H-2250.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2144**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Stonier, Berry, Taylor, Reed, Ramel, Peterson, Callan, Macri, Street, Gregerson, Berg, Fosse, Doglio, Pollet, Kloba, and Davis

AN ACT Relating to providing for a deposit return program for qualifying beverage containers to be implemented by a distributor responsibility organization; amending RCW 82.19.050 and 70A.245.100; adding a new section to chapter 82.04 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW; adding a new chapter to Title 70A RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec.**  INTENT. (1)(a) The legislature finds that the department was directed, through an independent consultant, to study how plastic packaging is managed in the state, to assess various policy options, and to provide recommendations to achieve certain goals, which include:

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

(ii) Plastic packaging sold into the state incorporates at least 50 percent postconsumer recycled content by January 1, 2030.

(b) The legislature also finds that the study recommends that a deposit return system is an effective way for producers to meet outcomes required by an extended producer responsibility framework.

(2) The legislature finds that a 2023 study commissioned by the department examined potential material recovery targets for consumer packaging and found that the best possible recovery, reuse, and recycling outcomes were made possible with an extended producer responsibility system combined with a deposit return system for qualifying beverage containers.

(3) The legislature intends that packaging materials be recycled or reused through a deposit return system for qualifying beverage containers and extended producer responsibility programs for other packaging materials. It is the intent of the legislature that a deposit return system for qualifying beverage containers incentivizes innovation, consumer participation, and industry stewardship to minimize environmental impacts.

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

(1) "Dealer" means any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a consumer that engages in the sale of beverages in qualifying beverage containers intended for consumption off site.

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

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

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

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

(6) "Qualifying beverage container" means any separate, sealed glass, metal, or plastic bottle or can, except for a carton, foil pouch, drink box, or metal container that requires a tool to be opened, that contains any beverage intended for human consumption, and in a quantity of greater than four ounces and less than or equal to one gallon, except for products with dairy milk as a first ingredient and infant formula.

NEW SECTION. **Sec.**  RELATIONSHIP WITH OTHER PRODUCER RESPONSIBILITY PROGRAMS. Notwithstanding any other extended producer responsibility program or programs enacted by the legislature to address the recycling or reuse of qualifying beverage containers, upon the effective date of this section, all qualifying beverage containers and their closures and labels of all producers cease to be considered covered products in any other extended producer responsibility program and are instead subject to the requirements of this chapter. A producer responsibility organization or similar entity implementing an extended producer responsibility organization may not require the participation of producers or distributors of qualifying beverage containers or impose fees on producers or distributors of qualifying beverage containers and any closures or labels managed under this chapter.

NEW SECTION. **Sec.**  FORMATION OF A DISTRIBUTOR RESPONSIBILITY ORGANIZATION. (1) A group of distributors representing the majority of beverages in qualifying beverage containers sold in or into Washington may form a distributor responsibility organization to operate a deposit return system that meets the requirements of this chapter. To be approved as a distributor responsibility organization, a group of distributors must register with the department and demonstrate to the department's satisfaction that its initial membership represents the majority of beverages in qualifying beverage containers sold or made available for sale in the state. Distributors may not be members of or appear on the registration of more than one distributor responsibility organization registering with the department.

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

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

(b) The total gross unit sales volume of beverages in qualifying beverage containers distributed by its members in Washington during the preceding year.

(3) The department shall review registrations submitted by a distributor responsibility organization. Except for the registration of an individual distributor independently fulfilling the duties required of a distributor responsibility organization, the department may not approve the registration of a distributor responsibility organization whose initial membership at the time of registration does not represent a majority of beverages in qualifying beverage containers sold or made available for sale in Washington during the prior year. The department shall approve the registration of a distributor responsibility organization whose initial membership at the time of registration represents, to the department's satisfaction, a majority of beverages in qualifying beverage containers sold or made available for sale in Washington during the prior year. The department shall approve the registration of an individual distributor independently fulfilling the duties required of a distributor responsibility organization as described in section 5 of this act.

(4) The requirements of this chapter do not take effect unless and until a distributor responsibility organization, other than a single distributor independently complying with the requirements of this chapter, is established and registers with the department to establish and operate a deposit return system, and has a plan approved by the department to do so.

