



2nd SESSION, 63rd GENERAL ASSEMBLY
Province of Prince Edward Island
57 ELIZABETH II, 2008

CHAPTER 1

(Bill No. 14)

Beverage Containers Act

Honourable George T. Webster
Minister of Environment, Energy and Forestry

GOVERNMENT BILL

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Queen's Printer
Charlottetown, Prince Edward Island

CHAPTER 1

Beverage Containers Act

(Assented to April 28, 2008)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Act

- (a) “approved plan” means, in respect of a type of beverage container for which a distributor is given an approval under subsection 6(1), the plan submitted by the distributor with the application for that approval, and includes any amendments to the plan approved by the Minister under subsection 7(2); approved plan
- (b) “auditor” means an auditor appointed under subsection 23(1); auditor
- (c) “beer” means beer as defined in the *Liquor Control Act* R.S.P.E.I. Cap. L-14; beer
- (d) “beverage” means any liquid that is a ready to serve drink that is intended for human consumption by drinking but does not include any liquid excluded by the regulations; beverage
- (e) “beverage container” means a container that beverage container
- (i) holds five litres or less of a beverage, and
- (ii) is delivered sealed to
- (A) a retailer, other than a retailer who operates a food service, who sells the beverage without opening the container, or
- (B) a retailer who operates a food service,
- but does not include any container or class of containers excluded by the regulations;
- (f) “beverage container collector” means the beverage container collector appointed under subsection 19(1); beverage container collector
- (g) “beverage container depot” means a business enterprise involving the acceptance of empty beverage containers from the public in exchange for a refund, or the storage, holding or return of empty beverage containers for or to a distributor or, where applicable, the distributor’s agent, but does not include the retention beverage container depot

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| | of empty beverage containers by a retailer solely for the purpose of storage; |
| Department | (h) “Department” means the Department of Environment, Energy and Forestry; |
| distributor | (i) “distributor” means a person who sells, by wholesale or other means, beverages in beverage containers to a retailer in the province; |
| food service | (j) “food service” means (i) a restaurant or cafeteria, and (ii) a hospital, nursing home or other institution that provides meals as part of the service it provides; |
| inspector | (k) “inspector” means an inspector appointed under subsection 22(1); |
| license | (l) “license” means a valid and subsisting license issued under section 13; |
| license holder | (m) “license holder” means a person who holds a license; |
| liquor | (n) “liquor” means liquor as defined in the <i>Liquor Control Act</i> ; |
| Minister | (o) “Minister” means the Minister of Environment, Energy and Forestry; |
| operator | (p) “operator” means, in respect of a beverage container depot, a person who has control or management of the beverage container depot; |
| recyclable beverage container | (q) “recyclable beverage container” means a type of beverage container that is intended to be recycled and is approved under section 6; |
| refillable beverage container | (r) “refillable beverage container” means a type of beverage container that is intended to be used more than once for the sale of a beverage and is approved under section 6; |
| registered distributor | (s) “registered distributor” means a distributor who is registered under section 9; |
| retailer | (t) “retailer” means a person who sells a beverage in a beverage container to a consumer for the purposes of consumption and includes a person who makes such a sale in the course of operating a food service; |
| sell | (u) “sell” includes to sell or offer to sell; |
| soft drink | (v) “soft drink” means a flavoured carbonated beverage which does not contain liquor; |
| wine | (w) “wine” means wine as defined in the <i>Liquor Control Act</i> . |

(2) For the purposes of this Act and the regulations, beverage containers shall be classified into types of beverage containers on the basis of the following characteristics:

- (a) their composition;
- (b) their shape;
- (c) their capacity;
- (d) the size, shape and location of the markings that are affixed to or form part of the beverage containers.

Types of beverage containers

(3) For greater certainty, a beverage container shall be deemed to belong to the type of beverage container that has the same characteristics referred to in clauses (2)(a) to (d) as that beverage container.

Idem

(4) For greater certainty, a reference in this Act or the regulations to an agent of a license holder includes a person who is an operator of the beverage container depot specified on the license held by the license holder.

Agent of license holder

2. (1) For the purposes of this Act, the Prince Edward Island Liquor Control Commission is both the retailer and distributor of liquor.

Liquor Control Commission is a retailer and distributor

(2) Where there is a contract between two or more distributors for the sale of a beverage in a beverage container to a retailer in the province, the Minister may, on application, exempt a distributor from all or part of the provisions of this Act and the regulations with respect to the beverage in the beverage container.

Exemption of distributor from all or part of Act and regulations

(3) Where the Minister exempts a distributor under subsection (2), the Minister shall

Idem

- (a) exempt the distributor in writing with respect to the beverage in the beverage container named in the exemption; and
- (b) designate the provisions of the Act or regulations to which the exemption applies and the conditions under which the exemption applies.

ADMINISTRATION

3. The Minister is responsible for the administration of this Act and may designate persons to act on the Minister's behalf.

Minister responsible for administration of Act

APPROVAL OF TYPES OF BEVERAGE CONTAINERS

4. (1) No person shall sell a beverage in a beverage container unless the beverage container is of a type that is approved under section 6.

