

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: H3/25/19 H4/2/19  
**A Bill**

HOUSE BILL 1771

By: Representatives V. Flowers, Clowney, D. Douglas, Glover, Murdock, Richardson, Scott, D. Whitaker  
By: *Senator G. Leding*

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH THE ARKANSAS LITTER REDUCTION AND DEPOSIT BEVERAGE CONTAINER RECYCLING ACT; TO REQUIRE THE LABELING OF DEPOSIT BEVERAGE CONTAINERS SOLD IN ARKANSAS; TO ESTABLISH THE DEPOSIT BEVERAGE CONTAINER RECYCLING PROGRAM; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH THE ARKANSAS LITTER REDUCTION AND DEPOSIT BEVERAGE CONTAINER RECYCLING ACT; TO REQUIRE THE LABELING OF DEPOSIT BEVERAGE CONTAINERS SOLD IN ARKANSAS; TO ESTABLISH THE DEPOSIT BEVERAGE CONTAINER RECYCLING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. DO NOT CODIFY. Legislative findings and intent.*

*(a) The General Assembly finds that:*

*(1) The average Arkansan consumes beverages from seven hundred thirty-nine (739) beverage containers per year;*

*(2) In 2015, Arkansas consumers threw away an estimated one billion four hundred million (1,400,000,000) beverage containers;*

*(3) A study conducted in Michigan found documentation of a reduction in litter following the implementation of a deposit beverage container program;*

*(4) According to the study, beverage container deposits were*



tied to both a reduction in costs for litter cleanup and a reduction in injuries to children caused by glass container litter;

(5) Studies also show a correlation between beverage container deposits and reduced damages to farm operations by a reduction in livestock injuries and in tractor tire damage caused by litter;

(6) Following implementation of a deposit beverage container program, Michigan is estimated to have saved four million six hundred thousand dollars (\$4,600,000) from injury prevention and reduced farm damage;

(7) Deposit beverage container programs play a critical role in diverting waste from roadways, streams, and landfills;

(8) Deposit beverage container programs increase recycling and reduce litter;

(9) Arkansas communities are currently expending money to dispose of valuable materials in landfills, which a deposit beverage container program could instead use to create an industry and positively impact the economy;

(10) Landfills are a finite resource that take up valuable land;

(11) In Arkansas, some landfills take up over two hundred fifty (250) acres of land;

(12) Litter and illegal dumping create problems throughout Arkansas's rural areas and farm land;

(13) Arkansas spends an estimated five million dollars (\$5,000,000) each year to collect and remove litter from highways;

(14) A deposit beverage container program would keep a projected fifty-eight thousand (58,000) tons of materials out of Arkansas's landfills each year, which would save both landfill space and valuable land used for landfills;

(15) An estimated increase of eight hundred million (800,000,000) beverage containers would be recycled with a deposit beverage container program, which would require a more robust recycling infrastructure in Arkansas and result in an increase in jobs;

(16) Recycling is largely inaccessible to rural Arkansans; and

(17) A deposit beverage container program in Arkansas would help make rural recycling more available with the implementation of privately owned certified redemption centers and would effectively incentivize recycling.

(b) The General Assembly intends by this act to alleviate issues in the state related to litter, illegal dumping, and associated environmental problems by incentivizing and increasing recycling of deposit beverage containers.

SECTION 2. Arkansas Code Title 8, Chapter 9, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Arkansas Litter Reduction and Deposit Beverage Container Recycling Act

8-9-701. Title.

This subchapter shall be known and may be cited as the “Arkansas Litter Reduction and Deposit Beverage Container Recycling Act”.

8-9-702. Definitions.

As used in this subchapter:

(1) “Administrative allowance” means an amount paid by the Office of Sustainable Materials under § 8-9-721 to a certified redemption center to defray the certified redemption center’s costs of complying with the administrative requirements of the deposit beverage container recycling program;

(2) “Cancel” means to crush, flatten, shred, or otherwise render a deposit beverage container unfit for redemption;

(3) “Certified collector” means a transportation company that has been certified by the office to collect and transport materials from each certified redemption center and certified redemption center depot to a certified processor;

(4) “Certified processor” means a facility, including without limitation a scrap yard, manufacturer, material recovery facility, or similar entity that is designed for the collection, processing, and sale or reuse of secondary resources that would otherwise be disposed of as county or municipal solid waste and that has been certified by the office to receive, purchase, quantify, process, document, cancel, and reuse, or sell for reuse, deposit beverage containers that have been redeemed by a certified redemption center or certified redemption center depot;

(5) “Certified redemption center” means an entity that:

(A) Has an operation, including without limitation an attended operation, automated operation, or mechanical device, that has been certified by the Office of Sustainable Materials:

(i) To accept empty deposit beverage containers from consumers;

(ii) To issue a refund by cash, printed check, electronic refund, redeemable credit slip, or authorized donation with a value not less than the empty deposit beverage container's refund value;

(iii) To sort and quantify the redeemed empty deposit beverage containers for collection by a certified collector; and

(iv) To perform other responsibilities as required under this subchapter; and

(B) May be owned or operated by a qualifying entity, including without limitation:

(i) An individual;

(ii) A business, including without limitation a grocery store or other retailer; or

(iii) A nonprofit agency, organization, or facility;

(6) "Certified redemption center depot" means an entity that has been authorized by the Office of Sustainable Materials and the Arkansas Department of Environmental Quality to accept specified nondeposit recyclable materials;

(7)(A) "Consumer" means a person who purchases a deposit beverage in a deposit beverage container for use or consumption and pays the deposit under the deposit beverage container recycling program.

(B) "Consumer" includes an establishment for lodging, eating, or drinking if beverages are generally consumed on the establishment's premises.

