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Choice of Beverage Container Laws in New York State*

*By: Joint bulletin with League of Women Voters: Jane Schmidt
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in New York State

by
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Summary

A law requiring a deposit on a beverage container is enacted to encourage people to return the container and thus decrease litter. The law may have other effects, such as encouraging the reuse of bottles, or the recycling of metals, but this often depends on how it is written. Ten bills placing mandatory deposits on beverage containers have been introduced in this session of the New York State legislature. Nine State bills are summarized in Tables I and II, along with the Monroe County bill. Although the nine State bills are in many ways identical, 7 modify the General Business Law and 2 modify the Environmental Conservation law. In all they go to 5 different committees. Seven were written by legislators in the New York City area.

This Bulletin explains how the laws differ and what each is expected to accomplish.

Beverages Included

All the proposed State laws affect beer and malt beverages and carbonated drinks. In addition, in their present versions two include teas, two include fruit drinks and one, alcoholic beverages. Inclusion of fruit drinks is intended to eliminate the possibility suggested by soft drink bottlers that the deposit would make their product non-competitive in price with non-carbonated fruit drinks. The State League of Women Voters has been lobbying against the inclusion of fruit drinks which will complicate getting a bill enacted. Fruit drinks will be removed from the next version of Senator Smith's bill. The law proposed by the Department of Environmental Conservation includes the widest variety of containers - it lists the containers excluded rather than those included. This proposal did not have a sponsor when these laws were gathered by RCSI.

Deposits

All of the proposed laws require both a deposit on containers and a refund value firmly attached to the container - this to avoid bottles and cans from other states being brought in for a refund. The Monroe County bill has the county name marked on the containers as well as the refund value for the same reason.

Table 1. Nine Container Deposit Bills Under Consideration in the New York State Legislature

<u>Bill or law</u>	<u>Introduced by</u>	<u>County</u>	<u>To Amend</u>	<u>Committee</u>
A-358	Thorp	Nassau	General Business Law	Commerce, Industry and Economic Development
A-417	Lane	Albany	General Business Law	Environmental Conservation
A-1093	Wepain	Queens	Environmental Conservation Law	Environmental Conservation
A-1657*	Cooperman	Queens	General Business Law	Commerce, Industry and Economic Development
A-1787	Koppell	Bronx	General Business Law	Commerce, Industry and Economic Development
S-139	Smith	Suffolk	General Business Law	Agriculture and Consumer Protection
S-820	Eckert	Monroe	General Business Law	Agriculture and Consumer Protection
S-1919	Bronston	Queens	Environmental Conservation Law	Conservation and Recreation
S-2498	Flynn	Bronx-Westchester	General Business Law	Consumer Protection

* A-1657 is available only in short form.

Note: A-3757 is missing from this table because it is not yet printed.

Certification of Bottles

All the State bills except the DEC's (Department of Environmental Conservation) have a lower deposit for "certified containers" and certification is spelled out very carefully - its purpose is to encourage the reuse of the containers collected. Reusable bottles with the name of the company printed on, such as Fiz, which now have at least a 5 cent deposit are exempt from certification in all the bills because they cannot be used interchangeably and are returned directly to their own bottler. A certified bottle can be used and reused interchangeably by many companies because the mouth fits a standard cover, the bottles will fit into standard bottle washing and filling machines and they are not marked as the property of one company. Certified bottles have a smaller deposit than non-certified bottles to tempt bottlers to buy them because they will only have to reimburse two or three cents instead of five cents for each one. Further the bottlers may not have to sort the bottles as much once they are returned. They will still have to be sorted for size. It is argued that once bottles are returned and paid for it will be more economical to reuse than to recycle or discard them, and then have to buy new ones.

THE VERMONT, THE MONROE COUNTY AND THE DEC LAWS DO NOT CERTIFY BOTTLES. THESE LAWS ARE CLASSIFIED AS ANTI-LITTER LAWS. THEY DO NOT GIVE A MONETARY ADVANTAGE TO THOSE WHO REUSE BOTTLES.

