

CHAPTER 275
FORMERLY
SENATE BILL NO. 234
AS AMENDED BY
SENATE AMENDMENT NOS. 1 & 3

AN ACT TO AMEND TITLES 7 AND 30 OF THE DELAWARE CODE RELATING TO RECYCLING AND BEVERAGE CONTAINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

WHEREAS, recycling conserves valuable natural resources, energy, landfill capacity, landfill disposal costs, greenhouse gas emissions and litter, creates jobs and promotes a conservation ethic; and

WHEREAS, Delaware's recycling rate is below that of the nation and surrounding states; and

WHEREAS, tipping fees at Delaware Solid Waste Authority landfills are scheduled to increase July 1, 2010 as a result of the need for new landfill space and it is in the interest of all Delawareans to minimize the need for future landfill capacity and the associated costs by reducing the flow of waste to landfills;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend "Subchapter III. Beverage Containers" in Chapter 60 of Title 7 by striking it in its entirety and substituting in lieu thereof the following:

"Subchapter III. Solid Waste Recycling

§6051. Findings; intent.

In furtherance of the determination long established in §6450 of Title 7 that "the reduction of solid waste disposal and recovery of usable materials from solid waste are matters of extreme importance in minimizing the environmental impact of solid waste disposal through landfilling" and that it "is in the public interest to develop a comprehensive statewide system of recycling and resource recovery which maximizes the quantity of solid waste materials which can be recovered, reused, or converted to beneficial use" the General Assembly hereby makes the following findings and declares the following intent with respect to the establishment of this Subchapter. In order to establish a comprehensive statewide system of recycling, wherein recycling is maximized and the necessary economies of scale are realized, every residence and business must have access to recycling programs that are both convenient and cost effective. It is the intent of the General Assembly, in full recognition that the establishment of a comprehensive statewide recycling program has long been sought, that said program shall be accomplished by modification of the existing beverage container law and the establishment of Universal Recycling inclusive of the prescribed recycling programs, requirements and goals that follow. As such, liberal interpretation in favor of accomplishing the stated goals and objectives shall be exercised.

§6052. Definitions.

Notwithstanding any definitions in Chapters 60 or 64 of Title 7 to the contrary, the following words and phrases shall have the meaning ascribed to them in this Subchapter unless the context clearly indicates otherwise.

- (a) 'Authority' means the Delaware Solid Waste Authority.
- (b) 'Beverage' means any mineral waters (but not including naturally sparkling mineral waters), soda waters or any other carbonated beverage not containing alcohol that is commonly known as a "soft drink" and any beer, ale or other malt beverage containing alcohol.
- (c) 'Beverage container' means any airtight non-aluminous container containing less than 2 quarts of a beverage under pressure of carbonation.
- (d) 'Dealer' means any person who engages in the sale of beverages in beverage containers to a consumer and shall include groups of retailers or retail chains.
- (e) 'Multi-family' means 3 or more attached structures, such as condominiums or apartments, generally intended for occupancy by individuals or families and where centralized community trash disposal and collection services are typically provided..