Sale of beverage in a beverage container

- Application for approval of a type of beverage container
- (2) A distributor who wishes to apply for the approval of a type of beverage container shall
- (a) submit to the Minister
 - (i) a written application in a form approved, and containing such information as may be required, by the Minister,
 - (ii) any fee prescribed by the regulations for the review of the application, and
 - (iii) a plan for the recycling or refilling of the type of beverage container for which the application is made; and
 - (b) provide to the Minister such other information and documents as the Minister may require.
- Plan, required contents
- (3) A plan for the recycling or refilling of a type of beverage container that is submitted by a distributor under subsection (2) shall include
- (a) a list of beverage container depots that will accept the empty beverage containers;
 - (b) a description of the means of retrieval of the empty beverage containers from the beverage container depots;
 - (c) a list of the facilities to be used for refilling or recycling the empty beverage containers;
 - (d) a description of the means to be used to deliver the empty beverage containers to the refilling or recycling facilities;
 - (e) a statement of how the distributor proposes to dispose of broken or contaminated empty beverage containers;
 - (f) a description of the composition, shape and capacity of the beverage containers;
 - (g) a description of the size, shape and location of the markings to be affixed to or form part of the beverage containers;
 - (h) a description of the means by which the beverage containers are packaged or held together so as not to present a hazard to wildlife;
 - (i) a description of the distributor's contingency arrangements in the event the distributor is for any reason unable to comply with the plan;
 - (j) a statement indicating whether the beverage containers will or will not contain liquor; and
 - (k) any other relevant information required by the Minister.
- Agent of distributor
- 5.** (1) Subject to subsection (2), a distributor may, by written agreement, assign all or part of the distributor's responsibilities under this Act and the regulations to an agent acceptable to the Minister.
- Restriction
- (2) A distributor shall not assign any of the distributor's responsibilities under this Act and the regulations with respect to the collection and remission or payment of the deposits payable on recyclable beverage containers that are sold or given away by the registered distributor.

(3) A written agreement made under subsection (1) shall not take effect sooner than the day that a copy of the agreement, as signed and completed, has been received by the Minister. Copy to Minister

(4) Where a distributor assigns all or part of the distributor's responsibilities to an agent by a written agreement made under subsection (1), the distributor is responsible under this Act and the regulations for the agent's violation of or failure to comply with the provisions of this Act and the regulations that the agent has been assigned responsibility for under the agreement. Liability of distributor of agent

6. (1) The Minister may, after reviewing an application by a distributor for the approval of a type of beverage container, issue an approval to the distributor for the type of beverage container if the Minister is satisfied that Approval of a type of beverage container

- (a) the plan submitted under subsection 4(2) with the application includes the information referred to in clauses 4(3)(a) to (k) and is otherwise acceptable to the Minister; and
- (b) the application has been made in accordance with the requirements of this Act.

(2) Where the Minister issues an approval under subsection (1) for a type of beverage container, the Minister shall Approval as a refillable or recyclable beverage container and notice of deposit and refund

- (a) issue the approval in writing;
- (b) indicate in the approval that the type of beverage container is approved, as the Minister considers appropriate,
 - (i) as a recyclable beverage container, or
 - (ii) as a refillable beverage container;
- (c) cause a written notice of the approval, which includes the value of the deposit payable for the beverage container, as determined by section 11, to be provided to the distributor or, where applicable, to the agent of the distributor; and
- (d) cause such details of the approved type of beverage container, as the Minister considers appropriate, to be posted on the Department's website.

(3) After reviewing an application, the Minister may, refuse to issue an approval under subsection (1) and, where the Minister refuses to issue an approval, the Minister shall provide a notice, in writing, of the refusal and the reasons therefor to the applicant. Refusal

(4) The Minister may, Terms and conditions

- (a) on issuing an approval under subsection (1) or at any subsequent time, impose any terms or conditions on the approval, including conditions respecting
 - (i) the refilling or recycling of the type of beverage container for which the approval was given, and

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| | <ul style="list-style-type: none"> (ii) the minimum percentage of beverage containers of the type of beverage container for which the approval was given that are to be recycled or refilled; and (b) at any time after imposing terms and conditions on an approval, amend or revoke such terms and conditions. |
| Revocation of approval | <p>(5) Where a distributor or, where applicable, the agent of the distributor, has failed to comply with</p> <ul style="list-style-type: none"> (a) a term or condition imposed under subsection (4) on an approval issued to the distributor in respect of a type of beverage container; or (b) an approved plan pertaining to an approval issued to the distributor in respect of a type of beverage container, <p>the Minister may, in accordance with the regulations, revoke the approval.</p> |
| Plan amendment | <p>7. (1) A distributor may apply to amend the plan submitted under subsection 4(2) by submitting the amendments in writing to the Minister.</p> |
| <i>Idem</i> | <p>(2) After reviewing an application to amend a plan, the Minister may, in writing, approve the amendments to the plan, and the amendments shall form part of the approved plan as of the date the amendments are approved by the Minister.</p> |
| Notice to distributor of approval | <p>(3) The Minister shall cause a written notice of an approval of any amendment made under subsection (2), together with a copy of the approval, to be given to the distributor who applied for the approval.</p> |
| Refusal | <p>(4) After reviewing an application to amend a plan made under subsection (1), the Minister may, where the Minister considers it appropriate to do so, refuse to amend the plan.</p> |
| <i>Idem</i> | <p>(5) Where the Minister refuses to amend a plan, the Minister shall provide a notice, in writing, of the refusal and the reasons therefor to the distributor who applied for the amendment.</p> |
| Annual reports | <p>8. (1) Within six months after the end of the 2008 calendar year, and within six months after the end of every subsequent calendar year, the Minister shall prepare a report for that calendar year reviewing</p> <ul style="list-style-type: none"> (a) the distributors' compliance with their approved plans; and (b) the refilling and recycling of beverage containers in the province. |
| Report to the Legislative Assembly | <p>(2) The Minister shall</p> <ul style="list-style-type: none"> (a) lay the report before the Legislative Assembly within 15 days of the completion of the report; or (b) where the Legislative Assembly is not in session, lay the report before the Legislative Assembly within 15 days of the commencement of the next sitting of the Legislative Assembly. |

