

9-1-1979

## Minimum Deposits for Beverage Containers: National Impact and Current Federal Legislation

Senator Mark O. Hatfield

Stephen J. Owens

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/ealr>

 Part of the [Environmental Law Commons](#), and the [Food and Drug Law Commons](#)

---

### Recommended Citation

Senator Mark O. Hatfield & Stephen J. Owens, *Minimum Deposits for Beverage Containers: National Impact and Current Federal Legislation*, 8 B.C. Env'tl. Aff. L. Rev. 1 (1979),  
<http://lawdigitalcommons.bc.edu/ealr/vol8/iss1/1>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Environmental Affairs Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

# MINIMUM DEPOSITS FOR BEVERAGE CONTAINERS: NATIONAL IMPACTS AND CURRENT FEDERAL LEGISLATION

*Senator Mark O. Hatfield\**  
&  
*Stephen J. Owens\*\**

## I. INTRODUCTION

There has been a dramatic trend towards non-returnable beverage containers in the United States over the past two decades. The consumption of non-returnable cans and bottles has increased over five times as fast as the consumption of beer and soft drinks.<sup>1</sup> Between 1959 and 1969, the number of containers consumed increased 164 percent while the amount of beer and soft drinks consumed increased only 29 percent<sup>2</sup> — a phenomenon due to the skyrocketing use of the non-returnable container.<sup>3</sup> Of the 15.5 million tons of glass produced annually in the United States, 7 million tons are used to make non-returnable bottles.<sup>4</sup> An admitted goal of container manu-

---

\* Mark O. Hatfield is the senior United States Senator from Oregon. Senator Hatfield is an advocate of minimum deposit legislation and has several times introduced such bills in the Senate.

\*\* Stephen J. Owens received a Bachelor of Science in Public Administration from the University of Missouri - Columbia in 1977 and is presently a J.D. candidate (to be awarded in 1980) at Wake Forest University. He is the author of a comment on state minimum deposit legislation published in 16 *Wake Forest L. Rev.* \_\_\_\_ (Dec. 1979), and he co-authored with Senator Hatfield an article presented at the National Mayors Conference in June 1979 describing the potential impacts of a minimum deposit law.

<sup>1</sup> U.S. Environmental Protection Agency, *Second Report to Congress - Resource Recovery and Source Reduction 82* (1974).

<sup>2</sup> *Id.*

<sup>3</sup> Hannon, *Bottles, Cans, Energy*, *ENVIRONMENT*, March 1972, at 13 [hereinafter cited as Hannon].

<sup>4</sup> 125 *CONG. REC.* S154 (daily ed. Jan. 15, 1979) (supplement to remarks of Senator Mark Hatfield) [hereinafter cited as 125 *CONG. REC.*]. Sen. Hatfield had several studies and reports

facturers is to annually produce 100 billion non-returnable containers.<sup>5</sup>

The underlying reason for the massive switch from returnable to non-returnable containers was the steel and can industries' desire to expand their markets in the late 1940's and early 1950's.<sup>6</sup> During this period the steel and can industries began competing with the glass industry for the beverage container market. The can manufacturers had envisioned manufacturing forty disposable steel cans for each returnable bottle made.<sup>7</sup> Glass manufacturers soon responded to claim their share of the disposable container market by producing a non-returnable container of their own.

The container manufacturers' marketing strategy stressed the benefits of non-returnables to distributors, retailers and consumers. Distributors could save on transportation costs because non-returnables cans and bottles weighed less and only had to be transported one way.<sup>8</sup> Retailers could save on costs in two ways. First, non-returnable bottles required less storage space than returnable bottles. Second, retailers would no longer have to pay for people to sort and handle the returnables.<sup>9</sup> Consumers could take non-returnables anywhere and not be bothered with the inconvenience of returning them for refund.<sup>10</sup> Thus, the initial response to non-returnable beverage containers was overwhelmingly favorable.

While the economic benefits to can and bottle manufacturers are obvious, the switch to non-returnable beverage containers has brought environmental and economic costs to the rest of society. We have paid for the augmented use of non-returnables through detrimental increases in litter, solid waste, energy and resource use, and unemployment.<sup>11</sup>

Legislative action appears to be the best alternative to negate the

---

printed in the *Congressional Record* when he introduced S. 50, the "Beverage Container Reuse and Recycling Act of 1979." These materials, found at 125 CONG. REC. S153-192, are the sources for subsequent citations in this article to 125 CONG. REC. Unless indicated otherwise, the title of an individual report or study has not been reprinted.

<sup>5</sup> 5 ENV'TL ACT. BULL. 4 (Jan. 5, 1974).

<sup>6</sup> Boyd and Williams, *Throwaway Containers: No Return for North Carolina*, March 1975, at 1 [hereinafter cited as Boyd and Williams].

<sup>7</sup> Based on the assumption that a bottle could be reused 40 times. Boyd and Williams, *supra* note 6, at 2 n.6.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 4.

societal costs of non-returnable beverage containers. Legislation known as "minimum deposit" bills has been proposed at all levels of government.<sup>12</sup> The most effective minimum deposit law would be at the national level, which will be the focal point of this article. First, the potential impacts of a national minimum deposit law will be examined. The article will then analyze minimum deposit legislation currently before Congress. Finally, the article will conclude by evaluating the costs and benefits of such a law.

## II. IMPACTS OF A NATIONAL MINIMUM DEPOSIT LAW

### A. Litter

The reduction of litter is a primary goal of beverage container legislation.<sup>13</sup> This goal has received special public attention due not only to the extraordinary increase in litter over past years, but also because of the litter problem's high visibility. While the roadsides have received the most abuse, other public areas such as beaches, parks, campgrounds and such private areas as parking lots and residential sites have also been defaced by the increasing amount of litter.<sup>14</sup>

Studies support the assertion that beverage containers are a primary contributor to the litter problem. One out of every four of the over 60 billion beer and soft drink containers manufactured in the United States ends up as litter on our landscape.<sup>15</sup> Beverage con-

---

<sup>12</sup> The largest amount of minimum deposit legislation has been produced at the state level. For favorable reports of minimum deposit systems, see generally Comment, *State Bottle Bill Model Legislation — Lessons from Prior North Carolina Bills and the Potential Impact of Passage*, 16 WAKE FOREST L. REV. \_\_\_\_ (Dec. 1979); Moore, *The Case for the Regulation of Nonreturnable Beverage Containers*, 64 KY. L.J. 767 (1976); Comment, *Ohio House Bill 869 and Similar Statutes*, 7 AKRON L. REV. 310 (1974); Schroth and Mugdan, *Bottling Up the Throwaways: An Improved Bill and Some Thoughts for Future Drafters*, 51 J. URB. L. 227 (1973); MacDowell, *Litter and the Bottle Bill*, 7 WAKE FOREST JURIST 28 (1976) [hereinafter cited as MacDowell] and articles compiled in Annot., 73 A.L.R.3d 1105 (1976).

The first state to pass such legislation was Oregon in 1973 (OR. REV. STAT. §§ 459.810-459.995 (1977)). The experience in Oregon indicates that there are few drawbacks to minimum deposit laws. Indeed, five other states have enacted similar legislation due to the favorable results achieved in Oregon. CONN. GEN. STAT. ANN. §§ 22a-77 to 22a-89 (West 1978); IOWA CODE ANN. §§ 455C.1-455C.12 (West 1978); ME. REV. STAT. ANN. tit. 32, §§ 1861-1871 (1978); MICH. STAT. ANN. § 18.1206 (1979); VT. STAT. ANN. tit. 10, §§ 1521-1527 (1979).

