

SOUTH AUSTRALIA

BEVERAGE CONTAINER ACT, 1975

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 11 October 1988.

The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law. A report has been prepared containing a comprehensive list of textual alterations made under the Acts Publication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.

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APPENDIX LEGISLATIVE HISTORY

BEVERAGE CONTAINER ACT, 1975

being

Beverage Container Act, 1975, No. 77 of 1975
[Assented to 23 October 1975]¹

as amended by

Beverage Container Act Amendment Act, 1976, No. 8 of 1976 [Assented to 26 February 1976]²

Beverage Container Act Amendment Act (No. 2), 1976, No. 98 of 1976 [Assented to 16 December 1976]

Beverage Container Act Amendment Act, 1986, No. 26 of 1986 [Assented to 20 March 1986]³

Beverage Container Act Amendment Act, 1988, No. 9 of 1988 [Assented to 10 March 1988]

¹ Came into operation 1 January 1977: s. 2 as amended by the Beverage Container Act Amendment Act (No. 2), 1976.

² Came into operation 1 January 1977: s. 2.

³ Came into operation 1 October 1986: *Gaz.* 11 September 1986, p. 759.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for the paying of refunds on certain containers; to prohibit the sale of certain containers; for incidental matters; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Beverage Container Act, 1975*.

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Interpretation

4. In this Act, unless the contrary intention appears—

"beverage" means—

(a) brandy, gin, rum, whisky, cordials containing spirits, wine, cider, perry, mead, ale, porter, beer or any other spiritous, malt, vinous or fermented liquors;

(b) any carbonated soft drink or waters;

or

(c) any liquid intended for human consumption by drinking, declared by regulation to be a beverage for the purposes of this Act:

"collection area" in relation to a container of a particular description, means an area comprising a part of the State delineated pursuant to section 9 as a collection area in relation to containers of that description:

"collection depot" in relation to containers of a particular description, means a collection depot the establishment of which is approved pursuant to section 9 in relation to containers of that description:

"container" means a container of any kind made for the purpose of containing a beverage, being a container which when filled with the beverage is sealed for the purposes of storage, transport and handling prior to its sale or delivery for the use or consumption of its contents:

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"glass container" means a container made of glass whether alone or in combination with any other substance or thing:

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3.

"to mark", in relation to a container, means to mark the container or any label on the container by any method (including embossment):

"refund amount" in relation to a container of a particular description means an amount prescribed as the refund amount in relation to containers of that description:

"retailer" means a person whose business is or includes that of selling a beverage for the purpose of the use or consumption of that beverage and in the case of such sale by means of a vending machine includes the owner of that vending machine unless that owner has leased or otherwise let out on hire that vending machine in which case the expression includes the person to whom that vending machine has been leased or let out on hire:

"sell" includes offer to sell and hold out for sale, and its derivatives and correlatives have a corresponding meaning:

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"wine-based beverage" means a beverage—

(a) that contains wine;

and

(b) that contains less than the prescribed percentage of alcohol.

Act not to apply to certain glass containers

5. This Act does not apply to glass containers made for the purpose of containing wine or spiritous liquor other than glass containers made for the purpose of containing a wine-based beverage.

Exemption of certain containers by regulation

5a. (1) The Governor may, by regulation, exempt containers of a specified description from the application of this Act or specified provisions of this Act either unconditionally or subject to conditions specified in the regulations.

(2) This section does not apply to containers to which section 5b applies.

Exemption of certain glass containers by Ministerial notice

5b. (1) This section applies to—

(a) glass containers made after the commencement of this section for the purpose of containing beer within the meaning of the *Liquor Licensing Act, 1985*;

or

(b) glass containers of a description prescribed for the purposes of this section.

(2) The Minister may, by notice published in the *Gazette*, exempt glass containers of a specified description from the application of section 7 if the Minister is satisfied—

(a) that the containers are made so as to be refilled not less than four times;

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(b) that the containers are marked in a manner and form approved by the Minister with statements indicating that they are refillable;

and

(c) that proper arrangements have been made for the re-use of the containers when returned to collection depots by refilling as referred to in paragraph (a) and by re-use of the glass of which they are made.

(3) The Minister may, by notice published in the *Gazette*, vary or revoke a notice under this section.

5.

PART II

REFUND AMOUNT

Markings, etc., as to the refund amount for beverage containers

6. (1) A retailer must not sell a beverage in a container, or cause, suffer or permit a beverage to be sold in a container, unless the container—

(a) is marked in a manner and form approved by the Minister with a statement indicating the refund amount applicable to that container;

and

(b) if the Minister so requires, has some other mark or feature approved by the Minister to indicate that a refund amount is applicable to that container.

Penalty: \$2 000.

