

A bill for an act
relating to solid waste; requiring manufacturers to recycle beverage containers;
providing civil penalties; appropriating money; amending Minnesota Statutes
2006, section 13.7411, subdivision 4; proposing coding for new law in Minnesota
Statutes, chapter 115A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 13.7411, subdivision 4, is amended to read:

Subd. 4. **Waste management.** (a) **Transfer station data.** Data received by a
county or district from a transfer station under section 115A.84, subdivision 5, are
classified under that section.

(b) **Solid waste records.** Records of solid waste facilities received, inspected,
or copied by a county pursuant to section 115A.882 are classified pursuant to section
115A.882, subdivision 3.

(c) **Customer lists.** Customer lists provided to counties or cities by solid waste
collectors are classified under section 115A.93, subdivision 5.

(d) **Beverage container reporting.** Data received by the Pollution Control Agency
under section 115A.1344 are classified under that section. Data regarding penalties
imposed under section 115A.1346 are classified under that section.

Sec. 2. **[115A.1340] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 115A.1340 to 115A.1349, the
following terms have the meaning given.

Subd. 2. **Beverage.** "Beverage" means:

(1) any soft drink, soda water, carbonated or uncarbonated natural or mineral water,
juice, tea, or coffee;

(2) beer, ale, or other malt liquor;

(3) distilled spirits, wine, or mixed wine; and

(4) other drinks in liquid form intended for human consumption.

Subd. 3. **Beverage container.** "Beverage container" means an airtight metal, glass, or plastic container, or a container composed of a combination of these materials, that, when sold or offered for sale, contains one gallon or less of a beverage.

Subd. 4. **Distilled spirits.** "Distilled spirits" has the meaning given in section 340A.101, subdivision 9.

Subd. 5. **Malt liquor.** "Malt liquor" has the meaning given in section 340A.101, subdivision 16.

Subd. 6. **Manufacturer.** "Manufacturer" means a person who places beverages in beverage containers for eventual sale to consumers.

Subd. 7. **Mixed wine.** "Mixed wine" means a drink containing less than seven percent alcohol by volume, consisting of wine and plain, sparkling, or carbonated water and other nonalcoholic ingredients.

Subd. 8. **Program year.** "Program year" means the period from July 1 through June 30.

Subd. 9. **Recycler.** "Recycler" means a public or private individual or entity who collects empty beverage containers from generators or a collector who aggregates empty beverage containers for the purpose of recycling.

Subd. 10. **Recycling.** "Recycling" has the meaning given in section 115A.03, subdivision 25b.

Subd. 11. **Wine.** "Wine" has the meaning given in section 340A.101, subdivision 29.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **[115A.1341] REGISTRATION.**

Subdivision 1. **Requirements for sale.** (a) A manufacturer must not sell or offer for sale in this state or deliver to retailers for subsequent sale in this state a beverage container unless:

(1) the beverage container is labeled with the manufacturer's brand, which label is permanently affixed and readily visible; and

(2) the manufacturer has filed a registration with the agency, as specified in subdivision 2.

(b) On or after July 1, 2009, a retailer who sells or offers for sale a beverage container must, before the initial offer for sale, review the agency Web site specified in

subdivision 2, paragraph (f), to determine that all beverage containers that the retailer is offering for sale are labeled with manufacturers' brands that are registered with the agency.

(c) A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked and the retailer took possession of a beverage container prior to the expiration or revocation of the manufacturer's registration and the unlawful sale occurred within six months after the expiration or revocation.

Subd. 2. **Manufacturer's registration.** (a) A manufacturer of beverage containers sold or offered for sale in this state after July 1, 2009, must submit a registration to the agency that includes:

(1) a list of the manufacturer's brands of beverages sold in beverage containers offered for sale in this state;

(2) the name, address, and contact information of a person responsible for ensuring compliance with sections 115A.1340 to 115A.1349; and

(3) a certification that the manufacturer has complied and will continue to comply with the requirements of sections 115A.1340 to 115A.1349.