- (f) 'Municipal Solid Waste' means wastes such as durable goods, nondurable goods, containers and packaging, food scraps, organic yard waste and miscellaneous inorganic waste from residential (i.e. household), commercial, institutional and industrial sources such as appliances, automobile tires, old newspapers, clothing, disposal tableware, office and classroom paper, wood pallets, and cafeteria wastes. Municipal solid waste does not include solid wastes from other sources such as construction and demolition debris, auto bodies, municipal sludges, combustion ash and industrial process wastes.
- (g) 'On-premises sales' means sales transactions in which beverages are purchased by a consumer for immediate consumption within the area under the control of the dealer.
- (h) 'Organic yard waste' means plant material resulting from lawn maintenance and other horticultural gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter.
- (i) 'Recyclable Material' or 'Recyclables' means any material or group of materials that can be collected and sold or used for recycling.
- (j) 'Recycling' means the process by which solid wastes are separated for use as raw materials, products or replacement of products, including the reuse of organic yard waste, but does not include the incineration of materials for energy.
- (k) 'Residential Waste' means the solid waste generated in occupied single-family and multi-family structures. Also referred to as 'Household Waste.'
- (l) 'Single Stream' means a system in which all fibers (including but not limited to paper, cardboard, etc.) and containers (including but not limited to plastic, glass and metal) are commingled for collection into one container instead of being sorted into separate commodities and multiple containers.
- (m) 'Single-family' means either a detached structure (i.e. a house) surrounded by open space or attached structures, such as town or row homes, generally intended for occupancy by a family and where individual trash collection services are typically provided for each structure.
- (n) 'Source Separated' means recyclable materials, including single stream recyclables, are segregated at the point of generation and kept apart from the waste stream by the generator thereof for the purpose of collection and recycling.

§6053. Universal Recycling.

The goal of Universal Recycling is to create an economy of scale wherein a dramatic increase in Delaware's diversion of recyclables occurs in the most cost effective manner achievable while simultaneously creating job opportunities and significantly reducing Delaware's rate of waste disposal.

Universal Recycling shall be implemented in accordance with the following provisions:

(a) Effective no later than September 15, 2011, the Authority shall cease providing curbside recycling services, including yard waste collection, and all persons providing solid waste collection services in the State of Delaware shall also provide:

(1) Single stream curbside recycling collection services to all of their Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers use such that recycling is encouraged and disposal of recyclables is discouraged; and the recyclables collection service shall be provided at a frequency of not less than once every other week.

(2) Source separated recycling collection services to dealers who provide on-premise sales, including delivery of a recyclables container that is adequately sized for the premise being served and a frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

(3) All single-family residential and on-premise sales customers with a single charge for the collection of waste and recyclables on their "waste services" bill that is inclusive of the combined waste and recycling collection service costs. Local governments that do not presently bill separately for the costs of waste collection are exempt from this requirement.

(4) Notification to all customers that the single stream recycling service will be provided and instructions on participation prior to September 15, 2011.

(b) Effective no later than January 1, 2013, all persons providing solid waste collection services in the State of Delaware shall provide:

(1) Single stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container(s) for the complex being served and ideally in the same proximity as the complex's waste disposal containers. Local governments may require multi-family complex owners to provide their own recyclable collection containers consistent with local requirements.

(2) Notification to the multi-family complex management that the single stream recycling service, including instructions on participation, will be provided.

(3) A frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

(4) Written justification to the Department for not providing multi-family recycling collection services where the physical constraints of the site prevent the placement of both trash and recycling containers. Exclusion from multi-family recycling is subject to Department review and approval.

(c) Owners of multi-family complexes must, at least once per calendar year, provide residents with instructions on participating in the complex's recycling program.

(d) The Recycling Public Advisory Council shall issue a report to the Governor and the General Assembly no later than November 1, 2012 with recommendations regarding the implementation of Universal Recycling in the commercial sector. It is the express requirement of this legislation that Universal Recycling be adopted by the commercial sector and that all commercial businesses actively participate in a comprehensive recycling program no later than January 1, 2014.

(e) Persons who choose to transport and deliver the solid waste and recyclables they generated on their own property for proper disposal or to a recycling facility of their choice respectively shall not be affected by this subchapter and may continue in this practice.

(f) Nothing shall impair the ownership of recyclable materials by the generator unless and until such materials are placed at curbside or similar location for collection and recycling, and nothing in this chapter shall be construed to prevent any person from collecting, transporting, processing, and marketing recyclable materials in competition with other persons in the same business, including the Authority, provided that the requirements of this Subchapter are satisfied.

(g) Persons engaging in the collection, transportation, processing, or marketing of source separated recyclable materials shall conduct such activities in a manner that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration.

