

1 **H. B. 2814**

2
3 (By Delegates Fleischauer, Talbott, Brown,
4 Manypenny, M. Poling, Staggers and Hatfield)

5
6 [Introduced January 24, 2011; referred to the
7 Committee on the Judiciary then Finance.]

8
9
10 A BILL to amend and reenact §22-15A-2 of the Code of West Virginia,
11 1931, as amended; and to amend said code by adding thereto
12 thirteen new sections, designated §22-15A-30, §22-15A-31, §22-
13 15A-32, §22-15A-33, §22-15A-34, §22-15A-35, §22-15A-36, §22-
14 15A-37, §22-15A-38, §22-15A-39, §22-15A-40, §22-15A-41 and
15 §22-15A-42, all relating to establishing a returnable beverage
16 container deposit program.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §22-15A-2 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted; and that said code be amended by adding
20 thereto thirteen new sections, designated §22-15A-30, §22-15A-31,
21 §22-15A-32, §22-15A-33, §22-15A-34, §22-15A-35, §22-15A-36, §22-
22 15A-37, §22-15A-38, §22-15A-39, §22-15A-40, §22-15A-41 and §22-15A-
23 42, all to read as follows:

24 **ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL**
25 **ACTION PLAN.**

1 **§22-15A-2. Definitions.**

2 Unless the context clearly indicates a different meaning or
3 defined elsewhere in this chapter, as used in this article:

4 (1) "Beneficial use" means the use or reuse of whole waste
5 tires or tire derived material which are reused in constructing
6 retaining walls, rebuilding highway shoulders and subbase, building
7 highway crash attenuation barriers and other civil engineering
8 applications, feed hopper or watering troughs for livestock, other
9 agricultural uses approved by the Department of Environmental
10 Protection, playground equipment, boat or truck dock construction,
11 house or building construction, go-cart, motorbike or race track
12 barriers, recapping, alternative daily cover or similar types of
13 beneficial applications. ~~Provided, That~~ However, waste tires may
14 not be reused as fencing, as erosion control structures, along
15 stream banks or river banks or reused in any manner where human
16 health or the environment, as determined by the Secretary of the
17 Department of Environmental Protection, is put at risk.

18 (2) "Beverage" means nonintoxicating and intoxicating beer,
19 ale, intoxicating liquors, alcohol, alcoholic liquor, wine, spirits
20 and any other liquid regulated or licensed by the Alcohol Beverage
21 Control Commissioner or any successor agency; nonalcoholic drinks
22 in liquid form including, but not limited to, water, tea and coffee
23 drinks regardless of dairy product content and intended for human
24 consumption in a beverage container. However, dairy products and

1 other drinks with nutritional value are not beverages for purposes
2 of this article.

3 (3) "Beverage container" means an airtight metal, glass or
4 plastic container or a container composed of a combination of these
5 materials, which, at the time of sale, contains one gallon or less
6 of a beverage, including HDPE #2 plastic water containers.

7 ~~(2)~~ (4) "Brand" means the name, symbol, logo, trademark or
8 other information that identifies a product rather than the
9 components of the product.

10 ~~(3)~~ (5) "Collected for commercial purposes" means taking solid
11 waste for disposal from any person for remuneration regardless of
12 whether or not the person taking the solid waste is a common
13 carrier by motor vehicle governed by article two, chapter twenty-
14 four-a of this code.

15 ~~(4)~~ (6) "Computer" means a desktop, personal computer or
16 laptop computer, including the computer monitor. Computer does not
17 include a personal digital assistant device, computer peripheral
18 devices such as a mouse or other similar pointing device, a printer
19 or a detachable keyboard.

20 ~~(5)~~ (7) "Court" means any circuit, magistrate or municipal
21 court.

22 ~~(6)~~ (8) "Covered electronic device" means a television,
23 computer or video display device with a screen that is greater than
24 four inches measured diagonally. "Covered electronic device" does

1 not include a video display device that is part of a motor vehicle
2 or that is contained within a household appliance or commercial,
3 industrial or medical equipment.

4 (9) "Dealer" means a person or business who sells or offers
5 for sale to consumers within this state a beverage in a beverage
6 container.

7 ~~(7)~~ (10) "Department" means the Department of Environmental
8 Protection.

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

12 ~~(8)~~ (12) "Litter" means all waste material, including, but not
13 limited to, any garbage, refuse, trash, disposable package,
14 container, can, bottle, paper, covered electronic devices, ashes,
15 cigarette or cigar butt, carcass of any dead animal or any part
16 thereof or any other offensive or unsightly matter, but not
17 including the wastes of primary processes of mining, logging,
18 sawmilling, farming or manufacturing.