<sup>13</sup> Gudger and Walters, *Beverage Container Regulations: Economic Implications and Suggestions for Model Legislation*, 5 ECOLOGY L.Q. 265, 266 (1976) [hereinafter cited as Gudger and Walters].

<sup>14</sup> *Id.*

<sup>15</sup> 125 CONG. REC., *supra* note 4, at S154.

tainers comprise from 60 to 80 percent of litter by volume and from 20 to 40 percent on a piece count basis.<sup>16</sup> Each year, over \$500 million is spent by federal, state and local governments for litter collection along the nation's roadsides.<sup>17</sup>

Empirical studies at the state level and projected results for the national level indicate the imposition of a minimum deposit law significantly reduces the amount of litter attributable to beverage containers. Results from Oregon and Vermont show that the volume of beverage container litter was reduced 66<sup>18</sup> and 76<sup>19</sup> percent, respectively, after enactment of minimum deposit laws in those states. Total litter was reduced by 21 percent in Oregon<sup>20</sup> and 35 percent in Vermont.<sup>21</sup> Projections indicate that total litter could be reduced by about 40 percent in volume by enacting a national minimum deposit law.<sup>22</sup>

### B. Solid Waste

In most municipalities the public bears the cost of solid waste disposal in the form of fixed monthly assessments or through property tax mechanisms. The skyrocketing increase of non-returnable beverage container use has shifted the burden of a private industry recovery and cleaning system to the municipal waste management system. Thus, those people buying non-returnable beverage containers and thereby increasing the price for solid waste disposal pay no more than those people reducing the price of such disposal by purchasing returnable containers.<sup>23</sup>

Beverage containers are the most rapidly growing segment of

---

<sup>16</sup> *Id.* Note that volume is a better indicator of an item's contribution to the litter because on a piece count basis one bottle would be equal to one gum wrapper.

<sup>17</sup> FEDERAL HIGHWAY ADMINISTRATION, REPORT ON THE STUDY OF HIGHWAY LITTER WITH RECOMMENDATIONS, (Washington, D.C., 1974) p. VII, cited in MacDowell, *supra* note 12, at 28.

<sup>18</sup> Boyd and Williams, *supra* note 6, at 14.

<sup>19</sup> 9 ENVIR. REP. (BNA) 673.

<sup>20</sup> Boyd and Williams, *supra* note 6, at 14.

<sup>21</sup> 9 ENVIR. REP. (BNA) 673.

<sup>22</sup> *Id.* See also *Beverage Container Reuse and Recycling Act of 1977: Hearings on S. 276 Before the Subcomm. for Consumers of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 2d Sess. 24 (1978) (statement of Representative James Jeffords) (says 35%) [hereinafter cited as *Beverage Container Hearings*].

<sup>23</sup> RESOURCE CONSERVATION COMMITTEE, SECOND REPORT TO THE PRESIDENT AND CONGRESS: COMMITTEE FINDINGS AND STAFF PAPERS ON NATIONAL BEVERAGE CONTAINER DEPOSITS 19 (1978) [hereinafter cited as R.C.C. REPORT].

municipal solid waste,<sup>24</sup> with a growth rate of 10 percent annually.<sup>25</sup> It is estimated that beverage containers constitute approximately 6 to 8 million tons of waste,<sup>26</sup> or from 4 to 8 percent of total municipal solid waste.<sup>27</sup> In 1985 this nation will spend over \$220 million to dispose of beverage containers.<sup>28</sup>

Imposition of a minimum deposit law would drastically reduce the amount of beverage container waste and significantly reduce total solid waste. Total solid waste would be reduced from 1.5 to 6 million tons,<sup>29</sup> or between 1.5 and 6 percent.<sup>30</sup> Such reductions in solid waste would have two major impacts. First, a reduction of 6 percent would result in a significant cut in expenses for taxpayers.<sup>31</sup> Second, it would reduce the demands on and extend the present life of municipal landfills<sup>32</sup> — an important impact in urban areas where land costs are high.<sup>33</sup>

### C. Energy

The shift to non-returnable containers placed an additional burden on national energy sources. The increased burden results when bottles and cans are simply discarded after one use rather than being washed and reused, or recycled. One of the benefits and a primary goal of a minimum deposit law is an overall reduction in energy use. This reduction occurs in two ways.

---

<sup>24</sup> 125 CONG. REC., *supra* note 4, at S154; Boyd and Williams, *supra* note 6, at 19.

<sup>25</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, QUESTIONS AND ANSWERS: RETURNABLE BEVERAGE CONTAINERS FOR BEER AND SOFT DRINKS at 3 (1975), reprinted in 125 CONG. REC., *supra* note 4, at S156-59 [hereinafter cited as QUESTIONS AND ANSWERS].

<sup>26</sup> R.C.C. REPORT, *supra* note 23, at 41 (says 6.3 million tons); QUESTIONS AND ANSWERS, *supra* note 25, at 3 (says 8 million tons); *Beverage Container Hearings*, *supra* note 22, at 12 (statement of Sen. Hatfield) (says 8 million tons).

<sup>27</sup> Boyd and Williams, *supra* note 6, at 19 (says 8%). *See also*, QUESTIONS AND ANSWERS, *supra* note 25, at 3 (says 6%); COMPTROLLER GENERAL'S REPORT TO CONGRESS, POTENTIAL EFFECTS OF A NATIONAL MANDATORY DEPOSIT ON BEVERAGE CONTAINERS 26 (1977) [hereinafter cited as COMPTROLLER GENERAL'S REPORT] (forecasts 5% for 1985).

<sup>28</sup> Based upon a \$35 per ton disposal charge for 6.3 million tons of beverage container waste. R.C.C. REPORT, *supra* note 23, at 41.

<sup>29</sup> QUESTIONS AND ANSWERS, *supra* note 25, at 3 (says 5-6 million tons); R.C.C. REPORT, *supra* note 23, at 41 (says 1.5 million tons); 9 ENVIR. REP. (BNA) 673 (says 1.5-3.0 million tons); COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 27 (forecasts 2.3 to 3.2 million ton reduction for 1985).

<sup>30</sup> *See* QUESTIONS AND ANSWERS, *supra* note 25, at 3 (says 6%); R.C.C. REPORT, *supra* note 23, at 41 (says 1.5%); COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 27 (says 3.6-4.1%).

<sup>31</sup> Boyd and Williams, *supra* note 6, at 20.

<sup>32</sup> *Id.*

<sup>33</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 27.

First, energy is saved in the production of beverage containers because fewer of the energy-demanding non-returnables will be produced.<sup>34</sup> In the bottle area, the number of returnables produced will increase, but a net energy savings will result because a returnable bottle used ten times requires one-third of the energy needed to produce ten non-returnables of equal size.<sup>35</sup> Most cans would be recycled as scrap instead of being discarded.<sup>36</sup> This would also result in energy savings since cans produced from recycled metal require much less initial energy than do cans produced from metal ore.<sup>37</sup> For example, aluminum and all-steel cans made from recycled material save 78 and 39 percent, respectively, of the energy required to produce a "new" can.<sup>38</sup>

The second way in which a minimum deposit law would save energy is in the area of disposal. Energy needs for disposal would be reduced because fewer tons of waste would have to be collected and transported to disposal sites. Once at the site, energy needs would be reduced because less waste would have to be handled.<sup>39</sup>

The energy saved through a minimum deposit law depends upon two variables: (1) bottle and can container mix and (2) return and recycling rates. Due to inconsistent survey results for the two variables, projections of overall energy savings differ somewhat. In general, from 151<sup>41</sup> to 224<sup>42</sup> trillion British Thermal Units (BTU's) could be saved per year. Such a savings is equivalent to between 32<sup>43</sup> and 50<sup>44</sup> percent of the energy used in beverage container manufacturing and between 0.2<sup>45</sup> and 0.3<sup>46</sup> percent of the total energy used in the

---

<sup>34</sup> Boyd and Williams, *supra* note 6, at 20.

