

Federal and State Mandatory Beverage Container Deposit Legislation

Karen L. Mallory and R. Alta Charo

TABLE OF CONTENTS

I. INTRODUCTION	355
II. ENERGY SAVINGS AND LITTER CONTROL FROM RECYCLING	357
III. STATE MANDATORY DEPOSIT LAWS.....	360
A. <i>Coverage</i>	361
B. <i>Deposit Ladders</i>	361
C. <i>Certification to Maximize Returns</i>	363
D. <i>Difficulties</i>	365
E. <i>Enforcement</i>	367
IV. FEDERAL EFFORTS TO ENCOURAGE RECYCLING.....	368
A. <i>Guidelines under RCRA</i>	368
B. <i>Proposed Federal Legislation</i>	370
C. <i>Constitutionality of Federal Container Regulation</i>	374
V. CONCLUSION	375
VI. APPENDICES	377
A. <i>Comparison of Bottle Bills in Nine States</i>	377

I. INTRODUCTION

Small incentives may field large returns; this is the philosophy behind mandatory deposit laws. Both as a means of encouraging systematized recycling and as a means of controlling unsightly litter, nine states, representing nearly 20 percent of the population, have enacted deposit legislation for beer and soft drink containers.¹

Deposits of this kind are akin to a refundable tax. All but one state deposit law sets a refund value of five cents on every beverage container covered by the statute.² Michigan's law, the sole exception, refunds ten cents.³ The refund value can also be viewed as a disposal fee charged to purchasers. Those who

1. Cavanaugh, *Packaging: Will Plastics Dominate?* RESOURCE RECYCLING, May/June 1985, at 14.

2. See OR. REV. STAT. §§ 459.810-.890 (1983).

3. MICH. COMP. LAWS ANN. §§ 445.571-.576 (West Supp. 1984).

choose to throw away the container pay for the convenience. Anyone who returns a container to the proper collection center receives a refund or, in the case of those who collect containers discarded by others, is paid for performing the service of rescuing containers from the solid waste stream. Theoretically, only the users of the service pay for it, and the refund value is set high enough to create an incentive to retain containers, but not so high as to discourage purchases.

To minimize the deleterious effect of deposits possibly creating a disincentive to purchase, deposit laws generally apply only to containers of beer, malt drink and carbonated soft drinks. Containers of nutritious beverages such as milk and fruit juice are not covered by deposit laws.

One advantage of this form of regulation is that it tends to correct market failure at a low cost. In the absence of a container deposit, market failure occurs because the package price of beverages covers only the costs of production and marketing; the costs of container disposal are externalized. As a result, disposal costs must be paid by society at large. Such costs include the expense of handling the huge quantity of garbage generated by beverage consumers, the environmental damage resulting from disposal methods such as burning and landfill, and the waste of valuable energy, when recyclable or reusable materials are disposed of permanently.

Critics of deposit laws charge that reliance on consumer recycling of materials is inefficient because public response is unreliable, and because the deposit system cannot be expanded to include other components of the solid waste stream.⁴ Municipal resource recovery plants are proposed as a better solution. In the past they have proved operationally unreliable and unprofitable.⁵ Today, however, with the rising costs of traditional disposal, the economic equations are changing. Nevertheless, technological developments must still be refined before resource recovery becomes standard practice for more than a select number of manufacturing processes.⁶ Deposit laws and resource recovery initiatives are not, however, mutually exclusive, and the role of each in energy conservation should be considered independently.

4. Comment, *State and Local Regulation of Nonreturnable Beverage Containers*, 1972 WIS. L. REV. 536, 539.

5. See Basta, *A Renaissance in Recycling*, HIGH TECHNOLOGY, Oct. 1985, at 32, 38-40.

6. *Id.* at 39.

Doubts about the degree of public response to deposit incentives are dispelled by the thirteen year success of the Oregon bottle bill.⁷ Oregon consumers return better than 90 percent of the beverage containers they purchase.⁸ Surveys conducted in 1973 and 1975 found that 90 percent of Oregonians supported the bill.⁹ Not only has recycling beverage containers become a way of life, but the public has also extended recycling to other materials. In response to the popular acceptance of can and bottle recycling, the Oregon legislature recently passed the Oregon Recycling Opportunity Act to encourage recycling of other materials.¹⁰ The citizens of Oregon are not alone in their acceptance of bottle bills. A survey released by the Federal Energy Administration in 1978 revealed that 73% of the national population favored deposits on beverage containers.¹¹

II. ENERGY SAVINGS FROM RECYCLING

Based on national beverage production in the late 1970's, a joint study conducted by the California Public Interest Group and the Stanford Environmental Law Society concluded that the potential savings of a federal bottle bill was 218 trillion Btu's, the equivalent of 1.74 billion gallons of gasoline each year.¹²

Since the consumption of soft drinks reached an all-time high in 1984,¹³ it is probable that a study conducted today would also show that a significant energy savings can accrue through deposit legislation. An exact estimate of potential savings is difficult, however, for three reasons: 1) most data are based on statistical projections rather than on studies of actual outcomes; 2) statistics on the energy used in production are only produced by the beverage industry, whose opposition to deposit laws casts some doubt on the objectivity of their data; and 3) the actual savings associ-

7. OR. REV. STAT. §§ 459.810-.890. (1983).

8. W. SHIREMAN, CAN AND BOTTLE BILLS 62 (California Public Interest Research Group and the Stanford Environmental Law Society, 1981).

9. *Id.* at 59.

10. S.B. 405 was passed on July 6, 1983.

11. *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. 100 (1978) (statement of Barbara Blum, Deputy Administrator, EPA).

12. This statistic assumes a return rate of 90 percent and that the container mix remains stable. SHIREMAN, *supra* note 8, at 194.

13. The 1985 edition of the annual impact report, "Beverage Trends in America," shows that in 1984, for the first time, soft drinks replaced water as the most consumed beverage in the United States. N.Y. Times, July 31, 1985, at C9, col. 4.

ated with deposit legislation will depend on shifting variables such as the container mix and rates of return and recycling.

Changes in the container mix—the share of drink sales accounted for by various types of containers—may, in particular, influence the conservation potential of deposit legislation.