§6054. Delaware Recycling Fund.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Delaware Recycling Fund ("the Fund").

(b) The following revenue shall be deposited into the Fund:

(1) As specified in 30 Del. C. §2912, the Recycling Fee on the sale of beverage containers;

(2) On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance;

(3) Any other revenue appropriated or transferred to the account by the General Assembly;
and

(4) Repayment of low interest loans.

(c) The Fund shall be used by the Secretary for the exclusive purpose of funding specific activities designed to enhance the state's recycling rate and the diversion of recyclables that would otherwise be land disposed. The Fund may be expended only:

(1) To fund the Recycling Grants and Low Interest Loan Program referenced in §6055 of this subchapter. Annual funding for the Recycling Grants and Low Interest Loan Program shall be dependent on revenue generated by the Fund;

(2) To pay the limited and reasonable cost of the Department and the Recycling Public Advisory Council to study, evaluate and report on the status and potential for recycling various components of the solid waste stream, with emphasis on those aspects of municipal solid waste and commercial waste necessary to achieve the diversion goals established in §6056 of this subchapter;

(3) To pay the Department's limited and reasonable costs for administering this Subchapter. No greater than 10% of the revenue deposited into the Fund shall be used by the Department for administering this subchapter without approval of the Joint Finance Committee and shall include but not be limited to: promoting the Recycling Grants and Low Interest Loan Program, Universal Recycling, zero waste principles, development of reporting requirements and related recycling initiatives; and

(4) To pay the Division of Revenue for the costs of administering 30 Del. C. §2912.

(d) The Department shall commence the Recycling Grants and Low Interest Loan Program in calendar year 2011 and offer the Program at least annually thereafter until 2014.

(e) The revenue from the Fund and its disbursement via the Recycling Grants and Low Interest Loan Program shall be subject to audit and the recipient of any such funding shall agree to the audit and cooperate with the auditor as a condition of receiving funding.

(f) No expenditures shall be made from the fund for any grants or loans pursuant to §6055 without the approval by the Controller General and Director of the Office of Management and Budget of a plan for revenues and expenditures for the period between December 1, 2010 and September 15, 2011.

§6055. Recycling Grants and Low Interest Loan Program.

(a) There is hereby established a competitive Recycling Grants and Low Interest Loan Program (the "Program") to assist persons engaged in the business of collecting, transporting, processing, or marketing recyclable materials with the implementation of:

(1) source separated recyclables collection and processing programs with emphasis on start-up costs for residential single-stream recyclables collection; and

(2) start-up costs for initiatives which result in the recycling of solid waste materials which would otherwise be land disposed, with emphasis on commercial waste.

The Program shall be administered by the Department, and monies from the Program shall be paid based on approved grant and loan requests. The Department shall be entitled to disburse grant and loan monies for the documented costs of implementing the collection or processing of recyclable materials. The Department shall be entitled to adopt guidelines and procedures for administering the Program and determining eligibility for receipt of funding pursuant to §6054 of this Chapter. Such procedures shall include provisions for repayment of loans to the Department and may include a rebate program for costs based on, including but not limited to, a prorated share of household customers in a recycling program that may have been in existence prior to creation of this law. The Department shall solicit the commentary of the grant eligible stakeholders during development of the grant guidelines and procedures. The Program shall be funded by monies made available under the provisions of §6054.

(b) The Recycling Public Advisory Council, after the receipt of comments by grant and loan eligible stakeholders, shall make recommendations annually to the Department regarding the programmatic priorities for awarding Program funds under this Subchapter. The Recycling Public Advisory Council shall provide recommendations regarding the categories and priorities for grants and loans that reflect an informed and representative view of the most urgent and important areas where grant funding will provide the most benefit to the State of Delaware balancing current needs with those of future generations.

