



Testimony of Bree Dietly on Behalf of the Beverage Association of Vermont and American Beverage Association on House Bill 158 as Amended

**House Committee on Ways and Means
March 15, 2023**

Good morning, Chair Kornheiser, Vice-Chair Canfield, and members of the Committee. My name is Bree Dietly, and I am a Principal at Breezeway Consulting in Somerville, Massachusetts. I have 37 years of experience working with deposit return systems across the US and have done several research projects related to the Vermont law. I also manage the Vermont Commingling Group, LLC, which is the entity that operates the commingling program, accounting for roughly 90 percent of the redeemed containers in Vermont. While I am not representing the LLC today, my experience with that program provides me with unique insight into the workings of Vermont's bottle bill. I am here today to speak on H.158 related to beverage container redemption.

Last year, Senator Bray convened a working group of stakeholders to discuss H.175 and how to arrive at a consensus for a path forward for Vermont's bottle bill. A system designed for the 1970s beverage market and consumers is understandably due for a tune-up as we stand 50-plus years in the future. Our industry was encouraged by the direction of those discussions and the thoughtful openness of the stakeholders to updated approaches to the bottle bill.

While we do not support expansion of Vermont's bottle bill, we are pleased to see that H.158 incorporates many of the necessary reforms to put the bottle bill on a more stable and sustainable path going forward.

We worked with the House Environment and Energy Committee as it took up the bill this session, and we were pleased with some of their changes to the bill, but we still have serious reservation about other aspects of it. We are willing to continue active engagement in discussions on this bill to move forward with a more progressive and updated framework for the state's bottle bill.

Our Members and Commitments

I am representing the Beverage Association of Vermont, which represents the bottlers and distributors of refreshment beverages in Vermont through our local bottling partners including Coca-Cola Beverages Northeast with operations in Colchester and Rutland, Pepsi-Cola of Burlington, Leader Distribution Systems in Brattleboro, and Polar Beverages. Our industry provides jobs to 700 Vermonters; these jobs are some of the best paid, highest benefit jobs available in communities to employees with and without college degrees. We are proud of our employees and how they and the companies they work for are involved in and give back to our communities.

The beverage industry plays an important role in advancing the circular economy. Our packaging is specifically designed and optimized for recycling. In particular, our PET bottles and aluminum cans are designed to be recyclable, have a high commodity value and, when collected and recycled, can become new bottles and cans. The industry also has invested in local and regional recycling infrastructure for more than 40 years.

The companies have also made commitments to collect and recycle packaging waste, to incorporate more recycled content into our PET bottles and to reduce the amount of new plastic in our bottles. The industry's Every Bottle Back program is investing \$100 million in improvements to collection systems around the country. And we are working on well-designed policies in several states to improve collection such as extended producer responsibility programs and modern deposit return systems.

Advantages of H.158

Last session we opposed a House-passed expansion of the bottle bill in H.175 because of our concerns over the significant problems “under the hood” of the current bottle bill. These issues escape the notice of all but those who work with the system on a daily basis. As a result, we spent a lot of time last session educating legislators and others about the issues: there is too much sorting at redemption centers, the infrastructure has not kept up with technological developments in this area, and a de-centralized system will continue to result in less efficient systems and decisions for the direction of the program.

The commingling group¹, which I manage, has dramatically changed how the system works, simplifying redemption and handling, but it is still a manual-sort system that is highly labor intensive – a challenge when workers are scarce. And despite the efficiencies produced by commingling, the roughly 10 percent of returns not in the commingling system impose vastly higher costs on redemption centers.

H.158 properly recognizes that the system needs to be fixed first, before expanding the program to include more beverages; that is also the view of beverage distributors and of many of the businesses with whom we work every day. We support key elements of the bill:

- Establishing a mandatory distributor organization that develops a stewardship plan is an essential reform to the existing program, and it lays the groundwork for future expansion so that change does not “break” the system we have today.
 - A stewardship model is the most common in other countries and at the forefront of the new systems being developed in Europe and elsewhere. These programs offer greater focus on meeting environmental goals because the stewardship group can be held accountable for performance (*i.e.*, the return rate) as well as reporting on how materials are being utilized to advance a circular economy. The programs are incentivized to provide convenient service to consumers and to do so efficiently. These programs also, without exception, have access to unclaimed deposit revenues to help offset costs.

