

SENATE BILL 3006
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 68, relative to
litter control.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 1
through 11 of this act as a new chapter 204.

SECTION 2. As used in this act:

(1) "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.

(2) "Beverage container" means an airtight metal, glass, paper, or plastic
container, or a container composed of a combination of these materials, which, at the
time of sale, contains one (1) gallon or less of a beverage.

(3) "Empty returnable container" means a beverage container which contains
nothing except the residue of its original contents.

(4) "Returnable container" means a beverage container upon which a deposit of
at least ten cents (10¢) has been paid, or is required to be paid upon the removal of the

container from the sale or consumption area, and for which a refund of at least ten cents (10¢) in cash is payable by every dealer or distributor in this state of that beverage in beverage containers, as further provided in Section 3.

(5) "Nonreturnable container" means a beverage container upon which no deposit or a deposit of less than ten (10) cents has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, or for which no cash refund or a refund of less than ten (10) cents is payable by a dealer or distributor in this state of that beverage in beverage containers, as further provided in Section 3.

(6) "Person" means an individual, partnership, corporation, association, or other legal entity.

(7) "Dealer" means a person who sells or offers for sale to consumers within this state a beverage in a beverage container, including an operator of a vending machine containing a beverage in a beverage container.

(8) "Operator of a vending machine" means equally its owner, the person who refills it, and the owner or lessee of the property upon which it is located.

(9) "Distributor" means a person who sells beverages in beverage containers to a dealer within this state, and includes a manufacturer who engages in such sales.

(10) "Manufacturer" means a person who bottles, cans, or otherwise places beverages in beverage containers for sale to distributors, dealers, or consumers.

(11) "Within this state" means within the exterior limits of Tennessee, and includes the territory within these limits owned by or ceded to the United States of America.

(12) "Commission" means the Tennessee alcoholic beverage commission.

(13) "Sale or consumption area" means the premises within the property of the dealer or of the dealer's lessor where the sale is made, within which beverages in returnable containers may be consumed without payment of a deposit, and, upon

removing a beverage container from which, the customer is required by the dealer to pay the deposit.

(14) "Nonrefillable container" means a returnable container which is not intended to be refilled for sale by a manufacturer.

(15) "Mixed wine drink" means a drink or similar product marketed as a wine cooler and containing less than seven percent (7%) alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one (1) or more of the following:

- (A) Nonalcoholic beverages.
- (B) Flavoring.
- (C) Coloring materials.
- (D) Fruit juices.
- (E) Fruit adjuncts.
- (F) Sugar.
- (G) Carbon dioxide.
- (H) Preservatives.

(16) "Mixed spirit drink" means a drink containing ten percent (10%) or less alcohol by volume consisting of distilled spirits mixed with nonalcoholic beverages or flavoring or coloring materials and which may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives; or any spirits, based beverage, regardless of the percent of alcohol by volume, that is manufactured for sale in a metal container.

SECTION 3. (a) A dealer within this state shall not sell, offer for sale, or give to a consumer a nonreturnable container or a beverage in a nonreturnable container.

(b) A dealer who regularly sells beverages for consumption off the dealer's premises shall provide on the premises, or within one hundred (100) yards of the premises on which the

dealer sells or offers for sale a beverage in a returnable container, a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.

(c) Regional centers for the redemption of returnable containers may be established, in addition to, but not as substitutes for, the means established for refunds of deposits prescribed in subsection (b).

(d) Except as provided in subsections (e) and (g), a dealer shall accept from a person an empty returnable container of any kind, size, and brand sold or offered for sale by that dealer and pay to that person its full refund value in cash.

(e) A dealer who does not require a deposit on a returnable container when the contents are consumed in the dealer's sale or consumption area is not required to pay a refund for accepting that empty container.

(f) Except as provided in subsection (g), a distributor shall accept from a dealer an empty returnable container of any kind, size, and brand sold or offered for sale by that distributor and pay to the dealer its full refund value in cash.

(g) Each beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container and the name of this state. A dealer or distributor may, but is not required to, refuse to accept from a person an empty returnable container which does not state on the container the refund value of the container and the name of this state. This subsection does not apply to a refillable container having a refund value of not less than ten cents (10¢), having a brand name permanently marked on it, and having a securely affixed method of indicating that it is a returnable container.

(h) A dealer within this state shall not sell, offer for sale, or give to consumers a metal beverage container, any part of which becomes detached when opened.