<sup>35</sup> See 125 CONG. REC., *supra* note 4, at S154.

<sup>36</sup> Boyd and Williams, *supra* note 6, at 23.

<sup>37</sup> *Id.*

<sup>38</sup> R. HUNT AND W. FRANKLIN, RESOURCE AND ENVIRONMENTAL PROFILE ANALYSIS OF NINE BEVERAGE CONTAINER ALTERNATIVES, EPA Publication SW-91c (1974) p. 40.

<sup>39</sup> Boyd and Williams, *supra* note 6, at 23.

<sup>40</sup> See COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 16, 28. Bottle and can container mix "describes how many of each type of container the beverage companies use to sell their products." *Id.* Return and recycling rates describe the percentage of bottles and cans which will be brought back for redemption and re-enter the market either through washing (bottles) or recycling (cans). See *id.* at 12.

<sup>41</sup> QUESTIONS AND ANSWERS, *supra* note 25, at 4.

<sup>42</sup> 125 CONG. REC., *supra* note 4, at S154.

<sup>43</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 28.

<sup>44</sup> 125 CONG. REC., *supra* note 4, at S154.

<sup>45</sup> The 0.2% figure is based upon a savings rate of 43% for beverage manufacturers. COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 28.

United States.

At a time when the United States' dependency on foreign oil is of major concern, a minimum deposit law would save between 70,000 and 125,000 barrels of oil per day.<sup>47</sup> With the absence of a national energy policy, it becomes increasingly apparent that energy problems will not soon be solved by locating a single massive source of savings. Conservation depends upon the accumulated savings of many less grandiose efforts.<sup>48</sup> For example, the United States saved 200,000 barrels of oil a day by reducing the speed limit to fifty-five miles per hour.<sup>49</sup> By simply enacting a minimum deposit law, this nation could save the equivalent of between 35 and 63 percent of the energy saved by reducing the speed limit.<sup>50</sup> Thus, national energy conservation from a mandatory deposit law would be significant.

#### D. Raw Materials

In 1975, 7 million tons of glass, 2 million tons of steel and 500,000 tons of aluminum were used to make beverage containers.<sup>51</sup> These materials made up 45 percent of all glass, 6 percent of all aluminum and 2 percent of all steel produced in the United States.<sup>52</sup> A minimum deposit law would reduce the amount of materials needed to make beverage containers because fewer bottles would be made and most metal cans would be recycled.

The primary raw materials for glass, aluminum and steel are sand, bauxite and iron ore, respectively.<sup>53</sup> While sand is plentiful, the domestic supply of bauxite and iron ore is not. The United States imports about 90 percent of its bauxite.<sup>54</sup> A minimum deposit law would result in a reduction in the demand for bauxite of between 1 and 1.5 million tons.<sup>55</sup> Such a reduction represents 50 to 75

---

<sup>46</sup> QUESTIONS AND ANSWERS, *supra* note 25, at 4.

<sup>47</sup> See *Beverage Container Hearings*, *supra* note 22, at 24 (statement of Rep. Jeffords) and at 12 (statement of Sen. Hatfield predicts a savings of 81,000 barrels of oil daily); 9 ENVIR. REP. (BNA) 673 (33,000-61,000 barrels); 125 CONG. REC., *supra* note 4, at S154 (115,000 barrels).

<sup>48</sup> Gudger and Walters, *supra* note 13, at 267.

<sup>49</sup> 125 CONG. REC., *supra* note 4, at S154.

<sup>50</sup> See note 47, *supra*.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 20.

<sup>54</sup> *Id.* at 21; R.C.C. REPORT, *supra* note 23, at 40 (says 90%); 125 CONG. REC., *supra* note 4, at S154 (says 85%).

<sup>55</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 21; R.C.C. REPORT, *supra* note 23, at



percent of the bauxite used for beverage container production<sup>56</sup> and 2.4 to 3.5 percent of the total United States demand for the material.<sup>57</sup> Demand for aluminum would be reduced from 300,000<sup>58</sup> to 500,000<sup>59</sup> tons, an amount equal to between 35 and 45 percent of the aluminum used for beverage containers.<sup>60</sup>

The nation's dependency upon imported iron ore is increasing. The United States currently imports one-third of its iron ore, and domestic ore is coming from increasingly lower grade deposits.<sup>61</sup> Imposition of a minimum deposit law would allow the United States to save between 2 and 3 million tons of iron ore each year.<sup>62</sup> This represents a reduction of between 45 and 83 percent of the iron ore used in the beverage container industry<sup>63</sup> and about 2 percent of all iron ore used in the United States.<sup>64</sup> The amount of steel required to make beverage containers would drop by about 1.5 million tons<sup>65</sup> or 15 percent.<sup>66</sup>

### E. Economic Impacts

The most hotly debated issue related to any proposed national minimum deposit legislation is its impact on the economy. While the environmental benefits are conceded by most opponents,<sup>67</sup> the economic merits of such a law are feverishly challenged.

A minimum deposit law would have primarily two economic effects. First, it would have an effect upon employment. Second, it would have cost implications for the affected industries and eventually for the consumer. The industries affected both in terms of em-

43; 9 ENVIR. REP. (BNA) 673 (predicts imports will be reduced by 1.6 million tons).

<sup>56</sup> See COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 21; R.C.C. REPORT, *supra* note 23, at 43.

<sup>57</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 21.

<sup>58</sup> QUESTIONS AND ANSWERS, *supra* note 25, at 4; 9 ENVIR. REP. (BNA) 673 (says 400,000).

<sup>59</sup> *Beverage Container Hearings*, *supra* note 22, at 24 (statement of Rep. Jeffords).

<sup>60</sup> *Id.* at 12 (statement of Sen. Hatfield).

<sup>61</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 20.

<sup>62</sup> *Id.*

<sup>63</sup> R.C.C. REPORT, *supra* note 23, at 43.

<sup>64</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 20.

<sup>65</sup> *Beverage Container Hearings*, *supra* note 22, at 24 (statement of Rep. Jeffords); 9 ENVIR. REP. (BNA) 673; QUESTIONS AND ANSWERS, *supra* note 25, at 4 (says 1.1 - 1.3 million tons).

<sup>66</sup> *Beverage Container Hearings*, *supra* note 22, at 12 (statement of Sen. Hatfield).

<sup>67</sup> Opponents usually argue that the environmental benefits are not worth the alleged economic costs. See *Beverage Container Hearings*, *supra* note 22, at 55 (statement of Mr. Frank Sellinger, President of Joseph Schlitz Co.).

ployment and costs would be the soft drink industry, brewers, beer wholesalers and distributors, container manufacturers, and retailers.

### 1. Employment Impacts

In every study conducted on the employment impact of federal or state minimum deposit laws there has been demonstrated a net increase in employment.<sup>68</sup> Many of the jobs created by a system of deposits, however, cannot be substituted for jobs existing under the current system. Such employment dislocations would be reduced if non-refillable bottles and metal cans continued to be sold or if the change in container usage occurred over an extended time period.

