

SUBCOMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2916 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Mark McCullough _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED SUBCOMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2916

By: McCullough

7
8 PROPOSED SUBCOMMITTEE SUBSTITUTE

9 An Act relating to environment and natural resources;
10 creating the Oklahoma Beverage Container Recycling
11 Act; stating findings; providing definitions;
12 providing for registration by deposit beverage
13 distributors; providing for a container recovery fee;
14 requiring payment of a deposit on deposit beverage
15 containers; stating deposit fee; providing for refund
16 value; establishing the Deposit Beverage Container
17 Fund; stating source of monies; providing for
18 expenditures; providing for administration of the
19 Deposit Beverage Container Program; providing for
20 audits; providing for promulgation of rules;
21 providing for certification of redemption centers;
22 establishing criteria for redemption centers;
23 providing criteria for reverse vending machines;
24 allowing refusal of certain beverage containers;
providing for certification of processors; stating
criteria for certification; stating certain duties of
a processor; requiring the Oklahoma Tax Commission to
pay a handling fee for redeemed deposit beverage
containers; providing for payment of an
administrative fee; requiring certain reports;
requiring records be made available; providing for an
advisory board; providing penalties for violations;
limiting obligation; making certain acts unlawful;
providing for payment of certain fines; providing for
codification; and declaring an emergency.

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-701 of Title 27A, unless there is created a duplication in numbering, reads as follows:

This act shall be know and may be cited as the "Oklahoma Beverage Container Recycling Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-702 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature finds that:

1. Recycling is an important element of an integrated solid waste management system, which can protect and preserve natural resources, conserve energy and reduce economic costs to residents, businesses and local governments within the state;

2. Reducing litter is important for the promotion of tourism and enhancing the quality of life for the residents of this state;

3. There is 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

4. The purposes of this act are to increase recycling rates for specified deposit beverage containers, to encourage recycling in

1 general, to reduce litter, and to provide a connection between
2 manufacturing decisions and recycling program management.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-11-703 of Title 27A, unless
5 there is created a duplication in numbering, reads as follows:

6 As used in the Oklahoma Beverage Container Recycling Act;

7 1. "Administrative fee" means an amount paid by the state to a
8 certified processor to defray administrative costs;

9 2. "Board" means the _____;

10 3. "Cancel" means to crush, flatten, shred or otherwise render
11 a deposit beverage container unfit for redemption;

12 4. "Certified processor" means a facility designed for the
13 collection, processing, and sale or reuse of secondary resources
14 that would otherwise be disposed of as municipal solid waste, and
15 that has been certified by the Department to purchase, quantify,
16 document, cancel, process and reuse or sell for reuse, deposit
17 beverage containers that have been collected at certified redemption
18 centers;

19 5. "Certified redemption center" means an operation that has
20 been certified by the Department to accept empty deposit beverage
21 containers from consumers, sort the containers according to material
22 type and, if applicable, color and size, pay no less than the
23 established refund value either to the consumer or to a recipient
24 designated or intended by the consumer, ensure that the properly

1 sorted containers are received by a certified processor and, where
2 authorized, cancel the empty containers. A certified redemption
3 center may be a:

- 4 a. dedicated storefront facility,
- 5 b. facility that is operated by and is a part of a:
 - 6 (1) grocery store or other retailer,
 - 7 (2) nonprofit agency or facility, such as a homeless
8 shelter,
 - 9 (3) recycling program operated by, or on behalf of, a
10 county, municipal or metropolitan government,
11 including a recycling convenience center, a waste
12 transfer station, a materials recovery facility,
13 or a landfill, or
 - 14 (4) certified processor,
- 15 c. portable microsite redemption center,
- 16 d. mobile redemption center,
- 17 e. reverse vending machine, or
- 18 f. drop-off redemption center operating in conjunction
19 with an electronic certified processor;

20 6. "Commissioner" means the _____;

21 7. "Comptroller" means the Office of the State Treasurer;

22 8. "Consumer" means a person who buys a beverage in a deposit
23 beverage container for use or consumption and pays the deposit;

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1 9. "Container recovery fee" means an amount paid to the state
2 by a deposit beverage distributor to defray the costs of collecting
3 and recycling deposit beverage containers and administering the
4 deposit program;

5 10. "Dealer" means a person who engages in the sale of
6 beverages in deposit beverage containers to a consumer for off-
7 premises consumption in the state;

8 11. "Department" means the Department of Environmental Quality;

9 12. "Deposit beverage" means beer, ale, or other drink produced
10 by fermenting malt, carbonated soft drinks, carbonated and
11 noncarbonated water, including flavored water, tea and coffee drinks
12 regardless of dairy-derived product content, juices, including one
13 hundred percent (100%) juices and juice blends, wine coolers,
14 flavored malt beverages and any other juice-based beverage with an
15 alcohol content of not more than seven percent (7%) by volume, and
16 all nonalcoholic drinks in liquid form and intended for internal
17 human consumption that are contained in a deposit beverage
18 container. Deposit beverage excludes the following:

- 19 a. a liquid which is a syrup in a concentrated form or
20 typically added as a minor flavoring ingredient in
21 food or drink, such as extracts, cooking additives,
22 sauces, or condiments,

- b. a liquid which is a drug, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act 21 U.S.C., Section 301 et seq.,
- c. a liquid which 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 (Public Law 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. unmixed wine and spirits;