19 ~~(9)~~ (13) "Litter receptacle" means those containers suitable
20 for the depositing of litter at each respective public area
21 designated by the secretary's rules promulgated pursuant to
22 subsection (e), section three of this article.

23 ~~(10)~~ (14) "Manufacturer" means either:

24 (A) A person that is the brand owner of a covered electronic

1 device or television sold or offered for sale in this state by any
2 means, including transactions conducted through retail sales
3 outlets, catalogs or the Internet; or

4 (B) A person who bottles, cans or otherwise places beverages
5 in beverage containers for sale to distributors, dealers or
6 consumers.

7 (15) "Nonrefillable container" means a returnable container
8 which is not intended to be refilled for sale by a manufacturer.

9 (16) "Nonreturnable container" means a beverage container upon
10 which no deposit or a deposit of less than five cents has been
11 paid, or is required to be paid upon the removal of the container
12 from the sale or consumption area, or for which no cash refund or
13 a refund of less than five cents is payable by a redemption center
14 in this state.

15 (17) "Operator of a vending machine" means equally its owner,
16 the person who refills it and the owner or lessee of the property
17 upon which it is located.

18 ~~(11)~~ (18) "Person" means a natural person, corporation, firm,
19 partnership, association or society and the plural as well as the
20 singular.

21 ~~(12)~~ (19) "Public area" means an area outside of a
22 municipality, including public road and highway rights-of-way,
23 parks and recreation areas owned or controlled by this state or any
24 county of this state or an area held open for unrestricted access

1 by the general public.

2 ~~(13)~~ (20) "Recyclable materials" means those materials that
3 would otherwise become solid waste for disposal in a refuse
4 disposal system and which may be collected, separated or processed
5 and returned to the marketplace in the form of raw materials or
6 products.

7 (21) "Redemption center" means an operation which accepts from
8 consumers and provides the refund value for returnable containers
9 intended to be recycled and ensures that the empty returnable
10 containers are properly recycled.

11 ~~(14)~~ (22) "Remediate or remediation" means to remove all
12 litter, solid waste and tires located above grade at a site.
13 ~~Provided, That~~ However, remediation does not include clean up of
14 hazardous waste.

15 (23) "Returnable container" means a beverage container upon
16 which a deposit of five cents has been paid, or is required to be
17 paid upon the removal of the container from the sale or consumption
18 area.

19 (24) "Reverse vending machine" means a mechanical device,
20 which accepts one or more types of returnable containers and issues
21 a redeemable credit slip with a value of not less than the
22 container's refund value.

23 (25) "Sale or consumption area" means the premises within the
24 property of the dealer or the dealer's lessor where the sale is

1 made, and where beverages in returnable containers may be consumed
2 without payment of a deposit, but when the beverage container is
3 removed from the premises, the customer is either required by the
4 dealer to pay the deposit, or the dealer forfeits its collection of
5 the deposit.

6 ~~(15)~~ ~~"Television" means any telecommunication system device~~
7 ~~that can receive moving pictures and sound broadcast over a~~
8 ~~distance and includes a television tuner or a video display device~~
9 ~~peripheral to a computer in which the display contains a television~~
10 ~~tuner.~~

11 ~~(16)~~ (26) "Secretary" means the Secretary of the Department of
12 Environmental Protection.

13 ~~(15)~~ (27) "Television" means any telecommunication system
14 device that can receive moving pictures and sound broadcast over a
15 distance and includes a television tuner or a video display device
16 peripheral to a computer in which the display contains a television
17 tuner.

18 ~~(17)~~ (28) "Video display device" means an electronic device
19 with an output surface that displays or is capable of displaying
20 moving graphical images or visual representations of image
21 sequences or pictures that show a number of quickly changing images
22 on a screen to create the illusion of motion. Video display device
23 includes a device that is an integral part of the display and
24 cannot easily be removed from the display by the consumer and that

1 produces the moving image on the screen. A "video display device"
2 may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas
3 plasma, digital light processing, other image-projection technology
4 or imaging display technologies.

