

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1381

By: Mitchell

AS INTRODUCED

An Act relating to environment and natural resources; creating the Oklahoma Beverage Container Recycling Act; defining terms; prohibiting certain acts; requiring returnable containers; making certain actions unlawful; requiring refunds; authorizing regional redemption centers; prohibiting refusal to accept certain returnable containers; providing exceptions; requiring certain labels and labeling; providing for construction of act; prohibiting multiple refunds; specifying limits on refunds; prohibiting certain deposits; adding to powers and duties of the Board of Environmental Quality and the Department of Environmental Quality; providing for container certification; prohibiting certification in certain circumstances; specifying certain certification requirements; providing for certain reviews; requiring certain reports; providing for contents; providing for power and duties of the Oklahoma Tax Commission; requiring certain determinations; authorizing certain credits; prohibiting certain disbursement; creating the Oklahoma Beverage Container Recycling Fund; providing purpose, deposits and expenditures; providing for ownership; providing for

disbursement; providing penalties; providing for codification; and providing an effective date.

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 2-11-601 of Title 27A, unless there is created a duplication in numbering, reads as follows:

This act shall be known 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 2-11-602 of Title 27A, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Beverage Container Recycling Act:

1. "Beverage" means a soft drink, soda water, carbonated natural or mineral water, or other nonalcoholic carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or a mixed spirit drink;
2. "Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of these materials, which, at the time of sale, contains one (1) gallon or less of a beverage;
3. "Empty returnable container" means a beverage container which contains nothing except residue of its original contents;
4. "Returnable container" means a beverage container upon which a deposit of at least ten cents (\$0.10) has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, and for which a refund of at least five cents (\$0.05) in cash is payable by every dealer or distributor in this

state of that beverage in beverage containers, as further provided in Section 3 of this act;

5. "Nonreturnable container" means a beverage container upon which no deposit or a deposit of less than five cents (\$0.05) has been paid, or is required to be paid upon the removal of the container from the sale or consumption area, or for which no cash refund or a refund of less than five cents (\$0.05) is payable by a dealer or distributor in this state of that beverage in beverage containers, as further provided in Section 3 of this act;

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

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

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

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

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

11. "Board" means the Board of Environmental Quality;

12. "Sale or consumption area" means the premises within the property of the dealer or of the dealer's lessor where the sale is made, within which beverages in returnable containers may be consumed without payment of a deposit, and, upon removing a beverage container from which, the customer is required by the dealer to pay the deposit;

13. "Nonrefillable container" means a returnable container which is not intended to be refilled for sale by a manufacturer;

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

- a. nonalcoholic beverages,
- b. flavoring,
- c. coloring materials,
- d. fruit juices,
- e. fruit adjuncts,
- f. sugar,
- g. carbon dioxide,
- h. preservatives;

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

16. "Department" means the Department of Environmental Quality;

17. "Overredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state is less than the annual total value of refunds made upon beverage containers redeemed within this state; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-603 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. A dealer shall not, within this state, sell, offer for sale, or give to consumers a nonreturnable container or a beverage in a nonreturnable container.

B. A dealer who regularly sells beverages for consumption off the dealer's premises shall provide on the premises, or within one hundred (100) yards of the premises on which the dealer sells or offers for sale a beverage in a returnable container, a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.

C. Regional centers for redemption of returnable containers may be established in addition to, but not as substitutes for, as a means for refund of deposits in accordance with subsection B of this section.

D. A dealer shall not refuse to accept from a person an empty returnable container of any kind, size, and brand sold by that dealer, nor refuse to pay to the person its full refund value in cash, except as provided in subsections E and G of this section.

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

F. A distributor shall not refuse to accept from a dealer an empty returnable container of any kind, size, and brand sold by that distributor, nor refuse to pay to the dealer its full refund value in cash, except as provided in subsection G of this section.

G. Every beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container and the name of this state. A dealer or distributor may, but is not required to, refuse to accept from a person an empty returnable container which does not state on the container the refund value of the container and the name of this state. This subsection shall not apply to a refillable container having a refund value of not less than five cents (\$0.05) which has a brand name permanently marked on it. Each container of this type shall clearly indicate, by a method securely affixed to the container, that the container is returnable for deposit.

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

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

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-604 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. To prompt the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as beverage containers, the Department of Environmental Quality shall certify beverage containers which satisfy the requirements of this section.

B. A beverage container shall be certified if:

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

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

C. The Commission shall not certify more than one beverage container of a particular manufacturer in each size classification. The Environmental Quality Board shall by rule establish appropriate size classifications in accordance with the purposes set forth in subsection A of this section, each of which shall include a size range of at least three (3) liquid ounces.

D. A beverage container shall not be certified under this section:

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

2. If the Department finds that its use by more than one manufacturer is not of sufficient volume to promote the purposes set forth in subsection A of this section.

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

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-605 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Not later than March 1, 1999, and not later than March 1 of each year thereafter, a distributor or manufacturer who originates a deposit on a beverage container shall file a report with the Oklahoma Tax Commission containing the information required by subsection B of this section.