(i) A person, dealer, distributor, or manufacturer shall not return an empty container to a dealer for a refund of the deposit if a dealer has already refunded the deposit on that returnable container. This subsection does not prohibit a dealer from refunding the deposit on an empty returnable container each time the returnable container is sanitized by the manufacturer and reused as a beverage container.

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

(k) A manufacturer licensed by the commission shall not require a distributor licensed by the commission to pay a deposit to the manufacturer on a nonrefillable container. However, a manufacturer licensed by the commission and a distributor licensed by the commission may enter into an agreement providing that either or both may originate a deposit or any portion of a deposit on a nonrefillable container if the agreement is entered into freely and without coercion.

(l) A manufacturer shall refund the deposit paid on any container returned by a distributor for which a deposit has been paid by a distributor to the manufacturer.

(m) Subsections (d), (f), and (g) apply only to a returnable container that was originally sold in this state as a filled returnable container.

SECTION 3. (a) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the commission shall certify beverage containers which satisfy the requirements of this section.

(b) A beverage container shall be certified if:

(1) It is reusable as a beverage container by more than one (1) manufacturer in the ordinary course of business.

(2) More than one (1) manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(c) The commission shall not certify more than one (1) beverage container of a particular manufacturer in each size classification. The commission shall by rule establish appropriate size classifications in accordance with the purposes set forth in subsection (a), each of which shall include a size range of at least three (3) liquid ounces.

(d) A beverage container shall not be certified under this section:

(1) If by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting, or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name.

(2) If the commission finds that its use by more than 1 manufacturer is not of sufficient volume to promote the purposes set forth in subsection (a).

(e) Unless an application for certification under this section is denied by the commission within sixty (60) days after the application is filed, the beverage container shall be deemed certified.

(f) The commission may at any time review certification of a beverage container. If, upon the review, after written notice and hearing afforded to the person who filed the original application for certification of the beverage container under this section, the commission determines that the beverage container is no longer qualified for certification, it shall withdraw certification. Withdrawal of certification shall be effective on a date specified by the commission, but not less than thirty (30) days after written notice to the person who filed the original application for certification of the beverage container under this section, and to the manufacturer referred to in subsection (b).

SECTION 4. (a) Not later than March 1, 2001 and not later than March 1 of each year thereafter, a distributor or manufacturer who originates a deposit on a beverage container shall file a report with the department of revenue containing the information required by subsection (b).

(b) The report required to be filed pursuant to subsection (a) shall indicate for the period of January 1, 2000 to December 31, 2000, and for the time period of January 1 to December 31 of each year thereafter, the dollar value of both the total deposits collected by the distributor or manufacturer on beverage containers sold within this state and total refunds made upon beverage containers redeemed by the distributor or manufacturer within this state.

(c) The reports required to be filed pursuant to subsection (1) shall be similar to the following and contain the following information:

REPORT		
DEPOSITS ORIGINATED AND REFUNDS GRANTED ON BEVERAGE CONTAINERS		
		Reporting Period:
Company Name:		
Company Address:		
	Number and Street	
	City, State, Zip	
\$	- \$	= \$
(Value of Deposits Originated)	(Value of Refunds Made)	(Difference)
\$	- \$	= \$
(Difference)	(Overredemption credit, if applicable)	(Amount owed to department of treasury)
The undersigned states that the above information is true and accurate.		
Signature - Owner or President		

Date

SECTION 5. (a) The department of revenue may audit, assess, and collect the amount of money reflecting unclaimed bottle deposits owed to this state, and enforce the obligation to pay the amount of money reflecting unclaimed bottle deposits owed to this state, in the same manner as revenues and according to the provisions of Title 67.

(b) Not later than March 1, 2001 and not later than March 1 of each year thereafter, an underredeemer shall pay to the department of revenue that amount of money by which its annual total value of deposits exceeds its annual total value of refunds made on redeemed beverage containers, subject to the overredemption credit contained in this section.

(c) After March 1, 2001, an underredeemer who becomes an overredeemer in a subsequent year may credit the value of the overredemption in order to reduce the amount of money owed to the department of treasury under this section in one (1) or more subsequent years as a result of that person again becoming an underredeemer. The value of the overredemption may be carried forward for not more than three (3) years or until the credit granted in this section is completely depleted, whichever occurs first.

