

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 641

Short Title: Litter Reduction Act of 2009. (Public)

Sponsors: Senators Berger of Franklin; and Kinnaird.

Referred to: Commerce.

March 18, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO REDUCE ROADSIDE AND OTHER LITTERING AND TO ENCOURAGE  
3 RECYCLING BY REQUIRING A DEPOSIT ON BEVERAGE CONTAINERS AND  
4 REQUIRING REDEMPTION CENTERS TO ACCEPT RETURNED BEVERAGE  
5 CONTAINERS AND REFUND THE DEPOSITS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 9 of Chapter 130A of the General Statutes is amended by  
8 adding a new Part to read:

9 "Part 2G. Beverage Container Deposits and Refunds.

10 **"§ 130A-309.130. Findings; intent.**

11 (a) The General Assembly finds that:

- 12 (1) Beverage containers constitute a major source of nondegradable litter and  
13 solid waste in this State.  
14 (2) Litter remains a large problem in North Carolina despite other efforts to  
15 discourage littering and to establish criminal penalties under G.S. 14-399 for  
16 first-time and subsequent offenses of littering.  
17 (3) The collection and disposal of litter imposes a great financial burden on the  
18 citizens of North Carolina.  
19 (4) A more concerted effort to reduce litter is needed in North Carolina.  
20 (5) Beverage containers should be reused or recycled.  
21 (6) Other states' experience shows that beverage container deposit legislation is  
22 successful in reducing litter and increasing recycling of discarded beverage  
23 containers.  
24 (7) Beverage container deposit legislation is consistent with the State's policy,  
25 set forth in G.S. 130A-309.04, to promote methods of solid waste  
26 management that are alternatives to disposal in landfills.  
27 (8) The program under this Part will contribute significantly to the reduction of  
28 the beverage container component of the litter in this State.

29 (b) It is the intent of the General Assembly to address the blight that litter imposes on  
30 the highways and lands of this State, while creating incentives for manufacturers, distributors,  
31 retailers, and consumers of beverages in beverage containers to recycle and reuse beverage  
32 containers.

33 **"§ 130A-309.131. Definitions.**

34 Unless a different meaning is required by the context, the following definitions apply  
35 throughout this Part:

- 36 (1) 'Beverage' means any ready-to-drink liquid intended for human  
37 consumption. Beverage includes any malt beverage; spirituous liquor;



- 1 fortified wine; unfortified wine; wine cooler; soda or noncarbonated water;  
2 and any nonalcoholic carbonated or noncarbonated drink in liquid form.
- 3 (2) 'Beverage container' means the individual, separate bottle, can, jar, carton, or  
4 other receptacle that has been sealed by a manufacturer, contains a beverage,  
5 and is made of glass, metal, plastic, or other material, or any combination of  
6 these materials. Beverage container does not include cups or other similar  
7 open or loosely sealed receptacles.
- 8 (3) 'Consumer' means an individual who purchases a beverage in a beverage  
9 container for his or her use or consumption. Consumer includes a lodging,  
10 eating, or drinking establishment.
- 11 (4) 'Convenience zone' means a zone designated by the Department under  
12 G.S. 130A-309.135.
- 13 (5) 'Curbside program' means a recycling program that meets all of the  
14 following criteria:
- 15 a. The program picks up recyclables from individual residences.  
16 b. The program is operated by, or pursuant to a contract with, a city,  
17 county, or other public agency.  
18 c. The program accepts empty beverage containers from consumers  
19 with the intent to recycle them.
- 20 (6) 'Distributor' means a person who engages in the sale of beverages in  
21 beverage containers to a retailer in this State, including any person who  
22 imports beverages from outside the State for sale to retailers or consumers in  
23 this State.
- 24 (7) 'Drop-off or collection program' means any person, association, nonprofit  
25 corporation, church, club, or other organization that meets the requirements  
26 of the Department for a drop-off or collection program and that accepts or  
27 collects empty beverage containers from consumers with the intent to  
28 recycle them, but is not certified by the Department as a redemption center  
29 and does not pay the refund value to consumers. Drop-off or collection  
30 program does not include a nonprofit drop-off program or a curbside  
31 program.
- 32 (8) 'Empty beverage container' means a beverage container that meets all of the  
33 following requirements:
- 34 a. Has the seal or closure installed by the manufacturer broken or  
35 removed.  
36 b. Does not contain foreign materials other than the residue of the  
37 beverage originally packaged in the beverage container by the  
38 manufacturer.  
39 c. Bears the message required under G.S. 130A-309.133 or is a  
40 refillable beverage container.  
41 d. Has a refund value established under G.S. 130A-309.133.
- 42 (9) 'Nonprofit drop-off program' means a recycling program that meets all of the  
43 following criteria:
- 44 a. The program is organized under section 501(c) or section 501(d) of  
45 the Internal Revenue Code (26 U.S.C. § 501(c), § 501(d)), or  
46 operated by, or caused to be operated by, a city, county, or other  
47 public agency.  
48 b. The program is certified by the Department as a redemption center  
49 under G.S. 130A-309.136.  
50 c. The program accepts empty beverage containers from consumers  
51 with the intent to recycle them.

