Enrolled
Senate Bill 1520

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CHAPTER .....

AN ACT

Relating to Oregon's program for redemption of beverage container refund values; creating new provisions; amending ORS 459A.702, 459A.705, 459A.715, 459A.717 and 459A.718; and prescribing an effective date.

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

SECTION 1. Sections 2 and 3 of this 2022 Act are added to and made a part of ORS 459A.700 to 459A.744.

SECTION 2. (1) The requirements of subsections (2) and (3) of this section apply to a distributor if:

(a) The distributor does not participate in a distributor cooperative; and

(b) The distributor sold more than 500,000 beverages in beverage containers in this state in the previous calendar year.

(2) A distributor described in subsection (1) of this section shall establish a program to provide redemption services in the distributor's distribution area that are comparable to services provided by a distributor cooperative in this state. Redemption services may include, but need not be limited to:

(a) Operation of full-service redemption centers;

(b) Drop-off service for beverage containers;

(c) Retail pick-up service; and

(d) Any other services required by the Oregon Liquor and Cannabis Commission by rule.

(3)(a) A distributor described in subsection (1) of this section shall pay annually to the commission a fee in an amount equal to $3,000 multiplied by the number of full-service redemption centers operated in this state, regardless of the person that operates the full-service redemption center.

(b) If the distributor operates a full-service redemption center, the distributor may satisfy its obligation to pay the annual registration fee described in ORS 459A.737 by paying the fee described in paragraph (a) of this subsection.

(4) Fees collected by the commission under this section shall be deposited in the Bottle Bill Fund established under ORS 459A.744.

SECTION 3. (1) A distributor described in subsection (2) of this section that does not participate in a distributor cooperative shall pay to the Oregon Liquor and Cannabis Commission the fee described in subsection (2) of this section for each calendar year, or part thereof, that the distributor sells beverages in beverage containers in this state. A distribu-

tor shall pay the fee no later than January 1 of the year following the year for which the fee applies.

(2) The fee required under subsection (1) of this section is:

(a) $25,000, for a distributor that sells at least 15,000 but not more than 500,000 beverages in beverage containers in this state during the calendar year.

(b) $5,000, for a distributor that sells fewer than 15,000 beverages in beverage containers in this state during the calendar year.

(3) Notwithstanding subsections (1) and (2) of this section, a distributor is not required to pay the fee described in subsection (2) of this section if, before December 31 of the year for which the fee applies, the distributor becomes a participant in a distributor cooperative.

(4) A distributor cooperative shall pay to the commission a fee in an amount equal to $3,000 multiplied by the number of full-service redemption centers operated in this state by any person other than the distributor cooperative.

(5) Fees collected by the commission under this section shall be deposited in the Bottle Bill Fund established under ORS 459A.744.

SECTION 4. ORS 459A.717 is amended to read:

459A.717. (1) The Oregon Liquor and Cannabis 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.744. 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 (5) and the criminal penalty authorized by ORS 459.992.

(2) Notwithstanding subsection (1) of this section, if a dealer violates a provision of ORS 459A.738, or if a distributor or importer violates a provision of ORS 459A.718, the commission shall provide the dealer, distributor or importer with written notice informing the dealer, distributor or importer of the violation and stating that the dealer, distributor or importer may avoid civil penalty for the violation by curing the violation within 60 days after issuance of the notice. If the dealer, distributor or importer 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 ORS 459A.738, or that the distributor or importer continues to violate a provision of ORS 459A.718, is a separate offense subject to a separate civil penalty. The commission is not required to provide the dealer, distributor or importer with an opportunity to cure a continuing violation before imposing a civil penalty for the continuing violation.

(3)(a) Notwithstanding subsection (1) of this section, if a distributor violates the provisions of section 2 (2) of this 2022 Act, the commission shall provide the distributor with written notice informing the distributor of the violation and stating that the distributor may avoid civil penalty for the violation by curing the violation within 60 days after issuance of the notice. A distributor may cure the violation by becoming a participant in a distributor cooperative or by providing the services described in section 2 (2) of this 2022 Act. If the distributor fails to cure the violation, the commission shall impose a civil penalty in the amount described in paragraph (b) of this subsection for each day that the violation continues.

(b)(A) For each day after the 60-day period beginning with the issuance of the notice under paragraph (a) of this subsection, the commission shall impose a civil penalty of at least $200 per day.

(B) For each day after the 100-day period beginning with the issuance of the notice under paragraph (a) of this subsection, the commission shall impose a civil penalty of at least $400 per day.

(C) For each day after the 200-day period beginning with the issuance of the notice under paragraph (a) of this subsection, the commission shall impose a civil penalty of at least:

(i) $1,000 per day for a distributor that sold more than 500,000 but fewer than five million beverages in beverage containers in this state during the previous calendar year;

(ii) $1,500 per day for a distributor that sold at least five million but fewer than 10 million beverages in beverage containers in this state during the previous calendar year; or

(iii) $2,500 per day for a distributor that sold 10 million or more beverages in beverage containers in this state during the previous calendar year.

