

HB 1652-FN - AS INTRODUCED

2022 SESSION

22-2706
08/11

HOUSE BILL ***1652-FN***

AN ACT relative to the recycling of beverage containers.

SPONSORS: Rep. Egan, Graf. 2; Rep. McGhee, Hills. 27; Rep. Tucker, Coos 5; Rep. Massimilla, Graf. 1

COMMITTEE: Environment and Agriculture

ANALYSIS

This bill establishes the beverage container deposit recycling program and directs the proceeds of such program to the general fund and to the state recycling fund.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the recycling of beverage containers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Beverage Container Deposit Recycling. Amend RSA by inserting after chapter 149-Q the following new chapter:

CHAPTER 149-R
BEVERAGE CONTAINER DEPOSIT RECYCLING

149-R:1 Definitions. In this chapter:

- I. "Beverage" means liquid intended for human consumption including, but not limited to, beer or other malt beverages, wine, liquor, other alcoholic drinks, soda water or other carbonated soft drinks, water, mineral water, dairy drinks, fruit juices, sports drinks, energy drinks, and iced teas or coffees. "Beverage" shall not include:
 - (a) A drug regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.;
 - (b) Infant formula; or
 - (c) A meal replacement liquid.
- II. "Beverage container" means any sealable bottle, can, or jar which is primarily composed of glass, metal, plastic, or any combination of those materials and is produced fro the purpose of containing a beverage. "Beverage container" shall not include:
 - (a) Pouches; or
 - (b) Aseptic packaging such as drink boxes.

III. "Bottler" means any person filling beverage containers for sale to distributors or dealers, including dealers who bottle or sell their own brand of beverage.

IV. "Consumer" means any person who purchases a beverage in a beverage container for use or consumption with no intent to resell such beverage.

V. "Dealer" means any person, including any operator of a vending machine, who engages in the sale of beverages in beverage containers to consumers in this state.

VI. "Department" means the department of environmental services.

VII. "Deposit initiator" means the first distributor to collect the deposit on a beverage containers old to any person within this state.

VIII. "Distributor" means any person who engages in the sale of beverages in beverage containers to dealers in this state, including any bottler who engages in such sales.

IX. "Redeemer" means every person who demands the refund value provided for herein in exchange for the empty beverage container, but shall not include a dealer as defined in this section.

X. "Redemption center" means any person offering to pay the refund value of an empty beverage container to a redeemer, or any person who contracts with one or more dealers or distributors to collect, sort, and obtain the refund value and handling fee of empty beverage containers for, or on behalf of, such dealer or distributor.

XI. "Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the universal product code on containers to determine if the container is redeemable and accumulates information regarding containers redeemed, including the number of such containers redeemed, thereby enabling the reverse vending machine to accept containers from redeemers and to issue a scrip or receipt for their refund value.

XII. "State-specific UPC code" means a UPC code that is unique to New Hampshire or used only in New Hampshire and any other states that have a substantially similar refund value law.

XIII. "Universal product code" or "UPC code" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a product. UPC code may also mean any accepted industry bar code which replaces the UPC code including EAN and other codes that may be used to identify a product.

149-R:2 Refund Value; Handling Fee.

I. The consumer shall pay a deposit of \$.10 to the dealer on each beverage container sold at retail in this state, except for any such beverage containers sold or offered for sale for consumption on an interstate passenger carrier and refunded to the consumer upon the return of the empty beverage container.

II. A retailer or redemption center who redeems beverage containers shall be reimbursed by the distributor of such beverage containers a handling fee in the amount of \$.035 per container.

149-R:3 Acceptance of Beverage Containers.

I. A dealer shall accept at their place of business from a redeemer any empty beverage containers of the design, shape, size, color, composition, and brand sold or offered for sale by the dealer, and shall pay to the redeemer the refund value of each such beverage container. Redemptions of refund value must be in legal tender, or a scrip or receipt from a reverse vending machine, provided that the scrip or receipt can be exchanged for legal tender for a period of not less than 60 days without requiring the purchase of other goods. The use or presence of a reverse vending machine shall not relieve a dealer of any obligations imposed pursuant to this chapter. If a dealer utilizes a reverse vending machine to redeem containers, the dealer shall provide redemption of beverage containers when the reverse vending machine is full, broken, under repair, or does not accept a type of beverage container sold or offered for sale by such dealer.

