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HOUSE BILL NO. 826

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 10.1-1402 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.52, relating to beverage container deposit and redemption program; established; civil and criminal penalties.

Patron—Hope (By Request)

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1402 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 14 of Title 10.1 an article numbered 3.8, consisting of sections numbered 10.1-1425.40 through 10.1-1425.52, as follows:

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.
12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.
13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.
14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary.

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59 All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the
60 responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste
61 management facilities.

62 15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage
63 or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only
64 costs related to the issuance of permits as required in this chapter in accordance with Board regulations,
65 but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the
66 Board pursuant to this subdivision shall be used exclusively for the hazardous waste management
67 program set forth herein.

68 15b. Collect fees from large quantity generators of hazardous wastes.

69 16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for
70 the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to
71 defray only costs related to the issuance, reissuance, amendment or modification of permits as required
72 in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to
73 issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to
74 § 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste
75 management program set forth herein. The Board shall establish a schedule of fees by regulation as
76 provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

77 17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in
78 accordance with this chapter.

79 18. Make separate orders and regulations it deems necessary to meet any emergency to protect public
80 health, natural resources and the environment from the release or imminent threat of release of waste.

81 19. Take actions to contain or clean up any site or to issue orders to require cleanup of any site
82 where (i) solid or hazardous waste, or another substance within the jurisdiction of the Board, has been
83 improperly managed or (ii) an open dump has been created, and to institute legal proceedings to recover
84 the costs of the containment or clean-up activities from any responsible party. Such responsible party
85 shall include any party, including the owner or operator or any other person, who caused the site to
86 become an open dump or who caused or arranged for the improper management of such solid or
87 hazardous waste or other substance within the jurisdiction of the Board.

88 20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste
89 laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the
90 purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been
91 improperly managed, including sites eligible for a joint federal and state remedial project under the
92 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law
93 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law
94 99-499, and for investigations to identify parties responsible for such mismanagement.

95 21. Abate hazards and nuisances dangerous to public health, safety or the environment, both
96 emergency and otherwise, created by the improper disposal, treatment, storage, transportation or
97 management of substances within the jurisdiction of the Board.

98 22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed
99 radioactive waste.

100 23. ~~Expired.~~ Adopt and enforce regulations necessary to carry out the provisions of Article 3.8 (§
101 10.1-1425.40 et seq.).

102 Article 3.8.

103 Beverage Container Deposit and Redemption.

104 § 10.1-1425.40. Definitions.

105 As used in this article, unless the context requires a different meaning:

106 "Beverage" means any drinkable liquid intended for human oral consumption. "Beverage" does not
107 include drugs regulated under the Federal Food, Drug, and Cosmetics Act (21 U.S.C. § 301 et seq.),
108 infant formula, or a meal replacement liquid.

109 "Beverage container" means a prepackaged beverage container, the volume of which is not more
110 than one gallon, made of any material including glass, plastic, aseptic packaging, or multimaterials, and
111 includes cartons and pouches.

112 "Consumer" means any person who purchases a beverage in a beverage container for use or
113 consumption.

114 "Distributor" means any person who engages in the sale of beverages in beverage containers to a
115 retailer within the Commonwealth, including any manufacturer who engages in such sales.

116 "Importer" means any retailer or manufacturer who directly imports beverage containers into the
117 Commonwealth.

118 "Member" means a distributor or importer who have joined the Organization and paid the applicable
119 fees.

120 "Organization" means a Producer Responsibility Organization.

"Redeemer" means a person who tenders for redemption an empty beverage container.

"Retailer" means a person or business that sells or offers for sale to consumers within the Commonwealth a beverage in a beverage container. "Retailer" does not include a business that primarily prepares food for sale or a person or business that sells beverage containers to consumers through stand-alone vending machines or similar means.

§ 10.1-1425.41. Deposit and label requirements.

A. Every beverage container sold within the Commonwealth that has a capacity of:

1. Six ounces or more and less than 24 ounces shall require a deposit of and have a redemption value of 10 cents.

2. Twenty-four ounces or more and less than one gallon shall require a deposit of and have a redemption value of 15 cents.

B. Any manufacturer, importer, or distributor of a beverage container sold in the Commonwealth shall include on the top lid or the body of the beverage container a clearly visible, standardized mark developed by the Organization that indicates to the consumer that the beverage container is redeemable for the applicable refund value set forth in subsection A. The Organization may require a manufacturer, importer, or distributor of a beverage container sold in the Commonwealth to include a barcode or unique code verification on the beverage container to allow for automated identification.

