

SENATE BILL No. 142

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-20-26.

Synopsis: Beverage container deposits. Requires returnable beverage containers to be used beginning in 2016. Requires a \$0.10 refundable deposit on each container. Allows manufacturers or distributors to be the originator of the deposit. Requires retailers to make cash refunds to consumers. Requires distributors to make cash refunds to retailers. Requires an originator of deposits to file a deposit report with the state and pay any excess deposits the originator collects. Provides that excess deposits are to be used to compensate retailers for taking returns, to cover administrative costs of the state, and to provide revenue to the recycling promotion and assistance fund. Provides that the department of state revenue is the administrator of the beverage container deposit program. Imposes a penalty for a general violation of the law of at least \$100 but not more than \$1,000 plus costs and attorney's fees associated with a civil action filed to collect the penalty. Provides that a person who returns or attempts to return nonreturnable containers commits either: (1) a Class C infraction if it involves at least 25 but not more than 100 nonreturnable containers; or (2) a Class C misdemeanor if it involves more than 100 nonreturnable containers or is a second or subsequent violation. Requires that the person must also pay the amount of loss caused to the retailer by the violation. Requires retailers to post a sign setting forth these penalties.

Effective: July 1, 2015.

Randolph

January 6, 2015, read first time and referred to Committee on Commerce & Technology.



First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 142

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-20-26 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]:
4 **Chapter 26. Beverage Container Deposits**
5 **Sec. 1. This chapter applies beginning January 1, 2016.**
6 **Sec. 2. As used in this chapter, "beverage" means the following:**
7 (1) **A soft drink, soda water, carbonated natural or mineral**
8 **water, or other nonalcoholic carbonated drink.**
9 (2) **Beer, ale, or other malt drink of any alcoholic content.**
10 (3) **A mixed wine drink or a mixed spirit drink.**
11 (4) **Noncarbonated water, including spring water, purified**
12 **water, and flavored water.**
13 (5) **Tea, including flavored tea.**
14 **Sec. 3. As used in this chapter, "beverage container" means an**
15 **airtight metal, glass, or plastic container, or a container composed**
16 **of a combination of these materials, which, at the time of sale,**



- 1 contains one (1) gallon or less of a beverage.
- 2 Sec. 4. As used in this chapter, "department" refers to the
3 department of state revenue.
- 4 Sec. 5. As used in this chapter, "distributor" means a person
5 that sells beverages in beverage containers to a retailer within
6 Indiana, and includes a manufacturer that engages in these sales.
- 7 Sec. 6. As used in this chapter, "empty returnable container"
8 means a beverage container that contains nothing except the
9 residue of its original contents.
- 10 Sec. 7. As used in this chapter, "manufacturer" means a person
11 that bottles, cans, or otherwise places a beverage in beverage
12 containers for sale to a distributor, retailer, or consumer.
- 13 Sec. 8. As used in this chapter, "mixed spirit drink" means a
14 drink containing either of the following:
- 15 (1) Ten percent (10%) or less alcohol by volume that consists
16 of distilled spirits mixed with any one (1) or more of the
17 following:
- 18 (A) Nonalcoholic beverages.
19 (B) Flavoring.
20 (C) Coloring materials.
21 (D) Water.
22 (E) Fruit juices.
23 (F) Fruit adjuncts.
24 (G) Sugar.
25 (H) Carbon dioxide.
26 (I) Preservatives.
- 27 (2) Any spirits based beverage, regardless of the percent of
28 alcohol by volume, that is manufactured for sale in a metal
29 container.
- 30 Sec. 9. As used in this chapter, "mixed wine drink" means a
31 drink or similar product marketed as a wine cooler that contains
32 less than seven percent (7%) alcohol by volume, consisting of wine
33 and plain, sparkling, or carbonated water and that contains any
34 one (1) or more of the following:
- 35 (1) Nonalcoholic beverages.
36 (2) Flavoring.
37 (3) Coloring materials.
38 (4) Fruit juices.
39 (5) Fruit adjuncts.
40 (6) Sugar.
41 (7) Carbon dioxide.
42 (8) Preservatives.



1 **Sec. 10.** As used in this chapter, "nonrefillable container" means
2 a returnable container that is not intended to be refilled for sale by
3 a manufacturer.

