

HOUSE BILL NO. 401
INTRODUCED BY E. CARNEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE COLLECTION AND RECYCLING OF CERTAIN BEVERAGE CONTAINERS; ESTABLISHING A REFUNDABLE CONTAINER DEPOSIT; PROVIDING FOR BEVERAGE CONTAINER REDEMPTION CENTERS; PROVIDING RESPONSIBILITIES FOR BEVERAGE RETAILERS AND DISTRIBUTORS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO IMPLEMENT RULES AND ENFORCE PROVISIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 14] may be cited as the "Montana Beverage Container Deposit and Recycling Act".

NEW SECTION. **Section 2. Purposes and objectives.** The purposes and objectives of [sections 1 through 14] are to:

- (1) minimize beverage container litter and disposal costs;
- (2) reduce the use of energy and raw materials and to promote energy conservation pursuant to the state energy policy in 90-4-1001;
- (3) encourage the reuse and recycling of beverage containers and to promote state solid waste and recycling policies pursuant to 75-10-102;
- (4) discourage the use of disposable single-use containers;
- (5) reduce injuries from broken glass containers; and
- (6) institute a deposit and refund system for most beverage containers.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], unless the context requires otherwise, the following definitions apply:

- (1) (a) "Beverage" means beer, ale, or other malt beverage regardless of alcohol content, mixed wine-based drink, mixed liquor drink, hard cider or fruit drink, carbonated or noncarbonated natural or mineral water, regular or mixed tea or coffee drink, fruit juice, soda water, and carbonated or noncarbonated soft drink of any kind in a liquid form for human consumption.

(b) The term does not include a liquid that is a:

(i) drug, medical supplement, or infant formula, as defined by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.;

(ii) liquid that is designed and consumed only as a dietary supplement, as defined in the Dietary Supplemental Health and Education Act of 1994, Public Law 103-417;

(iii) milk or other dairy product, except mixed tea or coffee drinks containing minimal amounts of dairy product;

(iv) concentrated syrup used to produce a drink upon dilution; and

(v) nonmixed wine or liquor, as defined in 16-1-106.

(2) "Beverage container" means a sealed glass, metal, or plastic container, bottle, or can that contains or did contain a beverage.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Clean" means containing nothing except the residue of its original contents.

(5) "Consumer" means a person who buys a beverage in a beverage container for consumption.

(6) "Department" means the department of environmental quality provided for in 2-15-3501.

(7) "Distributor" means a person who sells a beverage in a beverage container to another distributor or to a retailer in this state, including a manufacturer of beverages who engages in these sales.

(8) "Person" means an individual, corporation, partnership, association, governmental subdivision, or business organization of any kind.

(9) "Redemption center" means an operation, other than a retailer, that accepts a beverage container from a consumer and pays to the consumer the cash deposit refund value of the beverage container.

(10) "Refillable" means a beverage container capable of being reused for the sale of a beverage.

(11) "Retailer" means a person that sells a beverage in a beverage container to a consumer.

NEW SECTION. Section 4. Refund value. Each beverage container sold or offered for sale in this state beginning January 1, 2004, must have a refund value of not less than 5 cents. A crushed, torn, or otherwise bent metal beverage container retains its refund value only if the whole label required by [section 5] is visible.

NEW SECTION. Section 5. Labeling. (1) Except as provided in subsection (2), each beverage container sold or offered for sale in this state beginning January 1, 2004, must clearly indicate by embossing or by a stamp, label, or other method securely affixed to the beverage container the refund value of the container

in this state and the name or name abbreviation of this state.

(2) Any type of refillable glass or plastic beverage container having a refund value of not less than 5 cents beginning on January 1, 2004, and having a brand name permanently marked on it is not required to indicate the refund value, as provided in this section.

NEW SECTION. Section 6. Retailer requirements. (1) Except as provided in subsections (2) through (4), beginning January 1, 2004, a retailer shall accept from any consumer, and shall pay in cash the refund value for, any beverage container that is:

- (a) empty, reasonably clean, and unbroken;
- (b) labeled as required in [section 5];
- (c) of the kind, size, and brand sold by the retailer; and
- (d) presented to the retailer at the retailer's place of business.

(2) A retailer who sells a beverage exclusively for consumption on the retailer's premises may elect to not charge or refund a deposit for that beverage container.

(3) A retailer may limit the total refund paid pursuant to this section to any one consumer during any 1 day to a maximum of \$20.

(4) A retailer is not required to accept and pay the refund on a beverage container if it is not sold by the retailer or if the retailer, by clearly posted signs at the retail outlet, directs the consumer to a redemption center that is located no further than 3 miles from the retail outlet and that will accept and pay the refund on a beverage container that is sold by the retailer.

