

1977 BILL 22

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 22

THE BEVERAGE CONTAINER ACT, 1977

THE MINISTER OF THE ENVIRONMENT

First Reading

Second Reading

Third Reading

BILL 22

1977

THE BEVERAGE CONTAINER ACT, 1977

(Assented to _____, 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. (1) In this Act,
 - (a) “approval” means an approval issued by the Registrar to operate a depot under this Act and the regulations;
 - (b) “beverage” means
 - (i) carbonated or uncarbonated soft drinks, or
 - (ii) liquor, or
 - (iii) any other liquid designated by the regulations as a beverage;
 - (c) “container” means a bottle or can that contains or has contained a beverage, and includes any other thing that is designated by the regulations as a container;
 - (d) “depot” means a place established or operated as a business by any person for the collection and disposal of empty containers;
 - (e) “depot operator” means the owner or operator of a depot and includes a person acting or purporting to act on behalf of the owner or operator but does not include a retailer;
 - (f) “distributor” means a person who distributes a beverage in containers;
 - (g) “liquor” has the same meaning as in *The Liquor Control Act*;

Explanatory Notes

General: This Bill will repeal and replace chapter 10 of the Statutes of Alberta, 1971.

1. Former section 1. Definitions.

- (h) “manufacturer” means a person who manufactures a beverage and includes a person who carries on the business of filling containers with a beverage;
- (i) “Minister” means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (j) “Registrar” means the Registrar of Beverage Container Depots designated pursuant to section 3;
- (k) “retailer” means a person who sells beverages in containers and includes
 - (i) a person acting or purporting to act on his behalf, and
 - (ii) a person who controls the normal operation of an automatic vending machine that dispenses beverages in containers.

(2) For the purposes of this Act and the regulations, The Alberta Liquor Control Board shall, except in respect of beer manufactured in Alberta, be deemed to be the manufacturer of liquor.

2. (1) No person, other than a retailer, shall operate a depot unless an approval has been issued to him and the approval is not suspended or cancelled.

(2) No manufacturer, retailer or other person shall sell, offer to sell or permit to be sold any beverage in a container

- (a) that when empty cannot be reasonably identified as having contained the beverage manufactured by the manufacturer of that beverage, or
- (b) on which is written, stamped or in any way inscribed or to which is attached any label, cap or any other thing indicating that
 - (i) the container is not returnable, or
 - (ii) no refund is payable with respect to the container.

3. The Minister may designate an employee of the Government of Alberta as the Registrar of Beverage Container Depots.

2. Subsection (1) is new and prohibits the establishment or operation of a Beverage Container Depot without an approval under the Act in accordance with the regulations. Subsection (2) is the former section 3.

3. New. Designation of Registrar of Beverage Containers by the Minister.

4. Where a person presents to a depot operator at a depot any container that is reasonably identifiable as having contained a beverage, the depot operator

- (a) shall accept the container, and
- (b) shall pay to the person who presents the container a cash refund of not less than the amount prescribed by the regulations for the container.

5. Subject to any regulations made under section 16, clause 14, where a person presents to a retailer at the retailer's retail premises a container that

- (a) is the same size, class or type of container as containers that are sold by the retailer,
- (b) is reasonably identifiable as having contained a beverage
 - (i) manufactured by the manufacturer of that beverage, and
 - (ii) of the same kind as a beverage sold by a retailer,

the retailer shall pay to that person a cash refund of not less than the amount prescribed by the regulations for each container presented.

6. (1) Subject to subsection (2), a manufacturer or distributor shall, within such time as may be prescribed by the Registrar following a request to the manufacturer or distributor by a depot operator or retailer, collect from the depot operator or retailer any containers that contained any beverage manufactured or distributed by that manufacturer or distributor, as the case may be, and dispose of the containers in accordance with the regulations.

(2) A manufacturer or distributor is not required to collect any containers pursuant to subsection (1) unless the depot operator or retailer has in his possession at least such quantity of containers that contained a beverage manufactured or distributed by that manufacturer or distributor as may be prescribed by the Registrar.

(3) The manufacturer or distributor, upon collecting containers from a depot operator or retailer pursuant to subsection (1), shall, within such time as may be prescribed by the Registrar,

4. Former section 2.1, subsection (2) revised. Obligation of depot operators to accept and pay refund for containers.

5. Former section 2 revised. Obligation of retailer to accept and pay refund for containers.

6. Former section 2, subsections (3) and (4) and section 2.1, subsections (3) and (5) revised. Obligation of manufacturer and distributor to collect empty containers from depot operators and retailers.

- (a) reimburse the depot operator or retailer, for each container in respect of which a refund was made by the depot operator or retailer, in the amount specified in the regulations as the refund payable for the container, and
 - (b) pay to the depot operator or retailer an additional sum in the amount specified in the regulations, with respect to the depot operator or retailer, for each container in respect of which a refund was made.
- (4) Nothing in subsection (3) prohibits a manufacturer or distributor from agreeing with a depot operator or retailer to pay more than the amount required to be paid under subsection (3).

