

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2536

By: McCullough

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6 AS INTRODUCED

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

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

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

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

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

9 The Oklahoma Legislature finds that:

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

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

16 3. There is a need to expand participation in recycling
17 programs, to maximize the economic benefits of such programs to
18 businesses, government and residents and to reduce litter; and

19 4. The purposes of this act are to increase recycling rates for
20 specified deposit beverage containers, to encourage recycling in
21 general, to reduce litter, and to provide a connection between
22 manufacturing decisions and recycling program management.

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

4 As used in the Oklahoma Beverage Container Recycling Act;

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

7 2. "Board" means the Environmental Quality Board;

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

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

17 5. "Certified redemption center" means an operation that has
18 been certified by the Department to accept empty deposit beverage
19 containers from consumers, sort the containers according to material
20 type and, if applicable, color and size, pay no less than the
21 established refund value either to the consumer or to a recipient
22 designated or intended by the consumer, ensure that the properly
23 sorted containers are received by a certified processor and, where
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1 authorized, cancel the empty containers. A certified redemption
2 center may be a:

3 a. dedicated storefront facility,

4 b. facility that is operated by and is a part of a:

5 (1) grocery store or other retailer,

6 (2) nonprofit agency or facility, such as a homeless
7 shelter,

8 (3) recycling program operated by, or on behalf of, a
9 county, municipal or metropolitan government,
10 including a recycling convenience center, a waste
11 transfer station, a materials recovery facility,
12 or a landfill, or

13 (4) certified processor,

14 c. portable microsite redemption center,

15 d. mobile redemption center,

16 e. reverse vending machine, or

17 f. drop-off redemption center operating in conjunction
18 with an electronic certified processor;

19 6. "Comptroller" means the Office of the State Treasurer;

20 7. "Consumer" means a person who buys a beverage in a deposit
21 beverage container for use or consumption and pays the deposit;

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

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

6 10. "Department" means the Department of Environmental Quality;

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

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

21 b. a liquid which is a drug, medical food, or infant
22 formula as defined by the Federal Food, Drug, and
23 Cosmetic Act, 21 U.S.C., Section 301 et seq.,
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- 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;

12. "Deposit beverage container" means an individual, separate, 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 sizes less than or equal to two (2) liters, and used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this state;

1 13. "Deposit Beverage Container Fund", hereinafter the "Fund",
2 means a fund created in the State Treasury by the Oklahoma Tax
3 Commission, into which are deposited all program fees, deposits,
4 fines and interest, and out of which are paid all program costs,
5 refund values, handling fees, administrative fees, disposal costs
6 and other allocations;

7 14. "Deposit Beverage Container Program", hereinafter the
8 "Program", means an administrative entity created within the
9 Department of Environmental Quality, to carry out the requirements
10 of this act;

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

18 16. "Drop-off redemption center" means a certified redemption
19 center, typically located adjacent to a participating grocery store,
20 and operating in conjunction with an electronic certified processor
21 as defined in this section. Drop-off redemption centers accept bags
22 of deposit beverage containers from participating consumers, provide
23 bar-coded labels for the bags, ensure that the labeled bags are
24 transported to and processed by an electronic certified processor

1 and provide automated teller machines wherein participants may
2 review their redemption accounts and print credit slips to be
3 redeemed inside the participating grocery store;

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

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

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

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

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1 21. "Importer" means any person who buys, brings, or accepts
2 delivery of deposit beverage containers from outside the state for
3 sale or use within the state;

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

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

17 24. "On-premises consumption" means consumption of a deposit
18 beverage by a consumer immediately and within the area under control
19 of the establishment, including bars, restaurants, passenger ships,
20 and airplanes;

21 25. "Person" means an individual, partnership, firm,
22 association, public or private corporation, federal agency, the
23 state or any of its political subdivisions, trust, estate, or any
24 other legal entity;

1 26. "Refillable beverage container" means a beverage container
2 that is intended to be returned intact to the manufacturer or
3 distributor to be washed, refilled and resold, that is sold in a
4 container which has a brand name permanently marked on it and that
5 bears a manufacturers' refund value of at least five cents (\$0.05);
6 and

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

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

17 A. By September 1, 2012, all deposit beverage distributors
18 operating within the state shall register with the Oklahoma Tax
19 Commission in a manner and form prescribed by the Commission. After
20 September 1, 2012, any person who desires to conduct business in the
21 state as a deposit beverage distributor shall register with the
22 Commission no later than one (1) month prior to the commencement of
23 the business.

