

SENATE BILL 337

By Summerville

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 211 and Chapter 616 of the Public Acts of 2010, relative to the Tennessee Beverage Container Recycling Refunds Act.

WHEREAS, the general assembly finds that recycling is an important element of an integrated solid waste management system that can protect and preserve natural resources, conserve energy and reduce economic costs to residents, businesses and local governments within the state; and

WHEREAS, the general assembly finds that reducing litter is important for promoting tourism and recreation, reducing damage to farmers and enhancing the quality of life for residents of this state; and

WHEREAS, the general assembly finds a need to expand participation in recycling programs; to maximize the economic benefits of such programs to businesses, government and residents; and to reduce litter; and

WHEREAS, the purposes of this act are to increase recycling rates for specified deposit beverage containers, to encourage recycling in general, to reduce litter and to provide a connection between manufacturing decisions and recycling program management; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 211, is amended by adding Sections 2 through 29 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Beverage Container Recycling Refunds Act."

SECTION 3. As used in this part, unless the context otherwise requires:

(1) “Administrative allowance” means an amount paid by the program to a certified processor to defray the certified processor’s costs of complying with the administrative requirements of the program, pursuant to Section 22;

(2) “Cancel” means to crush, flatten, shred or otherwise render a deposit beverage container unfit for redemption;

(3) “Certified processor” means a facility designed for the collection, processing, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and that has been certified by the department to purchase, quantify, document, cancel, process and reuse or sell for reuse deposit beverage containers that have been collected at certified redemption centers;

(4) “Certified redemption center” means an operation that has been certified by the department to accept empty deposit beverage containers from consumers; sort the containers according to material type and, if applicable, color and size; pay no less than the established refund value either to the consumer or to a recipient designated or intended by the consumer; ensure that the properly sorted containers are received by a certified processor; and, where authorized, cancel the empty containers. A certified redemption center may be:

(A) A dedicated storefront facility;

(B) A portable microsite redemption center;

(C) A mobile redemption center;

(D) A reverse vending machine;

(E) A drop-off redemption center operating in conjunction with an electronic certified processor; or

(F) A facility that is operated by and may be a part of:

- (i) A grocery store, retailer or other business;
  - (ii) A certified processor;
  - (iii) A nonprofit agency or facility, such as a homeless shelter; or
  - (iv) A recycling program operated by, on behalf of, or independent of, a county, municipal or metropolitan government, including a recycling convenience center, a waste transfer station, a materials recovery facility, a curbside recycling program, a landfill or other recycling entity approved by the commissioner;
- (5) “Commissioner” means the commissioner of environment and conservation;
- (6) “Comptroller” means the office of the comptroller of the treasury;
- (7) “Consumer” means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit;
- (8) “Container-recovery fee” means an amount paid to the state by a deposit beverage distributor to provide uninterrupted funding of the county litter grants program and defray the costs of initiating the deposit program;
- (9) “Dealer” means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the state;
- (10) “Department” means the department of environment and conservation;
- (11) “Deposit beverage” means beer, ale or other drink produced by fermenting malt; carbonated soft drinks; carbonated and noncarbonated water, including flavored and sugared waters; tea and coffee drinks regardless of dairy-derived product content; juices, including one hundred percent (100%) juices and juice blends; flavored malt beverages and any other juice-based beverage with an alcohol content of not more than seven percent (7%) by volume; and all nonalcoholic drinks in liquid form and intended for

internal human consumption that are contained in a deposit beverage container.

"Deposit beverage" does not include:

(A) Any liquid that is:

(i) A syrup;

(ii) In a concentrated form; or

(iii) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces or condiments;

(B) Any liquid that is a drug, medical food or infant formula as defined by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq.;

(C) Any liquid that is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994, PL 103-417;

(D) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;

(E) Products designed to be consumed in a frozen state;

(F) Instant drink powders;

(G) Seafood, meat or vegetable broths, or soups, but not juices;

(H) Milk and all other dairy-derived products, except tea and coffee drinks containing such products; and

(I) Wine and spirits;

(12) "Deposit beverage container" means an individual, separate and sealed container that is not considered a refillable beverage container as defined in this section, and that is made of glass, aluminum, steel, bimetal or plastic, including polyethylene terephthalate (PET), high-density polyethylene (HDPE) and all other plastic types and

grades, in any size and used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state;

(13) "Deposit beverage container fund," hereinafter the "fund," means a fund created in the state treasury by the department of revenue into which are deposited all initial deposits, container-recovery fees, fines, interest, grants, donations and any allocations made to the fund independent of this part and out of which are paid all program costs, refund values, overhead allowances, administrative allowances, disposal costs and other allocations;

(14) "Deposit beverage container program," hereinafter the "program," means an administrative entity created within the division of solid waste management of the department of environment and conservation to carry out the requirements of this part;