II. A dealer whose place of business has at least:

(a) Ten thousand but less than 30,000 square feet devoted to the display of merchandise for sale to the public shall install and maintain at least 2 reverse vending machines at the dealer's place of business;

(2) Thirty thousand but less than 60,000 square feet devoted to the display of merchandise for sale to the public shall install and maintain at least 3 reverse vending machines at the dealer's place of business; or

(3) Sixty thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least 4 reverse vending machines at the dealer's place of business.

III. The requirements of paragraph II to install and maintain reverse vending machines shall not apply to a dealer that:

- (a) Sells only beverage containers of 20 ounces or less where such beverage containers are packaged in quantities of fewer than 6;
- (b) Sells beverage containers and devotes no more than 5 percent of its floor space to the display and sale of consumer commodities; or
- (c) Obtains a waiver from the department authorizing dealers to provide consumers with an alternative technology that:
 - (1) Determines if the container is redeemable;
 - (2) Provides protections against fraud through a system that validates each container redeemed by reading the UPC code and, except with respect to refillable containers, renders the container unredeemable;
 - (3) Accumulates information regarding containers redeemed; and
 - (4) Issues legal tender, or a scrip, receipt, or other form of credit for the refund value, that can be exchanged for legal tender for a period of not less than sixty (60) days without requiring the purchase of other goods.

IV. A dealer to which paragraph II does not apply and whose place of business is at least 30,000 square feet which does not utilize reverse vending machines to process empty beverage containers for redemption shall:

- (a) Establish and maintain a dedicated area within such business to accept beverage containers for redemption;
- (b) Adequately staff such area to facilitate efficient acceptance and processing of such containers during business hours; and
- (c) Post one or more conspicuous signs at each public entrance to the business which describes where in the business the redemption area is located.

V. For the purposes of this chapter on any day that a dealer is open for less than 24 hours, the dealer may restrict or refuse the payment of refund values during the first and last hour the dealer is open for business.

VI. A deposit initiator shall accept from a dealer or redemption center any empty beverage container of the design, shape, size, color, composition, and brand sold or offered for sale by the deposit initiator, and shall pay the dealer or redemption center the refund value of each such beverage container. A deposit initiator shall accept and redeem all such empty beverage containers from a dealer or redemption center without limitation on quantity.

VII. A deposit initiator's or distributor's failure to pick up empty beverage containers, including containers processed in a reverse vending machine, from a redemption center, dealer, or the operator of a reverse vending machine, shall be a violation of this chapter.

VIII. A dealer, retailer, or redemption center may refuse to accept from a redeemer any empty beverage container that is not clean, is broken, or contains material foreign to the normal contents of the container.

IX. The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in this chapter shall apply only to containers originally sold in this state as filled beverage containers. Any person who tenders to a dealer, distributor, redemption center, or bottler more than 10 cases of 24 empty beverage containers each, which a person knows or has reason to know were not originally sold in this state as filled beverage containers, for the purpose of obtaining a refund value or handling fee, shall be subject to the penalties in RSA 149-R:8.

149-R:4 Redemption Centers. Any person may establish a redemption center and shall have the right to determine what type, size, and brand of beverage container shall be accepted.

149-R:5 Labeling.

I. Every beverage container sold or offered for sale at retail in this state shall clearly indicate by embossing or imprinting on the normal product label, or in the case of a metal beverage container on the top of the container, the words "New Hampshire" or the letters "NH" and the refund value of the container in not less than 1/8th inch type size or such other alternate indications as may be approved by the department.

II. The liquor commission may allow, in the case of liquor or wine bottles, a conspicuous adhesive sticker to be attached to indicate the deposit information required in paragraph I, provided that the size, placement, and adhesive qualities of the sticker are as approved by the department.

III. A bottler may place on a beverage container a state-specific UPC code as a means of preventing the sale or redemption of beverage containers on which no deposit was initiated.

