

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 855

**FISCAL
NOTE**

By Senator Rucker

[Introduced March 20, 2025; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding two new articles,
2 designated §22-15B-1 and §11-13NN-1, relating to creating the West Virginia Beverage
3 Producer Responsibility Act; stating definitions; setting forth producer responsibility
4 organization requirements; establishing a recycling refund trust fund; requiring Auditor
5 oversight; delineating label standards and deposit and refund procedures; authorizing the
6 promulgation of rules; providing a compliance deadline; establishing a tax credit for
7 producer responsibility organizations that build or develop a redemption center or
8 technology-based redemption center; identifying credit limitation; stating definitions; and
9 authorizing the promulgation of rules.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15B. WEST VIRGINIA BEVERAGE PRODUCER RESPONSIBILITY ACT.

§22-15B-1. The West Virginia Beverage Producer Responsibility Act.

1 (a) Title. This article shall be cited as the "West Virginia Beverage Producer Responsibility
2 Act".

3 (b) Definitions. Notwithstanding any other provision of code to the contrary, as used in this
4 article:

5 (1) "Beverage" means an alcoholic, nonalcoholic, carbonated, or noncarbonated drink
6 packaged and prepared in liquid, ready-to-drink form and intended for human consumption.

7 (2) "Beverage container" means a glass, metal, or plastic vessel that is hermetically sealed
8 or capped and that contains a beverage at the time it is sold or offered for sale. The term does not
9 include a container that:

10 (A) Has a fluid capacity of more than one gallon;

11 (B) Contains milk, dairy alternatives, dairy product or plant-based drink;

12 (C) Contains infant formula, including any liquid food sold as an alternative for human milk

for the feeding of infants; or

(D) Contains medical food, including a liquid food that is formulated to be consumed or administered under the supervision of a physician and that is intended for specific dietary management of diseases or health conditions for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.

(3) "Consumer" means a person who purchases at retail a beverage in a beverage container. The term includes home and office delivery; a lodging, eating, or drinking establishment if beverages are generally not consumed on the establishment's premises. The term does not include a person who purchases a beverage from a lodging, eating, or drinking establishment for consumption on the establishment's premises.

(4) "De minimus" means a producer that sells less than one million beverages per year in the state.

(5) "Department" means the West Virginia Department of Environmental Protection.

(6) "PRO" means a West Virginia Beverage Producer Responsibility Organization established under this article.

(7) "Producer" means a person responsible for compliance with requirements under this article:

(A) For beverages sold in a beverage container at a physical retail location in this state:

(i) If the beverage is sold in a beverage container under the brand of the beverage manufacturer or is sold in a beverage container that lacks identification of a brand, the producer is the person that manufactures the beverage;

(ii) If there is no person to which subparagraph (i) applies, the producer is the person that is licensed to manufacture and sell or offer for sale to consumers in this state a beverage in a beverage container under the brand or trademark of another manufacturer or person;

(iii) If there is no person to which subparagraphs (i) or (ii) applies, the producer is the brand owner of the beverage;

(iv) If there is no person described in subparagraphs (i), (ii), or (iii) within the United States, the producer is the person who is the importer of record for the beverage into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the beverage in this state; or

(v) If there is no person described in subparagraphs (i) to (iv), the producer is the person that first distributes the beverage in or into this state;

(B) For beverages sold or distributed in a beverage container in or into this state via e-commerce, remote sale, or distribution the producer of the packaging is the same as the producer identified under subdivision (7)(A) of this section;

(C) "Producer" shall not include:

(i) A state, a federal or state agency, a political subdivision, or other governmental unit;

(ii) A registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization;

or

(iii) A de minimis producer.

(8) "Redemption center" means a manned or unmanned operation approved by the PRO under this article that redeems returned empty beverage containers by collecting beverage containers from persons who deliver to the operation beverage containers and issuing to a person delivering beverage containers a refund for each with a value not less than the beverage container's refund value. A retail establishment may choose to serve as a redemption center through mutual agreement with a producer responsibility organization, but nothing in this article requires a retail establishment to serve as a redemption center.

(9) "Refund" means a payment by a redemption center under subsection (c) to a person or entity who presents a beverage container at the redemption center.

(10) "Refund program" means a beverage container recycling program established under this article.

