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HOUSE BILL NO. 1759

Offered January 11, 2017

Prefiled January 9, 2017

A BILL to amend and reenact §§ 10.1-1402 and 10.1-1422.01 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 10.1-1425.48, relating to redeemable beverage containers; penalties.

Patron—Rasoul

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1402 and 10.1-1422.01 of the Code of Virginia are 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 10.1-1425.48, 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 sites or to issue orders to require cleanup of sites where solid
82 or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly
83 managed and to institute legal proceedings to recover the costs of the containment or clean-up activities
84 from the responsible parties.

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

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

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

97 23. ~~Expired.~~ *Promulgate and enforce regulations necessary to carry out the provisions of Article*
98 *3.8 (§ 10.1-1425.40 et seq.).*

99 **§ 10.1-1422.01. Litter Control and Recycling Fund established; use of moneys; purpose of Fund.**

100 A. All moneys collected from the taxes imposed under §§ 58.1-1700 through 58.1-1710 and by the
101 taxes increased by Chapter 616 of the 1977 Acts of Assembly, *all moneys remaining in the Unredeemed*
102 *Container Fund at the end of the year pursuant to § 10.1-1425.47, and all civil penalties collected*
103 *pursuant to § 10.1-1425.48* shall be paid into the treasury and credited to a special nonreverting fund
104 known as the Litter Control and Recycling Fund, *referred to in this section as "the Fund,"* which is
105 hereby established. The Fund shall be established on the books of the Comptroller. Any moneys
106 remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned
107 on such moneys shall remain in the Fund and be credited to it. The Director is authorized to release
108 money from the Fund on warrants issued by the Comptroller after receiving and considering the
109 recommendations of the Advisory Board for the purposes enumerated in subsection B ~~of this section~~.

110 B. Moneys from the Fund shall be expended, according to the allocation formula established in
111 subsection C ~~of this section~~, for the following purposes:

112 1. Local litter prevention and recycling grants to localities that meet the criteria established in
113 § 10.1-1422.04; and

114 2. Payment to (i) the Department to process the grants authorized by this article and (ii) the actual
115 administrative costs of the Advisory Board. The Director shall assign one person in the Department to
116 serve as a contact for persons interested in the Fund.

117 C. All moneys deposited into the Fund shall be expended pursuant to the following allocation
118 formula:

119 1. Ninety-five percent for grants made to localities pursuant to subdivision B 1 ~~of this section~~; and

120 2. Up to a maximum of ~~5%~~ *five percent* for the actual administrative expenditures authorized

pursuant to subdivision B 2 of this section.

Article 3.8.

Redeemable Beverage Containers.

§ 10.1-1425.40. Definitions.

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

"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.

"Beverage container" means any sealed metal, glass, or plastic bottle, can, jar, or carton produced for the purpose of containing a beverage.

"Consumer" means any person who purchases a beverage in a redeemable beverage container for use or consumption with no intent to resell.

"Dealer" means a person that sells or offers for sale to consumers within the Commonwealth a beverage in a redeemable beverage container.

"Distributor" means a person that sells beverages in redeemable beverage containers to a dealer within the Commonwealth.

"Mixed wine drink" means a drink or similar product marketed as a wine cooler and containing less than seven percent alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and containing any one or more of the following: nonalcoholic beverages, flavoring, coloring materials, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.

"Over-redeemer" means a distributor whose annual total value of redemption fees collected on redeemable beverage containers sold within the Commonwealth is less than the annual total value of redemptions the distributor made upon redeemable beverage containers redeemed within Virginia.

"Redeemable beverage container" means (i) a beverage container that has clearly, prominently, and securely affixed to or printed on it the word "Virginia" or its abbreviation and a statement of the amount of the redemption value of the container or (ii) a beverage container manufactured for reuse and so labeled.

"Redeemer" means a person who tenders for redemption a redeemable beverage container pursuant to § 10.1-1425.42.

"Redemption fee" means the redemption value charged by a distributor or a dealer for each redeemable beverage container it sells.

