

ASSEMBLY, No. 5000

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 16, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

The “Smart Container Act.”

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning beverage containers, and supplementing Title
2 13 of the Revised Statutes.

3

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

6

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

9

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

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

32

33 3. As used in this act:

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

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

42 (2) Rice milk or soy milk;

43 (3) Infant formula;

44 (4) Alcoholic beverages. The term "alcoholic beverage" shall
45 not include beer or other malt beverages, or wine products;

46 (5) A liquid that is a syrup, in a concentrated form, or typically
47 added as a minor flavoring ingredient in food or drink, such as
48 extracts, cooking additives, sauces, or condiments;

1 (6) A liquid that is ingested in very small quantities and that is
2 consumed for medicinal purposes only;

3 (7) A liquid that is designed and consumed only as a nutritional
4 supplement and not as a beverage;

5 (8) A product that is frozen at the time of sale;

6 (9) A product that is designed to be consumed in a frozen state;

7 (10) An instant drink powder; or

8 (11) Seafood, meat, vegetable broths, or soups.

9 "Beverage container" means the individual, separate, sealed
10 glass, metal, aluminum, steel, or plastic bottle, can, or jar used for
11 containing less than one gallon or 3.8 liters at the time of sale of a
12 beverage intended for use or consumption in this State. A
13 "beverage container" shall not include a refillable container.

14 "Commissioner" means the Commissioner of Environmental
15 Protection.

16 "Department" means the Department of Environmental
17 Protection.

18 "Director" means the Director of the Division of Taxation in the
19 Department of the Treasury.

20 "Distributor" means any person who sells beverages in beverage
21 containers to a retailer.

22 "Division" means the Division of Taxation in the Department of
23 the Treasury.

24 "Malt beverage" means any beverage obtained by the alcoholic
25 fermentation or infusion or decoction of barley, malt, hops, or other
26 wholesome grain or cereal and water, including, but not limited to,
27 ale, stout, or malt liquor.

28 "Redemption center" means a place or a business, and the owner
29 or operator thereof, which accepts empty beverage containers for
30 recycling and pays the refund value of beverage containers as
31 approved by the department pursuant to the provisions of this act.

32 "Refillable container" means a rigid plastic container that the
33 department determines is routinely returned to and refilled by the
34 product manufacturer at least five times with the original product
35 that is stored inside of the container.

36 "Retailer" means a person who engages in the sale within the
37 State of beverages in beverage containers to a consumer at retail for
38 off-premises use or consumption.

39 "Reverse vending machine" means an automated device that uses
40 a laser scanner, microprocessor, or other technology to accurately
41 recognize the universal product code to determine if a particular
42 beverage container is redeemable and accumulates information
43 regarding beverage containers redeemed, thereby enabling the
44 device to accept beverage containers from redeemers and to issue
45 scrip for their refund value.

46 "Smart container bar code" means a universal product code
47 applied to a beverage container to identify the container as sold or
48 offered for sale in this State.

1 “Universal product code” means a standard for encoding a set of
2 lines and spaces that can be scanned and interpreted into numbers to
3 identify a product. A “universal product code” may also mean any
4 accepted industry barcode which replaces that code and that may be
5 used to identify a product.

6
7 4. a. Every beverage container sold or offered for sale in this
8 State shall have a refund value when empty. Beverage containers
9 with a minimum capacity of eight ounces, or its equivalent volume,
10 and a maximum capacity of less than 24 ounces, or its equivalent
11 volume, shall have a refund value of \$0.10 each. Beverage
12 containers with a minimum capacity of 24 ounces, or its equivalent
13 volume, and a maximum capacity of less than one gallon or 3.8
14 liters, or its equivalent volume, shall have a refund value of \$0.20
15 each.

16 b. Every beverage container sold or offered for sale in this
17 State shall be clearly identified by a stamp, label, or other mark
18 securely affixed to the beverage container, bearing the inscription
19 "New Jersey" or "N.J." or “NJ” and indicating the refund value of
20 the beverage container.