Because the impact of a new national law upon job dislocations depends on the rate of change of container usage, a transition period would allow natural attrition in employment to absorb some of the job losses. It is estimated that after a five-year transition period about 90 percent of the containers sold would be refillable and 10 percent would be cans.<sup>69</sup> During this period about 39,000 jobs would be lost<sup>70</sup> — primarily skilled positions in the container manufacturing industries.<sup>71</sup> Yet at the same time approximately 107,000 new jobs would be created for lower classifications of skill and pay in the retail and distribution sectors.<sup>72</sup>

Studies in the states also predict a net gain in employment after enactment. Maryland,<sup>73</sup> Minnesota,<sup>74</sup> Connecticut,<sup>75</sup> New York,<sup>76</sup> Illinois,<sup>77</sup> Michigan,<sup>78</sup> Maine,<sup>79</sup> and North Carolina<sup>80</sup> found that the job gains in the retail and distribution sectors would outweigh the job losses of the container manufacturers. For example, enactment of a minimum deposit law in New York would result in a net job

---

<sup>68</sup> For a compilation of state studies, see 125 CONG. REC., *supra* note 4, at S155-56.

<sup>69</sup> 125 CONG. REC., *supra* note 4, at S155.

<sup>70</sup> *Id.*

<sup>71</sup> *Questions and Answers, supra* note 25, at 6.

<sup>72</sup> 125 CONG. REC., *supra* note 4, at S155; *Beverage Container Hearings, supra* note 22, at 25 (statement of Rep. Jeffords) (net gain of 50,000-118,000 jobs).

<sup>73</sup> See QUESTIONS AND ANSWERS, *supra* note 25, at 7 n.38.

<sup>74</sup> *Id.* at n.39.

<sup>75</sup> *Id.* at n.40.

<sup>76</sup> *Id.* at n.41.

<sup>77</sup> *Id.* at n.42.

<sup>78</sup> *Id.* at n.43.

<sup>79</sup> *Id.* at n.44.

<sup>80</sup> Boyd and Williams, *supra* note 6, at 48.

gain of 4,000 jobs with a net annual payroll increase of \$35 million.<sup>81</sup>

## 2. Cost Impacts on Affected Industries and Consumers

Certain industries would be adversely affected upon enactment of a minimum deposit law. A facility for the production, storage and distribution of non-returnable beverage containers which is not convertible to a returnable system will become obsolete. Bottlers and brewers will initially have to invest in additional equipment such as bottle washers and refillable container lines. Additional transportation costs will be incurred since the containers must be transported twice instead of only once. Retailers will need additional storage space and will have to employ extra help to handle and sort the returnable containers.

One study indicates that such changes would result in tax write-offs of \$1.3 billion and total new investments of \$1.2 billion for the industry.<sup>82</sup> More recently, the industry has claimed that such a conversion will cost about \$5 billion.<sup>83</sup> These costs, however, would be more than offset by container cost savings. The resulting *net* cost to all sectors of the beverage industry would be about \$250 million during the first year of the law's enactment, but this would eventually become a \$40 million gain in subsequent years due to container savings.<sup>84</sup> It should be noted that cost reduction in the industry is concentrated in the beverage filling sector — brewers and bottlers — while cost increases occur in the distribution and retail sectors.<sup>85</sup> If the filling sector chooses not to pass its entire cost savings forward, then all of the decrease in systemwide costs might not reach the consumer.<sup>86</sup>

Estimates of the ultimate savings to the consumer vary due to differences in cost estimates and the uncertainty of the portion of savings that will be passed forward from the filling sector. Consumer

---

<sup>81</sup> See QUESTIONS AND ANSWERS, *supra* note 25, at 7.

<sup>82</sup> MAILLIE, THE NATIONAL ECONOMIC IMPACT OF A BAN ON NONREFILLABLE BEVERAGE CONTAINERS 2 (1971) [hereinafter cited as MAILLIE].

<sup>83</sup> UNITED STATES BREWERS ASSOCIATION, INC., RESOURCE ENERGY RECOVERY AND RECYCLING VS. SOURCE REDUCTION: A SIMPLE ECONOMIC ANALYSIS OF TWO BASIC RESOURCE CONSERVATION STRATEGIES (1975). See also QUESTIONS AND ANSWERS, *supra* note 25, at 6.

<sup>84</sup> MAILLIE, *supra* note 82, at 35. See also COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 40-41, which predicts a decrease in net costs in two years of \$1.0-1.3 billion and after three years an annual cost reduction of \$1.3-1.9 billion.

<sup>85</sup> COMPTROLLER GENERAL'S REPORT, *supra* note 27, at 41.

<sup>86</sup> *Id.*

savings are generally estimated to range from three to five cents per twelve-ounce container.<sup>87</sup> It is often argued, however, that these figures do not take into account the added distribution and handling costs to the industry.<sup>88</sup> Such costs have been estimated to be from less than one cent to two cents per container.<sup>89</sup> Therefore, even if these costs are not included in the consumer savings figures above, beverages in refillable containers will still cost less and will save the consumer money.

### III. ANALYSIS OF CURRENT LEGISLATION

As of June, 1979 three minimum deposit bills were facing Congress.<sup>90</sup> The bills — S.50, H.R. 2812 and H.R. 1416 — are almost identical in nature. All would require a minimum five cent refund value on beverage containers of malt or beer, mineral water, soda water or carbonated soft drinks within a certain number of years after enactment. All would prohibit the sale of metal cans with detachable openings (“pull tops”) within one year of enactment. There are, however, slight variations. This article will focus on the provisions of S. 50, provisions in other bills which differ from S. 50, and notable omissions from all of the bills.

Sections of S. 50 of particular interest are:

*Section 2* states the findings of Congress.<sup>91</sup> H.R. 2812 gives additional findings, such as the fact that enactment of the bill would not be inflationary even though it would create jobs<sup>92</sup> and that an alternative tax approach would be a burden on interstate commerce.<sup>93</sup>

---

<sup>87</sup> QUESTIONS AND ANSWERS, *supra* note 25, at 4. See also, *Beverage Container Hearings*, *supra* note 22, at 24 (statement of Rep. Jeffords) (estimating an aggregate consumer savings of \$650 million to \$2.6 billion per year, which would be more than 3-5 cents per container); R.C.C. REPORT, *supra* note 23, at 34 (0.6 cents to 1.5 cents per filling). *Contra* Boyd and Williams, *supra* note 6, at 47, estimating about a one cent increase per container in shelf prices during the first two years. This study does not take a transition period into account.

<sup>88</sup> For citations to proponents of this view, see *Questions and Answers*, *supra* note 25, at 4 nn.22-23.

<sup>89</sup> *Id.*

<sup>90</sup> S. 50, 96th Cong., 1st Sess., 125 CONG. REC. S192 (daily ed. Jan. 15, 1979) (reprinted in Appendix I) [hereinafter cited as S. 50 in text and footnotes]; H.R. 2812, 96th Cong., 1st Sess., 125 CONG. REC. H1346 (daily ed. March 14, 1979) (reprinted in Appendix II) [hereinafter cited as H.R. 2812 in text and footnotes]; H.R. 1416, 96th Cong., 1st Sess. (1979) (reprinted in Appendix III) [hereinafter cited as H.R. 1416 in text and footnotes].

<sup>91</sup> See Appendix I.

<sup>92</sup> H.R. 2812, *supra* note 90, § 2(6). See Appendix II.

<sup>93</sup> H.R. 2812, *supra* note 90, § 2(8). See Appendix II.

*Section 3* defines the terms of the bill.<sup>94</sup> *Section 3(1)(C)* adds the definition of "refundable beverage container" to the bill.<sup>95</sup> This term had not been defined in previous legislation<sup>96</sup> nor is it defined in H.R. 1416. H.R. 2812 adds to the definition of "retailer" a proviso that the Administrator of the Environmental Protection Agency may prescribe regulations to establish who is a retailer in regard to beverage containers sold to consumers from vending machines.<sup>97</sup> This is a worthwhile addition because it is difficult to determine who would be held accountable for violations of the deposit law when the violation occurs through the operation of a vending machine.

