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Environmental Law—The Control of Nonreturnable Beverage Containers, Proposed Legislation

I. NATURE OF THE PROBLEM

A survey of litter found along a mile of two-lane highway in Kansas revealed that 590 beer cans, 130 pop bottles and 120 beer bottles had been discarded by passersby.¹ In the spring of 1970 volunteers in Vermont collected 40,000 cubic yards of litter from the state roadsides, of which 90 per cent was nonreturnable bottles and cans.² According to the Crusade for a Cleaner Environment, it costs \$1.5 billion a year to dispose of cans, nonreturnable bottles, and plastic containers.³ These figures indicate that the surface environment is threatened by two different, but solvable problems—litter and solid waste disposal.

II. PRESENT RESPONSES TO THE PROBLEM

A. Industry

The container manufacturers approach the mounting waste menace with the "conviction that the only viable long-range solution is the salvage and recycling of most components of refuse."⁴ Similarly, both the glass and can manufacturers adhere to the same policy in the area of litter prevention and control. Through pronouncements of Keep America Beautiful, an interest group founded and funded by industry, the policy has been laid out: (1) public education; (2) enactment, enforcement and publicity of adequate anti-littering laws; and (3) provision of adequate devices for collection and disposal of litter, such as equipment for picking up litter, trash receptacles, and litter bags.⁵

¹ U.S. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, PUB. NO. 1855, *THE ROLE OF PACKAGING IN SOLID WASTE MANAGEMENT 1966-1976*, at 117 (1969) (hereinafter cited as HEW).

² Newsweek, *Return to Returnables?*, Sept. 21, 1970, at 70.

³ N. Y. Times, Sept. 9, 1971, § 1, at 45, col. 1. The greatest problem with solid waste disposal lies in collection, typically the most cumbersome and expensive aspect of disposal, e.g., 75% of total disposal costs nationwide and 80% of the cost in New York City. Note, *Legal Framework of Solid Waste Disposal*, 3 IND. LEGAL F. 415, 423 (1970). In York, a city of 204,000, it was reported that the city could save as much as 1.2 million dollars a year in sanitation costs if it did not have to transport 75 to 100 tons of bottles and cans a week to the dump. N. Y. Times, Sept. 9, 1971, § 1, at 59, col. 1.

⁴ NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL, *GLASS CONTAINERS* 6 (1971).

⁵ GLASS CONTAINER INDUSTRY POLICY, *SOLID WASTE MANAGEMENT AND LITTER CONTROL* (1971).

In both areas industry's policies are inadequate. Although recycling appears to be the most practical solution in solid waste management and resources conservation, the present lack of public interest keeps recycling minimal. In rough figures supplied by glass manufacturing sources, approximately 168 million bottles and jars were recycled in 1971.⁶ The estimated total shipments of glass containers for end use in 1970 was almost 35 billion, thus only one-half percent of the bottles produced were recycled.⁷

In litter control, industry results are far from satisfactory. First, Keep America Beautiful has not been successful in public education:

Keep America Beautiful and other organizations have existed for some years through the support of industry. The primary thrust of their activity is directed at litter. To date these industry efforts taken as a whole are nominal. In some instances, the principal aim of industry action appears to be to *counteract unfavorable legislation* aimed at a particular material or container type.⁸

Second, legislation supported by industry is ineffective:

The penalties against abandonment of smaller articles fail for several reasons. Though nearly every state makes littering a misdemeanor, the statutes are relatively ineffective. The main reason for this ineffectiveness lies in the fact that enforcement is virtually impossible due to the size of the product which lends itself to quick and insidious abandonment. To enforce statutes as they now exist would require an army of enforcement officials. Compared to the manpower needed to enforce the statutes, it would probably be easier to increase the size of the sanitation departments and collect the waste.⁹

B. Government

In 1967 alone, container legislation was proposed in nineteen states¹⁰ The majority of the proposed bills were directed toward bot-

⁶ NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL, GLASS CONTAINERS 13 (1971).

⁷ HEW at 37.

⁸ *Id.* at 151 (emphasis added).

⁹ Note, *Control of Redeemable Solid Waste: A Proposed National Bill*, 5 SUFFOLK L. REV. 962, 968-9 (1971).

¹⁰ The following is a list of representative bills proposed in 1967, none of which was enacted: H.B. 653, ALA. (ban on non-returnable bottles); S.B.

tles in an effort to control litter. The methods of control proposed were either preventive,¹¹ *i.e.* a ban on nonreturnable bottles and cans; or remedial, *i.e.* a tax on nonreturnable items with proceeds going to litter control.

These legislative efforts, while attempting to deal with litter, overlooked basic factors not only in the litter area, but also with solid waste disposal. Litter can not be stopped by taxing the litterer, and recycling will not work without a deside on the part of the consumer to turn in his recyclable items.