Typically, targeted beverages are packaged in glass, metal or plastic. Many of the glass containers are of the “refillable” variety. Some glass, however, is recycled through crushing and reusing it in the production of new glass. While not refillable, aluminum containers are easily recycled into new beverage containers. Plastic, on the other hand, cannot be refilled or recycled into beverage containers.¹⁴

It was anticipated that one consequence of deposit legislation would be the increased use of refillable glass bottles.¹⁵ Such a shift on its own would result in substantial energy savings.¹⁶ A recent study of container mix changes in New York state between summer 1983 (prior to the effective date of the New York Returnable Beverage Container Law) and summer of 1984, suggests that the intended effect took place in the beer market, but that in the soft drink market, while non-refillable glass containers declined as a percentage of the mix, plastic rather than refillable glass made the biggest gain.¹⁷

In the year following the New York law, the market share of cans in the beer industry increased about one percentage point and refillable glass increased from 6.1 percent to 17.1 percent of volume.¹⁸ In the soft drink industry, by contrast, the share of refillable glass containers grew only slightly, from 4.8 percent to 5.6 percent, while plastic containers of PET (polyethylene terephtha-

14. Cavanaugh, *supra* note 1, at 15.

15. E. LOWRY, T. FENNER & F. LOWRY, *DISPOSING OF NON-RETURNABLES: A GUIDE TO MINIMUM DEPOSIT LEGISLATION* 10 (1975) (published by the Stanford Environmental Law Society).

16. *Id.* (“In a refillable system, the energy necessary to create the container is expended once. Thereafter . . . energy is used only for handling, transporting, and washing. In a non-returnable system, instead of expending the energy to make *one* container which makes an average of 15 trips, energy necessary to make *15* containers is expended.”)

17. TEMPORARY STATE COMMISSION ON RETURNABLE BEVERAGE CONTAINERS, NELSON A. ROCKEFELLER INSTITUTE OF GOVERNMENT, *NEW YORK RETURNABLE BEVERAGE CONTAINER LAW: THE FIRST YEAR 15-24* (1985) [hereinafter cited as RIG REPORT].

18. *Id.* at 21, 23. This is contrary to a national trend in the beer industry toward aluminum which is currently very inexpensive on the world market given the strength of the U.S. dollar. Cavanaugh, *supra* note 1, at 15.

late) increased from 47.3 to 57.3 percent.¹⁹ This shift to plastic in the soft drink industry can not wholly be accounted for by the deposit law, but it is estimated that the law probably increased the plastic container share of the New York container market by about 6-7 share points above what it otherwise would have been.²⁰

The increased use of plastic containers has uncertain ramifications for the energy savings potential of deposit law as currently drafted. Production of a single-use plastic bottle requires less energy than does production of an aluminum can, when it is assumed that 25% of aluminum cans are recycled.²¹ This energy savings potential, however, must be judged against the disadvantages of increasing the use of plastic containers. Unlike steel and aluminum cans which are separated with relative ease by the use of magnetism, plastic resins are not easily separated and as yet the variety of resins used in plastic container production are frequently incompatible.²² This causes substantial technological difficulty for the prospect of plastics recycling. Currently, the only plastic bottles recycled, (principally into stuffing material) are the soft drink bottles made of PET.²³ They cannot, however, be recycled into containers with currently available technology. Consequently possible energy savings at the production end must be weighed against loss of conservation potential at the recycling end.²⁴

In order to promote the development of technology which would improve the recycling potentials for plastic and the development of reusable varieties of plastic, a discriminatory deposit on plastic containers might be considered.²⁵ The New Jersey Of-

19. *Id.* at 19.

20. *Id.* at 24 (amounting to a 14% increase over its prior share of 47% of soft drink volume.)

21. SHIREMAN, *supra* note 8, at 28. A 1984 estimate suggested that the percentage of aluminum cans recycled has risen to 40 percent; plastics have, however, continued to grow as percentage of food, soft drink, liquor and other markets. Cavanagh, *supra* note 1, at 14.

22. Cavanagh, *supra* note 1, at 15.

23. *Id.* (Nationally PET accounts for 6.7 percent of plastics used in making rigid containers.)

24. A newly-established "plastics recycling institute" at a major New Jersey university will research new technologies for recycling PET and other plastics. RIG Report, *supra* note 17, at 192 n.10. See also Basta, *supra* note 5, at 34-35.

25. The production of refillable plastic bottles faces the same disincentive as glass: by developing a bottle which could be reused many times, the producers would sell fewer bottles.

fice of Recycling has recommended such a discriminatory deposit be placed on plastic containers by 1987, unless the industry demonstrates that it is capable of expanding the recycling market by that time.²⁶ Another means of dealing with the problems of plastic would be to limit the use of plastic as a container material.

While the increase of plastic containers in the mix may, in the future, require provisions such as those contemplated in New Jersey, it is clear that deposit legislation continues to offer energy savings through promoting aluminum can recycling. Cans have retained a steady share of the container mix and are expected to continue to do so.²⁷ Since producing aluminum from bauxite requires twenty times as much electricity as producing aluminum from recycled metal, recycling of this material alone promises considerable energy conservation.²⁸

In sum, it is difficult to quantify the exact energy savings that results from the implementation of container deposit legislation. At the least it is one mechanism which can contribute to savings through recycling, at the most it is a mechanism of market correction which can influence consumer decisions regarding container purchases, thereby directing consumption and industrial research and development in favor of the containers with the most conservation potential. The contribution of deposit laws to litter reduction, though an aesthetic contribution rather than a contribution to energy conservation, is also a reason for their continued viability. A 1984 study of litter reduction attributable to New York's Container law estimates that the law accounted for a 70% reduction in littering of regulated beverage containers.²⁹

III. STATE MANDATORY DEPOSIT LAWS

Laws requiring that a refund be paid to consumers upon return of beverage containers are in effect in nine states and a number of municipalities.³⁰ The first of these bottle laws was passed by Ore-

26. RIG REPORT, *supra* note 17, at 193 n.11.

27. RIG REPORT, *supra* note 17, at 187.

28. W. CHANDLER, MATERIALS RECYCLING: THE VIRTUE OF NECESSITY 24 (1983) (Worldwatch Paper no. 56). This statistic takes into account the energy required for transporting recycled cans.

29. RIG REPORT, *supra* note 17, at 145-147 (This is the best data to date on the law-related reductions of litter in New York. The study notes, however, that an adequate picture of the law's impact on total litter would require an expanded study.)

30. See CONN. GEN. STAT. ANN. §§ 22a-243 to -251 (West 1985); DEL. CODE ANN. tit. 7, §§ 6051-6060 (1983); IOWA CODE ANN. §§ 455C.1-.14 (West Supp. 1985); ME. REV. STAT.

gon in 1972.³¹ No state has ever repealed a deposit law. An indication of the support they have received can be gleaned from the fact that attempts to repeal deposit laws in Maine and Massachusetts were defeated by public referenda.³²

A. Coverage

The Oregon statute provided the model for subsequent state deposit legislation. As in Oregon, therefore, the definition of "beverage containers" generally includes containers made of any glass, metal or plastic. The statutes also consistently target beer, malt beverages, and carbonated soft drinks as the "beverages" subject to regulation. In New York there is some support for expanding the definition of beverages to include wine coolers. The New York Temporary State Commission on Returnable Beverage Containers voted 7 to 2 in 1985 to recommend such inclusion in the New York Container Law.³³

B. Deposit Ladders

Beverage containers may change hands as many as four times: from container manufacturer to bottler to distributor to dealer to consumer. The deposit can be initiated at any of these junctures.