NEW SECTION. **Sec.**  DISTRIBUTOR RESPONSIBILITY ORGANIZATION MEMBERSHIP AND DISTRIBUTORS INDEPENDENTLY CARRYING OUT THE DUTIES AND REQUIREMENTS OF A DISTRIBUTOR RESPONSIBILITY ORGANIZATION. (1) By October 1, 2025, or 120 days after a distributor responsibility organization's registration is approved by the department, whichever is later, each distributor that offers for sale, sells, or distributes in or into Washington beverages in qualifying beverage containers must:

(a) Join a distributor responsibility organization; or

(b) Register with the department as a distributor independently carrying out all duties and requirements of a distributor responsibility organization as described in this chapter. These duties include, but are not limited to, the following: (i) Providing a convenient bulk bag drop-off system as described in section 12 of this act that accepts all qualifying beverage containers in the same bag and at no cost to consumers; (ii) providing the same number and geographic distribution of drop-off locations as a distributor responsibility organization; (iii) paying to consumers the refund value of qualifying beverage containers; (iv) meeting the performance targets described in section 9 of this act; (v) paying all applicable performance penalties required of a distributor responsibility organization in this chapter; and (vi) fulfilling all reporting requirements required in this chapter.

(2) Distributors that have not joined a distributor responsibility organization, or that do not independently fulfill the duties required of a distributor responsibility organization, may not sell or supply beverages in qualifying beverage containers in or into Washington after October 1, 2025, or 120 days after a distributor responsibility organization is approved by the department, whichever is later. Any distributor that operates in violation of this requirement is subject to penalties and damages as described in section 7 of this act.

(3) If a distributor responsibility organization, other than a single distributor independently fulfilling the requirements of a distributor responsibility organization, is approved by the department and operates a deposit return system as described in this chapter, all qualifying beverage containers are included in the deposit return system and all requirements of this chapter apply to the distributors of beverages in qualifying beverage containers.

NEW SECTION. **Sec.**  INITIAL REPORTING REQUIREMENTS. (1)(a) Until a distributor responsibility organization begins to submit annual reports as required in section 18 of this act, by January 15th of each year, a distributor responsibility organization must submit the following data for the prior calendar year:

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

(ii) The number of qualifying beverage containers sold or made available for sale in the state by members of the distributor responsibility organization, by material category and size.

(b) A distributor responsibility organization may rely on member reporting for the reporting requirements in this section.

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

NEW SECTION. **Sec.**  CALCULATION AND PAYMENT OF FEES TO THE DEPARTMENT AND DAMAGES OWED TO A DISTRIBUTOR RESPONSIBILITY ORGANIZATION. (1) The department shall implement, administer, and enforce this chapter. The department may adopt rules to implement, administer, and enforce this chapter.

(2) By April 1st of each year after a distributor responsibility organization's registration has been approved by the department, the department must:

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

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

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

(3) By June 30th of the fiscal year of approval of a distributor responsibility organization registration and every June 30th thereafter, a distributor responsibility organization registered with the department shall submit an annual payment to the department to fund the costs to implement, administer, and enforce this chapter, including rule making, as identified through the workload analysis.

(4) In lieu of the annual fee payment required of the distributor responsibility organization, 120 days after a distributor responsibility organization's registration has been approved by the department, a distributor independently carrying out the duties and requirements of a distributor responsibility organization described in this chapter shall pay a registration fee to the department equal to 10 cents per qualifying beverage container until such time as a distributor responsibility organization begins operating a deposit return system.

(5) After a distributor responsibility organization begins operating a deposit return system, and after notification of noncompliance from the department and a 60-day cure period, the department shall administratively impose a civil penalty to any distributor who fails to participate in a distributor responsibility organization as specified in section 5 of this act, or fails to otherwise comply with the requirements of this chapter by independently carrying out the duties of a distributor responsibility organization described in this chapter, which must be at least 15 cents per beverage in a qualifying beverage container sold or made available for sale by the distributor in the state, or $10,000, whichever is greater.

(6) Any distributor who incurs a penalty under this section may appeal the penalty to the pollution control hearings board created in chapter 43.21B RCW.

(7) Fees paid by distributors not participating in a distributor responsibility organization under this section must be deposited into the deposit return organization program account created in section 24 of this act and used by the department to offset the costs of implementing the requirements of this chapter.

(8) Penalties paid by distributors not participating in a distributor responsibility organization under this section must be deposited into the recycling enhancement account created in RCW 70A.245.100.

(9) Notwithstanding the requirements of this section, a manufacturer distributor producing a de minimis quantity of beverages in refillable qualifying beverage containers may alternatively comply with the requirements of this chapter by operating a small-scale refund program approved by the department, as described in section 21 of this act.

(10) Unless otherwise specified in a distributor responsibility organization's bylaws or in a contract between a distributor responsibility organization and an individual distributor arranging specifically for the collection of qualifying beverage containers sold for the purpose of consumption on premises, after a distributor responsibility organization begins operating a deposit return system, any manufacturer, distributor, or importer that fails to pay to a distributor responsibility organization the refund value of qualifying beverage containers included in this chapter is liable to the distributor responsibility organization for treble the unpaid refund value and treble the collection costs incurred by the distributor responsibility organization for any qualifying beverage containers that were sold without the refund value of the container being remitted to the distributor responsibility organization.