§ 10.1-1425.42. Producer Responsibility Organization.

A. Only one Producer Responsibility Organization. The Organization may operate in conjunction with Operations in other states.

B. All distributors and importers of beverages into or within the Commonwealth shall join as members of the Organization, or pay a nonparticipation fee which shall be the greater of (i) \$0.05 per container that the distributor distributes in the Commonwealth or the importer imports into the Commonwealth or (ii) \$10,000.

C. The Organization shall charge a fee to members based upon the beverage containers sold in the Commonwealth by the member. The membership fee shall cover administrative costs and any amount necessary to pay for activities described in this article and any other activities deemed necessary by the organization to meet the performance targets set forth in this article not covered by the sale of used beverage containers, unredeemed deposits, container recycling fees, or any other revenue source of the Organization. The Organization shall vary the fee charged to individual members based upon the scrap value of beverage containers sold by a member in the Commonwealth.

§ 10.1-1425.43. Beverage container deposit program.

A. The deposit program shall operate by:

1. Distributors and importers charging retailers the applicable refund value and applicable container recycling fee described for each beverage container it delivers;

2. Retailers charging customers the applicable refund value and applicable container recycling fee at the point of purchase to the retailer; and

3. Consumers receiving the applicable refund value through redemption.

B. Any deposits not redeemed by the consumer shall be funds of the Organization and shall be used to support its administrative costs and perform other activities required by this article.

C. It shall be unlawful to distribute, import, or sell beverage containers in commerce in the Commonwealth except in compliance with this article.

D. It shall be unlawful to redeem a beverage container in the Commonwealth that was not sold in the Commonwealth.

§ 10.1-1425.44. Applicable refund value.

A. The applicable refund value shall be \$0.10 for beverage containers under 24 fluid ounces and \$0.15 for beverage containers of 24 ounces or more.

B. The Department may change the refund value (i) in a material-neutral way in consultation with the Organization, or (ii) upon request of the Organization. However, the Department shall not change the refund value pursuant to clause (i) more than one time in a ten-year period or pursuant to clause (ii) more than one time in a five-year period. Prior to any change, the Department shall provide at least 60 days' notice for a comment review period.

C. If the Organization's publicly reported redemption rate does not reach 85 percent for three years in a row after being required to reach such performance target, then the applicable refund value shall be \$0.15 for beverage containers under 24 ounces, and \$0.20 for beverage containers of 24 ounces or more.

§ 10.1-1425.45. Container recycling fee.

A. A consumer shall pay a non-refundable fee, in addition to the deposit, when purchasing a beverage container not made of aluminum, glass, high density polyethylene plastic, or polyethylene terephthalate that covers the cost of sorting, transporting, and recycling, as determined by the Organization.

182 B. The Organization may impose a non-refundable fee for containers other than those specified in
183 subsection A.

184 C. The Organization may stop changing a container recycling fee for any beverage container for
185 which a fee is charged under subsection A once there is sufficient economic value and end-markets to
186 support all or most of the cost of sorting, transporting, and recycling the container types.

187 D. All retailers shall make the non-refundable fee visible on the receipt for the purchase of the
188 beverage container provided to the customer.

189 **§ 10.1-1425.46. Material flows.**

190 A. When a consumer redeems a beverage container for the applicable refund via the means set forth
191 in this article, the Organization becomes the owner of the beverage container and may sell it to the
192 end-market of its choosing.

193 B. Notwithstanding the provisions of subsection A, for the first five years that beverage containers
194 are sold in the Commonwealth with an applicable refund value, the Organization shall transfer 10
195 percent of the scrap value to the Department to be used to support the collection of household
196 recyclables. Such support may include direct payment to household recycling collection operators and
197 household recycling education efforts.

198 **§ 10.1-1425.47. Means of redemption.**

199 A. A retailer with a retail space of 5,000 square feet or greater shall:

200 1. Accept a beverage container and pay the applicable refund value for up to 250 beverage
201 containers per person per day;

202 2. Permit the Organization to operate a bag drop program in its parking lot by providing space of
203 the retailer's choosing sufficient to operate the bag drop; or

204 3. If the retailer has less than 30 parking spaces under its control, permit the Organization to install,
205 maintain, and service at least two reverse vending machines.