In seven states, the deposit is first paid by the dealer to the distributor when the containers enter the store.³⁴ The dealer collects the same amount from the consumer when the beverage is sold. If the consumer returns the empty container the dealer refunds the deposit to the consumer and returns the container to the distributor, who refunds to the dealer the original deposit. In

ANN. tit. 32, §§ 1862-1871 (1978 & Supp. 1984); MASS. ANN. LAWS ch. 94, §§ 321-327 (Michie/Law. Co-op. 1985); MICH. COMP. LAWS ANN. §§ 445.571-.576 (West Supp. 1985); N.Y. ENVTL. CONSERV. LAW §§ 27-1001 to -1019 (McKinney 1984); OR. REV. STAT. §§ 459.810-.995 (1983); VT. STAT. ANN. tit. 10, §§ 1521-1527 (1984).

31. OR. REV. STAT. §§ 459.810-.890 (1983).

32. Maine's bottle bill, ME. REV. STAT. ANN. tit. 32, s§ 1862-1871 (1978 & Supp. 1978-1984), was first passed by the voters in 1976. It was reaffirmed, by an 84 to 16 percent margin, in November 1979. SHIREMAN, *supra* note 8, at 84. In 1984 Massachusetts voters defeated an effort to repeal their 1976 bottle bill, MASS. ANN. LAWS ch. 94, §§ 321-327 (Michie/Law. Co-op. 1985).

33. TEMPORARY STATE COMMISSION ON RETURNABLE BEVERAGE CONTAINERS, FINAL REPORT 60 (March 27, 1985) [hereinafter cited as N.Y. COMM'N FINAL REPORT].

34. CONN. GEN. STAT. ANN. § 22a-245(c) (West 198513); DEL. CODE ANN. tit. 7, § 6053(b) (1983); IOWA CODE ANN. § 455C.2.2 (West Supp. 1985); ME. REV. STAT. ANN. tit. 32, § 1866(3) (West 1978); MICH. COMP. LAWS ANN. § 445.572(6) (West Supp. 1985); N.Y. ENVTL. CONSERV. LAW § 27-1007(2) (McKinney 1984); OR. REV. STAT. § 459.830(2) (1983).

the mean time the distributor has had the opportunity to invest the dealer's advance payment. Furthermore, if the consumer does not return the empty container, the distributor retains the deposit.

Massachusetts adds one step to the deposit ladder, requiring that the distributor pay the bottler a deposit for each container.³⁵ The distributor then collects a deposit from the retainer, who collects one from the consumer. Of course, the refund process goes back up the ladder just as before, this time extending to the bottler. It is the bottler who profits from the lag time between deposit payment and refund and who retains forfeited deposits.

In Vermont the deposit process is shortened one step.³⁶ There, the retailer does not pay a deposit to the distributor but collects one from the consumer. When the empty container is returned, the dealer refunds the consumer's deposit and turns the container over to the distributor. The statute provides that the distributor is required to accept all containers and must pay the retailer at least the greater of 2 cents for each container or 20% of the deposit set by the Secretary as a handling fee. In this way, the retailer is in a position to profit from the lag time and forfeited deposits.

The level at which the deposit is initiated may have significant impact on whether its goals are achieved. In addition to affecting the distribution or profits, as illustrated above, the selection of the level at which deposits are initiated may influence whether the containers are recycled. The party who collects the first deposit and eventually pays the final refund ends up holding all the returned containers. Where the goal is to increase recycling, the party most likely to recycle should be the initiator of deposits.

When the first bottle bills were written, the focus was upon their effect on consumers. The main goal, litter reduction, could be achieved regardless of where the deposit was initiated. Increasingly it is also hoped that enforcement of container deposit legislation will increase recycling.³⁷ A study of the effects of New York's bottle bill, however, reveals that recycling has not in-

35. MASS. ANN. LAWS ch. 94, § 323(d) (Law. Co-op. 1985).

36. VT. STAT. ANN. tit. 10, § 1522 (1983).

37. See, e.g., Comment, *Supreme Court Upholds Minnesota Ban on Plastic Containers*, 11 ENVTL. L. REP. (ENVTL. L. INST.) 10017 (1981).

creased proportionately to returns.³⁸ It is possible that people are stockpiling the containers until the secondary materials market improves. In New Jersey, the price paid to recyclers for aluminum cans dropped from 33 cents per pound to 24 cents in 1984.³⁹ The drop is, in part, due to the strength of the dollar abroad, which means it is cheaper to import aluminum ingots than to buy recycled aluminum.⁴⁰ Despite the possibility of stockpiling, it is more likely that a substantial number of containers are going into landfill instead of being recycled.⁴¹

It has been suggested that initiating deposits between the container manufacturer and the bottler might encourage recycling.⁴² This would ensure that the returned containers reached the manufacturer, leaving the choice between using the recycled materials on hand or importing aluminum ingots at that level. If the choice were then made to waste the recyclable resources, at least it would be based upon truer representation of the market. It is unclear, however, how the existing recycling industry would be affected by the return of containers to container manufacturers.⁴³

C. *Certification to Maximize Returns*

Deposit laws generally require that distributors accept and redeem any containers from a dealer "of the kind, size and brand sold by the distributor" to the dealer.⁴⁴ Thus, distributors *may*, but are not required to redeem types of containers they do not sell. Similarly all deposit laws require that dealers accept returns of beverage containers of the kind, size and brand they currently

38. Although the New York deposit law resulted in return rates of 86%, only 56% were being recycled as of July 1984. RIG REPORT, *supra* note 17, at 58, 173.

39. N.Y. Times, June 7, 1985, at D19, col. 3.

40. *Id.*

41. RESOURCE RECYCLING, *supra* note 27, at 12 (A recent state-funded study in New York indicates that two-thirds of plastic soft-drink containers returned under the New York deposit system are being land-filled due to poor markets for post-consumer plastic scrap.)

42. Telephone interview with Ivan Braun, Environmental Action Coalition, New York City (June 26, 1985).

43. In response to the reliable supply of containers resulting from deposit laws, recycling industries have rapidly expanded in several states. See SHIREMAN, *supra* note 8, at 193. See also RIG REPORT, *supra* note 17, at 99.

44. OR. REV. STAT. § 459.830(2) (1983).

offer for sale.⁴⁵ Means of encouraging both distributors and dealers to accept a wide range of containers are necessary in order to maximize the convenience of the system for all parties.

