

108TH CONGRESS  
1ST SESSION

# S. 1867

To amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14 (legislative day, NOVEMBER 12), 2003

Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. KERRY, Mr. LIEBERMAN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Beverage  
5 Producer Responsibility Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the beverage industry has an established  
9 and effective marketing infrastructure that provides

1 a wide range of beverage products at affordable  
2 prices to consumers in the United States;

3 (2) the absence of a beverage industry infra-  
4 structure for recovering used beverage containers  
5 has—

6 (A) placed undue burdens on local waste  
7 authorities and, in turn, taxpayers;

8 (B) failed to provide any incentive for the  
9 beverage industry to reduce waste by taking re-  
10 sponsibility for collecting, recycling, and reusing  
11 beverage containers; and

12 (C) resulted in tens of billions of  
13 unrecycled beverage containers per year, includ-  
14 ing 120,000,000,000 unrecycled beverage con-  
15 tainers in 2001;

16 (3) 11 States have enacted laws designed to  
17 protect the environment, conserve energy and mate-  
18 rial resources, and reduce waste by requiring—

19 (A) beverage consumers to pay a deposit  
20 on the purchase of beverage containers; and

21 (B) the beverage industry to pay a refund  
22 on used beverage containers that are returned  
23 for reuse and recycling;

24 (4) those laws, based on deposit systems origi-  
25 nally devised by the beverage industry to recover

1       used bottles, have been shown to be the most effective and sustainable means for achieving high rates  
2       of beverage container reuse and recycling, especially  
3       the increasing proportion of beverages consumed  
4       away from the home;

6           (5) increasing existing rates of reuse and recycling of beverage containers to 80 percent would—

8           (A) save the equivalent of approximately  
9           300,000,000 barrels of oil in the next decade,  
10          in addition to the quantity of oil that is already  
11          being saved through existing recycling efforts;

12          (B) reduce greenhouse gas emissions by  
13          more than 4,000,000 tons annually, in addition  
14          to the 4,000,000 tons of emissions already  
15          being avoided through current recycling efforts;

16          (C) save an additional energy equivalent of  
17          25,000,000 barrels of crude oil each year, which  
18          is enough to meet the total residential energy  
19          needs of 1,500,000 households in the United  
20          States for a year; and

21          (D) dramatically reduce, by as much as 84  
22          percent, road side litter of beverage containers  
23          in States that do not have in effect a law regulating the recycling of beverage containers;

1           (6) a beverage container reuse and recycling  
2           system designed by brand owners could—

3                   (A) be seamlessly integrated with the na-  
4           tional and regional marketing systems of the  
5           brand owners;

6                   (B) maximize recycling efficiency; and

7                   (C) minimize costs of compliance with a  
8           patchwork of State recycling programs; and

9           (7) a national system of beverage container  
10          reuse and recycling is consistent with the intent of  
11          the Solid Waste Disposal Act (42 U.S.C. 6901 et  
12          seq.) and the goals established by the Administrator  
13          of the Environmental Protection Agency, including  
14          the national goal of 35 percent source reduction and  
15          recycling by 2005.

16 **SEC. 3. BEVERAGE CONTAINER REUSE AND RECYCLING.**

17          (a) IN GENERAL.—The Solid Waste Disposal Act (42  
18          U.S.C. 6901 et seq.) is amended by adding at the end  
19          the following:

20           **“Subtitle K—Beverage Container**  
21                   **Reuse and Recycling**

22           **“SEC. 12001. DEFINITIONS.**

23                   “In this subtitle:

24                           “(1) BEVERAGE.—

1           “(A) IN GENERAL.—The term ‘beverage’  
2 means a nonalcoholic or alcoholic carbonated or  
3 noncarbonated liquid that is intended for  
4 human consumption.

5           “(B) EXCLUSIONS.—The term ‘beverage’  
6 does not include milk or any other dairy or  
7 dairy-derived product.

8           “(2) BEVERAGE CONTAINER.—The term ‘bev-  
9 erage container’ means a container that—

10           “(A) is constructed primarily of metal,  
11 glass, plastic, or paper (or a combination of  
12 those materials);

13           “(B) has a capacity of not more than 1  
14 gallon of liquid; and

15           “(C) on or after the date of enactment of  
16 this subtitle—

17           “(i) may contain or contains a bev-  
18 erage; and

19           “(ii) is offered for sale or sold in  
20 interstate commerce.

21           “(3) BRAND OWNER.—The term ‘brand owner’  
22 means a person that manufactures or imports for re-  
23 sale in interstate commerce a beverage sold in a bev-  
24 erage container.

1           “(4) MANAGEMENT PLAN.—The term ‘manage-  
2           ment plan’ means a management plan submitted  
3           under section 12004.