7. (1) Where a manufacturer or distributor fails to comply with a request made by a depot operator or retailer pursuant to section 6 or fails to comply with this Act or the regulations, the Registrar may issue a stop sale order with respect to a beverage or a beverage in a container manufactured by that manufacturer or distributed by that distributor, as the case may be.

(2) Upon the issue of a stop sale order, no person shall sell or offer to sell or permit to be sold the beverage or the beverage in the container named in the stop sale order.

8. (1) Where a person, other than a retailer, operates a depot without an approval or while his approval is suspended, the Registrar, in writing, may order that person to stop operating that depot within the time specified in the order.

(2) Where a depot operator or retailer fails to comply with the provisions of this Act or the regulations or any rules made pursuant to the regulations, the Registrar, in writing, may order that depot operator or retailer to

- (a) stop engaging in any practice that is described in the order, and
- (b) take such measures as are specified in the order that, in the opinion of the Registrar, are necessary to ensure that this Act, the regulations and the rules, or any of them, will be complied with, within the time specified in the order.

7. Former section 4 revised. Stop sale order.

8. New. Depot operation stop order.

(3) Where a depot operator, within the time specified, fails to comply with an order made under subsection (2), the Registrar may by order in writing suspend or cancel any approval issued in respect of the depot operated by that depot operator.

9. The Registrar may

- (a) amend an order under section 7 or 8 if he considers it advisable in the circumstances to do so, or
- (b) revoke an order under section 7 or 8,

and shall notify accordingly the person to whom the order was directed.

10. (1) In this section “Authority” means the Environment Conservation Authority.

(2) A person to whom any order under section 7 or 8 is directed may, within 15 days after service upon him of the order, appeal to the Minister in accordance with the regulations for an inquiry into the order.

(3) Where an appeal is made under subsection (2), the Minister shall refer the appeal and the order to the Authority for an inquiry.

(4) The Authority shall

- (a) hold a hearing to inquire into all matters leading to the making of the order, and
- (b) determine whether, in its opinion, there were sufficient grounds for the making of the order,

and upon completion of the inquiry, the Authority shall report its findings to the Minister together with any recommendations it wishes to make in regard to the confirmation, amendment or revocation of the order.

(5) Upon receipt of the report of the Authority, the Minister shall direct the Registrar

9. New. Amendment or revocation of an order.

10. New. Appeal to the Minister and hearing by the Environment Conservation Authority.

- (a) to confirm or revoke the order or to amend the order in such manner as the Minister directs, and
- (b) to serve a notice upon the person to whom the order was directed of the action taken by the Registrar under clause (a).

11. (1) An appeal lies to the Supreme Court of Alberta from a decision of the Minister under section 10, subsection (5) and upon hearing the matter the Court may confirm the Registrar's order or direct the Registrar to revoke the order or to amend the order in such manner as the Court directs.

(2) An appeal under this section shall be commenced by way of originating notice within 30 days from the date that the notice under section 10, subsection (5), clause (b) is served upon the person appealing the decision of the Minister.

12. (1) Where an appeal is commenced under section 10, the commencement of that appeal does not operate as a stay of the order of the Registrar being appealed from except insofar as the chairman of the Environment Conservation Authority directs.

(2) Where an appeal is commenced under section 11, the commencement of that appeal does not operate as a stay of the decision of the Minister being appealed from except insofar as a judge of the Supreme Court directs.

13. The Registrar may apply to the Supreme Court by way of originating notice for an order of the Court

- (a) restraining the manufacturer or distributor who fails to comply with an order of the Registrar under section 7 from selling or offering for sale the beverage or the beverage in the container named in the Registrar's order, or
- (b) restraining a person who operates a depot contrary to an order made under section 8, subsection (1) from operating the depot until an approval has been issued or the suspension is removed, or
- (c) requiring the person, depot operator or retailer who fails to comply with an order of the Registrar under section 8, subsection (2) to comply with the terms of the order.

11. New. Appeal to Supreme Court of Alberta from order of Minister.

12. New. Appeal does not operate as a stay of proceedings.

13. New. Application by Registrar to the Supreme Court for restraining orders.

14. An order under section 7 or 8 or a notice under section 9 or section 10, subsection (5), or a notice of appeal of a decision under section 10, may be served personally or by mail, and if it is mailed it shall be deemed to be received on the third day after the date upon which the order, notice or notice of appeal is mailed.

15. (1) Sections 7, 8, 10, 11 and 13 apply whether or not a failure to comply with, or the contravention of, this Act or the regulations constitutes an offence and, if it constitutes an offence, whether or not a conviction has been adjudged for the offence.

(2) An order under section 7 or 8, a decision under section 10, or an order under section 11 or 13 does not affect any prosecution that has been or may be taken against any person under this Act or the regulations.

