

107TH CONGRESS  
2D SESSION

# S. 2220

To amend the Solid Waste Disposal Act to require implementation by brand owners of management plans that provide refund values for certain beverage containers.

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IN THE SENATE OF THE UNITED STATES

APRIL 22, 2002

Mr. JEFFORDS 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 require implementation by brand owners of management plans that provide refund values for certain beverage containers.

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 2002”.

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;

8 (B) failed to provide any incentive for the  
9 beverage industry to reduce waste; and

10 (C) resulted in tens of billions of  
11 unrecycled beverage containers per year, includ-  
12 ing 114,000,000,000 unrecycled beverage con-  
13 tainers in 1999;

14 (3) of particular concern—

15 (A) glass beverage containers are difficult  
16 and costly to recycle through municipal  
17 curbside programs because of breakage;

18 (B) valuable beverage container types are  
19 being replaced with low-value plastics and com-  
20 posite packaging; and

21 (C) removing glass or other valuable bev-  
22 erage container types from curbside programs  
23 has been found to reduce the public costs of  
24 those programs;

1           (4) an efficient, industry-operated system of  
2 beverage container collection, recycling, and reuse  
3 would—

4           (A) reduce the overall burden placed on  
5 taxpayers and municipal waste management  
6 systems; and

7           (B) shift the responsibility for that collec-  
8 tion, recycling, and reuse to beverage producers  
9 and consumers;

10          (5) deposit systems, originally devised by the  
11 beverage industry to recover used bottles, have been  
12 shown to be an effective and sustainable means for  
13 recovering used beverage containers, especially the  
14 increasing proportion of beverage containers the bev-  
15 erages contained by which are consumed away from  
16 the home;

17          (6) greater reuse and recycling of beverage con-  
18 tainers would—

19           (A) significantly improve the energy and  
20 emissions performance of the beverage industry  
21 of the United States; and

22           (B) in each year, conserve an amount of  
23 electrical energy equivalent to that required to  
24 serve millions of homes in the United States;

1           (7) 10 States have enacted and implemented  
2 laws designed to protect the environment, conserve  
3 energy and material resources, and reduce waste by  
4 requiring—

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

7           (B) the beverage industry to pay a refund  
8 on used beverage containers that are returned  
9 for reuse and recycling;

10          (8) those laws—

11           (A) enjoy strong public support; and

12           (B) have proven to be effective in achieving  
13 high rates of beverage container reuse and recycling;  
14

15          (9) a national standard for beverage container  
16 reuse and recycling would ensure that beverage consumers  
17 in all regions of the United States would  
18 enjoy access to beverage container reuse and recycling  
19 services;

20          (10) a beverage container reuse and recycling  
21 system designed by brand owners could—

22           (A) be seamlessly integrated with the national  
23 and regional marketing systems of the  
24 brand owners;

1 (B) maximize efficiency of the brand own-  
2 ers; and

3 (C) minimize unproductive costs of compli-  
4 ance with requirements of several different re-  
5 cycling programs;

6 (11) a national system of beverage container  
7 reuse and recycling is consistent with the intent of  
8 the Solid Waste Disposal Act (42 U.S.C. 6901 et  
9 seq.); and

10 (12) this Act is consistent with the goals estab-  
11 lished by the Administrator of the Environmental  
12 Protection Agency, including the national goal of 35  
13 percent source reduction and recycling by 2005.

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

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

18 **“Subtitle K—Beverage Container**  
19 **Reuse and Recycling**

20 **“SEC. 12001. DEFINITIONS.**

21 “In this subtitle:

22 “(1) BEVERAGE.—

23 “(A) IN GENERAL.—The term ‘beverage’  
24 means a nonalcoholic or alcoholic carbonated or

1 noncarbonated liquid that is intended for  
2 human consumption.

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

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

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

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

13 “(C) on or after the date of enactment of  
14 this subtitle—

15 “(i) may contain or contains a bev-  
16 erage; and

17 “(ii) is offered for sale or sold in  
18 interstate commerce.

19 “(3) BEVERAGE CONTAINER AGENCY.—The  
20 term ‘beverage container agency’ means, as deter-  
21 mined by a brand owner—

22 “(A) the brand owner; or

23 “(B) an entity appointed by the brand  
24 owner to act as an agent on behalf of the brand  
25 owner.

1           “(4) BRAND OWNER.—The term ‘brand owner’  
2 means a person that owns the trademark for, manu-  
3 factures, distributes, or imports for resale in inter-  
4 state commerce, a beverage sold in a beverage con-  
5 tainer.

6           “(5) MANAGEMENT PLAN.—The term ‘manage-  
7 ment plan’ means a management plan submitted  
8 under section 12004.

9           “(6) RECOVERY RATE.—The term ‘recovery  
10 rate’ means the percentage obtained by dividing—

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

14                   “(B) the number of beverage containers of  
15 the brand owner for which a deposit was col-  
16 lected under section 12005(a)(1) in the cal-  
17 endar year.