(15) "Deposit beverage distributor" means a person who engages in the sale of beverages in deposit beverage containers to a dealer in this state, including any manufacturer who engages in these sales. Deposit beverage distributor includes any person who imports beverages from outside of this state for sale to dealers or consumers in this state, and any federal agency and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers;

(16) "Drop-off redemption center" means a certified redemption center, typically located adjacent to a hosting grocery store or similar entity, and operating in conjunction with an electronic certified processor as defined in this section. Drop-off redemption centers accept bags containing deposit beverage containers from participating consumers; provide the consumer with bar-coded labels to identify their bags; ensure that the labeled bags are transported to and processed by an electronic certified processor; and provide automated teller machines where participants may review their

redemption accounts and print credit slips to be redeemed or accepted as cash by the host grocery store or similar entity;

(17) "Electronic certified processor" means a type of certified processor operating in conjunction with one (1) or more drop-off redemption centers. Electronic certified processors automatically scan, sort, and cancel empty deposit beverage containers that have been received from participating consumers at drop-off redemption centers; electronically record all transaction information, including quantities, materials and refund amounts due; and electronically post the refund amounts to consumers' redemption accounts;

(18) "Fiscal year" means the twelve-month period beginning on any July 1 and ending on the following June 30;

(19) "Import" means to buy, bring or accept delivery of deposit beverage containers from an address, supplier or any entity outside of the state;

(20) "Importer" means any person who buys, brings or accepts delivery of deposit beverage containers from outside the state for sale or use within the state;

(21) "Microsite redemption center" means a portable, attended roll-off trailer designed and equipped to serve as a certified redemption center, and typically located in the parking lot of a hosting grocery store or similar entity. Recycling refunds are typically issued in the form of a credit slip to be redeemed or accepted as cash by the host grocery store or similar entity;

(22) "Mobile redemption center" means a certified redemption center designed to bring redemption services to residences, institutions, conventions, businesses and other entities, either on a one-time or ongoing basis. Mobile redemption centers may operate independently, or they may be operated in conjunction with another certified redemption center or a certified processor;

(23) “On-premises consumption” means consumption of a deposit beverage by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes;

(24) “Overhead allowance” means an amount paid by the program to a certified redemption center to defray routine or fixed operating costs, such as utilities and insurance, pursuant to Section 21;

(25) “Person” means an individual, partnership, firm, association, public or private corporation, federal agency, the state or any of its political subdivisions, trust, estate or any other legal entity;

(26) “Refillable beverage container” means a beverage container that is intended to be returned intact to the manufacturer or distributor to be washed, refilled and resold; that is sold in a container which has a brand name permanently marked on it; and that bears a manufacturers’ refund value of at least five cents (5¢); and

(27) “Reverse vending machine” means a self-service certified redemption center, typically located adjacent to a grocery store or similar entity, into which a consumer feeds empty deposit beverage containers. The machine electronically scans the container’s bar code, sorts and cancels the container, records the transaction information, and issues a refund either as cash, electronic credit, a donation to a designated charity, or a credit slip to be redeemed or accepted as cash by the host grocery store or similar entity.

#### SECTION 4.

(a) By September 1, 2011, all deposit beverage distributors operating within the state shall register with the department of revenue in a manner and form prescribed by the department of revenue. After September 1, 2011, any person who desires to conduct business in the state as a deposit beverage distributor shall register with the

department of revenue no later than thirty (30) days prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture and importation of beverages in deposit beverage containers as well as in refillable beverage containers. The records shall be made available, upon request, for inspection by the department of revenue and the department of environment and conservation; provided, that any proprietary information obtained by either department shall be kept confidential and shall not be disclosed to any other person, except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce this part or any rule adopted pursuant to this part; or

(2) Under an order issued by a court or administrative hearing officer.

#### SECTION 5.

(a) Beginning October 1, 2011, every deposit beverage distributor shall pay to the department of revenue a container-recovery fee for each deposit beverage container manufactured in or imported into this state. The fee shall be imposed only once on the same deposit beverage container, and shall be implemented in phases as follows:

(1) From October 1, 2011, until June 30, 2012, the amount of the container-recovery fee shall be one-quarter of one cent (\$0.0025) per deposit beverage container;

(2) From July 1, 2012, until June 30, 2015, the amount of the container-recovery fee shall be adjusted to thirty-five thousandths of one cent (\$0.00035) per deposit beverage container; and

(3) Beginning on July 1, 2015, the amount of the container-recovery fee shall be adjusted to one-eighth of one cent (\$0.00125) per deposit beverage

container and shall remain at that level until changed by an act of the general assembly.

(b) Payment shall be accompanied by an inventory report, in a manner and form prescribed by the department of revenue, that identifies the number of beverages in deposit beverage containers, by container size and type, manufactured in or imported into the state during the reporting period.