¹ I have attached a brief overview of the operation of the commingling group.

- Research we compiled two years ago identified more than 150 required sorts at redemption centers for the non-commingled brands. The majority of containers covered by an expansion of the law would also require distributor-specific sorting, sending the number of sorts well into the hundreds. This is impractical for redemption centers, and we know how to design and operate a better system.
- Increasing the handling fee for noncommingled containers is a fair and reasonable short-term approach for dealing with the high costs those containers impose on redemption centers.

Proposed Changes to the Bill

We support some of the key reform concepts contained in H.158 and believe that a stewardship model, building on the reforms implemented and proven by the commingling system, is the right foundation on which to build the future of the bottle bill. Unfortunately, the current version of the bill removed language agreed by stakeholders in 2022 that would lead to the establishment of only one stewardship organization; many advantages of the approach are squandered if multiple organizations carve up the state.

We have several other concerns with the bill as amended by the Environment and Energy Committee but will focus our comments here on those issues with direct or indirect fiscal impacts to the State:

- Amend Section 2 to permit the stewardship organization to retain 100 percent of the unclaimed deposits for its first five years of operation – the time when the organization will be making significant new investments in technology and system design. Given the structure of the entity as a nonprofit and the transparent reporting, the annual reports will document that the funds are being spent on capital and operating costs of the system. After this initial period, the organization should retain at least 50 percent of the unclaimed deposits.
 - Vermont is already one of the costliest deposit systems in the country with the high handling fee and the fact that unclaimed deposits are siphoned out of the program, rather than used to defray the costs of operating the system.
 - Vermont and Massachusetts are the only deposit programs in the US that do not leave even a portion of those funds in the system to offset expenses. Outside the US, virtually all programs retain unclaimed deposits for that purpose.
 - Also, as the system performance improves (*i.e.*, redemption rates increase), unclaimed deposits will shrink, so they are not a reliable funding source for state programs in the long run.
- We oppose the automatic triggering of a 5¢ increase in the deposit in §1522(c), especially given the compressed target dates incorporated into the bill. The redemption targets must be met almost immediately upon expansion of the law, which we know from experience elsewhere will result in a temporary drop in redemption rates.

- A 10¢ deposit would have severe impacts on Vermont businesses, their revenue, and their tax payments – from sales taxes to excise taxes. The problem of cross-border fraud is already a problem, especially along the Connecticut River Valley, but also on the Massachusetts and New York borders where redemption centers offer premiums to attract out of state business. A 10¢ deposit would drive fraudulent redemption to unprecedented levels.
- A 10¢ deposit would also enhance the incentive for consumers to go out of state to buy beverages and other items – an already well-established practice, evidenced by the retail desert in the eastern part of Vermont. The Act 148 report from 2014 estimated that nearly 20% of the beverage containers recycled or disposed in Vermont came from outside the state – a percentage that could double if the deposit doubled.
- A deposit increase should be viewed as a last option to enhancing redemption rates. The stewardship organization can use redemption incentives, promotion, and convenience as tools to increase redemption without harming even more retail businesses in the state.

We have a number of other more technical amendments we would like to see in the bill correcting or revising definitions as well as addressing ambiguities in the amendments. We would be happy to share those with the Committee and other stakeholders at an appropriate time.

Summary

The redemption system in Vermont, like those in the other states that enacted them between 1971 and 1983, was designed for a different beverage industry, a different beverage market, a different retail environment, and different consumers. Yet the deposit system remains more or less unchanged except for ever-higher costs and the innovation of commingling.

Commingling provides an illustration of how redemption systems need to evolve in order to meet consumers where they are now, not the 1970s, yet it also shows the limitations of that system faced with a vastly more complex mix of beverages and beverage distributors in the market.

We believe a stewardship model is the natural next step for Vermont's program to open up the system to innovation and lay the foundation for expanding the law to include additional containers and to improve its performance.

