

ACT 176

H.B. NO. 1256

A Bill for an Act Relating to Solid Waste Management.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that recycling is an important element of an integrated solid waste management system, which can protect and preserve environmental resources and reduce economic costs to residents and businesses within the State. The legislature finds a need to expand participation in recycling programs and to minimize costs to those participating and to government. The purpose of this Act is to increase participation and recycling rates for specified deposit beverage containers, provide a connection between manufacturing decisions and recycling program management, and reduce litter.

SECTION 2. Chapter 342G, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DEPOSIT BEVERAGE CONTAINER PROGRAM

§342G-A Definitions. As used in this part, unless the context requires otherwise:

“Auditor” means the office of the auditor.

“Consumer” means a person who buys a beverage in a deposit beverage container for use or consumption and pays the deposit.

“Dealer” means a person who engages in the sale of beverages in deposit beverage containers to a consumer for off-premises consumption in the State.

“Department” means the department of health.

“Deposit beverage” means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term “deposit beverage” excludes the following:

- (1) A liquid which 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;
- (2) A liquid which is a drug, medical food or infant formula as defined by the Federal Food Drug and Cosmetic Act (21 U.S.C Sec. 301 et seq.);
- (3) A liquid which is designed and consumed only as a dietary supplement and not as a beverage as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417);
- (4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;
- (5) Products designed to be consumed in a frozen state;
- (6) Instant drink powders;
- (7) Seafood, meat, or vegetable broths, or soups, but not juices; and
- (8) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.

“Deposit beverage container” means the individual, separate, sealed glass, polyethylene terephthalate, high density polyethylene, or metal container less than or equal to sixty-four fluid ounces, used for containing, at the time of sale to the consumer, a deposit beverage intended for use or consumption in this State.

“Deposit beverage distributor” means a person who is a manufacturer of beverages in deposit beverage containers in this State, or who imports and engages in the sale of filled deposit beverage containers to a dealer or consumer. The term includes federal agencies and military distributors, but does not include airlines and shipping companies that merely transport deposit beverage containers.

“Import” means to buy, bring, or accept delivery of deposit beverage containers from an address, supplier, or any entity outside of the State.

“Importer” means any person who buys, brings, or accepts delivery of deposit beverage containers from outside the State for sale or use within the State.

“On-premises consumption” means to consume deposit beverages by a consumer immediately and within the area under control of the establishment, including bars, restaurants, passenger ships, and airplanes.

“Person” means individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Recycling facility” means all contiguous land and structures and other appurtenances, and improvements on the land used for the collection, separation, recovery, and sale of reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

“Redeemer” means a person, other than a dealer or distributor, who demands the refund value in exchange for the empty deposit beverage container.

“Redemption center” means an operation which accepts from consumers and provides the refund value for empty deposit beverage containers intended to be recycled and ensures that the empty deposit beverage containers are properly recycled.

“Refillable beverage container” means any deposit beverage container which ordinarily would be returned to the manufacturer to be refilled and resold.

“Reverse vending machine” means a mechanical device, which accepts one or more types of empty deposit beverage containers and issues a redeemable credit slip with a value not less than the container’s refund value. The refund value payments shall be aggregated and then paid if more than one container is redeemed in a single transaction.

§342G-B Deposit beverage container fee. (a) Beginning on October 1, 2002, every deposit beverage distributor shall pay to the department a deposit beverage container fee on each polyethylene terephthalate, high density polyethylene, or metal deposit beverage container manufactured in or imported into the State. The fee shall be imposed only once on the same beverage container. The fee shall be 0.5 cents per beverage container.

(b) Beginning on October 1, 2004 every deposit beverage distributor shall pay to the department a deposit beverage container fee on each deposit beverage container manufactured in or imported into the State. The fee shall be imposed only once on the same beverage. The fee shall be 1 cent per beverage container.

(c) No county shall impose or collect any assessment or fee on deposit beverage containers for the same or similar purpose that is the subject of this chapter.

(d) Beginning January 1, 2005, the deposit beverage container fees shall be based on a previous calendar quarter’s recycling rates as established by rules. The rates shall be as follows, based on the number of containers sold and the number recovered during a previous quarter:

- (1) If the recovery rate is seventy per cent or less: 1 cent per container; and
- (2) If the recovery rate is greater than seventy per cent: 1.5 cent per container.