4 **Sec. 11.** As used in this chapter, "nonreturnable container"
5 means a beverage container upon which no deposit is required to
6 be paid under this chapter.

7 **Sec. 12.** As used in this chapter, "operator of a vending
8 machine" includes its owner, the person who refills it, and the
9 owner or lessee of the property upon which it is located.

10 **Sec. 13.** As used in this chapter, "overredeemer" means a
11 distributor or manufacturer whose annual total value of deposits
12 collected on beverage containers sold within Indiana is less than
13 the annual total value of refunds made upon beverage containers
14 redeemed within Indiana.

15 **Sec. 14.** As used in this chapter, "person" includes an
16 association, a corporation, a fiduciary, an individual, a limited
17 liability company, a partnership, or a sole proprietorship.

18 **Sec. 15.** As used in this chapter, "retailer" means a person that
19 sells or offers for sale to an ultimate consumer a beverage in a
20 beverage container, including an operator of a vending machine
21 containing a beverage in a beverage container.

22 **Sec. 16.** As used in this chapter, "returnable container" means
23 a beverage container upon which a deposit is required to be paid
24 under this chapter.

25 **Sec. 17.** As used in this chapter, "sale or consumption area"
26 means the premises within the property of the retailer or of the
27 retailer's lessor where a sale is made.

28 **Sec. 18.** As used in this chapter, "underredeemer" means a
29 distributor or manufacturer whose annual total value of deposits
30 collected on beverage containers sold within Indiana exceeds
31 annual total value of refunds made upon beverage containers
32 redeemed within Indiana.

33 **Sec. 19. (a)** Each beverage container sold or offered for sale by
34 a retailer within Indiana must clearly indicate by embossing or by
35 a stamp, a label, or other method securely affixed to the beverage
36 container the refund value of the container and the name of the
37 state of Indiana.

38 **(b)** This section does not apply to a refillable container having:

- 39 (1) a refund value of at least ten cents (\$0.10);
40 (2) a brand name permanently marked on it; and
41 (3) a securely affixed method of indicating that it is a
42 returnable container.



1 **Sec. 20. (a)** A deposit of ten cents (\$0.10) shall be paid upon the
2 removal of any beverage container containing a beverage from a
3 sale or consumption area.

4 **(b)** A beverage in a returnable container may be consumed in a
5 sale or consumption area without payment of a deposit.

6 **(c)** A retailer within Indiana may not sell, offer for sale, or give
7 to a consumer a nonreturnable container or a beverage in a
8 nonreturnable container.

9 **Sec. 21. (a)** A manufacturer licensed by the alcohol and tobacco
10 commission may not require a distributor licensed by the alcohol
11 and tobacco commission to pay a deposit to the manufacturer on
12 a nonrefillable container. However, a manufacturer licensed by the
13 alcohol and tobacco commission and a distributor licensed by the
14 alcohol and tobacco commission may enter into an agreement
15 providing that either or both may originate a deposit or any
16 portion of a deposit on a nonrefillable container if the agreement
17 is entered into freely and without coercion.

18 **(b)** A manufacturer shall refund the deposit paid on any
19 container returned by a distributor for which a deposit has been
20 paid by a distributor to the manufacturer.

21 **Sec. 22. (a)** Except as provided in subsections (c) and (d), a
22 retailer shall accept from a person an empty returnable container
23 of any kind, size, and brand sold or offered for sale by that retailer
24 and pay to that person its full refund value in cash.

25 **(b)** Except as provided in subsection (d), a distributor shall
26 accept from a retailer an empty returnable container of any kind,
27 size, and brand sold or offered for sale by that distributor and pay
28 to that retailer its full refund value in cash.

29 **(c)** A retailer that does not require a deposit on a returnable
30 container when the contents are consumed in the retailer's sale or
31 consumption area is not required to pay a refund for accepting the
32 empty container.

33 **(d)** A retailer or distributor may, but is not required to, refuse
34 to accept from a person an empty returnable container that does
35 not state on the container the refund value of the container and the
36 name of the state of Indiana. This subsection does not apply to a
37 refillable container described in section 19(b) of this chapter.