"Under-redeemer" means a distributor whose annual total value of redemption fees collected on redeemable beverage containers sold within the Commonwealth equals or exceeds the annual total value of redemptions the distributor made upon redeemable beverage containers redeemed within Virginia.

§ 10.1-1425.41. Redeemable beverage containers required.

No beverage in a beverage container may be sold within the Commonwealth unless the beverage container is a redeemable beverage container with a redemption value of five cents. The Board shall adopt regulations as to the manner in which the redemption value and the word "Virginia" or its abbreviation shall be printed on or affixed to the redeemable beverage container.

§ 10.1-1425.42. Redemptions; vending machines.

A. If a person tenders for redemption an empty and unbroken redeemable beverage container that is reasonably clean and free of foreign objects to (i) a dealer that sells, or has sold at any time within the previous 90 days, the brand of beverage that was in the container or (ii) a redemption center, the dealer or redemption center shall promptly pay the redeemer the amount of the redemption value stated on the container. A dealer may establish reasonable hours when more than 48 redeemable beverage containers will be accepted from a person and may refuse to accept such quantities at other times. A redeemable beverage container shall not be considered broken for purposes of this section if it can be identified as a redeemable beverage container. A dealer that does not require a redemption fee on a redeemable beverage container when the contents are consumed in the dealer's sale or consumption area shall not be required to pay a redemption for accepting that empty container.

B. The Board shall establish by regulation what person is a dealer with respect to the sale of beverages in redeemable beverage containers to consumers through vending machines.

C. If a dealer or redemption center, or person who has contracted with a dealer to remove, sort, or store redeemable beverage containers, tenders for redemption an empty and unbroken redeemable beverage container that is reasonably clean and free of foreign objects to a distributor that sells, or has sold at any time within the previous 90 days, the brand of beverage that was in the container, the distributor shall promptly pay to such dealer or redemption center the redemption value of five cents, plus a handling fee of two cents.

D. Nothing in this article shall prohibit a dealer from contracting with any person for the removal, sorting, or storage of redeemable beverage containers. Distributors shall be responsible for collecting redeemable beverage containers from dealers, persons having a contract with a dealer to provide

182 storage of empty redeemable beverage containers, and redemption centers at least once every seven
183 days in a manner to be prescribed by regulation of the Board. The Board may authorize variances from
184 such a schedule.

185 E. The governing body of any locality, or any person, may establish one or more redemption centers
186 at which a person may tender a redeemable beverage container for redemption pursuant to the
187 provisions of subsection A.

188 F. No person shall return an empty redeemable beverage container to a dealer or redemption center
189 if a redemption has already been paid on that beverage container. This subsection shall not be
190 construed to prevent a dealer or redemption center from paying a redemption on a redeemable beverage
191 container each time that container is sanitized by the manufacturer and reused as a redeemable
192 beverage container.

193 **§ 10.1-1425.43. Recycling of redeemed beverage containers; credit toward recycling percentage**
194 **mandates.**

195 A. Every person to whom redeemable beverage containers are returned for redemption shall take all
196 reasonable actions necessary to ensure that such containers are recycled. As used in this section,
197 "recycled" means the separation of redeemable beverage containers from the waste stream so that they
198 may be collected, processed, and used again as a raw material for products that may or may not be
199 similar to beverage containers.

200 B. All redeemable beverage containers that are returned to redemption centers or dealers in any
201 local jurisdiction or region of the Commonwealth shall be deemed to have been recycled for purposes of
202 determining the compliance of that local jurisdiction or region with the recycling percentage mandates
203 of § 10.1-1411.