REGISTRATION OF DISTRIBUTORS

9. (1) No person shall sell, by wholesale or other means, a beverage in a beverage container to a retailer in the province unless the person is registered as a distributor under this Act. Sales to retailers
- (2) A person may apply to the Minister in writing on a form approved by the Minister for registration as a distributor under this Act. Registration, application
- (3) The Minister may, in accordance with the regulations, register a distributor who applies for registration. Registration
- (4) The Minister may, at the time of registering a distributor or at any subsequent time, impose any term or condition on the registration of the distributor that the Minister considers appropriate, including a condition that requires the distributor to deliver a security to the Minister in an amount and form, and subject to the terms, prescribed by regulations. Terms and conditions
- (5) The Minister may, at any time, Amendment or revocation of term or condition
- (a) amend, substitute or revoke any term or condition imposed on the registration of a distributor under subsection (4); or
- (b) impose additional terms or conditions on that registration, including a condition described in subsection (4) respecting a security.
- (6) The Minister may revoke or suspend the registration of a distributor issued under this section where the distributor contravenes or fails to comply with any of the provisions of this Act and the regulations or any term or condition imposed on the registration of the distributor. Revocation or suspension of registration
- (7) A distributor registered under this section shall provide the Minister with records and reports as required by the Minister on a form approved by the Minister. Records and reports
- (8) Where a security delivered under this section is forfeited, as determined by the regulations, the Minister, after deducting the Minister's cost of administering the security, may distribute in accordance with the regulations any money recovered from the forfeited security. Forfeiture of security
- (9) Where the Minister distributes, in accordance with the regulations, the money recovered from a forfeited security to the persons entitled thereto, the Minister is discharged of all responsibilities under this Act in respect of the distribution of the money. Distribution of money from forfeited security
- (10) The money recovered from a forfeited security is not subject to the provisions of the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9. *Financial Administration Act, application*

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| Report of registered distributors | (11) The Minister shall provide the Provincial Treasurer with <ul style="list-style-type: none"> (a) a notice of the registration, or the revocation or suspension of the registration, of a distributor under this section; and (b) a copy of any records and reports provided to the Minister under subsection (7). |
| Posting information on Department's website | (12) The Minister shall cause such details, as the Minister considers appropriate, of the registration, or the revocation or suspension of the registration, of a distributor under this section to be posted on the Department's website. |

DEPOSITS

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| Payment of deposit | 10. (1) Every person who purchases from a retailer or a distributor a beverage in a recyclable or refillable beverage container shall pay to the retailer or distributor, as the case may be, the deposit for the beverage container required under section 11. |
| Collection of deposit | (2) Every registered distributor shall collect the deposits payable on the recyclable and refillable beverage containers sold by the registered distributor. |
| Agent of Provincial Treasurer | (3) Every registered distributor shall, under subsection (2), collect deposits on recyclable beverage containers as an agent, and on behalf, of the Provincial Treasurer. |
| Remitting deposits to Provincial Treasurer | (4) Every registered distributor shall, in accordance with the regulations, remit to the Provincial Treasurer the deposits that are payable for the recyclable beverage containers sold by the registered distributor. |
| Returns | (5) Every registered distributor shall make such returns to the Provincial Treasurer, and shall keep such records in such form and containing such information, as may be prescribed by the regulations. |
| Deposit payable on donations by distributors | (6) Where a registered distributor gives away a beverage in a recyclable beverage container to any person, the registered distributor shall, in accordance with the regulations, pay to the Provincial Treasurer the deposit that would have been payable by the consumer under this section for the recyclable beverage container as if the person had purchased the beverage in the recyclable beverage container from the registered distributor or a retailer. |
| Payment to the Operating Fund | (7) The deposits remitted or paid to the Provincial Treasurer under subsections (4) and (6) are the property of the Government and shall be paid into the Operating Fund. |

(8) Where a registered distributor has paid to the Provincial Treasurer an amount as a deposit on a recyclable beverage container that

- (a) is not payable as such a deposit; or
- (b) is in excess of the amount payable as such a deposit,

the Provincial Treasurer shall, in accordance with the regulations, repay to the registered distributor, without interest, the amount wrongly paid or the amount of the excess, as the case may be.

Refunds

(9) Any deposit that is to be remitted or paid to the Provincial Treasurer under subsections (4) and (6) shall bear interest at the prescribed rate, not exceeding two per cent per month, from the day on which that deposit should have been remitted or paid to the Provincial Treasurer.

Interest on overdue deposits payable

(10) For the purposes of subsections (4) and (6), “deposit” includes all interest that is added to a deposit pursuant to subsection (9).

Deposit includes interest

11. (1) The amount of the deposit payable under section 10 for

- (a) a beverage container filled with liquor is,
 - (i) if the beverage container has a capacity of 500 millilitres or less, the amount that, when added to any applicable federal sales tax on the deposit, equals ten cents, and
 - (ii) if the beverage container has a capacity of more than 500 millilitres, the amount that, when added to any applicable federal sales tax on the deposit, equals twenty cents; and
- (b) a beverage container filled with a beverage, other than liquor, is the amount that, when added to any applicable federal sales tax on the deposit, equals ten cents.

Amount of deposit

(2) Notwithstanding subsection (1), during the period between May 3, 2008 and July 31, 2008, the amount of the deposit payable under section 10 for a refillable beverage container filled with a soft drink is

- (a) 20 cents, if the refillable beverage container has a capacity of 500 millilitres or less; and
- (b) 40 cents, if the refillable beverage container has a capacity of more than 500 millilitres.

Refillable beverage containers for soft drinks

(3) Notwithstanding subsection (1), the amount of the deposit payable under section 10 for a refillable beverage container filled with beer is \$1.20 for each dozen containers.

Refillable beverage containers for beer

REQUIRED MARKINGS AND INFORMATION

12. (1) No distributor shall sell a beverage in a beverage container that does not

- (a) have markings that identify the distributor of the beverage container or the person who filled the beverage container; and

Markings and information required on beverage container

(b) have stamped or printed on the beverage container such other information as may be prescribed by the regulations.

Idem

(2) No retailer shall sell a beverage in a beverage container that does not

(a) have markings that identify the distributor of the beverage container or the person who filled the beverage container; and

(b) have stamped or printed on the beverage container such other information as may be prescribed by the regulations.

LICENSES TO OPERATE BEVERAGE CONTAINER DEPOTS

Operation of a beverage container depot

13. (1) No person shall operate a beverage container depot unless the person is operating it under the authority of a license.

Applications respecting licenses

(2) A person who wishes to apply for a license, or for an amendment to a license, shall, in accordance with the regulations, apply to the Minister for the license or amendment and pay such fee, if any, as is prescribed.

