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SENATE BILL 1

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING THE BEVERAGE CONTAINER  
RECYCLING ACT; CREATING A FUND; PROVIDING PENALTIES; MAKING  
APPROPRIATIONS.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Beverage Container Recycling Act".

Section 2. DEFINITIONS.--As used in the Beverage  
Container Recycling Act:

A. "beverage" means a soft drink, soda water,  
carbonated, natural or mineral water or other nonalcoholic  
carbonated drink; beer, ale or other malt drink of whatever  
alcoholic content; or a mixed wine drink or a mixed spirit  
drink;

B. "beverage container" means an airtight metal,

1 glass, paper or plastic container or a container composed of a  
2 combination of these materials that, at the time of sale,  
3 contains one gallon or less of a beverage;

4 C. "dealer" means a person who sells or offers for  
5 sale to consumers within this state a beverage in a beverage  
6 container, including an operator of a vending machine  
7 containing beverages in beverage containers;

8 D. "distributor" means a person who sells beverages  
9 in beverage containers to a dealer within New Mexico, including  
10 a manufacturer who engages in such sales;

11 E. "empty returnable container" means a beverage  
12 container that contains nothing except the residue of its  
13 original contents;

14 F. "manufacturer" means a person who bottles, cans  
15 or otherwise places beverages in beverage containers for sale  
16 to distributors, dealers or consumers;

17 G. "mixed spirit drink" means a drink containing  
18 ten percent or less alcohol by volume consisting of distilled  
19 spirits mixed with nonalcoholic beverages or flavoring or  
20 coloring materials and that may also contain water, fruit  
21 juices, fruit adjuncts, sugar, carbon dioxide or preservatives;  
22 or any spirit-based beverage, regardless of the percent of  
23 alcohol by volume, that is manufactured for sale in a metal  
24 container;

25 H. "mixed wine drink" means a drink or similar

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1 product marketed as a wine cooler and containing less than  
2 seven percent alcohol by volume consisting of wine and plain,  
3 sparkling, or carbonated water and containing any one or more  
4 of the following:

- 5 (1) nonalcoholic beverages;
- 6 (2) flavoring;
- 7 (3) coloring materials;
- 8 (4) fruit juices;
- 9 (5) fruit adjuncts;
- 10 (6) sugar;
- 11 (7) carbon dioxide; or
- 12 (8) preservatives;

13 I. "nonrefillable container" means a returnable  
14 container that is not intended to be refilled for sale by a  
15 manufacturer;

16 J. "nonreturnable container" means a beverage  
17 container upon which no deposit or a deposit of less than ten  
18 cents (\$.10) has been paid or is required to be paid upon the  
19 removal of the container from the sale or consumption area or  
20 for which no cash refund or a refund of less than ten cents  
21 (\$.10) is payable by a dealer or distributor in this state of  
22 that beverage in beverage containers;

23 K. "operator of a vending machine" means equally  
24 its owner, the person who refills it and the owner or lessee of  
25 the property upon which it is located;

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1 L. "overredeemer" means a distributor or  
2 manufacturer whose annual total value of deposits collected on  
3 beverage containers sold within New Mexico is less than the  
4 annual total value of refunds made upon beverage containers  
5 redeemed within New Mexico;

6 M. "returnable container" means a beverage  
7 container upon which a deposit of at least ten cents (\$.10) has  
8 been paid or is required to be paid upon the removal of the  
9 container from the sale or consumption area and for which a  
10 refund of at least ten cents (\$.10) in cash is payable by every  
11 dealer or distributor in this state of beverages in such  
12 beverage containers;

13 N. "sale or consumption area" means the premises  
14 within the property of the dealer or of the dealer's lessor  
15 where the sale is made within which beverages in returnable  
16 containers may be consumed without payment of a deposit and  
17 upon removing a beverage container from which the customer is  
18 required by the dealer to pay the deposit;

19 O. "superintendent" means the superintendent of  
20 regulation and licensing; and

21 P. "underredeemer" means a distributor or  
22 manufacturer whose annual total value of deposits collected on  
23 beverage containers sold within New Mexico exceeds the annual  
24 total value of refunds made upon beverage containers redeemed  
25 within New Mexico.

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1           Section 3. NONRETURNABLE CONTAINERS--RETURNABLE  
2 CONTAINERS--REDEMPTION CENTERS--REFUNDS.--

3           A. A dealer shall not sell, offer for sale or give  
4 to a consumer a nonreturnable container or a beverage in a  
5 nonreturnable container.

6           B. A dealer who regularly sells beverages for  
7 consumption off the dealer's premises shall provide on the  
8 premises, or within one hundred yards of the premises on which  
9 the dealer sells or offers for sale a beverage in a returnable  
10 container, a convenient means whereby the containers of any  
11 kind, size and brand sold or offered for sale by the dealer may  
12 be returned by, and the deposit refunded in cash to, a person,  
13 regardless of whether the person is the original customer of  
14 that dealer and regardless of whether the container was sold by  
15 that dealer.

16           C. Regional centers for the redemption of  
17 returnable containers may be established in addition to, but  
18 not as substitutes for, the means established for refunds of  
19 deposits as provided in the Beverage Container Recycling Act.