(c) All inventory reports and payments shall be made monthly and received no later than the fifteenth day of the month following the end of the reporting period.

(d) Payment shall be made by check, money order or electronic deposit to the "Department of Revenue, State of Tennessee."

(e) No local government shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this part.

#### SECTION 6.

(a) Beginning March 1, 2013, every deposit beverage distributor shall pay to the department of revenue a deposit on each deposit beverage container manufactured in or imported into the state.

(b) The deposit shall be five cents (5¢) and shall remain at that level until changed by an act of the general assembly.

(c) Payment of the deposit shall be made simultaneously with, and according to the same terms as, payment of the container-recovery fee as described in Section 5, subsections (b) through (e).

#### SECTION 7.

(a) Beginning April 1, 2013, every deposit beverage distributor shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage

container sold in Tennessee. The deposit charge shall appear as a separate line item on any invoice or sales receipt. None of the deposit charge shall be subject to any state tax under title 67.

(b) Beginning April 1, 2013, every dealer shall charge the consumer at the point of sale a deposit equal to the refund value for each deposit beverage container sold in Tennessee, except on beverages intended for on-premises consumption. The deposit charge shall appear as a separate line item on any sales receipt or invoice. None of the deposit charge shall be subject to any state tax under title 67.

#### SECTION 8.

(a) Beginning April 1, 2013, every deposit beverage container sold in this state shall have a Tennessee refund value of five cents (5¢). The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed and may not be collected more than once.

(b) The refund value shall be clearly printed, embossed, stamped, labeled or otherwise marked on the container, along with the word "Tennessee" or the letters "TN." The names or letters representing other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules, and in a form and manner prescribed by the commissioner.

(c) Each deposit beverage container shall encode within the universal product code, or similar machine-readable indicia, information regarding the size and type of container and the refund value of the container in the states in which the container is intended to be sold.

(d) Inventory already in circulation on April 1, 2013, shall be affixed or sold with an adhesive sticker bearing the refund value of the container, the words "Tennessee" or

the letters "TN," and a bar code bearing the redemption information. These stickers shall be purchased from the department of revenue by the beverage distributors, who shall pay the deposit value of five cents (5¢) per sticker.

(e) This section does not apply to any type of refillable beverage container.

#### SECTION 9.

(a) There is created a fund in the state treasury by the department of revenue to be known as the "deposit beverage container fund," referred to in this part as the "fund," into which shall be deposited all:

- (1) Revenues generated from the container-recovery fee;
- (2) Revenues generated from the deposit beverage container deposit;
- (3) Interest generated by this fund;
- (4) Monetary civil penalties assessed for violations of this part; and
- (5) Any public or private grants, donations or allocations to the program

made independent of this act in support of its purposes.

(b) Monies in the fund shall be used to:

- (1) Reimburse refund values for deposit beverage containers redeemed by certified redemption centers pursuant to Section 17;
- (2) Pay overhead allowances to certified redemption centers pursuant to Section 21;
- (3) Pay administrative allowances to certified processors pursuant to Section 22;
- (4) Reimburse disposal costs to certified processors pursuant to Section 20;
- (5) Pay certified redemption centers or certified processors their share of fines collected pursuant to Section 29;

(6) Fund all administrative, accounting, auditing and compliance activities associated with the deposit beverage container program;

(7) Employ personnel to oversee the implementation of the deposit beverage container program, including permitting and enforcement activities; and

(8) Defray associated office expenses.

(c) Pursuant to Section 10, monies deposited in the fund shall also be used to:

(1) Reimburse the department of transportation for the loss of funding of the existing county litter grants program provided for in §§ 41-2-123, 57-5-201, and 67-4-402, and pursuant to Section 10(1);

(2) Reimburse local governments for any loss in additional revenue that is not provided for in subdivision (c)(1) and that is attributable, pursuant to Section 31, to the repeal of Chapter 616 of the Public Acts of 2010 relative to tax increases imposed by Chapter 307 of the Public Acts of 1981, and extended by Chapter 769 of the Public Acts of 1984, Chapter 33 of the Public Acts of 1987, Chapter 30 of the Public Acts of 1991, Chapter 2 of the Public Acts of 1995, Chapter 81 of the Public Acts of 1999; and Chapter 86 of the Public Acts of 2005.

(d) Monies deposited in the fund may also be used to:

(1) Establish and support certified redemption centers, including microsite certified redemption centers, pursuant to Section 16;

(2) Support certified processors; and

(3) Provide grants to local governments for solid waste management, recycling, curbside recycling, litter control and other programs and activities related to the purposes of this part.