NEW SECTION. **Sec.**  RESTRICTIONS ON THE USE OF FUNDS FROM UNCLAIMED REFUNDS. (1) A distributor responsibility organization may not distribute or otherwise disseminate funds from unclaimed refunds to members of the distributor cooperative, or alternative structure approved by the department, as a dividend or similar form of profit, and shall report on this requirement annually in the manner described in section 18 of this act.

(2) A distributor responsibility organization may not use funds from unclaimed refunds for the purpose of legislative or political advocacy efforts that would require reporting under chapter 42.17A RCW and the distributor responsibility organization shall report on this requirement annually in the manner described in section 18 of this act.

NEW SECTION. **Sec.**  REUSE AND RECYCLING PERFORMANCE REQUIREMENTS, VERIFICATION, AND PERFORMANCE PENALTIES. (1) To meet the reuse and recycling performance requirements established in this section, a distributor responsibility organization shall calculate the reuse sales rate and the redemption rate of qualifying beverage containers and provide the verification to the department as part of the annual reporting requirements. The reuse sales rate is the number of qualifying beverage containers in reusable packaging sold in a year. For materials reclaimed under a deposit return system, the calculation point for the redemption rate is the number of qualifying beverage containers redeemed statewide by the distributor responsibility organization divided by the number of beverages in qualifying beverage containers sold in the state by members of the distributor responsibility organization.

(2) At a minimum, a deposit return system plan submitted by a distributor responsibility organization must achieve the following performance requirements:

(a) A minimum of 60 percent of all qualifying beverage containers supplied into the state are redeemed for reuse or recycling through the deposit return system in the data reported for 2029 and thereafter;

(b) A minimum of 80 percent of all qualifying beverage containers supplied into the state are redeemed for reuse or recycling through the deposit return system in the data reported for 2032 and thereafter; and

(c) By December 31, 2032, sales of beverages in reusable packaging must reach at least one percent of all qualifying beverage containers.

(3) The department shall make public the annual reporting of the redemption rate and reuse sales rate required of the distributor responsibility organization registered by the department and any individual distributor independently complying with the requirements of this chapter.

(4)(a) In order to determine compliance with the redemption rate performance targets, the department may, within 120 days of the date that the department receives a report as described in section 18 of this act, review the records of a distributor responsibility organization specifically related to the accuracy of the redemption rate. The records specifically related to the accuracy of the redemption rate do not include financial details of a distributor responsibility organization.

(b) If in the course of a review described in (a) of this subsection, the department determines that an audit of a distributor responsibility organization is necessary to verify the redemption rate, the department shall require the distributor responsibility organization to retain an independent audit firm to determine the accuracy of the redemption rate. The scope of this audit is limited to records specifically related to the accuracy of the redemption rate. A distributor responsibility organization that is subject to review shall pay the costs of the audit. The audit is limited to the records described in (a) of this subsection.

(5) In lieu of any other penalties for not achieving the performance criteria in this section, should the redemption rate performance requirements described in this section not be met, the distributor responsibility organization shall annually calculate the number of containers representing the difference between the redemption rate of qualifying beverage containers and the redemption rate performance requirements described in this section, and pay a penalty that is equal to 10 cents times the number of containers representing the difference, to be deposited into the model toxics control operating account created in RCW 70A.305.180.

(6) At the sole discretion of the department, if the requirements of this section result in a penalty to be paid by the distributor responsibility organization, the department may alternatively identify priority areas for additional drop-off access to be provided, or may identify a reduction in the penalty to be paid in conjunction with the identification of priority areas for additional drop-off access to be provided, and the department and the distributor responsibility organization may agree to provide additional access accordingly. If agreement is not reached, the financial penalties in subsection (5) of this section must be paid.

(7) A penalty may not be assessed on the distributor responsibility organization related to the reuse performance requirements described in this section.

NEW SECTION. **Sec.**  DEPOSIT RETURN SYSTEM PLAN SUBMITTAL, APPROVAL PROCESS, AND DEPLOYMENT. (1) Beginning July 1, 2027, or within 180 days of the first adoption of rules under this chapter, whichever is later, a distributor responsibility organization with an approved registration with the department shall submit a plan to the department that meets the requirements of sections 11 through 20 of this act.