Thank you very much for the opportunity to testify today, and I am happy to answer questions or to provide additional information.

Vermont Commingling Summary

All distributors of deposit containers in Vermont are required to select a pickup agent to collect their returns from across the state, unless the distributors are able to do this themselves.

Distributors using TOMRA as their pickup agent may consider participating in the commingling group, which means that the distributor's empty containers will be managed together with those of the other participants in the group, rather than collected separately by brand (which is much more costly and inefficient).

Why Is There a Commingling Group?

Redemption centers have struggled to keep up with the staggering number of brewers and beer brands in the Vermont market as well as all the small soda and seltzer brands. These small brands account for only a small share of redemptions, but account for much of the cost of sorting and managing returns. Commingling was implemented in 2008 to simplify sorting for redemption centers and to help manage their costs. Because commingling saves redemption centers money, the handling fee is lower (3.5¢) for those in commingling while those not in commingling pay 4¢. Proposed legislation would increase that premium.

How Do I Get Billed for My Returns if They're Mixed with Others?

TOMRA collects bags, cases, and bins of commingled returns and bills all commingling participants for their respective share of those returns. The shares are determined by confidential sales data submitted monthly by the distributor to the group's manager. Participants only pay for containers of the type they sell, so if a brewer only sells 16 oz cans, they would pay for their share of 16 oz cans returned and not for any other container types.

By reducing sorting burdens on the redemption center, the participants in commingling pay a lower handling fee (currently 3.5¢ instead of the 4¢ charged to others). Larger distributors become Members of the group, with legal and equity stakes in its operation; smaller distributors are Partners and have a reduced set of responsibilities.

Should I Join Commingling?

Joining commingling allows for more efficient handling, less burden on redemption centers, and a more sustainable system. That is reflected now in the lower handling fee, although the savings provided by commingling are greater than reflected in that ½¢ difference so the non-commingling handling fee may increase.

It is likely that those joining the group will experience a higher redemption rate than they have been. That is because many smaller brands are already having some of their returns paid for by the commingling group, because the empties are mis-sorted at redemption centers. Because commingling accounts for the vast majority of returns in Vermont, commingling becomes the "default" if a redemption center employee isn't sure what to do with a bottle or can.

Commingling Details: Members of Vermont Commingling Group, LLC

- Coca-Cola Northeast
- Bottling Group, LLC (Burlington Pepsi)
- Leader Distribution Systems (Pepsi Cola of Brattleboro)
- Baker Distributing
- Calmont Beverage
- Farrell Distributing
- Craft Beer Guild of VT
- Breezeway Consulting LLC (Non-member, Manager)
- Non-member Partners: None currently

Based on Department of Taxation data for calendar year 2021, the LLC represented 90% of deposit containers redeemed (excluding distilled spirits).

What Can Be Commingled?

- Deposit beverage containers that are distributed exclusively by the members or partners. Brands for which outside distributors share distribution rights in Vermont would not be included in the program.
- Eligible brands are commingled by redemption centers, but separated by material and size including aluminum cans (four size categories), PET bottles (3 size categories), and glass (2 size categories and generally separated by color).

Affected Facilities

- Currently 76 redemption centers or retailers are in the commingling program. Those redeeming more than a certain number of containers are required to participate by law, but most facilities are permitted to commingle if they choose.

Pickup Responsibilities

- TOMRA is the designated pickup agent for the system. While the operating principles of the commingling system apply uniformly across all companies and TOMRA, the contractual relationship regarding pickup fees, scrap credits, and terms are individually negotiated between the members or partners and TOMRA; the LLC has no contractual relationship with TOMRA. TOMRA services all locations in the state as it also picks up distributor-sorted empties for dozens of other companies (*e.g.*, Polar, Nestle, Vermont Beer Shepherd). TOMRA is also responsible for conveying sorting instructions (*i.e.*, what belongs in commingling bags/bins) to the redemption centers.

Contact: Bree Dietly, Breezeway Consulting LLC
bree@breezewayc.com 508-932-8255