(e) Any monies remaining in the fund at the end of any fiscal year shall escheat to the state, shall remain in reserve until expended for purposes authorized by or

consistent with this act, shall not revert to the general fund on any June 30, and shall not be allocated to any use, nor appropriated for any purpose, not specifically authorized by this part. Any excess revenues from interest earned by such revenues shall not revert on any June 30, but shall remain available for expenditure in subsequent fiscal years. Any unexpended allocation from such reserve shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

SECTION 10. The following annual allocations shall be made from the fund by the department of revenue:

(1) A sum sufficient shall be allocated annually from the fund to reimburse the department of transportation for the loss of funding of the existing county litter grants program, including funding for litter education and eradication activities by county governments and Keep Tennessee Beautiful, provided in §§ 41-2-123, 57-5-201, and 67-4-402.

(A) Payment shall be made annually to the department of transportation, no later than September 1 of each year. The first payment shall be made no later than September 1, 2012;

(B) The amount of payment shall be based on sales of malt beverages and soft drinks in Tennessee during the preceding fiscal year, as determined by tax returns filed with the department of revenue by manufacturers, bottlers, importers or distributors of malt beverages and soft drinks;

(C) The payment amount shall be equal to the sum of the following calculations:

(i) Fifty cents (50¢) per taxable barrel of thirty-one liquid gallons (31 gals.) or partial barrel of malt beverage sold during the payment period; and

(ii) Four-tenths of one percent (0.4%) of taxable gross receipts of soft drinks sold during the payment period; and

(2) A sum sufficient shall be allocated annually to reimburse local governments for any loss in additional revenue that is not provided for in subsection (a) and pursuant to Section 31, that is attributable to the repeal of Chapter 616 of the Public Acts of 2010 of the tax increases imposed by Chapter 307 of the Public Acts of 1981, and extended by Chapter 769 of the Public Acts of 1984, Chapter 33 of the Public Acts of 1987, Chapter 30 of the Public Acts of 1991, Chapter 2 of the Public Acts of 1995, Chapter 81 of the Public Acts of 1999; and Chapter 86 of the Public Acts of 2005.

#### SECTION 11.

(a) The deposit beverage container program shall be administered by the division of solid waste management within the department of environment and conservation, with accounting functions performed by the department of revenue.

(b) The commissioner shall create a separate administrative entity to meet the administrative requirements of the deposit beverage container program. This entity shall be known as the deposit beverage container program and may be established as follows:

(1) The commissioner may create the entity within the division of solid waste management, with dedicated positions funded by the deposit beverage container fund; or

(2) The commissioner may contract the services of a third party to meet the administrative requirements of the deposit beverage container program. The costs for these services shall be reimbursed by the deposit beverage container fund.

(c) The commissioner of revenue may contract the services of a third party to meet the accounting requirements of the deposit beverage container program. The costs for these services shall be reimbursed by the deposit beverage container fund.

(d) The department may produce brochures, web sites, videos and other promotional materials that the commissioner determines to be necessary to inform the public about the goals, operations, benefits and outcomes of the deposit beverage container program.

SECTION 12. The comptroller shall conduct a management and financial audit of the deposit beverage container program for fiscal years 2012-2013 and 2013-2014, and for each subsequent fiscal year ending in an even-numbered year. The comptroller shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the general assembly and the departments of revenue, environment and conservation on or before January 2 following the end of the preceding reporting period. The costs incurred by the comptroller for the audit shall be reimbursed by the deposit beverage container fund. The comptroller may contract the audit services of a third party to conduct the audit.

SECTION 13. The commissioner and the department of revenue are authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 14. Full implementation of the deposit beverage container program shall commence on April 1, 2013.

SECTION 15. Every dealer shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the names, addresses, phone numbers and hours of operation of the closest certified redemption centers.

SECTION 16. The commissioner shall promulgate by rule the definition of an underserved area with regard to certified redemption centers. If an area is underserved according to this definition, the department, with input from the affected county, shall use its best efforts to see that a certified redemption center or microsite certified redemption center is established in that area. If no other funding is available, monies from the deposit beverage container fund may be used to establish and support the certified redemption center or microsite certified redemption center.

SECTION 17.

(a) Prior to participating in the program, any redemption center wishing to operate in Tennessee shall be certified by the department according to regulations promulgated by the commissioner. These regulations shall require that all information submitted to the department be under penalty of perjury. Applications for certification shall be filed with the department in a form and manner prescribed by the commissioner.

(b) Municipal, metropolitan and county governments, nonprofit organizations, dealers, businesses, existing scrap dealers and processors and individual persons are eligible to apply for certification to operate a certified redemption center.

(c) The department shall establish criteria to determine the minimum number of certified redemption centers needed to adequately serve each county based on population density, population distribution, consultation with the respective counties and other factors. The department may use these criteria in issuing certifications.

