

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1771

As Engrossed: 3/25/2019

Bill Subtitle: TO ESTABLISH THE ARKANSAS LITTER REDUCTION AND DEPOSIT BEVERAGE CONTAINER RECYCLING ACT; TO REQUIRE THE LABELING OF DEPOSIT BEVERAGE CONTAINERS SOLD IN ARKANSAS; TO ESTABLISH THE DEPOSIT BEVERAGE CONTAINER RECYCLING PROGRAM.

Basic Change :

Sponsor: Representatives V. Flowers, Clowney, D. Douglas, Glover, Murdock, Richardson, Scott, D. Whitaker

Engrossed 03/25/19 --- House Amendment 1 --- Amends the bill to provide the legislative intent for the establishment of the recycling act and makes technical changes, grammatical corrections, and corrects drafting errors. The amendment also specifically states that "deposit beverages" do not include beverages bottled by microbrewery restaurants, small farm wineries, and small breweries. The amendment provides that deposit beverage distributors must pay to the Deposit Beverage Container Fund a deposit fee on each container manufactured or imported into the state not to exceed six cents per container. Reports issued by certified redemption centers would be available online in electronic format.

Original Bill --- HB1771 creates the "Arkansas Litter Reduction and Deposit Beverage Container Recycling Act". The bill establishes a deposit fee on beverage containers and creates Certified Redemption Centers. The Office of Sustainable Materials within the Arkansas Department of Environmental Quality is created by the bill and a special revenue fund to be known as the "Deposit Beverage Container Fund" is established for deposit of the fees on beverage containers.

Taxpayers purchasing qualifying deposit beverages would pay a deposit of five cents (5¢) per container subject to a subsequent refund upon return of the empty container. "Deposit beverages" include: Beer, ale, or other drink produced by fermenting malt, including flavored malt beverages, coolers, and other malt-based beverages containing no more than fourteen percent (14%) of alcohol by volume; nonalcoholic wine, beer, and ready-to-use mixers; carbonated soft drinks; carbonated and noncarbonated water; tea, kombucha, and coffee; juices, juice blends, coconut water, and drinking vinegar; energy drinks and sports drinks; and smoothies, protein shakes, and nutritional supplements that are not marketed as a meal replacement. "Deposit beverages" do not include milk and other dairy-derived products; wine and distilled liquor; and hard cider.

Deposit beverage containers have specific labeling requirements and individuals who wish to return these deposit beverage containers will receive a refund value five cents (5¢) on these containers when returns to a designated deposit beverage container redemption center. Beverage container labeling must include the word "Arkansas" or the letters "AR".

The bill also establishes "deposit beverage distributors", "certified redemption centers", and "certified processors", to participate in the program with registration with the Office of Sustainable Materials prior to their initial participation.

Provisions of the bill would be effective on and after March 1, 2020

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Revenue Impact :

No Impact on existing State General Revenues if consumption of the specified beverage products does not decline as the result of the beverage container deposits.

Taxpayer Impact :

Taxpayers purchasing qualifying deposit beverages would pay a deposit fee for the beverage container. Individuals who wish to return these deposit beverage containers will receive a refund value five cents (5¢) on these containers when returns to a designated deposit beverage container redemption center.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation

Procedural Changes :

Change to sales tax rules to provide that deposit fees are not subject to taxation.

Other Comments :

None.

Legal Analysis :

Proposed HB1771 amends Title 8, Chapter 9, to add a new Subchapter 7 to facilitate litter reduction by creating a Deposit Beverage Container (Container) recycling program. Title 19 Section 6 Subchapter 8 is amended to add Section 840 which creates the Deposit Beverage Container Fund (the Fund) on the books of the Treasurer, Auditor, and Chief Fiscal Officer of the State to consist of special revenues and civil penalties collected under the new in § 8-9-701 et seq. as well as US government funds designated for the Fund, gifts or donations to the Fund, and interest and other earnings of the fund. The designation of special revenue in § 19-6-301 is also amended to include § 19-6-301, concerning special revenues, is amended to include fees collected under the Deposit Beverage Container program. Proposed § 8-9-703 would establish an Office of Sustainable Materials (the Office) in ADEQ which is to be funded by the Fund. § 19-6-840 further authorizes the Office to distribute and administer expenditures from the funds. The Bill as it is written does not appear to create any new duties or expenditures for DFA. The Fund will consist of special revenue and will be administered entirely by ADEQ.

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The Fund would be created under the new Arkansas Code section, § 19-6-840, and would consist of: (1) a deposit of five cents (5¢) on each container that is manufactured in or imported into the State by a Deposit Beverage Distributor (Distributor); and (2) an overhead support fee of one cent (1¢) on each Container that is manufactured in or imported into the State by a Distributor under §§ 8-9-705 to -706. Both fees will be made simultaneously to the Fund, and the Distributors shall charge to a dealer or consumer a charge equal to the deposit for each container under § 8-9-707. Under § 8-9-708 the refund value for each container shall be five cents (5¢).

- § 8-9-709 requires a legislative audit for each of the first two fiscal years, and every subsequent fiscal year ending in an even number. The purpose of the audit is to determine the unredeemed refund value and to provide recommendations. The cost of the audit shall be reimbursed by the Fund. Legislative Audit may contract with a third party to conduct the audit.
- Under § 8-9-711 the Office shall establish rules governing underserved areas with regard to certified redemption centers (Centers) and certified redemption center depots (Depots). If an area is determined and the Office is unable to remedy the situation moneys from the Fund may be used to establish certified facilities in those areas.
- § 8-9-713 requires that Centers and Depots are required to accept empty deposit beverage containers, determine the quantities of containers, and pay the refund to the consumer, non-profit entity, or any other group specified by the consumer, and to maintain adequate records of all of its transactions. Centers and Depots shall be owned or operated by a charity, community organization, social service agency or other non-profit, or maintain an ongoing beneficial relationship with one such organization. The Office shall be responsible for issuing payments to the certified redemption centers.
- § 8-9-716 will require that before participating in participating in the program collectors must be registered with the Office before a contract to a certified processor to collect material from a Center or Depot can be issued in accordance with current Arkansas Procurement laws.
- § 8-9-721 requires that the Office shall establish rules governing payment of the overhead allowance to certified redemption centers or depots. The overhead shall be an amount not to exceed one point six cents (1.6¢) times the number of deposit beverage containers received in a transaction. The overhead allowance shall be paid out of the Fund.
- § 8-9-722 requires that certified redemption centers or depots must submit to the Office invoices and supporting documentation for the total refund paid under § 8-9-713, the overhead allowance to be paid to the redemption center or depot under § 8-9-721. All reports provided to or created by the Office shall be made available online.
- § 8-9-723 requires that distributors, redemption centers and redemption center depots make records available to the Office, the Treasurer of the State, or an auditor of the Treasurer.
- § 8-9-725 provides that the Office shall make all committee meeting notices, minutes, reports, meeting recordings, and related documents available online.
- §§ 8-9-726 and -727 provide that civil penalties for violations of this subchapter or the rules developed by the Office shall be assessed by the Associate Director of the Office. § 8-9-728 provides that fines collected, less court costs, shall be deposited into the Fund; however if the violation is detected and reported by a Redemption Center or Depot fifty percent (50%) of the fine shall be awarded to the reporting entity.

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