13. "Deposit beverage container" means an individual, separate, sealed, container that is not considered a refillable beverage container according to Section ___ of this act, and that is made of glass, aluminum, steel, bimetals, or plastic, including polyethylene terephthalate (PET), high-density polyethylene (HDPE) and all other plastic types and grades, in sizes less than or equal to two (2)

1 liters, and used for containing, at the time of sale to the
2 consumer, a deposit beverage intended for use or consumption in this
3 state;

4 14. "Deposit Beverage Container Fund", hereinafter the "Fund",
5 means a fund created in the state treasury by the Oklahoma Tax
6 Commission, into which are deposited all program fees, deposits,
7 fines and interest, and out of which are paid all program costs,
8 refund values, handling fees, administrative fees, disposal costs
9 and other allocations;

10 15. "Deposit Beverage Container Program", hereinafter the
11 "Program", means an administrative entity created within the
12 Department of Environmental Quality, to carry out the requirements
13 of this act;

14 16. "Deposit beverage distributor" means a person who is a
15 manufacturer of beverages in deposit beverage containers sold in
16 this state, or who imports and engages in the sale of filled deposit
17 beverage containers to a dealer or consumer, and includes federal
18 agencies and military distributors, but does not include airlines
19 and shipping companies that merely transport deposit beverage
20 containers;

21 17. "Drop-off redemption center" means a certified redemption
22 center, typically located adjacent to a participating grocery store,
23 and operating in conjunction with an electronic certified processor
24 as defined in paragraph 18 of this section. Drop-off redemption

1 centers accept bags of deposit beverage containers from
2 participating consumers, provide bar-coded labels for the bags,
3 ensure that the labeled bags are transported to and processed by an
4 electronic certified processor and provide automated teller machines
5 wherein participants may review their redemption accounts and print
6 credit slips to be redeemed inside the participating grocery store;

7 18. "Electronic certified processor" means a type of certified
8 processor operating in conjunction with one or more drop-off
9 redemption centers. Electronic certified processors automatically
10 scan, sort, and cancel empty deposit beverage containers that have
11 been received from participating consumers at drop-off redemption
12 centers, electronically record all transaction information,
13 including quantities, materials and refund amounts due and post the
14 refund amounts to redemption accounts for consumers;

15 19. "Fiscal year" means the twelve-month period beginning on
16 any July 1 and ending on the following June 30;

17 20. "Handling fee" means an amount paid by the state to a
18 certified redemption center to defray the costs of, and provide a
19 reasonable financial return for, receiving, quantifying, sorting,
20 storing, documenting, canceling (if authorized) and ensuring that
21 redeemed deposit beverage containers are received by a certified
22 processor;

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1 21. "Import" means to buy, bring, or accept delivery of deposit
2 beverage containers from an address, supplier, or any entity outside
3 of the state;

4 22. "Importer" means any person who buys, brings, or accepts
5 delivery of deposit beverage containers from outside the state for
6 sale or use within the state;

7 23. "Microsite redemption center" means a portable, attended
8 roll-off trailer designed and equipped to serve as a certified
9 redemption center, and typically located in the parking lot of a
10 host grocery store or other retailer. Redemption refunds are
11 typically issued in the form of a credit slip that the consumer may
12 redeem for cash or apply toward purchases inside the host grocery
13 store or retailer;

14 24. "Mobile redemption center" means a certified redemption
15 center designed to bring redemption services to residences,
16 institutions, conventions, businesses and other entities, either on
17 a one-time or on-going basis. Mobile redemption centers may operate
18 independently, or they may be operated in conjunction with another
19 certified redemption center or a certified processor;

20 25. "On-premises consumption" means consumption of a deposit
21 beverage by a consumer immediately and within the area under control
22 of the establishment, including bars, restaurants, passenger ships,
23 and airplanes;

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1 26. "Person" means an individual, partnership, firm,
2 association, public or private corporation, federal agency, the
3 state or any of its political subdivisions, trust, estate, or any
4 other legal entity;

5 27. "Refillable beverage container" means a beverage container
6 that is intended to be returned intact to the manufacturer or
7 distributor to be washed, refilled and resold, that is sold in a
8 container which has a brand name permanently marked on it and that
9 bears a manufacturers' refund value of at least five cents (\$0.5);
10 and

11 28. "Reverse vending machine" means a self-service certified
12 redemption center, typically located adjacent to a grocery store,
13 into which a consumer feeds empty deposit beverage containers. The
14 machine electronically scans the container's bar code, sorts and
15 cancels the container, records the transaction information, and
16 issues a refund in the form of a redeemable credit slip, cash or
17 donation to a designated charity.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2-11-704 of Title 27A, unless
20 there is created a duplication in numbering, reads as follows:

21 A. By September 1, 2010, all deposit beverage distributors
22 operating within the state shall register with the Oklahoma Tax
23 Commission in a manner and form prescribed by the Commission. After
24 September 1, 2010, any person who desires to conduct business in the

1 state as a deposit beverage distributor shall register with the
2 Commission no later than one (1) month prior to the commencement of
3 the business.