Licenses- issuance, amendment and terms and conditions

(3) The Minister may, in accordance with the regulations,
 (a) issue or amend a license on receipt of, and after reviewing, an application made in accordance with subsection (2); and
 (b) at any time, impose any terms or conditions that the Minister considers appropriate on a license.

Amending, substituting or repealing terms and conditions

(4) The Minister may, in accordance with the regulations at any time amend, substitute or repeal the terms and conditions imposed on a license.

Compliance with terms and conditions

(5) Every person who holds a license shall comply with all terms and conditions imposed on that license.

Refusal

(6) After reviewing an application made in accordance with subsection (2), the Minister may, in accordance with the regulations, refuse to issue or amend a license.

Notice

(7) Where the Minister refuses to issue or amend a license, the Minister shall provide a notice, in writing, of the refusal and the reasons therefor to the applicant.

Term of license

(8) A license expires on December 31 of the year in which it is issued, unless sooner revoked under this Act and the regulations.

Location at which license holder may operate depot

(9) The Minister shall, on issuing a license under this section, specify on the license the address of the location in the province, as the Minister considers appropriate, at which the license holder is authorized under the license to operate a beverage container depot.

(10) A license shall authorize the holder thereof to operate a beverage container depot at only one location in the province.

One location per
license
Restriction

(11) No license holder shall operate a beverage container depot at a location other than the one specified on the license of the license holder.

(12) The Minister, when deciding whether or not to issue a license to authorize the operation of a beverage container depot at a specific location requested in an application, may take into consideration

Considerations

(a) the public interest in authorizing the operation of that beverage container depot at that location, having regard to

(i) the need for a beverage container depot to operate in the area of the province where that location is situated,

(ii) the proximity of that location to locations at which other beverage container depots are operating, and

(iii) the impact of the operation of the beverage container depot at that location on the beverage container depot system as a whole; and

(b) the length of time, if any, that the applicant has operated a beverage container depot at that location and the resulting economic impact on the applicant of a refusal to authorize the operation of the beverage container depot at that location.

(13) A license is not transferable.

Not transferable

(14) Every license holder shall, at all times, display the license or a copy of the license in a conspicuous place in the business office of the license holder at the location to which the license applies.

Display of license

(15) Every license holder shall provide the Minister with records and reports concerning the operation of the beverage container depot operated under the license, as required by the Minister and in the form approved by the Minister.

Records and reports

(16) Every license holder shall notify the Minister in writing of any change in the circumstances of the license holder that relates to any information the license holder set out in

Change in
information

(a) the application for the issuance of the license; and

(b) any subsequent application for the amendment of the license.

(17) The Minister may suspend or revoke a license if in the opinion of the Minister, the license holder, or an agent of the license holder, has violated or failed to comply with any provision of this Act or the regulations.

Suspension or
revocation

RETURN OF EMPTY BEVERAGE CONTAINERS

- Return of empty beverage containers **14.** (1) Subject to this section, a person may return an empty beverage container of a type approved under this Act to a beverage container depot for a refund.
- Acceptance of returned beverage containers (2) Subject to this section, an operator of a beverage container depot shall accept for a refund all empty beverage containers of a type approved under this Act that are delivered by a person to the beverage container depot.
- Exceptions (3) An operator of a beverage container depot is not required to accept for a refund, and a person may not return for a refund to a beverage container depot,
 - (a) an empty beverage container that is broken;
 - (b) an empty refillable beverage container that is not capable of being cleaned by normal washing;
 - (c) an empty beverage container of a type of beverage container that is not approved under section 6; or
 - (d) an empty beverage container that does not have markings
 - (i) that identify the distributor of the beverage container or the person who filled the beverage container, and
 - (ii) that are in a readable form or that are readable by a bar code scanner or reader.
- Restriction (4) No operator of a beverage container depot shall accept for a refund an empty beverage container if the operator knows, or ought to know, that the deposit for the beverage container has not been paid as required by this Act and the regulations.
- Restriction (5) No person shall return for a refund to a beverage container depot an empty beverage container if the person knows, or ought to know, that the deposit for the beverage container has not been paid as required by this Act and the regulations.
- Person under contract with Island Waste Management (6) No person who collects and processes recyclable materials in the province under a contract with Island Waste Management Corporation shall return, or cause or permit an employee or agent to return, an empty beverage container collected by the person under the contract to a beverage container depot for a refund.
- Idem (7) An operator of a beverage container depot shall not accept for a refund an empty beverage container from a person, or employee or agent of a person, who collects and processes recyclable materials in the province under a contract with Island Waste Management Corporation, if the operator knows, or ought to know, that the empty beverage container was collected by the person under the contract.

15. Every retailer shall prominently display at any place of business where the retailer sells a beverage in a beverage container, a notice, acceptable to the Minister, which

Notices required to be displayed by retailers

- (a) indicates that empty beverage containers of a type approved under this Act may be returned to any beverage container depot; and
- (b) advises of the location of the nearest beverage container depot.

16. Every operator of a beverage container depot shall display prominently at the location where the depot is operated a notice acceptable to the Minister advising the public of the daily period of time when empty beverage containers will be accepted.

Notice required to be displayed at beverage container depot

REFUNDS FOR AND COLLECTION OF EMPTY CONTAINERS

17. (1) An operator of a beverage container depot who, under section 14, accepts for a refund an empty beverage container shall immediately pay in cash to a person who delivers the beverage container to the beverage container depot the amount of the refund determined under this section.

Payment of refunds

(2) The amount of the refund payable under subsection (1)

Amount of refund

- (a) for an empty refillable beverage container that was, according to its markings, filled with liquor is
 - (i) 10 cents, if the beverage container has a capacity of 500 millilitres or less, and
 - (ii) 20 cents, if the beverage container has a capacity of more than 500 millilitres;
- (b) for an empty refillable beverage container that was, according to its markings, filled with a beverage other than liquor is 10 cents;
- (c) for an empty recyclable beverage container that was, according to its markings, filled with liquor is
 - (i) 5 cents, if the beverage container has a capacity of 500 millilitres or less, and
 - (ii) 10 cents, if the beverage container has a capacity of more than 500 millilitres; and
- (d) for an empty recyclable beverage container that was, according to its markings, filled with a beverage other than liquor is 5 cents.

