

SENATE BILL NO. 2167

Introduced by

Senator Lindaas

1 A BILL for an Act to create and enact chapter 23-37 and a new subsection to section 54-11-01
2 of the North Dakota Century Code, relating to deposits on beverage containers and the duties
3 of the state treasurer; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 23-37 of the North Dakota Century Code is created and enacted
6 as follows:

7 **23-37-01. Definitions.** As used in this chapter:

- 8 1. "Beverage" means beverage as defined in section 19-08-02 and includes alcoholic
9 beverages as defined in section 5-01-01.
- 10 2. "Beverage container" means any sealable bottle, can, jar, or carton that is primarily
11 composed of glass, metal, plastic, or any combination of those materials and is
12 produced for the purpose of containing a beverage. The term does not include
13 containers made of biodegradable material.
- 14 3. "Bottler" means any person filling beverage containers for sale to any distributor or
15 dealer, including a dealer that bottles or sells that dealer's own brand of beverage.
- 16 4. "Consumer" means any person that purchases a beverage in a beverage container
17 for use or consumption with no intent to resell the beverage.
- 18 5. "Dealer" means any person that engages in the sale of any beverage in a
19 beverage container to a consumer in the state.
- 20 6. "Distributor" means any person that engages in the sale of any beverage in a
21 beverage container to any dealer in the state.
- 22 7. "Label" means label as defined in section 23-32-01.
- 23 8. "Plastic" means plastic as defined in section 23-32-01.
- 24 9. "Plastic bottle" means plastic bottle as defined in section 23-32-01.

10. "Reusable beverage container" means any beverage container constructed and designed so the container is structurally capable of being refilled and resold by a bottler at least ten times after the container's initial use.

11. "Rigid plastic container" means rigid plastic container as defined in section 23-32-01.

23-37-02. Refund value. Every beverage container sold or offered for sale in this state has a refund value of at least five cents. This section does not apply to any container sold by a distributor for use by a common carrier in the conduct of interstate passenger service.

23-37-03. Refund and deposit requirements.

1. Every consumer shall deposit with the dealer the refund value of each beverage container the consumer purchases from that dealer.

2. A dealer shall accept from any person, during the dealer's business hours, any empty beverage container of the type, size, and brand sold by the dealer within the past sixty days and shall pay the person the refund value of each beverage container returned.

3. A distributor shall accept from any dealer any empty beverage container of the type, size, and brand sold by the distributor within the past sixty days and shall pay the dealer the refund value of the beverage container plus a handling fee of at least one cent per container if the empty beverage container is presented at the time of and at the location at which the dealer obtains filled beverage containers from the distributor.

4. A bottler shall accept from any distributor or dealer any empty reusable beverage container of the type, size, and brand sold by the bottler within the past sixty days and shall pay the distributor or dealer the refund value of the empty reusable beverage container plus a handling fee of at least one cent per container if the empty reusable beverage container is presented at the time and at the location at which the distributor or dealer obtains filled reusable beverage containers from the bottler. A bottler, other than a bottler of soft drinks, manufacturing in the state which offers to refund deposits in accordance with this section may not require a distributor to deposit with the bottler the refund value of a beverage container that is not reusable, and a bottler may not require of a distributor that any beverage

1 container that is not reusable be presented to the bottler at the location where the
2 distributor obtains filled beverage containers.

3 5. Any person may establish a redemption center and may determine what type, size,
4 and brand of beverage container to accept. A distributor shall take from any
5 redemption center any empty beverage container of the type, size, and brand sold
6 by the distributor within the past sixty days and shall pay the redemption center the
7 refund value of the container plus a handling fee of at least one cent per container.

8 6. Notwithstanding any provision in this chapter, a dealer, distributor, redemption
9 center, or bottler may refuse to accept any beverage container containing material
10 foreign to the normal contents of the container.

11 7. Any bottler or distributor receiving deposits or handling charges under this chapter
12 shall segregate the deposits or handling charges, as the case may be, in a fund
13 maintained separately from all other revenues. Any bottler or distributor receiving
14 deposits or handling charges under this chapter shall report monthly to the state
15 treasurer, in a manner prescribed by the state treasurer, the amount of the
16 deposits or handling charges, as the case may be, received and the amount
17 refunded.

18 8. Any bottler or distributor subject to subsection 3, 4, or 5 shall maintain a deposit
19 transaction fund which must be kept separate from all other revenues and
20 accounts. Each bottler or distributor shall place in the deposit transaction fund the
21 refund value for every nonreusable beverage container the bottler or distributor
22 sells which is subject to the provisions of this chapter. Except as specified in
23 section 23-37-05, any amount in the deposit transaction fund may only be
24 expended to pay refund values paid after December 31, 1999, for returned
25 nonreusable beverage containers under subsections 3, 4, and 5. Each deposit
26 transaction fund must be maintained by the respective bottler or distributor on
27 behalf of every consumer that purchased a refundable nonreusable beverage
28 container and on behalf of the state. Except as specified in section 23-37-05, the
29 amount in a deposit transaction fund is not income of the bottler or distributor.