4 B. All deposit beverage distributors shall maintain records
5 reflecting the manufacture and importation of beverages in deposit
6 beverage containers as well as in refillable beverage containers.
7 The records shall be made available, upon request, for inspection by
8 the Oklahoma Tax Commission and the Department of Environmental
9 Quality. Any proprietary information obtained by either the
10 Department or Commission shall be kept confidential and shall not be
11 disclosed to any other person, except:

12 1. As may be reasonably required in an administrative or
13 judicial proceeding to enforce any provision of this act or any rule
14 adopted pursuant to this act; or

15 2. Under an order issued by a court or administrative agency
16 hearings officer.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 2-11-705 of Title 27A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. Beginning on October 1, 2010, every deposit beverage
21 distributor shall pay to the Oklahoma Tax Commission a container
22 recovery fee for each deposit beverage container manufactured in or
23 imported into the state. The fee shall be imposed only once on the
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1 same deposit beverage container, and shall be implemented in phases
2 as follows:

3 1. The amount of the container recovery fee from October 1,
4 2010, until March 31, 2012, shall be one-quarter of one cent (0.25¢)
5 per deposit beverage container;

6 2. Beginning on April 1, 2012, the amount of the container
7 recovery fee shall increase to one-half of one cent (0.5¢) per
8 deposit beverage container and shall remain at that level until
9 December 31, 2012; and

10 3. Beginning on January 1, 2013, the amount of the container
11 recovery fee shall increase to one cent (1¢) per deposit beverage
12 container, and shall remain at that level until changed by the
13 Legislature.

14 B. Payment shall be accompanied by an inventory report, in a
15 manner and form prescribed by the Commission, that identifies the
16 number of beverages in deposit beverage containers, by container
17 size and type, manufactured in or imported into the state during the
18 reporting period.

19 C. All inventory reports and payments shall be made monthly and
20 received no later than the fifteenth day of the month following the
21 end of the reporting period.

22 D. Payment shall be made by check or money order payable to the
23 "Oklahoma Tax Commission, State of Oklahoma".

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1 E. No local government shall impose or collect any assessment
2 or fee on deposit beverage containers for the same or similar
3 purpose that is the subject of the Oklahoma Beverage Container Act.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2-11-706 of Title 27A, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Beginning March 1, 2012, every deposit beverage distributor
8 shall pay to the Oklahoma Tax Commission a deposit on each deposit
9 beverage container manufactured in or imported into the state.

10 B. The deposit shall be five cents (5¢), and shall remain at
11 that level until changed by the Legislature.

12 C. Payment of the deposit shall be made simultaneously with,
13 and according to the same terms as, payment of the container
14 recovery fee as described in Section 5 of this act.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-11-707 of Title 27A, unless
17 there is created a duplication in numbering, reads as follows:

18 A. Beginning April 1, 2012, every deposit beverage distributor
19 shall charge the dealer or consumer a deposit equal to the refund
20 value for each deposit beverage container sold in the state. The
21 deposit charge shall appear as a separate line item on any invoice
22 or sales receipt. None of the deposit charge shall be subject to
23 any state tax.

1 B. Beginning April 1, 2012, every dealer shall charge the
2 consumer at the point of sale a deposit equal to the refund value
3 for each deposit beverage container sold in the state, except on
4 beverages intended for on-premises consumption. The deposit charge
5 shall appear as a separate line item on any sales receipt or
6 invoice. None of the deposit charge shall be subject to any state
7 tax.

8 SECTION 8. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 2-11-708 of Title 27A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Beginning April 1, 2012, every deposit beverage container
12 sold in this state shall have a refund value of five cents (5¢). The
13 refund value is the amount of the deposit required. Once a refund
14 value has been applied to a deposit beverage container, the deposit
15 on that container may not be changed, and may not be collected more
16 than once.

17 B. The refund value shall be clearly printed, embossed,
18 stamped, labeled, or otherwise marked on the container, along with
19 the word "Oklahoma" or the letters "OK". The names or letters
20 representing other states with comparable deposit legislation may
21 also be included in the indication of refund value. Other
22 indications may be required as specified in rules, and in a form and
23 manner prescribed by the Board.

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1 C. Each deposit beverage container shall encode within the
2 universal product code or similar machine-readable indicia,
3 information regarding the size and type of container and the refund
4 value of the container in the states in which the container is
5 intended to be sold.

6 D. Inventory already in circulation on April 1, 2012, shall be
7 affixed or sold with an adhesive sticker bearing the refund value of
8 the container, the words "Oklahoma" or the letters "OK," and a bar
9 code bearing the redemption information. These stickers shall be
10 purchased from the Oklahoma Tax Commission by the beverage
11 distributors, who shall pay the deposit value of five cents (5¢) per
12 sticker.

13 E. This section shall not apply to any type of refillable
14 beverage container.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-11-709 of Title 27A, unless
17 there is created a duplication in numbering, reads as follows:

18 A. There is established in the State Treasury by the Oklahoma
19 Tax Commission the "Deposit Beverage Container Fund", into which
20 shall be deposited all:

- 21 1. Revenues generated from the container recovery fee;
- 22 2. Revenues generated from the deposit beverage container
23 deposit;
- 24 3. Accrued interest from the Fund; and

1 4. Fines and penalties assessed for violations of this part.

2 B. Monies in the Fund shall be used to:

3 1. Reimburse refund values for deposit beverage containers
4 redeemed by certified redemption centers pursuant to Section __ of
5 this act;

6 2. Pay handling fees for deposit beverage containers redeemed
7 by certified redemption centers pursuant to Section __ of this act;

8 3. Pay administrative fees to certified processors pursuant to
9 Section __ of this act;

10 4. Reimburse disposal costs to certified processors pursuant to
11 Section __ of this act;

12 5. Pay certified redemption centers or certified processors
13 their share of fines collected pursuant to Section __ of this act;

14 6. Fund all administrative, accounting, auditing, and
15 compliance activities associated with the Deposit Beverage Container
16 Program;

17 7. Employ personnel to oversee the implementation of the
18 Deposit Beverage Container Program, including permitting and
19 enforcement activities; and

20 8. Defray associated office expenses.