(2) The department shall evaluate the plan submitted by the distributor responsibility organization and make a determination of approval within 60 days of receiving the plan. The department shall approve the plan if it substantially meets the requirements of sections 11 through 20 of this act. The department shall disapprove the plan if it does not substantially meet the requirements of sections 11 through 20 of this act. If the department disapproves the plan of a distributor responsibility organization, the department shall provide a detailed explanation of its reasons for disapproval.

(3) Upon receipt of a plan disapproval and the department's detailed explanation for disapproving the plan, a distributor responsibility organization has 60 days to submit an amended plan to the department. Within 60 days, the department shall review and approve the amended plan if it substantially meets the requirements of sections 11 through 20 of this act or deny the amended plan if it does not substantially meet the requirements of sections 11 through 20 of this act.

(4) If a distributor responsibility organization fails to submit a plan by July 1, 2027, or within 180 days of the first adoption of rules relating to this chapter, whichever is later, or if a distributor responsibility organization fails to submit an amended plan within 60 days of a plan disapproval or a disapproval of an amended plan, the contingency plan described in section 27 of this act must be engaged.

(5) Upon receipt of the department's approval of a distributor responsibility organization's plan or amended plan to operate a deposit return system, the distributor responsibility organization shall implement a deposit return system as described in its approved plan by July 1, 2028, or within one year of first adoption of rules under this chapter, or within one year of the department's approval of the plan, whichever is later.

NEW SECTION. **Sec.**  REFUND VALUE, LABELING OF REFUND VALUE, AND COLLECTION OF REFUND VALUE. (1) A distributor responsibility organization operating a deposit return system shall provide a refund value of 10 cents per qualifying beverage container purchased in Washington and presented for a refund through the deposit return system, except in cases described in section 19 of this act.

(2) If a distributor responsibility organization's deposit return system plan is approved by the department, except for containers covered by a small-scale refund program established under section 21 of this act, all qualifying beverage containers sold or offered for sale in the state of Washington must:

(a) Carry a 10 cent refund value;

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

(c) Be sold by a distributor, importer, or producer that is a member of the distributor responsibility organization submitting the deposit return system plan for qualifying beverage containers or an individual distributor independently carrying out the duties required of a distributor responsibility organization described in this chapter; and

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

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

NEW SECTION. **Sec.**  BULK DROP-OFF PROGRAM AND DROP-OFF NETWORK FOR COLLECTING QUALIFYING BEVERAGE CONTAINERS. (1) The distributor responsibility organization must, at its own cost, provide a convenient bulk drop-off option for bagged qualifying beverage containers through a network of geographically dispersed locations in Washington that sell beverages in qualifying beverage containers, are located a convenient distance from a dealer, are located at a publicly owned facility, or are otherwise convenient for consumers. The distributor responsibility organization may not charge customers for the use of this drop-off service and must credit the cost of any required bag purchase back to the customer when the bag is returned and processed through the deposit return system.

(2) The distributor responsibility organization shall provide a sufficient number and distribution of drop-off facilities to achieve the redemption rate performance requirements included in section 9 of this act. The distributor responsibility organization's plan submitted to the department must provide an analysis and rationale supporting how the distributor responsibility organization's proposed distribution of drop-off facilities is designed to meet the redemption rate performance requirements included in section 9 of this act. Within the number of locations necessary to achieve the redemption rate performance targets identified through the analysis and rationale included in its plan, the distributor responsibility organization shall consider the following factors in making drop-off facility location decisions: (a) Proximity to the volume of beverage sales occurring in an area; (b) access in rural counties; (c) access in small cities; (d) convenient access for people living in communities serviced by the Washington state ferries system; and (e) convenient access for people in economically strained areas and in underserved urban areas.

(3) The distributor responsibility organization, with input from the consumer convenience advisory council established in section 14 of this act, may provide alternative access plans for areas where the beverage sales volume would otherwise necessitate drop-off capacity, but where drop-off locations cannot be secured. The department may approve the alternative access plan if it deems it to be similarly convenient to consumers.

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

(5) Drop-off locations may be located at dealers, or any other retail establishment, publicly owned facility, or any other location convenient to consumers. However, nothing in this chapter may be interpreted to create a legal obligation on the part of dealers either to accept returned qualifying beverage containers or allow a drop-off location to be sited at a dealer.

(6) Storage and drop-off containers sited for the purpose of fulfilling the requirements of this section are considered temporary mobile containers regardless of whether they have wheels, have electrical power, or are affixed to the site.

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

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

NEW SECTION. **Sec.**  DROP-OFF CAPACITY FORMULA AND NETWORK GROWTH AND REALIGNMENT. (1) The number of locations required to be provided by the distributor responsibility organization in an approved plan to achieve the redemption rate performance targets required for the 2032 reporting year must be used to calculate a drop-off capacity formula. The drop-off capacity formula is equal to the ratio of drop-off locations required in the distributor responsibility organization's approved plan to achieve the 2032 redemption rate performance targets to total anticipated sales of beverages in qualifying beverage containers the prior year.