4           “(5) REDEMPTION RATE.—The term ‘redemp-  
5           tion rate’ means the percentage obtained by divid-  
6           ing—

7                   “(A) the number of beverage containers of  
8                   a brand owner returned for a refund under sec-  
9                   tion 12005(b)(2) in a calendar year; by

10                   “(B) the number of beverage containers of  
11                   the brand owner for which a deposit was col-  
12                   lected under section 12005(a)(1) in the cal-  
13                   endar year.

14           “(6) REFUND VALUE.—The term ‘refund value’  
15           means the refund value of a beverage container de-  
16           termined in accordance with section 12006.

17           “(7) RETURN SITE.—The term ‘return site’  
18           means an operation, facility, or retail store, or an  
19           association of operations, facilities, or retail stores,  
20           that—

21                   “(A) is identified in an approved manage-  
22                   ment plan; and

23                   “(B) is operating under contract entered  
24                   into by the return site and a brand owner to  
25                   collect and redeem empty beverage containers.

1 “(8) SELLER.—

2 “(A) IN GENERAL.—The term ‘seller’  
3 means a person that sells a beverage in a bev-  
4 erage container.

5 “(B) INCLUSIONS.—The term ‘seller’ in-  
6 cludes all members of the supply chain.

7 “(9) UNBROKEN BEVERAGE CONTAINER.—The  
8 term ‘unbroken beverage container’ includes a bev-  
9 erage container that has been opened in a manner  
10 in which the beverage container was designed to be  
11 opened.

12 **“SEC. 12002. RESPONSIBILITIES OF BRAND OWNERS.**

13 “(a) IN GENERAL.—Each brand owner shall imple-  
14 ment an effective redemption, transportation, processing,  
15 marketing, and reporting system for the reuse and recy-  
16 cling of used beverage containers of the brand owner.

17 “(b) PROHIBITION OF POST-REDEMPTION  
18 LANDFILLING OR INCINERATION.—No brand owner or  
19 beverage container agency shall dispose of any beverage  
20 container labeled in accordance with section 12003 in any  
21 landfill or other solid waste disposal facility.

22 **“SEC. 12003. BEVERAGE CONTAINER LABELING.**

23 “(a) IN GENERAL.—No brand owner may sell or offer  
24 for sale in interstate commerce a beverage in a beverage  
25 container unless a statement of the refund value of the

1 beverage container is clearly, prominently, and securely af-  
 2 fixed to, printed on, or embossed on the beverage con-  
 3 tainer.

4 “(b) SIZE AND LOCATION OF REFUND VALUE  
 5 STATEMENT.—The Administrator shall promulgate regu-  
 6 lations establishing uniform standards for the size and ap-  
 7 propriate location on beverage containers of the refund  
 8 value statement required under subsection (a).

9 **“SEC. 12004. MANAGEMENT PLANS.**

10 “(a) SUBMISSION OF PLANS.—Not later than 180  
 11 days after the date of enactment of this subtitle, each  
 12 brand owner shall submit to the Administrator—

13 “(1) a management plan, in such form as the  
 14 Administrator may prescribe, for the collection,  
 15 transport, reuse, and recycling of beverage con-  
 16 tainers that the brand owner sells into interstate  
 17 commerce; and

18 “(2) a fee, in such amount as the Administrator  
 19 may establish by regulation, to cover administrative  
 20 costs relating to administration of the management  
 21 plan.

22 “(b) CONTENTS OF PLAN.—A management plan sub-  
 23 mitted under this section shall—

24 “(1) include—



1           “(A) the name, and address for service of  
2           process, of the brand owner submitting the  
3           management plan;

4           “(B) the name and title of a contact per-  
5           son at the brand owner;

6           “(C) the name and corporate address of  
7           each brand owner covered by the management  
8           plan; and

9           “(D) the brand name of each beverage cov-  
10          ered by the management plan;

11          “(2) provide—

12               “(A) a proposed implementation date for  
13               the management plan; and

14               “(B) appropriate documentation of such  
15               agreements entered into by the beverage con-  
16               tainer agency and return site operators as will  
17               take effect as of the date of implementation of  
18               the management plan; and

19          “(3) include a description of—

20               “(A) the ways in which the beverage con-  
21               tainer agency intends to make the use of return  
22               sites convenient for consumers of beverages cov-  
23               ered by the management plan in all areas of  
24               interstate commerce;

1           “(B) the ways in which the beverage con-  
 2           tainer agency intends to achieve, not later than  
 3           2 years after the date of implementation of the  
 4           management plan, a recovery rate of at least 80  
 5           percent; and

6           “(C) the ways in which the beverage con-  
 7           tainer agency will manage beverage containers  
 8           returned under the management plan in an en-  
 9           vironmentally responsible manner.

10       “(c) CHANGES IN INFORMATION.—Each beverage  
 11       container agency that submits a management plan under  
 12       this section shall promptly notify the Administrator, in  
 13       writing, of any change in the information provided under  
 14       subsection (b)(1).