Some states specify that dealers must accept beverage containers of the kind, size and brand they have sold in the last sixty days.⁴⁶ This reduces the possibility that dealers will refuse a return simply because they have recently changed distributors.

The Oregon system of bottle certification presents a more comprehensive effort to increase the number of containers accepted by distributors and dealers.⁴⁷ Bottles which are reusable by more than one manufacturer are certified and allowed a lower refund value.⁴⁸ The establishment of this special class of containers assumes that bottlers will encourage a refund system if the cost of producing new bottles is more than the cost of the deposit paid to the retailer for used bottles plus the cost of reusing a bottle. To ensure this cost relationship, and as an economic incentive to bottlers to retrieve not only their own containers but others as well, refund values are set so that bottlers save manufacturing costs if they use and redeem certified bottles.⁴⁹ In turn, once bottlers are willing to redeem all certified bottles, the system envisions that dealers will also become willing to redeem certified containers, even on a brand they do not sell, and thus consumers will encounter less inconvenience in finding a retailer to redeem their container.⁵⁰ The workability of this system is supported by the fact that the return rates for certified containers outstripped the return rates from other containers four years after the passage of the Oregon act.⁵¹ Promoting the use of uniform bottles in this manner may also save costs by facilitating handling and sorting.⁵²

45. *E.g.*, MICH. COMP. LAWS ANN. § 445.572(2) (West Supp. 1985); N.Y. ENVTL. CONSERV. LAW § 27-1007(1) (McKinney Supp. 1984); OR. REV. STAT. § 459.830(1) (1983).

46. CONN. GEN. STAT. ANN. § 22a-245(b) (West 1985); MASS. ANN. LAWS ch. 94, § 323(b) (Michie/Law. Co-op. 1985).

47. OR. REV. STAT. § 459.860 (1983); *See also* MICH. COMP. LAWS ANN. § 445.573 (West Supp. 1985).

48. OR. REV. STAT. § 459.820 (1983) (Certified containers "shall have a refund of not less than two cents" while other containers covered by the statute "shall have a refund value of not less than five cents.")

49. Comment, *State Bottle Bill Model Legislation—Lessons from Prior North Carolina Bills and the Potential Impact of Passage*, 15 WAKE FOREST L. REV. 759, 766-67 (1979).

50. *Id.*

51. Note, *The Return to Returnables: New York Enacts a Bottle Bill*, 4 PACE L. REV. 141, 147 n.33 (1983); *See also* Comment, *supra* note 50, at 767.

52. E. LOWRY, *supra* note 15, at 49-52.

The beverage industry opposes the certified bottle system because it does not allow market forces to select the type of container used.⁵³ Industry proponents claim that the bottle selected for certification is not necessarily the best package for safety, conservation of energy or conservation of natural resources. Since manufactures themselves are responsible for the types of bottles in use, it is clear that these criteria have not been high priority considerations in the past. In any case, these criteria could constitute guidelines of certification and are not therefore fundamentally inconsistent with a certification scheme. Nevertheless, most deposit legislation omits the certified bottle provisions in an attempt to minimize industry opposition.

D. *Difficulties*

Dealers complain of three main problems resulting from the bottle laws. First, handling costs increase as empty containers must be sorted and stored. Second, since most dealers also sell food, storage of empty containers poses a risk of contamination. Finally, normal business is occasionally interrupted when consumers return large number of containers.⁵⁴ These burdens can be minimized by including in the law provisions relating to the establishment of redemption centers, the payment of handling fees to dealers, and dealer authority to refuse unacceptable containers.

Establishing redemption centers separate from retail stores may alleviate the aforementioned problems of sanitation and business interruption. Consequently, several states have set up agencies which supervise the operation of redemption centers.⁵⁵ If, when registering with the agency, the operator of a center certifies that he will accept all containers sold by specified dealers, the state typically allows these dealers to refuse to accept returns

53. *Beverage Container Reuse and Recycling Act of 1977: Hearings on S.276 Before the Subcomm. for Consumers of the Comm. on Commerce, Science and Transportation*, 95th Cong., 2d Sess. 411-13 (1978) (letter of E.G. Anderson, Vice President, Adolph Coors Co.).

54. *Beverage Container Reuse and Recycling Act of 1979: Hearings on S. 50 Before the Senate Comm. on Commerce, Science, and Transportation*, 96th Cong., 2d Sess. 17 (1980) (statement of Charles E. Miller, Oregon Liquor Control Comm.) [hereinafter cited as *Hearings on S. 50*].

55. See, e.g., OR. REV. STAT. § 459.880 (1983); N.Y. ENVTL. CONSERV. LAW § 27-1013 (1984); But See MICH. COMP. LAWS ANN. § 445.572(3) (West Supp. 1985) which allows that redemption centers may be established, though not as a substitute for dealer refunds.

at their stores.⁵⁶ Two disadvantages of redemption centers may prove to be obstacles to their wide implementation. First, dealers who refer returns to such centers lose the opportunity to make additional sales to customers collecting refunds.⁵⁷ Second, existing deposit legislation provides inadequate financing for redemption centers. Currently, they receive only the penny and one-half or so which otherwise goes to the dealer to compensate for the costs of storage and handling.⁵⁸ This amount is far from enough to support the construction or operation of redemption centers. Consequently, they require financial support from an outside source (generally, the affiliated dealers). Redemption centers could, however, expand to handle recycling of metals, glass and paper, in addition to containers. Income from the broader recycling activities combined with reimbursement for handling costs could make operation of centers viable.⁵⁹

Minimum handling fees to be paid by the distributor to the dealer serve to defray some of the costs of storage and sorting about which dealers complain. Hence seven states have adopted handling fee provision.⁶⁰ In Massachusetts, where the deposit ladder extends to the bottler, the bottler pays a 1 cent handling fee to the distributor, who then reimburses the dealer 2 cents for each container.⁶¹ The rationale is that since the party at the end of the deposit ladder (the distributor, in most states) profits in interest while holding the deposits, that party should share the burden imposed upon those participants in the process who do not profit from it.

56. See OR. REV. STAT. § 459.880 (1983); N.Y. ENVTL. CONSERV. LAW § 27-1013 (McKinney 1984).

57. Note, *supra* note 52, at 148.

58. See, e.g., *supra* notes 33-38 and accompanying text.

59. SHIREMAN, *supra* note 8, at 188. A recent California proposal, if enacted, would allow recycling centers to offer consumers a "bonus redemption" based on the value of the scrap metals in the containers returned. This could act as an incentive to consumers to take containers directly to recycling centers. *Accord Reached in Bottle Bill Battle*, RESOURCE RECYCLING 39 (Jan.-Feb. 1986).