(d) The department may, at any time, review the certification of a certified redemption center. After written notice to the person responsible for the establishment and operation of the certified redemption center, the department, after it has afforded the certified redemption center operator a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may withdraw the

certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions or certification requirements.

(e) All certified redemption centers shall:

(1) Accept all types of empty deposit beverage containers on which a Tennessee deposit has been paid;

(2) Accept deposit beverage containers from the public a minimum number of hours or days per week, according to rules promulgated by the commissioner;

(3) Maintain redemption areas in full compliance with applicable laws and according to orders and rules established by the commissioner, including permitting and certification requirements;

(4) Take reasonable actions to identify, and prevent payment of a refund value for, any beverage container or other product on which a Tennessee deposit has not been paid, including containers that the certified redemption center knows, or ought to know, have been brought into Tennessee from another state;

(5) Determine the quantities of deposit beverage containers by manual count, electronic scan, weight, volume or other method authorized by the commissioner, and in a form and manner prescribed by the commissioner;

(6) Pay to the consumer, or to a charity or other recipient designated or intended by the consumer, an amount not less than the established refund value for all valid deposit beverage containers;

(7) Maintain a log of consumer transactions, including amounts donated to a charity or another designated organization, and the name and address of the charity or organization;

(8) Sort, consolidate, and, if authorized by the department, cancel the redeemed deposit beverage containers according to rules promulgated by the commissioner;

(9) Take reasonable precautions to ensure that redeemed deposit beverage containers are placed in a secure area while awaiting purchase by a certified processor;

(10) Ensure that all redeemed deposit beverage containers are purchased or received by a certified processor. If container material is purchased, prices paid shall be consistent with prevailing market scrap values, transportation costs and other factors, and the unit price and total amount paid shall be noted on transaction receipts. If a container material has a market scrap value of zero or less than zero, the negative value shall be noted on transaction receipts, and the payment amount entered as zero;

(11) Provide to the certified processor, or the processor's agent, a shipping report, in a form and manner prescribed by the commissioner, and including, but not limited to, the following information:

(A) The individual-unit quantities, by container type and collectively, of all deposit beverage containers being received by the certified processor, and whether quantities in each instance were determined by manual count, electronic scan, weight, volume or a combination of these methods;

(B) The amounts paid in refund values for the redeemed deposit beverage containers, by container type and collectively;

(C) Weight tickets, if applicable;

(D) Printouts of electronic transaction logs, if applicable;

(12) Prepare, maintain, and provide to the department upon request all records and documentation of redemption activity, including, but not limited to, consumer transaction logs, shipping reports, weight tickets, transaction receipts received from certified processors, electronic transaction printouts as applicable and any documents authorizing the canceling of redeemed deposit beverage containers; and

(13) Provide to the department, in a form and manner prescribed by the commissioner, and no later than October 1 of each year, a summary of redemption center activity for the preceding fiscal year, including, but not limited to, quantities of deposit beverage containers redeemed, by container type and collectively; quantities of refillable deposit beverage containers redeemed; the name of each certified processor receiving the containers; the dollar amount of any charitable donations made; and the names and addresses of the recipient charities.

(f) Any certified redemption center that wishes to cancel redeemed deposit beverage containers as part of its regular handling procedures shall apply for and receive authorization to do so from the department, and shall perform and document the cancellations in a form and manner prescribed by the commissioner.

(g) Any certified redemption center that wishes to accept refillable beverage containers from consumers shall:

- (1) Pay to the consumer the manufacturer's refund value for the refillable beverage container;
- (2) Record the transaction in the consumer transaction log;
- (3) Ensure that the refillable beverage container is received by a certified processor, a willing purchaser or the originating beverage distributor, who shall

reimburse the manufacturer's refund value to the certified redemption center.

The certified redemption center may negotiate with the receiving entity a reasonable fee to cover the cost of accepting and handling these containers.

(h) The quantity of beverage containers, including refillable beverage containers, redeemed by a certified redemption center shall be credited to the municipal or county government where the certified redemption center is located, regardless of the location of the certified processor that receives the containers, for purposes of calculating solid waste diversion amounts and meeting regional solid waste reduction goals.

SECTION 18. Reverse vending machines may be used to satisfy the requirements of Section 17, except that reverse vending machines are not required to accept refillable beverage containers; provided, that:

(1) The machines accept all types of empty deposit beverage containers that bear a valid Tennessee refund value;

(2) The machines pay out the full amount of the refund value in the form of cash, credit slip, electronic credit or designated donation;

(3) The machines are monitored during operating hours by an attendant;

(4) The machines are routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds; and

(5) Should the reverse vending machine fail to accept, recognize or process a Tennessee deposit beverage container that is otherwise valid, the attendant shall manually accept the container and issue the appropriate refund value. The reverse vending machine shall display a toll-free phone number and mailing address that the consumer may contact if the conflict cannot be resolved or if no attendant is available.