149-R:6 Deposit and Disposition of Refund Values; Reports; Abandoned Deposits, and reimbursement.

I. Each deposit initiator who receives deposits under this chapter shall segregate said deposits in a refund value fund which shall be maintained separately from all other revenues. Said deposit initiator shall report on a monthly basis to the department of environmental services and the department of revenue administration the amount of said deposits or handling fees received and the amount refunded.

II. Each deposit initiator shall report to the commissioner of the department of revenue administration by the tenth day of each month, concerning transactions concerning its refund value fund in the preceding month. Such report shall be made in a form prescribed by the commissioner and shall include the number of beverage containers sold and the number of beverage containers returned in that month, the amount of deposits received in and payments made from the fund in that month and the most 3 month period, any income earned on amounts in the refund value fund during the preceding month, the balance in the refund value fund at the close of the preceding month, and such other information as the director of revenue may require in furtherance of the commissioner's duties pursuant to this chapter.

III. Each deposit initiator shall provide a report to the department describing all the types of beverage containers on which it initiates deposits. The report shall include the product name, type of beverage, size, and composition of the beverage container, the presence of any state-specific UPC code and the percentage of products covered by such code, the methods used to prevent the fraudulent sale and redemption of beverage containers, and any other information the department may require. Upon request, a depositor initiator shall also provide to the department a copy of the container label or a picture of any beverage container sold or offered for sale in this state on which it initiates a deposit.

IV. At the end of each month, any amounts that are or should be in a deposit initiator's refund value fund and that are in the excess of the sum of:

(a) Interest income earned on amounts in the account during that month; and

(b) The total amount of refund values received by the deposit initiator for beverage containers during that month and the 2 preceding months shall be deemed to constitute abandoned deposit amounts. Income earned on the fund may be transferred from the fund for use as funds of the deposit initiator.

V. By the tenth day of each month, each deposit initiator shall turn over to the commissioner of the department of revenue administration any deposit amounts deemed to be abandoned at the close of the preceding month, pursuant to paragraph IV. Such amounts may be paid from the refund value fund. Fifty percent of the total amounts collected by the commissioner of the department of revenue administration pursuant to this chapter shall be deposited in this state's general fund and 50 percent of the total amounts collected shall be paid to the state recycling fund established in RSA 9-C:6.

VI. In any month the authorized payments from the refund value fund by a deposit initiator exceed the funds that are or should be in its deposit transaction fund, the state shall reimburse the deposit initiator from amounts received pursuant to this section, for those refunds paid by the deposit initiator for beverage containers for which the funds that are or should be in its refund value fund are insufficient; provided however, that such reimbursements to a deposit initiator for a month shall not exceed the excess of:

(a) Amounts paid by the deposit initiator to the state pursuant to this section in the preceding 24 months over; or

(b) Amounts paid by this state to the deposit initiator pursuant to this section during the preceding 24 months.

149-R:7 Administration; Rulemaking.

I. The commissioner shall administer the provisions of the program. The commissioner shall adopt rules under RSA 541-A to administer this chapter.

II. The commissioner of the department of environmental services may adjust the refund value described as follows:

(a) The commissioner shall establish a process for determining the redemption rate of beverage containers in rule under RSA 541-A subject to this chapter. The commissioner may establish any guidelines or regulations necessary or expedient to determine this rate.

- (b) Not later than the June 30 of each year, the commissioner shall determine the redemption rate for the previous calendar year.
- (c) Beginning with the calendar year 2025, if the redemption rate for a given calendar year is found by the director to be less than 90 percent, the commissioner shall increase the refund value by at least \$0.05 before December 31 of the following calendar year.
- (d) At their discretion, the commissioner may require an increased refund value for any beverage container.
- (e) The commissioner may increase the handling fee value if, at their discretion, the commissioner determines that a higher handling fee value is necessary to support redemption centers, retailers, or the redemption rate for containers in this state.

IV. The commissioner of the department of revenue administration shall administer this program. The commissioner shall adopt rules under RSA 541-A to administer this chapter. Such rules shall include a provision to permit bottlers or distributors to borrow, without any interest charge, against their deposit transaction funds subject to such terms and conditions as the commissioner of the department of revenue administration deems appropriate.