60. VT. STAT. ANN. § 1522(b) (1984) (retailer is reimbursed the greater of 2¢ or 20% of the deposit); ME. REV. STAT. ANN. tit. 32, § 1866(4) (Supp. 1982) (dealer is reimbursed 2¢); MASS. ANN. LAWS ch. 94, § 323(c) (Michie/Law Co-op. 1985) (distributor and dealer is reimbursed 1¢); IOWA CODE ANN. § 455 c.2.2 (West Supp. 1985) (dealer is reimbursed 1¢); CONN. GEN. STAT. ANN. § 22a-245(d) (West 1985) (dealer is reimbursed 1¢ per container); DEL. CODE ANN. tit. 7, § 6057(d) (1983) (dealer is reimbursed at least 20% of the deposit amount); N.Y. ENVTL. CONSERV. LAW § 27-1007(3) (McKinney 1984) (dealer is reimbursed 1.5 cents).

61. MASS. ANN. LAWS ch. 94, § 323(d) (Michie Law. Co-op 1985).

Handling fees are usually set at one to two cents per container or as a small percentage of the deposit.⁶² In New York State, the Temporary State Commission on Returnable Beverage Containers recommended that the handling fee be increased from 1.5 cents to only 2 cents per container despite data showing that the weighted average of handling costs is in the 2.5 cents range.⁶³ Five of the nine Commission members explained their decision to reimburse at less than cost as providing an inducement to retailers to maximize efficiency in handling the containers.⁶⁴ Costs, however, vary substantially depending on the location of the retail outlet and the methods used for processing used containers. Arguably the 2.5 cents weighed average costs does not fairly represent the handling costs assumed by retailers at the high-cost end of the spectrum. Rather than establishing handling costs in a weighted average, it has been suggested, therefore, that a dual fee structure (metropolitan versus non-metropolitan areas) should be considered.⁶⁵

Giving dealers the right to refuse to accept broken or dirty containers reduces health and sanitation problems. Hence most states allow refusal on these grounds.⁶⁶ In several states dealers may also set a maximum number of containers which they will accept from any one customer.⁶⁷

E. *Enforcement*

The penalty for violating a deposit law is usually a civil fine of \$50 to \$1,000, varying from state to state.⁶⁸ Some states exact the fine per violation while others charge for every day the viola-

62. See, e.g., OR. REV. STAT. § 459.820 (1983).

63. N.Y. COMM'N FINAL REPORT, *supra* note 34, at 14.

64. *Id.* at 14 (Retailers often take the position that the fee should compensate them directly for the total in-store costs associated with the law).

65. *Id.* at 15.

66. See, e.g., N.Y. ENVTL. CONSERV. LAW § 27-1009(2) (McKinney Supp. 1984); OR. REV. STAT. § 459.840 (3) (1983).

67. For example, Oregon dealers may refuse to accept more than 96 containers returned by any one person during one day if a daily time when larger quantities will be accepted is posted. OR. REV. STAT. § 459.840(4) (1983). In Michigan, a dealer may limit the refunds he pays to \$25 per person daily. MICH. COMP. LAWS ANN. § 445.572(10) (West Supp. 1985).

68. See, e.g., CONN. GEN. STAT. ANN. § 22a-246 (West 1985) (U.S. fines a first-time violator a minimum of \$50 or a maximum of \$100. The fine for a second offense is \$100 minimum, \$200 maximum, and for the third, \$250 minimum, \$500 maximum.) MASS. ANN. LAWS ch. 94, § 327 (Michie/Law. Co-op. 1985) (fines violators \$1,000 maximum per violation).

tion continues,⁶⁹ though it is questionable whether the per diem remedy can be enforced effectively. Violation of the Oregon bottle law is a Class A misdemeanor carrying a potential fine of \$2500 or one year imprisonment.⁷⁰ In addition, the Oregon Liquor Control Commission may revoke or suspend the license of any violator.⁷¹

IV. FEDERAL EFFORTS TO ENCOURAGE RECYCLING

A. *Guidelines under RCRA*

The Resource Conservation and Recovery Act (RCRA) of 1976 authorized the Environmental Protection Agency (EPA) to issue Solid Waste Management Guidelines for Beverage Containers.⁷² These guidelines were finalized by the EPA in 1976.⁷³ One of the Guidelines' objectives, in addition to reducing solid waste and litter, was to conserve energy by more efficient use of material resources. It was thought that this would encourage the establishment of effective beverage distribution and container collection systems,⁷⁴ in preparation for wider application of a deposit system. Federal facilities were a promising testing ground for the effectiveness of deposit laws in regions throughout the country.

The Guidelines, on the books though rarely implemented, are to be applied by all federal agencies when contracting for beverage sales at federal facilities. A five cent minimum deposit is set on all beverage containers, although it is recommended that the deposit amount be adjusted to agree with deposit laws where they are already in effect.⁷⁵ The Guidelines require that a dealer accept empty containers of the kind, size and brand sold by him and that a refund be provided at or close to the place of sale.⁷⁶ Returned refillables are to be returned to the distributor. Nonrefill-

69. See, e.g., N.Y. ENVTL. CONSERV. LAW § 27-1015 (McKinney Supp. 1985) (assesses a civil penalty of a maximum of \$500 each day the violations continue); DEL. CODE ANN. tit. 7, § 6060(a)(1) (1983) (provides for a minimum fine of \$250, maximum \$1,000 for each completed violation. However, if there is a substantial likelihood that the violations will reoccur, a permanent or preliminary injunction or temporary restraining order may be sought in the Court of Chancery).

70. OR. REV. STAT. §§ 459.992(5), 161.615, 161.635 (1983).

71. *Id.* § 459.992(6) (1983).

72. 42 U.S.C. §§ 6907, 6964 (1983).

73. 41 Fed. Reg. 41,203 (19,176) (codified at 40 C.F.R. § 244).

74. 40 C.F.R. § 244.100(c)(1) (1985).

75. *Id.* § 244.100(c)(3).

76. *Id.* § 244.201(c) and (d).

lables are to be returned to the distributor, or recycled where markets for recyclable materials are available.⁷⁷ The Guidelines suggest that the vendor do business only with distributors who would accept the returned containers, reimbursing the distributor for the refund value of the containers and reusing or recycling them.⁷⁸

The Guidelines recognize that in order to accomplish the objectives of the Act, the following conditions are necessary: consumers must continue to purchase beverages at federal facilities; empties must be returned and then reused or recycled; finally, the costs of implementation must not be prohibitive.⁷⁹ If any one of the conditions is not present at a given facility, the agency is allowed to refuse to implement the deposit system.⁸⁰

The Guidelines gave the agencies until October 1977 to decide whether or not to implement the system. Agencies took much longer in responding, despite an Executive Order which spelled out the responsibility of federal facilities to comply with federal environmental laws.⁸¹ As of March 1979 only 14 out of 52 agencies reported that they were implementing the Guidelines agency-wide.⁸²

More than half of the agencies were under the jurisdiction of the General Service Administration which decided in May of 1979 not to implement the Guidelines. The decision was based on test projects at 12 sites, the results of which revealed opposition among the vendors due to inconvenience and difficulty in finding markets for the collected containers.⁸³

The Guidelines failed tests conducted by the Department of Defense as well. After implementation for one year at ten military bases the Department found that beverage sales fell 13 – 56%.⁸⁴

77. *Id.* § 244.201(f).