(C) "Consumer" does not include a person who purchases a deposit beverage from an establishment for on-premises consumption;

(8) "Dealer" means a person that engages in the sale of deposit beverages in deposit beverage containers to a consumer for off-premises consumption in this state;

(9)(A) "Deposit beverage" means:

(i) Beer, ale, or other drink produced by fermenting malt, including without limitation flavored malt beverages, coolers, and

other malt-based beverages containing not more than fourteen percent (14%) of alcohol by volume;

(ii) Nonalcoholic wine, beer, and ready-to-use mixers such as margarita mix;

(iii) Carbonated soft drinks;

(iv) Carbonated and noncarbonated water, including without limitation artificially and naturally flavored and sugared waters;

(v) Tea, kombucha, and coffee, including without limitation lattes and other coffee drinks that contain milk;

(vi) Juices, including without limitation one hundred percent (100%) juices, juice blends, coconut water, and drinking vinegar;

(vii) Energy drinks and sports drinks;

(viii) Smoothies, protein shakes, and nutritional supplements that are not marketed as a meal replacement;

(ix) Flavored malt beverages, coolers, and other malt-based beverages containing not more than fourteen percent (14%) of alcohol by volume; and

(x) Single-serve wine and hard cider.

(B) "Deposit beverage" does not include:

(i) Milk and other dairy-derived products that consist only of dairy milk and flavorings or nutritional additives, including without limitation chocolate milk, cultured milk such as kefir and buttermilk, and lactose-free milk;

(ii) Plant-based milk, including without limitation almond milk and coconut milk;

(iii) Wine and distilled liquor;

(iv) Hard cider and unprocessed cider that is considered a wine;

(v) A liquid that is:

(a) A syrup;

(b) In a concentrated form; or

(c) Typically added as a minor flavoring ingredient in food or drink, such as extracts, cooking additives, sauces, or condiments;

(vi) A liquid that is a drug, medical food, or infant formula as defined by the Federal Food, Drug, and Cosmetic Act, 21

U.S.C. § 301 et seq., as it existed on January 1, 2019;

(vii) A liquid that is designed, marketed, and consumed only as a dietary supplement or meal replacement and not as a beverage as defined by the Dietary Supplement Health and Education Act of 1994, Pub. L. No. 103-417;

(viii) A product frozen at the time of sale to the consumer, or, in the case of an institutional consumer such as a hospital or nursing home, at the time of sale to the consumer;

(ix) A product designed to be consumed in a frozen state;

(x) Instant drink powder;

(xi) Soup or broth; or

(xii) Beverages bottled by a microbrewery-restaurant, small farm winery, or small brewery;

(10) "Deposit beverage container" means an individual, separate, and sealed container that is made of glass, aluminum, steel, or other metal, or polyethylene terephthalate plastic or high density polyethylene plastic, regardless of size, and used for containing a deposit beverage at the time of sale to the consumer if the container does not already carry a manufacturer's deposit;

(11)(A) "Deposit beverage distributor" means a person who engages in the sale of deposit beverages in deposit beverage containers to a dealer in this state, including without limitation a manufacturer who engages in these sales.

(B) "Deposit beverage distributor" includes without limitation a person who imports deposit beverages from outside of this state for sale to dealers or consumers in this state, and a federal agency and military distributors.

(C) "Deposit beverage distributor" does not include an airline and shipping company that merely transports deposit beverage containers;

(12) "Fiscal year" means July 1 of one year through June 30 of the next year;

(13) "Fraudulent return" means an effort, whether or not successful or deliberate, to receive a refund on a deposit beverage container that does not meet the requirements for a refund under this subchapter,

including without limitation a container:

(A) Purchased in another state;

(B) Purchased in this state before April 1, 2022;

(C) On which the Arkansas five-cent indicia is not present or cannot be detected;

(D) Redeemed previously; or

(E) Presented to be quantified by weight that has been made artificially heavy by deliberate means;

(14) "Hard cider" means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than twenty-one percent (21%) of alcohol by volume;

(15) "Import" means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or an entity outside of this state;

(16) "Importer" means a person who buys, brings, or accepts delivery of deposit beverage containers from outside the state for sale or use within this state;

(17) "Microsite certified redemption center" means a certified redemption center or certified redemption center depot housed in a portable, attended, roll-off trailer that is typically located adjacent to a hosting grocery store or other entity;

(18) "On-premises consumption" means consumption of a deposit beverage by a consumer immediately and within the area under control of the establishment, including without limitation bars, restaurants, passenger ships, and airplanes;

(19) "Overhead allowance" means an amount paid by the Office of Sustainable Materials to a certified redemption center or certified redemption center depot to defray operating costs according to § 8-9-720;

(20) "Overhead support fee" means an amount paid to the Office of Sustainable Materials by a deposit beverage distributor to support the payment of the overhead allowance according to § 8-9-705;

(21) "Person" means an individual, partnership, firm, association, public or private corporation, federal agency, trust, estate, department, agency, authority, or instrumentality of the state or its political subdivisions, or other legal entity;

(22)(A) "Redemption rate" means the number of refunds paid out

by the Deposit Beverage Container Fund in a given period relative to the number of deposits paid into the fund during the same period and expressed as a percentage, with the numerator being the number of refunds paid out and the denominator being the number of deposits paid in.

(B) "Redemption rate" includes refunds known to be, or suspected to be, fraudulent returns;

(23) "Refillable beverage container" means a beverage container that:

(A) Is intended to be returned intact to the manufacturer or distributor to be washed, refilled, and resold;

(B) Is sold in a container that has a brand name permanently marked on it; and

(C) Bears a manufacturer's refund value of at least five cents (5¢);

(24) "Reverse vending machine" means a self-service certified redemption center, typically located adjacent to a grocery store or similar entity, that electronically scans empty deposit beverage containers, sorts and cancels the empty deposit beverage containers, records the transaction information, and issues a credit slip or other form of refund; and

(25) "Unprocessed cider" means liquor brewed from the fermented juices of fruit and containing more than three percent (3%) and not more than twenty-one percent (21%) of alcohol by volume.