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

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

28 e. Every redeemed empty beverage container shall be the
29 property of the retailer or redemption center accepting the empty
30 beverage container for redemption.

31
32 5. a. Every distributor shall, within 30 days after the effective
33 date of this section, register with the State Treasurer on forms
34 prescribed by the director.

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

44 c. The director shall deposit all revenues collected pursuant to
45 this section in the Smart Container Fund established pursuant to
46 section 7 of this act. The director may use up to one percent of all
47 revenues collected to defray the costs of administration and
48 collection of the deposit revenues.

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

16

17 6. a. Every retailer and redemption center shall, within 30 days
18 after the effective date of this section, register with the State
19 Treasurer on forms prescribed by the director.

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

33 c. The director may require the maintenance of such accounts,
34 records, or documents relating to the redemption of empty beverage
35 containers, by any retailer or redemption center as the director may
36 deem appropriate for the administration of this section. The
37 director may make examinations, including the conduct of facility
38 inspections during regular business hours, with respect to the
39 accounts, records, or documents required to be maintained under
40 this subsection. The accounts, records, and documents shall be
41 preserved for a period of three years, except that the director may
42 consent to their destruction within that period or may require that
43 they be kept longer. The accounts, records, and documents may be
44 kept within the meaning of this subsection when reproduced by any
45 electronic, photographic, photostatic, microfilm, micro-card,
46 miniature photographic, or other process which actually reproduces
47 the original accounts, records, or documents.

1 7. a. The Smart Container Fund (hereinafter referred to as the
2 "fund") is established as a nonlapsing, revolving fund. The fund
3 shall be administered by the State Treasurer, and shall be credited
4 with all revenues collected pursuant to section 5 of this act, and all
5 interest or other investment income earned and received on the
6 investment of moneys in the fund.

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

8 (1) To reimburse retailers and redemption centers the full
9 amount for the total number of empty beverage containers redeemed
10 and the actual amount paid for the redemption of those empty
11 beverage containers;

12 (2) To redistribute deposit revenues to retailers and redemption
13 centers on a proportionate basis, in an amount equal to 25 percent
14 of the aggregate dollar value of any unclaimed deposits retained by
15 the State Treasurer, to defray handling costs; and

16 (3) To redistribute deposit revenues to the department, in an
17 amount equal to 75 percent of the aggregate dollar value of any
18 unclaimed deposits retained by the State Treasurer. Any amounts
19 received by the department as unclaimed deposits, and all interest
20 or other investment income earned and received on the investment
21 of money in the fund, shall be deposited in the Healthy Schools and
22 Community Lead Abatement Fund established pursuant to section 8
23 of this act.

24 As used herein, "unclaimed deposits" shall mean any amounts in
25 excess of the costs of redemption which have accrued to the fund on
26 or after the 30th day after which a deposit has been initiated.

27 c. The State Treasurer shall report to the department, on or
28 before the first day of the second full fiscal quarter following the
29 effective date of this act, and quarterly thereafter, on the volume of
30 beverage sales, empty beverage container redemptions, and
31 unclaimed deposits.

32
33 8. There is established in the Department of Environmental
34 Protection a nonlapsing fund to be known as the "Healthy Schools
35 and Community Lead Abatement Fund," hereinafter referred to as
36 "the fund." The fund shall be credited with the deposit revenues
37 redistributed by the State Treasurer to the department pursuant to
38 paragraph (3) of subsection b. of section 7 of this act, with all
39 interest or other investment income earned and received on the
40 investment of moneys in the fund, and with any other monies that
41 may be made available, or appropriated, to the department for the
42 purposes of the fund. Money in the fund shall be used by the
43 department, in consultation with the Department of Education, the
44 Department of Community Affairs, and the Department of Health,
45 solely for lead abatement in schools and communities, including:
46 removal and replacement of water fountains, plumbing, and pipes
47 that contain lead; stripping lead paint from schools and residential
48 dwellings; and other lead abatement programs, as established by the

1 department in consultation with the Department of Education, the
2 Department of Community Affairs, and the Department of Health.