5 ~~(18)~~ (29) "Waste tire" means any continuous solid or pneumatic
6 rubber covering designed to encircle the wheel of a vehicle but
7 which has been discarded, abandoned or is no longer suitable for
8 its original, intended purpose nor suitable for recapping, or other
9 beneficial use because of wear, damage or defect. A tire is no
10 longer considered to be suitable for its original intended purpose
11 when it fails to meet the minimum requirements to pass a West
12 Virginia motor vehicle safety inspection. Used tires located at a
13 commercial recapping facility or tire dealer for the purpose of
14 being reused or recapped are not waste tires.

15 ~~(19)~~ (30) "Waste tire monofill or monofill" means an approved
16 solid waste facility where no solid waste except waste tires are
17 placed for the purpose of long term storage for eventual retrieval
18 for marketing purposes.

19 ~~(20)~~ (31) "Waste tire processing facility" means a solid waste
20 facility or manufacturer that accepts waste tires generated by
21 sources other than the owner or operator of the facility for
22 processing by such means as cryogenics, pyrolysis, pyroprocessing
23 cutting, splitting, shredding, quartering, grinding or otherwise
24 breaking down waste tires for the purposes of disposal, reuse,

1 recycling and/or marketing.

2 ~~(21)~~ (32) "Waters of the state" means generally, without
3 limitation, natural or artificial lakes, rivers, streams, creeks,
4 branches, brooks, ponds, impounding reservoirs, springs, wells,
5 watercourses and wetlands.

6 ~~(22)~~ (33) "Yard waste" means grass clippings, weeds, leaves,
7 brush, garden waste, shrub or tree prunings and other living or
8 dead plant tissues, except that materials, which due to inadvertent
9 contamination or mixture with other substances which render the
10 waste unsuitable for composting, are not yard waste: *Provided,*
11 That the same or similar waste generated by commercial agricultural
12 enterprises is excluded.

13 **§22-15A-30. Legislative findings and purpose.**

14 (a) The Legislature declares that in order for the State of
15 West Virginia to meet the requirements of the West Virginia
16 Recycling Act, which mandates recycling goals of fifty percent, it
17 is imperative that new opportunities for recycling, particularly in
18 rural areas of the state, be developed.

19 (b) The Legislature finds that containers are the most
20 recyclable commodity in the waste stream and that the discarding of
21 these containers is an unnecessary addition to the state's litter
22 problem and its solid waste disposal system.

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

1 which:

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

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

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

7 (4) Builds upon existing recycling infrastructure.

8 **§22-15A-31. Start up date for statewide deposit and effective**
9 **nonreturnable containers; deposits; refunds;**
10 **deposits exempt from sales tax, etc.**

11 (a) On and after July 1, 2012:

12 (1) A dealer within this state may not sell, offer for sale or
13 give to a consumer a beverage in a nonreturnable container for off
14 premises consumption of a beverage if the manufacturer originally
15 packages the beverage in a returnable container.

16 (2) A dealer who regularly sells beverages for consumption off
17 the dealer's premises shall collect a deposit of five cents on each
18 returnable container. Collected deposits shall be submitted to the
19 Department of Environmental Protection on a monthly basis,
20 beginning August 1, 2012.

21 (3) Redemption centers shall accept any kind, size and brand
22 of returnable containers sold or offered for sale in this state,
23 for which a deposit has been paid, and shall pay the deposit refund
24 in cash to any person returning such containers.

1 (4) Businesses that sell beverages in returnable containers
2 for on premises consumption, such as hotels, bars and restaurants,
3 shall collect the used returnable containers and either use a
4 recycling facility or redemption center for disposal of the
5 containers or become a redemption center.

6 (5) Businesses that sell beverages in returnable containers
7 for on premises consumption, such as hotels, bars and restaurants,
8 shall remit to the Department of Environmental Protection a deposit
9 equal to five cents for each beverage purchased from a distributor,
10 wholesaler or retailer in a returnable container. However, the
11 business shall not pay a deposit on a returnable container
12 purchased from a retailer if the deposit was paid to the retailer
13 at the time of purchase. The deposit shall be remitted by the
14 business on a monthly basis to the Department of Environmental
15 Protection and shall be accompanied by a deposit report on forms
16 provided by the department. The report shall, at a minimum, show
17 the total number of returnable containers used or sold each month,
18 the total amount of deposit being remitted and the total number of
19 beverages purchased in returnable containers from each distributor,
20 wholesaler and retailer each month.

21 (6) Manufacturers producing returnable beverage containers to
22 be sold in this state shall clearly indicate by embossing or by a
23 stamp, a label or other method securely affixed to the beverage
24 container, the refund value of the container and the name of this

1 state.