204 **§ 10.1-1425.44. Reports of distributors; regulatory authority of the Tax Commissioner.**

205 A. Not later than March 1, 2019, and not later than March 1 of each year thereafter, a distributor
206 that originates a redemption fee on a redeemable beverage container shall file a report with the
207 Department of Taxation. The report shall be on forms prescribed by the Tax Commissioner and shall
208 include the following information:

209 1. For the period of January 1, 2018, through December 31, 2018, and for the time period of
210 January 1 through December 31 and for each year thereafter, the dollar value of (i) all redemption fees
211 collected by the distributor on redeemable beverage containers sold within the Commonwealth and (ii)
212 total redemptions made upon redeemable beverage containers redeemed by the distributor; and

213 2. Any additional information prescribed by the Tax Commissioner.

214 B. The Tax Commissioner is authorized to adopt regulations relating to the interpretation,
215 administration, and enforcement of the provisions of this section and §§ 10.1-1425.45 and 10.1-1425.46.

216 C. Any distributor that ceases doing business in the Commonwealth on or after January 1, 2020,
217 shall, within 90 days of the date it ceases doing business, file a report as required by this section and
218 regulations adopted hereunder.

219 D. Unless otherwise provided, the provisions of this section and § 10.1-1425.46 shall be administered
220 and moneys collected by the Tax Commissioner in the same manner and subject to the same penalties
221 and other provisions as the state income taxes imposed in Chapter 3 (§ 58.1-300 et seq.) of Title 58.1.

222 **§ 10.1-1425.45. Redemption fees exempted from certain taxes.**

223 The redemption fees provided for under this article shall not be subject to taxation under the
224 provisions of Article 3 (§ 58.1-3509 et seq.) of Chapter 35 of Title 58.1 or Chapter 37 (§ 58.1-3700 et
225 seq.) of Title 58.1.

226 **§ 10.1-1425.46. Redemption fees held by distributors; payments; credits.**

227 A. Not later than June 1, 2019, and not later than June 1 of each year thereafter, the Department of
228 Taxation shall determine for the preceding calendar year, on the basis of reports filed pursuant to
229 § 10.1-1425.44, the total value of redemption fees collected on redeemable beverage containers sold
230 within the Commonwealth, the total redemptions made on redeemable beverage containers redeemed
231 within the Commonwealth, and the total amount of money held by under-redeemers. By June 1, 2019,
232 and by June 1 of each year thereafter, the Department of Taxation shall publish and make available to
233 the public its findings under this subsection and report its findings to the General Assembly.

234 B. Not later than March 1, 2019, and not later than March 1 of each year thereafter, an
235 under-redeemer shall pay to the Department of Taxation that amount of money by which its annual total
236 value of redemption fees collected exceeds its annual total value of redemptions made on redeemable
237 beverage containers, subject to the over-redemption credit provided for in this section.

238 C. After March 1, 2019, an under-redeemer that becomes an over-redeemer in a subsequent year
239 may credit the value of the over-redemption in order to reduce the amount owed to the Department of
240 Taxation under this section in one or more subsequent years as a result of that person's again becoming
241 an under-redeemer. The value of the over-redemption may be carried forward for not more than three
242 years or until the credit granted by this subsection is completely depleted, whichever occurs first.

243 **§ 10.1-1425.47. Unredeemed Container Fund established; use of moneys.**

244 There is hereby created in the state treasury a special nonreverting fund to be known as the
245 Unredeemed Container Fund, referred to in this section as "the Fund." The Fund shall be established
246 on the books of the Comptroller. All moneys collected pursuant to § 10.1-1425.46, less the necessary
247 expenses incurred by the Department of Taxation in administering the provisions of §§ 10.1-1425.44 and
248 10.1-1425.46, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys
249 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
250 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall be
251 deposited into the Litter Control and Recycling Fund for distribution as provided for in § 10.1-1422.01.

252 **§ 10.1-1425.48. Penalties.**

253 Unless a different penalty is specifically provided, whenever a court finds a defendant guilty of a
254 violation of any provision of this article, the court shall assess a civil penalty of not less than \$100 or
255 more than \$1,000. Each violation shall constitute a separate offense. All civil penalties collected
256 pursuant to this section shall be paid into the state treasury and credited to the Litter Control and
257 Recycling Fund.

258 **2. That the provisions of this act shall become effective on January 1, 2018.**