SECTION 19. Certified redemption centers may refuse to pay the refund value on any deposit beverage container that:

- (1) Is broken, corroded, dismembered or flattened;
- (2) Contains a free-flowing liquid;
- (3) Does not properly indicate a refund value; or
- (4) Contains a significant amount of foreign material.

#### SECTION 20.

(a) Prior to participating in the program, processors shall be certified by the department and registered with the department of revenue according to regulations promulgated by the commissioner. These regulations shall require that all information submitted to the department or to the department of revenue be under penalty of perjury. Applications for certification shall be filed with the department in a form and manner prescribed by the commissioner. Applications for registration shall be filed with the department of revenue in a form and manner prescribed by the commissioner of revenue.

(b) The department may at any time review the certification of a certified processor. After written notice to the person of record responsible for the establishment and operation of the certified processor, the department, after it has afforded the certified processor operator a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, may withdraw the certification of the facility if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(c) Certified processors shall:

- (1) Accept from certified redemption centers all types of deposit beverage containers that have been redeemed, quantified, sorted and, if authorized, canceled in accordance with program rules, and that are

accompanied by a shipping report prepared by the certified redemption center in accordance with program rules;

(2) Perform a random sampling or samplings, in a form and manner prescribed by the commissioner, of the redeemed deposit beverage containers, to ascertain that they bear a valid Tennessee refund value;

(3) Independently determine quantities of each type of deposit beverage container, either by manual count, electronic scan, volume, weight or a combination of these methods, according to standards, averages and rules prescribed by the commissioner; and document the quantities in a form and manner prescribed by the commissioner;

(A) If a significant discrepancy exists between the quantities determined by the certified processor and the quantities stated on the shipping report prepared by the certified redemption center, or if a random sampling of redeemed beverage containers shows a significant proportion of beverage containers that do not bear a valid Tennessee refund value, the certified processor may withhold payment to the certified redemption center, or the department of revenue may withhold payment to the certified processor, pending further investigation by the department, according to procedures prescribed by the commissioner.

(B) The commissioner shall establish by rule what constitutes “significant discrepancy” and “significant proportion” relative to this subdivision (3);

(4) Cancel the redeemed deposit beverage containers, if they have not already been canceled;

(5) Process the containers as needed for remanufacturing or for sale to a willing purchaser; except that:

(A) If, after making a good-faith effort, a certified processor is unable to locate a willing purchaser or recipient for a specific beverage container material, the certified processor shall submit to the department a disposal request form, in a form and manner prescribed by the department, that describes the material and quantities, details any efforts made to find a willing purchaser or recipient and specifies the intended manner and location of disposal. The material shall not be disposed of without a written authorization to do so by the department, and shall be available for and subject to inspection by the department;

(B) The certified processor may recover costs associated with handling and disposing of the material by presenting to the department of revenue a written request for reimbursement in a form and manner prescribed by the commissioner and accompanied by the disposal authorization and all associated receipts. The commissioner shall establish by rule what constitutes "good-faith effort" relative to this subdivision (5).

(6) Issue payment to certified redemption centers, as follows:

(A) The amount of payment shall be the sum of all of the following amounts:

(i) The collective refund values of the redeemed deposit beverage containers received from the certified redemption center;

(ii) The overhead allowance due, pursuant to Section 21;

and

(iii) Payment for the container materials in an amount that reflects and is consistent with prevailing market scrap prices, incurred transportation or delivery costs and other factors.

(B) Payment shall be made to the certified redemption center within ten (10) business days, unless a significant discrepancy exists pursuant to subdivision (c)(3), in which case payment may be withheld pending the outcome of an investigation by the department, according to procedures prescribed by the commissioner.

(7) Provide to the certified redemption center a transaction receipt, prepared in a form and manner prescribed by the commissioner, and including, at a minimum, the following information:

(A) The per-unit quantities, by container type and collectively, of deposit beverage containers received from the certified redemption center, and whether quantities in each instance were determined by manual count, electronic scan, volume, weight or a combination of these methods;

(B) The weight, by container type and collectively, of deposit beverage containers received from the certified redemption center;

(C) The amounts paid in refund values to the certified redemption center, by container type and collectively;

(D) The amount paid as overhead allowance to the certified redemption center; and

(E) The amounts paid in scrap values for each type of deposit beverage container purchased from the certified redemption center.

Container material with a market value of zero or less than zero shall be noted, and the payment entered as zero.

