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HOUSE BILL 238

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING AND ENACTING SECTIONS OF THE BEVERAGE CONTAINER ACT; REQUIRING DEPOSITS ON BEVERAGE CONTAINERS; CREATING A FUND; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 57-20-1 NMSA 1978 (being Laws 1981, Chapter 289, Section 1) is amended to read:

"57-20-1. SHORT TITLE.--~~[This act]~~ Chapter 57, Article 20 NMSA 1978 may be cited as the "Beverage Container Act"."

**SECTION 2.** Section 57-20-2 NMSA 1978 (being Laws 1981, Chapter 289, Section 2, as amended) is amended to read:

"57-20-2. DEFINITIONS.--As used in the Beverage Container Act:

A. "beverage" means ~~[beer or other malt beverages,~~

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1 ~~fruit juice, vegetable juice and mineral waters, soda water and~~  
2 ~~similar carbonated soft drinks in liquid form and intended for~~  
3 ~~human consumption; and~~

4 ~~B. "beverage container" means the individual,~~  
5 ~~separate, metal can containing a beverage] wine, alcoholic~~  
6 ~~liquor, beer, mineral water, soda water and similar carbonated~~  
7 ~~soft drinks that are in liquid form and intended for human~~  
8 ~~consumption;~~

9 ~~B. "beverage container" means any sealed glass,~~  
10 ~~plastic or metal bottle, can, jar or carton that contains a~~  
11 ~~beverage;~~

12 ~~C. "consumer" means any person who purchases a~~  
13 ~~beverage in a beverage container for use or consumption;~~

14 ~~D. "dealer" means any person who engages in the~~  
15 ~~sale of beverages in beverage containers to a consumer;~~

16 ~~E. "dealer agent" means a person who solicits or~~  
17 ~~picks up empty beverage containers from a dealer for the~~  
18 ~~purpose of returning the empty beverage containers to a~~  
19 ~~distributor or manufacturer;~~

20 ~~F. "department" means the department of~~  
21 ~~environment;~~

22 ~~G. "distributor" means any person who engages in~~  
23 ~~the sale of beverages in beverage containers to a dealer in~~  
24 ~~this state, including any manufacturer who engages in such~~  
25 ~~sales;~~

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1           H. "false or counterfeit label or indication" means  
2 a label or indication purporting to show a valid refund value  
3 that has not been initially applied as authorized by a  
4 distributor;

5           I. "geographic territory" means the geographical  
6 area within a perimeter formed by the outermost boundaries  
7 served by a distributor;

8           J. "independent redemption center" means a  
9 redemption center that is also a nonprofit or a for-profit  
10 facility that is not affiliated with or in any way a subsidiary  
11 of a dealer, a distributor or a manufacturer;

12           K. "manufacturer" means any person who bottles,  
13 cans or otherwise fills beverage containers for sale to  
14 distributors or dealers;

15           L. "nonrefillable beverage container" means a  
16 beverage container not intended to be refilled for sale by a  
17 manufacturer;

18           M. "plastic can" means a beverage container that,  
19 in addition to the closure mechanism, is composed of plastic  
20 and metal;

21           N. "redemption center" means a facility at which  
22 consumers may return empty beverage containers and receive  
23 payment for the refund value of the empty beverage containers;  
24 and

25           O. "secretary" means the secretary of environment."

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1           SECTION 3. A new section of the Beverage Container Act is  
2 enacted to read:

3           "[NEW MATERIAL] REFUND VALUES.--

4           A. A refund value of not less than five cents  
5 (\$.05) shall be paid by the consumer on each beverage container  
6 sold in this state by a dealer for consumption off the  
7 premises. Upon return of the empty beverage container upon  
8 which a refund value has been paid to the dealer or person  
9 operating a redemption center and acceptance of the empty  
10 beverage container by the dealer or person operating a  
11 redemption center, the dealer or person operating a redemption  
12 center shall return the amount of the refund value to the  
13 consumer.

14           B. In addition to the refund value provided in this  
15 section, a dealer, a dealer agent or a person operating a  
16 redemption center who redeems empty beverage containers shall  
17 be reimbursed one cent (\$.01) per container by the distributor.  
18 A dealer, dealer agent or person operating a redemption center  
19 may compact empty metal beverage containers with the approval  
20 of the distributor required to accept the containers."