(b) A manufacturer who begins to sell or offer for sale beverage containers in this state after July 1, 2009, and has not filed a registration under this subdivision must submit a registration to the agency within ten days of beginning to sell or offer for sale beverage containers in this state.

(c) A registration must be updated within 30 days after a change in the manufacturer's brands of beverage containers sold or offered for sale in this state.

(d) A registration is effective upon receipt by the agency and is valid until September 1 of each year.

(e) The agency must review each registration and notify the manufacturer of any information required by this section that is omitted from the registration. Within 30 days of receipt of a notification from the agency, the manufacturer must submit a revised registration providing the information noted by the agency.

(f) The agency must maintain on its Web site the names of manufacturers and the manufacturers' brands listed in registrations filed with the agency. The agency must update the Web site information promptly upon receipt of a new or updated registration.

EFFECTIVE DATE. This section is effective January 1, 2009.

Sec. 4. [115A.1342] MANUFACTURER'S REGISTRATION FEE; CREATION OF ACCOUNT.

Subdivision 1. **Registration fee.** (a) Each manufacturer that registers under section 115A.1341 must, by January 1 each year, pay to the commissioner an annual registration

fee. The commissioner of revenue must deposit the fee in the account established in subdivision 2.

(b) The registration fee for a manufacturer that sells in excess of 10,000 beverage containers in the state annually is \$5,000. The registration fee for a manufacturer that sells fewer than 10,000 beverage containers in the state annually is \$2,500.

Subd. 2. Creation of account; appropriations. (a) The beverage container waste account is established in the environmental fund. The commissioner of revenue must deposit receipts from the fee established in subdivision 1 and any penalties received under section 115A.1346 in the account. Any interest earned on the account must be credited to the account. Money from other sources may be credited to the account.

(b) Until June 30, 2011, money in the account is annually appropriated to the Pollution Control Agency for implementing sections 115A.1340 to 115A.1349.

EFFECTIVE DATE. This section is effective January 1, 2009.

Sec. 5. ~~[115A.1343]~~ COLLECTION AND RECYCLING PROGRAM.

Subdivision 1. Submission of plan. (a) A manufacturer who, as of July 1, 2008, sells or offers for sale beverage containers in this state must, by January 1, 2009, submit a plan to the commissioner describing a statewide program, financed and implemented by the manufacturer, that will enable the manufacturer to, by July 1, 2010, collect, transport, and recycle a number of beverage containers equal to at least ... percent of the number of those products sold under the manufacturer's brand in the state during the previous year.

(b) A manufacturer who begins to sell or offer for sale beverage containers in the state after July 1, 2008, must submit a plan that meets the requirements of this section to the commissioner within 60 days of filing a registration under section 115A.1341, subdivision 2. The plan must describe how the manufacturer will meet the recycling requirement established in subdivision 1 within one year of the date of the manufacturer's registration.

(c) Manufacturers are encouraged to collaborate with retailers, wholesalers, trade associations, nonprofit organizations, and local units of government in developing and implementing a beverage container collection and recycling system.

(d) Manufacturers are encouraged to file a plan jointly or through an organization representing several manufacturers.

Subd. 2. Plan contents. The plan must contain, at a minimum:

(1) a description of the system to collect, transport, and recycle beverage containers;

(2) a description of permanent and event collection services that will be provided throughout the state, including the number and frequency of collection opportunities;

(3) a description of how existing public and private efforts to collect and recycle beverage containers will be integrated into the plan;

(4) a list of one or more permanent collection opportunities that will be provided in each county; and

(5) a list of collectors who will transport beverage containers to a recycling facility.

Subd. 3. Plan review and approval. (a) The commissioner must review and approve, and may modify, each plan. The commissioner must approve a plan no later than 60 days after the plan has been received by the agency. A manufacturer may not implement a plan that has not been approved by the commissioner.

(b) In determining whether to approve a plan, the commissioner must consider, at a minimum, whether the plan:

(1) is likely to meet the recycling requirement established in section 115A.1345, subdivision 1, paragraph (b);

(2) provides reasonable opportunities to collect and recycle beverage containers in all geographic areas of the state; and

(3) makes use of existing recycling programs and avoids duplication of effort.