(d) A manufacturer who no longer originates deposits may carry the value of an overredemption back for prior years in order to utilize its credit, and reduce the amount of underredemption owed to the department of treasury under this section on a one-time basis only. Utilization of this one-time credit may be applied against underredemption amounts owed for reporting years commencing in 2000.

(e) As used in this section:

(1) "Overredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state is less than the

annual total value of refunds made upon beverage containers redeemed within this state.

(2) "Underredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state exceeds annual total value of refunds made upon beverage containers redeemed within this state.

(f) In addition to the report prescribed in Section 4, if an underredeemer purchases empty returnable containers from an overredeemer, that purchase shall be reported by the underredeemer as a "refund made" and shall be reported by the overredeemer as a "deposit originated" in the report prescribed by Section 4. The report made by an underredeemer shall include the name and address of each overredeemer and the refund value of the empty returnable beverage containers purchased from each overredeemer. The report made by an overredeemer shall include the name and address of each underredeemer who purchased the returnable containers from that overredeemer and the refund value of the empty returnable beverage containers sold. The total consideration paid by an underredeemer to an overredeemer as authorized by this subsection shall equal the redemption value of the container.

(g) A purchase or sale made under subsection (f) during January of each year shall be included in the report for the previous calendar year only.

SECTION 6. (a) There is created in the state treasury a bottle deposit fund which is a revolving fund administered by the department of revenue. The money in the bottle deposit fund shall not revert to the general fund.

(b) The amount paid to the department of revenue by underredeemers shall be deposited by the state treasury in the bottle deposit fund created in subsection (a) for annual disbursement by the department of revenue in the following manner:

(1) Seventy-five percent (75%) to the cleanup and redevelopment trust fund created in Section 8.

(2) Twenty-five percent (25%) to dealers to be apportioned to each dealer on the basis of the number of empty returnable containers handled by a dealer as determined by the department of revenue.

(c) Not later than June 1 of each year, the department of treasury shall publish and make available to the public information related to Section 5(a) and send a report of that information to the legislature.

(d) The department of revenue may promulgate rules to implement the provisions of this act.

SECTION 7. Unclaimed deposits on returnable containers are considered to be the property of the person purchasing the returnable container and are not the property of the distributor or manufacturer who originated the deposit.

SECTION 8. (a) The cleanup and redevelopment trust fund is created within the state treasury.

(b) The state treasurer may receive money or other assets from any source for deposit into the trust fund. The state treasurer shall direct the investment of the trust fund. The state treasurer shall credit to the trust fund interest and earnings from fund investments.

(c) Money in the trust fund at the close of the fiscal year shall remain in the trust fund and shall not lapse to the general fund.

(d) The state treasurer shall annually disburse the following amounts from the trust fund: For each of the state fiscal years 2000-2001, 2001-2002, and 2002-2003, up to fifteen million dollars (\$15,000,000) each year of money in the trust fund to the cleanup and redevelopment fund. Amounts disbursed after the 2002-2003 fiscal year shall be set in the general appropriations act.

SECTION 9. Except as provided in Sections 10 or 11, a person, dealer, distributor, or manufacturer who violates this act is subject to a fine of not less than one hundred dollars

(\$100) or more than one thousand dollars (\$1,000) and is liable for the costs of prosecution.

Each day a violation occurs, a separate offense is committed.

SECTION 10. (a) A person shall not return or attempt to return to a dealer for a refund one (1) or more of the following:

(1) A beverage container that the person knows or should know was not purchased in this state as a filled returnable container.

(2) A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

(b) A person who violates subsection (a) is subject to one (1) of the following:

(1) If the person returns twenty-five (25) or more but not more than one hundred (100) nonreturnable containers, the person is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00).

(2) If the person returns more than one hundred (100) nonreturnable containers or violates subdivision (a) for a second or subsequent time, the person is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than five hundred dollars (\$500.00), or both.

(c) A person found guilty under this subsection shall be ordered by the court to pay restitution equal to the amount of loss caused by the violation.

SECTION 11. In that portion of the dealer's premises where returnable containers are redeemed, a dealer shall post a notice that says substantially the following: "A person who returns for refund an out-of-state nonreturnable container is subject to penalties of up to ninety-three (93) days in jail and a fine of five hundred dollars (\$500.00) and restitution." A dealer who fails to comply with this section is subject to a fine of not more than fifty dollars (\$50.00).

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.