(8) Submit to the department of revenue, pursuant to Section 23 and in a form and manner prescribed by the commissioner, a processor's invoice for reimbursement or payment of refund values, overhead allowance and administrative allowance for each separate transaction with a certified redemption center;

(9) For any refillable beverage containers received from the certified redemption center, reimburse the manufacturer's refund value to the certified redemption center and ensure that the refillable beverage containers are returned to the originating beverage distributor or sold to a willing purchaser. The certified processor may negotiate a reasonable fee with the originating distributor or willing purchaser to cover the cost of accepting and handling these containers; and

(10) Maintain copies of all documentation, including, but not limited to, shipping reports, weight tickets, transaction receipts, requests-for-disposal and end-market information, and make them available, upon request, to the departments of revenue and environment and conservation.

#### SECTION 21.

(a) Beginning April 1, 2013, the department of revenue shall pay to a certified redemption center, by agency of a certified processor pursuant to Section 23(a)(2), an overhead allowance for each transaction conducted in accordance with regulations and standards established by the commissioner.

(b) The amount of the overhead allowance shall be twenty percent (20%) of total refund values paid during the period covered by the transaction, as reported to the department of revenue in the processor's invoice pursuant to Section 23(a)(1), and shall remain at that level until changed by the commissioner in response to either of the following conditions:

(1) If monies in the fund decrease to a level at which the fund can no longer sustain in the long term an overhead allowance of twenty percent (20%) of refund values, the percentage shall be reduced by the commissioner, in consultation with the commissioner of revenue, and according to terms promulgated by the commissioner by rule;

(2) If monies in the fund increase to a level at which the fund can sustain in the long term an overhead allowance greater than twenty percent (20%) of refund values, the percentage may be increased by the commissioner, in consultation with the commissioner of revenue, and according to terms promulgated by the commissioner by rule.

## SECTION 22.

(a) Beginning April 1, 2013, the department of revenue shall pay to a certified processor an administrative allowance for each transaction conducted in accordance with regulations and standards established by the commissioner to defray the certified processor's costs of complying with the administrative requirements of this program.

(b) The amount of the administrative allowance shall be two percent (2%) of total refund values paid during the period covered by the transaction, as reported to the department of revenue in the processor's invoice pursuant to Section 23(a)(1). If monies in the fund increase to a level at which the fund can sustain in the long term an administrative allowance greater than two percent (2%) of refund values, the percentage

may be increased by the commissioner, in consultation with the commissioner of revenue, and according to terms promulgated by the commissioner by rule. If monies in the fund should subsequently decline to a level at which the fund can no longer sustain the increase, the percentage may be reduced by the commissioner, in consultation with the commissioner of revenue and according to terms promulgated by the commissioner by rule, but in no case shall it be reduced below two percent (2%).

#### SECTION 23.

(a) Beginning April 1, 2013, for every completed transaction with a certified redemption center, a certified processor shall submit to the department of revenue a processor's invoice for an amount equal to the sum of all of the following:

(1) The total amount of refund values paid by the certified processor to the certified redemption center, pursuant to Section 20(c)(6)(A)(i);

(2) The overhead allowance paid by the certified processor to the certified redemption center, pursuant to Section 21; and

(3) The administrative allowance due to the certified processor, pursuant to Section 22.

(b) The processor's invoice shall be accompanied by supporting documentation that shall include, but not be limited to:

(1) A copy of the transaction receipt prepared by the certified processor;

(2) A copy of the shipping report prepared by the certified redemption center; and

(3) Where applicable, a printout of any electronic transaction logs.

(c) The processor's invoice shall be submitted to the department of revenue within thirty (30) days following payment to a certified redemption center.

(d) The department of revenue shall issue payment to the certified processor within ten (10) business days of receipt of a properly submitted invoice, unless a discrepancy is noted pursuant to Section 20(c)(3), in which case payment may be withheld pending investigation by the department, according to procedures prescribed by the commissioner.

SECTION 24. Deposit beverage distributors, certified redemption centers and certified processors shall, upon request and under penalty of perjury, make their records available for inspection by the departments of revenue, environment and conservation, duly authorized agents of these departments, the comptroller, or the comptroller's auditor.

SECTION 25. The department, in consultation with the department of revenue, shall compile a report on the deposit beverage container program for each fiscal year, except that the first report shall be for the period from October 1, 2011 through June 30, 2013. These reports shall be delivered to the general assembly and the governor on January 2 following the end of the preceding reporting period. Reports shall contain, but not be limited to:

- (1) Performance indicators;
- (2) Revenues and expenditures;
- (3) Measures of effectiveness, including recycling rates and impacts on litter;

and

- (4) Economic impacts, including numbers of certified redemption centers, number of jobs supported or created, and tonnage, market value and end uses of recovered materials.

SECTION 26.