Sec. 6. [115A.1344] REPORTING REQUIREMENTS.

Subdivision 1. Manufacturer's reporting requirements. (a) By September 1 of each year, each manufacturer must report to the agency:

(1) the total weight of its beverage containers, less the weight of the beverage, sold in the state during the previous year; or

(2) an estimate of the total weight of its beverage containers, less the weight of the beverage, sold in the state during the previous program year based on national sales data.

A manufacturer must submit with the report required under this clause a description of how the information or estimate was calculated.

(b) By September 1 of each year, each manufacturer must report to the agency the total weight of empty beverage containers the manufacturer collected in the state and recycled or arranged to have collected in the state and recycled during the preceding program year.

Subd. 2. Wholesaler's reporting requirements. By September 1 of each year, each wholesaler licensed under section 340A.301, subdivision 1, must report to the agency for each manufacturer whose beverages are brought to rest in a licensed warehouse:

(1) the total weight of the manufacturer's beverage containers, less the weight of the beverage, sold in the state during the previous year; or

(2) an estimate of the total weight of the manufacturer's beverage containers, less the weight of the beverage, sold in the state during the previous program year based on national sales data. A wholesaler must submit with the report required under this clause a description of how the information or estimate was calculated.

Subd. 3. **Nonpublic data.** Data reported under subdivisions 1 and 2 by an individual wholesaler or manufacturer are classified as nonpublic data, as defined in section 13.02, subdivision 9, except that the agency may release the data in summary form in which individual manufacturers or wholesalers are not identified and from which neither their identities nor any other characteristics that could uniquely identify an individual manufacturer or wholesaler is ascertainable.

Subd. 4. **Recycler's reporting requirements.** By August 1 of each year, a recycler of beverage containers must report to the agency the total weight of empty beverage containers collected in the state and recycled by the recycler during the preceding program year.

EFFECTIVE DATE. This section is effective January 1, 2010.

Sec. 7. [115A.1345] RESPONSIBILITIES.

Subdivision 1. **Manufacturer's responsibilities.** (a) A manufacturer must annually collect and recycle or arrange for the collection and recycling of an amount of empty beverage containers equal to 80 percent of the total weight of its beverage containers, less the weight of the beverage, sold in the state during the preceding program year.

(b) A manufacturer must conduct and document due diligence assessments of collectors and recyclers with whom it contracts for the collection and recycling of empty beverage containers. A manufacturer is responsible for maintaining, for a period of three years, documentation that all beverage containers recycled, as reported under paragraph (a), were recycled in compliance with applicable laws.

(c) A manufacturer must provide the agency with contact information for a person who can be contacted regarding the manufacturer's activities under sections 115A.1340 to 115A.1349.

Subd. 2. **Retailer's responsibilities.** By July 1 of each year, beginning in 2010, a retailer must report to a manufacturer the number of beverage containers, by type of material and capacity, labeled with the manufacturer's brand sold in this state during the previous program year.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. [115A.1346] PENALTIES.

(a) The commissioner shall impose a penalty on each manufacturer that fails to meet the recycling requirement established in section 115A.1345, subdivision 1, paragraph (a). The penalty is \$..... for each one-tenth of one percent below 80 percent. Revenues from the penalties shall be deposited in the account established in section 115A.1342.

(b) Data regarding penalties imposed under this section is classified as nonpublic data, as defined in section 13.02, subdivision 9, except that the agency may release the data in summary form in which individual manufacturers are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual manufacturer is ascertainable.

Sec. 9. [115A.1347] AGENCY DUTIES.

(a) The agency shall administer sections 115A.1340 to 115A.1349.

(b) The agency shall establish procedures for:

(1) receipt and maintenance of the registration statements and certifications filed with the agency under section 115A.1341; and

(2) making the statements and certifications easily available to manufacturers, retailers, and members of the public.