38 **Sec. 23. (a)** A retailer that regularly sells beverages for
39 consumption off the retailer's premises shall provide on the
40 premises, or within one hundred (100) yards of the premises on
41 which the retailer has a sale or consumption area, a convenient
42 means so that a container of any kind, size, and brand sold or



1 offered for sale by the retailer may be returned by, and the deposit
 2 refunded in cash to, a person, regardless of whether the person is
 3 the original customer of that retailer, and regardless of whether
 4 the container was sold by that retailer.

5 (b) Regional centers for the redemption of returnable containers
 6 may be established, in addition to, but not as a substitute for, the
 7 means established for refunds of deposits described in subsection
 8 (a).

9 **Sec. 24.** A person, retailer, distributor, or manufacturer shall
 10 not return an empty container to a retailer for a refund of the
 11 deposit if a retailer has already refunded the deposit on the
 12 returnable container. This subsection does not prohibit a retailer
 13 from refunding the deposit on an empty returnable container each
 14 time the returnable container is sanitized by the manufacturer and
 15 is reused as a beverage container.

16 **Sec. 25.** A retailer may accept, but is not required to accept,
 17 from a person empty returnable containers for a refund that
 18 exceeds twenty-five dollars (\$25) on any given day.

19 **Sec. 26. (a)** Not later than March 1, 2017, and not later than
 20 March 1 of each year thereafter, a distributor or manufacturer
 21 that originates a deposit on a beverage container shall file a report
 22 with the department containing the information required by
 23 subsection (b).

24 (b) The report required to be filed under subsection (a) must
 25 indicate for the period January 1 through December 31 of the
 26 previous year the dollar value of both the total deposits collected
 27 by the distributor or manufacturer on beverage containers sold
 28 within Indiana and total refunds made upon beverage containers
 29 redeemed by the distributor or manufacturer within Indiana.

30 (c) The report required to be filed under subsection (a) must be
 31 designed by the department and contain the following information:

- 32 (1) The reporting period.
- 33 (2) Whether the filer is a distributor or manufacturer.
- 34 (3) The filer's company name and full address.
- 35 (4) The amount of deposits received and refunds granted.
- 36 (5) The difference between the value of deposits received and
 37 value of refunds made.
- 38 (6) The amount of any overredemption credit claimed, if any.
- 39 (7) The amount owed to the department, if any.
- 40 (8) An acknowledgment that states that the information in
 41 subdivisions (1) through (7) is true and accurate.
- 42 (9) A place for the signature of the authorized agent of the



1 filer and the date of the signature.

2 (10) Any other information the department considers
3 necessary to administer this chapter.

4 Sec. 27. (a) The department may audit, assess, and collect the
5 amount of money reflecting unclaimed bottle deposits owed to the
6 state of Indiana, and enforce the obligation to pay the amount of
7 money reflecting unclaimed bottle deposits owed to the state of
8 Indiana, in the same manner as revenues are collected by the
9 department.

10 (b) During May each year, the department shall publish a report
11 on the department's Internet web site concerning the department's
12 activities under this section. The department shall provide the
13 report to the general assembly in an electronic format under
14 IC 5-14-6.

15 Sec. 28. (a) Not later than March 1, 2017, and not later than
16 March 1 of each year thereafter, an underredeemer shall pay to the
17 department the amount by which its annual total value of deposits
18 received exceeds its annual total value of refunds made on
19 redeemed beverage containers, subject to the overredemption
20 credit contained in this section.

21 (b) After December 31, 2017, an underredeemer that becomes
22 an overredeemer in a subsequent year may credit the value of the
23 overredemption to reduce the amount of money owed to the
24 department under this section in one (1) or more subsequent years
25 as a result of the person again becoming an underredeemer. The
26 value of the overredemption may be carried forward for not more
27 than three (3) years or until the credit granted in this section is
28 completely depleted, whichever occurs first.

29 (c) A manufacturer that no longer originates deposits may carry
30 back the value of an overredemption for prior years in order to use
31 the credit, and reduce the amount of underredemption owed to the
32 department under this section on a one (1) time only basis.

33 Sec. 29. (a) In addition to the information on the report required
34 in section 26 of this chapter, if an underredeemer purchases empty
35 returnable containers from an overredeemer, that purchase shall
36 be reported by the underredeemer as a refund made and shall be
37 reported by the overredeemer as a deposit collected in an
38 addendum to the report.