21           SECTION 4. A new section of the Beverage Container Act is  
22 enacted to read:

23           "[NEW MATERIAL] PAYMENT OF REFUND VALUE.--Except as  
24 otherwise provided in the Beverage Container Act:

25           A. a dealer shall not refuse to accept from or

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1 refuse to pay to the consumer the refund value of any empty  
2 beverage container of the kind, size and brand sold by the  
3 dealer;

4 B. a distributor shall accept and pick up from a  
5 dealer or a redemption center for a dealer served by the  
6 distributor at least weekly or when the distributor delivers  
7 the beverage product, if deliveries are less frequent than  
8 weekly, any empty beverage container of the kind, size and  
9 brand sold by the distributor and shall pay to the dealer or  
10 person operating a redemption center the refund value of a  
11 beverage container and the reimbursement within one week  
12 following pickup of the containers, or when the dealer or  
13 redemption center normally pays the distributor for the deposit  
14 on beverage products purchased from the distributor, if less  
15 frequent than weekly. A distributor or employee or agent of a  
16 distributor is not in violation of the Beverage Container Act  
17 if a redemption center is closed when the distributor attempts  
18 to make a regular delivery or a regular pickup of empty  
19 beverage containers;

20 C. a distributor shall not be required to pay to a  
21 manufacturer a deposit or refund value on a nonrefillable  
22 beverage container;

23 D. a distributor shall accept from a dealer agent  
24 any empty beverage container of the kind, size and brand sold  
25 by the distributor that was picked up by the dealer agent from

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1 a dealer within the geographic territory served by the  
2 distributor, and the distributor shall pay the dealer agent the  
3 refund value of the empty beverage container and the  
4 reimbursement; and

5 E. the department shall provide for the recycling  
6 or disposal of empty beverage containers. The department shall  
7 give priority consideration to the recycling of the empty  
8 beverage containers, to the extent possible, before any other  
9 appropriate disposal method is considered or implemented."

10 SECTION 5. A new section of the Beverage Container Act is  
11 enacted to read:

12 "[NEW MATERIAL] REFUSAL TO ACCEPT CONTAINERS.--

13 A. Except as otherwise provided in the Beverage  
14 Container Act, a dealer, a person operating a redemption  
15 center, a distributor or a manufacturer may refuse to accept  
16 any empty beverage container that does not have stated on it a  
17 refund value.

18 B. A dealer may refuse to accept and to pay the  
19 refund value of any empty beverage container if the place of  
20 business of the dealer and the kind and brand of empty beverage  
21 containers are included in an order of the department approving  
22 a redemption center.

23 C. A manufacturer or distributor may refuse to  
24 accept and to pay the refund value and reimbursement on any  
25 empty beverage container that was picked up by a dealer agent

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1 from a dealer outside the geographic territory served by the  
2 manufacturer or distributor."

3 SECTION 6. A new section of the Beverage Container Act is  
4 enacted to read:

5 "[NEW MATERIAL] REFUND VALUE STATED ON CONTAINER--  
6 EXCEPTIONS.--

7 A. Each beverage container sold or offered for sale  
8 in this state by a dealer shall clearly indicate by embossing  
9 or by a stamp, label or other method securely affixed to the  
10 beverage container the refund value of the beverage container.  
11 The department shall specify, by rule, the minimum size of the  
12 refund value indication on the beverage containers.

13 B. A person, except a distributor, shall not import  
14 into this state after July 1, 2011 a beverage container that  
15 does not have securely affixed to the beverage container the  
16 refund value indication. The provisions of this subsection do  
17 not apply to:

18 (1) beverage containers containing alcoholic  
19 liquor for which the total capacity of the beverage containers  
20 is not more than one quart or, in the case of alcoholic liquor  
21 personally obtained outside the United States, one gallon;

22 (2) beverage containers containing beer for  
23 which the total capacity of the beverage containers is not more  
24 than two hundred eighty-eight fluid ounces; or

25 (3) all other beverage containers for which

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1 the total capacity is not more than five hundred seventy-six  
2 fluid ounces.

