

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 229

Short Title: Solid Waste Advance Disposal Fee.

(Public)

Sponsors: Senator Odom.

Referred to: Environment and Natural Resources.

March 13, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN ADVANCE DISPOSAL FEE ON CONTAINERS
3 THAT ARE NOT BEING RECYCLED AT A RATE OF FIFTY PERCENT
4 WITHIN THIS STATE.

5 The General Assembly of North Carolina enacts:

6 Section 1. Article 9 of Chapter 130A of the General Statutes is amended by
7 adding a new Part to read:

8 **"PART 5.**

9 **"ADVANCE DISPOSAL FEE PROGRAM.**

10 **"§ 130A-310.30. Legislative findings; purpose.**

11 The General Assembly finds that containers which are made from plastic, glass,
12 plastic-coated paper, aluminum, or other metals and which are improperly discarded
13 represent a significant solid waste problem in this State. Finding a solution to litter
14 problems involving containers has been challenging and difficult for the public and
15 private sectors. The General Assembly has determined that a program operated with the
16 established goals and implemented in phases is the most appropriate way to solve
17 problems of litter involving containers. This section is intended to create the necessary
18 infrastructure to help solve comprehensive solid waste management problems facing the
19 State in the future. If the recycling facilities and programs initially created under this
20 Part are not adequate, additional mechanisms are provided to be implemented in phases
21 to help assure that litter problems involving containers are solved and that the reduction
22 of the solid waste stream can be accomplished.

23 **"§ 130A-310.31. Definitions.**

24 As used in this Part:

- 1 (1) 'Container' means the individual, separate, and sealed glass, plastic,
2 plastic-coated paper, aluminum, or other metal can, bottle, or jar in
3 which the contents have been sealed by the manufacturer.
- 4 (2) 'Consumer' means any person who purchases a container for
5 consumption of its contents with no intent to resell such container.
- 6 (3) 'Dealer' means any person in this State who engages in the sale of
7 containers to a consumer. The term includes an operator of a vending
8 machine containing containers. The term does not include a person
9 who sells or offers for sale containers, the contents of which are
10 consumed on the premises; nor a common carrier in the conduct of
11 interstate passenger service who sells, offers for sale, or distributes to
12 its passengers, containers, the contents of which are consumed on the
13 premises.
- 14 (4) 'Distributor' means any person who engages in the sale of containers
15 to a dealer in this State, including any manufacturer who engages in
16 such sales.
- 17 (5) 'Manufacturer' means any person bottling, canning, or otherwise
18 filling containers for sale to distributors or dealers.
- 19 (6) 'Nonrefillable container' means a container which is not intended to be
20 reused as a container by a manufacturer after being initially used by a
21 consumer.
- 22 (7) 'Redemption center' means a business other than a recycling center
23 registered with the Department or a distributor, which offers to redeem
24 any empty container for the amount of deposit.
- 25 (8) 'Refillable container' means a container which is intended to be reused
26 as a container at least five times by a manufacturer after being initially
27 used by a consumer.

28 **"§ 130A-310.32. Advance disposal fee.**

29 (a) If the Solid Waste Branch of the Department of Human Resources determines
30 on October 1, 1992, by a preponderance of evidence, that containers which are made of
31 glass, plastic, plastic-coated paper, aluminum, or other metals and which are sold in this
32 State are not being recycled at a sustained rate of fifty percent (50%) of the quantities
33 that these individual types of containers are sold within the State, the advance disposal
34 fee program provided for in subsection (b) shall be implemented. The requirements of
35 this section that apply to plastic containers shall apply individually to the following
36 categories of plastic containers:

- 37 (1) Polyethylene terephthalate,
38 (2) High density polyethylene,
39 (3) Vinyl,
40 (4) Low density polyethylene,
41 (5) Polypropylene, and
42 (6) Polystyrene.

43 (b) If the Solid Waste Branch makes the determination specified in subsection (a)
44 of this section, there shall be an advance disposal fee of one cent (1¢) per container

1 charged by retail establishments on those types of containers sold in the State. The
2 proceeds of the advance disposal fee collected pursuant to this section, less the costs of
3 administration, shall be reported and paid quarterly and shall be transferred into a fund
4 to be known as the Disposal Fee Fund within the Department of Revenue.