21 C. Monies deposited in the Fund may also be used to:

22 1. Establish or support certified redemption centers, or both
23 establish and support such centers, including microsite certified
24 redemption centers, pursuant to Section __ of this act;

1 2. Support certified processors; and

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

5 D. Any monies remaining in the Fund at the end of any fiscal
6 year shall escheat to the state, shall remain in reserve until
7 expended for purposes consistent with or authorized by the Oklahoma
8 Beverage Container Act, and shall not revert to the general fund on
9 any June 30. Any excess revenues from interest earned by such
10 revenues shall not revert on any June 30, but shall remain available
11 for expenditure in subsequent fiscal years. Any unexpended
12 allocation from such reserve shall not revert to the general fund on
13 any June 30, but shall remain available for expenditure in
14 subsequent fiscal years.

15 SECTION 10. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2-11-710 of Title 27A, unless
17 there is created a duplication in numbering, reads as follows:

18 A. The Deposit Beverage Container Program shall be administered
19 by the Department of Environmental Quality, with accounting
20 functions performed by the Oklahoma Tax Commission.

21 B. The Board shall create a separate administrative entity
22 within the Department, with dedicated positions funded by the
23 Deposit Beverage Container Fund. This entity shall be known as the
24 Deposit Beverage Container Program.

1 C. The Commission may contract the accounting services of a
2 third party to meet the accounting requirements of the Deposit
3 Beverage Container Program. The costs for this service shall be
4 reimbursed by the Deposit Beverage Container Fund.

5 D. The Department may produce brochures, websites, videos and
6 other promotional materials that the Board determines to be
7 necessary to inform the public about the goals, operations, benefits
8 and outcomes of the Deposit Beverage Container Program.

9 SECTION 11. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-11-711 of Title 27A, unless
11 there is created a duplication in numbering, reads as follows:

12 The State Auditor and Inspector shall conduct a management and
13 financial audit of the Deposit Beverage Container Program for fiscal
14 years 2011-2012 and 2012-2013, and for each fiscal year thereafter
15 ending in an even-numbered year. The State Auditor shall submit the
16 audit report, including the amount of unredeemed refund value and
17 recommendations, to the Legislature and the Department of
18 Environmental Quality and the Oklahoma Tax Commission on or before
19 January 2 following the end of the preceding reporting period. The
20 costs incurred by the State Auditor for the audit shall be
21 reimbursed by the Deposit Beverage Container Fund. The State
22 Auditor may contract the audit services of a third party to conduct
23 the audit.

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1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2-11-712 of Title 27A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Environmental Quality Board and the Oklahoma Tax
5 Commission are authorized to promulgate rules to effect the purposes
6 of the Oklahoma Beverage Container Recycling Act.

7 B. Full implementation of the Deposit Beverage Container
8 Program shall commence on April 1, 2012.

9 SECTION 13. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-11-713 of Title 27A, unless
11 there is created a duplication in numbering, reads as follows:

12 Every dealer shall post a clear and conspicuous sign at each
13 public entrance to the place of business of the dealer, which
14 specifies the name, address, phone number and hours of operation of
15 the closest certified redemption centers.

16 SECTION 14. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-11-714 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 The Environmental Quality Board shall promulgate by rule the
20 definition of an underserved area with regard to certified
21 redemption centers. If an area is underserved according to this
22 definition, the Department of Environmental Quality, with input from
23 the affected county, shall use its best efforts to see that a
24 certified redemption center or microsite certified redemption center

1 is established in that area. If no other funding is available,
2 monies from the Deposit Beverage Container Fund may be used to
3 establish and support the certified redemption center or microsite
4 certified redemption center.

5 SECTION 15. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-11-715 of Title 27A, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Prior to participating in the Program, any redemption center
9 wishing to operate in Oklahoma shall be certified by the Department
10 of Environmental Quality according to rules promulgated by the
11 Environmental Quality Board. All information submitted to the
12 Department shall be under penalty of perjury. Applications for
13 certification shall be filed with the Department, in a form and
14 manner prescribed by the Board.

15 B. Municipal, metropolitan, and county governments, nonprofit
16 organizations, dealers, businesses, existing processors, and
17 individual persons are eligible to apply for certification to
18 operate a certified redemption center.

19 C. The Department shall establish criteria to determine the
20 number of certified redemption centers needed to adequately serve
21 each county, based on population density, population distribution,
22 consultation with the respective counties and other factors. The
23 Department may use these criteria in issuing certifications.

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1 D. The Department may, at any time, review the certification of
2 a certified redemption center. After written notice to the person
3 responsible for the establishment and operation of the certified
4 redemption center, the Department, after it has afforded the
5 certified redemption center operator a hearing in accordance with
6 the Administrative Procedures Act, may withdraw the certification of
7 the center if it finds that there has not been compliance with
8 applicable laws, rules, permit conditions, or certification
9 requirements.