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

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

12 2. Under an order issued by a court or administrative agency
13 hearings officer.

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

17 A. Beginning on October 1, 2012, every deposit beverage
18 distributor shall pay to the Oklahoma Tax Commission a container
19 recovery fee for each deposit beverage container manufactured in or
20 imported into the state. The fee shall be imposed only once on the
21 same deposit beverage container, and shall be implemented in phases
22 as follows:

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1 1. The amount of the container recovery fee from October 1,
2 2012, until March 31, 2014, shall be one-quarter of one cent
3 (\$0.0025) per deposit beverage container;

4 2. Beginning on April 1, 2014, the amount of the container
5 recovery fee shall increase to one-half of one cent (\$0.005) per
6 deposit beverage container and shall remain at that level until
7 December 31, 2014; and

8 3. Beginning on January 1, 2015, the amount of the container
9 recovery fee shall increase to one cent (\$0.01) per deposit beverage
10 container, and shall remain at that level until changed by the
11 Legislature.

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

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

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

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

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

6 A. Beginning March 1, 2014, every deposit beverage distributor
7 shall pay to the Oklahoma Tax Commission a deposit on each deposit
8 beverage container manufactured in or imported into the state.

9 B. The deposit shall be five cents (\$0.05), and shall remain at
10 that level until changed by the Legislature.

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

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

17 A. Beginning April 1, 2014, every deposit beverage distributor
18 shall charge the dealer or consumer a deposit equal to the refund
19 value for each deposit beverage container sold in the state. The
20 deposit charge shall appear as a separate line item on any invoice
21 or sales receipt. None of the deposit charge shall be subject to
22 any state tax.

23 B. Beginning April 1, 2014, every dealer shall charge the
24 consumer at the point of sale a deposit equal to the refund value

1 for each deposit beverage container sold in the state, except on
2 beverages intended for on-premises consumption. The deposit charge
3 shall appear as a separate line item on any sales receipt or
4 invoice. None of the deposit charge shall be subject to any state
5 tax.

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

9 A. Beginning April 1, 2014, every deposit beverage container
10 sold in this state shall have a refund value of five cents (\$0.05).
11 The refund value is the amount of the deposit required. Once a
12 refund value has been applied to a deposit beverage container, the
13 deposit on that container may not be changed, and may not be
14 collected more than once.

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

22 C. Each deposit beverage container shall encode within the
23 universal product code or similar machine-readable indicia,
24 information regarding the size and type of container and the refund

1 value of the container in the states in which the container is
2 intended to be sold.

3 D. Inventory already in circulation on April 1, 2014, shall be
4 affixed or sold with an adhesive sticker bearing the refund value of
5 the container, the words "Oklahoma" or the letters "OK", and a bar
6 code bearing the redemption information. These stickers shall be
7 purchased from the Oklahoma Tax Commission by the beverage
8 distributors, who shall pay the deposit value of five cents (\$0.05)
9 per sticker.

10 E. This section shall not apply to any type of refillable
11 beverage container.

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

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

- 18 1. Revenues generated from the container recovery fee;
- 19 2. Revenues generated from the deposit beverage container
20 deposit;
- 21 3. Accrued interest from the Fund; and
- 22 4. Fines and penalties assessed for violations of this part.

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

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1 1. Reimburse refund values for deposit beverage containers
2 redeemed by certified redemption centers pursuant to Section 18 of
3 this act;

4 2. Pay handling fees for deposit beverage containers redeemed
5 by certified redemption centers pursuant to Section 19 of this act;

6 3. Pay administrative fees to certified processors pursuant to
7 Section 20 of this act;

8 4. Reimburse disposal costs to certified processors pursuant to
9 this act;

10 5. Pay certified redemption centers or certified processors
11 their share of fines collected pursuant to Section 27 of this act;

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

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

18 8. Defray associated office expenses.

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

20 1. Establish or support certified redemption centers, or both
21 establish and support such centers, including microsite certified
22 redemption centers, pursuant to Section 14 of this act;

23 2. Support certified processors; and
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1 3. Provide grants to local governments for solid waste
2 management, recycling, litter control, and other programs and
3 activities related to the purposes of the Oklahoma Beverage
4 Container Recycling Act.