78. *Id.* § 244.201(e).

79. *Id.* § 244.100(d)(1).

80. *Id.* § 244.100(d)(2).

81. Exec. Order No. 12,088, *reprinted in* 3 C.F.R. 243 (1978).

82. COUNCIL ON ENVIRONMENTAL QUALITY, TENTH ANNUAL REPORT 302 (December 1979).

83. *Id.*, citing Communication from the U.S. General Services Administration (July 13, 1979).

84. *Id.* citing U.S. DEPARTMENT OF DEFENSE AND U.S. ENVIRONMENTAL PROTECTION AGENCY JOINT EXECUTIVE TASK FORCE, SOLID WASTE MANAGEMENT, AND FRANKLIN ASSOCIATES, LTD., REPORT TO THE SECRETARY OF DEFENSE ON DEPARTMENT OF DEFENSE TEST OF ENVIRONMENTAL PROTECTION AGENCY SOLID WASTE MANAGEMENT GUIDELINES FOR BEVERAGE CONTAINERS 4-28 (Mar. 1979).

When it was convenient, military posts residents chose to avoid paying deposits by buying beverages elsewhere. The Department of Defense declined to administer the Guidelines because of the decreased sales.⁸⁵

It does not appear that the goal of developing effective beverage distribution and container collection systems has been met. Implementation would have to be on a broader scale and more permanent basis to prompt significant industry response. Nor did the Guidelines provide an effective testing ground for federal deposit legislation. Effective tests would have studied deposits over a longer time period, after distribution and collection systems had developed. Instead, the deposits were evaluated and rejected within the time frame normally allowed for transition to a new system.

B. *Proposed Federal Legislation*

National beverage container legislation has been proposed in every Congressional session since 1971.⁸⁶ Until 1977 it took the form of a ban on nonreturnable beverage containers.⁸⁷ Since that year, the legislation has favored a deposit system to promote the reuse and recycling of beverage containers.⁸⁸ Senator Hatfield of

85. The National Park Service, however, had, as of 1977, set up deposit systems in more than two hundred park areas. COUNCIL ON ENVIRONMENTAL QUALITY, EIGHTH ANNUAL REPORT 52 (Dec. 1977).

86. See *infra* notes 88-89.

87. See, e.g., H.R. 17,805, 91st Cong., 2d Sess. (introduced May 26, 1970 by Rep. Gilbert); H.R. 18,733, 91st Cong., 2d Sess. (introduced Aug. 3, 1970 by Rep. Vigorito); H.R. 18,988, 91st Cong. 2d Sess. (introduced Aug. 13, 1970 by Rep. Vigerito); H.R. 18,999, 91st Cong., 2d Sess. (introduced Aug. 13, 1970 by Rep. Johnson); H.R. 19,378, 91st Cong., 2d Sess. (introduced Sept. 22, 1970 by Rep. Andrews); H.R. 19,435, 91st Cong., 2d Sess. (introduced Sept. 23, 1970 by Rep. Lowenstein). These bills were identical in substance. Each was referred to the Interstate and Foreign Commerce Committee and never reported out. See also H.R. 12,976, 92nd Cong., 2d Sess. (introduced Feb. 7, 1972 by Rep. Whalley), which was also never reported out of the Interstate and Foreign Commerce Committee.

88. See, e.g., H.R. 936 and H.R. 937, 95th Cong., 1st Sess. (introduced Jan. 4, 1977 by Rep. Jeffords); H.R. 5582, 95th Cong., 1st Sess. (introduced March 24, 1977 by Rep. Jeffords); H.R. 7155, 95th Cong., 1st Sess. (introduced May 12, 1977 by Rep. Jeffords); H.R. 7886, 95th Cong., 1st Sess. (introduced Aug. 4, 1977 by Rep. Jeffords); H.R. 8788, 95th Cong., 2d Sess. (introduced Aug. 4, 1977 by Rep. Jeffords); H.R. 8856, 95th Cong., 1st Sess. (introduced Aug. 4, 1977 by Rep. Ichord); H.R. 10,047, 95th Cong., 1st Sess. (introduced Nov. 4, 1977 by Rep. Jeffords); H.R. 13,393, 95th Cong., 2d Sess. (introduced July 10, 1978 by Rep. Jeffords). These bills were identical in substance. Each was referred to the Interstate and Foreign Commerce Committee which held hearings in 1978. S. 276, 95th Cong., 1st Sess. (introduced Jan. 18, 1977 by Sen. Hatfield) was referred to the Committee on Commerce, Science and Transportation which held hearings in 1978. But see

Oregon and Representative Jeffords of Vermont have been the most consistent sponsors of the bills in their respective houses. Committee hearings were held in 1975, 1978, 1980, and 1981 but the bills have never been reported by committee.⁸⁹ As a result, there has been no debate on the floor of either house.⁹⁰

While reporting the findings of the Resource Conservation Committee,⁹¹ Barbara Blum, acting Chairperson of the Committee, was asked why she supposed that national deposit legislation had not been passed when reports on it were so favorable. Although not speaking on the basis of official findings by the Committee, she offered a knowledgeable opinion to the effect that the failure was due to the strength of the anti-deposit lobby.⁹² The lobby wields a \$20 million budget⁹³ provided by the can and bottle manufacturers, the beer and soda industries, certain supermarket chains, and large unions of steel, glass and aluminum workers.⁹⁴ The soft drink industry, in particular is influential in party politics at the national level.⁹⁵

H.R. 873, 95th Cong., 1st Sess. (introduced Jan. 4, 1977 by Rep. Fish) which proposed a ban on the sales of non-returnable containers. *See also* H.R. 1416, 96th Cong., 1st Sess. (introduced Jan. 24, 1979 by Rep. Ichord); H.R. 2812, 96th Cong., 1st Sess. (introduced by Jeffords). These bills were identical in substance. Each was referred to the Interstate and Foreign Commerce Committee and never reported out.