10 E. All certified redemption centers shall:

11 1. Accept all types of empty deposit beverage containers on
12 which an Oklahoma deposit has been paid;

13 2. Accept deposit beverage containers from the public a minimum
14 number of hours or days per week, according to rules promulgated by
15 the Board;

16 3. Maintain redemption areas in full compliance with applicable
17 laws and according to orders and rules established by the Board,
18 including permitting and certification requirements;

19 4. Take reasonable actions to identify, and prevent payment of
20 a refund value on, any beverage container or other product on which
21 an Oklahoma deposit has not been paid, including containers that the
22 certified redemption center knows, or ought to know, have been
23 brought into the state from another state;

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1 5. Determine the quantities of deposit beverage containers by
2 manual count, electronic scan, weight, volume or other method
3 authorized by the Board, and in a form and manner prescribed by the
4 Board;

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

9 7. Maintain a log of consumer transactions, including amounts
10 donated to charity or other designated organization, and the name
11 and address of the charity or organization;

12 8. Sort, consolidate, and, if authorized by the Department,
13 cancel the redeemed deposit beverage containers according to rules
14 promulgated by the Board;

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

18 10. Ensure that all redeemed deposit beverage containers are
19 purchased by a certified processor, at prices consistent with
20 prevailing market scrap values, transportation costs and other
21 factors. If a container material has a market scrap value of zero
22 (\$0.0) or less than zero (\$0.0), the negative value shall be noted
23 on any transaction receipts, and the payment entered as zero (\$0.0);
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1 11. Provide to the certified processor, or the processor's
2 agent, a shipping report, in a form and manner prescribed by the
3 Board, and including but not limited to the following information:

- 4 a. the individual-unit quantities, by container type and
5 collectively, of all deposit beverage containers being
6 shipped to the certified processor, and whether
7 quantities in each instance were determined by manual
8 count, electronic scan, weight, volume, or a
9 combination thereof,
- 10 b. the amounts paid in refund values for the redeemed
11 deposit beverage containers, by container type and
12 collectively,
- 13 c. weight tickets, if applicable, and
- 14 d. printouts of electronic transaction logs, if
15 applicable;

16 12. Prepare, maintain, and provide to the Department upon
17 request, all records and documentation of redemption activity,
18 including but not limited to consumer transaction logs, shipping
19 reports, weight tickets, transaction receipts received from
20 certified processors, electronic transaction printouts as
21 applicable, and any documents authorizing the canceling of redeemed
22 deposit beverage containers; and

23 13. Provide to the Department, in a form and manner prescribed
24 by the Board, and no later than October 1 of each year, a summary of

1 redemption center activity for the preceding fiscal year, including
2 but not limited to quantities of deposit beverage containers
3 redeemed, by container type and collectively, the amount of
4 charitable donations made, and the name and address of the receiving
5 charities.

6 F. Any certified redemption center that wishes to cancel
7 redeemed deposit beverage containers as part of its regular handling
8 procedures shall apply for and receive authorization to do so from
9 the Department, and shall perform and document the cancellations in
10 a form and manner prescribed by the Board.

11 G. Any certified redemption center that wishes to accept
12 refillable beverage containers from consumers shall do the
13 following:

14 1. Pay to the consumer the manufacturer's refund value for the
15 refillable beverage container;

16 2. Record the transaction in the consumer transaction log; and

17 3. Ensure that the refillable beverage container is received by
18 a certified processor, willing purchaser or originating beverage
19 distributor, who shall reimburse the manufacturer's refund value to
20 the certified redemption center. The certified redemption center
21 may negotiate a handling fee for the return of these containers.

22 H. The quantity of beverage containers, including refillable
23 beverage containers, recycled by a certified redemption center shall
24 be credited to the local government where the certified redemption

1 center is located for purposes of calculating solid waste diversion
2 amounts.

3 SECTION 16. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-11-716 of Title 27A, unless
5 there is created a duplication in numbering, reads as follows:

6 Reverse vending machines may be used to satisfy the requirements
7 of Section __ of this act, except that that reverse vending machines
8 are not required to accept refillable beverage containers, and
9 provided that:

10 1. The machines accept all types of empty deposit beverage
11 containers that bear a valid Oklahoma refund value;

12 2. The machines pay out the full amount of the refund value via
13 cash, credit slip, electronic credit or designated donation;

14 3. The machines are monitored during operating hours by an
15 attendant;

16 4. The machines are routinely serviced to ensure proper
17 operation and continuous acceptance of containers and payment of
18 refunds; and

19 5. Should the reverse vending machine fail to accept, recognize
20 or process an Oklahoma deposit beverage container that is otherwise
21 valid, the attendant shall manually accept the container and issue
22 the appropriate refund value. The reverse vending machine shall
23 display a toll-free phone number and mailing address that the
24

1 consumer may contact if the conflict cannot be resolved, or if no
2 attendant is available.

3 SECTION 17. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 2-11-717 of Title 27A, unless
5 there is created a duplication in numbering, reads as follows:

6 Certified redemption centers may refuse to pay the refund value
7 on any deposit beverage container which:

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

12 SECTION 18. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2-11-718 of Title 27A, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Prior to participating in the Program, processors shall be
16 certified by the Department of Environmental Quality and registered
17 with the Oklahoma Tax Commission according to rules promulgated by
18 the Environmental Quality Board. These rules shall require that all
19 information submitted to the Department or to the Commission shall
20 be under penalty of perjury. Applications for certification shall
21 be filed with the Department, in a form and manner prescribed by the
22 Board. Applications for registration shall be filed with the
23 Commission, in a form and manner prescribed by the Commission.

