¹~~of~~ after¹ the effective date of this ¹~~act~~ section¹, register with
24 the State Treasurer on forms prescribed by the director.

25 b. Every retailer and redemption center shall, on or before the
26 first day of the first full fiscal quarter following the effective date of
27 this ¹~~act~~ section¹, and monthly thereafter, render a return under
28 oath to the State Treasurer, on such forms as may be prescribed by
29 the director, indicating the total number of empty beverage
30 containers redeemed during the previous month, the total amount
31 paid for redeemed empty beverage containers, and the disposition of
32 redeemed empty beverage containers. The director shall credit the
33 proper amount to the retailer or redemption center upon receipt of
34 written documentation of the total number of empty beverage
35 containers redeemed and the actual amount paid for the redemption
36 of those empty beverage containers, and at that time shall reimburse
37 the retailer or redemption center the full amount therefor.

38 c. The director may require the maintenance of such accounts,
39 records ¹₂¹ or documents relating to the redemption of empty
40 beverage containers, by any retailer or redemption center as the
41 director may deem appropriate for the administration of this section.
42 The director may make examinations, including the conduct of
43 facility inspections during regular business hours, with respect to
44 the accounts, records ¹₂¹ or documents required to be maintained
45 under this subsection. The accounts, records ¹₂¹ and documents
46 shall be preserved for a period of three years, except that the
47 director may consent to their destruction within that period or may

1 require that they be kept longer. The accounts, records ¹ and
2 documents may be kept within the meaning of this subsection when
3 reproduced by any ¹electronic,¹ photographic, photostatic,
4 microfilm, micro-card, miniature photographic ¹ or other process
5 which actually reproduces the original accounts, records ¹ or
6 documents.

7
8 7. a. The Smart Container Fund (hereinafter referred to as the
9 "fund") is established as a nonlapsing, revolving fund. The fund
10 shall be administered by the State Treasurer, and shall be credited
11 with all revenues collected pursuant to section 5 of
12 ¹**[P.L. , c. (C.)](pending in the Legislature as this bill)]**
13 this act¹, and all interest ¹or other investment income earned and¹
14 received on ¹the investment of¹ moneys in the fund.

15 b. Moneys in the fund shall be allocated and used as follows:

16 (1) To reimburse retailers and redemption centers the full
17 amount for the total number of empty beverage containers redeemed
18 and the actual amount paid for the redemption of those empty
19 beverage containers;

20 (2) To redistribute deposit revenues to retailers and redemption
21 centers on a proportionate basis, in an amount equal to ¹**[25%]** 25
22 percent¹ of the aggregate dollar value of any unclaimed deposits
23 retained by the State Treasurer, to defray handling costs; ¹and¹

24 (3) To redistribute deposit revenues to the department, in an
25 amount equal to ¹**[75%]** 75 percent¹ of the aggregate dollar value
26 of any unclaimed deposits retained by the State Treasurer ¹**[**, to
27 defray the costs of administration, public education and
28 enforcement programs, and to provide grants for environmental
29 projects¹]. Any amounts received by the department as unclaimed
30 deposits ¹, and all interest or other investment income earned and
31 received on the investment of money in the fund,¹ shall be
32 deposited in the ¹**[Clean Communities Program Fund established**
33 **pursuant to section 5 of P.L.2002, c.128 (C.13:1E-217).** Moneys in
34 the fund received as a result of the provisions of this subsection
35 shall be allocated and used as provided by law ¹**]** Healthy Schools
36 and Community Lead Abatement Fund established pursuant to
37 section 8 of this act¹.

38 As used herein, "unclaimed deposits" shall mean any amounts in
39 excess of the costs of redemption which have accrued to the fund on
40 or after the ¹**[thirtieth]** 30th¹ day after which a deposit has been
41 initiated.

42 c. The State Treasurer shall report to the department, on or
43 before the first day of the second full fiscal quarter following the
44 effective date of this act, and quarterly thereafter, on the volume of
45 beverage sales, empty beverage container redemptions, and
46 unclaimed deposits.

1 ¹8. There is established in the Department of Environmental
2 Protection a nonlapsing fund to be known as the “Healthy Schools
3 and Community Lead Abatement Fund,” hereinafter referred to as
4 “the fund.” The fund shall be credited with the deposit revenues
5 redistributed by the State Treasurer to the department pursuant to
6 paragraph (3) of subsection b. of section 7 of this act, with all
7 interest or other investment income earned and received on the
8 investment of moneys in the fund, and with any other monies that
9 may be made available, or appropriated, to the department for the
10 purposes of the fund. Money in the fund shall be used by the
11 department, in consultation with the Department of Education, the
12 Department of Community Affairs, and the Department of Health,
13 solely for lead abatement in schools and communities, including:
14 removal and replacement of water fountains, plumbing, and pipes
15 that contain lead; stripping lead paint from schools and residential
16 dwelling; and other lead abatement programs, as established by the
17 department in consultation with the Department of Education, the
18 Department of Community Affairs, and the Department of Health.¹

19
20 ¹~~8~~ 9¹. a. Every retailer shall, upon presentation of an empty
21 beverage container, refund to the bearer the refund value of the
22 beverage container. No retailer shall refuse to accept at the
23 retailer’s place of business an empty beverage container from a
24 person, or refuse to pay to a person the refund value of an empty
25 beverage container.