89. *See Waste Control Act of 1975: Hearings before the Subcomm. on Transportation and Commerce of the House Interstate and Foreign Commerce Comm.*, 94th Cong., 1st Sess. (1975); *Mandatory Deposits on Beverage Containers: Oversight before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce*, 95th Cong., 2d Sess. (1978); *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. (1978) [hereinafter cited as *Hearings on S. 276*]; *Beverage Container Reuse and Recycling Act of 1979: Hearings on S. 50 before the Senate Comm. on Commerce, Science, and Transportation*, 96th Cong., 2d Sess. [hereinafter cited as *Hearings on S. 50*] (1980); *Beverage Container Reuse and Recycling Act of 1981: Hearings on S. 709 before the Senate Comm. on Commerce, Science and Transportation*, 97th Cong., 1st Sess. (1981).

90. *See, e.g.*, S. 709, 97th Cong., 1st Sess., 127 CONG. REC. S2178 (daily ed. Mar. 12, 1981). It was thought that the Beverage Container Reuse and Recycling Act had its best chance of passage in 1981.

91. *See infra* notes 100-112.

92. *Hearings on S. 276, supra* note 90, at 45.

93. 125 CONG. REC. S5191 (daily ed. Jan. 15, 1979) (reprinting *Lobby that Battles the Bottle Bills*, READERS DIGEST, May 1976).

94. *Id.*

95. The Carter administration, which usually supported conservation measures, was uncharacteristically silent about the bottle bill. Former Oregon Governor Tom McCall believed that the fact that six former Coca-Cola officials held top positions in the administration, including that of Secretary of Energy, offered an explanation. *Hearings on S. 50, supra* note 90, at 11. The political influence of Coca-Cola in the Democratic party was evident as long ago as World War II, when Coca-Cola was exempted from sugar ra-

Proponents of deposit legislation cannot afford to ignore industrial opposition. Industry has supported proposals intended to reduce litter and increase recycling.⁹⁶ These provisions generally involve a broadly based tax on consumer goods.⁹⁷ Although such a dedicated litter tax may be an effective fund raising mechanism, it would have no direct effect on resource conservation, because it does not necessarily provide an incentive to reduce the consumption of materials or increase recycling.⁹⁸ The industry favors litter taxes because they protect profits derived from the production of large numbers of beverage containers. The container manufacturers are especially threatened by deposit laws aimed at encouraging refillables. It may be necessary for bottle bill supports to compromise the goals of the legislation. Although recycling cannot equal the exceptional energy savings offered by refillable bottles, the benefits of recycling aluminum cans are at least an improvement over manufacturing from raw materials. Such a compromise might enlist the support of the container manufacturers, making passage and effective implementation of the legislation possible.

The Resource Conservation and Recovery Act created a special interagency Cabinet-level group called the Resource Conservation Committee.⁹⁹ The Committee was to study various incentives and disincentives to resource conservation.¹⁰⁰ The subject of its first study was federal beverage container legislation due to the immediacy of the question pending before Congress.¹⁰¹

tioning. Later, Pepsi-Cola became the first American consumer product sold in the Soviet Union through its alliance with the Republicans and Richard Nixon. During the Carter administration, Coca-Cola was awarded the China market. The companies exchange campaign strategists with their affiliated parties today. Eichenwald, *Soda, the Life of the Party*, N.Y. Times, July 16, 1985, at A23, col. 1.

96. See, e.g., WASH. REV. CODE ANN. §§ 70.93.010-910 (1975), the Model Litter Control Act, which assesses a container tax to be spent on litter cleanup and officially requests the active cooperation of industry in increasing recycling.

97. See, e.g., VA. CODE 58.1-1706 through -1709 (1984).

98. RESOURCE CONSERVATION COMMITTEE, CHOICES FOR CONSERVATION FINAL REPORT TO THE PRESIDENT AND CONGRESS 103 (1979) [hereinafter cited as RCC FINAL REPORT].

99. Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6982(j)(1) (1982). Members included the Secretaries of Commerce, Labor, Treasury, and the Interior, the Administrator of the EPA, the Chairman of the Council on Environmental Quality, and representative from the Department of Energy, Office of Management and Budget, and the Council of Economic Advisors.

100. *Id.*

101. Resource Conservation Committee, Committee Findings and Staff Papers on National Beverage Container Deposits (1978).

Although the study projected that deposit laws would achieve the intended goals,¹⁰² the Committee deferred a decision on recommending deposit legislation.¹⁰³ Several reasons for the delay were cited. Two committee members wanted to wait to assess the effect of bottle laws in states where they had recently been passed.¹⁰⁴ The Council on Environmental Quality and the Labor Department were conducting studies of how the impact on local labor markets might be mitigated.¹⁰⁵ Also, in its second study, the Committee evaluated solid waste disposal charges and compared the effects of disposal charges with those of beverage container deposits.¹⁰⁶ Even after these studies were completed, however, no recommendation was made. The interesting feature of the Committee's efforts is that, despite the priority given to bottle bills, no conclusive statement resulted. Nevertheless, the material produced in the study should prove a valuable resource in further legislative efforts.¹⁰⁷

The beverage container deposit study included the development of model legislation. The model bill was based on the Hatfield and Jeffords bills, with minor modifications. It was to apply initially to beer and carbonated soft drinks packaged in sealed containers but could be extended by the Administrator of the EPA to include other beverages or containers.¹⁰⁸ The deposit minimum was set at 5 cents and tied to the Consumer Price Index to avoid dilution of the incentive effect in case of inflation.¹⁰⁹ Deposits were to initiate between the distributor and the wholesaler rather than between the dealer and the distributor.¹¹⁰ None of these recommendations were followed when the Beverage Container Reuse and Recycling Act was resubmitted in 1981.¹¹¹

102. RCC FINAL REPORT, *supra* note 99, at 94-95.

103. *Id.* at 96-98.

104. Maine, Michigan, Connecticut, Iowa and Delaware enacted bottle laws between 1976 and 1979. See Statutes cited *supra* note 31.

105. *Hearings on S. 276, supra* note 90, at 47 (statement of Barbara Blum, Deputy Administrator, EPA).

106. The conclusion reached after the study of disposal charges was that not enough information was available to make a credible evaluation. RCC FINAL REPORT, *supra* note 99, at 120.

107. In addition to the publications cited above, *Committee Findings and Staff Papers, supra* note 102 and *RCC Final Report, supra* note 99, the transcript of a public meeting on beverage container legislation held October 19, 1977 is available from the Office of Solid Waste.

108. RCC FINAL REPORT, *supra* note 99, at 96-97.

109. *Id.*

110. *Id.*

111. S. 709, 97th Cong., 1st Sess., 127 CONG. REC. S2156 (daily ed. Mar. 12, 1981).

C. *Constitutionality of Federal Container Regulation*

The Solid Waste Management Guidelines for Beverage Containers issued by the EPA were challenged in *United States Brewers Assoc. v. Environmental Protection Agency*.¹¹² The District of Columbia Circuit Court found the Guidelines valid because they fell squarely within the Congressional mandate of the 1976 Resource Conservation and Recovery Act.¹¹³ In response to the plaintiff's argument that the 1976 Act impermissibly regulates private commercial operations, the court ruled that the Guidelines imposed no duty on vendors to do business with the federal government, rather, that those who choose to do so must comply with certain requirements.¹¹⁴ This case does not address the constitutionality of deposit legislation that would apply to all beverage sales.