(c) The Department shall review all grant and loan applications and award grants and loans taking into consideration the Recycling Public Advisory Council recommendations. In those cases where the Department's funding decisions differ significantly from the Recycling Public Advisory Council recommendations, the Department shall report to the Recycling Public Advisory Council the justification for such differences.

(d) Any person providing solid waste collection services that is a recipient of a grant or low interest loan from the Delaware Recycling Fund shall not, as a result of implementation of Universal Recycling, increase rates charged for solid waste collection between such time as they make application for the grant until March 15, 2013.

§6056. Adopting Diversion Goals and Reporting Requirements

It is the intent of the General Assembly that implementation of the requirements of this Subchapter reduce the amount of non-hazardous solid waste currently deposited in landfills in this State by maximizing the recovery of recyclable materials. In order to do so, it will be necessary for the State of Delaware to embrace the Zero Waste Principles of designing and managing products and processes to systematically avoid and eliminate the volume and toxicity of waste and materials, conserve and recover all resources, and not incinerate or bury them. In that spirit, the following Interim Waste Diversion Goals are established with the understanding that as more data and information regarding the implementation of Universal Recycling become available, the goals leading up to January 1, 2020 may be modified by the Department as circumstances dictate; however, the January 1, 2020 goals may not be modified without the approval of the General Assembly:

| Table 1. Interim Zero Waste Diversion Goals ¹ | | |
|--|------------------------------------|--|
| Date by which goal is to be achieved | Solid Waste Diverted from disposal | Municipal Solid Waste Diverted from disposal |
| January 1, 2015 | 72% | 50% |
| January 1, 2020 | 85% | 60% |
| ¹ By weight | | |

(a) In order to effectively measure the diversion rates being achieved, all persons, including persons who collect, process or market recyclables, with the exception of those specified in §6053(e), must report to the Department on a calendar year basis, no later than February 15th of the following year, the type and quantity of recyclables managed, the method of recycling collection used (single or multiple streams), and the location of the recycling facilities used pursuant to reporting guidance developed by the Department and the Recycling Public Advisory Council. Said reporting guidance shall be developed pursuant to the solicitation of stakeholders responsible for reporting, shall take into account the need for confidentiality of the information reported and shall be finalized no later than December 1, 2010. The first recycling report shall cover calendar year 2011 and shall be due no later than February 15, 2012.

(b) In order to ensure that the waste diversion goals specified in Table 1 above are achieved by the dates specified, the Department, in cooperation with the Recycling Public Advisory Council, shall assess progress and recommend to the Governor and General Assembly any additional mechanisms necessary including but not limited to: which waste streams must be diverted from disposal, the parties responsible for ensuring the identified waste streams are diverted from disposal, the date by which the diverted waste streams must be diverted from disposal, implementation of Pay As You Throw, Extended Producer Responsibility, incentive based recycling, waste bans and related requirements. Such assessment shall be completed, inclusive of any draft legislation determined necessary, and submitted to the General Assembly no later than November 1, 2014 as part of the RPAC annual report.

§6057. Beverage Containers – Findings, intent, prohibitions

(a) The General Assembly hereby finds that beverage containers are a valuable recyclable material and a major source of non-degradable litter in this State and that the collection and disposal of this litter and solid waste constitutes a great financial burden for the citizens of this State; and that, in addition to this unnecessary expenditure of tax moneys, such litter unreasonably interferes with the enjoyment of life and property by our citizens; and that the practice of littering and disposal of a recyclable material is not compatible with previously adopted policies of the State in regard to proper use and protection of our natural resources.

(b) It is the intent of the General Assembly to increase recycling significantly, inclusive of beverage containers, thereby conserving valuable natural resources, removing the blight of litter on the landscape of the State caused by the disposal of beverage containers and other packaging, and reduce the increasing costs of litter collection and disposal.

(c) Prohibitions – No beverage shall be sold or offered for sale in this State:

1. In containers connected to each other with plastic rings or similar devices which are not classified by the Department as biodegradable, photodegradable or recyclable.