(3) Notwithstanding subsection (2), during the period between May 3, 2008 and July 31, 2008, the amount of the refund payable under subsection (1) for an empty refillable beverage container that was, according to its markings, filled with a soft drink is

Refunds for soft drink containers

- (a) 15 cents, if the refillable beverage container has a capacity of 500 millilitres or less; and

(b) 30 cents, if the refillable beverage container has a capacity of more than 500 millilitres.

Refunds for beer containers

(4) Notwithstanding subsection (2), the amount of the refund payable under subsection (1) for an empty refillable beverage container that was, according to its markings, filled with beer is

(a) \$1.20 for each dozen beverage containers packed in a beer carton that has the flaps either removed or turned in; and

(b) 7 cents for each beverage container that is not packed in accordance with clause (a).

Collection of empty refillable beverage containers by distributor

18. (1) Subject to subsection (2), a registered distributor or, where applicable, an agent of the registered distributor shall, within a period of time prescribed by the regulations and following a request by a license holder, or an agent of a license holder, collect from the beverage container depot operated by the license holder any empty refillable beverage containers sold by that registered distributor.

Prescribed amount of empty refillable beverage containers

(2) A registered distributor or, where applicable, an agent of the registered distributor is not required to collect empty refillable beverage containers under subsection (1) unless the license holder, or an agent of the license holder, has possession of empty refillable beverage containers sold by that registered distributor in an amount in excess of the minimum amount prescribed by the regulations.

No duty to collect from person who does not hold a license

(3) For greater certainty, a registered distributor or, where applicable, an agent of the registered distributor is not required to collect empty refillable beverage containers from any person other than a license holder or an agent of a license holder.

Refund payable by distributor

(4) Within a period of time prescribed by the regulations, the registered distributor or, where applicable, an agent of the registered distributor shall pay to a license holder, for each empty refillable beverage container collected from the beverage container depot operated by the license holder, the refund payable under section 17 for that container by the operator of the beverage container depot.

Payment of more than amount required

(5) Nothing in subsection (4) prohibits a registered distributor or, where applicable, an agent of the registered distributor from paying a license holder more than the amount required to be paid under subsection (4) for each empty refillable beverage container collected from the license holder, or an agent of the license holder, by the registered distributor.

Beverage containers not required to be accepted or collected

(6) Notwithstanding anything else in this Act, a registered distributor or, where applicable, an agent of the registered distributor is not required to accept or collect

(a) an empty refillable beverage container that is broken;

- (b) an empty refillable beverage container that is not capable of being cleaned by normal washing;
- (c) an empty refillable beverage container of a type of beverage container that is not approved under section 6; or
- (d) an empty refillable beverage container that does not have markings
 - (i) that identify the distributor of the beverage container or the person who filled the beverage container, and
 - (ii) that are in a readable form or are readable by a bar code scanner or reader.

19. (1) The Minister may appoint any person with whom the Minister has entered into a contract under subsection (2) as the beverage container collector for the purposes of this Act and the regulations.

Beverage container collector

(2) The Minister may enter into a contract with any person to act as the beverage container collector under this Act and the regulations.

Contract for services

20. (1) Subject to subsection (2), the beverage container collector shall, within a period of time prescribed by the regulations and following a request by a license holder, or an agent of a license holder, collect the empty recyclable beverage containers from the license holder's beverage container depot.

Collection of empty recyclable beverage containers

(2) The beverage container collector is not required to collect empty recyclable beverage containers under subsection (1) unless the license holder, or the agent of the license holder, has possession of empty recyclable beverage containers in an amount in excess of the minimum amount prescribed by the regulations.

Prescribed amount of empty recyclable beverage containers

(3) For greater certainty, the beverage container collector is not required to collect empty recyclable beverage containers from any person other than a license holder or an agent of a license holder.

No duty to collect from person who does not hold a license

(4) Notwithstanding anything else in this Act, the beverage container collector is not required to accept or collect

Beverage containers not required to be accepted or collected

- (a) an empty recyclable beverage container that is broken;
- (b) an empty recyclable beverage container of a type of beverage container that is not approved under section 6; or
- (c) an empty recyclable beverage container that does not have markings
 - (i) that identify the distributor of the beverage container or the person who filled the beverage container, and
 - (ii) that are in a readable form or are readable by a bar code scanner or reader.

(5) After collecting empty recyclable beverage containers from a license holder, the beverage container collector shall

Collection report

- (a) complete a collection report in a form approved by the Minister that indicates
 - (i) the name of the license holder,
 - (ii) the number of empty recyclable beverage containers collected that were, according to their markings, filled with liquor, and that have a capacity of 500 millilitres or less,
 - (iii) the number of empty recyclable beverage containers collected that were, according to their markings, filled with liquor and that have a capacity of more than 500 millilitres, and
 - (iv) the number of empty recyclable beverage containers collected that were, according to their markings, filled with a beverage other than liquor;
- (b) provide a copy of the collection report to the license holder, or to the operator of the beverage container depot, for signature;
- (c) retain a copy of the signed collection report; and
- (d) submit a copy of the collection report, by electronic or other means, to the Minister on behalf of the license holder.

Refund and
handling fee
payable by Minister

- 21.** After receipt of a collection report submitted under subsection 20(5), the Minister shall pay to the license holder named in a collection report, for each empty recyclable beverage container that the collection report indicates was collected from the license holder's beverage container depot, an amount equal to the sum of
- (a) the refund payable under section 17 by the operator of the beverage container depot for the empty recyclable beverage container; and
 - (b) the handling fee prescribed by the regulations for the acceptance and storage by the license holder of the empty recyclable beverage container.

INSPECTION

Inspectors

- 22.** (1) The Minister may appoint an employee of the Department as an inspector for the purposes of this Act.