- 1           (10) 'Operator of a vending machine' means its owner, the person who refills it, or  
2 the owner or lessor of the property upon which it is located.
- 3           (11) 'Redemption center' means an operation that is certified by the Department  
4 and that accepts empty beverage containers from consumers and pays, or  
5 provides the refund value, for empty beverage containers.
- 6           (12) 'Redemption location' means a place, mobile unit, reverse vending machine,  
7 or other device where a certified redemption center accepts one or more  
8 types of empty beverage containers from consumers, and pays, or provides  
9 the refund value, for one or more types of empty beverage containers.
- 10          (13) 'Retailer' means a person who sells or offers for sale in this State to  
11 consumers a beverage in a beverage container, including an operator of a  
12 vending machine containing a beverage in a beverage container.
- 13          (14) 'Reverse vending machine' means a mechanical device that accepts one or  
14 more types of empty beverage containers and issues a cash refund or a  
15 redeemable credit slip with a value not less than the container's refund value.
- 16          (15) 'Supermarket' means a full-line, self-service retail store with gross annual  
17 sales of two million dollars (\$2,000,000) or more that sells a line of dry  
18 goods, canned goods, or nonfood items and some perishable items.
- 19          (16) 'Use or consumption' means the exercise of any right or power over a  
20 beverage incident to the ownership thereof, other than the sale, storage, or  
21 retention for the purposes of sale of a beverage.

22 **"§ 130A-309.132. Department to administer program; adoption of rules; scope of Part.**

23         (a) The Department shall administer this Part.

24         (b) The Department and the Commission for Health Services may adopt any rules  
25 necessary or useful to implement this Part, and the Department may adopt any rules necessary  
26 or useful to carry out any of its duties imposed under this Part. The Department shall determine,  
27 by rule, whether any refund value applies to, or shall be paid for, a refillable beverage container  
28 under this Part. The Department may establish, by rule, criteria prescribing an obligation for the  
29 pickup or transfer of empty, unbroken, and reasonably clean beverage containers from  
30 redemption centers. The obligation may be fulfilled through a contracted agent. Any rules  
31 adopted under this subsection shall allocate the burdens associated with the handling, storage,  
32 and transportation of empty containers to prevent unreasonable financial or other hardship.  
33 These rules may require a redemption center to transport all returned containers to a material  
34 recovery facility or a recycling firm for sale at market or scrap value.

35 **"§ 130A-309.133. Deposit and refund value; requirements concerning beverage**  
36 **containers.**

37         (a) Every consumer who purchases a beverage in a beverage container shall pay a  
38 deposit equal to the refund value under subsection (b) of this section.

39         (b) Subject to subsection (e) of this section, every beverage container sold or offered for  
40 sale to a consumer in this State that contains no more than four liters and no less than 50  
41 milliliters of a beverage shall have a refund value of ten cents (10¢).