16. (1) The Lieutenant Governor in Council may make regulations

1. exempting

- (i) any beverage or class or type of beverage or any container or size, class or type of container, or
- (ii) the sale of any beverage or class or type of beverage or of any container or size, class or type of container, or
- (iii) any depot or any depot operator, retailer, manufacturer, distributor or other person or any class thereof,

from all or any of the provisions of this Act, or all or part of the regulations, for a period of time or completely, with or without conditions attached to the exemption;

- 2. limiting the number of empty containers that a retailer is required to accept at the retailer's place of business from any one person in any one day;
- 3. governing the disposal of empty containers;

14. New. Service of documents.

15. New. Administrative procedures apply and continue in effect without prosecution or conviction.

16. Regulations.

4. prescribing
 - (i) the refund payable by retailers and depot operators under sections 4 and 5, and
 - (ii) the sums required to be paid pursuant to section 6, subsection (3), clause (b), expressed as a sum of money or a percentage of any sum;
5. requiring the depot operator or retailer to keep or cause to be kept adequate books, documents, records and accounts for the purpose of this Act;
6. specifying the form and type of books, documents, records and accounts referred to in clause 5;
7. specifying the manner, method, frequency and degree of detail in which the books, documents, records and accounts referred to in clause 5 shall be kept by or on behalf of the depot operator or retailer;
8. requiring statistical returns and data pertaining to depot operation to be compiled and submitted to the Minister;
9. requiring the establishment of depots by
 - (i) retailers, and
 - (ii) manufacturers,or either of them, for the collection of empty containers;
10. authorizing the Registrar to make rules governing the operation of depots, including but not limited to, rules
 - (i) prescribing the form of applications for approvals;
 - (ii) prescribing the procedures for reviewing applications for approvals;
 - (iii) specifying the conditions upon which an approval will be given, including the location of the depot;
 - (iv) governing the general operation and administration of depots including the hours that they must remain open to receive empty containers;
 - (v) governing the qualifications of persons who may operate depots;
 - (vi) governing the transfer of approvals;

11. governing the handling and sorting of containers;
12. authorizing the Registrar to prescribe the form of a notice indicating the requirements of section 5 and to require the retailer to post the notice in his retail premises;
13. authorizing the Registrar to limit the number of depots in all or any part of Alberta;
14. prescribing the circumstances under which section 5 does not apply;
15. designating containers or classes or types of containers that shall be supplied by manufacturers and distributors to depot operators or retailers;
16. designating containers or classes or types of containers that shall be accepted by depot operators, retailers, manufacturers and distributors or any of them;
17. designating a liquid as a beverage for the purposes of section 1, subsection (1), clause (b);
18. designating a thing as a container for the purposes of section 1, subsection (1), clause (c);
19. prescribing the amounts of deposits that may be required by manufacturers, distributors, depot operators or retailers with respect to any container or class or type of container;
20. prohibiting the sale from any beverage vending machine of beverages and beverage containers where there are no facilities for the payment of refunds pursuant to section 5;
21. authorizing the Minister to prohibit the sale of
 - (i) any container of a size other than a size prescribed by the Minister, or
 - (ii) any container or class or type of container that the Minister considers to be detrimental to the environment;
22. requiring a retailer, in respect of each type of beverage sold by him in a container, to clearly advertise in his retail premises the amount of the deposit and refund payable for each type of container;

23. providing the procedures in respect of inquiries and appeals under section 10;
24. requiring a manufacturer, in respect of each type of beverage sold by him in a container, to have clearly marked on each container the amount of the deposit and refund payable for the container.

(2) Any notice under subsection (1), clause 12 and any limitation imposed under subsection (1), clause 13 shall be in writing and shall be published in the Alberta Gazette within one month of the making of the notice or limitation.

17. Where a request has been made to the Minister by or on behalf of manufacturers, distributors, depot operators or retailers to prescribe any amount or to change any amount prescribed in regulations made pursuant to section 16, subsection (1), clause 4 or 19, the Registrar, or any person authorized by the Registrar, at any reasonable time and upon two days' prior notice to the depot operator or retailer concerned,

- (a) is entitled to inspect any books, documents, records and accounts kept by or on behalf of a depot operator or retailer for the purpose of, or in connection with or pertaining to, the operation of the depot, and
- (b) is entitled to enter into any building, premises or place used by or on behalf of a depot operator or retailer for or in connection with the keeping of any books, documents, records or accounts referred to in clause (a) for the purpose of making the inspection.

18. A person who contravenes any provision of this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of not more than \$1,000 and in default of payment to imprisonment for a term not exceeding 100 days.

19. (1) In this section, "former Act" means *The Beverage Container Act*, being chapter 10 of the Statutes of Alberta, 1971.

(2) Subject to subsection (2), an approval issued under the former Act shall be deemed to be an approval issued under this Act.

17. New. Right-of-entry and inspection of books for assessment of requests for changes in rates.

18. Former section 6. Penalties.

19. Transitional.

(3) Where at the commencement of this Act a person is the holder of an approval issued under the former Act, the Registrar may, upon such notice as he considers suitable, issue to the person an approval under this Act upon such terms and conditions as the Registrar considers proper, in substitution therefor.

(4) Wherever anything has been done, constituted, effected, instituted or ordered to be done under the former Act, it has the same force and effect as though done, constituted, effected, instituted or ordered to be done under this Act.

20. *The Beverage Container Act* is repealed.

21. This Act comes into force on a date or dates to be fixed by Proclamation.

20. Repeals chapter 10 of the Statutes of Alberta, 1971.