(2) Five years after the distributor responsibility organization begins operating a deposit return system, and every five years after that, the distributor responsibility organization shall calculate an updated number of drop-off locations required using the drop-off capacity formula. If this calculation determines that the distributor responsibility organization needs to add additional drop-off sites to reach the number required by the drop-off capacity formula, the distributor responsibility organization shall provide the department with a list of proposed new locations, equal to the number determined by the drop-off capacity formula, disbursed based on the factors included in section 12 of this act and input from the consumer convenience advisory council established in section 14 of this act. The distributor responsibility organization shall make the new drop-off locations available within three years.

NEW SECTION. **Sec.**  CONSUMER CONVENIENCE ADVISORY COUNCIL. (1) The distributor responsibility organization shall establish the consumer convenience advisory council by January 1, 2026, or 60 days after a distributor responsibility organization's registration is approved by the department, whichever is later.

(2) The consumer convenience advisory council shall include the following members: (a) A representative of the distributor responsibility organization charged with securing and making available drop-off locations; (b) two representatives of a grocery association or individual grocer with more than 10 retail locations over 5,000 square feet in size in the state; (c) two representatives of a city association, or individual city government, with one representing a city with a population over 200,000 people; (d) two representative of a county association, or individual county government, with one representing an urban county and one representing a rural county; (e) an environmental organization; and (f) an organization representing glass, plastic, or metal packaging beverage container packaging.

(3) Any additional representatives beyond those specified in subsection (2) of this section deemed by the distributor responsibility organization to provide important insight into assisting with the deployment of drop-off locations may be approved by the department.

(4) The consumer convenience advisory council shall: (a) Work with the distributor responsibility organization to identify potential bag drop-off locations and achieve the consumer convenience required in section 12 of this act; (b) provide input on the location of new sites required by the drop-off capacity formula as described in section 13 of this act; and (c) consult in the selection of the third-party firm to conduct the consumer convenience assessment as described in section 15 of this act.

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

NEW SECTION. **Sec.**  CONSUMER CONVENIENCE ASSESSMENT AND UPDATED PLAN SUBMISSIONS. (1)(a) In the fourth and ninth full year in which a distributor responsibility organization operates a deposit return system in the state, the distributor responsibility organization, in consultation with the department and the consumer convenience advisory council established in section 14 of this act, shall retain a third-party consultant to conduct an assessment of consumer convenience.

(b) The distributor responsibility organization shall contract with and pay for the independent third-party consultant to identify any barriers to achieving the redemption rate performance requirements in section 9 of this act.

(2) If the third-party assessment finds that the number of drop-off locations required in the distributor responsibility organization's plan under section 9 of this act has not been reached, or that the redemption rate is significantly below the redemption rate performance targets in section 9 of this act, the consultant shall make recommendations to the department, the distributor responsibility organization, and the consumer convenience advisory council, regarding ways to increase consumer convenience and enhance performance.

(3) A distributor responsibility organization shall submit an updated plan to the department for review in the year following the year of each consumer convenience assessment under this section and shall address the recommendations included in the third-party assessment. The department shall review the updated plans. If, in its review of an updated plan, the department determines that the plan is insufficient to meet the redemption rate performance targets in section 9 of this act or the convenience requirements in section 12 of this act, it shall issue a notice of insufficiency to the distributor responsibility organization, describing the ways in which the distributor responsibility organization's plan is insufficient to meet the performance and convenience requirements. Upon receipt of a notice of insufficiency from the department, the distributor responsibility organization has 60 days to submit an updated plan. If, after 60 days, the distributor responsibility organization fails to submit an updated plan, or if the updated plan does not adequately address the elements of insufficiency identified by the department, the department shall inform the appropriate committees of the house of representatives and the senate of its analysis of the sufficiency of the updated plans by December of the year in which the updated plan was submitted.

NEW SECTION. **Sec.**  COORDINATION WITH PRODUCER RESPONSIBILITY ORGANIZATIONS AND FACILITATING THE REDEMPTION OF QUALIFYING BEVERAGE CONTAINERS COLLECTED THROUGH OTHER RECYCLING PATHWAYS. (1) Included in its plan submitted to the department, the distributor responsibility organization shall include a description of how the distributor responsibility organization and the deposit return system will coordinate with other recycling systems and processes, including coordinating with producer responsibility organizations operating in the state. As part of its coordination with producer responsibility organizations, the distributor responsibility organization must coordinate with any producer responsibility organization that includes boxed wine in a plastic bladder as a covered product to explore potential partnerships, efficiencies, and consumer convenience available through cooperation between the systems.

