

PSHB 1131 (H-0947.1/23) - H COMM AMD

By Committee on Environment & Energy

1 On page 6, line 25, after "containers" insert "and container
2 labels and closures"

3 On page 6, line 28, after "section" strike "302" and insert "303"

4 On page 47, line 19, after "(a)" strike "(i)"

5 On page 47, beginning on line 21, strike all material through
6 "act;" on line 23

7 On page 47, line 26, after "(c)" strike "(i)"

8 On page 47, beginning on line 29, strike all material through
9 "act;" on line 31

10 On page 47, line 32, after "(d)" strike "(i)"

11 Beginning on page 47, line 37, strike all material through "act;"
12 on page 48, line 2

13 On page 48, line 3, after "(e)" strike "(i)"

14 On page 48, beginning on line 6, strike all material through
15 "act;" on line 8

16 On page 48, line 9, after "(f)" strike "(i)"

17 On page 48, beginning on line 14, strike all material through
18 "activities;" on line 18

19 On page 48, beginning on line 20, after "this chapter" strike all
20 material through "act)" on line 21

21 On page 59, beginning on line 20, after "act" strike all material
22 through "formed" on line 24

1 Beginning on page 89, line 15, strike all of sections 301 through
2 319 and insert the following:

3 "NEW SECTION. **Sec. 301.** INTENT. (1) The legislature finds that
4 the department of ecology was directed, through an independent
5 consultant, to study how plastic packaging is managed in the state,
6 to assess various policy options, and to provide recommendations to
7 achieve certain goals, which included:

8 (a) Plastic packaging sold into the state is 100 percent
9 recyclable, reusable, or compostable by January 1, 2025;

10 (b) Plastic packaging sold into the state incorporates at least
11 20 percent postconsumer recycled content by January 1, 2025; and

12 (c) Plastic packaging is reduced when possible and optimized to
13 meet the need for it.

14 (2) The legislature also finds that the study recommendations
15 included establishing an extended producer responsibility policy for
16 all consumer packaging and paper with a framework that makes
17 producers responsible for achieving specific management and
18 environmental outcomes for the consumer packaging they supply into
19 Washington state. In addition, the legislature finds that the study
20 recommends that a deposit return system is an effective way for
21 producers to meet outcomes required by an extended producer
22 responsibility framework.

23 (3) The legislature further intends that packaging materials be
24 recycled or reused through extended producer responsibility programs,
25 including a deposit return system for qualifying beverage containers.
26 It is the intent of the legislature that extended producer
27 responsibility programs be implemented by and for producers of
28 plastic packaging and other material types so that the design and
29 management of their packaging is accomplished in a manner that
30 ensures minimal environmental impact, involves producers from design
31 concept to end-of-life management, and incentivizes innovation and
32 industry stewardship to minimize environmental impacts.

33 NEW SECTION. **Sec. 302.** DEFINITIONS. The definitions in this
34 section apply throughout this chapter unless the context clearly
35 requires otherwise.

36 (1) "Dealer" means a retail establishment, as that term is
37 defined in section 102 of this act, that engages in the sale of
38 beverages in qualifying beverage containers.

1 (2) "Department" means the department of ecology.

2 (3) "Deposit return system" means a beverage container redemption
3 program that pays a per-unit refund value to consumers for qualifying
4 beverage containers and collects and processes qualifying beverage
5 containers as described in section 307 of this act.

6 (4) "Distributor" means every person or entity who engages in the
7 sale of beverages in beverage containers to a dealer in this state,
8 including any manufacturer or importer who engages in such sales, and
9 dealers who self-distribute their own brands.

10 (5) "Distributor responsibility organization" means a cooperative
11 association as defined in chapter 23.86 RCW, or an alternative
12 structure as approved by the department, that is designated by a
13 group of distributors representing the majority of beverages sold in
14 qualifying beverage containers in the state, to develop and carry out
15 the activities required of distributors by this chapter.

16 (6) "Qualifying beverage container" means beverage containers as
17 described in section 307(2) of this act.

18 NEW SECTION. **Sec. 303.** RELATIONSHIP WITH CHAPTER 70A.--- RCW
19 (THE NEW CHAPTER CREATED IN SECTION 601 OF THIS ACT). (1)(a) As an
20 alternative to satisfying their compliance obligation under chapter
21 70A.--- RCW (the new chapter created in section 601 of this act) for
22 qualifying beverage containers, a producer responsibility
23 organization and the department may not consider qualifying beverage
24 containers to be covered products for purposes of chapter 70A.--- RCW
25 (the new chapter created in section 601 of this act) upon a
26 distributor responsibility organization's establishment and operation
27 of a deposit return system for the qualifying beverage containers
28 described in section 307(2) of this act.

29 (b) A producer of qualifying beverage containers subject to the
30 requirements of this chapter must satisfy postconsumer recycled
31 content requirements established in chapter 70A.--- RCW (the new
32 chapter created in section 602 of this act) through limited
33 participation in a producer responsibility organization only for
34 purposes of chapter 70A.--- RCW (the new chapter created in section
35 602 of this act).

36 (2) This chapter, relating to the establishment of a deposit
37 return system, establishes requirements for the management of the
38 containers described in section 307(2) of this act.

1 (3) (a) The requirements of sections 304 through 319 of this act
2 do not apply to qualifying beverage containers unless and until a
3 distributor responsibility organization, other than a single
4 distributor independently complying with the requirements of a
5 distributor responsibility organization in this chapter, is
6 established and files a written notice with the department at, or
7 prior to, the time of producer responsibility organization
8 registration under chapter 70A.--- RCW (the new chapter created in
9 section 601 of this act), that the distributor responsibility
10 organization will establish and operate a deposit return system.

11 (b) Upon the receipt of the written notice by the department
12 under (a) of this subsection, all qualifying beverage containers of
13 all producers subject to the requirements of chapter 70A.--- RCW (the
14 new chapter created in section 601 of this act) cease to be
15 considered covered products for purposes of chapter 70A.--- RCW (the
16 new chapter created in section 601 of this act) and are instead
17 subject to the requirements of this chapter.

18 (c) Nothing in this section excludes packaging associated with
19 qualifying beverage containers, other than the qualifying beverage
20 container itself and any closures or labels, from the requirements of
21 chapter 70A.--- RCW (the new chapter created in section 601 of this
22 act).