*Section 4* provides that no distributor or retailer may sell a beverage container unless a refund value of not less than five cents is clearly indicated on the container.

*Section 5* requires the payment of the appropriate refund by a seller to one who tenders an empty, unbroken beverage container of a brand of beverage which the seller currently sells or has sold within the last six months. The six month extension for redemption is aimed at enhancing consumer convenience—a major factor in return rates.<sup>98</sup> H.R. 1416 attempts to accommodate the consumer even more by providing for a redemption period lasting up to ten months after the retailer has stopped selling the brand in question.<sup>99</sup> It also extends the retailer's period of eligible redemption to one year after the distributor has ceased to offer the brand.<sup>100</sup>

*Section 6* bans all pull tops on cans. This section does not distinguish between metal and non-metal detachable parts as some state

---

<sup>94</sup> See Appendix I.

<sup>95</sup> The term simply means "a beverage container which has clearly, prominently and securely affixed to, or printed on, it . . . a statement of the amount of the refund value of the container." See Appendix I.

<sup>96</sup> See, e.g., S. 276, 95th Cong., 1st Sess., 123 CONG. REC. 1443 (1977).

<sup>97</sup> H.R. 2812, *supra* note 90, § 3(2)(C). See Appendix II.

<sup>98</sup> For the effect of consumer convenience on return rates, see Gudger and Walter, *supra* note 13, at 270-71. The wording in the pending bills does not go as far as it could to enhance consumer convenience. The bills require redemption for containers of the same "brand" sold by suppliers with whom the seller does business. A more convenient approach would be to require retailers to redeem *all* containers of a size, shape, and color sold by suppliers with whom the seller does business. In this way, a consumer would have available more retailers to which containers could be returned. The retailers could accept without difficulty all containers which they could pass on to the appropriate distributor. *Id.* at 285.

<sup>99</sup> H.R. 1416, *supra* note 90, § 5(a). See Appendix III.

<sup>100</sup> H.R. 1416, *supra* note 90, § 5(b). See Appendix III.

statutes do.<sup>101</sup>

*Section 7(a)* pre-empts existing state and local minimum deposit laws which are inconsistent with the Act. This section creates uniform deposit laws throughout the nation, insuring that the beverage industry does not have to face conflicting state laws as is often the case now. *Section 7(b)* exempts from state and local taxes the amount charged for a deposit when one buys a beverage. Subsections (c) and (d) elaborate on what is not pre-empted by the Act: a state may require a distributor to reimburse a retailer for handling containers, and a state or locality may establish or continue in effect deposit laws for containers used to hold liquids other than beverages. H.R. 2812 further states that the Act does not prevent a state or locality from establishing a refund value of at least five cents.<sup>102</sup>

*Section 8* provides civil and criminal sanctions for violation of the Act. A violator may be fined not more than \$1,000 and/or imprisoned for not more than sixty days for each violation.

H.R. 2812 provides only for civil penalties, distinguishes between violations "without good cause" and "knowing" violations, and sets out the procedure for obtaining different forms of civil relief when one is denied a refund rightfully owed to him. H.R. 2812 section 8(a) provides for a \$1,000 fine for each violation. Section 8(b) states that the aggrieved party may seek relief in any appropriate state or federal court and is entitled (in addition to the refund value) to the sum of (1) the amount of damages proximately resulting from the refused refund, (2) the amount of court costs, reasonable attorney's fee and other reasonable costs incurred in seeking a refund, plus (3) ten dollars for each beverage container which was not refunded. This subsection also allows the court to grant appropriate additional relief such as injunctive or declaratory relief. Section 8(c) states that any retailer or distributor who "knowingly" fails to make a refund may be fined a maximum of \$100 for each such failure up to \$10,000. The subsection also places the burden on the Attorney General of the United States to bring suit for such a violation.

As noted before,<sup>103</sup> a transition period is important to ameliorate some of the potential adverse impacts of the law. *Section 9* establishes such a transition period by delaying the law's effective date

<sup>101</sup> See OR. REV. STAT. § 459.850(4) (1977).

<sup>102</sup> H.R. 2812, *supra* note 90, § 7(a)(2)(A). See Appendix II.

<sup>103</sup> See text at notes 69-72, *supra*.

until three years after enactment. The ban on detachable pull tops, however, becomes effective one year after enactment. H.R. 2812 provides for only a two-year transition period,<sup>104</sup> except for the ban on pull tops which is also effective one year after enactment.<sup>105</sup>

The legislation facing Congress is also significant when considering provisions which have not been included. None of the current bills provides for a two-tier deposit system with a certified bottle, employee dislocation compensation, or retailer reimbursement.

Oregon, the first state to enact a minimum deposit law, provides that containers used by more than one beverage manufacturer may be "certified."<sup>106</sup> Certified containers may carry a lower minimum deposit.<sup>107</sup> The purpose of certification is to enable container manufacturers to use each other's containers and to enhance consumer convenience by allowing the consumer to return his beverage containers to more retailers. The experience in Oregon has shown that a two-tier system can lead to greater efficiency in handling and return of empty bottles, and improved consumer convenience.<sup>108</sup>

The beverage industry particularly opposes the two-tier approach and other states have declined to use it. Opponents contend that the two-tier system discriminates in favor of a particular package, does not allow economics to determine what type of package will be on the market, and does not always select the best package in terms of safety, conservation of energy or conservation of natural resources.<sup>109</sup> Regardless of the possible economic impact, omission of the two-tier system is politically sound to prevent added industry opposition.

Two recent innovations from state minimum deposit laws are not included in the present national legislation. A Connecticut provision setting up a special category of unemployment compensation for any person who suffers loss of employment as a result of the Act is not contained in any of the pending national bills.<sup>110</sup> Under the Connecticut act, which became effective on January 1, 1980, a "dislocated employee" may receive up to 85 percent of his net

---

<sup>104</sup> H.R. 2812, *supra* note 90, § 11(b). See Appendix II.

<sup>105</sup> H.R. 2812, *supra* note 90, § 11(c). See Appendix II.

<sup>106</sup> OR. REV. STAT. § 459.860 (1977).

<sup>107</sup> In Oregon, certified bottles carry a minimum two-cent deposit while non-certified bottles have a minimum five-cent deposit. OR. REV. STAT. § 459.820 (1977).

<sup>108</sup> Gudger and Walters, *supra* note 13, at 284.

<sup>109</sup> See *Beverage Container Hearings*, *supra* note 22, at 411 (letter of Mr. E.G. Anderson, Vice President, Adolph Coors Co.).

<sup>110</sup> CONN. GEN. STAT. § 31-11a (Supp. 1979).

weekly earnings for a period of up to two years.<sup>111</sup> The sum of such payments is reduced by any amount of regular unemployment compensation the dislocated employee receives.<sup>112</sup>

The Connecticut approach is not only novel, but politically sound. Labor opposition is greatly reduced with such a provision, thus enhancing the chances that a national bill will be passed. The benefits of reduced labor opposition must be weighed against the added costs of providing additional unemployment compensation.

The provision's impact upon the national budget is not nearly as severe as it initially appears. A net gain in jobs will result from enactment of the bill.<sup>113</sup> The increased number of productive workers will provide additional tax revenue.<sup>114</sup> The additional revenue can then pay for all or part of the dislocated employees' allowance fund. Finally, if the fund were set up under the Connecticut approach, it would only have to be sustained for two years. This also limits the provision's effect on the national budget.

