

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

723C0173

## HOUSE BILL NO. 1125

Introduced by: Representatives Lucas, Chicoine, Koehn, Kooistra, Lockner, McIntyre, Patterson, Waltman, and Weber and Senators Lawler, Everist, Hutmacher, Kloucek, Lange, and Reedy

1 FOR AN ACT ENTITLED, An Act to establish a beverage container deposit and refund  
2 program.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Beverage," wine as defined in § 35-1-1(25), alcoholic beverage as defined in § 35-1-  
6 1(1), malt beverage as defined in § 35-1-1(8), beer, nonalcoholic beer, mineral water,  
7 bottled water, soda water, and carbonated and noncarbonated soft drinks in liquid  
8 form and intended for human consumption;

9 (2) "Beverage container," any sealed glass, plastic, or metal bottle, can, jar, or carton  
10 containing a beverage;

11 (3) "Consumer," any person who purchases a beverage in a beverage container for use  
12 or consumption;

13 (4) "Dealer," any person who engages in the sale of beverages in beverage containers to  
14 a consumer;

15 (5) "Department," the Department of Environment and Natural Resources;

16 (6) "Distributor," any person who engages in the sale of beverages in beverage containers

1 to a dealer in this state, including any manufacturer who engages in such sales;

2 (7) "Manufacturer," any person who bottles, cans, or otherwise fills beverage containers  
3 for sale to distributors or dealers;

4 (8) "Nonrefillable beverage container," any beverage container not intended to be refilled  
5 for sale by a manufacturer;

6 (9) "Redemption center," any facility at which consumers may return empty beverage  
7 containers and receive payment for the refund value of the empty beverage containers;  
8 and

9 (10) "Secretary," the secretary of the Department of Environment and Natural Resources.

10 Section 2. A refund value of five cents shall be paid by the consumer on each beverage  
11 container sold in this state by a dealer for consumption off the premises. Upon return to a  
12 redemption center of the empty beverage container upon which a refund value has been paid and  
13 acceptance of the empty beverage container by the redemption center, the redemption center  
14 shall pay the amount of the refund value to the consumer who returned the container. A dealer  
15 is not required to accept an empty beverage container from a consumer or to pay the refund  
16 value. A violation of this section is a Class 2 misdemeanor.

17 Section 3. The beverage container recycling fund is hereby established in the state treasury.  
18 Any interest earned on money in the fund shall be deposited into the fund. Any money in the fund  
19 is continuously appropriated to the Department of Environment and Natural Resources for the  
20 payment to redemption centers of refund values and reimbursement as provided in section 5 of  
21 this Act and for the payment of other necessary expenses incurred in administering the provisions  
22 of this Act.

23 Section 4. Any distributor who sells or transfers beverages in beverage containers to a dealer  
24 for sale in this state to consumers shall pay a fee of six cents for each such container to the  
25 department. The fee shall be deposited in the beverage container recycling fund. Failure by the

1 distributor to pay the fee is a Class 1 misdemeanor.

2 Section 5. For each beverage container for which a redemption center has paid the refund  
3 value to a consumer pursuant to section 2 of this Act, the department shall pay to the redemption  
4 center the amount of the refund value and an additional reimbursement of one cent. Any payment  
5 to a redemption center pursuant to this section shall be from the beverage container recycling  
6 fund.

7 Section 6. To facilitate the return of empty beverage containers, any person may establish  
8 a redemption center at which consumers may return empty beverage containers and receive  
9 payment of the refund value of the beverage containers. A redemption center may enter into a  
10 contract or agreement with any other redemption center, distributor, manufacturer, or person for  
11 the purpose of collecting or paying the refund value on, or disposing of, beverage containers as  
12 provided in this Act.

13 Section 7. The redemption center shall attempt to recycle the empty beverage containers to  
14 the extent possible, before any other appropriate disposal method is considered or implemented.

15 Section 8. The department may inspect the premises and operations of any entity operating  
16 as a redemption center. The inspection may include sampling or testing to determine the  
17 characteristics of bulk quantities of beverage containers and to determine whether the redemption  
18 center is in substantial compliance with the requirements of this Act.

19 Section 9. Except as provided in section 12 of this Act, any redemption center may refuse  
20 to accept or refuse to pay the refund value on any empty beverage container that does not have  
21 stated on it a refund value as provided under section 2 of this Act.

22 Section 10. Each beverage container sold or offered for sale in this state by a dealer shall  
23 clearly indicate by embossing or by a stamp, label, or other method securely affixed to the  
24 container, the refund value of the container. A violation of this section is a Class 2 misdemeanor.

25 Section 11. No person, except a distributor, may import into this state a beverage container

1 that does not have securely affixed to the container the refund value indication. A violation of  
2 this section is a Class 2 misdemeanor. The provisions of this section do not apply if:

- 3 (1) For beverage containers containing distilled spirits as defined in § 35-1-1(6), the total  
4 capacity of the containers is not more than one quart or, in the case of distilled spirits  
5 personally obtained outside the United States, one gallon;
- 6 (2) For beverage containers containing malt beverage as defined in § 35-1-1(8), the total  
7 capacity of the containers is not more than two hundred eighty-eight fluid ounces; and
- 8 (3) For all other beverage containers, the total capacity of the containers is not more than  
9 five hundred seventy-six fluid ounces.

10 Section 12. The provisions of sections 10 and 11 of this Act do not apply to a refillable glass  
11 beverage container which has a brand name permanently marked on it and which has a refund  
12 value of not less than five cents, to any other refillable beverage container which has a refund  
13 value of not less than five cents and which is exempted by the secretary under rules promulgated  
14 by the department pursuant to chapter 1-26, or to a beverage container sold aboard a commercial  
15 airliner or passenger train for consumption on the premises.

16 Section 13. The department shall promulgate rules pursuant to chapter 1-26 specifying  
17 procedures for the payment of fees, refunds, and reimbursements authorized by this Act;  
18 standards and requirements related to refund value labels on beverage containers; standards for  
19 determining whether a container is reasonably intact; standards and requirements for estimating  
20 the number of beverage containers in bulk quantities; methods for testing or verifying the  
21 characteristics of bulk quantities of beverage containers; record-keeping requirements; standards  
22 and requirements for the establishment and operation of redemption centers; and other  
23 requirements governing the administration of the program established by this Act.

24 Section 14. Any person who commits any of the following acts is guilty of a Class 1  
25 misdemeanor:

1 (1) Collects or attempts to collect the refund value on the container a second time, with  
2 the knowledge that the refund value has once been paid to a redemption center or  
3 consumer;

4 (2) Manufactures, sells, possesses, or applies a false or counterfeit label or indication that  
5 shows or purports to show a refund value for a beverage container, with intent to use  
6 the false or counterfeit label or indication; or

7 (3) Collects or attempts to collect a refund value on a container with the use of a false or  
8 counterfeit label or indication showing a refund value, knowing the label or indication  
9 to be false or counterfeit.

10 As used in this section, a false or counterfeit label or indication is a label or indication  
11 purporting to show a valid refund value which has not been initially applied as authorized by a  
12 distributor. Subdivision (1) of this section does not apply to empty beverage containers that are  
13 intended to be refillable and are in a standard of condition except for sanitization to be refillable  
14 by the manufacturer.