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 Recycling Act, and shall not revert to the
9 general fund on any June 30. Any excess revenues from interest
10 earned by such revenues shall not revert on any June 30, but shall
11 remain available for expenditure in subsequent fiscal years. Any
12 unexpended allocation from such reserve shall not revert to the
13 general fund on any June 30, but shall remain available for
14 expenditure in 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 2013-2014 and 2014-2015, and for each fiscal year thereafter
15 ending in an even-numbered year. The State Auditor and Inspector
16 shall submit the audit report, including the amount of unredeemed
17 refund value and recommendations, to the Legislature and the
18 Department of Environmental Quality and the Oklahoma Tax Commission
19 on or before January 2 following the end of the preceding reporting
20 period. The costs incurred by the State Auditor and Inspector for
21 the audit shall be reimbursed by the Deposit Beverage Container
22 Fund. The State Auditor and Inspector may contract the audit
23 services of a third party to conduct 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, 2014.

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 (\$0.00) or less than zero (\$0.00), the negative value shall be noted
23 on any transaction receipts, and the payment entered as zero
24 (\$0.00);

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 this act, except that that reverse vending machines are not
8 required to accept refillable beverage containers, and provided
9 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
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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. Perform a random sampling or samplings, in a form and manner
21 prescribed by the Board, of the redeemed deposit beverage
22 containers, to ascertain that they bear a valid Oklahoma refund
23 value. If a significant discrepancy exists between the redemption
24 quantities stated on the shipping report prepared by the certified

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

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

13 5. Process the containers as needed for remanufacturing or sale
14 to a willing purchaser. If, after making a good-faith effort, a
15 certified processor is unable to locate a willing purchaser for
16 beverage container material, the certified processor shall submit to
17 the Department a disposal request form, in a form and manner
18 prescribed by the Department, that describes the material and
19 quantities, details efforts made to find a willing purchaser, and
20 specifies the intended manner and location of disposal. The
21 material shall not be disposed of without a written authorization to
22 do so by the Department. All rejected loads of deposit beverage
23 containers shall be available for and subject to inspection by the
24 Department. The certified processor may recover costs associated

1 with handling and disposing of the rejected material by presenting
2 to the Commission a written request for reimbursement, in a form and
3 manner prescribed by the Board, and accompanied by the disposal
4 authorization and all associated receipts. The Board shall
5 establish by rule what constitutes "good-faith effort" relative to
6 this section;

7 6. Issue payment to certified redemption centers, in an amount
8 that is the sum of all of the following amounts:

- 9 a. the refund value of the redeemed deposit beverage
10 containers received from the certified redemption
11 center,
- 12 b. the prevailing handling fee for the redeemed deposit
13 beverage containers, and
- 14 c. payment for the container materials in an amount that
15 reflects and is consistent with prevailing market
16 scrap prices, incurred transportation or delivery
17 costs and other factors.

18 Payment shall be made to the certified redemption center within ten
19 (10) business days, unless a significant discrepancy exists pursuant
20 to this paragraph in which case payment may be withheld pending the
21 outcome of an investigation by the Department, according to
22 procedures prescribed by the Board;

23
24

1 7. Provide to the certified redemption center a transaction
2 receipt prepared in a form and manner prescribed by the Board.

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

4 a. the individual-unit quantities, by container type and
5 collectively, of deposit beverage containers received
6 from the certified redemption center, and whether
7 quantities in each instance were determined by manual
8 count, electronic scan, volume, weight, or a
9 combination thereof,

10 b. the weight, by container type and collectively, of
11 deposit beverage containers received from the
12 certified redemption center,

13 c. the amounts paid in refund values to the certified
14 redemption center, by container type and collectively,

15 d. the amounts paid in handling fees to the certified
16 redemption center, by container type and collectively,
17 and

18 e. the amounts paid in scrap values, by unit and in
19 total, for each type of deposit beverage container
20 purchased from the certified redemption center.

