

HB 1287-FN – AS INTRODUCED

2014 SESSION

14-2383  
08/10

HOUSE BILL

***1287-FN***

AN ACT

requiring a refundable deposit on beverage containers.

SPONSORS:

Rep. Weed, Ches 16; Rep. Phillips, Ches 5

COMMITTEE:

Environment and Agriculture

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ANALYSIS

This bill requires a refundable deposit on beverage containers.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fourteen*

AN ACT requiring a refundable deposit on beverage containers.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Returnable Beverage Containers. Amend RSA by inserting after chapter 149-O  
2 the following new chapter:

3 CHAPTER 149-P

4 RETURNABLE BEVERAGE CONTAINERS

5 149-P:1 Definitions. In this chapter:

6 I. "Beverage" means beer, ale, or other drink produced by fermenting malt, wine, wine  
7 coolers, soda, or non-carbonated water and all non-alcoholic drinks in liquid form and intended for  
8 internal human consumption, except for unflavored rice milk, unflavored soy milk, milk, and dairy  
9 derived products.

10 II. "Commingling agreement" means an agreement between 2 or more initiators of deposits  
11 allowing the beverage containers for which they have initiated deposits to be commingled by dealers  
12 and redemption centers, as described.

13 III. "Commissioner" means the commissioner of the department of environmental services.

14 IV. "Consumer" means an individual who purchases a beverage in a beverage container for  
15 use or consumption.

16 V. "Dealer" means a person who sells, offers to sell, or engages in the sale of beverage  
17 containers to a consumer, including an operator of a vending machine containing beverages in  
18 beverage containers.

19 VI. "Department" means the department of environmental services.

20 VII. "Distributor" means a person who engages in the sale of beverages in beverage  
21 containers to a dealer in this state and includes a manufacturer who engages in such sales.

22 VIII. "Initiator of deposit" or "initiator" means a manufacturer, distributor, or other person  
23 who initiates a deposit on a beverage container.

24 IX. "Local redemption center" means a place of business that deals in acceptance of empty  
25 returnable beverage containers from either consumers or dealers, or both.

26 X. "Manufacturer" means a person who bottles, cans, or otherwise places beverages in  
27 beverage containers.

28 XI. "Non-refillable" means a beverage container which, after being used by a consumer, is  
29 not to be reused as a beverage container by a manufacturer.

30 XII. "Operator of a vending machine" means an owner of a vending machine, the person who  
31 refills it, or the owner or lessee of the property on which it is located.

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1 XIII. "Person" means an individual, partnership, corporation or other legal entity.

2 XIV. "Premises" means the property of the dealer or his lessor on which the sale is made.

3 XV. "Refillable" means a beverage container which, after being used by a consumer is to be  
4 reused as a beverage container at least 5 times by a manufacturer.

5 XVI. "Unflavored soymilk" means any liquid containing no additional flavoring ingredients  
6 and intended for internal human consumption, the primary protein source of which is soy protein  
7 derived from whole soybeans, isolated soy protein, soy protein concentrate, soy flour, spray dried  
8 tofu, or spray dried soymilk.

9 XVII. "Rice milk" means and liquid intended for internal human consumption of which the  
10 primary protein source is rice protein derived from partially milled brown rice.

11 XVIII. "Reverse vending machine" means an automated device that uses a laser scanner and  
12 microprocessor to accurately recognize the universal product code on containers and to accumulate  
13 information regarding containers redeemed, enabling the reverse vending machine to accept  
14 containers from redeemers and to issue script for the containers refund value.

15 XIX. "Use or consumption" means the exercise of any right or power over a beverage incident  
16 to the ownership thereof, other than the sale storage or retention for the purpose of sale of a  
17 beverage.

18 XX. "Wine" for this purpose does not include wine coolers.

19 XXI. "Wine coolers" means a beverage of less than 8 percent alcohol content by volume  
20 consisting of wine and:

21 (a) Plain sparkling or carbonated water; and

22 (b) Any one or more of the following:

23 (1) Fruit juices.

24 (2) Fruit adjuncts.

25 (3) Artificial or natural flavorings.

26 (4) Preservatives.

27 (5) Colorings.

28 (6) Any other natural or artificial blending material.

29 149-P:2 Refund Value. To encourage container reuse and recycling, every beverage container  
30 sold or offered for sale to a consumer in this state shall have a deposit and refund value. The deposit  
31 value shall be \$0.05 per container. Handling fees per container shall be \$0.035, or \$0.03 for  
32 commingling.

33 149-P:3 Ownership of Deposits.

34 I. A dealer may refuse to accept beverage containers during no more than 3 hours in any one  
35 business day. If a dealer refuses to accept containers under this section, the hours during which  
36 containers will not be accepted shall be conspicuously posted.