H.R. 2812 provides for the Administrator of the Environmental Protection Agency to "consult" with the Secretary of Labor about the possibility of dislocated employee assistance,<sup>115</sup> but this does not come close to establishing an allowance fund. Such a provision is probably not included in current legislation in the hope that the bills will pass on their merits alone—without being compromised to appease special interests. The provision does work as a good tool for compromise if special interests prove to be too strong.

Another recent development in state minimum deposit legislation which is not specifically included in current national bills is a provision requiring distributors to reimburse both dealers and redemption centers.<sup>116</sup> Under this approach the distributor is generally required to reimburse the dealer not only for the deposit returned to the consumer, but also for the cost of handling and sorting containers in an amount equal to either one cent per container<sup>117</sup> or 20 percent of the refund value.<sup>118</sup>

The provision for reimbursement can also help in a politically

---

<sup>111</sup> *Id.* § 31-11a(c).

<sup>112</sup> *Id.*

<sup>113</sup> See text at notes 68-81, *supra*.

<sup>114</sup> Boyd and Williams, *supra* note 6, at 52; See Gudger and Walters, *supra* note 13, at 282.

<sup>115</sup> H.R. 2812, *supra* note 90, § 10. See Appendix II.

<sup>116</sup> See Vt. Regs. ch. 10 § 22.10.1522.5 (1975); ME. REV. STAT. tit. 32 § 1866(4) (1978).

<sup>117</sup> See ME. REV. STAT. tit. 32 § 1866(4) (1978).

<sup>118</sup> See Vt. Regs. Ch. 10 § 22.10.1522.5 (1975).



tight situation. Merchants have complained that a minimum deposit law burdens them with the expenses of collecting and sorting containers.<sup>119</sup> While such a reimbursement would favor the merchants, it would put an added expense on the already burdened distributors and is therefore not included in the current legislation.<sup>120</sup>

Other less fundamental issues are also unaddressed in the current legislation. Provisions banning non-biodegradable plastic rings<sup>121</sup> and discriminatory deposit amounts<sup>122</sup> are abundant in state legislation. Statutory provisions establishing special hours for redemption,<sup>123</sup> educational programs,<sup>124</sup> or redemption centers<sup>125</sup> are already in effect in certain states. Such provisions are relatively minor and should not affect the legislation's chances for passage.

#### IV. CONCLUSION

Under a national minimum deposit law, the beneficial environmental impacts of litter and solid waste reduction, and energy and resource conservation can be achieved at significant levels. After enactment of the law, the nation could expect (1) a 40 percent reduction in the volume of litter, (2) a total reduction in solid waste of up to 6 percent, (3) reduced national energy needs of about 0.3 percent, (4) a savings of about 100,000 barrels of oil a day, and (5) conservation of scarce domestic supplies of bauxite and iron ore. These results are possible with only minimal, short-term consequences to the economy. If an adequate transition period is allowed, the national economy could actually benefit from such a law—especially in the area of employment.

Currently, Congress is again faced with the prospect of a mini-

---

<sup>119</sup> *Beverage Container Hearings*, *supra* note 22, at 112 (statement of Mr. Frank D. Register, Executive Director, National Association of Retail Grocers of the United States).

<sup>120</sup> Note, however, that S. 50 § 7(c) and H.R. 2812 § 7(c) allow a state to require reimbursement. Also H.R. 2812 § 9(c) allows for the evaluation of the need for such reimbursement by the Administrator of the Environmental Protection Agency.

<sup>121</sup> See VT. STAT. ANN. tit. 10 § 1525(2) (1978).

<sup>122</sup> Such a provision would prevent the use of discriminatory deposit amounts to discourage the use of refillable containers. It would prohibit sellers from kicking-up the shelf prices of reusable containers by placing an extraordinarily high deposit on them. See Gudger and Walters, *supra* note 13, at 283-84.

<sup>123</sup> See VT. STAT. ANN. tit. 10 § 1522(d) (1978).

<sup>124</sup> See VT. STAT. ANN. tit. 10 § 1526 (1978).

<sup>125</sup> See OR. REV. STAT. § 459.880 (1977). See also H.R. 2812 § 9(b), providing for evaluation of the need for redemption centers.

mum deposit law, with hearings to begin in March. Individual legislators will without doubt receive pressure from beverage container manufacturers and labor interests to defeat the bills. Congress, however, should pass the legislation with all deliberate speed.

The pending bills do not differ significantly in practical effect. Any one of the bills is capable of providing the desired environmental and economic impacts. S. 50 has the advantage of providing for a longer transition period—perhaps the single most important element of the legislation. State experience has shown that this is extremely effective legislation, and the nation should not be forced to wait any longer for such a badly needed law.

## APPENDIX I

## 96th CONGRESS

1st Session

S.50

## A BILL

To require a refund value for certain beverage containers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Beverage Container Reuse and Recycling Act of 1979".*

## FINDINGS AND PURPOSES

Sec. 2. Congress finds and declares that:

(1) The failure to reuse and recycle beverage containers represents a significant and unnecessary waste of important national energy and material resources.

(2) The littering of empty beverage containers constitutes a public nuisance, safety hazard, and esthetic blight and imposes upon public and private agencies unnecessary costs for the collection and removal of such containers.

(3) Empty beverage containers constitute a significant and rapidly growing proportion of municipal solid waste, disposal of which imposes a severe financial burden on local governments.

(4) The reuse and recycling of empty beverage containers would eliminate these unnecessary burdens on individuals, local governments, and the environment.

(5) A uniform national system for requiring a refund value on the sale of all beverage containers would result in a high level of reuse and recycling of such containers when empty.

## DEFINITIONS

Sec. 3. For the purposes of this Act:

(1)(A) The term "beverage" means beer or other malt beverage, mineral water, soda water, or a carbonated soft drink of any variety in liquid form and intended for human consumption.

(B) The term "beverage container" means a container designed to contain a beverage under pressure of carbonation.

(C) The term "refundable beverage container" means a beverage

container which has clearly, prominently, and securely affixed to, or printed on, it (in accordance with section 4) a statement of the amount of the refund value of the container.

(2)(A) The term "consumer" means a person who purchases a beverage in a beverage container for any use other than resale.

(B) The term "distributor" means a person who sells or offers for sale in commerce beverages in beverage containers for resale.

(C) The term "retailer" means a person who purchases from a distributor beverages in beverage containers for sale to a consumer or who sells or offers to sell in commerce beverages in beverage containers under pressure of carbonation to a consumer.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof,

(B) within the District of Columbia or any territory of the United States, or

(C) which affects trade, traffic, commerce, or transportation described in subparagraph (A) or (B).

(5) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

#### REQUIRED BEVERAGE CONTAINER LABELING

Sec. 4. No distributor or retailer may sell or offer for sale a beverage in a beverage container under pressure of carbonation unless there is clearly, prominently, and securely affixed to, or printed on, it (in accordance with regulations prescribed by the Administrator) a statement of the amount of the refund value of the container, such amount being not less than 5 cents.

#### RETURN OF REFUND VALUE OF BEVERAGE CONTAINERS

Sec. 5.(a)(1) If a consumer tenders for refund an empty and unbroken refundable beverage container to a retailer who sells (or has sold at any time during the period of six months ending on the date of such tender) a brand of beverage which was contained in the container, the retailer shall promptly pay the consumer the amount of the refund value stated on the container.

(2) If a retailer or consumer tenders for refund an empty and unbroken refundable beverage container to a distributor who sells (or has sold at any time during the period of six months ending on the date of such tender) a brand of beverage which was contained in the container, the distributor shall promptly pay the person the amount of the refund value stated on the container.

(b) The opening of a beverage container in a manner in which it was designed to be opened shall not, for purposes of this section, constitute the breaking of the container.