26 b. A retailer may limit the number of empty beverage
27 containers to be accepted for redemption at the retailer's place of
28 business to not less than 24 empty beverage containers per visit, per
29 redeemer, per day.

30 c. Redemptions of refund value shall be in legal tender. The
31 use or presence of a reverse vending machine shall not relieve a
32 retailer of any obligations imposed pursuant to this section. If a
33 retailer utilizes a reverse vending machine to redeem empty
34 beverage containers, the retailer shall provide redemption of empty
35 beverage containers when the reverse vending machine is full,
36 broken, ¹or¹ under repair ¹,¹ or does not accept a type of beverage
37 container sold by the retailer. On any day that the retail
38 establishment is open for less than ¹~~twenty-four~~ 24¹ hours, the
39 retailer may restrict or refuse the payment of refund values during
40 the first and last hour the retailer is open for business.

41 d. Every redeemed empty beverage container shall be the
42 property of the retailer accepting the empty beverage containers for
43 redemption. Every retailer shall ensure that all empty beverage
44 containers redeemed at the facility are properly recycled.

45
46 ¹~~9.~~ 10.¹ a. A retailer shall conspicuously post and maintain,
47 at the point of sale, a legible sign informing customers of the refund
48 value of empty beverage containers.

1 b. A retailer that does not sell or offer for sale in this State
2 alcoholic beverages shall not be required to accept at the retailer's
3 place of business from a redeemer any empty beverage containers
4 used for containing beer or other malt beverages, or wine products.
5 The retailer shall conspicuously post and maintain, at the point of
6 sale, a legible sign informing customers of the exemption from the
7 deposit and refund system established pursuant to this act.

8
9 ¹~~10~~ 11¹. a. A person may apply to the department for
10 approval to establish a redemption center, including a mobile
11 redemption center, subject to applicable provisions of law and in
12 accordance with the provisions of this act, at which consumers may
13 return empty beverage containers and receive payment of the refund
14 value of the beverage containers.

15 b. An application for approval to establish a redemption center
16 shall include ¹~~1~~ the name and address of the person responsible for
17 the establishment and operation of the redemption center; the kind,
18 size, and brand names of beverage containers which will be
19 accepted at the redemption center; the addresses of the retailers to
20 be served by the redemption center; and any additional information
21 which the department may require.

22 c. The department shall approve an application to establish a
23 redemption center if the department finds, in writing, that the
24 redemption center will provide a convenient service to consumers
25 for the return of empty beverage containers. The order of the
26 department approving the establishment of a redemption center
27 shall state ¹~~1~~ the retailers to be served by the redemption center;
28 the kind, size, and brand names of empty beverage containers which
29 the redemption center shall accept; and any other requirements
30 which the department deems necessary to insure that the redemption
31 center will provide a convenient service to the public.

32 d. The department may review at any time an approval of a
33 redemption center. After affording written notice and hearing to the
34 owner or operator of the redemption center, and to retailers served
35 by the redemption center, the department may withdraw approval of
36 the redemption center if the department finds, in writing, that the
37 center has failed to comply with the conditions set forth in the order
38 approving the center or if the redemption center no longer provides
39 a convenient service to the public.

40 e. Every redeemed empty beverage container shall be the
41 property of the owner or operator of the redemption center
42 accepting the empty beverage containers for redemption. Every
43 redemption center shall ensure that all empty beverage containers
44 redeemed at the facility are properly recycled.

45
46 ¹~~11.~~ 12¹ a. The commissioner shall adopt, pursuant to the
47 provisions of the "Administrative Procedure Act," P.L.1968, c.410
48 (C.52:14B-1 et seq.), any rules or regulations conditioning and

1 controlling the sale and labeling of beverage containers which shall
2 be designed to further the purposes of this act.

3 b. The director shall adopt, pursuant to the provisions of the
4 “Administrative Procedure Act,” any rules or regulations necessary
5 to implement the provisions of this act.

6
7 ¹[12] 13¹. a. The commissioner shall establish a public
8 education program to disseminate information regarding
9 implementation of this act. The information shall include, but need
10 not be limited to, ¹[publication of information specifying]¹ the
11 procedures necessary to establish a redemption center as provided
12 in section ¹[10] 11¹ of this act ¹[;]¹ and ¹[publication of]¹
13 information delineating the relevant rights and responsibilities of
14 distributors, retailers ¹₂¹ and redemption centers under the
15 provisions of this act.