(2) In proceedings for an offence against subsection (1) relating to containers of a particular description, a document purporting to be signed by the Minister specifying—

(a) the manner and form of marking approved by the Minister under that subsection in relation to containers of that description;

or

(b) the mark or feature required and approved by the Minister under that subsection in relation to containers of that description,

constitutes, in the absence of proof to the contrary, proof of the matters so specified.

PART III

RETURN OF CONTAINERS

Retailer to pay refund amount for empty glass containers

7. (1) Except as provided in this section, a retailer who sells or causes, suffers or permits to be sold a beverage in a glass container of a particular description must not refuse or fail, or suffer or permit a person apparently acting on the retailer's behalf to refuse or fail—

(a) to accept delivery of empty glass containers of that description being containers that are marked in the manner referred to in section 6(1);

and

(b) in respect of each such container, to pay to the person delivering that container the refund amount applicable to that container.

Penalty: \$2 000.

(2) A retailer referred to in subsection (1) is not obliged to accept delivery of any container that is in an unclean condition.

(3) In proceedings for an offence against subsection (1) an averment that the retailer sells beverages in a container of a particular description is, in the absence of proof to the contrary, proof of the fact averred.

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Establishment of collection depots and collection areas

9. (1) The Minister may, on application being made in the prescribed manner and form, by notice published in the *Gazette*—

(a) approve the establishment of a collection depot in relation to containers of a specified description or containers of specified descriptions;

(b) delineate a collection area in relation to that collection depot;

(c) impose such conditions as are prescribed or as the Minister thinks fit as to the operation of that collection depot or as to the disposal from that collection depot of empty containers delivered to that collection depot.

(2) The Minister may by notice published in the *Gazette* amend or vary any notice referred to in subsection (1) and upon that publication the notice as amended or varied has effect according to its terms.

(3) The Minister, by notice published in the *Gazette*—

(a) must at the request of the person for the time being operating a collection depot, revoke the approval of the establishment of that depot given under subsection (1);

and

- (b) may, if of the opinion that a contravention of any condition referred to in subsection (1) has occurred, revoke approval of the establishment of the collection depot in relation to which the contravention occurred,

and upon that revocation that collection depot ceases to be a collection depot for the purposes of this Act and the collection area delineated in relation to that collection depot ceases to be a collection area for the purposes of this Act.

Retailers not to sell certain containers except within collection area

10. (1) A retailer must not sell or cause, suffer or permit to be sold a beverage for consumption off the premises of the retailer in a container of a particular description unless the place or premises from which that sale takes place is situated within a collection area delineated in relation to a collection depot that will accept delivery of containers of that description.

Penalty: \$2 000.

- (1a) This section does not apply to containers to which section 7 applies.

(2) In proceedings for an offence against subsection (1) a document purporting to be signed by the Minister stating that a specified place or premises is in relation to a container of a specified description not within a collection area delineated in relation to a collection depot that will accept containers of that description is conclusive evidence of the matter so stated.

Retailers to exhibit signs showing location of collection depots

11. (1) A retailer, who sells a beverage in a container of a particular description from a place or premises that is situated within one or more collection areas delineated in relation to a collection depot or collection depots that will accept delivery of containers of that description, must not refuse or fail to exhibit and keep exhibited at or in that place or premises a sign in a form approved of by the Minister specifying the location of that collection depot or those collection depots.

Penalty: \$1 000.

(2) In proceedings for an offence against subsection (1) a document purporting to be signed by the Minister setting out a description of a sign approved for the purposes of that subsection is conclusive evidence of the form of the sign so approved for the purposes of that section.

Collection depots to pay refund amount for certain empty containers

12. (1) Except as is provided in this section, the person in charge of a collection depot must not refuse or fail, or suffer or permit a person apparently acting on his or her behalf, to refuse or fail—

- (a) to accept delivery of empty containers of a description in relation to which the establishment of that collection depot was approved being containers that are marked in the manner referred to in section 6(1);

8.

and

- (b) in respect of each such container, to pay to the person delivering that container the refund amount applicable to that container.

Penalty: \$2 000.

(2) A person referred to in subsection (1) is not obliged to accept delivery of any container that is in an unclean condition.

PART V

PROHIBITION ON THE SALE OF CERTAIN CONTAINERS

"Ring pull" container prohibited

13. (1) In this section—

"ring pull container" means a sealed container wholly or mainly constructed of metal (whether or not of more than one kind of metal) and capable of being opened, without the aid of any instrument, by the removal of portion of the container in such a manner as results or may result in a severance from the body of the container of the portion so removed.

(2) A retailer must not sell any beverage contained in a ring pull container.

Penalty: \$2 000.

Certain glass containers prohibited

13a. A retailer must not sell any beverage being carbonated soft drink or waters in a prescribed glass container or a glass container of a prescribed class or kind.

Penalty: \$2 000.