#### RESTRICTION ON METAL BEVERAGE CONTAINERS WITH DETACHABLE OPENINGS

Sec. 6. No distributor or retailer may sell or offer for sale a beverage in a metal beverage container a part of which is designed to be detached in order to open such container.

#### PREEMPTION OF STATE AND LOCAL LAW

Sec. 7.(a) Except as otherwise provided in this section, no State or political subdivision thereof may establish or continue in effect any law respecting a refund value of beverage containers sold with a beverage under pressure of carbonation to the extent the Administrator determines the law is inconsistent with this Act.

(b) No State or political subdivision thereof may, for purposes of determining the amount of any tax imposed by such State or subdivision on the sale of any refundable beverage container, take into account any amount charged which is attributable to the refund value of such container, if a statement of such refund value is affixed to or printed on the container in accordance with section 4.

(c) A State may require that a distributor pay a retailer for the tender of a refundable beverage container an amount, in addition to the amount of the refund value required to be paid under section 5(a)(2), for the retailer's handling or processing of the container.

(d) Subsection (a) does not prevent a State or political subdivision thereof from establishing or continuing in effect any law respecting a refund value on containers other than for beverages.

Sec. 8. Whoever violates any provision of section 4(a), 5(a), or 6 shall be fined not more than \$1,000, or imprisoned for not more than sixty days, or both, for each violation.

Sec. 9.(a) The provisions of sections 4, 5, and 7 shall apply only with respect to beverages in beverage containers sold or offered for

sale in interstate commerce on or after three years after the date of enactment of this Act.

(b) The provisions of section 6 shall apply only with respect to beverages in beverage containers sold or offered for sale in interstate commerce on or after one year after the date of enactment of this Act.

APPENDIX II  
96th CONGRESS  
1st Session  
H.R. 2812  
A BILL

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Beverage Container Reuse and Recycling Act of 1979".*

FINDINGS AND PURPOSES

Sec. 2. Congress finds and declares that:

- (1) The failure to reuse and recycle empty beverage containers represents a significant and unnecessary waste of important national energy and material resources.
- (2) The littering of empty beverage containers constitutes a public nuisance, safety hazard, and esthetic blight and imposes upon public and private agencies unnecessary costs for the collection and removal of such containers.
- (3) Empty beverage containers constitute a significant and rapidly growing proportion of municipal solid waste, disposal of which imposes a severe financial burden on local governments.
- (4) The reuse and recycling of empty beverage containers would eliminate these unnecessary burdens on individuals, local governments and the environment.
- (5) A national system for requiring a refund value on the sale of all beverage containers is compatible with, and should be an integral part of, the national solid waste management policy and would result in a high level of reuse and recycling of such containers.
- (6) A national system for requiring a refund value on the sale of all beverage containers would be anti-inflationary and help create jobs in areas of commerce.
- (7) A national system for requiring a refund value on the sale of all beverage containers would result in low administrative costs and would be self-enforcing in operation.
- (8) Collection of State and local sales taxes based on a refund value (or deposit) on returnable beverage containers acts as a burden on the commerce of such containers among the States.
- (9) Requiring retailers and distributors to pay refunds on refund-

able beverage containers promotes the commerce among the States of beverage in such containers.

#### DEFINITIONS

Sec. 3. For the purposes of this Act:

(1)(A) The term "beverage" means beer or other malt beverage, mineral water, soda water, or a carbonated soft drink of any variety in liquid form and intended for human consumption.

(B) The term "beverage container" means a container designed to contain a beverage under pressure of carbonation.

(C) The term "refundable beverage container" means a beverage container which has clearly, prominently, and securely affixed to, or printed on it (in accordance with section 4) a statement of the amount of the refund value of the container.

(2)(A) The term "consumer" means a person who purchases a beverage container for any use other than resale.

(B) The term "distributor" means a person who sells or offers for sale in commerce beverages in beverage containers for resale.

(C) The term "retailer" means a person who purchases from a distributor beverages in beverage containers for sale to a consumer or who sells or offers to sell in commerce beverages in beverage containers under pressure of carbonation to a consumer. The Administrator shall prescribe such regulations as may be necessary to establish what person is a retailer with respect to the sale of beverages in beverage containers under pressure of carbonation to consumers through beverage vending machines.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof,

(B) within the District of Columbia or any territory of the United States, or

(C) which affects trade, traffic, commerce, or transportation described in subparagraph (A) or (B).

(5) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.



**REQUIRED BEVERAGE CONTAINER LABELING**

Sec. 4. No distributor or retailer may sell or offer for sale a beverage in a beverage container under pressure of carbonation unless there is clearly, prominently, and securely affixed to, or printed on it (in accordance with regulations prescribed by the Administrator) a statement of the amount of the refund value of the container, such amount being not less than 5 cents.

**RETURN OF REFUND VALUE OF BEVERAGE  
CONTAINERS**

Sec. 5. (a)(1) If a consumer tenders for refund an empty and unbroken refundable beverage container to a retailer who sells (or has sold at any time during the period of six months ending on the date of such tender), a brand of beverage which was contained in the container, the retailer shall promptly pay the consumer the amount of the refund value stated on the container.

(2) If a retailer or consumer tenders for refund an empty and unbroken refundable beverage container to a distributor who sells (or has sold at any time during the period of six months ending on the date of such tender) a brand of beverage which was contained in the container, the distributor shall promptly pay the person the amount of the refund value stated on the container.

(b) The opening of a beverage container in a manner in which it was designed to be opened and the compression of a metal beverage container providing the refund label is readable shall not, for purposes of this section, constitute the breaking of the container.

**RESTRICTION OF FLIP-TOP METAL BEVERAGE  
CONTAINERS**

Sec. 6. No distributor or retailer may sell or offer for sale a beverage container a part of which is designed to be detached in order to open such container.

**PREEMPTION OF STATE AND LOCAL LAW**

Sec. 7.(a)(1) Except as otherwise provided in this section, no State or political subdivision thereof may establish or continue in effect any law respecting a refund value of beverage containers sold with a beverage under pressure of carbonation to the extent the Administrator determines the law is inconsistent with this Act.

(2) Paragraph (1) does not prevent a State or political subdivision thereof from—

(A) requiring refund values of different amounts (of not less than 5 cents) for differing types or sizes of refundable beverage containers, and

(B) establishing or continuing in effect any law respecting a refund value on containers other than for beverages.

(b) No State or political subdivision thereof may, for purposes of determining the amount of any tax imposed by such State or subdivision on the sale of any refundable beverage container, take into account any amount charged which is attributable to the refund value of such container.

(c) A State may require that a distributor pay a retailer for the tender of a refundable beverage container an amount, in addition to the amount of the refund value required to be paid under section 5(a)(2), for the retailer's handling or processing of the container.

#### ENFORCEMENT

Sec. 8.(a) Whoever violates any provision of section 4(a), 5(a), or 6 shall be fined not more than \$1,000 for each violation.

(b) If a retailer or distributor fails, without good cause, to promptly make payment to a consumer or retailer, respectively, of the refund value of a beverage container in accordance with section 5(a), the consumer or retailer, respectively, shall be entitled to collect in an appropriate action in any appropriate State or federal court, from the retailer or distributor, respectively, in addition to the amount of the refund value, an amount equal to the sum of (1) the amount of any damages proximately resulting from such failure to make payment, (2) the amount of court costs and reasonable attorneys' fees and any other reasonable costs attributable to the collection of such refund value, plus (3) \$10 for each beverage container for which the retailer or distributor, respectively, fails to make payment. The court in such an action may order such additional relief, including injunctive and declaratory relief, as the court determines to be appropriate to enforce the provisions of section 5(a).