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

[*(4)*] **(5)** 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 5. ORS 459A.715 is amended to read:

459A.715. (1) A dealer may refuse to accept from any person, and a distributor or importer may refuse to accept from a dealer, any empty beverage container that does not state thereon a refund value as established by ORS 459A.705.

(2) A dealer may refuse to accept and to pay the refund value of:

(a) Empty beverage containers if the place of business of the dealer and the kind of empty beverage containers are included in an order of the Oregon Liquor and Cannabis Commission approving a full-service redemption center under ORS 459A.735.

(b) Any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(c)(A) More than 144 individual beverage containers returned by any one person during one day, if the dealer occupies a space of 5,000 or more square feet in a single area.

(B) More than 50 individual beverage containers returned by any one person during one day, if the dealer occupies a space of less than 5,000 square feet in a single area.

(d) Any beverage container that is damaged to the extent that the brand appearing on the container cannot be identified.

(3) The commission shall develop and provide to dealers notices that describe the reasons a dealer may refuse to accept and to pay the refund value for empty beverage containers under subsection (2) of this section. The notices may contain additional information as determined by the commission.

(4) A dealer must post in each area where beverage containers are received a notice provided to the dealer under subsection (3) of this section.

[*(3)(a) In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:*]

[_____]

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 144 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

[_____]

[*(b) In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:*]

[_____]

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 50 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

[_____]

SECTION 6. ORS 459A.718 is amended to read:

459A.718. (1) Two or more distributors or importers may establish a distributor cooperative for the purposes of:

(a) Collecting the refund value of beverage containers specified in ORS 459A.705 from distributors or importers and refunding to dealers the amount the dealers paid for the refund value of empty beverage containers;

(b) Paying the refund value specified in ORS 459A.705 for beverage containers sold in this state;

(c) Processing beverage containers sold in this state; and

(d) Maintaining a registry of all beverage containers sold and redeemed in this state.

(2) A distributor cooperative established under this section must service a majority of the dealers in this state.

(3) If a distributor cooperative is established, a dealer that uses the distributor cooperative to redeem and process beverage containers sold in this state is not required to return beverage containers to a distributor or importer that does not participate in the distributor cooperative, provided that the dealer or the distributor cooperative provides an accounting to the distributor or importer of the beverage containers by brand and kind that were distributed by the distributor or importer and subsequently redeemed by the dealer or distributor cooperative.

(4) Upon receipt of the accounting required by subsection (3) of this section, a distributor or importer that does not participate in the distributor cooperative must pay the refund value of the redeemed beverage containers specified in the accounting to the dealer or distributor cooperative that provided the accounting.

(5) A distributor or importer that does not participate in a distributor cooperative to redeem and process beverage containers shall register with the distributor cooperative as a nonparticipating distributor or importer and shall report, in a form and manner as required by the distributor cooperative, information necessary for the distributor cooperative to maintain the beverage container registry described in subsection (6) of this section.

(6) A distributor cooperative shall maintain a registry of all types of beverage containers sold and redeemed in this state for all registered entities that describes the beverage containers using the following information for each beverage container:

(a) The name of the beverage contained in the beverage container as identified through the use of letters, words or symbols on the product label affixed to the beverage container;

(b) The type of beverage contained in the beverage container using an appropriate categorization method for beverages as determined by the distributor cooperative;

(c) The size of the beverage container;

(d) Whether the beverage container is glass, metal or plastic; and

(e) If applicable, the universal product code or European article number on the product label affixed to the beverage container.

(7)(a) For purposes of this subsection, beverage container return data is the number of beverage containers returned for the refund value specified in ORS 459A.705 in Oregon during the calendar year and the number of beverage containers that carry a refund value specified in ORS 459A.705 sold in Oregon during the calendar year, calculated separately.

(b) By July 1 of each calendar year, a distributor cooperative shall provide the Oregon Liquor and Cannabis Commission with a report that lists, in aggregate form:

(A) For all distributors and importers that participate in the distributor cooperative, the previous calendar year's beverage container return data, calculated separately for glass, metal and plastic beverage containers; and

(B) The registry of all beverage containers sold and redeemed in this state during the previous calendar year.

(c) By July 1 of each calendar year, a distributor or importer that does not participate in a distributor cooperative shall provide the commission with a report that lists the distributor's or the importer's beverage container return data for the previous calendar year, calculated separately for glass, metal and plastic beverage containers.

(8)(a) By August 1 of each calendar year, using the beverage container return data provided in subsection (7)(b) of this section, the Oregon Liquor and Cannabis Commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(b) By August 1 of each calendar year, using the beverage container return data provided in subsection (7)(c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor or importer that does not participate in a distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(c) By August 1 of each calendar year, using the beverage container return data provided in subsection (7)(b) and (c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for all distributors and importers in Oregon. The commission shall carry out the calculation for all beverage containers, and separately for glass, metal and plastic beverage containers, and shall post the percentages on the commission's website.

(d) Except for the percentages described in paragraphs (a) to (c) of this subsection or in a proceeding under ORS 459A.717 for a violation of subsection (7) of this section, the commission may not disclose any information provided by a distributor, an importer or a distributor cooperative under subsection (7) of this section.