(2) The distributor responsibility organization must accept, and must pay the full refund value for, any qualifying beverage containers returned to the distributor responsibility organization by material recovery facilities, governmental entities, and other processing facilities if all of the following criteria are met: (a) The qualifying beverage containers have been collected and separated in accordance with standards established by the distributor responsibility organization and are delivered directly to a distributor responsibility organization processing facility; (b) in order to avoid redeeming containers not purchased in the state, the material recovery facilities, governmental entities, and other processing facilities may only handle or process materials from this state, or provide third-party auditing and verification sufficient to confirm that the containers being returned were recovered only from material originating in the state; and (c) the containers are separated by material type, not contaminated with other materials or substances, and are not crushed, broken, or otherwise substantially manipulated into a shape other than the shape of the container at the time of purchase.

(3) The distributor responsibility organization's plan submitted to the department must include a description of the standards for how qualifying beverage containers must be collected, separated, and delivered to a distributor responsibility organization processing facility by material recovery facilities, governmental entities, and other processing facilities in order to be eligible for a refund.

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

NEW SECTION. **Sec.**  ALTERNATIVE REDEMPTION PARTNERSHIPS FOR PROVIDING IMMEDIATE REFUNDS TO CONSUMERS. (1) A distributor responsibility organization operating a deposit return system shall include in its plan a method to accept direct, sorted returns in commercial quantities at its processing facilities for an additional refund value premium if the containers are returned by organizations certified as a nonprofit organization pursuant to section 501(c)(3) of the internal revenue code that are approved by the distributor responsibility organization and serve very low-income individuals who rely on regular container refunds through the deposit return system as a source of daily funds. The distributor responsibility organization may provide pick-up service for containers collected under this section.

(2) To limit fraud and ensure that services are deployed where they are most needed, the distributor responsibility organization may approve or deny partnerships described in this section at its sole discretion.

(3) The distributor responsibility organization plan submitted under section 10 of this act must include a: (a) Description of how it will establish partnerships with nonprofit organizations receiving the additional refund value premium; and (b) process for annually reporting to the department regarding the names, locations, return volume, and any other services provided through the partnership.

NEW SECTION. **Sec.**  ANNUAL REPORTING ON ACTIVITIES. (1) Beginning July 1st of the year following the year a distributor responsibility organization begins operating a deposit return system in the state, and every July 1st thereafter, a distributor responsibility organization must submit an annual report to the department for the preceding calendar year of plan implementation.

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

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

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

(c) (i) The number of beverages in reusable containers that were supplied into the state in aggregate and by material categories of glass, metal, and plastic, by members of the distributor responsibility organization;

(ii) A report describing the successes, challenges, and opportunities for refillable bottles in Washington; and

(iii) A statistical sample or other available data providing an estimate of the reuse rates of reusable containers for beverages;

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

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

(f) The amount and final destination of recycled material and disposed material managed by the program;

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

(h) The total value of unclaimed refunds, including unclaimed refunds used by the distributor responsibility organization to support operations;

(i) The annual redemption rate by qualifying beverage container material category and reuse sales rate; and

(j) For drop-off bags made of film plastic, reporting on their postconsumer recycled content and the recycling markets for the used bags.

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

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

(5) Included in its annual report, a distributor responsibility organization shall provide verification from a third-party financial auditing firm confirming: (a) The total budget for the distributor responsibility organization and the total cost of implementing the plan approved by the department; (b) the total value of unclaimed refunds; (c) a verification that funds represented by unclaimed refunds were not distributed to members of the cooperative as a dividend or similar form of profit; and (d) a verification that funds represented by unclaimed refunds were not used for legislative or political advocacy efforts that require reporting under chapter 42.17A RCW.

NEW SECTION. **Sec.**  DENIAL OF REFUND VALUE FOR SOME QUALIFYING BEVERAGE CONTAINERS. (1) The distributor responsibility organization is not required to accept or pay refunds for:

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

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

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

(2) In the case of subsection (1)(c) of this section, the distributor responsibility organization shall include in its plan submittal to the department a description of the reasonable grounds it will use to determine if a refund should be rejected for a qualifying beverage container.

NEW SECTION. **Sec.**  EDUCATION AND OUTREACH ACTIVITIES. (1) Each plan implemented by a distributor responsibility organization under this chapter must include education and outreach activities that effectively reach diverse residents, are accessible, are clear, and support the achievement of the redemption rate performance requirements described in section 9 of this act.