(c) The agency shall annually review:

(1) the proportion of sales of beverage containers sold in the state that manufacturers are required to recycle;

(2) the base registration fee; and

(3) the reports submitted under section 115A.1344.

If the agency determines that any of the values in clause (1) or (2) must be changed to improve the efficiency or effectiveness of the activities regulated under sections 115A.1342 to 115A.1349, the agency shall submit recommended changes and the reasons for them to the chairs of the senate and house of representatives committees with jurisdiction over solid waste policy.

(d) By January 15 each year, beginning in 2010, the agency shall calculate estimated sales of beverage containers sold in the state, by material type and capacity, by each manufacturer during the preceding program year, based on national sales data.

(e) The agency shall manage the account established in section 115A.1342, subdivision 2. If the revenues in the account exceed the amount that the agency determines is necessary for efficient and effective administration of the program, including any amount for contingencies, the agency must recommend to the legislature that the

H.F. No. 4046, as introduced - 2007-2008th Legislative Session (2007-2008)

registration fee be lowered to reduce revenues collected in the subsequent program year by the estimated amount of the excess.

(f) On or before December 1, 2011, and each year thereafter, the agency shall provide a report to the governor and the legislature on the implementation of sections 115A.1340 to 115A.1349. For each program year, the report must discuss the total weight of beverage containers recycled and a summary of information in the reports submitted by manufacturers and recyclers under section 115A.1344. The report must also discuss the various collection programs used by manufacturers to collect beverage containers; information regarding beverage containers that are being collected by persons other than registered manufacturers or collectors and recyclers with whom registered manufacturers have contracted; and information about beverage containers, if any, being disposed of in landfills in the state. The report must include a description of enforcement actions under sections 115A.1340 to 115A.1349. The agency may include in its report other information received by the agency regarding the implementation of sections 115A.1340 to 115A.1349.

(g) The agency shall promote public participation in the activities regulated under sections 115A.1340 to 115A.1349 through public education and outreach efforts.

(h) The agency shall enforce sections 115A.1340 to 115A.1349 in the manner provided by sections 115.071, subdivisions 1, 3, 4, 5, and 6; and 116.072.

(i) The agency shall impose penalties as required under section 115A.1346.

(j) The agency shall facilitate communication between counties, collection and recycling centers, and manufacturers to ensure that manufacturers are aware of beverage containers available for recycling.

(k) The agency shall develop a form retailers must use to report information to manufacturers under section 115A.1345, subdivision 2, and post it on the agency's Web site.

(l) The agency shall post on its Web site the contact information provided by each manufacturer under section 115A.1341, subdivision 2, paragraph (a), clause (2).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 10. [115A.1348] OTHER RECYCLING PROGRAMS.

A city, county, or other public agency may not require households to use public facilities to recycle their beverage containers to the exclusion of other lawful programs available. Cities, counties, and other public agencies are encouraged to work with manufacturers to assist them in meeting their recycling obligations under section 115A.1345, subdivision 1. Nothing in sections 115A.1340 to 115A.1349 prohibits or restricts the operation of any program recycling beverage containers in addition to those

provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or recycling beverage containers, provided that those persons comply with all applicable laws.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 11. **[115A.1349] ANTICOMPETITIVE CONDUCT.**

(a) A manufacturer that organizes collection or recycling of empty beverage containers under this section may engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized collection or recycling system and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

(b) An organization of manufacturers, an individual manufacturer, and its officers, members, employees, and agents who cooperate with a political subdivision that organizes collection or recycling under this section may engage in anticompetitive conduct to the extent necessary to plan and implement the organized collection or recycling system, provided that the political subdivision actively supervises the participation of each entity. An organization, entity, or person covered by this paragraph is immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 12. **DIRECT APPROPRIATION.**

Prior to the governor making budget recommendations to the legislature in fiscal year 2010, the Pollution Control Agency must report on revenues received and expenditures made under Minnesota Statutes, section 115A.1342, during fiscal years 2009 and 2010, and request the governor to recommend a direct appropriation for the purposes of that section.