18           “(7) REFUND VALUE.—The term ‘refund value’  
19 means the refund value of a beverage container de-  
20 termined in accordance with section 12006.

21           “(8) RETURN SITE.—The term ‘return site’  
22 means an operation, facility, or retail store, or an  
23 association of operations, facilities, or retail stores,  
24 that—

1           “(A) is identified in an approved manage-  
2           ment plan; and

3           “(B) is operating under contract entered  
4           into by the return site and a beverage container  
5           agency to collect and redeem empty beverage  
6           containers of 1 or more brand owners.

7           “(9) SELLER.—

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

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

13          “(10) UNBROKEN BEVERAGE CONTAINER.—The  
14          term ‘unbroken beverage container’ includes a bev-  
15          erage container that has been opened in a manner  
16          in which the beverage container was designed to be  
17          opened.

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

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

23          “(b) PROHIBITION OF POST-REDEMPTION  
24          LANDFILLING OR INCINERATION.—No brand owner or  
25          beverage container agency shall dispose of any beverage

1 container labeled in accordance with section 12003 in any  
2 landfill or other solid waste disposal facility.

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

4 “(a) IN GENERAL.—No brand owner may sell or offer  
5 for sale in interstate commerce a beverage in a beverage  
6 container unless a statement of the refund value of the  
7 beverage container is clearly, prominently, and securely af-  
8 fixed to, printed on, or embossed on the beverage con-  
9 tainer.

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

15 **“SEC. 12004. MANAGEMENT PLANS.**

16 “(a) SUBMISSION OF PLANS.—Not later than 180  
17 days after the date of enactment of this subtitle, each bev-  
18 erage container agency shall submit to the  
19 Administrator—

20 “(1) a management plan, in such form as the  
21 Administrator may prescribe, for the collection,  
22 transport, reuse, and recycling of beverage con-  
23 tainers that the beverage container agency, or that  
24 each brand owner represented by the beverage con-  
25 tainer agency, sells into interstate commerce; and

1           “(2) a fee, in such amount as the Administrator  
2           may establish by regulation, to cover administrative  
3           costs relating to administration of the management  
4           plan.

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

7           “(1) include—

8                   “(A) the name, and address for service of  
9                   process, of the beverage container agency sub-  
10                  mitting the management plan;

11                  “(B) the name and title of a contact per-  
12                  son at the beverage container agency;

13                  “(C) the name and corporate address of  
14                  each brand owner covered by the management  
15                  plan; and

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

18           “(2) provide—

19                   “(A) a proposed implementation date for  
20                   the management plan; and

21                   “(B) appropriate documentation of such  
22                   agreements entered into by the beverage con-  
23                   tainer agency and return site operators as will  
24                   take effect as of the date of implementation of  
25                   the management plan; and

1 “(3) include a description of—

2 “(A) the ways in which the beverage con-  
3 tainer agency intends to make the use of return  
4 sites convenient for consumers of beverages cov-  
5 ered by the management plan in all areas of  
6 interstate commerce;

7 “(B) the ways in which the beverage con-  
8 tainer agency intends to achieve, not later than  
9 2 years after the date of implementation of the  
10 management plan, a recovery rate of at least 80  
11 percent; and

12 “(C) the ways in which the beverage con-  
13 tainer agency will manage beverage containers  
14 returned under the management plan in an en-  
15 vironmentally responsible manner.

16 “(c) CHANGES IN INFORMATION.—Each beverage  
17 container agency that submits a management plan under  
18 this section shall promptly notify the Administrator, in  
19 writing, of any change in the information provided under  
20 subsection (b)(1).

21 “(d) APPROVAL OF MANAGEMENT PLANS.—

22 “(1) IN GENERAL.—The Administrator shall  
23 approve or disapprove each management plan sub-  
24 mitted under this section.

1           “(2) DETERMINATION.—In determining wheth-  
2 er to approve or disapprove a management plan, the  
3 Administrator may return the management plan to  
4 the beverage container agency—

5                   “(A) with a request for additional informa-  
6 tion; or

7                   “(B) for amendment.

8           “(3) DISAPPROVAL.—If the Administrator dis-  
9 approves a management plan, the Administrator  
10 shall, not later than 60 days after the date of dis-  
11 approval, provide to the beverage container agency  
12 that submitted the management plan a written ex-  
13 planation of the reasons for disapproval.

14           “(e) IMPLEMENTATION OF MANAGEMENT PLANS.—

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

19                   “(A) not later than 180 days after the date  
20 of enactment of this subtitle, have in effect a  
21 management plan that has been approved by  
22 the Administrator; and

23                   “(B) implement the management plan in  
24 accordance with the implementation date pro-

1           posed in the management plan under subsection  
2           (b)(2)(A).