23 (4) If a distributor responsibility organization, other than a
24 single distributor independently fulfilling the requirements of a
25 distributor responsibility organization, is approved by the
26 department and operates a deposit return system as described in
27 section 307 of this act, all qualifying beverage containers are
28 included in the deposit return system and all requirements of this
29 chapter apply to the distributors of qualifying beverage containers.

30 NEW SECTION. **Sec. 304.** DISTRIBUTOR RESPONSIBILITY ORGANIZATION
31 DUTIES. (1) Beginning July 1, 2024, or four months after a
32 distributor responsibility organization is approved by the
33 department, whichever is later, each distributor that offers for
34 sale, sells, or distributes in or into Washington beverages in
35 qualifying beverage containers must join a distributor responsibility
36 organization or independently carry out all duties and requirements
37 of a distributor responsibility organization described in this
38 chapter including, but not limited to, the following: (a) Providing a
39 convenient bulk bag drop-off system as described in section 307(5) of

1 this act that accepts all qualifying beverage containers in the same
2 bag, and at no cost to consumers; (b) providing the same number, and
3 geographic distribution, of drop-off locations as required of a
4 distributor responsibility organization; (c) paying to consumers the
5 refund value of qualifying beverage containers; (d) meeting the
6 performance targets described in section 306 of this act; (e) paying
7 all applicable performance penalties; and (f) fulfilling all
8 reporting requirements in this chapter.

9 (2) To qualify as a distributor responsibility organization,
10 other than an individual distributor independently fulfilling the
11 duties required of a distributor responsibility organization, and be
12 approved by the department as described in section 305 of this act, a
13 distributor responsibility organization must demonstrate to the
14 department's satisfaction that its initial membership represents the
15 majority of beverages in qualifying beverage containers sold or made
16 available for sale in the state. Distributors may not be initial
17 members of more than one distributor responsibility organization
18 registering with the department. Distributors that have not joined a
19 distributor responsibility organization, or that do not independently
20 fulfill the duties required of a distributor responsibility
21 organization, may not sell or supply beverages in qualifying beverage
22 containers after October 1, 2024, or 120 days after a distributor
23 responsibility organization is approved by the department, whichever
24 is later, in or into Washington. Any distributor that operates in
25 violation of this requirement is subject to penalties and damages as
26 described in sections 305 and 307 of this act.

27 (3) A distributor responsibility organization registering with
28 the department must submit with its registration the following:

29 (a) A list of its member distributors and their brands of
30 beverages in qualifying beverage containers; and

31 (b) The total gross sales volume of beverages in qualifying
32 beverage containers distributed by its members in Washington during
33 the preceding year, representing, to the satisfaction of the
34 department, a majority of such sales in the state.

35 (4) Until a distributor responsibility organization begins to
36 submit annual reports as specified in section 309 of this act, by
37 January 15th of each year a distributor responsibility organization
38 must submit the following data for the prior calendar year:

39 (a) A list of its member distributors and their brands of
40 beverages in qualifying beverage containers; and

1 (b) The number of qualifying beverage containers sold or made
2 available for sale in the state, by material category and size. A
3 distributor responsibility organization may rely on member reporting
4 for the reporting requirements in this section.

5 (5) By June 30th of the fiscal year of initial distributor
6 responsibility organization registration and every June 30th
7 thereafter, a distributor responsibility organization registered with
8 the department must submit an annual payment to the department to
9 fund the costs to implement, administer, and enforce this chapter,
10 including rule making.

11 (6) Beginning July 1, 2026, or within 180 days of the first
12 adoption of rules relating to this chapter, whichever is later, a
13 distributor responsibility organization approved by the department as
14 described in section 305 of this act must submit a plan to the
15 department that meets the requirements of a deposit return system as
16 specified in section 307 of this act.

17 (7) A distributor responsibility organization registered with the
18 department must implement a deposit return system, as specified in
19 section 307 of this act, by July 1, 2027, or within one year of first
20 adoption of rules relating to this chapter, whichever is later.

21 (8) A distributor responsibility organization registered with the
22 department may require deposits to be collected to offset the refund
23 value up to 60 days prior to the start of the deposit return system.

24 (9) A distributor responsibility organization that submits
25 information or records to the department under this chapter may
26 request that the information or records be made available only for
27 the confidential use of the department, the director, or the
28 appropriate division of the department. The director of the
29 department must give consideration to the request, and if the
30 director determines that this action is not detrimental to the public
31 interest and is otherwise in accordance with the policies and
32 purposes of chapter 43.21A RCW, the director must grant the request
33 for the information to remain confidential as authorized in RCW
34 43.21A.160.

35 (10) A distributor responsibility organization may not distribute
36 or otherwise disseminate funds from unclaimed refunds to members of
37 the distributor cooperative, or alternative structure approved by the
38 department, as a dividend, and shall report on this requirement
39 annually in the manner described in section 309 of this act.

1 (11) A manufacturer distributor producing a de minimis quantity
2 of beverages in qualifying beverage containers may alternatively
3 comply with the requirements of this chapter by operating an
4 independent refund program approved by the department, as described
5 in section 312 of this act.

6 NEW SECTION. **Sec. 305.** DEPARTMENT DUTIES. (1) The department
7 shall implement, administer, and enforce this chapter. The department
8 may adopt rules to implement, administer, and enforce this chapter.

9 (2) By April 1st of each year after a distributor responsibility
10 organization has notified the department of its intent to implement a
11 deposit return system under section 303 of this act, the department
12 must:

13 (a) Prepare a workload analysis that, as narrowly, efficiently,
14 and cost-effectively as possible, identifies the annual costs to
15 implement, administer, and enforce this chapter, including rule
16 making, in the next fiscal year;

17 (b) Determine a total annual fee payment to be paid by a
18 distributor responsibility organization to cover, but not exceed, the
19 costs of implementing, administering, and enforcing this chapter
20 identified through the workload analysis; and

21 (c) Send notice to a distributor responsibility organization of
22 fee amounts due.