24

1 B. The Department may, at any time, review the certification of
2 a certified processor. After written notice to the person of record
3 responsible for the establishment and operation of the certified
4 processor, the Department, after it has afforded the certified
5 processor operator a hearing in accordance with the Administrative
6 Procedures Act, may withdraw the certification of the facility if it
7 finds that there has not been compliance with applicable laws,
8 rules, permit conditions, or certification requirements.

9 C. Certified processors shall:

10 1. Accept from certified redemption centers all types of
11 deposit beverage containers that have been redeemed, quantified,
12 sorted and, if authorized, canceled in accordance with Program
13 rules, and that are accompanied by a shipping report prepared by the
14 certified redemption center in accordance with Program rules;

15 2. Independently determine quantities of each type of deposit
16 beverage container, either by manual count, electronic scan, volume,
17 weight, or a combination of these methods, according to standards,
18 averages and rules prescribed by the Board; and document the
19 quantities in a form and manner prescribed by the Board;

20 3. a. Perform a random sampling or samplings, in a form and
21 manner prescribed by the Board, of the redeemed
22 deposit beverage containers, to ascertain that they
23 bear a valid Oklahoma refund value.

24

1 b. If a significant discrepancy exists between the
2 redemption quantities stated on the shipping report
3 prepared by the certified redemption center, and the
4 results of the independent quantification performed by
5 the certified processor, or if a random sampling of
6 redeemed beverage containers shows a significant
7 proportion of beverage containers that do not bear a
8 valid Oklahoma refund value, the certified processor
9 may withhold payment to the certified redemption
10 center, or the Commission may withhold payment to the
11 certified processor, pending further investigation by
12 the Department, according to procedures prescribed by
13 the Board. The Board shall establish by rule what
14 constitutes "significant discrepancy" and "significant
15 proportion" relative to this section;

16 4. Cancel the redeemed deposit beverage containers, if they
17 have not already been canceled;

18 5. a. Process the containers as needed for remanufacturing
19 or sale to a willing purchaser.

20 b. If, after making a good-faith effort, a certified
21 processor is unable to locate a willing purchaser for
22 beverage container material, the certified processor
23 shall submit to the Department a disposal request
24 form, in a form and manner prescribed by the

1 Department, that describes the material and
2 quantities, details efforts made to find a willing
3 purchaser, and specifies the intended manner and
4 location of disposal. The material shall not be
5 disposed of without a written authorization to do so
6 by the Department. All rejected loads of deposit
7 beverage containers shall be available for and subject
8 to inspection by the Department. The certified
9 processor may recover costs associated with handling
10 and disposing of the rejected material, by presenting
11 to the Commission a written request for reimbursement,
12 in a form and manner prescribed by the Board, and
13 accompanied by the disposal authorization and all
14 associated receipts. The Board shall establish by
15 rule what constitutes "good-faith effort" relative to
16 this section;

17 6. a. Issue payment to certified redemption centers, in an
18 amount that is the sum of all of the following
19 amounts:

20 (1) the refund value of the redeemed deposit beverage
21 containers received from the certified redemption
22 center,
23
24

1 (2) the prevailing handling fee for the redeemed
2 deposit beverage containers, pursuant to Section
3 ___ of this act, and

4 (3) payment for the container materials, in an amount
5 that reflects and is consistent with prevailing
6 market scrap prices, incurred transportation or
7 delivery costs and other factors.

8 b. Payment shall be made to the certified redemption
9 center within ten (10) business days, unless a
10 significant discrepancy exists pursuant to this
11 paragraph in which case payment may be withheld
12 pending the outcome of an investigation by the
13 Department, according to procedures prescribed by the
14 Board;

15 7. Provide to the certified redemption center a transaction
16 receipt, prepared in a form and manner prescribed by the Board.

17 Information in the transaction receipt shall include at a minimum:

18 a. the individual-unit quantities, by container type and
19 collectively, of deposit beverage containers received
20 from the certified redemption center, and whether
21 quantities in each instance were determined by manual
22 count, electronic scan, volume, weight, or a
23 combination thereof,
24

- 1 b. the weight, by container type and collectively, of
2 deposit beverage containers received from the
3 certified redemption center,
4 c. the amounts paid in refund values to the certified
5 redemption center, by container type and collectively,
6 d. the amounts paid in handling fees to the certified
7 redemption center, by container type and collectively,
8 and
9 e. the amounts paid in scrap values, by unit and in
10 total, for each type of deposit beverage container
11 purchased from the certified redemption center.

12 Containers with a market value of zero (\$0.0) or less
13 than zero (\$0.0) shall be recorded, and the market
14 value noted, but the payment shall be entered as zero
15 (\$0.0);

16 8. Submit to the Commission, pursuant to Section __ of this act
17 and in a form and manner prescribed by the Board, a processor's
18 invoice for reimbursement or payment of refund values, handling
19 fees, and administrative fees incurred in each separate transaction
20 with a certified redemption center;

21 9. For any refillable beverage containers received from the
22 certified redemption center, reimburse the manufacturer's refund
23 value to the certified redemption center and ensure that the
24 refillable beverage containers are returned to the originating

1 beverage distributor or sold to a willing purchaser. The certified
2 processor may negotiate a handling fee with the originating
3 distributor or willing purchaser for the return of these containers;
4 and

5 10. Maintain copies of all documentation, including but not
6 limited to shipping reports, weight tickets, transaction receipts,
7 requests-for-disposal and end-market information, and make them
8 available, upon request, to the Commission.

