

**SENATE BILL NO. 2167**

Introduced by

Senator Lindaas

1 A BILL for an Act to create and enact chapter 23-37 and a new subsection to section 54-11-01  
2 of the North Dakota Century Code, relating to deposits on beverage containers and the duties  
3 of the state treasurer; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 23-37 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **23-37-01. Definitions.** As used in this chapter:

- 8 1. "Beverage" means beverage as defined in section 19-08-02 and includes alcoholic  
9 beverages as defined in section 5-01-01.
- 10 2. "Beverage container" means any sealable bottle, can, jar, or carton that is primarily  
11 composed of glass, metal, plastic, or any combination of those materials and is  
12 produced for the purpose of containing a beverage. The term does not include  
13 containers made of biodegradable material.
- 14 3. "Bottler" means any person filling beverage containers for sale to any distributor or  
15 dealer, including a dealer that bottles or sells that dealer's own brand of beverage.
- 16 4. "Consumer" means any person that purchases a beverage in a beverage container  
17 for use or consumption with no intent to resell the beverage.
- 18 5. "Dealer" means any person that engages in the sale of any beverage in a  
19 beverage container to a consumer in the state.
- 20 6. "Distributor" means any person that engages in the sale of any beverage in a  
21 beverage container to any dealer in the state.
- 22 7. "Label" means label as defined in section 23-32-01.
- 23 8. "Plastic" means plastic as defined in section 23-32-01.
- 24 9. "Plastic bottle" means plastic bottle as defined in section 23-32-01.

1           10. "Reusable beverage container" means any beverage container constructed and  
2                    designed so the container is structurally capable of being refilled and resold by a  
3                    bottler at least ten times after the container's initial use.

4           11. "Rigid plastic container" means rigid plastic container as defined in section  
5                    23-32-01.

6           **23-37-02. Refund value.** Every beverage container sold or offered for sale in this state  
7 has a refund value of at least five cents. This section does not apply to any container sold by a  
8 distributor for use by a common carrier in the conduct of interstate passenger service.

9           **23-37-03. Refund and deposit requirements.**

10          1. Every consumer shall deposit with the dealer the refund value of each beverage  
11             container the consumer purchases from that dealer.

12          2. A dealer shall accept from any person, during the dealer's business hours, any  
13             empty beverage container of the type, size, and brand sold by the dealer within the  
14             past sixty days and shall pay the person the refund value of each beverage  
15             container returned.

16          3. A distributor shall accept from any dealer any empty beverage container of the  
17             type, size, and brand sold by the distributor within the past sixty days and shall pay  
18             the dealer the refund value of the beverage container plus a handling fee of at least  
19             one cent per container if the empty beverage container is presented at the time of  
20             and at the location at which the dealer obtains filled beverage containers from the  
21             distributor.

22          4. A bottler shall accept from any distributor or dealer any empty reusable beverage  
23             container of the type, size, and brand sold by the bottler within the past sixty days  
24             and shall pay the distributor or dealer the refund value of the empty reusable  
25             beverage container plus a handling fee of at least one cent per container if the  
26             empty reusable beverage container is presented at the time and at the location at  
27             which the distributor or dealer obtains filled reusable beverage containers from the  
28             bottler. A bottler, other than a bottler of soft drinks, manufacturing in the state  
29             which offers to refund deposits in accordance with this section may not require a  
30             distributor to deposit with the bottler the refund value of a beverage container that  
31             is not reusable, and a bottler may not require of a distributor that any beverage

- 1 container that is not reusable be presented to the bottler at the location where the  
2 distributor obtains filled beverage containers.
- 3 5. Any person may establish a redemption center and may determine what type, size,  
4 and brand of beverage container to accept. A distributor shall take from any  
5 redemption center any empty beverage container of the type, size, and brand sold  
6 by the distributor within the past sixty days and shall pay the redemption center the  
7 refund value of the container plus a handling fee of at least one cent per container.
- 8 6. Notwithstanding any provision in this chapter, a dealer, distributor, redemption  
9 center, or bottler may refuse to accept any beverage container containing material  
10 foreign to the normal contents of the container.
- 11 7. Any bottler or distributor receiving deposits or handling charges under this chapter  
12 shall segregate the deposits or handling charges, as the case may be, in a fund  
13 maintained separately from all other revenues. Any bottler or distributor receiving  
14 deposits or handling charges under this chapter shall report monthly to the state  
15 treasurer, in a manner prescribed by the state treasurer, the amount of the  
16 deposits or handling charges, as the case may be, received and the amount  
17 refunded.
- 18 8. Any bottler or distributor subject to subsection 3, 4, or 5 shall maintain a deposit  
19 transaction fund which must be kept separate from all other revenues and  
20 accounts. Each bottler or distributor shall place in the deposit transaction fund the  
21 refund value for every nonreusable beverage container the bottler or distributor  
22 sells which is subject to the provisions of this chapter. Except as specified in  
23 section 23-37-05, any amount in the deposit transaction fund may only be  
24 expended to pay refund values paid after December 31, 1999, for returned  
25 nonreusable beverage containers under subsections 3, 4, and 5. Each deposit  
26 transaction fund must be maintained by the respective bottler or distributor on  
27 behalf of every consumer that purchased a refundable nonreusable beverage  
28 container and on behalf of the state. Except as specified in section 23-37-05, the  
29 amount in a deposit transaction fund is not income of the bottler or distributor.
- 30 9. The obligation to accept or take any empty beverage container and to pay the  
31 refund value and handling fee for any empty beverage container as provided under

1 subsections 2, 3, 4, and 5 only applies to a container originally sold in the state as  
2 a filled beverage container. Any person that tenders to a dealer, distributor,  
3 redemption center, or bottler more than ten cases of twenty-four empty beverage  
4 containers each, which the dealer, distributor, redemption center, or bottler knows  
5 or has reason to know were not originally sold in the state as filled beverage  
6 containers, for the purpose of obtaining a refund value or handling fee, is subject to  
7 the enforcement action and civil penalties set forth in this chapter.