2 (b) A redemption center may, but is not required to, accept
3 for recycling an empty returnable container which does not state on
4 the container the refund value of the container and the name of
5 this state. A deposit refund shall not be paid on any such
6 container.

7 (c) A person, dealer, distributor or manufacturer may not
8 return an empty container to a redemption center for a refund of
9 the deposit if a redemption center has already refunded the deposit
10 on that returnable container.

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

14 (e) After verifying the accuracy of the request for refund,
15 the Department of Environmental Protection shall refund the deposit
16 to the redemption center plus a one cent per container handling
17 fee.

18 (f) Deposits collected under this article are exempt from the
19 sales tax imposed by article fifteen, chapter eleven of this code.

20 (g) Deposits collected or refunded shall not be included as
21 gross income for purposes of calculating the business and
22 occupation tax imposed or authorized by article thirteen, chapter
23 eleven of this code.

24 **§22-15A-32. Redemption centers.**

1 (a) Prior to operation, redemption centers shall be certified
2 by the Department of Environmental Protection.

3 (b) Applicants for certification as a redemption center shall
4 be filed with the Department of Environmental Protection on forms
5 prescribed by the department. Redemption centers must meet the
6 requirements of this article. Solid waste facilities and recycling
7 facilities, as defined in article fifteen of this chapter, may
8 include redemption centers. Redemption centers are not permitted
9 facilities under article fifteen of this chapter.

10 (c) Applications for certification shall at a minimum contain
11 the following:

12 (1) Name and business address of the applicant;

13 (2) Contact information for the applicant;

14 (3) Valid West Virginia business license and any applicable
15 county or municipal business license or permit;

16 (4) Proposed method for crushing, destroying and recycling
17 returnable containers;

18 (5) Amount of space available for receiving, crushing or
19 destroying and storing containers; and

20 (6) Other information requested by the department.

21 (d) The department, at any time, may review the certification
22 of a redemption center. After written notice to the person
23 responsible for the establishment and operation of the redemption
24 center and to the dealers served by the redemption center, the

1 department may withdraw the certification of the center if it finds
2 that there has not been compliance with applicable laws, rules,
3 certification requirements, fraud or abuse of the program.

4 (e) The Department of Environmental Protection, prior to the
5 approval of any redemption center, shall consult with, and if
6 requested, hold a meeting with local solid waste authorities to
7 discuss possible redemption sites and centers and coordination of
8 the collection and redemption process.

9 The Department of Enviromental Protection may enter into
10 memorandums of understanding with local solid waste authorities for
11 the purposes of clarifying responsibilities relating to redemption
12 and collection of beverage containers, and any other matters which
13 would streamline the redemption process, utilize existing
14 infrastructure and expand the overall recycling infrastructure. To
15 the extent possible, approval of redemption sites should strengthen
16 and not harm local solid waste authority recycling efforts.

17 (f) Redemption centers shall:

18 (1) Accept all types of empty returnable containers for which
19 a deposit has been paid in West Virginia.

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

22 (3) Pay to the redeemer at a minimum the full refund value for
23 all beverage containers, except as provided in section thirty-four
24 of this article;

1 (4) Shall not crush or destroy all returnable containers that
2 are accepted at the time of redemption, but such collected
3 containers may be crushed or destroyed after the recyclable items
4 have been separated;

5 (5) Recycle each container collected either through a
6 contractual agreement with an out-of-state recycler authorized to
7 transport recyclables within this state or an instate recycling
8 facility permitted by the Department of Environmental Protection.
9 However, a redemption center operated by a recycler is permitted to
10 recycle the containers accepted by it; and

11 (6) Forward the documentation necessary to support claims for
12 payment under section thirty-five of this article.

13 (g) Redemption centers' redemption areas shall be maintained
14 in full compliance with applicable laws and with the orders and
15 rules of the Department of Environmental Protection, the Bureau for
16 Public Health and local health departments.

17 **§22-15A-33. Reverse vending machine requirements.**

18 Reverse vending machines may be used by redemption centers if
19 the reverse vending machine accepts any type of empty returnable
20 container and pays out appropriate refunds via a redeemable voucher
21 for those containers that bear a valid West Virginia refund value.
22 The reverse vending machine shall be routinely serviced to ensure
23 proper operation and continuous acceptance of containers and
24 payment of refunds. All returnable containers accepted by a

1 reverse vending machine shall either be crushed or destroyed at the
2 point of redemption.