42         (c) Every beverage container that contains a beverage that is sold or offered for sale in  
43 this State shall clearly indicate by embossing or imprinting on the normal product label, or in  
44 the case of metal beverage containers, on the top of the container the words 'North Carolina' or  
45 the initials 'N.C.' and the refund value of the container in not less than one-quarter inch type  
46 size. This subsection does not apply to any permanently labeled glass beverage container  
47 having a refund value of not less than ten cents (10¢) prior to the effective date of this Part and  
48 having a brand name permanently marked thereon, unless the glass beverage container contains  
49 spirituous liquors, fortified or unfortified wines, or malt beverages.

50         (d) Every beverage container that contains a beverage that is sold or offered for sale in  
51 this State shall be made of materials that are recyclable or made of recycled materials.

1       (e) Every five years, the Department shall determine the percentages of each category  
2 of beverage containers, based on the composition of the container: aluminum, nonaluminum  
3 metal, glass, plastic, or other materials or combination of materials, that are being returned. If  
4 the Department finds that the return rate for any category is less than seventy-five percent  
5 (75%), the Department may increase the refund rate for that category of beverage containers by  
6 five cents (5¢).

7 **"§ 130A-309.134. Duties of retailers.**

8       (a) Every retailer shall pay to the distributor deposits equal to the value of the refunds  
9 under G.S. 130A-309.133 when the retailer purchases beverages from a distributor and shall  
10 receive deposits from consumers at the time of sale.

11       (b) Every retailer shall identify, by a clear and conspicuous sign at the retailer's place of  
12 business, the address of at least the redemption center or redemption location nearest to the  
13 retailer that redeems all types of empty beverage containers at one location during at least 30  
14 hours per week with a minimum of five hours of operation occurring during periods other than  
15 from Monday to Friday, from 9:00 A.M. to 5:00 P.M.

16 **"§ 130A-309.135. Redemption centers duties; additional duties of Department.**

17       (a) There shall be at least one certified redemption center or redemption location within  
18 every convenience zone. The redemption center and redemption location shall accept from any  
19 consumer and shall pay to the consumer the refund value in cash at one location for all types of  
20 empty beverage containers during at least 30 hours per week with a minimum of five hours of  
21 operation occurring during periods other than from Monday to Friday, from 9:00 A.M. to 5:00  
22 P.M. The redemption center may pay the refund value based on the weight of the empty  
23 beverage containers.

24       (b) The redemption center and redemption location shall accept from any drop-off or  
25 collection program and shall pay to the drop-off or collection program the refund value for all  
26 types of empty beverage containers. The redemption center may pay the refund value based on  
27 the weight of the empty beverage containers. No drop-off or collection program shall pay any  
28 refund to the consumer.

29       (c) The Department shall, on a statewide basis, designate all convenience zones,  
30 including convenience zones in underserved areas, and shall prepare a map showing these  
31 convenience zones. The Department shall update convenience zone designations and maps as  
32 necessary. The Department shall develop and maintain a list of supermarkets and shall identify  
33 supermarket locations only for the purpose of providing a reference point in the establishment  
34 of convenience zones. The Department shall not designate more than one convenience zone per  
35 10,000 residents in nonrural underserved areas or more than one convenience zone per 7,000  
36 residents in rural underserved areas. The redemption location in underserved areas shall be  
37 located within one mile of a retailer. The Department shall not designate a convenience zone in  
38 an underserved area that would require establishing a redemption center or a redemption  
39 location in an area adjacent to, or conveniently accessible to, an established convenience zone.

40       (d) The Department shall attempt to enter into agreements with established recycling  
41 centers to provide redemption centers or redemption locations that satisfy the requirements  
42 under subsection (a) of this section in each convenience zone.

43       (e) If the Department determines that subsection (a) of this section cannot be fulfilled in  
44 a particular convenience zone due to factors beyond the control of the Department, the  
45 Department may establish by rule an alternative minimum convenience requirement for that  
46 convenience zone that shall not conflict with the purposes of this Part.