(a) The commissioner shall convene an advisory committee to assist it in developing any rules needed to implement this part. The commissioner shall select

members of the committee so as to obtain input from state agencies, as well as from representatives of any or all of the following:

- (1) Bottlers;
- (2) Consumers;
- (3) Counties, including county sheriffs' departments;
- (4) Dealers;
- (5) Distributors;
- (6) Importers;
- (7) Keep Tennessee Beautiful;
- (8) Manufacturers and end-users;
- (9) Municipalities;
- (10) Nonprofit organizations;
- (11) Recyclers, including scrap dealers and providers of curbside recycling;
- (12) Redemption centers;
- (13) Redemption-service providers;
- (14) Solid waste professionals; or
- (15) Others as recommended by the commissioner.

(b) Members of the committee shall be appointed by the commissioner and shall serve at the commissioner's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the commissioner.

SECTION 27. Except as provided otherwise in Section 29, any person who violates this part or any rule adopted pursuant to this part shall be assessed a civil penalty of not more than ten thousand dollars (\$10,000) for each separate offense. This penalty shall be assessed by

the commissioner pursuant to Section 28. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be made through administrative or civil actions.

#### SECTION 28.

(a) If the commissioner determines that any person has violated or is violating this part, any rule adopted pursuant to this part, or any term or condition of a certification or permit issued pursuant to this part, the commissioner may do any one (1) or more of the following:

(1) Issue a field citation assessing a civil penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing a civil penalty for any past or current violation;

(3) Require compliance immediately or within a specified time; and

(4) Commence a civil action in chancery or circuit court in Davidson County, to seek appropriate relief, including a temporary, preliminary or permanent injunction against violations of this part, the imposition and collection of civil penalties or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification or revocation of a certification or permit issued pursuant to this part and shall state with reasonable specificity the nature of the violation.

(c) Any order issued under this part shall become final unless the person or persons named in the order request, in writing and not later than twenty (20) days after the notice of order is served, a hearing before the commissioner. Any penalty imposed pursuant to this part shall become due and payable twenty (20) days after the notice of penalty is served, unless the person named in the order requests in writing a hearing

before the commissioner. Whenever a hearing is requested on any penalty imposed pursuant to this part, the penalty shall become due and payable upon the issuance of a final order confirming the penalty in whole or in part.

(d) Any hearing conducted pursuant to this section shall be conducted as a contested case pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If, after a hearing held pursuant to this section, the commissioner finds that a violation or violations have occurred, the commissioner shall:

(1) Affirm or modify any penalties imposed or modify or affirm the order previously issued; or

(2) Issue an appropriate order or orders for the prevention, abatement or control of the violation involved, or for the taking of other corrective action as may be appropriate.

(e) If, after a hearing on an order or penalty contained in a notice, the commissioner finds that no violation has occurred or is occurring, the commissioner shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the violation.

(f) If the amount of any penalty is not paid to the department within thirty (30) days after an order becomes final, the commissioner may institute a civil action in the name of the state to collect the final penalty amount. In any proceeding to collect the civil penalty imposed, the commissioner need only show that:

(1) Notice was given;

(2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(3) The civil penalty was imposed; and

(4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the commissioner shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

#### SECTION 29.

(a) The obligations to accept empty beverage containers and pay the refund value as described in this part apply only to containers originally sold in this state as filled deposit beverage containers.

(b) It is an offense for a person who, during any single transaction, tenders or tries to tender to a certified redemption center more than twenty-four (24) empty beverage containers that the person knows or has reason to know were not originally sold in this state as filled deposit beverage containers. A violation of this subsection (b) is a Class A misdemeanor with fines as provided in subsection (d).

(c) Certified redemption centers shall conspicuously display a sign in letters that are at least one (1) inch in height with the following information: "WARNING: Persons tendering containers for redemption that were not originally purchased in Tennessee may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender."

(d) A person who violates this section is subject to a fine of up to the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of more than twenty-four (24) containers.

(e) The balance of each fine collected pursuant to this section, after deducting court costs, shall be placed in the deposit beverage container fund and shall remain in the fund to be expended for activities authorized by this part; except, that if the violation

was detected and reported by a certified redemption center or a certified processor, then the fine shall be disposed of as follows:

(1) Fifty percent (50%) of the fine shall remain in the fund to be expended for activities authorized by this part; and

(2) Fifty percent (50%) of the fine shall be awarded to the certified redemption center or certified processor reporting the violation as an incentive to be vigilant for and respond to illegal tenders or attempts to otherwise defraud the program.

SECTION 30. This part shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this part unless such funds are specifically appropriated by the general appropriations act.

SECTION 31. Chapter 616, Section 1, of the Public Acts of 2010 is amended by deleting the language "June 30, 2016, or until June 30 of any year following the enactment of any state or federal law which imposes mandatory deposits by consumers on beverage containers sold in Tennessee" and by substituting instead the language "June 30, 2011."

SECTION 32. This act shall take effect upon becoming a law, the public welfare requiring it.