5 For the purposes of this section, 'proceeds' of the fee shall mean all funds collected
6 and received by the Department of Revenue pursuant to this subsection, including
7 interest and penalties on delinquent fees. The amount deducted for the costs of
8 administration shall not exceed three percent (3%) of the total revenues collected
9 pursuant to this subsection, and shall be only those costs solely and directly attributable
10 to the fee. The Department of Revenue shall determine the amount which needs to be
11 reserved in the Disposal Fee Fund each quarter for refunds on the advance disposal fee
12 and administrative costs. Any amount above that reserve shall be transferred quarterly
13 to a fund to be known as the Container Recycling Trust Fund within the Department to
14 be used for grants to units of local government for county recycling programs according
15 to the provisions of subsection (d) of this section.

16 The Department of Revenue shall administer, collect, and enforce the fee authorized
17 under this subsection pursuant to the same procedures used in the administration,
18 collection, and enforcement of the general State sales tax imposed under Chapter 105 of
19 the General Statutes, except as provided in this section. The provisions of this section
20 regarding the authority to audit and make assessments, keeping of books and records,
21 and interest and penalties on delinquent fees shall apply. The fees shall not be included
22 in the computation of estimated taxes pursuant to Article 4C of Chapter 105 of the
23 General Statutes.

24 The Department of Revenue is authorized to employ persons and incur other
25 expenses to implement this Part. The Department is empowered to adopt such rules and
26 shall prescribe and publish these forms as may be necessary to effectuate the purposes
27 of this section. The Department is authorized to establish audit procedures and to assess
28 delinquent fees.

29 (c) The Department of Human Resources shall adopt rules to accomplish the
30 following:

- 31 (1) Establish reporting requirements necessary to obtain necessary sales
32 and recycling information to implement this section and G.S. 130A-
33 310.33;
- 34 (2) Establish the criteria to determine whether the fifty percent (50%)
35 recycling rate has been achieved; and
- 36 (3) Establish the criteria for registration of public and private recycling
37 centers.

38 (d) Containers for which an advance disposal fee has been charged may be
39 returned to recycling centers which have registered with the Department, pursuant to
40 Department rule, for a refund on the advance disposal fee in addition to payment for the
41 market value of the product from which the container is made. Moneys in the Container
42 Recycling Trust Fund shall be allocated to support container recycling programs as
43 follows:

- 44 (1) For capital assistance grants, fifty percent (50%);

- 1 (2) For litter control, fifteen percent (15%);
2 (3) For promotion and education, ten percent (10%);
3 (4) For technical assistance, eight percent (8%);
4 (5) For research and development, seven percent (7%); and
5 (6) For administration, ten percent (10%).

6 No more than monthly, or at times determined by rule of the Department of Revenue,
7 operators of recycling centers registered with the Department may certify to the
8 Department of Revenue, on forms provided by the Department of Revenue, the amount
9 of refunds of the advance disposal fee which have been paid to purchasers and shall
10 receive a refund from the Disposal Fee Fund. The Department of Revenue shall
11 establish audit procedures for registered recycling center operators.

12 (e) This section expires October 1, 1996.

13 **"§ 130A-310.33. Increased advance disposal fee.**

14 (a) If the Solid Waste Branch of the Department of Human Resources determines
15 by October 1, 1996, that containers made of glass, plastic, plastic-coated paper,
16 aluminum, or other metals, and sold in the State are not being recycled at a rate of fifty
17 percent (50%) of the quantities that these individual types of containers are sold within
18 the State, the advance disposal fee program established in G.S. 130A-310.32(b) shall
19 increase to two cents (2¢) per container and the provisions of this section shall be
20 implemented. These fees shall not apply to those types of containers that are recycled at
21 a rate of fifty percent (50%) or more.

22 (b) Every container sold or offered for sale in this State shall have a refund value,
23 or deposit, established by the distributor of not less than five cents (5¢). Each container
24 shall have the refund value, and the words 'North Carolina' clearly indicated by
25 embossing, by a stamp, or by a label or other device securely fixed to any portion of the
26 container other than the bottom. A recycling center, redemption center, or distributor
27 may refuse to accept from a person any empty container which does not state such
28 information on the container.