3 C. The provisions of Subsections A and B of this  
4 section do not apply to a refillable glass beverage container  
5 that has a brand name permanently marked on it and that has a  
6 refund value of not less than five cents (\$.05), to any other  
7 refillable beverage container that has a refund value of not  
8 less than five cents (\$.05) and that is exempted by the  
9 secretary under rules adopted by the secretary or to a beverage  
10 container sold aboard a commercial airliner or passenger train  
11 for consumption on the premises."

12 SECTION 7. A new section of the Beverage Container Act is  
13 enacted to read:

14 "[NEW MATERIAL] REDEMPTION CENTERS.--

15 A. Any person may establish a redemption center,  
16 subject to the approval of the department, at which consumers  
17 may return empty beverage containers and receive payment of the  
18 refund value of such beverage containers.

19 B. An application for approval of a redemption  
20 center shall be filed with the department. The application  
21 shall state the name and address of the person responsible for  
22 the establishment and operation of the redemption center, the  
23 kind and brand names of the beverage containers that will be  
24 accepted at the redemption center and the names and addresses  
25 of the dealers to be served by the redemption center. The

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1 application shall contain other information that the secretary  
2 may reasonably require.

3 C. The department shall approve a redemption center  
4 if it finds that the redemption center will provide a  
5 convenient service to consumers for the return of empty  
6 beverage containers. The order of the department approving a  
7 redemption center shall state the dealers to be served by the  
8 redemption center and the kind and brand names of empty  
9 beverage containers that the redemption center shall accept.  
10 The order may contain any other provisions that the secretary  
11 requires to ensure that the redemption center will provide a  
12 convenient service to the public.

13 D. The department may review the approval of any  
14 redemption center at any time. After written notice to the  
15 person responsible for the establishment and operation of the  
16 redemption center and to the dealers served by the redemption  
17 center, the secretary may, after hearing, withdraw approval of  
18 a redemption center if the secretary finds that there has not  
19 been compliance with the department's order approving the  
20 redemption center or if the redemption center no longer  
21 provides a convenient service to the public.

22 E. All approved redemption centers shall meet  
23 applicable health standards."

24 SECTION 8. A new section of the Beverage Container Act is  
25 enacted to read:

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1           "[NEW MATERIAL] SECRETARY RULES.--The secretary shall  
2 adopt the rules necessary to carry out the provisions of the  
3 Beverage Container Act."

4           **SECTION 9.** A new section of the Beverage Container Act is  
5 enacted to read:

6           "[NEW MATERIAL] APPEAL.--Any person aggrieved by an order  
7 of the department relating to the approval or withdrawal of  
8 approval for a redemption center may seek judicial review of  
9 the order in the district where the redemption center would be  
10 located."

11           **SECTION 10.** A new section of the Beverage Container Act  
12 is enacted to read:

13           "[NEW MATERIAL] PROHIBITED ACTS--PENALTIES.--

14           A. A person who violates a provision of the  
15 Beverage Container Act or a rule adopted pursuant to that act  
16 is guilty of a petty misdemeanor and shall be punished pursuant  
17 to Section 31-19-1 NMSA 1978.

18           B. A distributor shall not collect or attempt to  
19 collect a refund value on an empty beverage container if the  
20 distributor has paid the refund value on the beverage container  
21 to a dealer, redemption center or consumer.

22           C. A person shall not:

23                   (1) collect or attempt to collect the refund  
24 value on the beverage container a second time with the  
25 knowledge that the refund value has once been paid by the

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1 distributor to a dealer, redemption center or consumer;

2 (2) manufacture, sell, possess or apply a  
3 false or counterfeit label or indication that shows or purports  
4 to show a refund value for a beverage container with intent to  
5 use the false or counterfeit label or indication; or

6 (3) collect or attempt to collect a refund  
7 value on a container with the use of a false or counterfeit  
8 label or indication showing a refund value, with the knowledge  
9 that the label or indication is false or counterfeit.