23 (3)(a) The department shall review new, updated, and revised
24 registrations submitted by a distributor responsibility organization
25 as required in section 304 of this act. The department shall not
26 approve the registration of a distributor responsibility organization
27 whose initial membership at the time of registration does not
28 represent a majority of beverages in qualifying beverage containers
29 sold or made available for sale in Washington the prior year. The
30 department shall:

31 (i) Approve the registration of a distributor responsibility
32 organization whose initial membership at the time of registration
33 represents, to the department's satisfaction, a majority of beverages
34 in qualifying beverage containers sold or made available for sale in
35 Washington the prior year; and

36 (ii) Make a determination, when applicable, as to whether the
37 distributor responsibility organization's plan, plan update, or plan
38 revision meets the criteria established in section 307 of this act.

1 (b) The department shall notify the distributor responsibility
2 organization of:

3 (i) The department's approval of a plan, if the plan provides for
4 a program that meets the requirements of section 307 of this act; or

5 (ii) The department's disapproval of a plan, and its reasons for
6 disapproval, if the department determines the plan does not meet the
7 requirements of section 307 of this act.

8 (c) If a distributor responsibility organization's plan is not
9 approved by the department, the distributor responsibility
10 organization must submit a new or revised plan within 60 days after
11 receipt of the department's letter of disapproval.

12 (4) The department shall receive the annual reports submitted by
13 a distributor responsibility organization, or individual distributor
14 independently complying with the requirements of this chapter,
15 pursuant to section 309 of this act and:

16 (a) Ensure the reports contain the items required in sections 304
17 and 309 of this act; and

18 (b) Make public the annual reporting required of the distributor
19 responsibility organization registered by the department, and any
20 individual distributor independently complying with the requirements
21 of this chapter, as described in sections 304 and 309 of this act.

22 (5)(a) In order to determine compliance with the provisions of
23 section 306(2) of this act, the department may, within six months of
24 the date that the department receives a report as described in
25 section 309 of this act, review the records of a distributor
26 responsibility organization specifically related to the accuracy of
27 the redemption rate. The records specifically related to the accuracy
28 of the redemption rate do not include financial details of a
29 distributor responsibility organization.

30 (b) If in the course of a review described in (a) of this
31 subsection the department determines that an audit of a distributor
32 responsibility organization is necessary to verify the redemption
33 rate, the department shall require the distributor responsibility
34 organization to retain an independent audit firm to determine the
35 accuracy of the redemption rate. The scope of the audit must be
36 limited to records specifically related to the accuracy of the
37 redemption rate. A distributor responsibility organization that is
38 subject to review shall pay the costs of the audit. The audit must be
39 limited to the records described in (a) of this subsection.

1 (6) In lieu of the payment described in section 304(5) of this
2 act and subsection (2) of this section, after October 1, 2024, or 120
3 days after a distributor responsibility organization is approved by
4 the department, whichever is later, a distributor independently
5 carrying out the duties and requirements of a distributor
6 responsibility organization described in this chapter shall pay a
7 registration fee to the department equal to 10 cents per qualifying
8 beverage container until such time as a distributor responsibility
9 organization begins operating a deposit return system.

10 (7) (a) After July 1, 2027, or the date in which a distributor
11 responsibility organization begins operating a deposit return system,
12 whichever is later, and after notification of noncompliance from the
13 department and a 60-day cure period, the department shall
14 administratively impose a civil penalty to any distributor who fails
15 to participate in a distributor responsibility organization as
16 specified in section 304 of this act, or fails to otherwise comply
17 with the requirements of this chapter by independently carrying out
18 the duties of a distributor responsibility organization described in
19 this chapter, which shall be at least 15 cents per qualifying
20 beverage container sold or made available for sale by that
21 distributor in the state, or \$10,000, whichever is greater.

22 (b) Any distributor who incurs a penalty under this section may
23 appeal the penalty to the pollution control hearings board
24 established in chapter 43.21B RCW.

25 (c) Fees paid under subsection (6) of this section must be
26 deposited into the deposit return organization program account
27 created in section 318 of this act and used by the department to
28 offset costs of implementing the requirements in this chapter. The
29 department shall direct and store any excess funds to make available
30 to the recycling revenue augmentation fund described in section 317
31 of this act.

32 (d) Penalties levied under this section must be deposited into
33 the deposit return organization program account created in section
34 318 of this act and be used to support the duties of the department
35 described in this section.

36 NEW SECTION. **Sec. 306.** REUSE AND RECYCLING PERFORMANCE
37 REQUIREMENTS. (1) To meet the reuse and recycling performance
38 requirements established in this section, a distributor
39 responsibility organization must:

1 (a) Demonstrate that all qualifying beverage containers are
2 designed to be reusable or recyclable by January 1, 2031, in
3 accordance with criteria established by the department; and

4 (b) Calculate the reuse sales rate and the redemption rate of
5 qualifying beverage containers and provide the verification to the
6 department as part of the annual reporting requirements. The reuse
7 sales rate is the number of units in reusable packaging sold in a
8 year. For materials reclaimed under a deposit return system, the
9 calculation point for the redemption rate is the number of qualifying
10 beverage containers redeemed statewide by the distributor
11 responsibility organization divided by the number of qualifying
12 beverage containers sold in the state by members of the distributor
13 responsibility organization.

14 (2) At a minimum, each plan must achieve the following
15 performance requirements:

16 (a) By 2028, a minimum of 60 percent of all qualifying beverage
17 containers supplied into the state are redeemed for reuse or
18 recycling through the deposit return system;

19 (b) By 2031, a minimum of 80 percent of all qualifying beverage
20 containers supplied into the state are redeemed for reuse or
21 recycling through the deposit return system; and

22 (c) By December 31, 2031, sales of beverages in reusable
23 packaging must reach at least one percent of all qualifying beverage
24 containers.