37 II. A distributor may not refuse to accept from any dealer or local redemption center any

1 empty, unbroken, and reasonably clean beverage container or any beverage container that has been  
2 processed through an approved reverse vending machine that meets the requirements of rules  
3 adopted by the department pursuant to this chapter of the kind, sizes, and brand sold by the  
4 distributor or refuse to pay to the dealer or local redemption center the refund value of a beverage  
5 container as established.

6 III. In addition to the payment of the refund value, the initiator of the deposit shall  
7 reimburse the redemption center for the cost of handling beverage containers, in the amount of  
8 \$0.035 per returned container for containers picked up by the initiator. The initiator of the deposit  
9 may reimburse the dealer or local redemption center directly or indirectly through a party with  
10 which it has entered into a commingling agreement.

11 IV. In addition to the payment of the refund value, the initiator of the deposit shall  
12 reimburse the dealer or local redemption center for the cost of handling beverage containers, at least  
13 \$0.035 for containers picked up. The initiator of the deposit may reimburse the dealer or local  
14 redemption center directly or indirectly through a contracted agent or through a party with which it  
15 has entered into a commingling agreement

16 V. The reimbursement that the initiator of the deposit is obligated to pay the dealer or  
17 redemption center must be reduced by \$0.005 for any returned container that is subject to a qualified  
18 commingling agreement that allows the dealer or redemption center to commingle beverage  
19 containers of like product group, material, and size. A commingling agreement is qualified for  
20 purposes of this paragraph if the department determines that 50 percent or more of the beverage  
21 containers of like product group, material, or size for which the deposits are being initiated in the  
22 state are covered by the commingling agreement. Once the initiator of deposit has established a  
23 qualified commingling agreement for containers of a like product group, material and size, the  
24 department shall allow additional brands to be included from a different product group if they are of  
25 like material. The state, through the department of environmental services, shall make every  
26 reasonable effort to enter into a qualified commingling agreement under this section with every other  
27 initiator of deposits for beverage containers that are of like product group, size, and material as the  
28 beverage containers for which the state is the initiator of deposit.

29 149-P:4 Obligation to Pick Up Beverage Containers. The obligation to pick up beverage  
30 containers subject to this chapter shall be determined as follows:

31 I. A distributor that initiates the deposit has the obligation to pick up any empty, unbroken,  
32 and reasonably clean beverage containers of the particular kind, size, and brand sold by the  
33 distributor from dealers from whom that distributor has sold those beverages and from licensed  
34 redemption centers. The distributor shall pick up from dealers and redemption centers within 7  
35 business days, when the dealers and redemption centers have reached a quantity of 50 bags of cans  
36 and/or plastics, and 300 cases of glass.

37 II. An initiator of the deposit has the obligation to pick up any empty, unbroken, and

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1 reasonably clean beverage containers that are commingled pursuant to a commingling agreement  
2 along with any beverage containers that the initiator is otherwise obligated to pick up.

3 III. The obligation of the initiator of the deposit under this section may be fulfilled by the  
4 initiator directly or through a party with which it has entered into a commingling agreement.

5 149-P:5 Commingling of Like Products. For these purposes, like products shall be those that are  
6 made up of one of the following:

7 I. Beer, ale, or other beverage produced by fermenting malt, and wine coolers.

8 II. Soda.

9 III. Non-carbonated water.

10 IV. All other beverages.

11 149-P:6 Registration of Commingling Agreements. Not later than 48 hours following the  
12 execution or amendment of a commingling agreement, including an amendment that adds an  
13 additional party to an existing agreement, the parties shall file a copy of the commingling agreement  
14 or amendment with the department.

15 149-P:7 Unclaimed Deposits.

16 I. An initiator of a deposit shall maintain a separate account to be known as the deposit  
17 transaction fund. The initiator shall keep the fund separate from all other revenues and accounts.  
18 The initiator shall place in that fund the value of all non-refillable beverage containers.

19 II. The initiator's abandoned deposit amount at the end of each month shall be the amount  
20 equal to the amount of deposits that are or should be in the fund, less the sum of:

21 (a) Income earned on amount in the fund during that month; or

22 (b) The total amount of refund values received by the initiator for non-refillable beverage  
23 containers during that month and the 2 preceding months.

24 III. Income from the fund may be transferred from the fund for use as funds of the initiator.  
25 By the 20th day of each month, an initiator shall forward to the department of revenue  
26 administration the initiator's abandoned deposit amounts determined pursuant to paragraph II.  
27 These amounts may be paid from the deposit transaction fund. These amounts shall be treated by  
28 the department of revenue administration as a tax.