8-9-703. Office of Sustainable Materials – Deposit beverage container recycling program – Accounting services – Promotional materials.

(a) The Arkansas Department of Environmental Quality shall create within the department the Office of Sustainable Materials, with dedicated positions and other expenses funded by the Deposit Beverage Container Fund.

(b) The department shall create a separate administrative entity to be known as the "deposit beverage container recycling program", which shall be funded by the fund.

(c)(1) Accounting functions of the deposit beverage container recycling program shall be performed by the office.

(2) The costs for the services under subdivision (c)(1) of this section shall be paid for by the fund.

(d)(1) The office, the deposit beverage container recycling program,

or a contracted third-party administrator may produce brochures, websites, videos, or other promotional materials that the office determines to be necessary to inform the public about the goals, operations, benefits, and outcomes of the deposit beverage container recycling program.

(2) The costs for materials under subdivision (d)(1) of this section shall be paid for by the fund.

8-9-704. Registration of deposit beverage distributors.

(a) A person who desires to conduct business in this state as a deposit beverage distributor shall register with the Associate Director of the Office of Sustainable Materials no later than one (1) month before commencement of business.

(b)(1) A deposit beverage distributor shall maintain records reflecting the manufacture and import of beverages in deposit beverage containers as well as in refillable beverage containers.

(2)(A) The records shall be made available, upon request, for inspection by the office.

(B) If proprietary information is obtained by the office, the proprietary information shall be kept confidential and shall not be disclosed to another person, except:

(i) As may be reasonably required in an administrative or judicial proceeding to enforce this subchapter or a rule adopted under this subchapter; or

(ii) Under an order issued by a court or administrative hearing officer.

8-9-705. Deposit beverage distributor – Deposit required.

(a)(1) A deposit beverage distributor shall pay to the Deposit Beverage Container Fund a deposit fee on each deposit beverage container manufactured in or imported into this state.

(2) The deposit fee shall appear as a separate line item on an invoice or sales receipt.

(3) The deposit fee shall not be subject to state tax.

(b) The deposit shall be five cents (5¢).

(c) Payment of the deposit shall be made simultaneously with, and according to the same procedure as, payment of the program charge as required

in § 8-9-707.

8-9-706. Deposit beverage distributor – Overhead support fee.

(a) A deposit beverage distributor shall pay to the Office of Sustainable Materials an overhead support fee on each deposit beverage container manufactured in or imported into this state.

(b) The overhead support fee shall be one cent (1¢).

(c) Payment of the overhead support fee shall be made simultaneously with, and according to the same procedure as, payment of the program charge as required in § 8-9-707.

(d) A payment under subsection (a) of this section shall be:

(1) Accompanied by an inventory report, in a manner and form prescribed by the office, that identifies the number of beverages in deposit beverage containers, by container size and type, manufactured in or imported into the state during the reporting period;

(2) Made monthly and received no later than the fifteenth day of the month following the end of the reporting period; and

(3) Made by check, money order, or electronic deposit to the office.

(e) A local government shall not impose or collect an assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this subchapter.

8-9-707. Deposit beverage distributor – Program charge.

(a)(1) A deposit beverage distributor shall charge the dealer or consumer a deposit equal to the program charge for each deposit beverage container sold in this state.

(2) The program charge shall appear as a separate line item on an invoice or sales receipt.

(3) The program charge, including the refund value and overhead support fee, not to exceed six cents (6¢), shall not be subject to state tax.

(b)(1) A dealer shall charge the consumer at the point of sale a program charge for each deposit beverage container sold in this state, except on beverages intended for on-premises consumption.

(2) The program charge shall appear as a separate line item on a sales receipt or invoice.

(3) The program charge shall not be subject to state tax.

8-9-708. Deposit beverage container – Arkansas refund value.

(a)(1) A deposit beverage container sold in this state shall have an Arkansas refund value of five cents (5¢).

(2) The refund value is the amount of the deposit required.

(3) When a refund value has been applied to a deposit beverage container, the deposit on the deposit beverage container shall not be changed or collected more than one (1) time.

(b)(1) The refund value shall be clearly printed, embossed, stamped, labeled, or otherwise marked on the deposit beverage container, along with the word “Arkansas” or the letters “AR”.

(2)(A) The names or letters representing other states with comparable deposit legislation may also be included in the indication of refund value.

(B) Other indicia may be required as specified by rule, and in a form and manner prescribed by the Office of Sustainable Materials.

(c) A deposit beverage container shall have encoded within the universal product code, or similar machine-readable indicia, information regarding the size and type of deposit beverage container and the refund value of the deposit beverage container in the states in which the deposit beverage container is intended to be sold.

(d)(1) Inventory already in circulation on April 1, 2022, shall be affixed or sold with an adhesive label bearing the refund value of the container, the word "Arkansas" or the letters "AR", and a universal product code bearing the redemption information.

(2) The adhesive label under subdivision (d)(1) of this section shall be purchased from the Office of Sustainable Materials by a deposit beverage distributor, who shall pay the deposit value of five cents (5¢) per label.

(e) This section does not apply to a refillable beverage container.

8-9-709. Arkansas Legislative Audit – Annual audits.

(a) Arkansas Legislative Audit shall conduct a management and financial audit of the deposit beverage container recycling program for fiscal years 2021-2022 and 2022-2023, and for each fiscal year thereafter

ending in an even-numbered year.