25 NEW SECTION. **Sec. 307.** DEPOSIT RETURN SYSTEM. (1) The
26 department shall make a determination of approval of a distributor
27 responsibility organization's plan, or plan update, to operate a
28 deposit return system for qualifying beverage containers based on the
29 criteria in this section:

30 (a) The distributor responsibility organization's registration
31 with the department meets the requirements described in sections 304
32 and 305 of this act;

33 (b) The distributor responsibility organization presents a plan
34 that imposes a refund value of 10 cents for all qualifying beverage
35 containers covered under the plan;

36 (c) The plan or plan update includes a method for paying the
37 refund value and collecting qualifying beverage containers from
38 consumers, including a plan to provide convenient bulk, bagged
39 returns, and a plan to accept direct, sorted returns at its

1 processing facilities for an additional refund value premium if the
2 containers are returned by organizations certified as nonprofit
3 organizations pursuant to section 501(c)(3) of the internal revenue
4 code that are approved by the distributor responsibility organization
5 and serve very low-income individuals who rely on regular container
6 refunds through the deposit return system as a source of daily funds;

7 (d) Includes in the plan a process for annually reporting to the
8 department regarding the names, locations, return volume, cost per
9 container for each partnership, and other services provided through
10 the partnerships described in (c) of this subsection; and

11 (e) Includes a description of how the distributor responsibility
12 organization and the deposit return system will coordinate with other
13 recycling systems and processes, including exploring the potential
14 for colocating facilities as described in section 308 of this act,
15 establishing policies to facilitate the redemption of materials from
16 other recycling pathways as described in section 314 of this act, and
17 providing clear communications about which products are included in
18 the deposit return system as described in section 313 of this act.

19 (2) A deposit return system must include the following qualifying
20 beverage containers:

21 (a) Except as provided in (b) of this subsection, any individual,
22 separate, sealed glass, metal, or plastic bottle or can, except for a
23 carton, foil pouch, drink box, or metal container that requires a
24 tool to be opened, that contains any beverage intended for human
25 consumption and in a quantity of greater than four ounces and less
26 than or equal to one gallon.

27 (b) The requirements of this chapter do not apply to beverages
28 with dairy milk as the first ingredient or infant formula.

29 (3) If a deposit return system is approved by the department,
30 then for the duration of the plan, all qualifying beverage containers
31 sold or offered for sale in the state of Washington:

32 (a) Must carry a 10 cent refund value;

33 (b) Must be registered at least annually with the distributor
34 responsibility organization by the producer or distributor, including
35 information on the brand, size, container material type or types,
36 beverage type, bar code or stock keeping unit information, and total
37 number of containers of each type, size, and brand sold in the state
38 of Washington;

39 (c) Must be sold by a distributor, importer, or producer that is
40 a member of the distributor responsibility organization submitting

1 the deposit return system plan for qualifying beverage containers or
2 an individual distributor independently carrying out the duties
3 required of a distributor responsibility organization described in
4 this chapter; and

5 (d) Must carry a clear and conspicuous marking indicating the
6 refund value of the container in the state of Washington. This
7 requirement may be satisfied through the abbreviation "WARV" or any
8 other standard abbreviation approved by the department. A beverage
9 container for wine may satisfy the requirement to indicate the refund
10 value of the container through the use of a quick response code.

11 (4) (a) In lieu of any other penalties for not achieving the
12 performance criteria in section 306 of this act, should the
13 redemption rate performance requirements described in section 306 of
14 this act not be met, the distributor responsibility organization
15 shall annually calculate the number of containers representing the
16 difference between the redemption rate of qualifying beverage
17 containers and the redemption rate performance requirements described
18 in section 306(2) (a) and (b) of this act, and pay a penalty that is
19 equal to 10 cents times the number of containers representing the
20 difference.

21 (b) At the sole discretion of the department, if the requirements
22 in (a) of this subsection result in a penalty to be paid by the
23 distributor responsibility organization, the department may
24 alternatively identify priority areas for additional drop-off access
25 to be provided, and the department and the distributor responsibility
26 organization may agree to provide additional access accordingly. If
27 agreement is not reached, the financial penalty in (a) of this
28 subsection must be paid.

29 (c) There is no penalty assessed on the distributor
30 responsibility organization related to the reuse performance
31 requirements described in section 306 of this act.

32 (5) The distributor responsibility organization must, at its own
33 cost, provide a convenient bulk drop-off option for bagged qualifying
34 beverage containers at geographically dispersed locations in
35 Washington that sell beverages in qualifying beverage containers, are
36 located a convenient distance from a dealer, or are located at a
37 publicly owned facility. The distributor responsibility organization
38 may not charge customers for this drop-off service and must credit
39 the cost of any required bag purchase back to the customer when the
40 bag is processed. If drop-off bags are made of plastic film, bags

1 must have a minimum 50 percent recycled content and the distributor
2 responsibility organization must be able to demonstrate that waste
3 film from bags is being recycled in the best commercially available
4 manner.

5 (6) Upon launch of the deposit return system, the distributor
6 responsibility organization shall provide at least 270 bag drop sites
7 around the state, with at least one drop site located in each county,
8 and at least one drop site located in each island community served by
9 the Washington state ferries system, distributed by county
10 proportional to the volume of qualifying beverage containers sold in
11 each county. The distributor responsibility organization shall
12 calculate a drop-off capacity formula that is equal to the ratio of
13 drop-off locations to total sales of beverages in qualifying beverage
14 containers represented by the initial deployment of 270 sites, and
15 the number of beverages in qualifying beverage containers sold the
16 year prior to the year the distributor responsibility organization
17 begins operating a deposit return system in Washington. Within two
18 years of the date in which the distributor responsibility
19 organization begins operating a deposit return system, the
20 distributor responsibility organization shall add an additional 10
21 drop-off locations. The locations of the additional 10 drop-off sites
22 must be agreed upon by the distributor responsibility organization
23 and the department, in consultation with the consumer convenience
24 advisory council established in section 310 of this act, balancing
25 the need for consumer convenience and access in rural counties, small
26 cities, and underserved areas, and data regarding where beverages in
27 qualifying beverage containers are sold. Five years after the
28 distributor responsibility organization is required to provide 280
29 drop-off locations, and every five years after that, the distributor
30 responsibility organization shall calculate an updated number of
31 drop-off locations required using the drop-off capacity formula. If
32 this calculation determines that the distributor responsibility
33 organization needs to add additional drop-off sites to reach the
34 number required by the capacity formula, the distributor
35 responsibility organization shall provide the department with a list
36 of proposed new locations, equal to the number determined by the
37 drop-off capacity formula, based on input from the consumer
38 convenience advisory council established in section 310 of this act,
39 consideration of consumer convenience, and data regarding where
40 beverage sales occur. The distributor responsibility organization

1 shall make the new drop-off locations available within three years.
2 Drop-off locations may be located at dealers, or any other retail
3 establishment, publicly owned facility, or any other location
4 convenient to consumers but nothing in this chapter may be
5 interpreted to create a legal obligation on the part of dealers
6 either to accept returned qualifying beverage containers or allow a
7 drop-off location to be sited at a dealer. Local governments shall
8 coordinate with the distributor responsibility organization to
9 identify opportunities for the siting of necessary collection
10 infrastructure including, where appropriate, on city and county
11 properties, to help ensure convenient access across the state. All
12 sites must be paid for in full by the distributor responsibility
13 organization. The distributor responsibility organization may provide
14 an alternative access plan for any county that has not reached the
15 required number of drop-off locations and the department may approve
16 an alternative access plan for that county if it deems the
17 alternative access plan for that county to be similarly convenient to
18 consumers as the proportional drop site requirement. The distributor
19 responsibility organization shall pay for the cost of these
20 facilities.