9 SECTION 19. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-11-719 of Title 27A, unless
11 there is created a duplication in numbering, reads as follows:

12 A. Beginning April 1, 2012, the Oklahoma Tax Commission shall
13 pay to a certified redemption center, by agency of a certified
14 processor, a handling fee for each deposit beverage container that
15 has been redeemed by the certified redemption center and received by
16 the certified processor in accordance with regulations and standards
17 established by the Environmental Quality Board.

18 B. For the period from April 1, 2012, through December 31,
19 2013, the amount of the handling fee shall be two cents (2¢) per
20 container.

21 C. Beginning January 1, 2014, and annually thereafter on every
22 January 1, the handling fee shall be renewed or revised by the
23 Board, in consultation with the Commission, and based on review of
24 redemption rates for the preceding fiscal year, the availability of

1 funds in the Deposit Beverage Container Fund, and other factors.
2 The handling fee shall not be more than two cents (2¢) per container
3 nor less than one cent (1¢) per container. These amounts shall
4 remain in effect until changed by the Legislature.

5 SECTION 20. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-11-720 of Title 27A, unless
7 there is created a duplication in numbering, reads as follows:

8 For every redeemed deposit beverage container received by a
9 certified processor from a certified redemption center in accordance
10 with rules promulgated by the Environmental Quality Board, the
11 Oklahoma Tax Commission shall pay to the certified processor an
12 administrative fee equal to two percent (2%) of the collective
13 refund values of the deposit beverage containers, to defray the
14 certified processor's costs of complying with the administrative
15 requirements of this Program.

16 SECTION 21. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2-11-721 of Title 27A, unless
18 there is created a duplication in numbering, reads as follows:

19 A. Beginning April 1, 2012, for every completed redemption
20 center transaction, a certified processor shall submit to the
21 Oklahoma Tax Commission an invoice processing for an amount equal to
22 the sum of all of the following:

23 1. The total amount of refund values paid by the certified
24 processor to the certified redemption center;

1 2. The total amount of handling fees paid by the certified
2 processor to the certified redemption center; and

3 3. The total amount of administrative fees due to the certified
4 processor pursuant to Section ___ of this act.

5 B. The processor's invoice shall be accompanied by supporting
6 documentation that shall include but not be limited to:

7 1. A copy of the transaction receipt prepared by the certified
8 processor;

9 2. A copy of the shipping report prepared by the certified
10 redemption center; and

11 3. Where applicable, a printout of any electronic transaction
12 logs.

13 C. Certified processors may submit multiple invoices at once,
14 provided that the required information and documentation are
15 submitted for each separate redemption center transaction, and that
16 every redemption center transaction is invoiced within thirty (30)
17 days.

18 D. Payment shall be made by the Commission within ten (10)
19 business days of receipt and approval of an invoice and accompanying
20 documentation.

21 SECTION 22. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2-11-722 of Title 27A, unless
23 there is created a duplication in numbering, reads as follows:

24

1 Deposit beverage distributors, certified redemption centers, and
2 certified processors shall, upon request, and under penalty of
3 perjury, make their records available for inspection by the Oklahoma
4 Tax Commission and the Department of Environmental Quality, duly
5 authorized agents of these agencies, the Office of the State
6 Treasurer, or the State Auditor and Inspector.

7 SECTION 23. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2-11-723 of Title 27A, unless
9 there is created a duplication in numbering, reads as follows:

10 The Department of Environmental Quality, in consultation with
11 the Oklahoma Tax Commission, shall compile a report on the Deposit
12 Beverage Container Program for each fiscal year, except that the
13 first report shall be for the period from October 1, 2010, through
14 June 30, 2012. The reports shall be delivered to the Speaker of the
15 House of Representatives, the President Pro Tempore of the State
16 Senate and the Governor on January 2 following the end of the
17 preceding reporting period. Reports shall contain, but not be
18 limited to:

- 19 1. Performance indicators;
- 20 2. Revenues and expenditures;
- 21 3. Measures of effectiveness, including recycling rates and
22 impacts on litter; and

23

24

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

4 SECTION 24. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 2-11-724 of Title 27A, unless
6 there is created a duplication in numbering, reads as follows:

7 A. The Environmental Quality Board shall convene an advisory
8 committee to assist it in developing any rules needed to implement
9 the Oklahoma Beverage Container Recycling Act. The Board shall
10 select members of the committee so as to obtain input on the state
11 level, as well as from representatives of any or all of the
12 following:

- 13 1. Counties;
- 14 2. Municipalities;
- 15 3. Metropolitan areas;
- 16 4. Solid waste managers;
- 17 5. Dealers;
- 18 6. Consumers;
- 19 7. Redemption centers;
- 20 8. Redemption service providers;
- 21 9. Recyclers;
- 22 10. Manufacturing end-users;
- 23 11. Nonprofit organizations;
- 24 12. Keep Tennessee Beautiful;

- 1 13. Bottlers;
- 2 14. Distributors;
- 3 15. Importers; and
- 4 16. Others as recommended by the Oklahoma Tax Commission.

5 B. Members of the committee shall be appointed by the _____ and
6 shall serve at the _____ pleasure. A simple majority of the
7 committee members shall constitute a quorum for the purposes of
8 recommending rules and providing input to the _____.