(b) Arkansas Legislative Audit shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the General Assembly, Arkansas Department of Environmental Quality, and the Office of Sustainable Materials on or before January 2 following the end of the preceding reporting period.

(c) The costs incurred by Arkansas Legislative Audit for the audit shall be reimbursed by the Deposit Beverage Container Fund.

(d) Arkansas Legislative Audit may contract the audit services of a third party to conduct the audit.

8-9-710. Notice required.

A dealer shall post a clear and conspicuous sign at each public entrance to the dealer's place of business that specifies the names, addresses, telephone numbers, and hours of operation of the closest certified redemption centers.

8-9-711. Underserved area – Certified redemption centers and certified redemption center depots.

(a)(1) The Office of Sustainable Materials shall promulgate by rule the definition of an underserved area with regard to certified redemption centers and certified redemption center depots.

(2) However, in determining the definition of an underserved area with regard to certified redemption centers and certified redemption center depots, the following shall be considered in addition to the factors identified in a rule promulgated by the office:

(A) The population, population density, and population distribution of the designated area;

(B) The outcome of consultation with the respective counties and municipalities within the designated area; and

(C) The past performance of certified redemption centers and certified redemption center depots.

(b) If an area is determined to be an underserved area according to the definition under subsection (a) of this section, the office, with input from the affected county or counties, shall use the office's best efforts to see that a certified redemption center or certified redemption center depot

is established in the underserved area.

(c) If an area remains underserved in spite of efforts under subsection (b) of this section, moneys from the Deposit Beverage Container Fund may be used to identify, enlist, or contract with a vendor, operator, or provider of certified redemption centers to ensure that a microsite certified redemption center or other certified redemption center or certified redemption center depot is established in the underserved area.

8-9-712. Certified redemption center or certified redemption center depot – Application to participate in deposit beverage container recycling program.

(a) Before participating in the deposit beverage container recycling program, a redemption center or redemption center depot wishing to operate in this state shall be certified by the Office of Sustainable Materials according to rules promulgated by the office.

(b) The rules under subsection (a) of this section shall require that all information submitted to the office be under penalty of perjury.

(c) Applications for certification shall be filed with the office in a form and manner prescribed by the office.

(d) A person shall not be prohibited from applying for certification to operate a certified redemption center or certified redemption center depot, but the office shall encourage and assist nonprofit entities wishing to apply.

(e) The office shall establish criteria to determine the minimum and optimum number of certified redemption centers or certified redemption center depots needed to adequately serve each county, based on population density, population distribution, consultation with the respective counties, and other factors.

(f) The office shall use the criteria under subsection (e) of this section in issuing certifications.

(g)(1) At any time the office may review the certification of a certified redemption center or certified redemption center depot.

(2) After written notice to the person responsible for the establishment and operation of the certified redemption center or certified redemption center depot, the office, after it has afforded the certified redemption center or depot operator a hearing, may withdraw the certification

of the certified redemption center or certified redemption center depot if the office finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

8-9-713. Certified redemption center or certified redemption center depot – Requirements – Payment.

(a) A certified redemption center and certified redemption center depot shall:

(1) Accept all types of empty deposit beverage containers on which an Arkansas deposit has been paid;

(2) Accept deposit beverage containers from the public a minimum number of hours or days per week according to rules promulgated by the Office of Sustainable Materials;

(3) Maintain redemption areas in full compliance with applicable laws and according to orders and rules promulgated by the office, including without limitation permitting and certification requirements and uniform signage and other design guidelines;

(4) Take reasonable actions to identify and prevent payment of a refund value for a deposit beverage container or other product on which an Arkansas deposit has not been paid, including deposit beverage containers or other products that the certified redemption center or certified redemption center depot knows, or should know, have been brought into this state from another state;

(5) Determine the quantities of deposit beverage containers by manual count, electronic scan, weight, or other method authorized by the office, and in a form and manner prescribed by the office;

(6) Pay to the consumer, or to a nonprofit entity or other recipient designated or intended by the consumer, an amount not less than the established refund value for all valid deposit beverage containers;

(7) Maintain an electronic log of consumer transactions, including without limitation amounts of refunds donated to nonprofit entities, in a form and manner prescribed by the office;

(8) Sort, consolidate, and, if authorized by the office, cancel the redeemed deposit beverage containers according to rules promulgated by the office;

(9) Take reasonable precautions to ensure that redeemed deposit

beverage containers are placed in a secure area while awaiting collection by a certified collector;

(10) Ensure that all redeemed deposit beverage containers are received by a certified collector;

(11) Provide to the certified collector a shipping report, in a form and manner prescribed by the office, that includes without limitation:

(A) Quantities of each deposit beverage container type by unit or by weight;

(B) Quantification method, whether manual count, electronic scan, weight, volume, or a combination of manual count, electronic scan, weight, or volume;

(C) Refund values paid;

(D) Weight tickets, if applicable; and

(E) Printouts of electronic transaction logs, if requested; and

(12)(A) Prepare, maintain, and provide to the office upon request all records and documentation of redemption activity, including without limitation consumer transaction logs, shipping reports, weight tickets, transaction receipts received from certified collectors, amounts of refunds or other benefits donated to charities, and documents authorizing the canceling of redeemed deposit beverage containers.

(B) If a certified redemption center is a certified redemption center depot, the records and documentation made available shall include types and quantities of nondeposit recyclables collected, and the name of each certified collector receiving the materials.

(b) A certified redemption center or certified redemption center depot that wishes to cancel redeemed deposit beverage containers as part of its handling procedures shall apply for and receive authorization to do so from the office and shall perform and document the cancellations in a form and manner prescribed by the office.