Cans

Five of the bills ban "flip-top" cans outright, two permit them to be sold but deny them certification. Two laws certify cans which are opened with a can opener and place a lower deposit on them. At the present time, according to American Can Co., there is no returnable can on the market. Certification of cans is not intended to encourage reuse but to decrease littering with the small closing piece (tab) of the flip top can.

Two State bills and the Monroe County bill do not treat cans separately from bottles. Monroe County does not want to ban cans because it has both a can manufacturing and two can filling industries. However, many believe that a mandatory deposit and certification make it uneconomic to fill a container that cannot be reused. They believe that the deposit, particularly on the State level, is enough to induce a switch to reusable containers.

Cans are discouraged by environmentalists because they demand high energy use and require either non-renewable or foreign resources. The problem is thoroughly discussed for New York State in "No Deposit No Return" (1), from which Figure 1 is reprinted. It is worth noting that an aluminum can requires the most energy if not recycled, but with 95% recycling aluminum cans use no more energy than a refillable glass bottle making 10 trips.

Decreasing Discarded Material

In Monroe County where glass has a good market and cans are salable, it is assumed that any law encouraging return will be followed by recycling and fewer containers will reach landfills.

The DEC bill is unique in that it requires a license to discard the containers after they are returned. Terms of the license are not spelled out, but if written carefully, and if there is a charge for disposal, it may become significantly more economical to recycle or reuse bottles and cans than it is to bury them in landfills. In Vermont some manufacturers simply mark deposit values on no-deposit bottles and bury them when they are returned. Apparently the authors of the DEC bill feel that recycling the glass and metal is just as good as reusing bottles because they include the licensing for a landfill disposal and do not recommend a certification procedure.

Taxation

The Vermont bill included a small tax on non-refillable beverage containers, the revenues to be used toward maintaining sanitary landfills. The tax was supposed to remain only one year. No New York State bill includes a tax.

Redemption Centers

No bill mandates governmental redemption centers, 7 of them permit centers, 5 require that they be licensed, and one requires that they receive an extra penny deposit from the bottler. The latter feature should encourage business men to set up the centers. Those laws that license centers exempt stores from having to take back the bottles they sell. In other words if a bottle can be returned to a redemption center a store does not have to accept it. This solves the problem of space, particularly for small stores. The Rochester Metropolitan League of Women Voters is encouraging the County to make more detailed plans for redemption centers; they are permitted but not licensed in the proposed Monroe County bill.