47       (f) The Secretary may grant an exemption to the requirements of subsection (a) of this  
48 section if all of the following conditions exist:

- 49           (1) The Secretary may grant an exemption only for individual convenience  
50 zones. The Secretary shall not grant a blanket exemption to areas larger than  
51 a single convenience zone.

- 1           (2)    An exemption may be granted only to further the purposes of this Part.  
2           (3)    An exemption may be granted only after the Department holds a public  
3           hearing.  
4           (4)    An exemption may only be granted to prevent the creation of excessive  
5           redemption locations resulting in severe adverse local market conditions for  
6           recycled materials or if, after a public hearing, a city, county, or city and  
7           county request an exemption for an existing nonprofit recycling center for its  
8           location.  
9           (5)    The total number of exemptions shall not be more than ten percent (10%) of  
10           all redemption locations that would otherwise be created under this Part, as  
11           calculated by the Department.  
12           (6)    The Secretary shall not grant an exemption that would significantly decrease  
13           the ability of consumers to conveniently return empty beverage containers  
14           and receive payments for the refund value.  
15           (7)    In areas where curbside programs collect and recycle beverage containers,  
16           the Secretary shall not grant an exemption for the benefit of the curbside  
17           program unless the local agency administering the program requests the  
18           Department to grant an exemption and the program collects and recycles all  
19           types of beverage containers from households at least weekly.

20    **"§ 130A-309.136. Redemption centers; certification process.**

21           (a)    The Department shall certify redemption centers pursuant to this section. The  
22    Department shall certify any nonprofit drop-off program that meets the requirements  
23    established by the Department and the purposes of this Part. The Department shall not certify  
24    any drop-off or collection program as a redemption program. The Secretary shall adopt by rule  
25    a procedure for the self-certification of redemption centers, including standards for  
26    certification. These rules shall require that all information be submitted to the Department  
27    under penalty of perjury. These rules shall require that at least all of the following conditions be  
28    satisfied for certification:

- 29           (1)    The operator of the redemption center demonstrates to the satisfaction of the  
30           Department that the operator will operate in accordance with this Part and  
31           any rules adopted under this Part.  
32           (2)    The operator of the redemption center shall not knowingly pay a refund for  
33           any food or packaging material or any beverage container or other product  
34           that does not have a refund value under G.S. 130A-309.133.  
35           (3)    The operator of the redemption center shall take those actions that satisfy the  
36           Department to prevent the payment of a refund for any food or packaging  
37           material or any beverage container or other product that does not have a  
38           refund value under G.S. 130A-309.133.  
39           (4)    The operator of the redemption center shall accept all empty beverage  
40           containers, regardless of type, from consumers and from drop-off or  
41           collection programs and shall pay the refund value for all empty beverage  
42           containers, regardless of type.  
43           (5)    The operator of the redemption center shall notify the Department promptly  
44           of any change in the nature of its operations that conflicts with information  
45           submitted in the operator's application for certification.  
46           (6)    The operator of the redemption center shall be subject to an audit of empty  
47           beverage container redemptions by the Department, in a manner determined  
48           by the Department, to ensure that the operator is complying with this Part  
49           and any rules adopted under this Part.

1        (b) The Department may review and verify all applications for certification of  
2 redemption centers and may conduct an investigation of any applicant in any manner that the  
3 Department deems necessary to promote the purposes of this Part.

4        (c) After notice and hearing, the Department may revoke, suspend, or refuse to renew a  
5 certificate granted under this section or may impose a civil penalty on the operator holding the  
6 certificate for any one or more of the following reasons:

7            (1) The operator is convicted of any crime substantially related to the  
8 qualifications, functions, and duties of an operator of a redemption center.

9            (2) The operator engaged in fraud or deceit to obtain a certificate for a  
10 redemption center.

11           (3) The operator engaged in dishonesty and substantial incompetence or fraud  
12 performing the functions and duties of an operator of a redemption center.

13           (4) The operator willfully violated G.S. 130A-309.135(a), 130A-309.135(b), or  
14 130A-309.143(c).

15        (d) In making a determination under subsection (c) of this section, the Department may  
16 do any of the following:

17            (1) Immediately revoke the certificate.