(c) A certified redemption center depot shall, before accepting nondeposit recyclable material, enter into a written agreement with the appropriate receiving entity or entities, stipulating prescribed collection, handling, labeling, storage, documentation, transfer, transportation, and other requirements, and stipulating the terms of payment, if any, to be made by the receiving entity or entities to the certified redemption center depot.

(d) In order to be certified as a certified redemption center depot, a certified redemption center shall:

(1) Comply with all applicable requirements and rules for each type of nondeposit recyclable material accepted;

(2) Meet minimum requirements for property size, access, storage, and other criteria for each type of nondeposit recyclable material authorized for acceptance, according to rules promulgated by the office;

(3) Accept nondeposit recyclable materials during operating hours only; and

(4) Accept nondeposit glass containers, including without limitation deposit beverage containers from other states, deposit beverage containers on which no Arkansas deposit was paid, and deposit beverage containers not bearing the Arkansas five-cent indicia.

(e)(1) Every certified redemption center or certified redemption center depot in the state shall:

(A) Be owned or operated by a charity, community organization, social service agency, or other nonprofit entity operating in Arkansas; or

(B) Maintain an ongoing beneficial relationship with at least one (1) entity listed in subdivision (e)(1)(A) of this section.

(2)(A) As used in subdivision (e)(1) of this section, "ongoing beneficial relationship" shall be determined by the office but shall include such measures as hosting bottle drives or maintaining a donation bin with proceeds earmarked for the nonprofit entity.

(B) The method for verifying that the requirement under subdivision (e)(2)(A) of this section is met shall be determined by the office.

(f) The office shall:

(1)(A) Issue payment to certified redemption centers in the sum of the following:

(i) The collective refund values of the redeemed deposit beverage containers received at the certified redemption center or certified redemption center depot;

(ii) The overhead allowance due under § 8-9-721; and

(iii) Payment for the deposit beverage redemption cost incurred.

(B) Payment shall be made to the certified redemption center or certified redemption center depot within ten (10) business days unless a significant discrepancy exists pursuant to § 8-9-720(c)(3), in which case payment may be withheld pending the outcome of an investigation by the office;

(2) Provide to the certified redemption center or certified redemption center depot a transaction receipt, prepared in a form and manner prescribed by the office and including, at a minimum, the following information:

(A) The unit quantities, by deposit beverage container type and collectively, of deposit beverage containers managed by the certified redemption center or certified redemption center depot, and whether quantities were determined by manual count, electronic scan, volume, weight, or a combination of manual count, electronic scan, volume, and weight;

(B) The weight, by deposit beverage container type and collectively, of deposit beverage containers managed by the certified redemption center or certified redemption center depot;

(C) The amounts paid in refund values by the certified redemption center or certified redemption center depot, by deposit beverage container type and collectively; and

(D) The amount paid as overhead allowance to the certified redemption center or certified redemption center depot;

(3) Submit to the office, in a form and manner prescribed by the office, an invoice for reimbursement of refund values, overhead allowances, and payment of administrative allowances due;

(4)(A) For a refillable beverage container received, reimburse the manufacturer's refund value to the certified redemption center or certified redemption center depot and ensure that the refillable beverage container is conveyed to the originating refillable beverage distributor or sold to a purchaser.

(B) The certified redemption center may negotiate a reasonable fee with the originating deposit beverage distributor or purchaser to cover the cost of accepting and handling the refillable beverage containers.

8-9-714. Certified redemption center or certified redemption center

depot – Refillable beverage containers.

A certified redemption center or certified redemption center depot that wishes to accept refillable beverage containers from consumers shall:

- (1) Pay to the consumer the manufacturer's refund value for the refillable beverage container;
- (2) Record the transaction in the consumer transaction log; and
- (3)(A) Ensure that the refillable beverage container is received by a certified processor or the originating deposit beverage distributor, who shall reimburse the manufacturer's refund value to the certified redemption center or certified redemption center depot.

(B) The certified redemption center or certified redemption center depot may negotiate with the receiving entity a reasonable fee to cover the cost of accepting and handling refillable beverage containers.

8-9-715. Certified redemption center or certified redemption center depot – Nondeposit glass containers.

(a) A certified redemption center that wishes to accept nondeposit glass containers or other items on a list of specified nondeposit recyclable materials as a convenience to consumers, as an additional source of revenue, or to advance the solid waste management goals of the state or the Arkansas Department of Environmental Quality, may apply to the Office of Sustainable Materials to be certified as a certified redemption center depot.

(b) The list of specified nondeposit recyclable materials shall be determined by the office and may be updated as often as needed.

(c)(1) A nondeposit recyclable material, including without limitation glass beverage containers on which no Arkansas deposit was paid, is not eligible for a refund under this subchapter.

(2) However, a certified redemption center depot may pay consumers an amount reflecting all or some of the nondeposit recyclable material's market value.

8-9-716. Certified collector.

(a)(1) Before participating in the deposit beverage container recycling program, a collector shall be certified by and registered with the Office of Sustainable Materials according to rules established by the office.

(2) The rules under subdivision (a)(1) of this section shall require that all information submitted to the office be under penalty of perjury.

(3) An application for certification and an application for registration shall be filed with the office, in a form and manner prescribed by the Associate Director of the Office of Sustainable Materials.

(b)(1) At any time the office may review the certification of a certified collector.

(2) After written notice to the person of record responsible for the establishment and operation of the certified collector, the office, after the office has afforded the certified collector a hearing, may withdraw the certification of the certified collector if the office finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(c) The office shall award a contract to a certified collector to collect materials from a certified redemption center and a certified redemption depot and deliver to a certified processor in accordance with the Arkansas Procurement Law, § 19-11-201 et seq.

(d) A certified collector shall be paid by the mile, at a rate determined by the office, to collect materials from a certified redemption center and a certified redemption depot and deliver to a certified processor.