149-R:8 Enforcement.

- I. The attorney general shall enforce the provisions of this chapter.
- II. Any bottler, distributor, retailer, dealer, or redemption center who violates any provisions of this chapter shall be subject to a civil penalty for each violation of not more than \$1,000 per violation.
- III. Any person, including a bottler, distributor, retailer, dealer, or redemption center, who violations the provisions shall be subject to a civil penalty of the greater of \$100 for each container or \$1,000 for each tender of containers.
- IV. Any deposit initiator failing to make full and timely payments as required shall pay interest on any unpaid amounts at the rate of 1.5 percent for each month or part thereof until payment is made in full.

2 State Recycling Fund. Amend RSA 9-C:6 to read as follows:

9-C:6 Fund Established. There is established in the office of the state treasurer a nonlapsing fund to be known as the state recycling fund to be administered by the director of the division, which shall be kept distinct and separate from all other funds. All moneys in the state recycling fund shall be continually appropriated to the commissioner of administrative services for the purpose of paying division costs in administering this chapter, providing state agencies with needed equipment and supplies for recycling, or to offset any costs associated with providing recycled materials pickup service. The treasurer shall deposit all donations received under RSA 9-C:7, I in the state recycling fund. ***The commissioner of the department of revenue administration shall deposit revenue from the beverage container deposit recycling program in the state recycling fund in accordance with RSA 149-R:6.***

3 Effective Date. This act shall take effect January 1, 2023.

LBA
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12/28/21

**HB 1652-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the recycling of beverage containers.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Liquor

	Fund and State Recycling Fund
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LOCAL:

Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	\$0	\$0	\$0

METHODOLOGY:

This bill establishes the beverage container deposit recycling program and directs the proceeds of such program to the general fund and to the state recycling fund.

The Department of Environmental Services indicates the duties assigned to the Department would require an additional position (Waste management Specialist Position IV, LG 26) in the Solid Waste Management Bureau. This position would be responsible for:

- Conducting rulemaking to administer chapter pursuant to proposed RSA 149-R:7, I.
- Establishing the waiver criteria in proposed RSA 149-R:3, III(c).
- Establishing a process for determining statewide redemption rate, annually calculate redemption rate, and adjust deposit values and handling fees accordingly pursuant to proposed RSAA 149-R:7.
- Reviewing monthly fiscal reports submitted by beverage distributors to the Department pursuant to proposed RSA 149-R:6.
- Reviewing periodic reports submitted by beverage distributors to the Department describing beverage products sold into the state pursuant to proposed RSA 149-R:6, III.
- Referring identified compliance and enforcement issues to the NH Attorney General’s office for further action.
- Responding to public inquiries and requests for information and preparing educational resources, etc.

The estimated annual costs for this position, including benefits, office space, equipment and operating expenses would be \$99,000 in FY 2023, \$101,000 in FY 2024 and \$106,000 in FY 2025. Because the bill is silent on a source of funding to pay for necessary resources, the Department assumes a general fund appropriation would be required. The process of establishing and staffing the Waste Management Specialist position and conducting the required rulemaking would require several months so implementation of the program would not be immediate.

The Department does not have information on the annual number of beverage containers sold in NH, and cannot predict a redemption rate. Because the Department has not administered a program like this, the Department is unable to estimate the complete administrative costs. The Department assumes that penalties and fines resulting from enforcement actions conducted by the Office of Attorney General would be deposited into the General Fund. The Department assumes local governments that currently collect recyclable beverage containers would see a reduction in the number of collected containers and revenue obtained from the subsequent sale of those containers for their commodity value (e.g., aluminum cans and PETE bottles). Finally, the bill would generate additional revenues for the State from unclaimed deposits (or abandoned deposits). This revenue would be split 50/50 between the General Fund and the State Recycling Fund.

The Department of Revenue Administration provided the following information and assumptions concerning the fiscal impact of this bill:

- The bill provides that the State shall reimburse deposit initiators when refunds paid exceed deposits received. It is unclear whether the Department of Environmental Services or the Department of Revenue Administration would administer this reimbursement obligation. For purposes of this fiscal note, Revenue Administration has assumed this obligation. The Department assumes this could result in an indeterminable decrease in revenue.