18            (2) Immediately suspend the certificate for a specified period of time.

19            (3) Permit the operator to continue operation as a certified redemption center  
20 until a specified date, at which time the revocation or suspension shall  
21 become effective.

22            (4) Permit the operator to continue operation as a certified redemption center on  
23 condition of complying with any conditions that the Department determines  
24 would further the purposes of this Part.

25            (5) Impose a civil penalty of not more than one hundred dollars (\$100.00) per  
26 violation. Each day that a violation occurs shall be considered a separate  
27 violation.

28 **"§ 130A-309.137. Reimbursement to redemption centers and other programs.**

29        (a) The Department shall reimburse the redemption center the refund value for every  
30 empty beverage container received by the redemption center from consumers and from drop-off  
31 or collection programs, plus two percent (2%) of the refund value for administrative costs.

32        (b) The Department shall reimburse the nonprofit drop-off program the refund value for  
33 every empty beverage container received by the drop-off program from consumers. A nonprofit  
34 drop-off program may pay refunds to the consumers, and, if it does, the Department shall also  
35 pay to the nonprofit drop-off two percent (2%) of the refund value for administrative costs.

36        (c) The Department shall reimburse the curbside program the refund value for every  
37 empty beverage container received by the curbside program from consumers. No curbside  
38 program shall pay any refund to the consumer, and no curbside program is eligible to receive  
39 any sum for administrative costs.

40 **"§ 130A-309.138. Duties of distributors.**

41        Within 10 days of the end of each month and in a form and manner to be determined by the  
42 Department, a distributor shall pay to the Department the refund value of every beverage  
43 container sold or transferred to a retailer, less one percent (1%) for the distributor's  
44 administrative costs.

45 **"§ 130A-309.139. Retailer acting as distributor.**

46        Whenever any retailer or group of retailers receives a shipment or consignment of, or in any  
47 other manner acquires, beverage containers outside the State for sale to consumers in the State,  
48 such retailer shall comply with this Part as if the retailer were a distributor, as well as a retailer.

49 **"§ 130A-309.140. Redemption arrangements for vending machines.**

50        Any operator of a vending machine may elect to arrange with a certified redemption center,  
51 within five miles of the location of the vending machine, to redeem beverage containers from

1 the vending machine. The vending machine operator shall post on each vending machine the  
2 name and address of the redeeming redemption center.

3 **"§ 130A-309.141. Beverage Container Litter Reduction Account.**

4 (a) The Beverage Container Litter Reduction Account is created in the Department, to  
5 be administered by the Department. The Beverage Container Litter Reduction Account is a  
6 nonreverting fund that consists of refund values remitted by distributors to the Department  
7 under G.S. 130A-309.138 and credited to the Account. Interest earned shall accrue to the  
8 Account.

9 (b) The Beverage Container Litter Reduction Account shall be used to fund the  
10 following:

11 (1) The costs to the Department for administering this Part.

12 (2) Payments by the Department to certified redemption centers, nonprofit  
13 drop-off programs, and curbside programs as reimbursement for refund  
14 values and for any administrative costs required under G.S. 130A-309.137.

15 (3) A reserve for contingencies in the following amount:

16 a. A reasonable and prudent amount determined by the Department, not  
17 to exceed one million dollars (\$1,000,000).

18 b. During any calendar year, the reserve shall not be greater than an  
19 amount equal to one-fourth of the total amount paid as  
20 reimbursements under subdivision (2) of this subsection during the  
21 preceding calendar year, plus any interest on that amount.

22 (c) The Unredeemed Beverage Container Deposits Account is created in the  
23 Department, to be administered by the Department. After all expenditures under subsection (b)  
24 of this section have been made, the balance remaining in the Beverage Container Litter  
25 Reduction Account shall be credited to the Unredeemed Beverage Container Deposits Account.  
26 The Unredeemed Beverage Container Deposits Account may be used for all of the following  
27 purposes:

28 (1) For urban, rural, and recreational litter abatement and recycling activities or  
29 grants.

30 (2) For recycling information, education, and promotion.