8-9-717. Reports – Municipal or county governments.

The type and tonnage of material collected by a certified redemption center or certified redemption center depot and subsequently recycled shall be reported and credited to the municipal or county government where the certified redemption center or certified redemption center depot is located, for purposes of calculating solid waste diversion amounts and meeting regional solid waste reduction goals.

8-9-718. Reverse vending machine.

A reverse vending machine may be used to satisfy the requirements of § 8-9-713 if the reverse vending machine:

(1) Accepts all types of empty deposit beverage containers that bear a valid Arkansas refund value;

(2) Is routinely serviced to ensure proper operation and

continuous acceptance of deposit beverage containers and payment of refunds;

(3) Is monitored during operating hours by an attendant who is authorized to issue refunds should the reverse vending machine fail to accept, recognize, or process a valid Arkansas deposit beverage container; and

(4) Displays a toll-free telephone number and a website or mailing address that a consumer may contact should an attendant be unable to provide assistance.

8-9-719. Refusal to pay refund value.

A certified redemption center or certified redemption center depot may refuse to pay the refund value on a deposit beverage container that:

- (1) Does not properly indicate an Arkansas refund value;
- (2) Is broken, corroded, dismembered, or flattened;
- (3) Contains more than trace amounts of liquid; or
- (4) Contains a significant amount of foreign material.

8-9-720. Processor – Certification and registration.

(a)(1) Before participating in the deposit beverage container recycling program, a processor shall be certified by and registered with the Office of Sustainable Materials according to rules established by the office.

(2) The rules under subdivision (a)(1) of this section shall require that all information submitted to the office be under penalty of perjury.

(3) An application for certification shall be filed with the office, in a form and manner prescribed by the Associate Director of the Office of Sustainable Materials.

(4) An application for registration shall be filed with the office, in a form and manner prescribed by the Associate Director of the Office of Sustainable Materials.

(b)(1) At any time the office may review the certification of a certified processor.

(2) After written notice to the person of record responsible for the establishment and operation of the certified processor, the office, after the office has afforded the certified processor operator a hearing, may withdraw the certification of the certified processor if the office finds

that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(c) A certified processor shall:

(1)(A) Accept from a certified redemption center or certified redemption center depot deposit beverage containers that have been redeemed, quantified, sorted, and, if applicable, canceled according to deposit beverage container recycling program rules and that are accompanied by a shipping report prepared by the certified redemption center or certified redemption center depot according to deposit beverage container recycling program rules.

(B) A certified processor shall accept all types of deposit beverage containers from a certified redemption center or certified redemption center depot being serviced unless arrangements have been made for another receiving entity to receive a particular deposit beverage container type, such as glass, from that certified redemption center or certified redemption center depot;

(2) Perform a random sampling or samplings, in a form and manner prescribed by the office, of the redeemed deposit beverage containers to ascertain that they were eligible for redemption;

(3)(A) Independently determine quantities of each type of deposit beverage container, either by manual count, electronic scan, volume, weight, or a combination of these methods, according to standards, averages, and rules prescribed by the office, and document the quantities in a form and manner prescribed by the office.

(B) If a significant discrepancy exists between the quantities determined by the certified processor and the quantities stated on the shipping report prepared by the certified redemption center or certified redemption center depot, or if a random sampling of redeemed deposit beverage containers shows a significant proportion of deposit beverage containers that were not eligible for redemption, the certified processor shall notify the office for further investigation by the office, according to procedures prescribed by the office.

(C)(i) The office shall establish by rule what constitutes a significant discrepancy and significant proportion.

(ii) However, in establishing what constitutes a significant discrepancy and significant proportion, the office shall consider

the following in addition to the factors identified by the office:

(a) The amount of deposit beverage containers that have been redeemed, quantified, sorted, and canceled by the certified redemption center or certified redemption center depot; and

(b) The past performance of the certified redemption center, certified redemption center depot, or certified processor;

(4) Cancel the redeemed deposit beverage containers, if they have not already been canceled;

(5)(A)(i) Process the deposit beverage containers as needed for remanufacturing or for sale to or receipt by a manufacturer, secondary certified processor, or other end user.

(ii) If, after making a good-faith effort, a certified processor is unable to locate a purchaser or recipient of a specific deposit beverage container material, the certified processor may apply to the office for permission to dispose of the deposit beverage container material in a form and manner prescribed by the office, with reasonable disposal costs to be reimbursed by the deposit beverage container recycling program.

(B)(i) The office shall establish by rule what constitutes a good-faith effort and reasonable disposal costs relative to this section.

(ii) The office shall consider past conduct and performance when establishing what constitutes a good-faith effort and reasonable disposal costs under this section;

(6)(A) Maintain a copy of documentation, including without limitation shipping reports, weight tickets, and transaction receipts.

(B) Documents under subdivision (c)(6)(A) of this section shall be made available, upon request, to the office; and

(7) Report to the office on the type and tonnage of material collected and subsequently recycled for purposes of calculating solid waste diversion amounts and meeting regional solid waste reduction goals.

(d) Certified processors may create or make use of a collection service that picks up redeemed deposit beverage containers or refillable beverage containers from certified redemption centers or certified redemption center depots and transports them to a certified processor.

8-9-721. Overhead allowance.

(a) The Office of Sustainable Materials shall pay to a certified

redemption center or certified redemption center depot, by agency of a certified processor under § 8-9-720, an overhead allowance for each transaction conducted according to rules established by the office.

(b) The overhead allowance shall be the total of an amount not to exceed one and six tenths of a cent (1.6¢) multiplied by the number of deposit beverage containers received in the transaction, as reported to the office in the certified redemption center's invoice under § 8-9-722, and shall remain at that level until changed by the General Assembly.