10 D. Exempt from the provisions of this section are  
11 empty beverage containers that are intended to be refillable  
12 and are in a standard of condition except for sanitization to  
13 be refillable by the manufacturer."

14 SECTION 11. A new section of the Beverage Container Act  
15 is enacted to read:

16 "[NEW MATERIAL] DISTRIBUTORS' AGREEMENTS AUTHORIZED.--A  
17 distributor may enter into a contract or agreement with any  
18 other distributor, manufacturer or person for the purpose of  
19 collecting or paying the refund value on, or disposing of,  
20 beverage containers."

21 SECTION 12. A new section of the Beverage Container Act  
22 is enacted to read:

23 "[NEW MATERIAL] REDEMPTION OF REFUSED NONREFILLABLE METAL  
24 BEVERAGE CONTAINERS.--If the refund value indication on an  
25 empty nonrefillable metal beverage container is readable but

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1 the redemption of the beverage container is lawfully refused by  
2 a dealer or person operating a redemption center, the beverage  
3 container shall be accepted and the refund value paid to a  
4 consumer as provided in this section. Each beer distributor  
5 selling nonrefillable metal beverage containers in this state  
6 shall provide individually or collectively by contract or  
7 agreement with a dealer, person operating a redemption center  
8 or another person at least one facility in the county seat of  
9 each county where refused empty nonrefillable metal beverage  
10 containers having a readable refund value indication are  
11 accepted and redeemed. In cities having a population of  
12 twenty-five thousand or greater, the number of the facilities  
13 provided shall be one for each twenty-five thousand population  
14 or a fractional part of that population."

15 SECTION 13. A new section of the Beverage Container Act  
16 is enacted to read:

17 "[NEW MATERIAL] PLASTIC CANS PROHIBITED--PENALTY.--A  
18 person shall not manufacture, offer for sale or sell any  
19 single-serving beverage container that is a plastic can nor  
20 offer for sale or sell any beverage packaged in a  
21 single-serving plastic can. A person violating this section is  
22 guilty of a misdemeanor and shall be punished pursuant to  
23 Section 31-19-1 NMSA 1978."

24 SECTION 14. A new section of the Beverage Container Act  
25 is enacted to read:

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1           "[NEW MATERIAL] BEVERAGE CONTAINERS--DISPOSAL AT SANITARY  
2 LANDFILL PROHIBITED.--After July 1, 2011, the final disposal of  
3 beverage containers by a dealer, distributor, manufacturer or  
4 person operating a redemption center in a sanitary landfill is  
5 prohibited. After September 1, 2013, the final disposal of  
6 beverage containers used to contain alcoholic liquor by a  
7 dealer, distributor, manufacturer or person operating a  
8 redemption center in a sanitary landfill is prohibited."

9           **SECTION 15.** A new section of the Beverage Container Act  
10 is enacted to read:

11           "[NEW MATERIAL] GRANTS FOR INDEPENDENT REDEMPTION  
12 CENTERS--FUND CREATED.--

13           A. The department shall establish an independent  
14 redemption center grant program to award grants for  
15 improvements to independent redemption centers.

16           B. The "independent redemption center grant fund"  
17 is created in the state treasury. The fund shall consist of  
18 money appropriated to the fund, income from investment of the  
19 fund and money otherwise accruing to the fund. Money in the  
20 fund shall not revert to any other fund at the end of a fiscal  
21 year. The department shall administer the fund, and money in  
22 the fund is appropriated to the department to provide for the  
23 independent redemption center grant program. Money in the fund  
24 shall be disbursed on warrants signed by the secretary of  
25 finance and administration pursuant to vouchers signed by the

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1 secretary of environment or the secretary's authorized  
2 representative.

3 C. Money in the independent redemption center grant  
4 fund shall be used by the department to provide grants to  
5 independent redemption centers. The department shall not award  
6 grants in a fiscal year in an aggregate of more than one  
7 million dollars (\$1,000,000). A grant shall not exceed fifteen  
8 thousand dollars (\$15,000) for any independent redemption  
9 center.

10 D. The department shall not pay administrative  
11 costs relating to the management of the independent redemption  
12 center grant program in excess of three and one-half percent of  
13 the money in the fund in a fiscal year."