206 B. A retailer with a retail space of more than 1,000 square feet but less than 5,000 square feet
207 shall:

208 1. Accept a beverage container and pay the applicable refund value for up to 50 beverage containers
209 per person per day;

210 2. Permit the Organization to operate a bag drop program in its parking lot by providing space of
211 the retailer's choosing sufficient to operate the bag drop; or

212 3. If the retailer has less than 30 parking spaces under its control, permit the Organization to install,
213 maintain, and service at least one reverse vending machines.

214 C. A retailer with a retail space of 1,000 square feet or less that sells at least one million beverage
215 containers per year shall:

216 1. Accept a beverage container and pay the applicable refund value for up to 25 beverage containers
217 per person per day;

218 2. Permit the Organization to operate a bag drop program in its parking lot by providing space of
219 the retailer's choosing sufficient to operate the bag drop; or

220 3. If the retailer has less than 30 parking spaces under its control, permit the Organization to install,
221 maintain, and service at least one reverse vending machines.

222 D. A retailer with a retail space of 1,000 square feet or less that sells at least one million beverage
223 containers per year shall have no duties pursuant to this article, except as provided in subsection E and
224 F.

225 E. Any retailer that has at least 10,000 people living within a three-mile radius of the retailer shall
226 permit the organization to install, maintain, and service at least one reverse vending machine.

227 F. Any retailer shall (i) offer for sale the standard bags that the Organization deems necessary to
228 operate a bag drop program; (ii) permit the Organization to install, service, and operate a reverse
229 vending machine in space controlled by the retailer; and (iii) permit the Organization to install, service,
230 and operate a self-service kiosk that allows for the printing of redemption vouchers.

231 G. The provisions of this section shall not apply to a retailer that is a business that primarily
232 prepares food for sale or that sells beverage containers to consumers through stand-alone vending
233 machines or similar means.

234 H. In zip codes with a population density greater than 30,000 residents per square mile, the
235 Organization shall ensure that all residents in such zip code are within a two-mile radius of a bag drop
236 redemption location, and shall build, service, and operate its own bag drop redemption location as
237 necessary.

238 I. Any facilities set up by the Organization to efficiently aggregate, sort, and process materials
239 collected at redemption locations shall accept an unlimited amount of beverage containers eligible for
240 redemption submitted in the standard bag determined by the Organization from organizations
241 established and operated as nonprofit organizations, and may provide these organizations a premium.

242 J. The means of redemption set forth in this section shall be available to the public for not less than
243 10 hours each day except for on a federal, state, or local holiday.

§ 10.1-1425.48. Responsibilities.

A. The Organization shall pay for (i) the installation, maintenance, and operation of redemption in the parking lots of retailers programs that permit consumers to drop off bags with beverage containers eligible for redemption and get paid electronically the appropriate redemption value, (ii) the installation, maintenance, and operation of reverse vending machines at retailers, (iii) the installation, maintenance, and operation of self-service kiosks at retailers, (iv) the building, service, and operation of bag drop locations necessary to provide adequate access to certain zip codes, (v) any facilities in the Commonwealth necessary to efficiently aggregate, sort, and process the material collected at various redemption locations, and (vi) the upkeep of a list and map on its website of all redemption locations and what redemption options are available at each location.

B. The Organization may (i) use funds generated by this article to provide grants for litter clean-up, education and outreach on recycling, (ii) give funds to its members in a fiscal year in which its revenues exceeded the cost of carrying out the requirements of this Act by more than 50 percent, so long as funds given to Members do not cause revenue to go below more than 150 percent of the cost of carrying out the requirements of this article.

§ 10.1-1425.49. Performance targets.

A. The Organization shall meet the following performance targets: (i) at least a 75 percent redemption target for all Beverage Containers starting two years after all Beverage Containers are sold in the Commonwealth with the applicable deposit value, (ii) at least an 85 percent redemption target for all Beverage Containers starting four years after all Beverage Containers are sold in the Commonwealth with the applicable deposit value, (iii) at least a 90 percent redemption target for all Beverage Containers starting eight years after all Beverage Containers are sold in the Commonwealth with the applicable deposit value.

B. If the Organization does not meet the performance targets detailed in subsection A, it shall submit to the Department a product stewardship plan within one year detailing the actions it will take to meet the performance targets.

C. If three years after submission of the product stewardship plan the performance targets have not been met, the Department may (i) increase the deposit value, (ii) fine the Organization up to \$250 per day that the targets are not met, and (iii) require the Organization to submit a revised product stewardship plan.