20           D. Except as provided in Subsections E and G of  
21 this section, a dealer shall accept from a person an empty  
22 returnable container of any kind, size or brand sold or offered  
23 for sale by that dealer and pay to that person its full refund  
24 value in cash.

25           E. A dealer who does not require a deposit on a

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1 returnable container when the contents are consumed in the  
2 dealer's sale or consumption area is not required to pay a  
3 refund for accepting that empty container.

4 F. Except as provided in Subsection G of this  
5 section, a distributor shall accept from a dealer an empty  
6 returnable container of any kind, size or brand sold or offered  
7 for sale by that distributor and pay to the dealer its full  
8 refund value in cash.

9 G. Each beverage container sold or offered for sale  
10 by a dealer shall clearly indicate by embossing or by a stamp,  
11 a label or other method securely affixed to the beverage  
12 container the refund value of the container and the name of  
13 this state. A dealer or distributor may refuse to accept from  
14 a person an empty returnable container that does not state on  
15 the container the refund value of the container and the name of  
16 this state. The provisions of this subsection do not apply to  
17 a refillable container having a refund value of not less than  
18 ten cents (\$.10), having a brand name permanently marked on it  
19 and having a securely affixed method of indicating that it is a  
20 returnable container.

21 H. A dealer shall not sell, offer for sale or give  
22 to consumers a metal beverage container any part of which  
23 becomes detached when opened.

24 I. A person, dealer, distributor or manufacturer  
25 shall not return an empty returnable container to a dealer for

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1 a refund of the deposit if a dealer has already refunded the  
2 deposit on that returnable container. The provisions of this  
3 subsection do not prohibit a dealer from refunding the deposit  
4 on an empty returnable container each time the returnable  
5 container is sanitized by the manufacturer and reused as a  
6 beverage container.

7 J. A dealer is not required to accept from a person  
8 empty returnable containers for a refund in excess of twenty-  
9 five dollars (\$25.00) on any given day.

10 K. A manufacturer licensed by the superintendent  
11 shall not require a distributor licensed by the superintendent  
12 to pay a deposit to the manufacturer on a nonrefillable  
13 container. However, a manufacturer licensed by the  
14 superintendent and a distributor licensed by the superintendent  
15 may enter into an agreement providing that either or both may  
16 originate a deposit or any portion of a deposit on a  
17 nonrefillable container if the agreement is entered into freely  
18 and without coercion.

19 L. A manufacturer shall refund the deposit paid on  
20 any container returned by a distributor for which a deposit has  
21 been paid by a distributor to the manufacturer.

22 M. The provisions of Subsections D, F and G of this  
23 section apply only to a returnable container that was  
24 originally sold in New Mexico as a filled returnable container.

25 N. Any person who knowingly violates the provisions

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1 of this section may be assessed a civil penalty of not less  
2 than one hundred dollars (\$100) or more than one thousand  
3 dollars (\$1,000).

4 Section 4. BEVERAGE CONTAINER CERTIFICATION.--

5 A. To promote the use of reusable beverage  
6 containers of uniform design and to facilitate the return of  
7 containers to manufacturers for reuse as a beverage container,  
8 the environmental improvement board shall adopt rules to  
9 certify beverage containers. The rules shall require that  
10 beverage containers are reusable as beverage containers if more  
11 than one manufacturer in the ordinary course of business will  
12 accept the beverage container for reuse as a beverage container  
13 and more than one manufacturer in the ordinary course of  
14 business will pay the refund value of the container. The  
15 environmental improvement board shall establish rules for  
16 appropriate size classifications, each of which shall include a  
17 size range of at least three liquid ounces.

18 B. The environmental improvement board shall not  
19 certify more than one beverage container of a particular  
20 manufacturer in each size classification. A beverage container  
21 shall not be certified under this section if, by reason of its  
22 shape or design or by reason of words or symbols permanently  
23 inscribed thereon, whether by engraving, embossing, painting or  
24 other permanent method, it is reusable as a beverage container  
25 in the ordinary course of business only by a manufacturer of a

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1 beverage sold under a specific brand name or if the  
2 environmental improvement board finds that its use by more than  
3 one manufacturer is not of sufficient volume to promote the  
4 purposes set forth in Subsection A of this section.

5 C. The beverage container shall be deemed certified  
6 unless an application for certification under this section is  
7 denied by the environmental improvement board within sixty days  
8 after the application is filed.

9 D. The environmental improvement board may at any  
10 time review certification of a beverage container. If, upon  
11 the review, after written notice and hearing afforded to the  
12 person who filed the original application for certification of  
13 the beverage container under this section, the environmental  
14 improvement board determines that the beverage container is no  
15 longer qualified for certification, it shall withdraw  
16 certification. Withdrawal of certification shall be effective  
17 on a date specified by the environmental improvement board, but  
18 not less than thirty days after written notice to the person  
19 who filed the original application for certification of the  
20 beverage container under this section and to the manufacturer.