29 149-P:8 Rulemaking. The commissioner shall adopt rules under RSA 541-A relative to the  
30 administration and enforcement of this chapter.

31 2 Liquor Fees Unaffected. The fee collected under RSA 178:26, I and the fee collected under  
32 RSA 178:30, V shall not be affected by the provisions of this act.

33 3 Effective Date. This act shall take effect 60 days after its passage.

**HB 1287-FN - FISCAL NOTE**

AN ACT requiring a refundable deposit on beverage containers.

**FISCAL IMPACT:**

The Department of Environmental Services, New Hampshire State Liquor Commission, Department of Revenue Administration, and New Hampshire Municipal Association state this bill, **as introduced**, will increase state expenditures, and have an indeterminable fiscal impact on state and local revenues, and local expenditures in FY 2015 and each year thereafter. There is no impact on county revenue and expenditures.

**METHODOLOGY:**

The Department of Environmental Services states this bill requires the Department to administer a refundable deposit program on beverage containers. The Department assumes the effective date of this bill is July 1, 2014. The Department based revenue estimates on actual Maine revenues, as Maine has enacted similar legislation, and the populations of New Hampshire and Maine are comparable. The Department estimates state revenue from unclaimed deposits will total \$1,350,000 million in FY 2015, and each year thereafter. The Department states it will require four additional positions to establish, administer, and enforce the program: a full-time supervisor position at labor grade 26; a full-time waste management specialist position at labor grade 24; one half-time paralegal at labor grade 19; and one half-time administrative assistant at labor grade 16, increasing state expenditures as follows:

<b>Position Costs</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>
Salary (LG 26)	\$47,424	\$49,511	\$51,695	\$53,937
Salary (LG 24)	\$43,485	\$45,435	\$47,424	\$49,511
Salary (LG 19)	\$17,696	\$18,418	\$19,217	\$19,997
Salary (LG 16)	\$15,727	\$16,361	\$17,024	\$17,696
Benefits	\$55,327	\$58,489	\$61,832	\$65,359
Current Expense	\$2,850	\$2,850	\$2,850	\$2,850
DoIT Charges	\$11,817	\$10,773	\$10,988	\$11,208
Office Space	\$10,437	\$10,812	\$10,920	\$11,139
Equipment	\$4,500	\$0	\$0	\$0
Travel	\$1,688	\$1,688	\$1,688	\$1,688
Indirect Costs	\$12,576	\$13,175	\$13,803	\$14,455
<b>Total</b>	<b>\$223,527</b>	<b>\$227,512</b>	<b>\$237,441</b>	<b>\$247,840</b>

The Department of Environmental Services states that municipalities participating in recycling programs will experience a loss of revenue due to the reduction in recyclables sent to the municipal recycling centers. The Department does not have the data to estimate the current impact. The Department has no information to estimate the county impact, if any.

The New Hampshire State Liquor Commission states under this bill the Commission would incur costs for the transportation, storage, and personnel associated with picking up empty beverage containers from over 4,600 on and off-premise licensees, and 77 retail stores. Additionally, the Commission anticipates increased expenditures for deposit stickers, labor costs for placing stickers on existing inventory, and accounting processing costs. The Commission assumes the deposit on wine bottles cannot be passed to the consumer without an impact on wine sales, and therefore the Commission will absorb the full impact of the deposit, reducing wine revenue by \$1,419,226 (28,384,525 wine bottles sold in FY 2013 x \$0.05). By absorbing the deposit on wine bottles, the Commission states it should be able to maintain its level of wine sales. Also, the Commission assumes the deposit will reduce the price advantage over other states and may reduce gallons of beer sold by up to 40%. Based on FY 2013 sales, a loss of 40% beer sales would reduce beer tax revenues by up to \$5,075,526 (42,296,051 gallons sold in FY 2013 x 40% = 16,918,420 x \$.30 beer tax). However, the Commission cannot estimate the potential costs associated with these activities at this time. Finally, the Commission is uncertain whether vendor contracts for stickers and transportation could be completed within the 60-day timeframe given as the effective date of this bill.

The Department of Revenue Administration states it is not clear from this bill what the Department is required to do with the abandoned deposit amounts initiators pay the Department; therefore, the fiscal impact cannot be determined at this time.

The New Hampshire Municipal Association states it is unable to determine any direct impact on municipal revenues or expenditures. The Association states for those municipalities that are able to reduce the number of beverage containers disposed in municipal waste and recycling facilities they may experience a decrease in expenditures. However, for those municipalities that receive revenue from recycling beverage containers, they may experience a decrease in revenue. As a result, the Association is not able to determine the exact fiscal impact of this bill.

This bill does not contain an appropriation or establish positions.