(c) The overhead allowance shall be paid out of the Deposit Beverage Container Fund.

8-9-722. Certified redemption center – Invoice requirements.

(a) For every completed transaction with a certified redemption center or certified redemption center depot, a certified redemption center or certified redemption center depot shall submit to the Office of Sustainable Materials an invoice for an amount equal to the sum of all of the following:

(1) The total amount of refund values paid by the certified redemption center or certified redemption center depot under § 8-9-713; and

(2) The overhead allowance to be paid to the certified redemption center or certified redemption center depot under § 8-9-721.

(b) The certified redemption center or certified redemption center depot's invoice shall be accompanied by supporting documentation that shall include without limitation:

(1) A copy of the transaction receipt prepared by the certified redemption center or certified redemption center depot;

(2) A copy of the shipping report prepared by the certified redemption center or certified redemption center depot; and

(3) When applicable, a printout of electronic transaction logs.

(c) The office shall issue payment to the certified processor within ten (10) business days after receipt of a properly submitted invoice unless a discrepancy exists under § 8-9-713(f)(1)(B), in which case payment may be withheld pending investigation by the office according to procedures prescribed by the office.

(d) The office shall make all reports created by or provided to the office available online.

8-9-723. Inspections.

Deposit beverage distributors, certified redemption centers and certified redemption center depots, and certified processors shall, upon request and under penalty of perjury, make their records available for inspection by the Office of Sustainable Materials, the Treasurer of State, or an auditor of the Treasurer of State.

8-9-724. Reports – Deposit beverage container recycling program.

(a) The Office of Sustainable Materials shall compile a report on the deposit beverage container recycling program for each fiscal year.

(b)(1) The report required under subsection (a) of this section shall be delivered to the General Assembly and the Governor on January 2 following the end of the preceding reporting period.

(2) Reports shall include without limitation:

(A) Performance indicators;

(B) Revenues and expenditures;

(C) Measures of effectiveness, including without limitation redemption rates and impacts on litter;

(D) Measures of access and convenience, including without limitation numbers, types, locations, and distribution of certified redemption centers, and efforts and expenditures to ensure that certified redemption centers are established in areas defined as underserved areas under § 8-9-711;

(E) Measures of benefits to nonprofit organizations, including without limitation the amount of donated refunds; and

(F) Economic impacts, including without limitation the number of jobs supported or created, and tonnage, market value, and end uses of recovered materials.

8-9-725. Advisory committee.

(a) The Office of Sustainable Materials shall convene an advisory committee to make recommendations to the office in developing rules needed to implement this subchapter and to advise the deposit beverage container recycling program.

(b) The Associate Director of the Office of Sustainable Materials shall select members of the advisory committee so as to obtain input from state agencies, as well as from representatives of the following:

- (1) Bottlers;
- (2) Consumers;
- (3) Counties, including without limitation county sheriffs' departments;
- (4) Dealers;
- (5) Deposit beverage distributors;
- (6) Importers;
- (7) The Keep Arkansas Beautiful Commission;
- (8) Manufacturers and end users;
- (9) Municipalities;
- (10) Nonprofit organizations;
- (11) Recyclers, including without limitation scrap dealers and providers of curbside recycling;
- (12) Certified redemption centers and certified redemption center depots;
- (13) Redemption service providers;
- (14) Solid waste professionals; or
- (15) Others as recommended by the associate director.

(c)(1) Members of the advisory committee shall serve at the associate director's pleasure.

(2) A majority of the advisory committee members shall constitute a quorum for the purposes of recommending rules and providing input to the associate director.

(d) The office shall make all advisory committee meeting notices, minutes, reports, meeting recordings, and related documents of the committee available online.

8-9-726. Violations.

(a) Except as provided in § 8-9-727, a person that violates this subchapter or a rule adopted under this subchapter shall be assessed a civil penalty of not more than ten thousand dollars (\$10,000) for each separate offense.

(b) The civil penalty described in subsection (a) of this section shall be assessed by the Associate Director of the Office of Sustainable Materials pursuant to § 8-9-727.

(c) Each day of each violation shall constitute a separate offense.

(d) Any action taken to impose or collect the civil penalty provided

for in this section shall be made through administrative or civil actions.

8-9-727. Penalties.

(a) If the Associate Director of the Office of Sustainable Materials determines that a person has violated or is violating this subchapter, a rule adopted under this subchapter, or a term or condition of a certification or permit issued under this subchapter, the associate director may do one (1) or more of the following:

(1) Issue a field citation assessing a civil penalty and ordering corrective action immediately or within a specified time;

(2) Issue an order assessing a civil penalty for a past or current violation;

(3) Require compliance immediately or within a specified time;

or

(4) Commence a civil action in Pulaski County Circuit Court, to seek appropriate relief, including without limitation a temporary, preliminary, or permanent injunction against violations of this subchapter, the imposition and collection of civil penalties, or other relief.

(b) An order issued under this section may include a suspension, modification, or revocation of a certification or permit issued under this subchapter and shall state with reasonable specificity the nature of the violation.

(c)(1) An order issued under this subchapter shall become final unless the person named in the order requests in writing a hearing before the office no later than twenty (20) days after the notice of order is served.

(2) A civil penalty imposed under this subchapter shall become due and payable twenty (20) days after the notice of the civil penalty is served unless the person named in the order requests in writing a hearing before the office.

(3) Whenever a hearing is requested on a civil penalty imposed under this subchapter, the civil penalty shall become due and payable upon the issuance of a final order confirming the civil penalty in whole or in part.

(d) If, after a hearing held under this section, the office finds that a violation or violations have occurred, the office shall:

(1) Affirm or modify a civil penalty imposed or modify or affirm

the order previously issued; or

(2) Issue an appropriate order or orders for the prevention or control of the violation involved, or for the taking of other corrective action as may be appropriate.