§342G-C Deposit beverage distributors; registration, recordkeeping requirements. (a) By September 1, 2002, all deposit beverage distributors operating within the State shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address or other information previously submitted. After September 1, 2002, any person who desires to conduct business in the State as a deposit beverage distributor shall register with the department no later than one month prior to the commencement of the business.

(b) All deposit beverage distributors shall maintain records reflecting the manufacture of their beverages in deposit beverage containers as well as the importation and exportation of deposit beverage containers. The records shall be made available, upon request, for inspection by the department; provided that any

proprietary information obtained by the department shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearings officer.

§342G-D Deposit into deposit beverage container deposit special fund; use of funds. (a) There is established in the state treasury the deposit beverage container deposit special fund, into which shall be deposited:

- (1) All revenues generated from the deposit beverage container fee as described under sections 342G-B and 342G-E;
- (2) All revenues generated from the deposit beverage container deposit as described under sections 342G-J and 342G-E; and
- (3) All accrued interest from this fund.

(b) Moneys in the fund shall be used to reimburse refund values and pay handling fees to redemption centers. The department may also use the money to:

- (1) Fund administrative, audit, and compliance activities associated with collection and payment of the deposits and handling fees of the deposit beverage container fee and deposit program;
- (2) Conduct recycling education and demonstration projects;
- (3) Promote recyclable market development activities;
- (4) Support the handling and transportation of the deposit beverage containers to end-markets;
- (5) Hire personnel to oversee the implementation of the deposit beverage container fee and deposit program, including permitting and enforcement activities; and
- (6) Fund associated office expenses.

§342G-E Deposit beverage container inventory report and payment. (a) Beginning October 1, 2002, payment of the deposit beverage container fee and deposits as described in section 342G-J shall be made monthly based on inventory reports of the deposit beverage distributors. All deposit beverage distributors shall submit to the department documentation in sufficient detail that identifies:

- (1) The number of beverages in deposit beverage containers, by container size and type, manufactured in or imported to the State; and
- (2) The number of these deposit beverage containers, by container size and type, exported and intended for consumption out of the State during the reporting period.

(b) The amount due from deposit beverage distributors shall be the net number of deposit beverage containers imported or manufactured into the State (the total number of containers imported or manufactured less the total number of containers exported for consumption outside the State) multiplied by the sum of the prevailing deposit beverage container fee and the refund value of 5 cents. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii". All inventory reports and payments shall be made no later than the fifteenth day of the month following the end of the payment period of the previous month.

§342G-F Contract for administrative services. The department may contract the services of a third party to administer the deposit beverage container program under this part.

§342G-G Management and financial audit. The auditor shall conduct a management and financial audit of the program for fiscal years 2004-2005 and 2005-2006, and for each fiscal year thereafter ending in an even-numbered year. The auditor shall submit the audit report, including the amount of unredeemed refund value and recommendations, to the legislature and the department no later than twenty days prior to the convening of next regular session. The costs incurred by the auditor for the audit shall be reimbursed by the deposit beverage container program special fund. The auditor may contract the audit services of a third party to conduct the audit.

§342G-H Reserved.

§342G-I Rules; commencement. The department may adopt rules pursuant to chapter 91 as may be necessary for the purposes of this part. Full implementation of the deposit beverage container deposit program shall commence no later than January 1, 2005.

§342G-J Payment and application of deposits. (a) By January 1, 2005, every deposit beverage container sold in this State shall have a refund value of 5 cents. Each container shall have the refund value clearly indicated on it as provided in section 342G-L.

(b) The refund value is the amount of the deposit required. Once a refund value has been applied to a deposit beverage container, the deposit on that container may not be changed and shall be paid to the State.

(c) The deposit on each filled deposit beverage container shall be paid by the deposit beverage distributor, who manufactures or imports beverages in deposit beverage containers. Payment and reporting of the deposits shall be in accordance with section 342G-E. The deposits shall be deposited into the deposit beverage container deposit special fund as described in section 342G-D.

(d) Deposit beverage distributors who are required under subsection (c) to pay a deposit shall also pay a deposit beverage container fee and register with the State.

§342G-K Sales of beverages in deposit beverage containers. (a) Beginning January 1, 2005, every deposit beverage distributor who pays a deposit shall charge the dealer or consumer a deposit equal to the refund value for each deposit beverage container sold in Hawaii. The deposit charge may appear as a separate line item on the invoice.

(b) Each dealer shall charge the consumer the deposit beverage container deposit at the point of sale of the beverage excluding sales for on-premises consumption. The deposit charge may appear as a separate line item on the invoice.