PART VA

APPOINTMENT AND POWERS OF INSPECTORS

Appointment of inspectors

13b. (1) The Minister may appoint a suitable person as an inspector for the purposes of this Act.

(2) An appointment under this section may be subject to such conditions as the Minister thinks fit.

(3) The Minister may vary or revoke an appointment at any time.

(4) An inspector must be provided with a certificate evidencing the inspector's appointment under this section.

(5) An inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, any power under this Act, produce for the inspection of the person, the certificate of appointment furnished under this section.

Powers of inspectors

13c. An inspector may, subject to the conditions of the inspector's appointment, at any reasonable time—

- (a) enter and inspect premises for any reasonable purpose connected with the administration of this Act;
- (b) require a person who the inspector believes has committed, or is about to commit, an offence against this Act to state the person's full name and usual place of residence;
- (c) require a person who the inspector reasonably believes has knowledge concerning any matter relating to the administration of this Act to answer questions in relation to those matters;
- (d) require a person who has custody of records or documents of, or relating to, any matter dealt with by this Act to produce those records or documents;
- (e) inspect any records, documents or objects produced or found upon premises under this section;
- (f) take copies of, or extracts from, records or documents produced or found upon premises under this section;
- (g) where the inspector suspects on reasonable grounds that an offence against this Act has been committed, seize and remove any records, documents or objects that, in the opinion of the inspector, afford evidence of the offence.

Penalty for hindering, etc., inspectors

13d. (1) A person must not, without reasonable excuse—

- (a) hinder an inspector in the exercise of powers conferred by this Part;

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- (b) refuse or fail to comply with a requirement of an inspector under this Part;
- (c) refuse or fail to answer a question put by an inspector under this Part to the best of the person's knowledge, information and belief.

Penalty: \$2 000.

(2) A person is not required to answer a question under this section if the answer would tend to incriminate the person of an offence.

PART VI

MISCELLANEOUS

Offences by bodies corporate

14. Where a person charged with an offence against this Act is a body corporate, a person who is concerned or takes part in the management of that body corporate may be charged with the same offence and where the body corporate is convicted of the offence a person who is so concerned or takes part in the management of the body corporate may be convicted of the same offence unless the person proves the act or omission constituting the offence took place without his or her knowledge or consent.

Evidentiary

15. In proceedings for an offence that is a contravention of this Act an averment—

(a) that a liquid is a beverage;

or

(b) that a container is a glass container,

is, in the absence of proof to the contrary, proof of the fact averred.

Summary procedure

16. An offence against this Act is a summary offence.

Regulations

17. (1) The Governor may make such regulations as are necessary or expedient for the purposes of giving effect to the provisions and objects of this Act.

(2) The regulations may prescribe a penalty not exceeding \$1 000 for any contravention of, or non-compliance with, a provision of the regulations.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 502.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 11 October 1988. A schedule of these alterations was laid before Parliament on 4 October 1988.

Section 2:	amended by 98, 1976, s. 2; deleted in pursuance of the Acts Republication Act, 1967, as its function is now exhausted
Section 3:	repealed by 26, 1986, s. 3
Section 4:	definition of "container" substituted by 26, 1986, s. 4(a) definition of "description" repealed by 26, 1986, s. 4(a) definition of "exempt container" repealed by 26, 1986, s. 4(a) definition of "glass container" substituted by 26, 1986, s. 4(a) definition of "low alcohol wine-based beverage" inserted by 26, 1986, s. 4(a); repealed by 9, 1988, s. 2(a) definition of "mark" inserted by 26, 1986, s. 4(a) definition of "refund amount" substituted by 26, 1986, s. 4(a) definition of "the appointed day" repealed by 26, 1986, s. 4(b) definition of "wine-based beverage" inserted by 9, 1988, s. 2(b)
Section 5:	substituted by 26, 1986, s. 5; amended by 9, 1988, s. 3
Sections 5a and 5b:	inserted by 26, 1986, s. 5
Section 6:	substituted by 26, 1986, s. 6
Heading preceding section 7:	substituted by 26, 1986, s. 7
Section 7(1):	amended by 26, 1986, s. 8
Heading preceding section 8:	repealed by 26, 1986, s. 9
Section 8:	repealed by 26, 1986, s. 10
Section 10(1):	amended by 26, 1986, s. 11(a), (b)
Section 10(1a):	inserted by 26, 1986, s. 11(c)
Section 11(1):	amended by 26, 1986, s. 12
Section 12(1):	amended by 26, 1986, s. 13
Section 13(2):	amended by 8, 1976, s. 3; 26, 1986, s. 14
Section 13a:	inserted by 8, 1976, s. 4; amended by 26, 1986, s. 15

Part VA comprising ss. 13b - 13d and heading inserted by 26, 1986, s.
16

Section 17(2): substituted by 26, 1986, s. 17