39 (b) The addendum to the report made by an underredeemer
40 must include the name and address of each overredeemer and the
41 refund value of the empty returnable containers purchased from
42 each overredeemer.



1 (c) The addendum to the report made by an overredeemer must
2 include the name and address of each underredeemer that
3 purchased the empty returnable containers from the overredeemer
4 and the refund value of the empty returnable containers sold.

5 (d) The total consideration paid by an underredeemer to an
6 overredeemer as authorized by this section must equal the
7 redemption value of the beverage container.

8 (e) A purchase or sale made under subsection (a) during
9 January of each year must be included in the report for the
10 previous calendar year only.

11 **Sec. 30. (a)** The bottle deposit fund is established as a dedicated
12 fund for the receipt of all revenue collected by the department
13 under this chapter.

14 (b) The fund shall be administered by the treasurer of state. Any
15 expenses incurred in administering the fund shall be paid from the
16 fund. The treasurer of state shall invest the money in the fund not
17 currently needed to meet the obligations of the fund in the same
18 manner as other public money may be invested.

19 (c) Interest earned on money in the fund shall be credited to the
20 fund.

21 (d) The amount paid to the department by underredeemers shall
22 be deposited in the fund by the department.

23 (e) The money that is deposited in the fund each year is
24 appropriated for the following purposes:

25 (1) Twenty-five percent (25%) shall be paid to retailers
26 during the last business week in July each year, to be
27 apportioned to each retailer on the basis of the number of
28 empty returnable containers handled by a retailer the
29 previous year, as determined by the department.

30 (2) Two percent (2%) is annually appropriated on July 31
31 each year to the department to offset the costs to the
32 department for administering this chapter.

33 (3) The remainder shall be transferred on the first business
34 day in August each year to the Indiana recycling promotion
35 and assistance fund established by IC 4-23-5.5-14.

36 (f) Money in the fund at the end of a state fiscal year does not
37 revert to the state general fund. If the fund is abolished, any money
38 in the fund reverts to the state general fund.

39 **Sec. 31.** Unclaimed deposits on returnable containers are
40 considered to be the property of the person purchasing the
41 returnable container and are not the property of the distributor or
42 manufacturer that collected the deposit.



1 **Sec. 32. (a)** Except as provided in sections 33 and 34 of this
2 chapter, a person, retailer, distributor, or manufacturer that
3 violates this chapter is subject to a civil penalty of not less than one
4 hundred dollars (\$100) but not more than one thousand dollars
5 (\$1,000). In addition, the violator is liable for the costs and
6 attorney's fees associated with any civil action filed to collect the
7 penalty.

8 **(b)** Each day during which a violation continues constitutes a
9 separate offense.

10 **(c)** Any penalty assessed under this section shall be deposited in
11 the bottle deposit fund established by section 30 of this chapter.

12 **Sec. 33. (a)** A person shall not return or attempt to return to a
13 retailer for a refund one (1) or more of the following:

14 **(1)** A beverage container that the person knows or should
15 know was not purchased in Indiana as a filled returnable
16 container.

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

20 **(b)** A person that violates subsection (a) is subject to one (1) of
21 the following:

22 **(1)** If the person returns at least twenty-five (25) but not more
23 than one hundred (100) nonreturnable containers, the person
24 commits a Class C infraction.

25 **(2)** If the person knowingly or intentionally returns more than
26 one hundred (100) nonreturnable containers or violates
27 subsection (a) for a second or subsequent time, the person
28 commits a Class C misdemeanor.

29 **(c)** A person that violates subsection (a) shall also be ordered by
30 the court to pay an amount equal to the amount of loss caused to
31 the retailer by the violation.

32 **Sec. 34. (a)** In the part of the retailer's premises where
33 returnable containers are redeemed, a retailer shall post a notice
34 that says substantially the following: "A person who returns for
35 refund an out-of-state nonreturnable container is subject to
36 penalties of up to 60 days in jail plus a fine of \$500 and
37 restitution."

38 **(b)** A retailer that fails to comply with this section is subject to
39 a civil penalty not to exceed fifty dollars (\$50) for each day the
40 failure to comply continues.