Any legislation, to be effective, must ban nonreturnable containers of a specific type as well as create an incentive to bring the packaging material out of the solid waste stream. Further, such legislation, to be workable, must: (1) prohibit the use of all non-returnable containers intended for use with a certain commodity; (2) impose a sufficiently high deposit compelling the consumer to return the used container; (3) ban the appearance of containers of new material to replace those banned; (4) anticipate and therefore deal adequately with problems of term definition, so that the spirit of the law will be followed; and (5) provide for convenience to consumers on the return, and prevent inundation from outside the state of spurious containers.

The most important of these characteristics is the deposit. The amount must be sufficiently high to cause an affluent population to return its used containers. As a New Jersey legislator recently stated, "people will tend to think twice before they throw an empty beer or

1157, CONN. (ban on nonreturnable beverage bottles and aluminum cans); H.B. 1326, KAN. (1c tax on nonreturnables); H.B. 892, ME. (ban on nonreturnable bottles); H.B. 2893, MASS. (ban on use of nonreturnable bottles); H.B. 2416, MICH. (5c deposit on nonreturnable bottles); H.B. 2127, MINN. (3c deposit on bottles and cans); H.B. 552, MO. (1c tax on cans and bottles); H.B. 462, MONT. (1c deposit on cans and bottles); LB.B. 281, NEB. (1c tax on beer cans and bottles); H.B. 677, N.H. (ban on nonreturnable beer and soft drink bottles and cans); H.B. 215 N.M. (4c deposit on cans and bottles); S.B. 4190, N.Y. (1 mil tax on nonreturnable containers, 2 mil tax on tap-top containers); S.B. 146, N.D. (deposit on all cans and bottles); H.B. 514, OKLA. (ban of soft drinks on Capitol grounds); S.B. 1147, PA. (ban on nonreturnable bottles); H.B. 507, S.D. (ban on beer in cans and nonreturnable bottles); H.B. 131, WASH. (2c deposit on beer and soft drink bottles); H.B. 559, WISC. (1c redemption on labels of beer cans and bottles). HEW at 165.

¹¹ An extreme example of such legislation occurred in Oberlin, Ohio. In September, 1971, the town council banned the sale of nonreturnable beer and soft drink containers, establishing a \$100 fine and up to 30 days in jail for possession or sale of such bottles. N. Y. Times, Sept. 19, 1971, § 1, at 66, col. 2 (emphasis added).

soda bottle (with a high deposit) out of their car window."¹² In addition, a high bounty paid by the consumer on purchase and redeemed on return "could result in the recycling of much glass, aluminum, and steel if local waste disposal agencies, scrap dealers, and scrap users cooperated."¹³

III. PROPOSED STATUTE

In 1971, an attempt was made in West Virginia to ban "throw away" containers, omitting any mention of a tax or deposit.¹⁴ Had this bill been enacted in its original form it would have met none of the five criteria for effective container legislation.¹⁵

What is called for is comprehensive legislation designed to deal effectively with solid waste disposal and litter. Such legislation has been enacted in Oregon.¹⁶ It is designed to affect every beverage container sold or offered for sale in Oregon, by placing a refund value of not less than five cents on each container.¹⁷ The Oregon statute is a model of workable legislation brought about by the Oregon Environmental Council and other civic groups believing that containers with a high enough value will not be discarded along the roadside.¹⁹ The intent of the legislation is essentially to expand the refund system to include cans and bottles which are presently considered "throw-away" containers. The present Oregon method which is used by both bottlers of soft drinks and beer is to charge the distributor for the value of the deposit which is eventually passed on to the consumer. This additional mark-up is required to pay for the extra cost of returning cans to the distributors. This further economic burden imposed on the use of metal containers will provide an additional incentive for consumers to purchase re-usable containers.²⁰ Thus

¹² N. Y. Times, Sept. 9, 1971, § 1, at 45, col. 2.

¹³ HEW at 166.

¹⁴ H.B. 880, 60th W. Va. Leg., Reg. Sess. (1971).

¹⁵ H.B. 880 would have imposed a ten dollar fine for each sale or distribution of a "throw-away" container intended to be used for beer or bottled soft drinks. This legislation would have been ineffective because it was at least ambiguous to question whether all non-returnable beverage containers would have been banned, a dilemma which can be resolved by specific term definition. Additionally, the legislation did not provide for deposit or a convenient means for the consumer to return the used container.

¹⁶ Ore. Rev. Stat. § 459.810 (1971).

¹⁷ *Id.* § 459.810 (2).

¹⁸ *Id.* § 459.820 (1).

¹⁹ N. Y. Times, June 6, 1971, § 1, at 57, col. 1.

²⁰ Letter from Don Waggoner, President Oregon Environmental Council to Fred A. Jesser, III, March 17, 1972.