3 **§22-15A-34. Refusal of refund value payment for a returnable**
4 **container.**

5 Redemption centers shall refuse to pay the refund value on any
6 broken, corroded, dismembered, flattened returnable container, or
7 any returnable container which:

8 (1) Contains a free flowing liquid;

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

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

11 **§22-15A-35. Redemption center reporting.**

12 The Department of Environmental Protection shall pay certified
13 redemption centers handling fees and refund values as described in
14 section thirty-one of this article, based on collection reports
15 submitted by the redemption centers. All redemption centers shall
16 submit to the required information on forms prescribed by the
17 department. Information shall include at a minimum:

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

19 (2) The amount of refunds paid out;

20 (3) The amount and weight of each type of container
21 transported out-of-state, or to a permitted recycling facility
22 within this state;

23 (4) Copies of out-of-state transport and weight receipts, or
24 acceptance receipts from permitted recycling facilities. If the

1 redemption center and the recycling facility are the same entity,
2 copies of out-of-state transport and weight receipts, or
3 documentation of end use accepted by the Department of
4 Environmental Protection, shall also be included.

5 (5) The requests for payment shall be submitted to the
6 Department of Environmental Protection no more frequent than two
7 times per month. Beginning January 1, 2012, each redemption center
8 shall report the previous quarter's information no later than
9 thirty days after the end of that quarter to allow the handling
10 rate to be calculated. Failure to timely submit the report will
11 result in postponement of payment for those containers until the
12 reports are submitted.

13 **§22-15A-36. Report; filing; form and contents.**

14 (a) A dealer that originates a deposit on a beverage container
15 shall file a report with the Department of Environmental
16 Protection, not later than March 1, 2012, and not later than March
17 1 of each year after that, containing the information required by
18 subsection (b) of this section.

19 (b) The report required to be filed pursuant to subsection (a)
20 of this section must contain, for the period of January 1, 2012, to
21 December 31, 2012, and for the time period of January 1 to December
22 31 of each year thereafter, the dollar amount of the total deposits
23 collected by the dealer on beverage containers sold within this
24 state.

1 §22-15A-37. Returnable Container Deposit Fund; creation;
2 administration; deposits; annual disbursement;
3 report of information; rules.

4 (a) All returnable container deposits collected and remitted
5 to the Department of Environmental Protection shall be deposited in
6 a special revenue account in the State Treasury to be known as the
7 "Returnable Container Deposit Fund". Moneys in the fund are the
8 sole property of the state and do not revert to the person, dealer,
9 retailer or business that remitted the deposit to the state.
10 Expenditures from the fund shall be for the purposes set forth in
11 this article and are not authorized from collections but are to be
12 made only in accordance with appropriation by the Legislature and
13 in accordance with section three, article two, chapter eleven-b of
14 this code. However, for the fiscal year ending June 30, 2012,
15 expenditures are authorized from collections rather than pursuant
16 to appropriation by the Legislature.

17 (b) The amount paid to the State Treasury by dealers shall be
18 deposited in the returnable container deposit fund created in
19 subsection (a) of this section for annual disbursement by the
20 Department of Environmental Protection in the following manner:

21 (1) Six cents per container to redemption centers and
22 businesses.

23 (2) A reasonable amount not to exceed actual costs incurred by
24 the Department of Environmental Protection to administer the

1 program; and

2 (3) Ten percent of any surplus remaining in the fund after
3 authorized payments to redemption centers and businesses to refund
4 deposits, pay handling fees and administrative expenses shall be
5 transferred to the "Community Litter Control Fund";

6 (c) The Department of Environmental Protection shall report to
7 the Joint Committee on Government and Finance, publish and make
8 available to the public, information related to section thirty-six
9 of this article no later than December 31, 2012 and each year
10 thereafter.

11 (d) The Department of Environmental Protection shall propose
12 rules for legislative approval in accordance with article three,
13 chapter twenty-nine-a of this code to implement the requirements of
14 the returnable container deposit program contained in this article.

15 **§22-15A-38. Nonprofit redemption assistance.**

16 In order to achieve the aims of this article, nonprofit
17 organizations who are either registered with the West Virginia
18 Secretary of State or who are exempt from such registration, may
19 accept returnable containers as donations. Notwithstanding
20 contrary provisions of section thirty-one of this article,
21 nonprofit organizations that have collected returnable containers
22 as donations may obtain refunds in excess of \$25.

23 **§22-15A-39. Reporting and payments; limitation on local**
24 **governments to assess or collect assessments or**

1 **fees on deposit beverage containers.**

2 (a) All inventory reports and payments shall be made monthly
3 and received no later than the fifteenth day of the month following
4 the end of the reporting period.