3

4 9. a. Every retailer shall, upon presentation of an empty
5 beverage container, refund to the bearer the refund value of the
6 beverage container. No retailer shall refuse to accept at the
7 retailer's place of business an empty beverage container from a
8 person, or refuse to pay to a person the refund value of an empty
9 beverage container.

10 b. A retailer may limit the number of empty beverage
11 containers to be accepted for redemption at the retailer's place of
12 business to not less than 24 empty beverage containers per visit, per
13 redeemer, per day.

14 c. Redemptions of refund value shall be in legal tender. The
15 use or presence of a reverse vending machine shall not relieve a
16 retailer of any obligations imposed pursuant to this section. If a
17 retailer utilizes a reverse vending machine to redeem empty
18 beverage containers, the retailer shall provide redemption of empty
19 beverage containers when the reverse vending machine is full,
20 broken, or under repair, or does not accept a type of beverage
21 container sold by the retailer. On any day that the retail
22 establishment is open for less than 24 hours, the retailer may restrict
23 or refuse the payment of refund values during the first and last hour
24 the retailer is open for business.

25 d. Every redeemed empty beverage container shall be the
26 property of the retailer accepting the empty beverage containers for
27 redemption. Every retailer shall ensure that all empty beverage
28 containers redeemed at the facility are properly recycled.

29

30 10. a. A retailer shall conspicuously post and maintain, at the
31 point of sale, a legible sign informing customers of the refund value
32 of empty beverage containers.

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

40

41 11. a. A person may apply to the department for approval to
42 establish a redemption center, including a mobile redemption
43 center, subject to applicable provisions of law and in accordance
44 with the provisions of this act, at which consumers may return
45 empty beverage containers and receive payment of the refund value
46 of the beverage containers.

47 b. An application for approval to establish a redemption center
48 shall include: the name and address of the person responsible for

1 the establishment and operation of the redemption center; the kind,
2 size, and brand names of beverage containers which will be
3 accepted at the redemption center; the addresses of the retailers to
4 be served by the redemption center; and any additional information
5 which the department may require.

6 c. The department shall approve an application to establish a
7 redemption center if the department finds, in writing, that the
8 redemption center will provide a convenient service to consumers
9 for the return of empty beverage containers. The order of the
10 department approving the establishment of a redemption center
11 shall state: the retailers to be served by the redemption center; the
12 kind, size, and brand names of empty beverage containers which the
13 redemption center shall accept; and any other requirements which
14 the department deems necessary to insure that the redemption center
15 will provide a convenient service to the public.

16 d. The department may review at any time an approval of a
17 redemption center. After affording written notice and hearing to the
18 owner or operator of the redemption center, and to retailers served
19 by the redemption center, the department may withdraw approval of
20 the redemption center if the department finds, in writing, that the
21 center has failed to comply with the conditions set forth in the order
22 approving the center or if the redemption center no longer provides
23 a convenient service to the public.

24 e. Every redeemed empty beverage container shall be the
25 property of the owner or operator of the redemption center
26 accepting the empty beverage containers for redemption. Every
27 redemption center shall ensure that all empty beverage containers
28 redeemed at the facility are properly recycled.

29

30 12. a. The commissioner shall adopt, pursuant to the provisions
31 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
32 1 et seq.), any rules or regulations conditioning and controlling the
33 sale and labeling of beverage containers which shall be designed to
34 further the purposes of this act.

35 b. The director shall adopt, pursuant to the provisions of the
36 "Administrative Procedure Act," any rules or regulations necessary
37 to implement the provisions of this act.

38

39 13. a. The commissioner shall establish a public education
40 program to disseminate information regarding implementation of
41 this act. The information shall include, but need not be limited to,
42 the procedures necessary to establish a redemption center as
43 provided in section 11 of this act and information delineating the
44 relevant rights and responsibilities of distributors, retailers, and
45 redemption centers under the provisions of this act.