(11) "Retail" means an establishment or physical location that sells beverage containers, including vending machines.

65 (c) Beverage container recycling PRO requirements.

66 (1) Producers may form, and a producer may participate in, the Beverage Container
67 Recycling PRO authorized by this article. The PRO shall be a nonprofit corporation organized
68 under chapter 31E of this code, that is formed for the purpose of creating and implementing a plan
69 to meet and maintain at least a biennial average recycling rate of no less than 75% for beverage
70 containers by January 1, 2035.

71 (2) The PRO shall establish labeling standards for beverage containers covered under this
72 chapter to inform the consumer of the refund amount provided on return.

73 (3) The PRO shall establish quality standards for beverage containers accepted for refund.

74 (4) The PRO shall collect and provide information necessary to enable the department to
75 determine an annual recycling rate for beverage containers collected through redemption centers,
76 curbside recycling programs and other means.

77 (d) Recycling refund trust fund. The PRO shall manage a system to collect and refund the
78 full amount of a consumer deposit. All collected consumer funds shall be deposited to the credit of
79 a recycling refund trust fund, known as the "Beverage Container Recycling Trust Fund,"
80 established and maintained by the State Treasurer with payments and disbursements managed
81 by the PRO. Money in the trust fund may be allocated and expended only for:

82 (1) Siting and permitting, construction, operation, transportation of material, leasing
83 agreements and liability insurance and maintenance of redemption centers and technology-based
84 redemption centers, including reverse vending machines and bag-drop receptacles, that provide
85 convenient cost-effective methods of paying refunds;

86 (2) Making refund payments to persons or entities, including curbside recycling programs,
87 who return a beverage container to a redemption center or through other means as determined by
88 the PRO, that meets quality standards determined by the PRO;

89 (3) Reimbursing a local government entity or independent entity operating a redemption
90 center, as authorized by the PRO, for refunds paid to persons or entities, including curbside

recycling programs, returning beverage containers that meet quality standards determined by the
PRO;

(4) Reimbursing a governmental or other entity that provides beverages without charging a
fee to the public during disaster declaration for any deposit paid on donated beverages;

(5) Providing information to and educating consumers about the refund program;

(6) Reimburse the State Auditor and the commission for costs incurred through audit,
oversight, or compliance processes; and

(7) Administration and management of the PRO.

(e) State Auditor oversight; reserves. The State Auditor may:

(1) Require the PRO to provide financial information;

(2) Conduct financial audits of the refund program; and

(3) Require the PRO to maintain reserves in an amount determined by the State Auditor in
accordance with applicable financial accounting standards.

(f) Label required.

(1) A person participating in the Beverage Container Recycling PRO authorized by this
article may not distribute, sell, or offer for sale in this state a beverage in a beverage container
unless the beverage container meets labeling standards established by the PRO, unless they are
a de minimis producer as defined in this section.

(2) A person participating in the Beverage Container Recycling PRO authorized by this
article may not sell at retail in this state a beverage in a beverage container unless the person
collects or provides for the collection of the deposit on the beverage container in accordance with
the manner established by the PRO.

(g) Procedures.

(1) The PRO shall establish efficient, convenient, and cost-effective procedures for
collection of the beverage container deposit and payment of the deposit refunds.

(2) If the PRO does not meet the recycling rate target provided under subsection (c) of this

117 section before the end of subsequent biennial, the department may require the PRO to remit to the
118 state all or part of the money in the recycling refund trust fund established under subsection (d)
119 herein. The State Auditor shall hold money remitted under this subsection until the PRO or
120 another organization provides to the department a corrective plan to meet the recycling target
121 under this section.

122 (3) The State Auditor shall consult with the department before approving the corrective
123 plan and releasing the money remitted and held under this subsection to the PRO or other
124 organization responsible for the approved corrective plan.

125 (4) The department may audit the PRO for accuracy and adherence to recycling targets
126 under this section. The PRO shall reimburse the department for the cost incurred by the
127 department in the audit process.

128 (h) Rules.

129 Not later than September 1, 2027, the department shall promulgate rules for the
130 implementation of this article. To facilitate the approval of the structure and organization of the
131 Beverage Container Recycling PRO and the PRO's initial plan, the department may adopt
132 emergency rules in accordance with the West Virginia administrative procedures act.

133 (i) Compliance.