21 (7) Unless otherwise specified in a distributor responsibility
22 organization's bylaws or in a contract between a distributor
23 responsibility organization and an individual distributor arranging
24 specifically for the collection of beverage containers sold for the
25 purpose of consumption on premises, any manufacturer, distributor, or
26 importer that fails to pay to a distributor responsibility
27 organization the refund value of qualifying beverage containers
28 included in this chapter is liable to the distributor responsibility
29 organization for treble the unpaid refund value and treble the
30 collection costs incurred by the distributor responsibility
31 organization for any beverage containers that were sold without the
32 refund value of the container being remitted to the distributor
33 responsibility organization.

34 (8) The distributor responsibility organization is not required
35 to accept or pay refunds for:

36 (a) Beverage containers visibly containing or contaminated by a
37 substance other than water, residue of the original contents, or
38 ordinary dust;

1 (b) Beverage containers that are crushed, broken, or damaged to
2 the extent that the brand appearing on the container cannot be
3 identified; or

4 (c) Any beverage container for which the distributor
5 responsibility organization has reasonable grounds to believe was not
6 purchased through the state's deposit return system or for which a
7 refund has already been given.

8 (9) If the distributor responsibility organization uses automated
9 industrial counting equipment to count containers returned in bulk
10 and credit refund values to consumers, the distributor responsibility
11 organization may use commercially viable methods of counting, and
12 shall have a customer service system, which serves as the remedy to
13 resolve complaints and discrepancies.

14 (10) The distributor responsibility organization may create
15 reasonable terms and conditions for participation in the program.

16 (11) For the first five years in which a deposit return system is
17 operated by a distributor responsibility organization in this state,
18 a distributor responsibility organization shall remit \$15,000,000 by
19 December 31st of each year for the first five years in which it
20 operates a deposit return system, to the department of commerce's
21 recycling revenue augmentation fund created in section 317 of this
22 act. If the first year of operations of a deposit return system
23 begins after January 1st, the payment amount shall be prorated in
24 accordance with the portion of the year in which the deposit return
25 system is operating. These payments constitute the full financial
26 obligation of the distributor responsibility organization to the
27 recycling revenue augmentation fund created in section 317 of this
28 act.

29 (12)(a) All retailers over 5,000 square feet and with qualifying
30 beverage unit sales greater than 100,000 annually must install a
31 self-serve kiosk, provided at no charge by the distributor
32 responsibility organization, to facilitate the printing of redemption
33 vouchers, pay the value of redemption vouchers to customers, and must
34 sell bags for redemption at the price established by the distributor
35 responsibility organization. The distributor responsibility
36 organization shall reimburse dealers for the value of valid vouchers
37 redeemed by customers. Dealers may additionally offer a voucher
38 redemption option for funds to be used as store credit. There is no
39 other cost or requirement for retailers associated with container
40 redemption.

1 (b) Storage and drop-off containers sited for the purposes of
2 fulfilling the requirements of this section are considered mobile
3 containers regardless of whether they have wheels, have electrical
4 power, or are affixed to the site.

5 (c) The distributor responsibility organization shall establish a
6 geographically distributed network of processing facilities across
7 the state for the purpose of counting, crediting, sorting, and
8 compacting bagged container returns and facilitating the program for
9 organizations certified as nonprofit organizations pursuant to
10 section 501(c)(3) of the internal revenue code as described in
11 subsection (1)(c) of this section.

12 NEW SECTION. **Sec. 308.** PARTICIPATION IN THE FEASIBILITY STUDY.

13 In order to facilitate the potential for shared drop-off locations
14 with other depots or return pathways provided by producer
15 responsibility organizations, the distributor responsibility
16 organization must participate in the feasibility study described in
17 section 505 of this act. The distributor responsibility
18 organization's participation in the feasibility study is limited to
19 helping identify potential partnerships and shared drop-off locations
20 between the distributor responsibility organization and producer
21 responsibility organizations, and the distributor responsibility
22 organization retains sole discretion to determine how to achieve the
23 required number and geographic distribution of drop-off locations
24 required of the distributor responsibility organization.

25 NEW SECTION. **Sec. 309.** ANNUAL REPORTING ON ACTIVITIES. (1)

26 Beginning July 1, 2028, and each July 1st thereafter, a distributor
27 responsibility organization must submit an annual report to the
28 department for the preceding calendar year of plan implementation.

29 (2) Each annual report must include the following information:

30 (a) A list of its member distributors and their brands of
31 beverages in qualifying beverage containers;

32 (b) The number of qualifying beverage containers supplied into
33 the state in aggregate, and by material categories of glass, metal,
34 and plastic, by members of the distributor responsibility
35 organization;

36 (c) The number of beverages in reusable containers that were
37 sold;

1 (d) The number of qualifying beverage containers redeemed in
2 aggregate, and by material categories of glass, metal, and plastic,
3 through the deposit return system operated by the distributor
4 responsibility organization;

5 (e) A list and explanation of the beverages in qualifying
6 beverage containers supplied or sold in Washington by members of the
7 distributor responsibility organization and brands of qualifying
8 beverage containers participating in the deposit return system;

9 (f) The final destinations of recycled material managed by the
10 program;

11 (g) The total budget for the distributor responsibility
12 organization;

13 (h) Total value of unclaimed refunds used by the distributor
14 responsibility organization to support operations; and

15 (i) The annual redemption rate and reuse sales rate.

16 (3) The reporting described in subsection (2)(b) of this section
17 does not include containers that are sold to dealers or other
18 entities outside of the state.

19 (4) A distributor responsibility organization may rely on member
20 reporting for reporting requirements in this chapter.