Entry and
inspection

- (2) An inspector may, without a warrant, during normal business hours or at any other reasonable time and upon presentation of identification provided by the Minister, for the purpose of administering this Act
- (a) enter any premises, place or vehicle used for the storing, cleaning, handling, sorting, transporting, crushing, selling, refilling or recycling of beverage containers;
 - (b) inspect any premises, place, vehicle or equipment used in the storing, cleaning, handling, sorting, transporting, crushing, selling, refilling or recycling of beverage containers; and

(c) inspect any books, accounts, reports or records kept at or in any premises, place or vehicle, relating to the storing, cleaning, handling, sorting, transporting, crushing, selling, refilling or recycling of beverage containers.

(3) The owner or person in charge of any premises, place or vehicle and every person found there shall give all reasonable assistance to an inspector to enable the inspector to carry out the inspector's duties under this Act and the regulations. Assistance

(4) The owner or person in charge of any premises, place or vehicle and every person found therein shall answer all questions put to him or her by an inspector relating to any of the matters concerning which authority to enter is given in this section and shall produce for inspection such records, documents and other things as are required by the inspector. Answer questions

(5) If, during the course of an inspection pursuant to subsection (2), it appears to the inspector conducting the inspection that there has been a contravention of this Act or the regulations, the inspector may seize and take away any of the books of account, records, other documents or other things and retain them until they are produced in any court proceeding and may make a copy thereof. Retention of records

(6) A copy of any book of account, record or document purporting to be signed and certified by an inspector is admissible in evidence in any prosecution or proceeding in any court as *prima facie* proof of the original book of account, record or document and its contents without proof of the signature, appointment or authority of the person purporting to have signed it. Admissibility etc. of copies of records

AUDITS OF REGISTERED DISTRIBUTORS AND ASSESSMENTS OF DEPOSITS

23. (1) The Provincial Treasurer may appoint employees of the Provincial Treasury as auditors for the purposes of this Act. Auditors

(2) In this section and section 24, "deposit" means a deposit that is required under this Act to be paid, collected and remitted for a recyclable beverage container. deposit, defined

(3) An auditor may, without a warrant, during normal business hours or at any other reasonable time and upon presentation of identification provided by the Provincial Treasurer, enter any premises, place or vehicle where a registered distributor carries on business, or where a registered distributor keeps records with respect to transactions that may give rise to deposits that are required to be collected, paid or remitted under this Act, Entry for audit, inspection

- (a) to audit, inspect or examine any account, record, paper, document, invoice, record keeping device, voucher, letter, electronic mail, goods or property or any other document or thing that is related or may relate in any way to such deposits that may be required to be collected, paid or remitted under this Act;
- (b) to determine whether such deposits have been or are being paid, collected or remitted by any registered distributor;
- (c) to determine the amount of such deposits that have been paid, collected or remitted, or that may be payable, by any registered distributor;
- (d) to ascertain the quantities of beverages in recyclable beverage containers on hand or sold by a registered distributor; or
- (e) to make such inquiries and examinations and to conduct such searches of the premises, place or vehicle as the auditor may consider necessary in relation to such deposits.

Audit, examine, etc. (4) The auditor may, on entering any premises, place or vehicle under subsection (3), require the owner or person in charge of the premises, place or vehicle or any other person on the premises or place or in the vehicle to give the auditor all reasonable assistance with the audit or examination and to answer all proper questions relating to the audit or examination either orally or, if the auditor so requests, on oath or by statutory declaration, and for that purpose to require the owner or manager to attend at the premises, place or vehicle with the auditor.

Answer questions (5) The registered distributor and each of his or her officers, employees and agents shall answer all questions put to him or her by an auditor relating to any of the matters concerning which authority to enter is given in this section and shall produce for inspection such records, documents and other things as are required by the auditor.

Records not maintained in the province (6) A registered distributor who does not keep or maintain in the province all books of account, records, record-keeping devices, papers or any other documents required for the purpose of audit, inspection, or examination, is liable for the expenses necessarily incurred by an auditor to examine the books of account, records and documents at the place where they are kept or maintained.

Retention of records (7) If, during the course of an audit or inspection pursuant to subsection (3), it appears to the auditor conducting the audit or inspection that there has been a contravention of this Act or the regulations, the auditor may seize and take away any of the books of account, records and other documents and retain them until they are produced in any court proceeding and may make a copy thereof.

Admissibility etc. of copies of records (8) A copy of any book of account, record or document purporting to be signed and certified by an auditor is admissible in evidence in any

prosecution or proceeding in any court as *prima facie* proof of the original book of account, records or document and its contents without proof of the signature, appointment or authority of the person purporting to have signed it.

24. (1) The Provincial Treasurer may, from time to time and at such intervals as the Provincial Treasurer may consider reasonable, assess any deposits required to be remitted or paid to the Provincial Treasurer under this Act by any registered distributor and thereupon the deposits so assessed become due and payable to the Provincial Treasurer by the registered distributor.

Assessment of deposits (payable) to pay on recyclable beverage containers

(2) Where a registered distributor fails

(a) to pay or remit deposits to the Provincial Treasurer as required by this Act and the regulations; or
 (b) to substantiate a payment to the Provincial Treasurer of any deposit by means of the records kept by the registered distributor, the Provincial Treasurer may estimate the amount of the unpaid deposits and such estimated amount shall thereupon be deemed to be the amount of the deposits due and payable by the registered distributor.

Estimate of unpaid deposits

(3) The Provincial Treasurer shall serve personally or send by registered mail to the registered distributor at the last known address of the registered distributor a notice of assessment setting out the amount assessed under subsection (1) or estimated under subsection (2), and in the case of a registered distributor having more than one address, one of which is within the province, the notice of assessment may be sent to the address in the province.

Notice of assessment

(4) The registered distributor's liability to an assessment under subsection (1) or an estimate under subsection (2) is not affected by an incorrect or incomplete assessment or estimate, or by the fact that no assessment or estimate has previously been made.