(9)(a) In order to determine compliance with the provisions of subsection (7) of this section, within six months of the date that the commission receives a report described in subsection (7)(b) and (c) of this section, the commission may review or audit the records of each reporting distributor cooperative, or each reporting distributor or importer that does not participate in a distributor cooperative.

(b)(A) If in the course of a review described in paragraph (a) of this subsection the commission determines that an audit of a distributor cooperative, distributor or importer is necessary, the commission shall require the distributor cooperative, distributor or importer to retain an independent financial audit firm to determine the accuracy of information contained in the report. The distributor cooperative, distributor or importer that is the subject of review shall pay the costs of the audit. The audit must be limited to the records described in paragraph (a) of this subsection.

(B) The commission shall adopt rules to carry out the provisions of this paragraph.

(10) No later than February 15 of each year, a distributor cooperative shall submit to the commission, and to the appropriate committees of the Legislative Assembly in the manner provided under ORS 192.245, a report that describes sites, options and access points added during the previous calendar year and expansion priorities for the current calendar year. The report must include a description of the distributor cooperative's efforts to expand and enhance alternative redemption access opportunities for individuals who redeem containers on a daily or near daily basis.

SECTION 7. (1) Sections 2 and 3 of this 2022 Act and the amendments to ORS 459A.715, 459A.717 and 459A.718 by sections 4 to 6 of this 2022 Act become operative on January 1, 2023.

(2) The Oregon Liquor and Cannabis Commission may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, powers and functions conferred on the commission by sections 2 and 3 of this 2022 Act and the amendments to ORS 459A.715, 459A.717 and 459A.718 by sections 4 to 6 of this 2022 Act.

SECTION 8. ORS 459A.702 is amended to read:

459A.702. ORS 459A.700 to 459A.744 apply to:

(1) Any individual, separate, sealed glass, metal or plastic bottle or can, except for a carton, foil pouch, drink box or metal container that requires a tool to be opened, that contains any one of the following beverages, intended for human consumption and in a quantity less than or equal to three liters:

(a) Water or flavored water;

(b) Beer or another malt beverage;

(c) Mineral water, soda water or a similar carbonated soft drink;

(d) Kombucha; or

(e) Hard seltzer.

(2) Wine in a can.

[*(2)*] **(3)** Any beverage other than those specified in [*subsection (1)*] **subsections (1) and (2)** of this section that is intended for human consumption and is in a quantity more than or equal to four fluid ounces and less than or equal to one and one-half liters, except distilled liquor, wine **in a container other than a can**, dairy or plant-based milks, infant formula and any other exemptions set forth in rule by the Oregon Liquor and Cannabis Commission.

SECTION 9. ORS 459A.705 is amended to read:

459A.705. (1) Except as provided in subsections (2) and (3) of this section, every beverage container sold or offered for sale in this state shall have a refund value of not less than five cents.

(2)(a) Every beverage container sold or offered for sale in this state shall have a refund value of not less than 10 cents, beginning on the later of:

(A) Eight months after the Oregon Liquor and Cannabis Commission determines that, in each of the two previous calendar years, the number of beverage containers returned for the refund value specified in this section was less than 80 percent of the total number of beverage containers that were sold in this state; or

(B) January 1 of the calendar year following the determination by the commission described in subparagraph (A) of this paragraph.

(b) In making a determination under this subsection, the commission may not include the beverages described in ORS 459A.702 [*(2)*] **(3)** before January 1, 2021.

(3) Every beverage container certified as provided in ORS 459A.725, sold or offered for sale in this state, shall have a refund value of not less than two cents.

SECTION 10. (1) The amendments to ORS 459A.702 and 459A.705 by sections 8 and 9 of this 2022 Act become operative on July 1, 2025.

(2) The Oregon Liquor and Cannabis Commission may adopt rules and take any action before the operative date specified in subsection (1) of this section that is necessary to enable the commission, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, powers and functions conferred on the commission by the amendments to ORS 459A.702 and 459A.705 by sections 8 and 9 of this 2022 Act.

SECTION 11. On and after the operative date specified in section 10 of this 2022 Act and until October 1, 2026:

(1) The refund value paid for a can that contains wine as described in ORS 459A.702 shall be not less than 10 cents, regardless of the refund value, or lack of a refund value, indicated on the beverage container.

(2) A can that contains wine may be sold or offered for sale in this state regardless of the refund value, or lack of a refund value, indicated on the beverage container, notwithstanding ORS 459A.720 (1).

SECTION 12. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 1 (1), chapter 640, Oregon Laws 2021, for the biennium ending June 30, 2023, 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 and Cannabis Commission, is increased by $101,426 for administration and coordination of bottle redemption activities pursuant to sections 2, 3 and 11 of this 2022 Act and the amendments to ORS 459A.702, 459A.705, 459A.715, 459A.717 and 459A.718 by sections 4, 5, 6, 8 and 9 of this 2022 Act.

SECTION 13. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate March 2, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 3, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

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Shemia Fagan, Secretary of State