8 **23-37-04. Deposit transaction fund reports.** Every bottler and every distributor shall  
9 report to the state treasurer by the tenth day of each month concerning every transaction in the  
10 preceding month which affected the bottler's or distributor's deposit transaction fund. The  
11 report must be made in a form prescribed by the state treasurer and must include the number of  
12 nonreusable beverage containers sold and the number of nonreusable beverage containers  
13 returned in the reported month, the amount of any deposit received in and payments made from  
14 the deposit transaction fund in the reported month and the most recent three-month period, any  
15 income earned on any amount in the deposit transaction fund during the reported month, the  
16 balance in the deposit transaction fund at the close of the reporting month, and other  
17 information the state treasurer may require.

18 **23-37-05. Abandoned deposits.** At the end of each month, any amount that is or  
19 should be in a bottler's or distributor's deposit transaction fund which is in excess of the sum of  
20 income earned on amounts in the fund during that month and the total amount of refund values  
21 received by the bottler or distributor for nonreusable beverage containers during that month and  
22 the two preceding months constitutes abandoned deposit amounts. Income earned on a  
23 deposit transaction fund may be transferred from the deposit transaction fund for use as funds  
24 of the bottler or distributor. By the tenth day of each month, each bottler and each distributor  
25 shall provide to the state treasurer any deposit amount abandoned at the close of the preceding  
26 month, pursuant to this section. Abandoned amounts provided to the state treasurer under this  
27 section may be paid from a deposit transaction fund. The state treasurer shall deposit in the  
28 general fund any money received under this section.

29 **23-27-06. Reimbursements.** If in any month the authorized payments from the deposit  
30 transaction fund by a bottler or distributor pursuant to subsection 8 of section 23-37-03 exceed  
31 the funds that are or should be in the bottler's or distributor's deposit transaction fund, the state

1 shall reimburse that bottler or distributor from amounts received under section 23-37-05 for any  
2 refunds paid by the bottler or distributor for nonreusable beverage containers for which the  
3 funds that are or should be in the bottler's or distributor's deposit transaction fund are  
4 insufficient. However, monthly reimbursements to a bottler or distributor may not exceed the  
5 excess of amounts paid by the bottler or distributor to the state pursuant to section 23-37-05 in  
6 the preceding twenty-four months over amounts paid by the state to the bottler or distributor  
7 under this section during the applicable twenty-four months.

8 **23-37-07. Beverage container labels.** Every beverage container, except a  
9 permanently labeled reusable glass container, imported into or offered for sale in the state by a  
10 bottler, distributor, or dealer must clearly indicate the refund value of the container in at least  
11 twelve-point type by embossing, by stamp, by label, or other method securely affixed to any  
12 portion except the bottom of the beverage container. A permanently labeled reusable glass  
13 beverage container first imported into or offered for sale in the state after the effective date of  
14 this Act by a bottler, distributor, or dealer must clearly indicate that the container may be  
15 returned for deposit in at least twelve-point type by embossing, by stamp, by label, or other  
16 method securely affixed to any portion except the bottom of the permanently labeled reusable  
17 glass beverage container. A dealer, distributor, redemption center, or bottler may refuse to  
18 accept from any person any empty beverage container, except a permanently labeled reusable  
19 glass beverage container, that does not state a refund value and a dealer, distributor,  
20 redemption center, or bottler may refuse to accept any permanently labeled reusable glass  
21 beverage container that does not state that the container may be returned for deposit.

22 **23-37-08. Vending machines.** Every operator of a vending machine that sells any  
23 beverage in a beverage container shall post a conspicuous notice on each vending machine  
24 indicating a refund of not less than five cents is available on each beverage container  
25 purchased and where and from whom that refund may be obtained. This section does not  
26 require vending machine operators to provide refunds at the location of a vending machine.

27 **23-37-09. Rules.** The state treasurer shall adopt rules necessary to implement this  
28 chapter. The rules must include provisions permitting bottlers and distributors to borrow,  
29 without any interest charge, against the bottler's or distributor's deposit transaction fund, subject  
30 to any terms and conditions the state treasurer provides.

1           **23-37-10. Penalty.** Any bottler, distributor, redemption center, or dealer that violates  
2 this chapter is subject to a civil penalty of not more than one thousand dollars for each violation.  
3 Any bottler or distributor failing to make full and timely payments required by section 23-37-05  
4 shall pay interest on any unpaid amounts at the rate of one and one-half percent for each  
5 month or part of a month until payment is made in full. Any person, including a bottler,  
6 distributor, redemption center, or dealer, that violates subsection 9 of section 23-37-03 is  
7 subject to a civil penalty of the greater of one hundred dollars for each container or twenty-five  
8 thousand dollars for each tender of containers.

9           **SECTION 2.** A new subsection to section 54-11-01 of the 1997 Supplement to the  
10 North Dakota Century Code is created and enacted as follows:

11                   Administer chapter 23-37.