16 b. The department shall report to the Governor and ¹pursuant
17 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to¹ the Legislature
18 on the success of the public education ¹program¹ in New Jersey not
19 later than August 30 of each year.

20

21 ¹[13] 14¹. a. There is established an advisory council, to be
22 known as the "Smart Container Act Public Advisory Council." The
23 advisory council shall consist of ¹[9] nine¹ members, who shall be
24 appointed by the Governor, with the advice and consent of the
25 Senate.

26 b. The members of the advisory council shall include: one
27 representative of an organization whose prime function is the
28 enhancement of the environmental quality of the State; two
29 distributors; two county or municipal recycling coordinators; two
30 retailers ¹₂¹ and two operators of redemption centers.

31 c. The advisory council shall organize as soon as practical after
32 the appointment of its members. The members of the advisory
33 council shall elect one of their number to serve as chairperson and
34 the advisory council may elect an executive director who need not
35 be a member of the advisory council.

36 d. The members of the advisory council shall receive no
37 compensation for their services, but shall be allowed their actual
38 and necessary expenses incurred in the performance of their duties.

39

40 ¹[14] 15¹. a. The Smart Container Act Public Advisory Council
41 is empowered to:

42 (1) Serve as a working forum for the exchange of views,
43 concerns, ideas, information ¹₂¹ and recommendations relating to
44 implementation of this act;

45 (2) Request the attendance at any meeting of the advisory
46 council of any personnel of the department or of other State
47 agencies as may be necessary to provide information and otherwise

1 assist the advisory council and request such information from the
2 department or other State agencies as the advisory council may
3 require in fulfilling its responsibility under this section;

4 (3) Monitor, review ^{1,1} and make recommendations concerning
5 the objectives, methods ^{1,1} and strategies of the department and
6 other State agencies in implementing and pursuing programs
7 designed to meet the objectives of this act;

8 (4) Request and receive, upon reasonable notice, reports from
9 the department and other State agencies concerning the
10 implementation of the provisions of this act;

11 (5) Make recommendations to the Governor and the Legislature
12 concerning the awarding of grants for ¹ ~~various environmental~~
13 ~~projects, including land preservation, litter cleanup and public area~~
14 ~~beautification activities,~~ lead abatement projects¹ from the
15 amounts ¹ ~~received by the department as unclaimed deposits and~~¹
16 deposited in the ¹ ~~Clean Communities Program Fund~~ Healthy
17 Schools and Community Lead Abatement Fund established¹
18 pursuant to section ¹ ~~7~~ 8¹ of this act; and

19 (6) Perform other activities or services as may be necessary to
20 fulfill the purposes of this section.

21 b. The advisory council shall meet ¹ ~~at~~ as¹ frequently as it
22 deems necessary, keep a record of its proceedings, and determine
23 the rules of its own procedures. Five members of the advisory
24 council shall constitute a quorum for the transaction of any business
25 of the advisory council.

26 c. Staff services, including recording of advisory council
27 proceedings, shall be performed by personnel of the department, or
28 such State agencies as the chairperson deems appropriate or
29 desirable.

30 d. The department shall provide the advisory council with such
31 facilities, assistance, and data as will enable the advisory council to
32 carry out its powers and duties. All other State agencies shall, at
33 the request of the chairperson, provide the advisory council with
34 such facilities, assistance, and data as will enable the advisory
35 council to carry out its powers and duties.

36

37 ¹ ~~15~~ 16¹. Any person who violates the provisions of this act or
38 any rule or regulation adopted pursuant to this act shall be liable to
39 a penalty of not more than \$500 per day to be collected in a civil
40 action commenced by a local ¹ ~~board of~~ health authority¹, a
41 county health department, ¹ ~~the director,~~¹ or the commissioner.

42 Each day during which the violation continues constitutes an
43 additional, separate ^{1,1} and distinct offense. Any penalty imposed
44 pursuant to this subsection may be collected, with costs, in a
45 summary proceeding pursuant to the "Penalty Enforcement Law of
46 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
47 and the municipal court shall have jurisdiction to enforce the

1 provisions of the "Penalty Enforcement Law of 1999" in connection
2 with this act. The department is authorized to compromise and
3 settle a claim for a penalty under this act in an amount which the
4 department deems appropriate and equitable under all of the
5 circumstances.

6
7 ¹~~16~~ 17¹. ¹~~This~~ Sections 4 through 11 and section 16 of this¹
8 act shall take effect ¹~~12 months following~~ one year after the date
9 of¹ enactment ¹~~], except that section 11~~ of this act, and the
10 remainder of this act¹ shall take effect immediately.