3           “(2) NEW BRAND OWNERS.—A brand owner  
4           that proposes, after the date of enactment of this  
5           subtitle, to sell in interstate commerce a beverage in  
6           a beverage container shall—

7                   “(A) have, as of the date on which the  
8                   brand owner commences the selling of the bev-  
9                   erage, a management plan that has been ap-  
10                  proved by the Administrator; and

11                  “(B) implement the management plan in  
12                  accordance with the implementation date pro-  
13                  posed in the management plan under subsection  
14                  (b)(2)(A).

15           “(3) PROHIBITION.—No brand owner shall sell  
16           in interstate commerce any beverage in a beverage  
17           container—

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

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

24           “(f) REPORT.—

1           “(1) IN GENERAL.—Each beverage container  
2 agency the management plan of which is approved  
3 and implemented under this section shall, not later  
4 than March 31 of each year after the implementa-  
5 tion date of the management plan, submit to the Ad-  
6 ministrator a report that describes the effectiveness  
7 of the management plan during the preceding cal-  
8 endar year.

9           “(2) INFORMATION.—The report shall  
10 include—

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

13                           “(i) expressed as a percentage; and

14                           “(ii) audited by an entity independent  
15 of the beverage container agency; and

16                   “(B) annual financial statements, prepared  
17 by an entity independent of the beverage con-  
18 tainer agency, of all deposits received and re-  
19 funds paid by each brand owner subject to the  
20 management plan.

21           “(3) PUBLIC AVAILABILITY.—The Adminis-  
22 trator may make available to the public the informa-  
23 tion described in paragraph (2).

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

25           “(a) DEPOSIT.—

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

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

12          “(3) EXCEPTION.—This subsection shall not  
13          apply to a case in which a beverage in a beverage  
14          container is sold for consumption, and is consumed,  
15          on the premises of the seller.

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

19               “(1) accept unbroken beverage containers for  
20               return; and

21               “(2) pay to a person returning beverage con-  
22               tainers an amount, in cash or in the form of a  
23               voucher redeemable for cash on demand, that is  
24               equal to the total of the refund values affixed to,

1 printed on, or embossed on, each container returned  
2 by the person.

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

7 “(1) is contaminated or, for hygienic reasons, is  
8 unsuitable for recycling;

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

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

13 **“SEC. 12006. REFUND VALUE.**

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

16 “(1) 10 cents; or

17 “(2) an adjusted value determined under sub-  
18 section (b).

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

20 “(1) adjust the amount of the refund value of  
21 a beverage container under subsection (a) on the  
22 date that is 10 years after the date of enactment of  
23 this subtitle, and every 10 years thereafter, to reflect  
24 changes during those 10-year periods in the Con-

1 consumer Price Index for all urban consumers published  
2 by the Department of Labor; and

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

5 **“SEC. 12007. RECOVERY RATES.**

6 “(a) IN GENERAL.—Except as provided in sub-  
7 sections (b) and (c), in a case in which a brand owner  
8 complies with each provision of this subtitle, but fails to  
9 achieve a recovery rate of at least 80 percent for beverage  
10 containers of the brand owner during a calendar year, the  
11 Administrator may require that the beverage container  
12 agency of the brand owner pay to each State an amount  
13 equal to the difference between—

14 “(1) the amount of deposits collected on bev-  
15 erage containers of the brand owner that were sold  
16 in the State; and

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

19 “(b) EXEMPTIONS FOR CERTAIN STATES.—A brand  
20 owner that achieves a recovery rate of at least 80 percent  
21 under a beverage container deposit program of a State  
22 within the 2-year period beginning on the date of enact-  
23 ment of this subtitle shall be exempt from the provisions  
24 of this subtitle with respect to that State.

1       “(c) REUSE RATE ADJUSTMENT.—The minimum re-  
2       covery rate required to be achieved by a brand owner  
3       under subsection (a) shall be reduced by 1 percentage  
4       point for each percentage point increase in the use by the  
5       brand owner of refillable beverage containers.

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

7       “(a) DISPUTES.—If a dispute arises under this sub-  
8       title between, and cannot be resolved by, a beverage con-  
9       tainer agency and a return site, the beverage container  
10      agency or the return site shall refer the matter to binding  
11      arbitration.

12      “(b) CONFIDENTIALITY.—

13           “(1) IN GENERAL.—Except as provided in para-  
14      graph (2), each person acting under the authority of  
15      this subtitle shall keep confidential all facts, infor-  
16      mation, and records obtained or provided under this  
17      subtitle.

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

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

2 “Not later than May 31, 2003, and annually there-  
3 after, the Administrator shall submit to Congress a report  
4 that describes—

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

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

9 **“SEC. 12010. PENALTIES.**

10 “Notwithstanding any other provision of this Act—

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

15 “(2) a person that violates section 12004(f)  
16 shall be subject to a civil penalty of not more than  
17 \$10,000 for each violation.”.

18 (b) CONFORMING AMENDMENT.—The table of con-  
19 tents for the Solid Waste Disposal Act (42 U.S.C. prec.  
20 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. Recovery rates.

“Sec. 12008. Other management requirements.

“Sec. 12009. Report by Administrator.  
“Sec. 12010. Penalties.”.