15       “(d) APPROVAL OF MANAGEMENT PLANS.—

16           “(1) IN GENERAL.—The Administrator shall  
 17           approve or disapprove each management plan sub-  
 18           mitted under this section.

19           “(2) DETERMINATION.—In determining wheth-  
 20           er to approve or disapprove a management plan, the  
 21           Administrator may return the management plan to  
 22           the beverage container agency—

23                   “(A) with a request for additional informa-  
 24                   tion; or

25                   “(B) for amendment.

1           “(3) DISAPPROVAL.—If the Administrator dis-  
 2           approves a management plan, the Administrator  
 3           shall, not later than 60 days after the date of dis-  
 4           approval, provide to the beverage container agency  
 5           that submitted the management plan a written ex-  
 6           planation of the reasons for disapproval.

7           “(e) IMPLEMENTATION OF MANAGEMENT PLANS.—

8           “(1) IN GENERAL.—A brand owner that, on or  
 9           before the date of enactment of this subtitle, is sell-  
 10          ing in interstate commerce a beverage in a beverage  
 11          container, shall—

12                 “(A) upon submission of the management  
 13                 plan, implement the management plan in ac-  
 14                 cordance with the implementation date pro-  
 15                 posed by the brand owner under subsection  
 16                 (b)(2)(A).

17                 “(B) upon approval of the management  
 18                 plan by the Administrator, implement the man-  
 19                 agement plan as approved under subsection (d).

20           “(2) NEW BRAND OWNERS.—A brand owner  
 21           that proposes, after the date of enactment of this  
 22           subtitle, to sell in interstate commerce a beverage in  
 23           a beverage container shall—

24                 “(A) have, as of the date on which the  
 25                 brand owner commences the selling of the bev-

1           erage, a management plan that has been ap-  
2           proved by the Administrator; and

3           “(B) implement the management plan in  
4           accordance with the implementation date pro-  
5           posed in the management plan under subsection  
6           (b)(2)(A).

7           “(3) PROHIBITION.—No brand owner shall sell  
8           in interstate commerce any beverage in a beverage  
9           container—

10           “(A) except as in accordance with para-  
11           graph (1) or (2), as appropriate; or

12           “(B) on or after the implementation date  
13           proposed in a management plan of the brand  
14           owner under subsection (b)(2)(A), if the Admin-  
15           istrator has not approved the management plan.

16           “(f) REPORT.—

17           “(1) IN GENERAL.—Each beverage container  
18           agency the management plan of which is approved  
19           and implemented under this section shall, not later  
20           than March 31 of each year after the implementa-  
21           tion date of the management plan, submit to the Ad-  
22           ministrator a report that describes the effectiveness  
23           of the management plan during the preceding cal-  
24           endar year.

1           “(2) INFORMATION.—The report shall in-  
2       clude—

3                   “(A) for each type of beverage container  
4       returned, the recovery rate—

5                           “(i) expressed as a percentage; and

6                           “(ii) audited by an entity independent  
7       of the brand owner; and

8                   “(B) annual financial statements, prepared  
9       by an entity independent of the beverage con-  
10      tainer agency, of all deposits received and re-  
11      funds paid by each brand owner subject to the  
12      management plan.

13           “(3) PUBLIC AVAILABILITY.—The Adminis-  
14      trator shall make available to the public the informa-  
15      tion described in paragraph (2).

16   **“SEC. 12005. DEPOSIT AND REFUND.**

17           “(a) DEPOSIT.—

18                   “(1) IN GENERAL.—On and after the imple-  
19      mentation date of any approved management plan to  
20      which a seller is subject, the seller shall collect from  
21      each purchaser of a beverage in a beverage con-  
22      tainer, at the time of sale, a deposit in an amount  
23      that is not more than the refund value of the bev-  
24      erage container.

1           “(2) DOCUMENTATION.—A deposit collected  
2           under paragraph (1) shall be indicated on the re-  
3           ceipt of the purchaser, if a receipt is given for the  
4           purchase.

5           “(3) EXCEPTION.—This subsection shall not  
6           apply to a case in which a beverage in a beverage  
7           container is sold for consumption, and is consumed,  
8           on the premises of the seller.

9           “(b) REFUND.—On and after the implementation  
10          date of an approved management plan, a beverage con-  
11          tainer return site covered by the management plan shall—

12           “(1) accept unbroken beverage containers for  
13          return; and

14           “(2) pay to a person returning beverage con-  
15          tainers an amount, in cash or in the form of a  
16          voucher redeemable for cash on demand, that is  
17          equal to the total of the refund values affixed to,  
18          printed on, or embossed on, each container returned  
19          by the person.