B. The report required to be filed pursuant to subsection A of this section shall indicate for the period of January 1, 1998, to December 31, 1998, and for the time period of January 1 to December 31 of each year thereafter, the dollar value of both the total deposits collected by the distributor or manufacturer on beverage containers sold within this state and total refunds made upon

beverage containers redeemed by the distributor or manufacturer within this state.

C. The reports required to be filed pursuant to subsection A of this section shall be similar to the following and contain the following information:

REPORT

DEPOSITS ORIGINATED AND REFUNDS GRANTED ON BEVERAGE CONTAINERS

Reporting Period: _____

Company Name: _____

Company Address: _____

Number and Street: _____

\$ _____ - \$ _____ = \$ _____ (Value of Deposits
(Value of (Difference) Originated)
Refunds Made)

\$ _____ - \$ _____ = \$ _____ (Difference)
(Overredemption credit, Amount owed to, if applicable, Oklahoma Tax
Commission)

The undersigned states that the above information is true and accurate.

_____ Signature - Owner or President
_____ Date

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-606 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Not later than May 1, 1999, and not later than May 1 of each year thereafter, the Oklahoma Tax Commission shall determine for the preceding calendar year, based upon the reports filed pursuant to Section 5 of this act, the total value of the deposits collected on beverage containers sold within this state, refunds made on beverage containers redeemed within this state, and the total amount of money owed by underredeemers.

B. Not later than March 1, 1999, and not later than March 1 of each year thereafter, an underredeemer shall pay to the Oklahoma Tax Commission that amount of money by which its annual total value of deposits exceeds its annual total value of refunds made on redeemed beverage containers, subject to the overredemption credit contained in this section.

C. After March 1, 1999, an underredeemer who becomes an overredeemer in a subsequent year may credit the value of the overredemption in order to reduce the amount of money owed to the Oklahoma Tax Commission pursuant to this section in one or more subsequent years as a result of that person again becoming an underredeemer. The value of the overredemption may be carried forward for not more than three (3) years or until the credit granted in this section is completely depleted, whichever occurs first.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-607 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Oklahoma Tax Commission the "Oklahoma Beverage Container Recycling Fund". The Fund shall be administered by the Oklahoma Tax Commission pursuant to the provisions of Section 8 of this act.

B. The Fund shall consist of:

1. All monies received by the Commission as proceeds from the assessment imposed pursuant to the Oklahoma Beverage Container Recycling Act;

2. Interest attributable to investment of money in the Fund;
and

3. Money received by the Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma Beverage Container Recycling Act.

C. The monies deposited in the Fund shall at no time become part of the general budget of the Commission or any other state agency. Except as provided for in the Oklahoma Beverage Container Recycling Act, no monies from the Fund shall be transferred for any purpose to any other state agency or any account of the Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-608 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Of the monies accruing to the fund, so much as necessary shall be used to reimburse each dealer the amount of monies paid to consumers as a refund for containers redeemed.

B. Of the monies accruing to the Oklahoma Beverage Container Recycling Fund, four percent (4%) thereof shall be available to the Oklahoma Tax Commission and four percent (4%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Beverage Container Recycling Act. In addition, an amount not to exceed Fifty Thousand Dollars (\$50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Beverage Container Recycling Act.

C. Twenty-five percent (25%) of the funds collected shall be apportioned to each dealer on the basis of the number of empty returnable containers handled by a dealer as determined by the Oklahoma Tax Commission.

D. Of the remaining monies in the Oklahoma Beverage Container Recycling Fund, ten percent (10%) shall be allocated to businesses located in Oklahoma who manufacture new products or derive energy benefits from containers which have been processed according to the requirements of the Oklahoma Beverage Container Recycling Act. Such businesses shall be eligible for compensation in a total amount not

to exceed fifty percent (50%) of their capital investment in equipment necessary to utilize processed containers purchased on or after January 1, 1998. Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of each capital investment. Such businesses may apply for compensation monthly to the Oklahoma Tax Commission, and shall supply any information required by the Commission to document compliance with the provisions of the Oklahoma Beverage Container Recycling Act.

E. The balance of the monies remaining in the Oklahoma Beverage Container Recycling Act shall be allocated pursuant to the provisions of the Oklahoma Beverage Container Recycling Act to facilities or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Beverage Container Recycling Act to receive reimbursement which, through the filing of appropriate applications, reports, and other documentation that may be required by the Department of Environmental Quality pursuant to the Oklahoma Beverage Container Recycling Act, demonstrate that such facilities or legal entities have successfully processed containers pursuant to the Oklahoma Beverage Container Recycling Act.

F. The Oklahoma Tax Commission may audit the records of a distributor or manufacturer required to file a report pursuant to Section 5 of this act for the purpose of determining the accuracy of the information contained in the report.

G. Not later than June 1 of each year, the Oklahoma Tax Commission shall publish and make available to the public the findings made pursuant to Section 5 of this act and send a report of those findings to the legislature.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-609 of Title 27A, unless there is created a duplication in numbering, reads as follows:

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-11-610 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A person, dealer, distributor, or manufacturer who violates the Oklahoma Beverage Container Recycling Act shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) and costs of prosecution. Every day a violation occurs is a separate offense.

SECTION 11. This act shall become effective November 1, 1997.

46-1-5099 KSM