21 (5) Included in its annual report, a distributor responsibility
22 organization shall provide verification from a third-party financial
23 auditing firm confirming the total budget for the distributor
24 responsibility organization, the total value of unclaimed refunds,
25 and a verification that funds represented by unclaimed refunds were
26 not distributed to members of the cooperative as a dividend.

27 NEW SECTION. **Sec. 310.** CONSUMER CONVENIENCE ADVISORY COUNCIL.

28 (1) In coordination with the department, the distributor
29 responsibility organization shall establish the consumer convenience
30 advisory council within six months following initial registration of
31 a distributor responsibility organization.

32 (2) The consumer convenience advisory council must include the
33 following members:

34 (a) A representative of the distributor responsibility
35 organization charged with securing and making available drop-off
36 locations;

37 (b) Two representatives of a grocery association, or individual
38 grocers with more than 10 retail locations over 5,000 square feet in
39 size in the state;

1 (c) Two representatives of a city association, or individual city
2 government, with one representing a city with a population over
3 200,000 people;

4 (d) Two representatives of a county association, or individual
5 county government, with one representing an urban county and one
6 representing a rural county; and

7 (e) An environmental organization.

8 (3) Any additional representatives deemed by the distributor
9 responsibility organization to provide important insight into
10 assisting with the deployment of drop-off locations may be approved
11 by the department.

12 (4) The consumer convenience advisory council shall work with the
13 distributor responsibility organization to identify potential bag
14 drop-off locations and achieve the consumer convenience required in
15 section 307 of this act.

16 (5) The consumer convenience advisory council shall meet at least
17 twice per year and more frequently at the request of the distributor
18 responsibility organization.

19 NEW SECTION. **Sec. 311.** CONSUMER CONVENIENCE ASSESSMENT. (1) In
20 the fifth full year in which a distributor responsibility
21 organization operates a deposit return system in the state, the
22 department, in partnership with the distributor responsibility
23 organization, and in consultation with the consumer convenience
24 advisory council established in section 310 of this act, shall
25 conduct an assessment of consumer convenience, identifying any
26 barriers to achieving the number of drop-off locations required by
27 the consumer convenience requirements in section 306 of this act and
28 any other potential barriers to consumer convenience or
29 participation.

30 (2) If the required number of drop-off locations has not been
31 achieved, or if the system's redemption rate is significantly lower
32 than the redemption rate performance targets described in section 307
33 of this act, the department shall make policy recommendations
34 regarding ways to increase consumer convenience and enhance
35 performance.

36 NEW SECTION. **Sec. 312.** INDEPENDENT REFUND PROGRAM. (1) A
37 distributor that is also a manufacturer may submit a plan to the
38 department to operate an independent refund program for beverages in

1 qualifying beverage containers produced by the manufacturer, and the
2 department may approve the plan if it meets all of the following
3 criteria:

4 (a) The manufacturer sells or distributes no more than 10,000
5 beverages in qualifying beverage containers per year in the state;

6 (b) The beverages are packaged in reusable qualifying beverage
7 containers;

8 (c) The manufacturer offers a refund value for the containers
9 that is greater than the refund value for containers redeemed by the
10 distributor responsibility organization;

11 (d) The department determines that the plan includes return
12 pathways and options that are convenient for consumers returning
13 their brand of beverage containers covered by the plan for a refund;
14 and

15 (e) The plan includes annual reporting requirements that, in the
16 department's determination, are sufficient to measure the performance
17 of the independent refund program.

18 (2) If the department approves an independent refund program plan
19 as described in subsection (1) of this section, the distributor
20 manufacturer operating a plan approved by the department is not
21 subject to the requirements of distributors independently complying
22 with the requirements in this chapter, as described in section 304(1)
23 of this act and elsewhere in this chapter.

24 (3) Reusable containers sold through a program approved through
25 this section count towards the reusable container performance
26 requirements described in section 306 of this act.

27 (4) The department may revoke plan approval for a manufacturer
28 distributor operating an independent refund program at any time if,
29 in its sole discretion, the department determines that the program is
30 not providing sufficient performance or not meeting the consumer
31 convenience requirements submitted with its plan.

32 NEW SECTION. **Sec. 313.** EDUCATION AND OUTREACH ACTIVITIES. (1)
33 Each plan implemented by a distributor responsibility organization
34 under this chapter must include education and outreach activities
35 that effectively reach diverse residents, are accessible, are clear,
36 and support the achievement of the performance requirements described
37 in section 306 of this act. To implement the education and outreach
38 activities described in the plan, a distributor responsibility
39 organization must, at minimum:

1 (a) Develop and provide outreach and educational materials,
2 resources, and campaigns about the program to be used by the
3 distributor responsibility organization, dealers, governmental
4 entities, and nonprofit organizations. The materials, resources, and
5 campaigns developed under this section to encourage participation in
6 the deposit return system must, at minimum:

7 (i) Provide information to residents on recycling and reuse
8 practices related to the deposit return system, including where and
9 how to redeem qualifying beverage containers, and what happens to
10 containers once they are returned; and

11 (ii) Education and engagement with users of the deposit return
12 system to reduce the rate of inbound contamination or unwanted
13 materials;

14 (b) Use media channels that may include, but are not limited to,
15 print publications, radio, television, the internet, and online
16 streaming services to promote the program statewide;

17 (c) Use consistent and easy to understand messaging and education
18 statewide, with the aim of reducing resident confusion regarding the
19 recyclability, reuse, compostability, and end-of-life management
20 options available for different qualifying beverage containers;

21 (d) Be conceptually, linguistically, and culturally accurate for
22 the communities served and tailored to effectively reach the state's
23 diverse populations, including through meaningful consultation with
24 overburdened communities and vulnerable populations;

25 (e) Establish a process for answering customer questions and
26 resolving customer concerns;

27 (f) Provide a map of each area where drop-off and other
28 collection services for qualifying beverage containers are available
29 on its website; and

30 (g) Evaluate the effectiveness of education and outreach efforts
31 for the purposes of making progress toward performance requirements
32 established in this chapter.

33 (2) A distributor responsibility organization may coordinate with
34 government entities that choose to participate in carrying out
35 resident education and outreach regarding the deposit return system.