Figure 1. Impact of Container Recycling on Energy Consumption

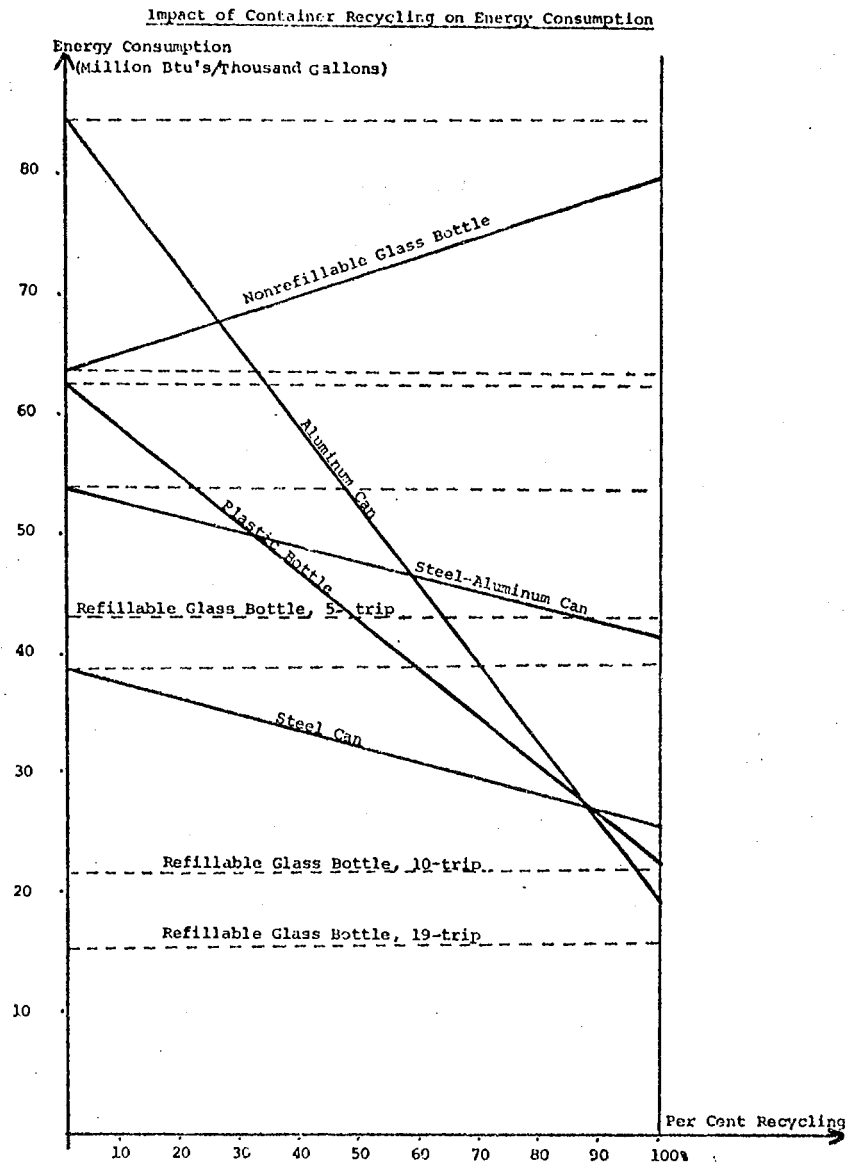


Table 2. Provisions of Laws and Bills Mandating a Deposit on Beverage Containers.

Bill or law	Liquids included	Deposit		Redemption Centers	Permit required to landfill cans or bottles	Bans flip-top cans	Fine	Effective date
		Uncertified/Certified	not less than:					
New York State:								
A-358	as Oregon	5¢ ^(a)	2¢	licensed	no	yes	no	7/1/76
A-417	as Oregon + tea	5¢	3¢	permitted	no	yes ^(b)	violation \$500	Oct. after enacted ^(c)
A-1093	as Oregon	glass 8¢ ^(a) other 5¢	2¢	licensed	no	no ^(b)	no violation	4/1/76
A-1657*	beer, carbonated & uncarbonated soft drinks	"Reasonable"		no	no	no	\$25	Sept. after enacted
A-1787	as Oregon	5¢ ^(a)	2¢	licensed	no	no ^(b)	no	3/1/76
S-139*	as Oregon + tea, fruit drinks	5¢	3¢	permitted	no	yes ^(b)	violation \$500	Oct. after enacted
S-820	as Oregon + alcohol. beverages	5¢	2¢	no	no	yes	misdemeanor	immediate
S-1919	as Oregon ^(d)	glass 8¢ ^(a) other 5¢	2¢	licensed	no	no	violation no	4/1/76
S-2498	as Oregon	5¢ ^(a)	2¢	permitted	no	yes	misdemeanor no	6/1/76
DEC	excludes milk, 70% or more fruit water, soup, medicine	5¢	no	no	yes	yes	violation \$100	6/1/76
Monroe County	as Oregon	5¢	no	permitted	no	no	violation \$250	?
Oregon	beer, malt, soda, carbonated soft drinks	5¢	2¢	yes	no	yes	violation, civil penalty \$500	10/1/72
Vermont	as Oregon	5¢	no	permitted ^(e)	no ^(f)	no	up to \$1000	6/30/73

(a) All laws require store to accept bottles that it normally sells except those laws that license redemption centers.