D. If five years after submission of the product stewardship plan the performance targets have not been met, the Department may take over the Organization's operations and charge its members until the performance targets are met, and shall transfer leadership of the Organization back to the Organization within 180 days of achieving the performance targets.

§ 10.1-1425.50. Reporting.

A. By July 1 of each calendar year, the Organization shall make publicly available on its website:

1. The number of beverage containers sold in the Commonwealth by material type for each quarter of the year covered by the report and the quarters of each prior year;

2. The number of beverage containers redeemed by material type for each quarter of the year covered by the report and the quarter of each prior year;

3. The number of beverage containers redeemed at each bag drop location, reverse vending machine, or other redemption location that the Organization operates;

4. The end-markets to which the Organization sold Beverage Containers;

5. The percent of the total amount sold of each material type that went to each end-market;

6. All redemption locations in the Commonwealth;

7. The means of redemption at each location in the Commonwealth;

8. Total expenses of the Organization;

9. The number of consumer complaints per month by redemption location for the previous calendar year and each prior year; and

10. The total number of individual consumers per month that filed complaints by redemption location for the previous calendar year and each prior year;

B. The Department may require the Organization to have an independent third-party verify the numbers disclosed pursuant to subsection A. The Department shall notify the Organization by August 1 that it will require an independent third-party review, and the Organization shall have until December 31 to have the review completed.

C. The Organization shall establish safeguards to ensure its members do not have access to information regarding the price paid for the material sold by any individual buyer and how much of each material went to each individual recycler.

§ 10.1-1425.51. Advisory Committee.

The Organization shall establish an advisory committee that represents a range of interested and engaged persons including, at a minimum, one of each of the following: (i) beverage container

305 manufacturers or their trade associations, (ii) beverage producers or their trade associations, (iii) local
306 government, (iv) environmental non-profit organizations, (v) end markets that buy or recycle beverage
307 containers from the Organization, and (vi) retailers or their trade associations. The advisory committee
308 shall provide written or oral comments directly to the Board of Directors and President of the
309 Organization at least twice a year. The Advisory Committee shall submit a report to the General
310 Assembly annually by December 1. Such report shall include feedback on the operation of the
311 Organization and the deposit return system generally. The Organization shall publish such report on its
312 website.

313 **§ 10.1-1425.52. Reimbursement.**

314 The Organization shall reimburse the Department for costs incurred by the Department in overseeing
315 the Organization.

316 **§ 10.1-1425.52. Civil Penalties.**

317 A. In addition to any other applicable civil or criminal penalties, The Department may impose a
318 civil penalty for a violation of this article. Such penalty shall be \$100 for each initial, separate violation
319 and not more than \$1,000 for each subsequent separate violation per day.

320
321 B. Every person who, with intent to defraud, knowingly takes any of the following actions is guilty of
322 a crime:

323 1. Redeems out-of-Commonwealth containers, rejected containers, line breakage, or containers that
324 have already been redeemed;

325 2. Returns redeemed containers to the Commonwealth marketplace for redemption;

326 3. Brings out-of-Commonwealth containers, rejected containers, or line breakage to the
327 Commonwealth marketplace for redemption.

328 C. If the civil penalty obtained for a violation of subsection B is less than or equal to \$950 the
329 person is subject to punishment in jail for not more than six months, by a fine not exceeding \$1,000, or
330 both. If the civil penalty exceeds \$950, a person is subject to punishment by imprisonment in jail for up
331 to one year, by a fine not exceeding \$10,000, or both.

332 D. The Department may bring a civil action to enjoin the distribution, importation, or sale into the
333 Commonwealth of a Beverage sold in a beverage container in violation of this Act.

334 E. The Department may fine the Organization up to \$30,000 annually per redemption location that
335 receives complaints from more than 50 individuals per month.

336 F. Any civil penalties recovered by the Department shall be used to administer this Act, build
337 infrastructure that enhances recycling in the Commonwealth, conduct outreach and education activities
338 focused on recycling in the Commonwealth, perform litter clean-ups in the Commonwealth, or support
339 collection of recyclable material at the household or in public spaces.

340 2. That the provisions of this act shall be effective for beverage containers made of aluminum,
341 glass, high density polyethylene plastic, or polyethylene terephthalate beginning July 1, 2025. The
342 provisions of this act shall be effective for all other beverage containers beginning July 1, 2026.
343 The Department may extend each such effective date for up to one year.