46 b. The department shall report to the Governor and, pursuant to
47 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on

1 the success of the public education program in New Jersey not later
2 than August 30 of each year.

3

4 14. a. There is established an advisory council, to be known as
5 the "Smart Container Act Public Advisory Council." The advisory
6 council shall consist of nine members, who shall be appointed by
7 the Governor, with the advice and consent of the Senate.

8 b. The members of the advisory council shall include: one
9 representative of an organization whose prime function is the
10 enhancement of the environmental quality of the State; two
11 distributors; two county or municipal recycling coordinators; two
12 retailers; and two operators of redemption centers.

13 c. The advisory council shall organize as soon as practical after
14 the appointment of its members. The members of the advisory
15 council shall elect one of their number to serve as chairperson and
16 the advisory council may elect an executive director who need not
17 be a member of the advisory council.

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

21

22 15. a. The Smart Container Act Public Advisory Council is
23 empowered to:

24 (1) Serve as a working forum for the exchange of views,
25 concerns, ideas, information, and recommendations relating to
26 implementation of this act;

27 (2) Request the attendance at any meeting of the advisory
28 council of any personnel of the department or of other State
29 agencies as may be necessary to provide information and otherwise
30 assist the advisory council and request such information from the
31 department or other State agencies as the advisory council may
32 require in fulfilling its responsibility under this section;

33 (3) Monitor, review, and make recommendations concerning the
34 objectives, methods, and strategies of the department and other
35 State agencies in implementing and pursuing programs designed to
36 meet the objectives of this act;

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

40 (5) Make recommendations to the Governor and the Legislature
41 concerning the awarding of grants for lead abatement projects from
42 the amounts deposited in the Healthy Schools and Community Lead
43 Abatement Fund established pursuant to section 8 of this act; and

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

46 b. The advisory council shall meet as frequently as it deems
47 necessary, keep a record of its proceedings, and determine the rules
48 of its own procedures. Five members of the advisory council shall

1 constitute a quorum for the transaction of any business of the
2 advisory council.

3 c. Staff services, including recording of advisory council
4 proceedings, shall be performed by personnel of the department, or
5 such State agencies as the chairperson deems appropriate or
6 desirable.

7 d. The department shall provide the advisory council with such
8 facilities, assistance, and data as will enable the advisory council to
9 carry out its powers and duties. All other State agencies shall, at
10 the request of the chairperson, provide the advisory council with
11 such facilities, assistance, and data as will enable the advisory
12 council to carry out its powers and duties.

13

14 16. Any person who violates the provisions of this act or any
15 rule or regulation adopted pursuant to this act shall be liable to a
16 penalty of not more than \$500 per day to be collected in a civil
17 action commenced by a local health authority, a county health
18 department, the director, or the commissioner.

19 Each day during which the violation continues constitutes an
20 additional, separate, and distinct offense. Any penalty imposed
21 pursuant to this subsection may be collected, with costs, in a
22 summary proceeding pursuant to the "Penalty Enforcement Law of
23 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court
24 and the municipal court shall have jurisdiction to enforce the
25 provisions of the "Penalty Enforcement Law of 1999" in connection
26 with this act. The department is authorized to compromise and
27 settle a claim for a penalty under this act in an amount which the
28 department deems appropriate and equitable under all of the
29 circumstances.

30

31 17. Sections 4 through 11 and section 16 of this act shall take
32 effect one year after the date of enactment of this act, and the
33 remainder of this act shall take effect immediately.

34

35

36 STATEMENT

37

38 This bill, entitled the "Smart Container Act," would require a 10-
39 cent deposit on beverage containers with a capacity of between eight
40 ounces and less than 24 ounces, and a 20-cent deposit on beverage
41 containers with a capacity of between 24 ounces and less than one
42 gallon. Under the bill, "beverage container" means an individual,
43 separate, sealed glass, metal, aluminum, steel, or plastic bottle, can, or
44 jar containing less than one gallon of a beverage, and does not include
45 refillable containers. "Beverage" means any carbonated or
46 noncarbonated drink in liquid form intended for human consumption,
47 with certain exceptions specified in the bill. Juice, sports drinks,
48 bottled water, soda, wine, and beer are examples of products that

1 would be subject to the deposit. All such beverage containers would
2 be identified by a label and embossed with a smart container bar code,
3 which would indicate that the container was sold in the State.

