

Section 1 Header

2022 SESSION

22-2706.0  
08/11

HOUSE BILL            *[bill number]*

AN ACT                relative to the recycling of beverage containers.

SPONSORS:            [sponsors]

COMMITTEE:          [committee]

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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.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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 1 New Chapter; Beverage Container Deposit Recycling. Amend RSA by inserting after chapter  
2 149-Q the following new chapter:

3 CHAPTER 149-R

4 BEVERAGE CONTAINER DEPOSIT RECYCLING

5 149-R:1 Definitions. In this chapter:

6 I. "Beverage" means liquid intended for human consumption including, but not limited to,  
7 beer or other malt beverages, wine, liquor, other alcoholic drinks, soda water or other carbonated  
8 soft drinks, water, mineral water, dairy drinks, fruit juices, sports drinks, energy drinks, and iced  
9 teas or coffees. "Beverage" shall not include:

10 (a) A drug regulated under the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.;

11 (b) Infant formula; or

12 (c) A meal replacement liquid.

13 II. "Beverage container" means any sealable bottle, can, or jar which is primarily composed  
14 of glass, metal, plastic, or any combination of those materials and is produced for the purpose of  
15 containing a beverage. "Beverage container" shall not include:

16 (a) Pouches; or

17 (b) Aseptic packaging such as drink boxes.

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

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

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

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

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

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

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

**Section 3 Header**  
**- Page 2 -**

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

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

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

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

16 149-R:2 Refund Value; Handling Fee.

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

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

23 149-R:3 Acceptance of Beverage Containers.

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

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

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

**Section 3 Header**

- Page 3 -

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

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

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

9           (a) Sells only beverage containers of 20 ounces or less where such beverage containers  
10 are packaged in quantities of fewer than 6;

11           (b) Sells beverage containers and devotes no more than 5 percent of its floor space to the  
12 display and sale of consumer commodities; or

13           (c) Obtains a waiver from the department authorizing dealers to provide consumers with  
14 an alternative technology that:

15                   (1) Determines if the container is redeemable;

16                   (2) Provides protections against fraud through a system that validates each  
17 container redeemed by reading the UPC code and, except with respect to refillable containers,  
18 renders the container unredeemable;

19                   (3) Accumulates information regarding containers redeemed; and

20                   (4) Issues legal tender, or a scrip, receipt, or other form of credit for the refund  
21 value, that can be exchanged for legal tender for a period of not less than sixty (60) days without  
22 requiring the purchase of other goods.

23           IV. A dealer to which paragraph II does not apply and whose place of business is at least  
24 30,000 square feet which does not utilize reverse vending machines to process empty beverage  
25 containers for redemption shall:

26           (a) Establish and maintain a dedicated area within such business to accept beverage  
27 containers for redemption;

28           (b) Adequately staff such area to facilitate efficient acceptance and processing of such  
29 containers during business hours; and

30           (c) Post one or more conspicuous signs at each public entrance to the business which  
31 describes where in the business the redemption area is located.

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

35           VI. A deposit initiator shall accept from a dealer or redemption center any empty beverage  
36 container of the design, shape, size, color, composition, and brand sold or offered for sale by the  
37 deposit initiator, and shall pay the dealer or redemption center the refund value of each such

**Section 3 Header**

**- Page 4 -**

1 beverage container. A deposit initiator shall accept and redeem all such empty beverage containers  
2 from a dealer or redemption center without limitation on quantity.

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

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

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

16 149-R:4 Redemption Centers. Any person may establish a redemption center and shall have the  
17 right to determine what type, size, and brand of beverage container shall be accepted.

18 149-R:5 Labeling.

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

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

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

29 149-R:6 Deposit and Disposition of Refund Values; Reports; Abandoned Deposits, and  
30 reimbursement.

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

36 II. Each deposit initiator shall report to the commissioner of the department of revenue  
37 administration by the tenth day of each month, concerning transactions concerning its refund value

**Section 3 Header**  
**- Page 5 -**

1 fund in the preceding month. Such report shall be made in a form prescribed by the commissioner  
2 and shall include the number of beverage containers sold and the number of beverage containers  
3 returned in that month, the amount of deposits received in and payments made from the fund in  
4 that month and the most 3 month period, any income earned on amounts in the refund value fund  
5 during the preceding month, the balance in the refund value fund at the close of the preceding  
6 month, and such other information as the director of revenue may require in furtherance of the  
7 commissioner's duties pursuant to this chapter.

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

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

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

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

23 V. By the tenth day of each month, each deposit initiator shall turn over to the commissioner  
24 of the department of revenue administration any deposit amounts deemed to be abandoned at the  
25 close of the preceding month, pursuant to paragraph IV. Such amounts may be paid from the refund  
26 value fund. Fifty percent of the total amounts collected by the commissioner of the department of  
27 revenue administration pursuant to this chapter shall be deposited in this state's general fund and  
28 50 percent of the total amounts collected shall be paid to the state recycling fund established in RSA  
29 9-C:6.

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

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

**Section 3 Header**  
**- Page 6 -**

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

3           149-R:7 Administration; Rulemaking.

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

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

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

11           (b) Not later than the June 30 of each year, the commissioner shall determine the  
12 redemption rate for the previous calendar year.

13           (c) Beginning with the calendar year 2025, if the redemption rate for a given calendar  
14 year is found by the director to be less than 90 percent, the commissioner shall increase the refund  
15 value by at least \$0.05 before December 31 of the following calendar year.

16           (d) At their discretion, the commissioner may require an increased refund value for any  
17 beverage container.

18           (e) The commissioner may increase the handling fee value if, at their discretion, the  
19 commissioner determines that a higher handling fee value is necessary to support redemption  
20 centers, retailers, or the redemption rate for containers in this state.

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

26           149-R:8 Enforcement.

27           I. The attorney general shall enforce the provisions of this chapter.

28           II. Any bottler, distributor, retailer, dealer, or redemption center who violates any provisions  
29 of this chapter shall be subject to a civil penalty for each violation of not more than \$1,000 per  
30 violation.

31           III. Any person, including a bottler, distributor, retailer, dealer, or redemption center, who  
32 violations the provisions shall be subject to a civil penalty of the greater of \$100 for each container or  
33 \$1,000 for each tender of containers.

34           IV. Any deposit initiator failing to make full and timely payments as required shall pay  
35 interest on any unpaid amounts at the rate of 1.5 percent for each month or part thereof until  
36 payment is made in full.

37           2 State Recycling Fund. Amend RSA 9-C:6 to read as follows:

**Section 3 Header**

**- Page 7 -**

1           9-C:6 Fund Established. There is established in the office of the state treasurer a nonlapsing  
2 fund to be known as the state recycling fund to be administered by the director of the division, which  
3 shall be kept distinct and separate from all other funds. All moneys in the state recycling fund shall  
4 be continually appropriated to the commissioner of administrative services for the purpose of paying  
5 division costs in administering this chapter, providing state agencies with needed equipment and  
6 supplies for recycling, or to offset any costs associated with providing recycled materials pickup  
7 service. The treasurer shall deposit all donations received under RSA 9-C:7, I in the state recycling  
8 fund. *The commissioner of the department of revenue administration shall deposit revenue*  
9 *from the beverage container deposit recycling program in the state recycling fund in*  
10 *accordance with RSA 149-R:6.*

11           3 Effective Date. This act shall take effect January 1, 2023.