2. In a beverage container which is not recyclable or refillable.

§6058. Establishment, composition and responsibility of the Recycling Public Advisory Council

(a) There is hereby established a Recycling Public Advisory Council (the “Council”). The Council shall be composed of sixteen (16) members who shall be appointed by the Governor as follows:

1. One member from the Department;
2. One member from the Authority;
3. One member representing county governments, with such member being recommended by the Delaware Association of Counties;
4. One member representing municipal governments, with such member being recommended by the Delaware League of Local Governments;
5. One member representing the recycling industry;
6. One member representing the waste hauling industry;
7. Two members, one representing the Soft Drink Industry and one representing the Alcohol Beverage Industry representing the beverage industry;
8. One member representing the Delaware State Chamber of Commerce;
9. One member representing the Delaware Restaurant industry; and
10. Five members representing community-based or public-interest groups.
11. One member representing the Delaware Food Industry Council.

(b) Members of the Council, except for those appointed pursuant to subparagraphs 1 and 2 of subsection (a) above, shall serve for terms up to three (3) years and may not serve more than two consecutive terms but may again serve after one year off of the Council. Members shall be appointed for staggered terms so that no more than five (5) appointments shall expire in any one calendar year. Members may be reimbursed for travel to and from meetings. The Governor shall appoint a Chairman from among the sixteen members. Actions of the Council shall be approved by a majority vote of the Council. At least nine (9) members of the Council shall constitute a quorum. The Council may adopt by-laws as it deems appropriate to serve the purposes of this Subchapter.

(c) The Recycling Public Advisory Council shall:

1. Advise the Department and the Authority on all aspects of recycling;
2. Advise the Department in developing criteria for the Recycling Grants and Low Interest Loan Program and selection of applications as well as provide an annual assessment of the revenue needed to satisfy the grant requirements;
3. Maintain, in conjunction with the Department and the Authority, a methodology for measuring recycling rates;

4. Provide advice and recommendations regarding the recycling outreach and education programs conducted by the Authority and/or the Department;

5. Report to the Governor and the General Assembly annually by November 1 of each year on the status of recycling activities in Delaware. Said report shall include, but not be limited to the following:

a. Status of attainment of the recycling goals specified in 7 Del. C. §6056;

b. An accounting of the recycling grants and loan program and any recommendations for future funding of the grants and loan program;

c. An assessment of the activities of both the Department and the Authority in achieving the recycling goals specified in 7 Del. C. §6056;

d. An objective, auditable accounting of recycling rates for total solid waste, municipal solid waste, and residential solid waste;

e. Such other recommendations as the Council shall deem appropriate; and

f. Use the definitions of "recycling" and "municipal solid waste" as stated by the United States Environmental Protection Agency in its document EPA530-R-97-011 dated September 1997. The Council shall be able to adopt changes to these definitions.

(d) The Department, in concert with the Authority and the Council, shall:

1. Monitor the State's recycling initiatives and measure Delaware's achievements toward attainment of the recycling goals specified in 7 Del. C. §6056;

2. Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities;

3. Provide technical assistance to local entities to assist them in increasing their recycling rates; and

4. Provide administrative support to the Council.

§6059. Enforcement, civil and administrative penalties

(a) Whoever violates this Subchapter, or any rule or regulation promulgated there under, or any order of the Secretary, shall:

1. For the first conviction, be fined not less than \$100 nor more than \$500 for each day of violation;

2. For each subsequent conviction for the same offense within a 10 year period, be fined not less than \$500 nor more than \$1,500 for each day of violation;

3. In his or her discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this Subchapter. Conciliation shall be giving written notice to the responsible party (i) specifying the complaint, (ii) proposing a reasonable time for its correction, (iii) advising that a hearing on the complaint may be had if requested by a date stated in the notice, and (iv) notifying that a proposed correction date will be ordered unless a hearing is requested. If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on his or her own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this Title.