30 9. The obligation to accept or take any empty beverage container and to pay the
31 refund value and handling fee for any empty beverage container as provided under

subsections 2, 3, 4, and 5 only applies to a container originally sold in the state as a filled beverage container. Any person that tenders to a dealer, distributor, redemption center, or bottler more than ten cases of twenty-four empty beverage containers each, which the dealer, distributor, redemption center, or bottler knows or has reason to know were not originally sold in the state as filled beverage containers, for the purpose of obtaining a refund value or handling fee, is subject to the enforcement action and civil penalties set forth in this chapter.

23-37-04. Deposit transaction fund reports. Every bottler and every distributor shall report to the state treasurer by the tenth day of each month concerning every transaction in the preceding month which affected the bottler's or distributor's deposit transaction fund. The report must be made in a form prescribed by the state treasurer and must include the number of nonreusable beverage containers sold and the number of nonreusable beverage containers returned in the reported month, the amount of any deposit received in and payments made from the deposit transaction fund in the reported month and the most recent three-month period, any income earned on any amount in the deposit transaction fund during the reported month, the balance in the deposit transaction fund at the close of the reporting month, and other information the state treasurer may require.

23-37-05. Abandoned deposits. At the end of each month, any amount that is or should be in a bottler's or distributor's deposit transaction fund which is in excess of the sum of income earned on amounts in the fund during that month and the total amount of refund values received by the bottler or distributor for nonreusable beverage containers during that month and the two preceding months constitutes abandoned deposit amounts. Income earned on a deposit transaction fund may be transferred from the deposit transaction fund for use as funds of the bottler or distributor. By the tenth day of each month, each bottler and each distributor shall provide to the state treasurer any deposit amount abandoned at the close of the preceding month, pursuant to this section. Abandoned amounts provided to the state treasurer under this section may be paid from a deposit transaction fund. The state treasurer shall deposit in the general fund any money received under this section.

23-27-06. Reimbursements. If in any month the authorized payments from the deposit transaction fund by a bottler or distributor pursuant to subsection 8 of section 23-37-03 exceed the funds that are or should be in the bottler's or distributor's deposit transaction fund, the state

1 shall reimburse that bottler or distributor from amounts received under section 23-37-05 for any
2 refunds paid by the bottler or distributor for nonreusable beverage containers for which the
3 funds that are or should be in the bottler's or distributor's deposit transaction fund are
4 insufficient. However, monthly reimbursements to a bottler or distributor may not exceed the
5 excess of amounts paid by the bottler or distributor to the state pursuant to section 23-37-05 in
6 the preceding twenty-four months over amounts paid by the state to the bottler or distributor
7 under this section during the applicable twenty-four months.

8 **23-37-07. Beverage container labels.** Every beverage container, except a
9 permanently labeled reusable glass container, imported into or offered for sale in the state by a
10 bottler, distributor, or dealer must clearly indicate the refund value of the container in at least
11 twelve-point type by embossing, by stamp, by label, or other method securely affixed to any
12 portion except the bottom of the beverage container. A permanently labeled reusable glass
13 beverage container first imported into or offered for sale in the state after the effective date of
14 this Act by a bottler, distributor, or dealer must clearly indicate that the container may be
15 returned for deposit in at least twelve-point type by embossing, by stamp, by label, or other
16 method securely affixed to any portion except the bottom of the permanently labeled reusable
17 glass beverage container. A dealer, distributor, redemption center, or bottler may refuse to
18 accept from any person any empty beverage container, except a permanently labeled reusable
19 glass beverage container, that does not state a refund value and a dealer, distributor,
20 redemption center, or bottler may refuse to accept any permanently labeled reusable glass
21 beverage container that does not state that the container may be returned for deposit.

22 **23-37-08. Vending machines.** Every operator of a vending machine that sells any
23 beverage in a beverage container shall post a conspicuous notice on each vending machine
24 indicating a refund of not less than five cents is available on each beverage container
25 purchased and where and from whom that refund may be obtained. This section does not
26 require vending machine operators to provide refunds at the location of a vending machine.

27 **23-37-09. Rules.** The state treasurer shall adopt rules necessary to implement this
28 chapter. The rules must include provisions permitting bottlers and distributors to borrow,
29 without any interest charge, against the bottler's or distributor's deposit transaction fund, subject
30 to any terms and conditions the state treasurer provides.

1 **23-37-10. Penalty.** Any bottler, distributor, redemption center, or dealer that violates
2 this chapter is subject to a civil penalty of not more than one thousand dollars for each violation.
3 Any bottler or distributor failing to make full and timely payments required by section 23-37-05
4 shall pay interest on any unpaid amounts at the rate of one and one-half percent for each
5 month or part of a month until payment is made in full. Any person, including a bottler,
6 distributor, redemption center, or dealer, that violates subsection 9 of section 23-37-03 is
7 subject to a civil penalty of the greater of one hundred dollars for each container or twenty-five
8 thousand dollars for each tender of containers.

9 **SECTION 2.** A new subsection to section 54-11-01 of the 1997 Supplement to the
10 North Dakota Century Code is created and enacted as follows:

11 Administer chapter 23-37.