(b) Yes - 18 month delay after effective date
No - flip top cans cannot be certified, others can

(c) Not before 6/1/76

(d) Bottler must pay one cent (1¢) to store or operator of redemption center

(e) To be maintained by manufacturer or distributor

(f) Tax levied for one year to maintain landfill

* S-139 and A-1657 are undergoing revision.

Penalties

Only 3 state bills and the Monroe County bill set a fine for non-compliance with the law. The fines are relatively small - between \$25 and \$500, but they can be reassessed each day of non-compliance. Oregon levies a large fine.

Delay Between Passage and Effective Date

One state bill takes effect immediately, another after 3 years. Several of those which ban cans put in an additional 18 month period to phase them out. The Monroe County bill has a space for effective date, but it has not yet been inserted. Some kind of a delay is needed on the state level to permit industry to use up existing stocks, to bring about gradual conversion to a returnable system (which is not mandated), and to allow for job relocation. The State League of Women Voters has recommended that there be a provision in the final state bill for a tax write-off extending over the period of delay.* This will encourage the industries to convert in, say, the three year period, when they know the law is going into effect, rather than wait until the day it becomes effective. These constraints may not apply to the County bill because it mandates fewer changes in procedure.

Possible Legal Challenges to the Law

The Oregon and the Vermont law were both challenged in court with the charges that they placed an undue burden on interstate commerce, and denied the equal protection and due process clauses of the fourteenth amendment to the Constitution. In both cases the judges ruled that the laws did not violate the Constitution. Many expect a New York State law to be similarly challenged.

A member of the New York State Brewers' Association has said that the brewers may take Monroe County to court because the use of beer containers is regulated by the State and the county cannot override the state regulation. The regulation in question is regulation 89 of the rules and regulations of New York State and any State law that is passed should have the power to override any other similar law regulating packaging of beer and malt drinks.

Conclusion

Monroe County is now proposing an antilitter law. Changes which would strongly encourage use of reusable bottles are: 1) certifying bottles; 2) charging bottlers for landfill space; 3) controlling or banning cans. Two other suggestions that have been made to make the law more easily workable are a clearer description of the way in which the redemption centers will work and a tax write-off for conversion.

Arguments against changing the proposed County bill are:

1. Changes take time and require public hearings. The bill should be passed in this session.
2. The county is too small for the law to make much difference in U.S. energy consumption or for it to be practical to try to use a standardized bottle.
3. One of the purposes of a County law is to help convince the State to pass a more comprehensive law.
4. The Task Force on Critical Problems of the New York State Senate concluded that the most effective way of dealing with non-returnable containers is a mandatory deposit law - as opposed to a ban which puts no pressure on the consumer to return the containers, and as opposed to educating the consumers or depending on voluntary recycling.

* S-139B and A-6884 (See page 7) do not include this provision.

End Note (2)

As this Bulletin was going to press, two more State bills were submitted. RCSI has not seen either of them. S-139B is a revision of Senator Smith's original bill. It is co-sponsored by 15 Senators. A-6884 is a revision of Assemblyman Cooperman's bill and is co-sponsored by 57 Assemblymen. Among the sponsors are Senator Eckert and Assemblyman Hanna, from this region. The rest of our Legislators were not mentioned in the League of Women Voters list of sponsors.

Both bills have a mandatory deposit of 5¢ for non-certified and 3¢ for certified containers. Both provide for redemption centers (we do not know if they require licensing). The effective date is July, 1978.

There will be two hearings on these bills, one held in Albany on April 15 and the other in New York City on May 2. The hearings are called by the Senate Committee on Consumer Protection, and the Assembly Committee on Commerce, Industry and Economic Development.

References

- (1) New York State Senate Task Force on Critical Problems, "*No Deposit, No Return*", a report on beverage containers. February 1975
- (2) Information from New York State League of Women Voters' *Call to Action*, April 1975