§342G-L Deposit beverage container requirements. (a) Except as provided in subsection (b), every deposit beverage container sold in this State shall clearly indicate the refund value of the container and the word "Hawaii" or the letters "HI". The names or letters representing the names of other states with comparable deposit legislation may also be included in the indication of refund value. Other indications may be required as specified in rules.

(b) Subsection (a) does not apply to any type of refillable glass beverage container which has a brand name permanently marked on it and which has the equivalent of a refund value of at least 5 cents which is paid upon receipt of such container by a dealer or distributor.

§342G-M Redemption of empty deposit beverage containers. (a) Except as provided in subsection (b), a dealer shall:

- (1) Operate a redemption center by accepting all types of empty beverage containers with a Hawaii refund value;
 - (2) Pay to the redeemer the full refund value for all deposit beverage containers which bear a valid Hawaii refund value; and
 - (3) Ensure each deposit beverage container collected is recycled, and forward documentation necessary to support claims for payment as stated in section 342G-S, or rules adopted under this part.
- (b) Subsection (a) shall not apply to any dealer:
- (1) Who is located in a high density population area as defined by the director in rules, and within two miles of a certified redemption center that is operated independently from a dealer;
 - (2) Who is located in a rural area as defined by rule;
 - (3) Who subcontracts with a certified redemption center for operation on the dealer's premises;
 - (4) Whose sale of deposit beverage containers are only via vending machines;
 - (5) Whose place of business is less than five thousand square feet of interior space;
 - (6) Who can demonstrate physical hardship, or financial hardship, or both, based on specific criteria established in rules; or
 - (7) Who meet other criteria established by the director.

Notwithstanding paragraphs (1) and (2), the director may allow the placement of redemption centers at greater than prescribed distances to accommodate geographical features while assuring adequate consumer convenience.

(c) All dealers, regardless of the square footage of the dealer's place of business, shall post a clear and conspicuous sign at each public entrance to the dealer's place of business, which specifies the name, address, and hours of operation of the closest redemption center locations.

(d) If there is no redemption center within the two-mile radius of a dealer due to the criteria described in subsection (b), then the respective county and the State shall determine the need for a redemption center in that area. If a redemption center is deemed necessary, then the State, with assistance from the county, shall establish the redemption center with funding from the deposit beverage container deposit special fund.

(e) Businesses that sell deposit beverages for on-premises consumption, such as hotels, bars, and restaurants, shall collect used deposit beverage containers from the consumer; and use a certified redemption center for the collection of containers, or become a certified redemption center.

§342G-N Redemption centers. (a) Prior to operation, redemption centers shall be certified by the department.

(b) Applications for certification as a redemption center shall be filed with the department of health on forms prescribed by the department.

(c) The State, at any time, may review the certification of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center and to the dealers served by the redemption center, the State, after it has afforded the redemption center operator a hearing in accordance with chapter 91, may withdraw the certification of the center if it finds that there has not been compliance with applicable laws, rules, permit conditions, or certification requirements.

(d) Redemption centers shall:

- (1) Accept all types of empty deposit beverage containers for which a deposit has been paid;
- (2) Verify that all containers to be redeemed bear a valid Hawaii refund value;
- (3) Pay to the redeemer the full refund value for all beverage containers, except as provided in section 342G-P;
- (4) Crush or destroy all deposit beverage containers that are accepted at the time of redemption;
- (5) Ensure each container collected is recycled through a contractual agreement with an out-of-state recycler or an in-state recycling facility permitted by the department; provided that this paragraph shall not apply if the redemption center is operated by a recycler permitted by the department; and
- (6) Forward the documentation necessary to support claims for payment as stated in section 342G-S.

(e) Redemption centers' redemption areas shall be maintained in full compliance with applicable laws and with the orders and rules of the department, including permitting requirements, if deemed necessary, under chapter 342H.

§342G-O Reverse vending machine requirements. Reverse vending machines may be used by redemption centers to satisfy the requirements of section 342G-M; provided that the reverse vending machine shall accept any type of empty deposit beverage container and pay out appropriate refunds via a redeemable voucher for those containers that bear a valid Hawaii refund value. If the reverse vending machine is unable to read the Hawaii refund value, then the department shall specify a delayed date in which the reverse vending machines may be used. The reverse vending machine shall be routinely serviced to ensure proper operation and continuous acceptance of containers and payment of refunds. All deposit beverage containers accepted by a reverse vending machine shall either be crushed or destroyed at the point of redemption.