21 Containers with a market value of zero (\$0.00) or less
22 than zero (\$0.00) shall be recorded and the market
23 value noted, but the payment shall be entered as zero
24 (\$0.00);

1 8. Submit to the Commission, pursuant to Section 21 of this act
2 and in a form and manner prescribed by the Board, a processor's
3 invoice for reimbursement or payment of refund values, handling
4 fees, and administrative fees incurred in each separate transaction
5 with a certified redemption center;

6 9. Reimburse the manufacturer's refund value to the certified
7 redemption center for any refillable beverage containers received
8 from the certified redemption center, and ensure that the refillable
9 beverage containers are returned to the originating beverage
10 distributor or sold to a willing purchaser. The certified processor
11 may negotiate a handling fee with the originating distributor or
12 willing purchaser for the return of these containers; and

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

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

20 A. Beginning April 1, 2014, the Oklahoma Tax Commission shall
21 pay to a certified redemption center, by agency of a certified
22 processor, a handling fee for each deposit beverage container that
23 has been redeemed by the certified redemption center and received by
24

1 the certified processor in accordance with regulations and standards
2 established by the Environmental Quality Board.

3 B. For the period from April 1, 2014, through December 31,
4 2015, the amount of the handling fee shall be two cents (\$0.02) per
5 container.

6 C. Beginning January 1, 2016, and annually thereafter on every
7 January 1, the handling fee shall be renewed or revised by the
8 Board, in consultation with the Commission, and based on review of
9 redemption rates for the preceding fiscal year, the availability of
10 funds in the Deposit Beverage Container Fund, and other factors.
11 The handling fee shall not be more than two cents (\$0.02) per
12 container nor less than one cent (\$0.01) per container. These
13 amounts shall remain in effect until changed by the Legislature.

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

17 For every redeemed deposit beverage container received by a
18 certified processor from a certified redemption center in accordance
19 with rules promulgated by the Environmental Quality Board, the
20 Oklahoma Tax Commission shall pay to the certified processor an
21 administrative fee equal to two percent (2%) of the collective
22 refund values of the deposit beverage containers, to defray the
23 certified processor's costs of complying with the administrative
24 requirements of the Program.

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

4 A. Beginning April 1, 2014, for every completed redemption
5 center transaction, a certified processor shall submit to the
6 Oklahoma Tax Commission an invoice for an amount equal to the sum of
7 all of the following:

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

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

12 3. The total amount of administrative fees due to the certified
13 processor pursuant to Section 20 of this act.

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

16 1. A copy of the transaction receipt prepared by the certified
17 processor;

18 2. A copy of the shipping report prepared by the certified
19 redemption center; and

20 3. Where applicable, a printout of any electronic transaction
21 logs.

22 C. Certified processors may submit multiple invoices at once,
23 provided that the required information and documentation are
24 submitted for each separate redemption center transaction, and that

1 every redemption center transaction is invoiced within thirty (30)
2 days.

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

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

9 Deposit beverage distributors, certified redemption centers, and
10 certified processors shall, upon request, and under penalty of
11 perjury, make their records available for inspection by the Oklahoma
12 Tax Commission and the Department of Environmental Quality, duly
13 authorized agents of these agencies, the Office of the State
14 Treasurer, or the State Auditor and Inspector.

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

18 The Department of Environmental Quality, in consultation with
19 the Oklahoma Tax Commission, shall compile a report on the Deposit
20 Beverage Container Program for each fiscal year, except that the
21 first report shall be for the period from October 1, 2012, through
22 June 30, 2014. The reports shall be delivered to the Speaker of the
23 House of Representatives, the President Pro Tempore of the State
24 Senate and the Governor on January 2 following the end of the

1 preceding reporting period. Reports shall contain, but not be
2 limited to:

- 3 1. Performance indicators;
- 4 2. Revenues and expenditures;
- 5 3. Measures of effectiveness, including recycling rates and
6 impacts on litter; and
- 7 4. Economic impacts, including numbers of certified redemption
8 centers, number of jobs supported or created, and tonnage, market
9 value and end uses of recovered materials.

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

13 A. The Environmental Quality Board shall convene an advisory
14 committee to assist it in developing any rules needed to implement
15 the Oklahoma Beverage Container Recycling Act. The Board shall
16 select members of the committee so as to obtain input on the state
17 level, as well as from representatives of any or all of the
18 following:

- 19 1. Counties;
- 20 2. Municipalities;
- 21 3. Metropolitan areas;
- 22 4. Solid waste managers;
- 23 5. Dealers;
- 24 6. Consumers;

- 1 7. Redemption centers;
- 2 8. Redemption service providers;
- 3 9. Recyclers;
- 4 10. Manufacturing end-users;
- 5 11. Nonprofit organizations;
- 6 12. Keep Oklahoma Beautiful;
- 7 13. Bottlers;
- 8 14. Distributors;
- 9 15. Importers; and
- 10 16. Others as recommended by the Oklahoma Tax Commission.