4 The bill would require each distributor of beverage containers to
5 submit to the State Treasurer, quarterly, a return indicating the total
6 number of containers to be sold in the State from that distributor in the
7 ensuing quarter, and pay the initial deposit on each container. The
8 Director of the Division of Taxation (“director”) would deposit all
9 revenues into the “Smart Container Fund” established in the bill.
10 Retailers of beverage containers would be required to accept empty
11 beverage containers and refund to the bearer the refund value of the
12 container. Retailers could limit the number of empty beverage
13 containers they accept for redemption to 24 containers per visit, per
14 redeemer, per day. Empty beverage containers could also be redeemed
15 at redemption centers that may be established under the bill. Each
16 retailer or redemption center would be required to submit to the State
17 Treasurer, monthly, a return indicating the total number of empty
18 beverage containers redeemed in the previous month, the total amount
19 paid for redeemed containers, and the disposition of the containers.
20 The director would then reimburse the retailer or redemption center for
21 the amounts they paid for redemption of the empty beverage
22 containers.

23 The bill would establish the “Smart Container Fund,” which would
24 be credited with all of the revenues collected by the State Treasurer
25 pursuant to the bill. Money in the fund would be used: (1) to
26 reimburse retailers and redemption centers for the amounts they paid
27 for the redemption of empty beverage containers; (2) to redistribute 25
28 percent of the unclaimed deposits retained by the State Treasurer to
29 retailers and redemption centers to defray handling costs; and (3) to
30 redistribute 75 percent of the unclaimed deposits to the Department of
31 Environmental Protection (“DEP”) for deposit into the “Healthy
32 Schools and Community Lead Abatement Fund” established in the
33 bill. Money in that fund would be used by the DEP, in consultation
34 with the Department of Education, the Department of Community
35 Affairs, and the Department of Health, for lead abatement in schools
36 and communities, including: removal and replacement of water
37 fountains, plumbing, and pipes that contain lead; stripping lead paint
38 from schools and residential dwellings; and other lead abatement
39 programs.

40 Under the bill, all distributors, retailers, and redemption centers
41 would be required to register with the State Treasurer. A person could
42 apply to the DEP for approval to establish a redemption center,
43 including a mobile redemption center, where consumers may redeem
44 the empty beverage containers. The bill specifies certain requirements
45 for establishment of a redemption center, and authorizes the DEP to
46 oversee redemption centers. Under the bill, every redeemed beverage
47 container would be the property of the retailer or redemption center
48 that receives the container. Retailers and redemption centers would

1 have to ensure that all of the containers collected are properly
2 recycled. Further, retailers would be required to post and maintain
3 signs at the point of sale informing consumers of the refund value of
4 empty beverage containers. The bill would require the DEP to
5 establish a public education program to disseminate information
6 regarding implementation of the bill, and report to the Governor and
7 the Legislature on the success of the public education program.

8 The bill would also establish the “Smart Container Act Public
9 Advisory Council.” The council would consist of nine members
10 appointed by the Governor with the advice and consent of the Senate,
11 as follows: one representative of an environmental organization; two
12 distributors; two county or municipal recycling coordinators; two
13 retailers; and two operators of redemption centers. The council would,
14 among other things, serve as a working forum for the exchange of
15 ideas and information and recommendations relating to
16 implementation of the bill. The council would also make
17 recommendations to the Governor and the Legislature concerning the
18 awarding of grants for lead abatement projects under the Healthy
19 Schools and Community Lead Abatement Fund.

20 Finally, any person who violates the provisions of the bill would be
21 subject to a fine of up to \$500 per day.