§342G-P Refusal of refund value payment for a deposit beverage container. Redemption centers shall refuse to pay the refund value on any broken, corroded, dismembered, flattened deposit beverage container, or any deposit beverage container which:

- (1) Contains a free flowing liquid;
- (2) Does not properly indicate a refund value; or
- (3) Contains a significant amount of foreign material.

§342G-Q Handling fees and refund values for certified redemption centers. (a) The State shall pay to each certified redemption center a handling fee of not less than the prevailing beverage container fee for each deposit beverage container redeemed by a consumer which is transported out-of-state or received by an approved in-state company for an approved end use for recycling or received by a department permitted recycling facility.

(b) Not less than thirty days before paying the handling fees required by this section, the department shall publish a notice statewide in accordance with applicable state law of the recovery rate for the calendar quarter for which the handling fee will be paid. Payments for handling fees shall be made not less than six months after the completion of the calendar quarter to which the payment applies.

(c) The handling fee shall be paid in addition to the refund value of each such empty beverage container. The department may choose to pay the handling fee and refund value on the basis of the total weight of the containers received by material type and the average weight of each container type.

(d) A handling fee and refund value may only be paid once for each container redeemed by a consumer and claimed by a redemption center in accordance with section 342G-S.

§342G-R Reserved.

§342G-S Redemption center reporting. The State shall pay certified redemption centers handling fees and refund values as described in 342G-Q, based on collection reports submitted by the redemption centers. All redemption centers shall submit to the department, information on forms prescribed by the department. Information shall include at a minimum:

- (1) The amount and type of containers accepted and rejected;
- (2) The amount of refunds paid out;
- (3) The amount and weight of each type of containers transported out-of-state, or to a permitted recycling facility;
- (4) Copies of out-of-state transport and weight receipts, or acceptance receipts from permitted recycling facilities. If the redemption center and the recycling facility are the same entity, copies of out-of-state transport and weight receipts, or documentation of end use accepted by the department, shall also be included.

The requests for payment shall be no more frequent than two times per month. Beginning January 1, 2005, each center shall report the previous quarter's information no later than thirty days after the end of that quarter so that the handling rate can be calculated. Failure to timely submit the report shall postpone payment for those containers until they are timely submitted for a subsequent quarter.

§342G-T Recycling facility reporting. Recycling facilities, in addition to any requirements under chapter 342H, shall prepare or maintain the documents involving empty beverage containers, as required by the department.

§342G-U Audit authority. The records of the deposit beverage distributor, dealer, redemption center, and recycling facility shall be made available, upon request, for inspection by the department, a duly authorized agent of the department, or the auditor. Any proprietary information obtained by them shall be kept confidential and shall not be disclosed to any other person, except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearings officer.

§342G-V Advisory committee. The department shall convene an advisory committee to assist it in developing any rules needed to implement this chapter. The department shall select members of the committee so as to obtain input on the state level as well as assess the impact on each individual county, consumers, recyclers, and the beverage industry. Members of the committee shall be appointed by the director and shall serve at the director's pleasure. A simple majority of the committee members shall constitute a quorum for the purposes of recommending rules and providing input to the director."

SECTION 3. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- Additional exemptions. In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts received as a beverage container deposit collected under chapter 342G, part .”

SECTION 4. Section 342G-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Deposit beverage” means beer, ale, or other drink produced by fermenting malt, mixed spirits, mixed wine, tea and coffee drinks regardless of dairy-derived product content, soda, or noncarbonated water, and all nonalcoholic drinks in liquid form and intended for internal human consumption that is contained in a deposit beverage container.

The term “deposit beverage” excludes the following:

- (1) A liquid which 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;
- (2) A liquid which is ingested in very small quantities and which is consumed for medicinal purposes only;
- (3) A liquid which is designed and consumed only as a nutritional supplement as defined in the Dietary Supplement Health and Education Act of 1994 (P.L. 103-417) and not as a beverage;
- (4) Products frozen at the time of sale to the consumer, or, in the case of institutional users such as hospitals and nursing homes, at the time of sale to the users;
- (5) Products designed to be consumed in a frozen state;
- (6) Instant drink powders;
- (7) Seafood, meat, or vegetable broths, or soups, but not juices; and
- (8) Milk and all other dairy-derived products, except tea and coffee drinks with trace amounts of these products.”