36 NEW SECTION. **Sec. 314.** PAYMENT OF REFUND VALUE FOR COLLECTION
37 USING OTHER INFRASTRUCTURE. (1) The distributor responsibility
38 organization must accept, and must pay the full refund value for, any
39 qualifying beverage containers returned to the distributor

1 responsibility organization by material recovery facilities,
2 governmental entities, and other processing facilities if all of the
3 following criteria are met:

4 (a) The qualifying beverage containers have been collected and
5 separated in accordance with standards established by the distributor
6 responsibility organization and are delivered directly to a
7 distributor responsibility organization processing facility;

8 (b) In order to avoid redeeming containers not purchased in the
9 state, the material recovery facilities, governmental entities, and
10 other processing facilities may only handle or process materials from
11 this state, or provide third-party auditing and verification
12 sufficient to confirm that the containers being returned were
13 recovered only from material originating in the state; and

14 (c) The containers are separated by material type, not
15 contaminated with other materials, and are not crushed, broken, or
16 otherwise substantially manipulated into a shape other than the shape
17 of the container at the time of purchase.

18 (2) Nothing in this chapter requires a person, including a
19 business, to use the infrastructure provided by a deposit return
20 system created under this chapter or precludes the disposal for
21 recycling of qualifying beverage containers via curbside recycling
22 collection systems.

23 NEW SECTION. **Sec. 315.** CIVIL PENALTIES. (1) Upon notice of a
24 significant violation of the deposit return system plan or
25 performance requirements of this chapter, and after a cure period of
26 at least 60 days, the department may assess a civil penalty of at
27 least \$200 per violation per day, but no more than \$500 per violation
28 per day.

29 (2) The department shall make its best efforts to work with the
30 distributor responsibility organization to remedy issues without the
31 use of penalties and make reasonable accommodations when the nature
32 of the violation is significantly outside of the distributor
33 responsibility organization's control.

34 (3) Notwithstanding the performance penalty described in section
35 307 of this act, a civil penalty may not be assessed based on the
36 redemption rate or reuse sales rate performance requirements.

37 NEW SECTION. **Sec. 316.** RECYCLING REVENUE AUGMENTATION FUND. (1)
38 The department of commerce shall administer the recycling revenue

1 augmentation fund, created in section 317 of this act, which shall,
2 for the first five years in which a distributor responsibility
3 organization operates a deposit return system in the state:

4 (a) Collect funds from a distributor responsibility organization
5 as described in section 307(11) of this act; and

6 (b) Beginning January 1st of the year following the year in which
7 a distributor responsibility organization first operates a deposit
8 return system in the state, and each January 1st for the following
9 four years, accept requests annually from local governments, or
10 operators of curbside or drop-off recycling programs in the state, or
11 both, to receive funds from the recycling revenue augmentation fund
12 to offset revenue losses from the previous year from scrap material
13 being diverted to the deposit return system. These requests must
14 include third-party audited financial data demonstrating any revenue
15 losses from the value of scrap materials diverted from curbside or
16 drop-off recycling programs by a deposit return system, less any
17 decreased operating costs from not collecting, hauling, processing,
18 or landfilling the material, less any new revenue provided through
19 other provisions within this chapter that offsets revenue losses, and
20 less any material weight losses represented by the operator serving
21 fewer accounts. For local government and publicly operated curbside
22 or drop-off recycling programs, the government entity's annual audit
23 may satisfy the audited data requirement of this section if the
24 department of commerce determines that it is sufficient to verify the
25 claim. Each request must include the average total tons of glass,
26 plastic, and metal for that applicant for the three years preceding
27 the operation of a deposit return system in the state, compared to
28 the total tons of glass, plastic, and metal material for the year for
29 which funds are requested.

30 (2) The department of commerce shall:

31 (a) Evaluate all requests annually and determine the validity of
32 the data submitted by each requester;

33 (b) Reject requests that do not include sufficient or
34 sufficiently accurate data;

35 (c) Distribute funds to operators of curbside and drop-off
36 recycling systems proportionally, based on valid requests and
37 available revenue in the fund; and

38 (d) If the total amount of requests deemed valid by the
39 department of commerce is less than the amount of funds available
40 each year, less the department of commerce's program funding

1 described in subsection (3) of this section, the department of
2 commerce shall remit the remaining balance back to the distributor
3 responsibility organization, with the exception of funds generated by
4 section 305(7)(c) of this act, which shall remain in the recycling
5 revenue augmentation fund to support future requests. If funds
6 generated by section 305(7)(c) of this act remain in the recycling
7 revenue augmentation fund upon the conclusion of the program, they
8 shall be deposited into the deposit return organization program
9 account created in section 318 of this act and shall be used to
10 support the department of commerce's requirements in this chapter.

11 (3) The department of commerce may use funds provided for in
12 section 307(11) of this act for each of the five years the program
13 operates to cover costs associated with implementing and
14 administering the recycling revenue augmentation fund.

15 NEW SECTION. **Sec. 317.** ACCOUNT FOR RECYCLING REVENUE
16 AUGMENTATION FUND. The recycling revenue augmentation fund is created
17 in the custody of the state treasurer. All receipts received by the
18 department of commerce under section 316 of this act must be
19 deposited in the account. Expenditures from the account may be used
20 by the department of commerce only for implementing and administering
21 the requirements of section 316 of this act. Only the director of the
22 department of commerce or the director's designee may authorize
23 expenditures from the account. The account is subject to the
24 allotment procedures under chapter 43.88 RCW, but an appropriation is
25 not required for expenditures.

26 NEW SECTION. **Sec. 318.** DEPOSIT RETURN ORGANIZATION PROGRAM
27 ACCOUNT. The deposit return organization program account is created
28 in the custody of the state treasurer. All receipts received by the
29 department under this chapter must be deposited in the account.
30 Expenditures from the account may be used by the department only for
31 implementing, administering, and enforcing the requirements of this
32 chapter. Only the director of the department or the director's
33 designee may authorize expenditures from the account. The account is
34 subject to the allotment procedures under chapter 43.88 RCW, but an
35 appropriation is not required for expenditures.

36 NEW SECTION. **Sec. 319.** CONTINGENCY. If a distributor
37 responsibility organization ceases to exist and operate a deposit

1 return system in Washington, other than for temporary disruptions due
2 to unforeseen circumstances, as determined by the department,
3 qualifying beverage containers become covered products under chapter
4 70A.--- RCW (the new chapter created in section 601 of this act)."