NEW SECTION. Section 7. Distributor requirements. (1) Beginning January 1, 2004, a distributor shall accept from any retailer or redemption center and shall pay in cash the refund value for any beverage container that is:

- (a) empty, reasonably clean, and unbroken;
- (b) labeled as required in [section 5];
- (c) of the kind, size, and brand sold by the distributor; and
- (d) accounted for and presented at the retailer's, distributor's, or redemption center's place of business.

(2) (a) In addition to the payment of the refund value, the distributor shall reimburse the retailer or redemption center for the cost of handling beverage containers. Except as provided in subsection (2)(b), the handling cost reimbursement must be at least 20% of the refund value of each beverage container accounted

for and presented to the distributor by the retailer or redemption center, as provided in subsection (1).

(b) A distributor or group of distributors may sign, with a retailer or redemption center, an agreement designed to reduce counting, sorting, and other handling requirements associated with returned beverage containers. An agreement may specify a mutually agreeable handling reimbursement that is different from that required by subsection (2)(a).

(3) A distributor shall, within 10 days of receiving written billing from a redemption center, fulfill all of the distributor's obligations under subsections (1) and (2) to that redemption center.

(4) A distributor may:

(a) retain all unclaimed deposits for beverage containers that are not returned and that are not used to pay handling costs under subsection (2); and

(b) establish reasonable procedures to prevent the multiple redemption of nonrefillable beverage containers that a redemption center retains for further recycling.

NEW SECTION. Section 8. Notice of refund on vending machines. Beginning January 1, 2004, an owner of a vending machine who sells beverages in beverage containers shall, as a substitute for complying with the requirements of [section 6] with respect to that vending machine, post a conspicuous notice on the vending machine stating that a refund of not less than 5 cents is available for each beverage container sold and stating the nearest location where the refund may be obtained.

NEW SECTION. Section 9. Redemption centers. (1) A person may not establish, maintain, or operate a redemption center without the approval and certification of the department. Unless the facility is licensed pursuant to Title 75, chapter 10, part 2, an application for the approval and certification of a redemption center must be filed with the department and must include the following:

(a) the name and address of the person responsible for the establishment and operation of the facility;

(b) the location of the facility;

(c) a statement from the appropriate local authorities certifying that the location and operation of the facility will be in compliance with applicable local land use requirements;

(d) the type of beverage containers that will be accepted for refunds at the redemption center;

(e) an operation plan describing how beverage containers will be processed at the facility; and

(f) any additional relevant information that the department may require by rule in the interest of public health, safety, and welfare and in furtherance of the purposes and objectives of [section 2].

(2) The department may, after notice and opportunity for a hearing before the board, revoke the approval and certification of a redemption center for violation of [sections 1 through 14], department rules, or orders issued under [section 12].

(3) A redemption center may retain possession of any nonrefillable beverage container for further recycling even after the distributor has paid the refund and handling reimbursement, with the approval of the distributor.

(4) A deliberate attempt by a person to obtain multiple redemption of the same beverage container constitutes actual fraud punishable under 27-1-221.

NEW SECTION. Section 10. Department duties. The department may adopt rules to implement [sections 1 through 14], including but not limited to rules for:

- (1) the establishment, operation, and approval of redemption centers; and
- (2) recordkeeping designed to identify or estimate the effectiveness of [sections 1 through 14].

NEW SECTION. Section 11. Inspections. The department is authorized to conduct inspections of any retailer, distributor, or redemption center facility subject to [sections 1 through 14] to determine compliance with [sections 1 through 14] and to obtain copies of any records related to the recycling and redemption of beverage containers.

NEW SECTION. Section 12. Administrative enforcement. (1) When the department determines that a violation of [sections 1 through 14] or a violation of a rule adopted pursuant to [sections 1 through 14] has occurred, it may serve written notice of the violation to the alleged violator or the violator's agent. The notice must specify the law or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time. The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of a request for a hearing, the board shall schedule a hearing. Service by mail is complete on the day of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department's order. An order may include the date by which the violation must cease and may establish time limits for taking a particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or

any other appropriate means before issuing an order pursuant to subsection (1).

NEW SECTION. Section 13. Civil enforcement. (1) The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court an action to enjoin the operation of any retailer, distributor, or redemption center for a violation of [sections 1 through 14] or a rule adopted or an order issued pursuant to [sections 1 through 14].

(2) The department may sue in district court to collect a civil penalty, as provided in [section 14].

NEW SECTION. Section 14. Civil penalty. A person who violates [sections 1 through 14] or a rule adopted or an order issued pursuant to [sections 1 through 14] is subject to a civil penalty of not more than \$500 for each day of violation.

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 14].

NEW SECTION. Section 16. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Effective date. [This act] is effective on passage and approval.

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