SECTION 5. Section 342G-81, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Deposit glass beverage container” means:

- (1) The individual, separate, sealed, glass container used for containing, at the time of import, sixty-four ounces or less of a beverage; or
- (2) The empty, individual, separate glass container that will be filled with sixty-four ounces or less of a beverage and sealed in this State, so that these glass beverage containers will be subject to parts A and B.”

SECTION 6. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;

- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649;
- (27) High technology special fund under section 206M-15.5;
- (28) Public schools special fees and charges fund under section 302A-1130(f);
- (29) Cigarette tax stamp enforcement special fund established by section 28-14;
- (30) Cigarette tax stamp administrative special fund established by section 245-41.5; ~~and~~
- (31) Tobacco enforcement special fund established by section 28-15;
- (32) Deposit beverage container deposit special fund under section 342G-D;
and
- (33) Glass advance disposal fee special fund established by section 342G-82.

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 7. Section 342G-71, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342G-71]]~~ **Penalties.** Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a

separate offense. Any action taken to impose or collect the penalty provided for in this section shall be ~~considered a civil action.~~ made through administrative, civil, or criminal actions.”

SECTION 8. Section 342G-72, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§342G-72[.] Enforcement. [The department of health shall enforce this chapter.]~~ (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a certification or permit issued pursuant to this chapter, the director may do any one or more of the following:

- (1) Issue a field citation assessing an administrative penalty and ordering corrective action immediately or within a specified time;
- (2) Issue an order assessing an administrative penalty for any past or current violation;
- (3) Require compliance immediately or within a specified time; and
- (4) Commence a civil action in circuit court in which the violation occurred or where the person resides or maintains the person’s principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction, the imposition and collection of civil penalties, or other relief.

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

(c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall:

- (1) Affirm or modify any penalties imposed or shall modify or affirm the order previously issued; or
- (2) Issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.

If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after 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.

(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
 - (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
 - (3) The administrative penalty was imposed; and
 - (4) The penalty remains unpaid.
- (f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.”

SECTION 9. Section 342G-82, Hawaii Revised Statutes, is amended to read as follows:

“~~[§342G-82]~~ **Advance disposal fee.** (a) Every glass container importer shall pay to the department an advance disposal fee. The fee shall be imposed only once on the same glass container and shall not be assessed on drinking glasses, cups, bowls, plates, ashtrays, and similar tempered glass containers. For the period beginning September 1, 1994, ~~[to September 1, 1996,]~~ the fee shall be one and one-half cents per glass container. ~~[Thereafter, the fee shall be set by the legislature at a rate the legislature determines will permit funding of county glass recovery programs as required to achieve the following glass recovery program goals:~~

- ~~(1) Twenty five per cent by the end of 1996;~~
- ~~(2) Fifty per cent by the end of 1998; and~~
- ~~(3) By the end of 2000 and thereafter, the maximum amount practicable considering the economic and environmental benefits to be realized.~~

~~(b) In January 1995, the department, with assistance from the county solid waste divisions, shall evaluate the amount of glass recovered during the first fifteen months of the program and recommend to the legislature any modification in the fee structure to meet county glass recovery program funding requirements. Thereafter, prior to the convening of the legislative session in each subsequent even-numbered year, the department of health, in coordination with the counties, shall report to the legislature on the effectiveness of the program and make appropriate recommendations for modification of the fee.] Beginning October 1, 2004, the glass advance disposal fee shall only apply to glass containers that are not glass deposit beverage containers.~~

~~[(e)]~~ (b) The legislature shall have exclusive authority over all matters subject to this chapter.

~~[(d)]~~ (c) No county shall impose or collect any assessment or fee on glass containers for the same or similar purpose that is ~~[-[the]]~~ subject of this chapter.”

SECTION 10. Section 342G-83, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All glass container importers shall maintain records reflecting the manufacture of their glass containers as well as the importation and exportation of products packaged in glass. The records shall identify the type (glass deposit beverage container or non-deposit beverage glass container) and quantity of each type of glass container. The records shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential, and shall not be disclosed to any other person except:

- (1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or
- (2) Under an order issued by a court or administrative agency hearing officer.”

SECTION 11. Section 342G-84, Hawaii Revised Statutes, is amended to read as follows:

“§342G-84 Deposit into environmental management special fund; distribution to counties. (a) Revenues generated from the advance disposal fee shall be deposited into a special account in the environmental management fund. Moneys from the special account shall be used to fund county glass recovery programs established in accordance with the requirements under section 342G-86; provided that no moneys shall be made available to a county unless the county has first submitted its formally adopted integrated solid waste management plan to the department for review. In the event of any surplus in the special account, the department shall recommend a reduction in the fee as deemed necessary.