20          “(c) ACCEPTABLE BEVERAGE CONTAINERS.—A re-  
21          turn site shall not be required to accept or pay a refund  
22          for a beverage container under this section if, as deter-  
23          mined by the return site, the beverage container—

24           “(1) is contaminated or, for hygienic reasons, is  
25          unsuitable for recycling;

1           “(2) can be reasonably identified as a container  
2           that was purchased outside the United States; or

3           “(3) cannot be reasonably identified as a con-  
4           tainer to which this subtitle applies.

5   **“SEC. 12006. REFUND VALUE.**

6           “(a) IN GENERAL.—The refund value of a beverage  
7           container shall be the greater of—

8           “(1) 10 cents; or

9           “(2) an adjusted value determined under sub-  
10          section (b).

11          “(b) ADJUSTMENT.—The Administrator shall—

12           “(1) adjust the amount of the refund value of  
13           a beverage container under subsection (a) on the  
14           date that is 10 years after the date of enactment of  
15           this subtitle, and every 10 years thereafter, to reflect  
16           changes during those 10-year periods in the Con-  
17           sumer Price Index for all urban consumers published  
18           by the Department of Labor; and

19           “(2) round any adjustment under paragraph  
20           (1) to the nearest 5-cent increment.

21   **“SEC. 12007. REDEMPTION RATES.**

22           “(a) IN GENERAL.—Except as provided in sub-  
23           sections (b) and (c), in a case in which a brand owner  
24           complies with each provision of this subtitle, but fails to  
25           achieve a redemption rate of at least 80 percent for bev-

1 erage containers of the brand owner during a calendar  
 2 year, the Administrator may require that the brand owner  
 3 pay to each State an amount equal to the difference be-  
 4 tween—

5           “(1) the amount of deposits collected on bev-  
 6 erage containers of the brand owner that were sold  
 7 in the State; and

8           “(2) the amount of refunds paid on those bev-  
 9 erage containers.

10       “(b) REUSE RATE ADJUSTMENT.—The minimum re-  
 11 covery rate required to be achieved by a brand owner  
 12 under subsection (a) shall be reduced by 1 percentage  
 13 point for each percentage point increase in the use by the  
 14 brand owner of refillable beverage containers.

15 **“SEC. 12008. OTHER MANAGEMENT REQUIREMENTS.**

16       “(a) DISPUTES.—If a dispute arises under this sub-  
 17 title between, and cannot be resolved by, a brand owner  
 18 and a return site, the beverage container agency or the  
 19 return site shall refer the matter to binding arbitration.

20       “(b) CONFIDENTIALITY.—

21           “(1) IN GENERAL.—Except as provided in para-  
 22 graph (2), each person acting under the authority of  
 23 this subtitle shall keep confidential all facts, infor-  
 24 mation, and records obtained or provided under this  
 25 subtitle.



1           “(2) EXCEPTION.—Paragraph (1) shall not  
2       apply in a case in which public duty requires, or any  
3       regulation promulgated by the Administrator under  
4       this subtitle permits, the disclosure of any facts, in-  
5       formation, or records described in that paragraph.

6   **“SEC. 12009. REPORT BY ADMINISTRATOR.**

7       “Not later than October 31, 2005, and annually  
8       thereafter, the Administrator shall submit to Congress a  
9       report that describes—

10           “(1) the recovery rate for beverage containers  
11       during the year covered by the report; and

12           “(2) the extent to which beverage container col-  
13       lection is proceeding in accordance with this subtitle.

14   **“SEC. 12010. RETENTION OF STATE AUTHORITY.**

15       “Nothing in this subtitle prohibits any State or polit-  
16       ical subdivision from imposing any requirement that is not  
17       inconsistent with this subtitle.

18   **“SEC. 12011. PENALTIES.**

19       “Notwithstanding any other provision of this Act—

20           “(1) a person that violates any provision of this  
21       subtitle (other than section 12004(f)) shall be sub-  
22       ject to a civil penalty of not more than \$1,000 for  
23       each violation; and

1           “(2) a person that violates section 12004(f)  
 2           shall be subject to a civil penalty of not more than  
 3           \$10,000 for each violation.”.

4           (b) CONFORMING AMENDMENT.—The table of con-  
 5           tents for the Solid Waste Disposal Act (42 U.S.C. prec.  
 6           6901) is amended by adding at the end the following:

          “Subtitle K—Beverage Container Reuse and Recycling

          “Sec. 12001. Definitions.

          “Sec. 12002. Responsibilities of brand owners.

          “Sec. 12003. Beverage container labeling.

          “Sec. 12004. Management plans.

          “Sec. 12005. Deposit and refund.

          “Sec. 12006. Refund value.

          “Sec. 12007. Redemption rates.

          “Sec. 12008. Other management requirements.

          “Sec. 12009. Report by Administrator.

          “Sec. 12010. Retention of State authority.

          “Sec. 12011. Penalties.”.

○