134 (1) The PRO shall provide information as required by subsection (e), not later than
135 September 1, 2028.

136 (2) Except as otherwise provided by this article, a producer, retailer, redemption center, or
137 other person subject to requirements imposed by the PRO plan adopted and approved hereunder
138 shall comply with those requirements beginning January 1, 2028.

CHAPTER 11. TAXATION.

ARTICLE 13NN. TAX CREDIT FOR BEVERAGE CONTAINER RECYCLING **PRODUCER RESPONSIBILITY ORGANIZATION.**

§11-13NN-1. Beverage Container Recycling Producer Responsibility Organization tax adjustment credit.

1 (a) Credit allowed. – There shall be allowed to every eligible taxpayer a credit, as
2 determined under this section, against the tax imposed under §11-21-1 et seq. of this code, or
3 against the tax imposed under §11-24-1 et seq. of this code, as applicable.

4 (1) The amount of credit allowable shall be applied over a 10-year period, at the rate of one
5 tenth thereof per taxable year, beginning with the taxable year in which a redemption center or
6 technology-based redemption center is first placed in service or used in this state.

7 (2) The amount of annual credit allowed shall not reduce the business and occupation tax
8 under §11-13-1 et seq. of this code, below 50% of the amount which would be imposed for such
9 taxable year in the absence of this credit against tax, computed before application of the annual
10 exemption allowed by §11-13-3 of this code.

11 (3) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be
12 allowed for the amount of any unused portion of any annual credit allowance. Such unused credit
13 shall be forfeited.

14 (4) Credit limitation. The aggregate amount of credit allowable under this article, against
15 the taxes imposed by §11-13-1 et seq. of this code for the taxable year, shall in no event exceed
16 50% of the tax due for the taxable year, computed prior to application of the tax credits provided by
17 this article and §11-13C-1 et seq. of this code, and the annual exemption allowed provided by §11-
18 13-3 of this code.

19 (b) Definitions. –

20 (1) "Eligible taxpayer" means any West Virginia Beverage Producer Responsibility
21 Organization ("PRO") authorized by §22-15B-1 et seq. of this code who purchases or leases
22 property for the purpose of building or developing a redemption center or technology-based
23 redemption center in this state, as defined in §22-15B-1(b)(8) of this code, for the purpose of
24 providing refunds to consumers under the West Virginia Beverage Producer Responsibility Act.

A person or entity shall not constitute an eligible taxpayer for purposes of this article if any related person (as defined in Section 267(b) of the Internal Revenue Code of 1986) had operations or owned or leased property in West Virginia during the five-year period prior to building or developing a redemption center or technology-based redemption center, or if any such related person is a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to building or developing a redemption center or technology based redemption center.

(2) "Property purchased or leased for the purpose of building or developing a redemption center or technology-based redemption center" shall include real property, and improvements thereto, and tangible personal property incorporated into real property, whether or not attached thereto, but only if such real or tangible personal property was constructed, or purchased, on or after July 1, 2025, for use in building or developing a redemption center or technology-based redemption center.

(A) Property purchased or leased for the purpose of building or developing a redemption center or technology-based redemption center shall not include:

(i) Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the department of motor vehicles;

(iii) Airplanes;

(iv) Off-premise transportation equipment; and

(v) Property which is primarily used outside this state.

(3) Property shall be deemed to have been purchased or leased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

51 (B) The machinery or equipment was owned by the taxpayer prior to the specified date or
52 was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to
53 such date; or

54 (C) In the case of leased property, there was a binding written lease or contract to lease
55 identifiable property in effect prior to the specified date.

56 (c) Rules. – The State Tax Department and the economic development authority may
57 promulgate rules in accordance with §29A-3-1 et seq. of this code to carry out the policy and
58 purposes of this article, to provide any necessary clarification of the provisions of this article and to
59 efficiently provide for the general administration of this article.

NOTE: The purpose of this bill is to create the West Virginia Beverage Producer Responsibility Act. The bill states definitions; sets forth producer responsibility organization requirements; establishes a recycling refund trust fund; requires Auditor oversight; delineates label standards and deposit and refund procedures; authorizes the promulgation of rules; provides a compliance deadline; establishes a tax credit for producer responsibility organizations that build or develop a redemption center or technology-based redemption center; identifies credit limitation; and states definitions.

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