21 Section 5. REPORT--FILING.--

22 A. Not later than December 1, 2009 and not later  
23 than December 1 of each year thereafter, a distributor or  
24 manufacturer who originates a deposit on a beverage container  
25 shall file a report with the department of environment

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1 containing the dollar value of both the total deposits  
2 collected by the distributor or manufacturer on beverage  
3 containers sold within New Mexico and total refunds made upon  
4 beverage containers redeemed by the distributor or manufacturer  
5 within New Mexico.

6 B. If an underredeemer purchases empty returnable  
7 containers from an overredeemer, that purchase shall be  
8 reported by the underredeemer as a "refund made" and shall be  
9 reported by the overredeemer as a "deposit originated" in the  
10 report prescribed by Subsection A of this section. The report  
11 made by an underredeemer shall include the name and address of  
12 each overredeemer and the refund value of the empty returnable  
13 beverage containers purchased from each overredeemer. The  
14 report made by an overredeemer shall include the name and  
15 address of each underredeemer that purchased the returnable  
16 containers from that overredeemer and the refund value of the  
17 empty returnable beverage containers sold. The total  
18 consideration paid by an underredeemer to an overredeemer as  
19 authorized by this subsection shall equal the redemption value  
20 of the containers.

21 C. A purchase or sale made pursuant to this section  
22 during January of each year shall be included in the report for  
23 the previous calendar year only.

24 Section 6. UNCLAIMED BOTTLE DEPOSITS--AUDIT--ASSESSMENT--  
25 COLLECTION BY DEPARTMENT OF ENVIRONMENT--PAYMENT BY

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1 UNDERREDEEMER CREDIT--APPLYING CREDIT AGAINST PRIOR YEARS--  
2 REPORT.--

3 A. The department of environment may audit, assess  
4 and collect the amount of money reflecting unclaimed bottle  
5 deposits owed to the department and enforce the obligation to  
6 pay the amount of money reflecting unclaimed bottle deposits  
7 owed to the department. Not later than December 15, 2009 and  
8 not later than December 15 of each year thereafter, an  
9 underredeemer shall pay to the department of environment that  
10 amount of money by which its annual total value of deposits  
11 exceeds its annual total value of refunds made on redeemed  
12 beverage containers, subject to the overredemption credit  
13 contained in this section.

14 B. After December 15, 2009, an underredeemer who  
15 becomes an overredeemer in a subsequent year may credit the  
16 value of the overredemption in order to reduce the amount of  
17 money owed to the department of environment pursuant to  
18 Subsection A of this section in one or more subsequent years as  
19 a result of that person again becoming an underredeemer. The  
20 value of the overredemption may be carried forward for not more  
21 than three years or until the credit granted in this section is  
22 completely depleted, whichever occurs first.

23 C. A manufacturer who no longer originates deposits  
24 may carry the value of an overredemption back for prior years  
25 in order to utilize its credit and reduce the amount of

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1 underredemption owed to the department of environment pursuant  
2 to this section on a one-time basis only. Utilization of this  
3 one-time credit may be applied against underredemption amounts  
4 owed for reporting years commencing in 2010.

5 Section 7. BEVERAGE CONTAINER DEPOSIT FUND--CREATED.--

6 There is created in the state treasury the "beverage container  
7 deposit fund", which is a revolving fund administered by the  
8 department of environment. The fund shall consist of money  
9 paid to the department of environment by underredeemers, income  
10 from investment of the fund and money otherwise accruing to the  
11 fund. Money in the fund shall not revert to the general fund.  
12 The department of environment shall administer the fund, and  
13 money in the fund is appropriated to the department to  
14 administer provisions of the Beverage Container Recycling Act.  
15 Money in the fund shall be disbursed on warrants signed by the  
16 secretary of finance and administration pursuant to vouchers  
17 signed by the secretary of environment or the secretary's  
18 authorized representative. Subject to appropriations by the  
19 legislature, proceeds from the fund may be used to operate  
20 recycling programs within the department of environment,  
21 including programs that apportion amounts to each dealer on the  
22 basis of the number of empty returnable containers handled by a  
23 dealer as determined by the reports filed with the department  
24 of environment.

25 Section 8. UNCLAIMED DEPOSITS.--Unclaimed deposits on

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1 returnable containers are considered to be the property of the  
2 person purchasing the returnable container and are not the  
3 property of the distributor or manufacturer that originated the  
4 deposit.

5 Section 9. PROHIBITED RETURN--VIOLATION--CIVIL PENALTY.--

6 A. A person shall not return or attempt to return  
7 to a dealer for a refund a beverage container that the person  
8 knew or should have known was not purchased in New Mexico as a  
9 filled returnable container or a beverage container that the  
10 person knew or should have known did not have a deposit paid  
11 for it at the time of purchase.

12 B. A person who knowingly returns twenty-five or  
13 more, but not more than one hundred, nonreturnable containers  
14 may be assessed a civil penalty of not more than one hundred  
15 dollars (\$100).

16 C. A person who knowingly returns more than one  
17 hundred nonreturnable containers or violates Subsection B of  
18 this section for a second or subsequent time may be assessed a  
19 civil penalty of not more than five hundred dollars (\$500).

20 Section 10. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2009.

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