(2) To implement the education and outreach activities described in the plan, a distributor responsibility organization must, at minimum:

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

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

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

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

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

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

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

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

(g) Evaluate the effectiveness of education and outreach efforts for the purposes of making progress toward the redemption rate performance requirements established in section 9 of this act.

(3) A distributor responsibility organization may coordinate with governmental entities that choose to participate in carrying out resident education and outreach regarding the deposit return system.

NEW SECTION. **Sec.**  SMALL-SCALE REFUND PROGRAM. (1) A distributor that is also a manufacturer may submit a plan to the department to operate a small-scale refund program for beverages in qualifying beverage containers produced by the manufacturer, and the department may approve the plan if it meets all of the following criteria:

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

(b) The beverages are packages in reusable qualifying beverage containers;

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

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

(e) The plan includes annual reporting requirements that, in the department's determination, are sufficient to measure the performance of the small-scale refund program.

(2) If the department approves a small-scale refund program plan as described in this section, the distributor manufacturer operating a plan approved by the department is not subject to the requirements of distributors independently complying with the requirements in this chapter for those containers covered by the small-scale refund program plan.

(3) Reusable containers sold through a program approved through this section count towards the reusable container performance requirements described in section 9 of this act.

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

NEW SECTION. **Sec.**  RECYCLING REVENUE AUGMENTATION FUNDING PROGRAM. (1) For the first five years in which a deposit return system is operated by a distributor responsibility organization in this state, a distributor responsibility organization shall remit $15,000,000 by December 31st of each year to the department of commerce's recycling revenue augmentation account created in section 23 of this act. If the first year of operation of a deposit return system begins after January 1st, the payment amount must be prorated in accordance with the portion of the year in which the deposit return system is operating. These payments constitute the full financial obligation of the distributor responsibility organization to the recycling revenue augmentation funding program.

(2) The department of commerce shall administer the recycling revenue augmentation funding program, which must, for the first five years in which a distributor responsibility organization operates a deposit return system in this state:

(a) Collect funds from a distributor responsibility organization as described in subsection (1) of this section; and

(b) Beginning January 1st of the year following the year in which a distributor responsibility organization first operates a deposit return system in the state, and each January 1st for the following four years, accept requests annually from local governments, or operators of curbside or drop-off recycling programs in the state, or both, to receive funds from the recycling revenue augmentation funding program to offset revenue losses from the previous calendar year from scrap material being diverted to the deposit return system.

(3) Requests consistent with subsection (2)(b) of this section must be received by the department of commerce by July 1st of each year for the preceding calendar year. These requests must include third-party audited financial data demonstrating any revenue losses from the value of scrap materials diverted from curbside or drop-off recycling programs by a deposit return system, less any decreased operating costs from not collecting, hauling, processing, or landfilling the material, less any new revenue provided through other producer responsibility programs created by the legislature in 2024 or later that offsets or partially offsets revenue losses, and less any material weight losses represented by the operator serving fewer accounts. For local government and publicly operated curbside or drop-off recycling programs, the governmental entity's annual audit may satisfy the audited data requirement of this section if the department of commerce determines that it is sufficient to verify the claim. Each request must include the average total tons of glass, plastic, and metal for that applicant for the three years preceding the operation of a deposit return system in the state, compared to the total tons of glass, plastic, and metal material for the year for which payments are requested.

(4) The department of commerce shall: (a) Evaluate all requests annually and determine the validity of the data submitted by each requester; (b) reject requests that do not include sufficient or sufficiently accurate data; (c) make payments from the recycling revenue augmentation account created in section 23 of this act to operators of curbside and drop-off recycling systems proportionally, based on valid requests and available revenue in the account; and (d) after the close of each calendar year, remit any unobligated balance in the recycling revenue augmentation account created in section 23 of this act to the distributor responsibility organization.

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

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

NEW SECTION. **Sec.**  MINIMUM POSTCONSUMER RECYCLED CONTENT OF DROP-OFF BAGS. If drop-off bags used for qualifying beverage containers under a deposit return system are made of plastic film, bags must have a minimum postconsumer recycled content that equals the minimum postconsumer recycled content standard under chapter 70A.245 RCW for plastic trash bags and the distributor responsibility organization must be able to demonstrate that the recovered film from bags is recycled.

NEW SECTION. **Sec.**  CIVIL PENALTIES FOR DISTRIBUTOR RESPONSIBILITY ORGANIZATIONS. (1) Upon notice of a significant violation of the deposit return system plan or performance requirements of this chapter by a distributor responsibility organization, and after a cure period of at least 60 days, the department may assess a civil penalty of at least $200 per violation per day, but no more than $500 per violation per day.

(2) The department shall make its best efforts to work with the distributor responsibility organization to remedy issues without the use of penalties and make reasonable accommodations when the nature of the violation is significantly outside of the distributor responsibility organization's control or is not feasible for the distributor responsibility organization to quickly remedy.