29 This subsection does not apply to containers sold by a distributor for use by a
30 common carrier in the conduct of interstate passenger service. This subsection does
31 apply to any refillable container having a brand name permanently marked thereon
32 which, on the effective date of this section, has a refund value of not less than ten cents
33 (10¢).

34 The requirements of this subsection relating to refund value shall not apply to those
35 types of containers that meet the requirements of recycling in G.S. 130A-310.32(a).
36 Each consumer shall deposit with the dealer the refund value of each container
37 purchased from that dealer. However, no deposit shall be required if the container is
38 sold for consumption of the beverage on the premises. The proceeds of the deposit
39 collected pursuant to this subsection, less the costs of administration, shall be reported
40 and paid quarterly and shall be transferred to a fund to be known as the Container
41 Deposit Fund within the Department of Revenue. The amount deducted for the costs of
42 administration shall not exceed three percent (3%) of the total deposits collected
43 pursuant to this subsection, and shall be only those costs solely and directly attributable
44 to the deposit. The Department of Revenue shall determine the amount which needs to

1 be reserved in the Container Deposit Fund each quarter for refunds on deposits and
2 administration costs. Any amount above that reserve shall be transferred to the
3 Container Recycling Trust Fund to be used according to the provisions of G.S. 130A-
4 310.32(d).

5 The Department of Revenue shall administer and collect the deposits pursuant to the
6 same procedures used in the administration and collection of the advance disposal fee.

7 (c) Except as provided in subsection (e) of this section, a recycling center
8 registered with the Department shall accept from any consumer or other person not a
9 dealer any empty, unbroken, and reasonably clean container of the type, size, and brand
10 sold within North Carolina and shall pay in cash the refund value of the returned
11 container.

12 (d) A dealer shall inform consumers that containers are returnable to a registered
13 recycling center by placing a sign or shelf label, or both, in close proximity to any sales
14 display of containers. The sign or label shall indicate the amount of deposit required for
15 each container and indicate that the containers are returnable. If a dealer participates in
16 a redemption center, the location of that redemption center shall be posted.

17 (e) A recycling center may limit the total number of containers that he will
18 accept from any one consumer in any business day to 96 containers. The recycling
19 center may refuse to accept containers for a period of not more than three hours during
20 any business day, provided that the hours during which containers will not be accepted
21 are conspicuously posted.

22 (f) Each operator of a vending machine which sells containers shall post a
23 conspicuous notice on the vending machine indicating that a refund is available for each
24 container purchased and indicating where and from whom that refund may be obtained.
25 This subsection does not require vending machine operators to provide refunds at the
26 premises where the vending machines are located.

27 (g) Any person may establish a redemption center and may determine what type,
28 size, and brand of container shall be accepted. The redemption center may contract with
29 a distributor to collect and provide for the recycling of empty containers. The
30 distributor shall accept any empty, unbroken, and reasonably clean container of the
31 type, size, and brand sold by the distributor within the past 12 months and shall pay to
32 the redemption center, within 10 working days, the refund value of the containers
33 collected, plus a handling fee of not less than ten percent (10%) and not more than thirty
34 percent (30%) of the refund values.

35 (h) No more than monthly, or at times determined by rule of the Department of
36 Revenue, operators of recycling centers registered with the Department may certify to
37 the Department of Revenue, on forms provided by the Department of Revenue, the
38 amount of refunds on deposits which have been paid to purchasers and shall receive a
39 refund from the Container Deposit Fund, plus a handling fee of not less than ten percent
40 (10%) and not more than thirty percent (30%) of the refund values. The Department of
41 Revenue shall establish audit procedures for registered recycling center operators.

42 (i) The Department shall adopt rules necessary to administer this section,
43 including rules for the regulation of redemption centers. The rules shall provide that
44 State information material, including travel pamphlets and road maps, printed after

1 December 31, 1994, shall contain information related to this section. Such
2 informational material shall contain a statement relating to the deposit law, urging
3 travelers to avoid littering.

4 (j) The Department of Public Instruction shall incorporate information
5 concerning this section into educational materials distributed to primary and secondary
6 schools within the State urging an end to littering."

7 Sec. 2. The General Assembly shall review the Advance Disposal Fee
8 Program annually.

9 Sec. 3. This act is effective upon ratification.