New York State Bar Association
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

Memorandum in Support

ENVIRONMENTAL LAW SECTION

ELS MEMORANDUM #4 June 13, 2007

S. 5850	By:	Senator Marcellino
A. 8044	By:	M. of A. Sweeney
	Senate Committee:	Environmental Conservation
	Assembly Committee:	Ways and Means
	Effective Date:	In accordance with Section 18 of the legislation

AN ACT to amend the environmental conservation law, in relation to Article 27, Title 10, the New York State Returnable Container Act.

LAW AND SECTIONS REFERRED TO: Article 27 of the environmental conservation law

MEMORANDUM PREPARED BY THE ENVIRONMENTAL LAW SECTION

THE SECTION SUPPORTS THIS LEGISLATION

The Environmental Law Section supports legislation that proposes certain significant amendments to the New York State Returnable Container Act, more commonly known as the "Bottle Bill." The Section supports legislation that will amend the current Bottle Bill to expand its coverage, effect the transfer of unclaimed deposits to the State, raise the handling fee, lower the threshold for certain New York City retailers, and create incentives for redemption centers.

The Bottle Bill amendments supported by the Section would:

1. Expand the definition of beverages covered under the Bottle Bill to include all beverages covered under the current law, plus non-carbonated beverages, with the exception of milk and dairy products, infant formula, alcoholic beverages other than beer and malt beverages, nutritional supplements, syrups, concentrates, soups, powdered and frozen beverages, and liquid prescription or over-the-counter drugs.

2. Require deposit initiators (e.g., bottler or distributor) to transfer unclaimed deposits to the State Environmental Protection Fund. The current law is silent as to unclaimed deposits. The amendment we support would represent a departure from the current practice whereby beverage distributers and bottlers have kept the unclaimed deposits. According to NYSDEC redemption statistics for 2003-2004, it is conservatively estimated that unclaimed deposits have amounted to more than $1.5 billion since enactment of the Bottle Bill.

Opinions expressed are those of the Section/Committee preparing this memorandum and do not represent those of the New York State Bar Association unless and until they have been adopted by its House of Delegates or Executive Committee.

3. Increase the handling fee to be paid by deposit initiators to retailers or redemption centers from 2 cents per container to 3.5 cents per container.

4. For certain smaller New York City retailers, limit the number of returns qualifying stores must accept to 72 containers per person per day.

The Bottle Bill was enacted in 1983 and furnished a practical and long-awaited solution to the tenacious problem of litter caused by bottles and cans. Weinberg, McKinney's Practice Commentary to ECL § 27-1001. In Section 27-1001 the Legislature expressed the purpose of the bill, which still resonates today. Section 27-1001 states:

> The legislature hereby finds that litter composed of discarded soft-drink, beer and ale bottles and cans is a growing problem of state concern and a direct threat to the health and safety of the citizens of this state. Discarded beverage bottles and cans create a hazard to vehicular traffic, a source of physical injury to pedestrians, farm animals and machinery and an unsightly accumulation of litter which must be disposed of at increasing public expense. Beverage bottles and cans also create an unnecessary addition to the state's and municipalities' already overburdened solid waste and refuse disposal systems. Unsegregated disposal of such bottles and cans creates an impediment to the efficient operation of resource recovery plants. Further, the legislature finds that the uninhibited discard of beverage containers constitutes a waste of both mineral and energy resources. The Legislature hereby finds that requiring a deposit on all beverage containers, along with certain other facilitating measures, will provide a necessary incentive for the economically efficient and environmentally benign collection and recycling of such containers. ECL § 27-1001.

Since its enactment, the Bottle Bill has been very effective in reducing litter and increasing recycling rates. According to the New York Public Interest Research Group (NYPIRG), since 1982 more then 90 billion containers bearing a 5¢ deposit have been redeemed and more than 6 million tons of plastic, glass and metal have been kept out of landfills and incinerators.

Since the Bottle Bill's original enactment however, much has changed. The array of beverages available to consumers has expanded exponentially, and consumer drinking habits have changed significantly in response to the wider selection of available beverages. Today, the fastest growing segments of the convenience industry are bottled water (in all its variations), tea, sports drinks and so-called "energy" drinks – none of which require a deposit. NYPIRG states that these beverages, which barely existed when the bottle bill was first passed, now account for 22% of the beverage market. In addition, NYPIRG states that recent surveys have shown that non-redeemable containers make up nearly two-thirds of the beverage containers now piling up on New York's shorelines and up to 11% of all litter in some communities.

Expanding the definition of "beverage" has the potential to result in up to 2.6 billion additional bottles and cans returned and recycled. This amount is extrapolated from the New York State Department of Budget projections of unclaimed deposits which are expected to total $100 million per year, according to annual redemption statistics reported by the NYSDEC. Some

characterize that estimate as conservative. The Container Recycling Institute, which uses a blend of NYSDEC redemption rate data and beverage marketing data, estimates that actual unclaimed deposits would exceed $180 million annually.

The amendments endorsed by this Section would build upon what is already one of New York State's most successful environmental laws. The expanded ambit of the bottle bill is likely to significantly enhance the environmental benefits of the current law: prevention of litter, increase in recycling rates, reduction of waste stream, and the complementing of existing curbside recycling programs. Also, in addition to the financial incentive to recycle spurred by the deposit, such amendments to the bottle bill would further enhance recycling incentives by making available financial and technical assistance to both non-profit and for-profit redemption centers.

While there is little dispute about the potential benefits to the environment from an expanded Bottle Bill, the shifting of the unclaimed deposits from the beverage industry to the State has generated significant controversy. This Section endorses an amendment that would require that unclaimed deposits be transferred to the State Environmental Protection Fund. Governor Spitzer proposed that this revenue stream be used to create $100 million in annual funding for open space, parks, farmland preservation, river clean-ups, recycling programs, waste prevention and other environmental programs. This approach would follow the lead of other states (e.g., Maine, Massachusetts, Michigan, California and Hawaii) which take back unclaimed deposits.

The beverage wholesalers, breweries, supermarket and drug store owners have opposed amendments such as those endorsed by this Section. They characterize such amendments as a tax. They also state that smaller retailers don't have the space to process the anticipated increased volume of returns. Opponents also predict that such amendments would drive up prices and that the price of a bottle of water, juice or tea could increase by 15¢ once the deposit and the costs of additional sorting and transport are factored in.

But one-way, throw-away, no-deposit, no-return beverage containers may be seen as a hidden tax themselves since State citizens are now absorbing the cost of disposing of beverage containers not currently covered by the Bottle Bill. Moreover, as the value of sustainability continues to grow, the trend both in Europe and the United States is to require manufacturers to bear the responsibility for the waste resulting from the products they create (e.g., consumer electronics). Hence, it makes sense that the beverage producers and their consumers should bear the cost of their product's waste instead of taxpayers and municipalities.

For the reasons stated above, the Environmental Law Section **SUPPORTS** legislation to amend the Bottle Bill as outlined above.

Memorandum prepared by: The New York State Bar Association Environmental Law Section.

Section Chair: Walter Mugdan, Esq.