

Enrolled
House Bill 2803

Sponsored by Representative HOYLE

CHAPTER

AN ACT

Relating to beverage containers; creating new provisions; and amending ORS 459A.717, 459A.735 and 459A.737.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 459A.735 is amended to read:

459A.735. (1) To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind of beverage containers that will be accepted at the redemption center, the names and addresses of the dealers to be served by the redemption center and proposals for up to two convenience zones described in [ORS 459A.737] **section 3 of this 2015 Act**. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The order of the commission approving a redemption center shall state: *[the dealers to be served by the redemption center and the kind of empty beverage containers that the redemption center must accept. The order may contain such other provisions to ensure the redemption center will provide a convenient service to the public as the commission may determine.]*

(a) The location of the convenience zones specified by the commission under section 3 (1) of this 2015 Act;

(b) The dealers within the convenience zones to be served by the redemption center;

(c) The dealers within the convenience zones not to be served by or not participating in the redemption center;

(d) The services to be provided by the redemption center and the equivalent services required to be provided under section 3 (5) of this 2015 Act by a dealer that does not participate in, and is not served by, the redemption center;

(e) The kind of empty beverage containers that the redemption center must accept; and

(f) Such other provisions to ensure the redemption center will provide a convenient service to the public as the commission may determine.

(4)(a) No later than five days after approving a redemption center under subsection (3) of this section, the commission shall provide written notice to each dealer that is identified

in the order approving the redemption center as a dealer within the convenience zones not to be served by or not participating in the redemption center.

(b) The notice required under this subsection shall include:

(A) All information required to be in the order approving the redemption center under subsection (3) of this section; and

(B) Notice of the provisions of section 3 of this 2015 Act that are applicable to the dealer receiving the notice.

[(4)] (5) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

SECTION 2. ORS 459A.737 is amended to read:

459A.737. (1)[(a)] Pursuant to the provisions of ORS 459A.735, the Oregon Liquor Control Commission:

[(A)] (a) Shall approve one beverage container redemption center in a city having a population of less than 300,000, operated by a distributor cooperative serving a majority of the dealers in this state; and

[(B)] (b) May approve one or more additional beverage container redemption centers.

[(b)] (2) Notwithstanding any other provision of ORS 459A.700 to 459A.740, a beverage container redemption center:

[(A)] (a) May not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day;

[(B)] (b) Must provide hand counting of up to 50 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705;

[(C)] (c) May provide drop off service for at least 125 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705, and may provide an accounting mechanism by which the person may redeem the refund value of the beverage containers at a later date; and

[(D)] (d) May provide other services as determined necessary by the person responsible for the operation of the beverage container redemption center.

[(2)(a)] *For each beverage container redemption center, the commission shall specify up to two convenience zones. The first convenience zone shall be the sector within a radius of not more than two miles around the beverage container redemption center. The second convenience zone shall be the sector beginning at the border of the first convenience zone and continuing to a radius of not more than three and one-half miles around the beverage container redemption center. The convenience zones shall be based to the greatest extent practicable upon the proposals submitted as part of the application for approval of the redemption center under ORS 459A.735.]*

[(b)] *All dealers doing business within the first convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of empty beverage containers.]*

[(c)] *All dealers doing business within the second convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.]*

[(d) All dealers doing business within either convenience zone that occupy a space of less than 5,000 square feet in a single area may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.]

[(e)(A) Any dealer doing business in either convenience zone that occupies a space of 5,000 or more square feet in a single area that does not participate in, and is not served by, the beverage container redemption center may not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day and must provide services equivalent to those provided by the redemption center under subsection (1)(b) of this section, including hand counting and drop off service.]

[(B) In addition to complying with the requirements specified in subparagraph (A) of this paragraph, a dealer described in subparagraph (A) of this paragraph must:]

[(i) Post in each area where beverage containers are received a clearly visible and legible sign that contains the list of services that must be provided by the dealer; and]

[(ii) Provide two automated reverse vending machines capable of processing metal, plastic and glass beverage containers, or one automated reverse vending machine capable of processing metal, plastic and glass beverage containers for each 500,000 beverage containers sold by the dealer in the previous calendar year, whichever is greater.]

[(C) The provisions of subparagraphs (A) and (B) of this paragraph do not apply to a dealer described in subparagraph (A) of this paragraph if the dealer sold fewer than 100,000 beverage containers in the previous calendar year.]

[(3) The provisions of subsection (2) of this section do not apply to any dealer for which the driving distance from the place of business of the dealer to the beverage container redemption center, calculated using the shortest route, is more than two times the radius specified for the second convenience zone or, if only one convenience zone is specified by the commission, two times the radius specified for that convenience zone.]

*[(4)] (3) The commission may adopt all rules necessary to implement and administer the provisions of this section **and section 3 of this 2015 Act.***

SECTION 3. (1) For each beverage container redemption center, the Oregon Liquor Control Commission shall specify up to two convenience zones. The first convenience zone shall be the sector within a radius of not more than two miles around the beverage container redemption center. The second convenience zone shall be the sector beginning at the border of the first convenience zone and continuing to a radius of not more than three and one-half miles around the beverage container redemption center. The convenience zones shall be based to the greatest extent practicable upon the proposals submitted as part of the application for approval of the redemption center under ORS 459A.735.