(e)(1) If, after a hearing on an order or civil penalty contained in a notice, the office finds that no violation has occurred or is occurring, the office shall rescind the order or civil penalty.

(2) An order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.

(f)(1) If the amount of a civil penalty is not paid to the office within thirty (30) days after an order becomes final, the associate director may institute a civil action in the name of the state to collect the final civil penalty amount.

(2) In a proceeding to collect the civil penalty imposed, the office shall show that:

(A) Notice was given;

(B) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;

(C) The civil penalty was imposed; and

(D) The civil penalty remains unpaid.

(g) In connection with a hearing held under this section, the office shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

#### 8-9-728. Application.

(a) The obligation to accept empty deposit beverage containers and pay the refund value as described in this subchapter applies only to deposit beverage containers originally sold in this state as filled deposit beverage containers.

(b)(1) It is a violation of this subchapter for a person to tender or attempt to tender to a certified redemption center or certified redemption center depot during a single transaction more than twenty-four (24) empty deposit beverage containers that the person knows or has reason to know were not originally sold in Arkansas as filled deposit beverage containers.

(2) A violation of subdivision (b)(1) of this section may be punishable by a fine as provided in subsection (d) of this section.

(c) Certified redemption centers and certified redemption center depots must conspicuously display a sign in letters that are at least one inch (1") in height with the following information:

“WARNING: Persons tendering containers for redemption that were not originally purchased in Arkansas may be subject to a fine of the greater of one hundred dollars (\$100) per container or twenty-five thousand dollars (\$25,000) for each tender.”

(d) A person who violates this section is subject to a fine of up to the greater of one hundred dollars (\$100) for each container or twenty-five thousand dollars (\$25,000) for each tender of more than twenty-four (24) containers.

(e) The balance of each fine collected under this section, after deducting court costs, shall be deposited into the Deposit Beverage Container Fund and shall remain in the fund to be expended for activities authorized by this subchapter, with the exception that if the violation was detected and reported by a certified redemption center or certified redemption center depot or a certified processor, then the fine shall be disposed of as follows:

(1) Fifty percent (50%) of the fine shall remain in the fund to be expended for activities authorized by this subchapter; and

(2) Fifty percent (50%) of the fine shall be awarded to the certified redemption center or certified redemption center depot or the certified processor that reported the violation, as an incentive to be vigilant for and responsive to illegal tenders or attempts to otherwise defraud the deposit beverage container recycling program through fraudulent returns.

#### 8-9-729. Rules.

Unless otherwise provided in this subchapter, the Office of Sustainable Materials shall promulgate rules to carry out this subchapter.

SECTION 3. Arkansas Code § 19-6-301, concerning special revenues, is amended to add an additional subdivision to read as follows:

(263) Fees collected under the Arkansas Litter Reduction and

Deposit Beverage Container Recycling Act, § 8-9-701 et seq.

SECTION 4. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended to add an additional section to read as follows:

19-6-840. Deposit Beverage Container Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue fund to be known as the "Deposit Beverage Container Fund".

(b) The fund shall consist of:

(1) The special revenues collected under §§ 8-9-705 – 8-9-708, to be deposited by the Office of Sustainable Materials into the State Treasury to the credit of the fund;

(2) Monetary civil penalties assessed and collected under the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.;

(3) United States Government moneys designated for deposit into the fund;

(4) A gift or donation to the fund; and

(5) Interest, earnings, and other revenues as may be authorized by law.

(c) The fund shall be administered by the office, which shall authorize distributions and administrative expenditures from the fund to:

(1) Reimburse refund values for deposit beverage containers redeemed by certified redemption centers and certified redemption center depots under § 8-9-713;

(2) Pay overhead allowances to certified redemption centers and certified redemption center depots under § 8-9-721;

(3) Pay certified redemption centers or certified redemption center depots their share of fines collected under § 8-9-728;

(4) Fund all administrative, accounting, auditing, and compliance activities associated with the deposit beverage container recycling program under the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.;

(5) Employ personnel to oversee the implementation of the deposit beverage container recycling program under the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.,

including permitting and enforcement activities;

(6) Defray office expenses associated with implementation of the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.; and

(7) Fund other distributions and administrative expenditures as necessary to administer the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.

(d) Moneys deposited into the fund shall also be used to:

(1) Identify, enlist, or contract with vendors of microsite certified redemption centers under § 8-9-711;

(2) Provide training, guidance, and other resources to certified redemption centers or certified redemption center depots, especially certified redemption centers or depots owned or operated by nonprofit entities;

(3) Produce educational campaigns and materials to ensure public awareness of and compliance with the deposit beverage container recycling program under the Arkansas Litter Reduction and Deposit Beverage Container Recycling Act, § 8-9-701 et seq.; and

(4) Provide grants to local governments for water infrastructure and to the Arkansas Department of Transportation for state aid to county roads for improvements to county roads and grants to nonprofit organizations or other entities to support solid waste management, recycling, curbside recycling, litter control, and other programs and activities related to the purposes of this subchapter

*SECTION 5. DO NOT CODIFY. Effective Dates.*

(a) Section 8-9-703(a) in Section 2 of this act is effective on and after September 1, 2019.

(b) Sections 8-9-705 and 8-9-706 in Section 2 of this act are effective on and after March 1, 2020.

(c) Sections 8-9-707, 8-9-708, 8-9-721, and 8-9-722 in Section 2 of this act are effective on and after April 1, 2020.

(d) The first report required under § 8-9-724(a) in Section 2 of this act shall be for the period from October 1, 2019, through June 30, 2021.

*/s/V. Flowers*