EFFECT: Adds an intent section to the deposit return system portion of the bill;

Requires producers of qualifying beverage containers to satisfy postconsumer recycled content requirements (PCRC) through limited participation in a producer responsibility organization (PRO), rather than through a distributor responsibility organization (DRO);

Clarifies that if a deposit return system is established, qualifying beverage containers may not be considered covered products that require participation in a PRO;

Excludes closures and labels for qualifying beverage containers from the scope of covered products under PRO requirements;

Clarifies that if a distributor of beverage containers opts to independently carry out the responsibilities of a DRO, it must fulfill all duties and requirements that apply to the DRO, including providing a convenient bulk bag drop-off system, providing the same number, geographic distribution, and drop-off locations that DRO must provide, and meeting performance targets;

Specifies that distributors that do not join a DRO or independently fulfill a DRO's responsibilities may not sell beverages in qualifying beverage containers 120 days after a DRO is approved by the department of ecology;

Eliminates restrictions on who may participate on the governing board of a DRO;

Eliminates requirements that a DRO report separately to the department of ecology as part of its registration on the number of qualifying beverage containers sold in Washington that are reusable or compostable;

Requires DRO annual payments of the department of ecology's oversight costs by June 30th of each year, rather than by December 31st;

Establishes an annual payment rate to the department of ecology for ecology's oversight costs of ten cents per beverage container;

Requires a deposit return system to be implemented within one year of the department of ecology's adoption of rules pertaining to deposit return systems, rather than two years after registration with ecology;

Eliminates the DRO's obligations to pay for updated performance rates studies undertaken by the department of ecology;

Eliminates the DRO's obligations to pay for the PRO's advisory council, and eliminates the PRO advisory council's oversight of DRO operations;

Establishes a consumer convenience advisory council comprised of specified membership, and with responsibility for working with the DRO to identify potential bag drop-off locations;

Eliminates the prohibition on the use of unclaimed deposits and commodity sale revenues for the payment of penalties, litigation, lobbying, or political advertisements;

Specifies that a DRO may not distribute funds from unclaimed refunds to members of the DRO;

Eliminates the requirement that the department of ecology make DRO plans and annual reports subject to public comment for 30 days prior to ecology's approval decision;

Eliminates the authority of the department of ecology to amend the contents of a DRO plan in the event that a DRO fails to submit a sufficient plan after a previous ecology disapproval of a DRO plan;

Authorizes the department of ecology to review a DRO's records to assess records specifically related to the accuracy of the redemption rate reported by the DRO;

Authorizes the department of ecology to require a DRO to identify priority areas for drop-off access to be provided in the event that a DRO fails to meet minimum redemption performance rates and is made to pay a penalty to ecology;

Requires a DRO to add at least ten additional drop-off locations within two years of the initiation of deposit return system operations, and to increase the number of beverage container drop-off sites from 280 based on a capacity formula tied to the volume of beverage sales in Washington that is recalculated every five years;

Requires local governments to coordinate with DROs to identify opportunities for the siting of collection infrastructure, including on city and county properties where appropriate, to ensure convenient statewide access of drop-off locations;

Allows for a DRO to establish an alternative access drop-off plan for any counties that do not reach a proportional level of sited drop sites;

Requires retailers over 5,000 square feet with sales of qualifying beverage units over 100,000 annually to install self-serve kiosks to facilitate the printing of redemption vouchers, pay redemption voucher values, and sell bags for redemption at the DRO-established price;

Requires a DRO to establish a geographically distributed network of processing facilities across Washington to facilitate bagged container returns by nonprofit organizations;

Amends the standards by which a DRO is not required to pay the redemption value for a returned bottle to allow for DRO nonpayment for any beverage container that the DRO has reasonable grounds to believe were not purchased in Washington or for which a refund has already been provided, rather than requiring evidence of such factors;

Requires a consumer convenience assessment to be carried out by the department of ecology in partnership with the DRO to assess customer convenience provided by the program;

Eliminates stakeholder consultation requirements applicable to DRO planning and operations;

Amends the standards for the payment of beverage container refund value for qualifying beverage containers returned to the DRO by material recovery facilities, governmental entities, and other processing facilities;

Eliminates human health and environmental protection standards that apply to facilities managing qualifying beverage containers;

Eliminates requirements that the DRO include certain tracking and reporting measures related to material recovery facilities and other infrastructure used by the deposit return system;

Amends and limits the contents of the plans and annual reports that a DRO must submit to the department of ecology for approval prior to the establishment of a deposit return system;

Amends the minimum and maximum volumes of qualifying beverage containers that must be managed through the deposit return system to those containers of less than one gallon and greater than four ounces;

Restricts the department of ecology, and independent audits that ecology may require a DRO to carry out, from reviewing the financial details of a DRO;

Changes provisions related to the department of ecology enforcement of program requirements, including authorizing ecology to impose a penalty of fifteen cents per qualifying beverage container of any distributor that fails to participate in a DRO, and eliminating provisions related to ecology issuance of orders and other civil penalty authorities;

Lowers the minimum reusable packaging performance rate that a DRO must achieve to one percent of all qualifying beverage containers by December 31, 2031, and eliminates the authority for the department of ecology to impose penalties for the failure to achieve reuse performance rates;

Eliminates restrictions on the use of alternative recycling technologies by a DRO;

Eliminates contingency plan submission requirements for DROs;

Authorizes manufacturer distributors that produce a de minimis quantity of beverages to operate an independent refund program that meets an alternative set of requirements, including a refund value of more than ten cents, the use of beverages that are packaged in reusable containers, and convenient consumer return pathways, rather than requiring such manufacturer distributors to participate in a DRO or independently fulfill a DRO's responsibilities;

Specifies that if a DRO ceases to implement a deposit return system, qualifying beverage containers revert to being covered products subject to PRO participation requirements;

Requires a DRO to remit \$15 million by December 31st of each year for the first five years of a deposit return system to a recycling revenue augmentation fund;

Makes the department of commerce responsible for the implementation of the recycling revenue augmentation fund (RRAF), to provide funds to offset revenue losses to local governments and operators of drop-off recycling programs; and

Creates new accounts related to the RRAF, the department of commerce's CRAF oversight, and the department of ecology's DRO oversight.

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