(2) All dealers doing business within the first convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of empty beverage containers.

(3) All dealers doing business within the second convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(4) All dealers doing business within either convenience zone that occupy a space of less than 5,000 square feet in a single area may, notwithstanding any other provision of ORS

459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(5)(a) Any dealer doing business in either convenience zone that occupies a space of 5,000 or more square feet in a single area that does not participate in, and is not served by, the beverage container redemption center may not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day and must, beginning on the date that the redemption center begins accepting beverage containers, provide services equivalent to those provided by the redemption center under ORS 459A.737 (2), including hand counting and drop off service.

(b) In addition to complying with the requirements specified in paragraph (a) of this subsection, a dealer described in paragraph (a) of this subsection must:

(A) Post in each area where beverage containers are received a clearly visible and legible sign that contains the list of services that must be provided by the dealer; and

(B) Provide two automated reverse vending machines capable of processing metal, plastic and glass beverage containers, or one automated reverse vending machine capable of processing metal, plastic and glass beverage containers for each 500,000 beverage containers sold by the dealer in the previous calendar year, whichever is greater.

(c)(A) The provisions of paragraphs (a) and (b) of this subsection do not apply to a dealer described in paragraph (a) of this subsection if the dealer sold fewer than 100,000 beverage containers in the previous calendar year. To be eligible for the exemption under this paragraph, a dealer described in paragraph (a) of this subsection must report to the commission the number of beverage containers sold by the dealer in the previous calendar year.

(B) The report required under this paragraph must be submitted by a dealer:

(i) Except as provided in subsection (6) of this section, no later than 60 days after issuance of the notice required under ORS 459A.735 (4); and

(ii) No later than January 1 of each calendar year following the year that the notice under ORS 459A.735 (4) was issued and for which the dealer intends to claim the exemption.

(d) The commission shall ensure compliance with this subsection by a dealer described in paragraph (a) of this subsection that is not subject to an exemption under paragraph (c) of this subsection.

(6) A dealer that plans to begin doing business in either convenience zone after the date that the beverage container redemption center associated with the convenience zone begins accepting beverage containers shall, not less than 60 days prior to the date that the dealer begins doing business:

(a) Provide notice to the commission explaining whether the dealer will or will not participate in, be served by and pay the cost of participation in the redemption center; and

(b) If the dealer will not participate in the redemption center and will claim an exemption under subsection (5)(c) of this section, provide documentation of compliance with the requirements for nonparticipating dealers under this section and an estimate of the number of beverage containers that the dealer expects to sell during the first calendar year that the dealer does business in the convenience zone.

(7) The provisions of subsections (2) to (6) of this section do not apply to any dealer for which the driving distance from the place of business of the dealer to the beverage container redemption center, calculated using the shortest route, is more than two times the radius specified for the second convenience zone or, if only one convenience zone is specified by the commission, two times the radius specified for that convenience zone.

(8) Not more than 60 days after issuance of notice from the commission under ORS 459A.735 (4), a dealer shall provide the commission with written documentation confirming compliance with each of the requirements of this section that are applicable to the dealer receiving notice.

SECTION 4. In addition to the authority granted under ORS 459.992, inspectors and investigators employed by the Oregon Liquor Control Commission have authority to inspect any space occupied by a dealer, as defined in ORS 459A.700, for compliance with section 3 of this 2015 Act.

SECTION 5. ORS 459A.717 is amended to read:

459A.717. (1) The Oregon Liquor Control Commission may impose a civil penalty of at least \$50, but not more than \$500, for a violation of any provision of ORS 459A.700 to 459A.740. Each day a violation occurs constitutes a separate violation. The authority to impose a civil penalty under this section is in addition to and not in lieu of the revocation and suspension authority under ORS 459.992 (4) and the criminal penalty authorized by ORS 459.992.

(2) **Notwithstanding subsection (1) of this section, if a dealer, as defined in ORS 459A.700, violates a provision of section 3 of this 2015 Act, the commission shall provide the dealer with written notice informing the dealer of the violation and stating that the dealer may avoid civil penalty for the violation by curing the violation within 60 days after issuance of the notice. If the dealer fails to cure the violation within 60 days after issuance of the notice, the commission shall impose a civil penalty of at least \$200 for the violation. Each day after the 60-day period that the dealer continues to violate a provision of section 3 of this 2015 Act is a separate offense subject to a separate civil penalty. The commission is not required to provide the dealer with an opportunity to cure a continuing violation before imposing a civil penalty for the continuing violation.**

[2] (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

[3] (4) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

SECTION 6. **Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter ____, Oregon Laws 2015 (Enrolled Senate Bill 5520), for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Liquor Control Commission, is increased by \$133,738 to fund the fulfillment of the commission's duties associated with redemption centers for beverage containers.**

Passed by House April 23, 2015

Repassed by House June 30, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 30, 2015

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State