(b) The department shall distribute the moneys contained in the special account to the counties in proportion to the amount of glass imported into each county based on the county's de facto population. The distribution shall be in the form of direct contracts with the department as permitted under chapters 103 and 103D or transfer of funds from the department.

(c) No more than ten per cent, in the aggregate, of the revenue collected in any one year may be used by the department for administrative and educational purposes and to promote glass recovery, recycling, and reuse in Hawaii through research and demonstration projects.

(d) All moneys distributed to the counties under subsection (b), and not used by the counties as specified in section 342G-86, shall be returned to the State for deposit into the environmental management special fund at the end of each annual contract period.”

SECTION 12. Section 342G-85, Hawaii Revised Statutes, is amended to read as follows:

“§342G-85 Container inventory report and payment. (a) Payment of the advance glass disposal fee shall be made quarterly based on inventory reports of the glass container importers, except for those importers subject to subsection (c) or (d). All glass container importers shall submit to the department documentation in sufficient detail that identifies the number of glass deposit beverage and glass non-deposit beverage containers manufactured or imported to the State and sold or distributed, by manufacturer or distributor, during the calendar year.

(b) [The] Until September 30, 2004, the amount due from glass container importers less glass containers exported for the calendar year shall be the sum equal to the number of glass containers provided in subsection (a) multiplied by the advance disposal fee [of 1.5 cents.] specified in section 342G-82. Beginning October 1, 2004, the amount due from glass container importers shall be the sum equal to the number of non-deposit beverage glass containers provided in subsection (a), less non-deposit beverage glass containers exported, and multiplied by the advance disposal fee. Payment shall be made by check or money order payable to the “Department of Health, State of Hawaii”. All subsequent inventory reports and payments shall be made not later than the fifteenth day of the month following the end of the previous calendar quarter, except for those importers subject to subsection (d).

(c) [A] Until September 30, 2004, a glass container importer who imports fewer than five thousand glass containers within a one-year period shall be exempt from payment of the fee. Any empty, imported glass container designed to hold not more than two and one-half fluid ounces of a product meant for human consumption shall be exempt from the fee. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State fewer than five thousand non-deposit

beverage glass containers within a one-year period shall be exempt from payment of the fee.

(d) [A] Until September 30, 2004, a glass container importer who imports five thousand or more glass containers, but less than or equal to one hundred thousand glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly. Beginning October 1, 2004, a glass container importer who imports or manufactures in the State five thousand or more non-deposit beverage glass containers, but less than or equal to one hundred thousand non-deposit beverage glass containers, shall be permitted to provide a report and payment of the fee annually, rather than quarterly.

SECTION 13. Section 342G-86,¹ Hawaii Revised Statutes, is amended to read as follows:

“(a) All county glass recovery programs shall include:

- (1) Some form of glass incentive or “buy back” program providing a means of encouraging participation by the public or private collectors; and
- (2) The paving [during each of the first two years] of the equivalent of one mile of two lane asphalt roadway as part of a research and demonstration program utilizing glassphalt[-] or glass within any other portion of the pavement section; or any other demonstration project as approved by the department.”

SECTION 14. Section 342G-88, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 342G-89, Hawaii Revised Statutes, is repealed.

SECTION 16. The department shall provide quarterly reports on the deposit beverage container program to the legislature and the governor for the period beginning October 1, 2002 and ending December 31, 2004. The reports shall contain but not be limited to:

- (1) Performance indicators;
- (2) Measures of effectiveness;
- (3) Organization charts; and
- (4) Position descriptions of every type of position created and actual salaries paid to each employee.

The reports shall include recommended legislation for statutory changes.

If the administration of the program is contracted to a third party pursuant to section 342G-F, a copy of the contract shall be appended to the next applicable report, and the contractor shall abide by these reporting requirements as well. The contractor’s pay scales shall be comparable to equivalent positions in civil service.

SECTION 17. All positions established for the program established by section 2 of this Act shall be temporary positions. No permanent position shall be established for the program and no temporary position shall be converted to a permanent position until explicitly authorized by the legislature.

SECTION 18. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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SECTION 20. This Act shall take effect on July 1, 2002; provided that amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 25, 2002.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.