Liability to assessment

(5) Any assessment or estimate made under this section is, subject to being varied or vacated on objection under section 25 and subject to a further assessment or estimate made under this section, valid and binding notwithstanding any error, defect, or omission therein or any proceeding under this Act.

Objections

(6) An affidavit or statutory declaration by a person serving or mailing a notice pursuant to subsection (3) stating that the person has mailed or served the notice is proof that the amount stated in the notice is due and owing and the onus of proving otherwise rests on the registered distributor.

Affidavit of service

25. (1) Where a registered distributor considers that the registered distributor is not liable to pay or remit the amount of the deposits

Objection

assessed against the registered distributor under section 24, the registered distributor may, within 60 days of the date of the service or mailing of the notice of assessment, serve on the Provincial Treasurer an objection setting out the reasons for the objection and all relevant facts.

Reconsideration (2) The Provincial Treasurer shall, within 60 days of receipt of the notice of objection from a registered distributor, reconsider the assessment or estimate and vacate, confirm or vary it, and the Provincial Treasurer shall thereupon send, by registered mail, a notice to the registered distributor of the decision of the Provincial Treasurer.

STOP SALE ORDERS

Stop Sale Order **26.** (1) Subject to subsection (2), where the Minister determines that
 (a) a registered distributor or, where applicable, the agent of the distributor has failed to comply with subsection 18(1) or (4); or
 (b) a registered distributor has failed to comply with subsection 10(2), (4), (5) or (6),

the Minister may issue a stop sale order prohibiting, to the extent stated in the order, the registered distributor from selling in the province any beverage in any beverage container for a period of not more than 90 days.

Contravention of stop sale order (2) Where the Minister has issued a stop sale order to a registered distributor under subsection (1), the registered distributor or, where applicable, the agent of the registered distributor shall not, during the period specified in the stop sale order, contravene the stop sale order.

Stop sale orders – service **27.** (1) No person to whom a stop sale order under section 26 is directed is required to comply with the order until the order has been served on the person.

When stop sale order sufficiently served (2) Any stop sale order issued under section 26 is deemed to be sufficiently served

(a) upon a copy being personally served on the person to whom it is directed;

(b) upon a copy being sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt being received; or

(c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person.

Service of director or officer of corporation (3) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (2) is deemed to be service on the corporation for the purposes of this Act.

(4) Where it is impractical for any reason to serve a stop sale order in a manner referred to in subsection (2), an *ex parte* application may be made to a judge of the Supreme Court who may make an order for substituted service providing for such steps to be taken to bring the matter to the attention of the person to be served.

Order for substituted service

(5) Any stop sale order issued pursuant to this Act or the regulations shall be *prima facie* proof in proceedings in any court not only that the order was legally made, but also that every administrative prerequisite necessary to enable the making of the order was done and satisfied, and no further proof other than the mere production of the original order or a copy thereof certified by the Minister or his authorized representative, is necessary.

Evidence

GENERAL

28. No person shall knowingly give false or misleading information in any application, report, statement, form or return made or provided to the Minister or to the Provincial Treasurer under this Act or the regulations.

False or misleading information

29. (1) No person shall obstruct or attempt to obstruct an inspector or an auditor acting under this Act or the regulations.

Obstruction

(2) No person shall knowingly give false or misleading information, either orally or in writing, to an inspector or to an auditor acting under this Act or the regulations.

False or misleading information

30. The Minister, Provincial Treasurer, inspectors, auditors, and any other public officers or employees of the Government acting under the authority of this Act or the regulations are not personally liable for any loss or damage suffered by any person by reason of anything in good faith done or omitted to be done in the purported exercise of any powers or duties given by this Act or the regulations.

Liability of Minister, Provincial Treasurer and officers

31. (1) Except for the purposes of the administration and enforcement of this Act or where this Act indicates otherwise, all information, and all statements and documents, obtained under this Act or the regulations by the Minister, an inspector, the Provincial Treasurer or an auditor or any other person acting under the authority of this Act or the regulations are confidential.

Confidentiality of information

(2) Except for the purposes of the administration and enforcement of this Act or where this Act indicates otherwise, no person employed by the Government shall communicate or allow to be communicated to any person any information obtained under this Act or the regulations, or allow any person to inspect or have access to any written statement furnished under this Act.

Idem

Offences and
Penalties

32. (1) Every natural person who contravenes or violates any provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not less than \$200 and not more than \$1,000, or to imprisonment for 90 days, or to both.

Idem

(2) Notwithstanding subsection (1), every natural person who contravenes or violates subsection 12(2) or section 15 of this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$500 and not more than \$2,000, or to imprisonment for 90 days, or to both.

Idem

(3) Notwithstanding subsections (1) and (2), every natural person who contravenes or violates

- (a) subsection 4(1);
- (b) subsection 9(1);
- (c) subsection 10(2), (4), (5) or (6);
- (d) subsection 12(1);
- (e) subsection 18(1) or (4); or
- (f) subsection 26(2),

is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$10,000, or to imprisonment for 90 days, or to both.

Idem

(4) Every corporation that contravenes or violates any provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$2,000.

Idem

(5) Notwithstanding subsection (4), every corporation that contravenes or violates subsection 12(2) or section 15 of this Act is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000 and not more than \$4,000.

Idem

(6) Notwithstanding subsection (4), every corporation which contravenes or violates

- (a) subsection 4(1);
- (b) subsection 9(1);
- (c) subsection 10(2), (4), (5) or (6);
- (d) subsection 12(1);
- (e) subsection 18(1) or (4); or
- (f) subsection 26(2),

is guilty of an offence and is liable on summary conviction to a fine of not less than \$2,000 or more than \$20,000.

Personal liability of
corporate officers

(7) Every officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces in, or participates in, the commission of an offence by that corporation under subsection (4), (5) or (6) is guilty of the offence and is liable on summary conviction,

- (a) in respect of the commission of an offence by the corporation under subsection (4), to any penalty set out in subsection (1);
- (b) in respect of the commission of an offence by the corporation under subsection (5), to any penalty set out in subsection (2); and
- (c) in respect of the commission of an offence by the corporation under subsection (6), to any penalty set out in subsection (3).