The threshold inquiry in determining the constitutionality of deposit legislation must be whether the proposed regulation deprives any person of a constitutionally protected right. Industry groups have challenged bottle bills on the grounds that they violate the equal protection and due process clauses of the Fourteenth Amendment.¹¹⁵ They argue that to single out beverage containers for special treatment not accorded other containers is an arbitrary and unreasonable classification.¹¹⁶ Such challenges have been unsuccessful before the state courts applying the rational basis test,¹¹⁷ the same standard used by the Supreme Court to evaluate allegedly discriminatory classifications.¹¹⁸ Under the rational basis standard, a court will not overrule legislative action which a reasonable legislature might conceivably have thought lead to an acceptable end.¹¹⁹ Bottle bills satisfy the rational basis standard because achieving the goal of eliminating beverage containers from litter alone would be an acceptable end. That the

112. 600 F.2d 974 (D.C. Cir. 1979).

113. *Id.* at 984.

114. *Id.*

115. *American Can Co. v. Oregon Liquor Control Comm'n*, 15 Or. App. 618, 517 P.2d 691 (Or. Ct. App. 1973).

116. *American Can*, 15 Or. App. at 645, 517 P.2d at 704.

117. *Id.* No case has challenged the constitutionality of state deposit laws since the *American Can* decision.

118. The alternative standard, that of strict scrutiny, is reserved for legislation which violates fundamental rights. It has never been applied to economic regulation. Comment, *Beverage Container Legislation: A Policy and Constitutional Evaluation*, 52 TEXAS L. REV. 351, 365 (1974).

119. *McGowan v. Maryland*, 366 U.S. 420 (1961).

classification discriminates by dealing with only a part of the problem does not invalidate it.¹²⁰

State bottle bills do not violate constitutional rights.¹²¹ The question remains whether Congress has the power to pass a uniform statute. This power may be derived from the Commerce Clause, which expressly allows Congress to regulate interstate commerce.¹²² There appear to be few if any limits on congressional authority to regulate industrial activity that sends products into interstate commerce.¹²³ Clearly, containers distributed nationwide lie within congressional reach. Those containers that do not move interstate should fall within the federal commerce power because of their effect on national commerce. The court has included in this classification any activity having any effect, direct or indirect, on national commerce.¹²⁴ Local distribution of beverage containers would impact the national distribution of beverage containers and therefore national commerce.

V. CONCLUSION

Beverage container deposit legislation provides a means of conserving energy and controlling litter. Such legislation should therefore be promoted despite industry and labor opposition. New bills should be drafted in the light of evidence that plastic containers are an increasing portion of the container mix. Such legislation should also carefully consider how to best design the deposit ladder so as to encourage recycling. In addition, provisions requiring or motivating dealers and distributors to redeem more than just their own containers should be developed. Finally, close monitoring of results of enacted state legislation

120. *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955) ("reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind."); *Railway Express Agency v. New York*, 336 U.S. 106, 110 (1949) ("It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.")

121. *See Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (ban on plastic milk containers as distinguished from non-plastic containers did not violate the Equal Protection Clause because it was rationally related to the achievement of state goals to improve waste management and increase conservation.)

122. U.S. CONST. art. I, § 8, cl. 3.

123. *See, e.g., NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *U.S. v. Darby*, 312 U.S. 100 (1941).

124. *Wickard v. Filburn*, 317 U.S. 111 (1942). The court ruled that growing wheat for local consumption could be regulated by Congress because it affected the interstate market demand for wheat.

should be required since such information is useful both in fine tuning existing legislation and improving the likelihood that new legislation will be adopted.

APPENDIX Comparison of Bottle Bills in Nine States

STATE (in order of implementation)	AMOUNT OF DEPOSIT	HANDLING FEE	ADMINISTERING AGENCY	DEPOSIT INITIATION LEVEL	PENALTIES	SPECIAL FEATURES
OREGON effective 1972	5 cents minimum; 2 cents for certified containers	—	Liquor Control Commission	retailer to distributor	suspension of revocation of license; Class B Misdemeanor	limits returnable to 96 per person per day
VERMONT effective 1973	5 cents minimum	greater of 2 cents to or 20% of deposit	Department of Environmental Conservation	consumer to retailer	maximum fine of \$1,000 for each violation	— educational program — bans sale of non- refillable glass containers
MICHIGAN effective 1978	10 cents minimum; 5 cents for certified containers	—	Liquor Control Commission	retailer to distributor	— fines of \$100- \$1,000 per each day of violation plus costs of prosecution	not required to accept returnable for a refund in excess of \$25 per day
MAINE effective 1978	5 cents minimum	2 cents	Department of Agriculture	retailer to distributor	maximum fine of \$100	limits returnables to 240 per person per day
IOWA effective 1979	5 cents minimum	1 cent	Department of Water, Air and Waste Management	retailer to distributor	simple misdemeanor	— deposit required on alcoholic liquor bottles — \$100,000 paid annually for treatment of alcoholics
CONNECTICUT effective 1980	5 cents minimum	1 cent	Department of Environmental Protection	retailer to distributor	1st offense: \$50-\$100 2nd offense: \$100-\$200 3rd offense: \$250-\$500	exempts containers sold on interstate passenger carriers

APPENDIX—Continued

STATE (in order of implementation)	AMOUNT OF DEPOSIT	HANDLING FEE	ADMINISTERING AGENCY	DEPOSIT INITIATION LEVEL	PENALTIES	SPECIAL FEATURES
DELAWARE effective 1981	5 cents minimum	20% of deposit	Department of Natural Resources and Environmental Control	retailer to distributor	fine of \$250-\$1,000, injunction or TRO if likelihood of recurrence, monetary damages for continuing violations	— limits returnables to 19 per person per week — educational program — persons under 20 cannot redeem beer or other alcoholic beverage containers
MASSACHUSETTS effective Jan. 1983	5 cents minimum for less than 32 oz.; 10 cents minimum for 32 oz. or more	1 cent	Department of Environmental Affairs	distributor to bottler	maximum fine of \$1,000	exempts containers sold on interstate passenger carriers
NEW YORK effective Sept. 1983	5 cents minimum	1.5 cents	Department of Environmental Conservation	retailer to distributor	maximum fine of \$500 plus additional fine of \$500 per each day violation continues	requires temporary state commission to study effects

Source: Note, *Return to Returnables: New York Enacts a Bottle Bill*, 4 Pace L. Rev. 141, 166 (1983).