5 (b) Payment shall be made by check or money order payable to
6 the Department of Environmental Protection, State of West Virginia.
7 Funds shall be deposited into the Returnable Container Deposit
8 Fund.

9 (c) No local government shall impose or collect any assessment
10 or fee on deposit beverage containers.

11 **§22-15A-40. Community Litter Control Fund.**

12 (a) All moneys designated and transferred from the "Returnable
13 Container Deposit Fund" in accordance with section thirty-seven of
14 this article shall be deposited in the "Community Litter Control
15 Fund" which is hereby created. Expenditures from the fund shall be
16 for the purposes set forth in this section and are not authorized
17 from collections but are to be made only in accordance with
18 appropriation by the Legislature and in accordance with section
19 three, article two, chapter eleven-b of this code. However, for
20 the fiscal year ending June 30, 2012, expenditures are authorized
21 from collections rather than pursuant to appropriation by the
22 Legislature.

23 (b) The "Community Litter Control Fund" may receive money or
24 other assets from any source for deposit and shall retain interest

1 earned on its investment.

2 (c) Money in the "Community Litter Control Fund" at the close
3 of the fiscal year remains in the "Community Litter Control Fund"
4 and does not lapse to the general revenue.

5 (d) The Department of Environmental Protection may only expend
6 interest and earnings of the Community Litter Control Fund for
7 grants for the purpose of creating and expanding recycling
8 programs. Those persons and groups eligible for grants include
9 county governments, local health departments, municipalities,
10 regional planning agencies, nonprofits and charitable organizations
11 that promote recycling through educational and clean-up programs.
12 Activities to be performed by grant recipients and program
13 objectives and deliverables shall be specified in contracts entered
14 into by the grant recipients and the department. Grant recipients
15 shall provide a financial match of not less than twenty-five
16 percent of each grant received. Not more than \$100,000 may be
17 granted in any fiscal year to a single recipient.

18 (e) The Department of Environmental Protection shall annually
19 submit a report summarizing the grants made under this section,
20 contractual commitments made and achieved and a preliminary
21 evaluation of the effectiveness of this section not later than
22 September 30, 2012, and each year thereafter, to the Joint
23 Committee on Government and Finance.

24 **§22-15A-41. Prohibited return; violation; penalty.**

1 (a) A person, dealer, business, distributor or manufacturer
2 may not return or attempt to return to a redemption center for a
3 refund any of the following:

4 (1) A beverage container that the person, dealer, business,
5 distributor or manufacturer knows or should know was not purchased
6 in this state.

7 (2) A beverage container that the person, dealer, business,
8 distributor or manufacturer knows or should know did not have a
9 deposit paid for it at the time of purchase.

10 (b) A person, dealer, business, distributor or manufacturer
11 who violates subsection (a) of this section is subject to one of
12 the following:

13 (1) If the person, dealer, business, distributor or
14 manufacturer returns twenty-five but not more than one hundred
15 nonreturnable containers, the person, dealer, business, distributor
16 or manufacturer is guilty of a misdemeanor and, upon conviction
17 thereof, shall be fined not more than \$100. Each day a violation
18 occurs is a separate offense.

19 (2) If the person, dealer, business, distributor or
20 manufacturer returns one hundred or more nonreturnable containers
21 or violates subdivision (a) above for a second or subsequent time,
22 the person, dealer, business, distributor or manufacturer is guilty
23 of a misdemeanor and, upon conviction thereof, shall be fined not
24 more than \$500. Each day a violation occurs is a separate offense.

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

4 **§22-15A-42. Posting notice on redemption center premises; failure**
5 **to comply; penalty.**

6 A redemption center shall post a notice in that portion of the
7 redemption center's premises where returnable containers are
8 redeemed stating the following: "A person who returns for refund
9 an out-of-state nonreturnable container is subject to a fine of
10 \$500 and restitution." A redemption center that fails to comply
11 with this section is subject to a fine of not more than \$50.

NOTE: The purpose of this bill is to establish a program to recycle beverage containers and reduce litter. The bill requires the use of returnable containers for many beverages and requires the use of a five cent deposit; exempts deposits on containers from sales taxes and excludes deposits from business and occupation taxes; prescribes the powers and duties of DEP; and prescribes penalties and remedies.

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

§22-15A-30 through §22-15A-42 are new; therefore, they have been completely underscored.