(b) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board, in accordance with §6008 of this Title."

Section 2. Amend § 6451, Title 7 of the Delaware Code, by inserting therein the following new paragraph:

“(6) ‘Organic yard waste’ means plant material resulting from lawn maintenance and other horticultural gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter.”.

Section 3. Amend § 6452, Title 7 of the Delaware Code by inserting in line 2 of paragraph (8) between the words “environment” and “for” the following, “including but not limited to used oil & filters, batteries, household hazardous wastes, electronic wastes, etc., as long as economically sustainable in the judgment of the Authority” , by striking the word “and” at the end of paragraph (9) thereof; by striking the period as it appears at the end of paragraph (10) thereof and substituting in lieu thereof a semi-colon; and by inserting therein the following new subsections:

“(11) The implementation of a source separated recycling system that balances the need for drop-off recycling centers with public and private sector implementation and expansion of curbside recycling programs except where a municipal government implements curbside recycling within its jurisdiction, the Authority may, after consultation with the local municipality, remove the drop off sites located within the same jurisdiction with the goal of maintaining at least one existing drop-off recycling center in each municipality until January 1, 2014; and

(12) Providing at no cost to those persons required to provide curbside recycling services pursuant to §6053 of Title 7 the Authority’s unneeded wheeled recycling carts on the basis determined by the Authority for the purpose of minimizing the costs associated with the implementation of Universal Recycling when the Authority ceases providing curbside recycling services in accordance with §6053(a) of Title 7.

Section 4. Amend Chapter 64, Title 7 of the Delaware Code, by striking §6454 thereof in its entirety and by substituting in lieu thereof the following:

“§6454. Recycling Centers.

(a) Implementation of efficient and cost-effective recycling programs will require that Delaware have access to facilities capable of processing source separated recyclables. Where the private sector has developed extensive recyclables processing capability and where unique programs that provide incentives to the general public to recycle that are not available to Delaware residents, the Department and the Authority shall encourage and work with the private sector to establish private facilities for recyclables and recycling incentive programs in Delaware. The Authority shall accept recyclables from municipalities and non-municipal persons at no cost under such contractual terms and conditions as mutually agreed. Additional materials may be accepted at the source separated recycling center subject to the approval of the Authority. The Authority shall receive recyclable materials for transfer to the processing facility at locations designated by the Authority. It shall be the responsibility of the Authority to ensure that processing and/or transfer facilities for managing source separated collected recyclables are in operation in each County. It shall also be the responsibility of the Authority to transport or arrange for the transport of source separated recyclables from the Authority’s transfer stations or landfills to a processing facility.”.

Section 5. Amend Chapter 64, Title 7 of the Delaware Code, by striking § 6455 thereof in its entirety and substituting in lieu thereof the following:

“§6455. Public Education and Promotion of Recycling, Composting and other Waste Reduction Programs.

The Authority, in cooperation and consultation with the Department, shall initiate and conduct public outreach and education programs on the cessation of its curbside recycling program and modification to its drop off and organic yard waste programs, as well as continuing education on the purposes and value of source separated recycling and resource recovery. The intent of these educational programs shall be to maximize the diversion and recovery of recyclable materials and organic yard waste, whether it was generated by the commercial or residential sector. Such program may be conducted in conjunction with similar efforts of private industry, municipalities, public interest groups, the Department and the Recycling Public Advisory Council. The program may include the use of public advertising.”.

Section 6. Amend Section 2909(j) of Chapter 29 of Title 30 of the Delaware Code by deleting the word “and” between the numerals “2905” and “2906” and substituting therefore a comma “,” immediately after the numerals 2905 and by inserting immediately after the numerals “2906” and before the first occurrence of the word “of” the word and numerals “and 2912”.