- The bill provides that deposit initiators collect a ten cent bottle deposit when a consumer purchases a bottled beverage and then refunds the ten cent bottled deposit when the consumer returns the beverage container. The Department would be responsible for collecting deposits deemed abandoned. The abandoned deposits would result in an increase in revenue to the general fund and state recycling fund. The Department does not have data upon which to estimate the revenue increase
- The Department would need to update necessary tax return forms and electronic management systems related to the beverage bottle deposit and redemption program, which would have an indeterminable cost. The Department assumes that these costs would be incurred in FY 2023 and FY 2024.
- The Department anticipates it would require additional positions to administer the bill. The Department does not have sufficient information regarding the scope or workload expected from the bottle deposit and redemption program to determine the number and type of positions needed to estimate the expected cost. The Department assumes it would start to incur the cost of these additional positions in FY 2023, with the full cost to be incurred in FY 2024 and forward.

The Liquor Commission provided the following information and assumptions concerning the fiscal impact of this bill:

- The bill would reduce beer tax revenue by an estimated \$6 million per year based on annual production of 44.1 million gallons. Current law (RSA 178:26) provides if a beverage container mandatory deposit legislation is passed into law the \$.30 per gallon tax shall be reduced to \$.18 per gallon as of the effective date of the legislation.
- The Commission would need to affix labels on each bottle sold in a state operated outlet with an identifying UPC code. Deposit stickers would be required on existing inventory (assume three weeks of inventory in stores). The cost of stickering unmarked retail inventory is estimated to be \$.10 per bottle or can. A three-week inventory equals about 22 million bottles and cans. The Commission is not able to estimate the costs to purchase labels and assign personnel to affix them upon inventory.
- New accounting and record keeping measures would be established to collect a deposit from consumers on each bottle purchased, track accounts, segregate this fund and file monthly reports with the Department of Revenue Administration and make payments to consumers who return products to liquor stores. The Commission anticipates hiring an Accountant II, LG19, to oversee this program. The cost of this position will be roughly \$75,000 including salary, benefits and equipment.
- Placing a deposit on alcoholic beverage containers will also reduce the number of gallons of beer sold annually since it may no longer have a price advantage over surrounding states (VT, ME, MA) and this would be reflected in a reduction in beer tax revenue.
- Installation of "reverse vending machines" (RVM) at a dealer's place of business based upon the square footage of the facility. RVM's are generally used for plastic bottles and cans. While the Commission does sell some products in plastic and cans the majority of products sold are in glass containers. As a dealer, the Commission would need to purchase and install reverse vending machines in stores that meet the square footage requirements stated in the bill. The Commission operates 67 state-owned stores. 32 stores would require RVMs. Assuming a minimum of 2 RVM's per store and a range of costs from \$10,000 to \$25,000 per RVM, the commission could pay from \$640,000 up to \$1,600,000 for 65 machines.
- Regarding location of RVMs, a store would likely lose product floor space to accommodate the RVM's. If outside the store, the Commission would need to locate space, install lighting and cameras for security, and determine if any local ordinances apply to the location of the machines outside of a liquor store.
- There would be an indeterminable cost to transport the recycled materials to a central or regional recycling center.
- There would be an indeterminable amount of additional revenue to the Commission as a retailer who redeems beverage containers and receives a handling fee in the amount of \$.035 per container.

The Department of Justice states the fiscal impact of this bill is indeterminable. The bill would require the Department to bring enforcement actions to assess civil penalties for bottlers, distributors, retailers, and dealers in response to violations of the law. The bill further subjects any person to a civil penalty per container or tender of containers. The fiscal impact on the Department based on the enforcement provision is indeterminable, because it is not possible to predict how many enforcement actions the Department would bring. Depending on the number of enforcement actions, additional resources may be required for the Department to fulfill its enforcement obligations.

There would be no impact on county revenue or on county or local expenditures.

This bill does not establish new positions or appropriate state funds.

AGENCIES CONTACTED:

Departments of Environmental Services, Justice and Revenue Administration and the Liquor Commission