11 B. A simple majority of the committee members shall constitute
12 a quorum for the purposes of recommending rules and providing input
13 to the Board.

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

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

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

4 A. If the Environmental Quality Board determines that any
5 person has violated or is violating any provision of the Oklahoma
6 Beverage Container Recycling Act, any rule adopted pursuant to this
7 act, or any term or condition of a certification or permit issued
8 pursuant to this act, the Board may do any one or more of the
9 following:

10 1. Issue a field citation assessing an administrative penalty
11 and ordering corrective action immediately or within a specified
12 time;

13 2. Issue an order assessing an administrative penalty for any
14 past or current violation;

15 3. Require compliance immediately or within a specified time;
16 and

17 4. Commence a civil action in district court to seek
18 appropriate relief, including a temporary, preliminary, or permanent
19 injunction against violations of this act, the imposition and
20 collection of civil penalties or other relief.

21 B. Any order issued pursuant to this section may include a
22 suspension, modification, or revocation of a certification or permit
23 issued pursuant to this act and shall state with reasonable
24 specificity the nature of the violation.

1 C. Any order issued under this act shall become final, unless
2 the person or persons named in the order request, in writing, and
3 not later than twenty (20) days after the notice of order is served,
4 a hearing before the Board. Any penalty imposed pursuant to this
5 act shall become due and payable twenty (20) days after the notice
6 of penalty is served, unless the person named therein requests in
7 writing a hearing before the Board. Whenever a hearing is requested
8 on any penalty imposed pursuant to this act, the penalty shall
9 become due and payable upon the issuance of a final order confirming
10 the penalty in whole or in part.

11 D. Any hearing conducted pursuant to this section shall be
12 conducted as a contested case pursuant to the Administrative
13 Procedures Act. If, after a hearing held pursuant to this section,
14 the Board finds that a violation or violations have occurred, the
15 Board shall:

16 1. Affirm or modify any penalties imposed or modify or affirm
17 the order previously issued; or

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

21 E. If, after a hearing on an order or penalty contained in a
22 notice, the Board finds that no violation has occurred or is
23 occurring, it shall rescind the order or penalty. Any order issued
24 after a hearing may prescribe the date or dates by which the

1 violation or violations shall cease and may prescribe timetables for
2 necessary action in preventing, abating, or controlling the
3 violation.

4 F. If the amount of any penalty is not paid to the Department
5 within thirty (30) days after an order becomes final, the Board may
6 institute a civil action in the name of the state to collect the
7 final penalty amount. In any proceeding to collect the
8 administrative penalty imposed, the Board need only show that:

- 9 1. Notice was given;
- 10 2. A hearing was held or the time granted for requesting a
11 hearing expired without a request for a hearing;
- 12 3. The administrative penalty was imposed; and
- 13 4. The penalty remains unpaid.

14 G. In connection with any hearing held pursuant to this
15 section, the Board shall have the power to subpoena the attendance
16 of witnesses and the production of evidence on behalf of all
17 parties.

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

21 A. The obligations to accept empty beverage containers and pay
22 the refund value and handling fees for the containers as described
23 in the Oklahoma Beverage Container Recycling Act apply only to
24

1 containers originally sold in this state as filled deposit beverage
2 containers.

3 B. It shall be unlawful for a person who, during any single
4 transaction, tenders or tries to tender to a certified redemption
5 center more than twenty-four empty beverage containers that the
6 person knows or has reason to know were not originally sold in this
7 state as filled deposit beverage containers.

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

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

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

20 E. The balance of each fine collected pursuant to this section,
21 after deducting court costs, shall be placed in the Deposit Beverage
22 Container Fund and shall remain in the Fund to be expended for
23 activities authorized by this act, with the exception that if the
24 violation was detected and reported by a certified redemption center

1 or a certified processor, then the fine shall be disposed of as
2 follows:

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

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

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

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