Section 7. Amend Chapter 29 of Title 30 of the Delaware Code by adding a new Section 2912 thereto as follows:

“§ 2912. Beverage container retailer license requirement; license fee; Recycling Fee on beverage container sales.

(a) In addition to any license required under § 2304, § 2905, § 2906 or § 2908 of this title, any person desiring to engage in business in this State as a retailer to sell beverages in beverage containers shall obtain a registration upon making application to the Division of Revenue at no additional cost.

(b) For taxable periods beginning after November 30, 2010 and at such time as the Delaware Recycling Fund reaches a cumulative total of \$22,000,000 or ending December 1, 2014, whichever comes first, in addition to the registration required by subsection (a) of this section, every retailer of beverages in beverage containers, excluding on-premise sales, shall pay a Recycling Fee at the rate of \$0.04 per beverage container sold at retail during any month. Such fee shall be due on the twentieth day of the following month. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due. Each retailer of beverages in beverage containers may list, as a separate line item on an invoice, the amount of the fees due under this subsection.

(c) As used in this section:

(i) The term ‘retailer’ shall have the meaning ascribed to that term in § 2901(8) of this title and shall include persons licensed under § 2304, § 2905, § 2906 or § 2908 of this title.

(ii) The term ‘beverage’ shall mean any mineral waters (but not including naturally sparkling mineral waters), soda waters or any other carbonated beverage not containing alcohol that is commonly known as a “soft drink” and any beer, ale or other malt beverage containing alcohol.

(iii) The term ‘beverage container’ shall mean any airtight nonaluminous container containing less than 2 quarts of a beverage under pressure of carbonation.

(d) The fees provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the additional fee provided in this section to the credit of the special fund described in §6054 of Title 7. The Division of Revenue shall enter into an agreement with the Department of Natural Resources and Environment Control authorizing the Division of Revenue to charge such fund an amount reasonably determined by the Division of Revenue to be the cost of administering the fees described in this section.”

This section shall sunset December 1, 2014.

Section 8. This Act shall become effective on December 1, 2010.

Section 9. Post-Effective Date Refund Procedures.

(a) From December 1, 2010 until January 31, 2011, a dealer shall accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, and pays the consumer the refund on the appropriately labeled returnable beverage container. A dealer may refuse to refund deposits on beverage containers which are broken, or unclean, or not empty. Such dealer may refuse to accept beverage containers from any person who attempts to return 120 or more containers at the same time, or within a 1-week period. On and after February 1, 2011, no dealer shall have any liability to or with respect to any consumer that relates to the deposit on any beverage container.

(b) From December 1, 2010 until February 28, 2011, a dealer upon redeeming beverage containers shall be reimbursed by the manufacturer or distributor of such beverage containers in an amount which is at

least 20 percent of the deposit returned to the consumer in addition to the refund. On and after March 1, 2011, no manufacturer or distributor shall have any liability to or with respect to any dealer or consumer that relates to the deposit on any beverage container.

(c) For purposes of this section, terms shall have the definitions given in subchapter III, Chapter 60 of Title 7, and:

(1) "Consumer" means any person who purchases a beverage in a beverage container for final use or consumption.

(2) "Deposit" means the sum paid to the distributor by the dealer or to the dealer by the consumer when beverages are purchased in returnable beverage containers, and which is refunded when the beverage container is returned.

(3) "Distributor" means any person who engages in the sale of beverages in beverage containers to a dealer including any manufacturer who engages in such sale.

(4) "Manufacturer" means any person who bottles, cans, packs or otherwise fills beverage containers for sale to distributors or dealers.

(5) "Refund" means the sum, equal to the deposit that is given to the consumer or the dealer or both in exchange for empty returnable beverage containers.

(6) "Returnable beverage container" means a beverage container for which a refund or equal value is payable upon return, whether such container is refillable or not. This definition and this subchapter shall not apply to any beverage container which is capable of containing 64 or more ounces of beverage.

Approved June 08, 2010