(3) A failure to achieve the redemption rate performance requirements specified in section 9 of this act is not subject to the penalties described in this section and is instead subject to the penalties described in section 9 of this act.

(4) A civil penalty may not be assessed based on the reuse sales rate performance requirements.

NEW SECTION. **Sec.**  CONTINGENCY. If a distributor responsibility organization ceases to exist and operate a deposit return system in Washington, other than for temporary disruptions due to unforeseen circumstances, as determined by the department, or if a distributor responsibility organization and the department fail to reach agreement on an initial plan to operate a deposit return system, the deposit return system must be discontinued, the requirements and provisions of this chapter may not be enforced, and qualifying beverage containers become covered products under any relevant extended producer responsibility programs that apply.

NEW SECTION. **Sec.**  A new section is added to chapter 82.04 RCW to read as follows:

In computing tax due under this chapter, a taxpayer may deduct from the measure of tax amounts derived from charges for the refund value of qualifying beverage containers as required under chapter 70A.--- RCW (the new chapter created in section 36 of this act). To qualify for this deduction, the taxpayer must separately itemize the charges for the refund value on a receipt, invoice, or similar billing document given to the purchaser. The amount of the deduction claimed under this section for a reporting period may not exceed the aggregate charges for the refund value of qualifying beverage containers for beverages sold by the taxpayer during such a reporting period.

**Sec.**  RCW 82.19.050 and 2005 c 289 s 1 are each amended to read as follows:

The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(4) The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; ((~~or~~))

(5)(a) The sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer.

(b) For the purposes of this subsection, the following definitions apply:

(i) "Prepared food" has the same meaning as provided in RCW 82.08.0293.

(ii) "Nonsingle use container" means a receptacle for holding a single individual's food or beverage that is designed to be used more than once. Nonsingle use containers do not include pizza delivery bags and similar insulated containers that do not directly contact the food. Nonsingle use containers do not include plastic or paper plates or other containers that are disposable.

(iii) "Caterer" means a person contracted to prepare food where the final cooking or serving occurs at a location selected by the customer; or

(6) The charge for the refund value of qualifying beverage containers as required under chapter 70A.--- RCW (the new chapter created in section 36 of this act), if the charge is separately stated on a receipt, invoice, or similar billing document given to the purchaser.

NEW SECTION. **Sec.**  The provisions of RCW 82.32.805 and 82.32.808 do not apply to sections 28 and 29 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

Permitting or siting procedures applicable to a storage or drop-off container under chapter 70A.--- RCW (the new chapter created in section 36 of this act) must be consistent with section 12(6) of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 35A.21 RCW to read as follows:

Permitting or siting procedures applicable to a storage or drop-off container under chapter 70A.--- RCW (the new chapter created in section 36 of this act) must be consistent with section 12(6) of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 36.01 RCW to read as follows:

Permitting or siting procedures applicable to a storage or drop-off container under chapter 70A.--- RCW (the new chapter created in section 36 of this act) must be consistent with section 12(6) of this act.

**Sec.**  RCW 70A.245.100 and 2021 c 313 s 13 are each amended to read as follows:

The recycling enhancement account is created in the custody of the state treasurer. All penalties collected by the department pursuant to RCW 70A.245.040 and 70A.245.050 and chapter 70A.--- RCW (the new chapter created in section 36 of this act) must be deposited in the account. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. Expenditures from the account may be used by the department only for providing grants to local governments for the purpose of supporting local solid waste and financial assistance programs.

NEW SECTION. **Sec.**  (1) In consultation with distributor responsibility organizations under this chapter, the department and the department of revenue must study:

(a) The impacts of distributor requirements under this chapter on the litter rates of covered products and qualifying beverage containers under this chapter; and

(b) Possible improvements to the structure of the litter tax under chapter 82.19 RCW including, but not limited to, administration, compliance, and distribution of the tax and application of the tax to certain products, for achieving the purpose of chapter 82.19 RCW.

(2) By January 1, 2030, the department, in consultation with the department of revenue, must provide recommendations to the appropriate committees of the legislature on:

(a) Applicability of the litter tax to covered products and qualifying beverage containers, based on whether the purpose of the litter tax under chapter 82.19 RCW is being achieved for those products by the requirements of producers and distributors under this chapter; and

(b) Improvements to the structure of the litter tax for meeting the purposes of chapter 82.19 RCW.

(3) This section expires July 1, 2030.

NEW SECTION. **Sec.**  Sections 1 through 27 and 35 of this act constitute a new chapter in Title 70A RCW.

**--- END ---**