(8) Subsection (7) applies whether or not the corporation has been prosecuted or convicted of the offence. *Idem*

(9) Where a contravention or violation of any provision of this Act or the regulations continues for more than one day, the offender is guilty of a separate offence for each day that the contravention or violation continues. *Continuing offence*

(10) Proceedings with respect to an offence under this Act or the regulations may be instituted at any time within two years after the time when the subject matter of the proceedings arose. *Limitation period*

(11) For the purposes of subsections (4), (5) and (6), Her Majesty in right of the province or in right of Canada is deemed to be a corporation. *Prosecution of Crown*

(12) In any prosecution for a violation or contravention of a provision of this Act or the regulations, any document purporting to be signed by the Minister or the Provincial Treasurer is admissible in evidence without proof of the signature, appointment or authority of the person purporting to have signed it, and is, in the absence of evidence to the contrary, proof of the matters stated in the document. *Evidence*

33. The Lieutenant Governor in Council may make regulations *Regulations*

- (a) excluding specific liquids or classes of liquids from the definition “beverage” in clause 1(1)(d);
- (b) excluding containers or classes of containers from the definition “beverage container” in clause 1(1)(e);
- (c) respecting the fees that are payable under this Act and the regulations;
- (d) respecting the approval and revocation of approval of types of beverage containers;
- (e) respecting the registration of distributors and the revocation and suspension of the registration of distributors;
- (f) respecting the security to be delivered by a distributor to the Minister as a term or condition of registration under section 9;
- (g) respecting the determination as to when the security provided by a distributor as a term or condition of registration is forfeited and the distribution of any money recovered on the forfeiture of the security;
- (h) respecting the

- (i) remittance by registered distributors under subsection 10(4) of the deposits that are payable on recyclable beverage containers sold by registered distributors, and
- (ii) the payment by registered distributors under subsection 10(6) of the deposits that are payable on recyclable beverage containers given away by registered distributors;
- (i) respecting the returns registered distributors are required to make, and the records and information registered distributors are required to keep, for the purposes of subsection 10(5);
- (j) respecting the refund under subsection 10(8) of amounts paid wrongly or in excess of the amounts due as deposits on recyclable beverage containers;
- (k) prescribing the rate of interest payable under subsection 10(9) on overdue deposits;
- (l) prescribing the information required to be stamped or printed on a beverage container for the purposes of subsection 12(1);
- (m) respecting applications for the issuance and amendment of licenses;
- (n) respecting the issuance and amendment of licenses, including regulations setting out requirements pertaining to
 - (i) the applicant, and
 - (ii) the location, lot size, building size and structure, parking areas, storage areas and public accessibility of the beverage container depot to be operated under the license;
- (o) respecting the grounds for, and procedure governing, the refusal to issue and amend licenses;
- (p) respecting the suspension or revocation of licenses;
- (q) respecting the terms and conditions that are imposed on licenses;
- (r) respecting the operation and maintenance of beverage container depots;
- (s) prescribing the time within which a registered distributor shall collect empty refillable beverage containers from a beverage container depot under subsection 18(1);
- (t) prescribing the amounts of empty refillable beverage containers for the purpose of subsection 18(2);
- (u) prescribing the period of time within which a registered distributor is required under subsection 18(4) to pay a refund to a license holder for the empty refillable beverage containers collected from the beverage container depot operated by the license holder;
- (v) respecting the powers and duties of the beverage container collector and inspectors and auditors;
- (w) prescribing the time within which the beverage container collector shall collect empty recyclable beverage containers from a beverage container depot under subsection 20(1);

- (x) prescribing the amounts of empty recyclable beverage containers for the purpose of subsection 20(2);
- (y) prescribing the handling fee payable under section 21 for the acceptance and storage by a license holder of an empty recyclable beverage container;
- (z) prescribing the period for which an assessment may be made under this Act;
- (aa) authorizing a designated officer or designated employee of the Provincial Treasury to exercise any powers or perform any duties of the Provincial Treasurer under this Act or the regulations;
- (bb) prohibiting the sale by registered distributors of beverages in beverage containers connected by plastic rings or other connecting devices that are not biodegradable or photodegradable;
- (cc) respecting forms and documents to be used for the purposes of this Act or the regulations;
- (dd) defining any word or expression used in this Act and not defined herein;
- (ee) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purposes of this Act.

TRANSITIONAL

34. Every person who,

- (a) immediately before the day this section comes into force, holds a license to operate a recycling plant under the *Environmental Protection Act* Waste Resource Management Regulations; and
- (b) for the fiscal year ending March 31, 2007, has submitted to the Department, in accordance with section 66 of the *Environmental Protection Act* Waste Resource Management Regulations and before the day this section comes into force, a written report that indicates that the recycling plant accepted beverage containers for a refund during that fiscal year,

Persons deemed to hold licenses

is deemed to hold a license issued under section 13 of this Act until December 31, 2008, unless the license is sooner revoked under this Act and the regulations.

REPEAL OF PROVISIONS OF THIS ACT

35. (1) Subsection 11(2) is repealed.

Repeal of transitional deposit for soft drink containers

(2) Subsection 17(3) is repealed.

Repeal of transitional refunds for soft drink containers

COMMENCEMENT

Commencement **36.** This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

CHAPTER 1

(Bill No. 14)

Beverage Containers Act

| <i>STAGE:</i> | <i>DATE:</i> |
|------------------------------|----------------|
| <i>1st Reading:</i> | April 15, 2008 |
| <i>2nd Reading:</i> | April 17, 2008 |
| <i>To Committee:</i> | April 17, 2008 |
| <i>Reported:</i> | April 17, 2008 |
| <i>3rd Reading and Pass:</i> | April 24, 2008 |
| <i>Assent:</i> | April 28, 2008 |

Honourable George T. Webster
Minister of Environment, Energy and Forestry

GOVERNMENT BILL