9 SECTION 25. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2-11-725 of Title 27A, unless
11 there is created a duplication in numbering, reads as follows:

12 Except as provided otherwise in Section __ of this act, any
13 person who violates any provision of the Oklahoma Beverage Container
14 Recycling Act or any rule adopted pursuant to this act shall be
15 assessed a civil penalty of not more than Ten Thousand Dollars
16 (\$10,000.00) for each separate offense. Each day of each violation
17 shall constitute a separate offense. Any action taken to impose or
18 collect the penalty provided for in this section shall be made
19 through administrative or civil actions.

20 SECTION 26. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-11-726 of Title 27A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. If the Environmental Quality Board determines that any
24 person has violated or is violating any provision of the Oklahoma

1 Beverage Container Recycling Act, any rule adopted pursuant to this
2 act, or any term or condition of a certification or permit issued
3 pursuant to this act, the Board may do any one or more of the
4 following:

5 1. Issue a field citation assessing an administrative penalty
6 and ordering corrective action immediately or within a specified
7 time;

8 2. Issue an order assessing an administrative penalty for any
9 past or current violation;

10 3. Require compliance immediately or within a specified time;
11 and

12 4. Commence a civil action in district court, to seek
13 appropriate relief, including a temporary, preliminary, or permanent
14 injunction against violations of this act, the imposition and
15 collection of civil penalties or other relief.

16 B. Any order issued pursuant to this section may include a
17 suspension, modification, or revocation of a certification or permit
18 issued pursuant to this act and shall state with reasonable
19 specificity the nature of the violation.

20 C. Any order issued under this act shall become final, unless
21 the person or persons named in the order requests, in writing, and
22 not later than twenty (20) days after the notice of order is served,
23 a hearing before the Board. Any penalty imposed pursuant to this
24 act shall become due and payable twenty (20) days after the notice

1 of penalty is served, unless the person named therein requests in
2 writing a hearing before the Board. Whenever a hearing is requested
3 on any penalty imposed pursuant to this act, the penalty shall
4 become due and payable upon the issuance of a final order confirming
5 the penalty in whole or in part.

6 D. Any hearing conducted pursuant to this section shall be
7 conducted as a contested case pursuant to the Administrative
8 Procedures Act. If, after a hearing held pursuant to this section,
9 the Board finds that a violation or violations have occurred, the
10 Board shall:

11 1. Affirm or modify any penalties imposed or modify or affirm
12 the order previously issued; or

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

16 E. If, after a hearing on an order or penalty contained in a
17 notice, the Board finds that no violation has occurred or is
18 occurring, it shall rescind the order or penalty. Any order issued
19 after a hearing may prescribe the date or dates by which the
20 violation or violations shall cease and may prescribe timetables for
21 necessary action in preventing, abating, or controlling the
22 violation.

23 F. If the amount of any penalty is not paid to the Department
24 within thirty (30) days after an order becomes final, the Board may

1 institute a civil action in the name of the state to collect the
2 final penalty amount. In any proceeding to collect the
3 administrative penalty imposed, the Board need only show that:

- 4 1. Notice was given;
- 5 2. A hearing was held or the time granted for requesting a
6 hearing expired without a request for a hearing;
- 7 3. The administrative penalty was imposed; and
- 8 4. The penalty remains unpaid.

9 G. In connection with any hearing held pursuant to this
10 section, the Board shall have the power to subpoena the attendance
11 of witnesses and the production of evidence on behalf of all
12 parties.

13 SECTION 27. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 2-11-727 of Title 27A, unless
15 there is created a duplication in numbering, reads as follows:

16 A. The obligations to accept empty beverage containers and pay
17 the refund value and handling fees for the containers as described
18 in the Oklahoma Beverage Container Recycling Act apply only to
19 containers originally sold in this state as filled deposit beverage
20 containers.

21 B. It shall be unlawful for a person who, during any single
22 transaction, tenders or tries to tender to a certified redemption
23 center more than twenty-four empty beverage containers that the
24

1 person knows or has reason to know were not originally sold in this
2 state as filled deposit beverage containers.

3 C. Certified redemption centers shall conspicuously display a
4 sign in letters that are at least one (1) inch in height with the
5 following information:

6 "WARNING: Persons tendering containers for redemption that were
7 not originally purchased in Oklahoma may be subject to a fine of the
8 greater of One Hundred Dollars (\$100.00) per container or Twenty-
9 five Thousand Dollars (\$25,000.00) for each tender."

10 D. A person who violates this section shall be guilty of a
11 misdemeanor and shall be subject to a fine of up to the greater of
12 One Hundred Dollars (\$100.00) for each container or Twenty-five
13 Thousand Dollars (\$25,000.00) for each tender of more than twenty-
14 four containers.

15 E. The balance of each fine collected pursuant to this section,
16 after deducting court costs, shall be placed in the Deposit Beverage
17 Container Fund and shall remain in the Fund to be expended for
18 activities authorized by this act, with the exception that if the
19 violation was detected and reported by a certified redemption center
20 or a certified processor, then the fine shall be disposed of as
21 follows:

22 1. Fifty percent (50%) of the fine shall remain in the Fund to
23 be expended for activities authorized by this act; and
24

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

5 SECTION 28. It being immediately necessary for the preservation
6 of the public peace, health and safety, an emergency is hereby
7 declared to exist, by reason whereof this act shall take effect and
8 be in full force from and after its passage and approval.

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