31 (3) For incentive payments to encourage the establishment of certified  
32 redemption centers in convenience zones in underserved or rural areas.

33 (4) For public education programs directed at reducing litter.

34 **"§ 130A-309.142. Additional penalties.**

35 (a) A person may be assessed a civil penalty not to exceed one thousand dollars  
36 (\$1,000) per violation if the person does any of the following:

37 (1) Sells or offers for sale beverages in containers not labeled in accordance  
38 with G.S. 130A-309.133.

39 (2) Operates a redemption center without obtaining a certificate under  
40 G.S. 130A-309.136.

41 (3) Makes a report pursuant to G.S. 130A-309.143 that is false.

42 (b) The Department may examine the accounts and records of distributors and may  
43 assess a penalty of ten percent (10%) per year, plus interest, for underpayments of the refund  
44 value for beverage containers to be credited to the Beverage Container Litter Reduction  
45 Account. The Department may also impose a civil penalty of fifteen percent (15%) of the  
46 amount due for payments up to a month late and a five percent (5%) additional penalty for each  
47 month the payments continue to be unremitted.

48 **"§ 130A-309.143. Reports.**

49 (a) Every distributor who sells or offers for sale in this State beverages in beverage  
50 containers shall report to the Department no later than April 15, 2010, and quarterly thereafter.

1 the number of beverages in beverage containers sold, by material type and size and weight, and  
2 by any other manner prescribed by the Department.

3 (b) No later than July 1, 2010, and annually thereafter, the Department shall determine  
4 and shall include in its report all of the following:

- 5 (1) A summary of the information contained in the distributors' reports under  
6 subsection (a) of this section.
- 7 (2) The status of beverage container recycling opportunities throughout the  
8 State, together with any recommendations on methods to enhance the  
9 opportunities for all consumers in every region of the State to return empty  
10 beverage containers conveniently, efficiently, and economically.
- 11 (3) An analysis of the total amount of funds used for program administration  
12 and for reimbursement payments to redemption centers, nonprofit drop-off  
13 programs, and curbside programs and an analysis of how funds in the  
14 Unredeemed Beverage Containers Deposit Account are distributed and used  
15 under G.S. 130A-309.141(c).
- 16 (4) The economic impact of this Part on North Carolina retailers, distributors,  
17 and manufacturers of beverages and their containers.
- 18 (5) The problems, if any, incurred in the distribution, sale, and return of  
19 beverage containers attributed to the enactment of this Part.
- 20 (6) The effectiveness of this Part in reducing the proportion of empty beverage  
21 containers in litter found along the State's roads and highways and along its  
22 streams and rivers.
- 23 (7) The effectiveness of this Part in increasing recycling or reuse of beverage  
24 containers.
- 25 (8) The costs incurred in the administration of this Part.
- 26 (9) Any recommendations or administrative or legislative proposals considered  
27 appropriate to improving the effectiveness of this Part in achieving its  
28 purposes.
- 29 (10) Any other information the Department determines is pertinent to achieving  
30 the purposes of this Part.

31 (c) The Department may require any retailer, distributor, or certified redemption center  
32 to provide that information concerning its compliance with this Part that will enable the  
33 Department to prepare its report under this section."

34 **SECTION 2.** In order to be assured that sufficient funds have accrued in the  
35 Beverage Container Litter Reduction Account created in G.S. 130A-309.141, as enacted in  
36 Section 1 of this act, for the payment of refunds for beverage containers under Part 2E of  
37 Article 9 of Chapter 130A of the General Statutes, as enacted in Section 1 of this act, the  
38 Department of Environment and Natural Resources shall establish the date, no later than July 1,  
39 2010, for redemptions of beverage containers to commence.

40 **SECTION 3.** G.S. 130A-309.135(a), 130A-309.135(b), 130A-309.137, and  
41 130A-309.141(b), as enacted in Section 1 of this act, become effective April 1, 2010. The  
42 remainder of this act becomes effective January 1, 2010, and applies to beverage containers  
43 sold or offered for sale on or after that date.