(c) Any retailer or distributor who knowingly fails to make payment in accordance with section 5(a) may be assessed a civil penalty of not more than \$100 for each such failure with respect to a container: except that the maximum civil penalty shall not exceed

\$10,000 for any related series of violations. Such penalty shall be assessed by the Attorney General and the Administrator and shall be collected in a civil action brought by the Attorney General or by the Administrator (with the concurrence of the Attorney General) by any of the Administrator's attorneys designated by him for this purpose.

#### EVALUATION AND TECHNICAL ASSISTANCE

Sec. 9.(a) The Administrator shall monitor, before and after the effective dates of section 4(a) and 6, the rate of reuse and recycling of beverage containers, and shall evaluate and report to Congress [sic] of the first three years after the date of the enactment of this Act and biennially thereafter on the impact of the provisions of this Act on—

- (1) conservation of energy and material resources;
- (2) resource recovery and reduction of solid waste and litter; and
- (3) the economy.

(b) The Administrator shall evaluate and report, not later than one year after the date of the enactment of this Act, to Congress on the potential role that centers for the redemption of refundable beverage containers might serve in assisting in the return of the refund value of beverage containers under section 5(a) and on any recommendations for changes in this Act to promote such a role.

(c) The Administrator shall monitor and report to Congress on any additional net costs incurred by retailers as a result of enactment of this Act. And [sic] shall include in such report any recommendations the Administrator may have with respect to requiring distributors to pay retailers for the tender of refundable beverage containers, amounts, in addition to the amounts of the refund value required to be paid under section 5(a)(2), for the retailer's handling or processing of the containers.

(d) The Administrator shall provide such technical assistance and information to State distributors, retailers, and consumers, and to manufacturers of beverage containers, as is necessary to carry out the provisions and purposes of this Act.

#### CONSULTATION ON EMPLOYMENT DISLOCATION

Sec. 10. The Administrator shall advise and consult with the Secretary of Labor on steps that the Secretary might take, through

existing authorities, to identify and provide assistance to individuals whose employment may be adversely affected by this Act.

**EFFECTIVE DATES**

Sec. 11.(a) Except as otherwise provided in subsections (b) and (c), this Act shall take effect on the date of its enactment.

(b) The provisions of section 4(a) (relating to required labeling of beverage containers) shall apply with respect to beverages in beverage containers sold or offered for sale in interstate commerce on or after the end of the two-year period beginning on the last date of the month in which this Act is enacted.

(c) The provisions of section 6 (relating to prohibiting flip-top cans) shall apply with respect to beverages in beverage containers sold or offered for sale in interstate commerce on or after the end of the one-year period beginning on the last date of the month in which this Act is enacted.

(d) The provisions of section 7(a) (relating to preemption of State and local laws) shall preempt State and local laws to the extent to which they are inconsistent with the provisions of this Act only on and after the respective effective dates of such provisions.

## APPENDIX III

## 96th CONGRESS

1st Session

H.R. 1416

## A BILL

To require a refund value for certain beverage containers, and for other purposes.

*Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled, That this Act may be cited as the "Beverage Container Reuse and Recycling Act of 1979".*

## FINDINGS AND PURPOSES

Sec. 2. The Congress finds and declares that:

(1) The failure to reuse and recycle empty beverage containers represents a significant and unnecessary waste of important national energy and material resources.

(2) The littering of empty beverage containers constitutes a public nuisance, safety hazard, and esthetic blight and imposes upon public and private agencies unnecessary costs for the removal and collection of such containers.

(3) Empty beverage containers constitute a significant and rapidly growing proportion of municipal solid waste, whose disposal imposes a severe financial burden on municipal governments.

(4) The reuse and recycling of empty beverage containers would eliminate these unnecessary burdens on individuals, local governments, and the environment.

(5) A uniform national system for requiring a refund value on the sale of all beverage containers would result in a high level of reuse and recycling of such containers when empty.

## DEFINITIONS

Sec. 3. For the purposes of this Act:

(1) The term "beverage" means beer or other malt beverage, mineral water, soda water, or a carbonated soft drink of any variety in liquid form and intended for human consumption.

(2) The term "beverage container" means a container designed to contain a beverage under pressure of carbonation.

(3) The term "consumer" means a person who purchases a bever-

age in a beverage container for any use other than resale.

(4) The term "distributor" means a person who sells or offers for sale in commerce beverages in beverage containers for resale.

(5) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and place outside thereof,

(B) within the District of Columbia or any territory of the United States, or

(C) which affects trade, traffic, commerce, or transportation described in subparagraph (A) or (B).

(6) The term "State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

(7) The term "retailer" means a person who purchases from a distributor beverages in beverage containers for sale to a consumer or who sells or offers to sell in commerce beverages in beverage containers to a consumer.

#### REQUIRED BEVERAGE CONTAINERS LABELING

Sec. 4.(a) No distributor may sell or offer for sale a beverage in a beverage container under pressure of carbonation unless there is clearly and prominently embossed, stamped, labeled, or otherwise securely affixed to such container a statement of a refund value of not less than 5 cents for such container.

(b) No retailer may sell or offer for sale a beverage in a beverage container under pressure of carbonation unless there is clearly and prominently embossed, stamped, labeled, or otherwise securely affixed to such container a statement of a refund value of not less than 5 cents for such container.

#### RETURN OF REFUND VALUE OF BEVERAGE CONTAINERS

Sec. 5.(a) A retailer shall pay to a consumer the amount of the refund value affixed, in accordance with section 4, to any empty and unbroken beverage container tendered by such consumer to such retailer which container contained the brand of beverage sold by such retailer at any time during the period of ten months immediately prior to the date of such tender.

(b) A distributor shall pay to a retailer the amount of the refund value affixed, in accordance with section 4, to any empty and unbroken beverage container tendered by such retailer to such distributor

which container contained the brand of beverage sold by such distributor to such retailer at any time during the period of one year immediately prior to the date of such tender.

**STATE TAXATION OF COLLECTIONS AND RETURNS OF  
REFUND VALUE**

Sec. 6. No state may place a tax or other levy for the sale or transfer of property on the collection or return of the amount of any refund value established under this Act.

**RESTRICTION ON METAL BEVERAGE CONTAINERS WITH  
DETACHABLE OPENINGS**

Sec. 7. No distributor or retailer may sell or offer for sale a beverage in a metal beverage container a part of which is designed to be detached in order to open such container.

**ENFORCEMENT**

Sec. 8. Whoever violates any provision of section 4, 5, or 7 shall be fined not more than \$1,000, or imprisoned for not more than sixty days, or both, for each violation.

**EVALUATION AND TECHNICAL ASSISTANCE**

Sec. 9.(a) The Administrator of the Environmental Protection Agency shall monitor, before and after the effective dates of sections 4 and 7, the rate of reuse and recycling of beverage containers, and shall evaluate and report to Congress periodically on the impact of the provisions of this Act on—

- (1) conservation of energy and material resources;
- (2) reduction of solid waste; and
- (3) the economy.

(b) The Administrator of the Environmental Protection Agency shall provide such technical assistance and information to distributors, retailers, and consumers, and to manufacturers of beverage containers as is necessary to carry out the provisions and purposes of this Act.

**EFFECTIVE DATE**

Sec. 10.(a) Except as otherwise provided in subsections (b) and

(c), this Act shall take effect on the date of enactment of this Act.

(b) The provisions of section 4 shall apply only with respect to beverages in beverage containers sold or offered for sale in interstate commerce on or after three years after the date of enactment of this Act.

(c) The provisions of section 7 shall apply only with respect to beverages in beverage containers sold or offered for sale in interstate commerce on or after one year after the date of enactment of this Act.