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House Bill 4704 with committee amendment
First Analysis (5-15-89)

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Sponsor: Rep. Michael J. Griffin
Committee: Liquor Control

Mich. State Law Library

THE APPARENT PROBLEM:

When a deposit-bearing can or bottle is not returned, the deposit remains in the hands of the wholesaler or bottler who distributed the product to the retailer. A long-simmering controversy has once again erupted over how much money accrues as the result of unclaimed deposits on beer and soft drinks and to whom that money rightfully belongs. The Michigan United Conservation Clubs (MUCC), a principal backer of the movement that created the initiated deposit law, is launching a new petition drive that would require that all unclaimed deposits be returned to the state and held in a special trust fund for ten years before revenues are put to use in funding solid and hazardous waste cleanup efforts, recycling programs, and environmental law enforcement. (Up to 20 percent of annual unclaimed deposit revenue could go to retailers after the first 10 years, with the legislature to decide whether and how to distribute it.) The MUCC and its allies, including the Department of Natural Resources (DNR), are buoyed by a report prepared for the DNR by a private consultant that puts the annual value of unclaimed deposits between \$33 and \$38 million. Beer wholesalers and soft drink bottlers dispute both the estimate of the value of unclaimed deposits (about \$12 million is their figure) and the argument that the deposits belong to the public. They say the deposits are legally theirs (according to court and attorney general opinions) and do not, in fact, offset the costs they incur administering the deposit law, even when recycling revenue is added in. Nevertheless, beer wholesalers are supporting a compromise proposal that would, through mandatory reporting, identify officially the value of unclaimed deposits annually and that would divert any dollars over a certain threshold amount to the state.

THE CONTENT OF THE BILL:

The bill would amend the initiated bottle deposit law to require distributors and manufacturers of beverages sold in deposit-bearing containers to pay to the Department of Treasury the amount of unredeemed deposits exceeding \$4 million dollars (for beer) and \$8 million (for soft drinks). The threshold amounts would be increased by 5 percent each calendar year. The money collected by the treasury department would be placed in a special fund, with 50 percent to be used for environmental cleanup and 50 percent to be apportioned to retailers for bottle handling expenditures. The bill contains a formula for determining what proportion of unredeemed deposits each "underredeemer" must send to the state.

The bill would require, beginning March 1, 1990, distributors and manufacturers to file annual reports with the Department of Treasury indicating the dollar value during the preceding calendar year of both total deposits collected on beverages sold in the state and total refunds made on beverage containers redeemed by the distributor or manufacturer. Separate reports would be required for alcoholic and non-alcoholic beverages. The Department of

Treasury would determine by May 1, based on the reports, the total of deposits collected and redeemed. Based on the formulas cited above, the treasury department would assess and collect money owed by an "underredeemer." Businesses would have to be notified of the amount they owed by July 1 and would have 45 days to pay. Treasury could audit the records of a business required to file reports. The department would be able to promulgate rules to implement the act.

MCL 445.573a et al

FISCAL IMPLICATIONS:

The estimate of the annual value of unclaimed deposits is, obviously, controversial. Wholesalers believe that there will be little or no revenue going to the state under this proposal because they believe that \$12 million is close to the annual amount of unclaimed deposits. Beer wholesalers have estimated their unclaimed deposits at under \$3 million based on a 98.2 percent return rate. Soft drink bottlers estimate they collect \$9.1 million in unclaimed deposits based on a return rate of 95.3 percent. The report that Public Sector Consultants did for the Department of Natural Resources estimated unclaimed deposits at \$33 million to \$38 million annually (based on an estimated return rate of 92-93 percent), which means that some \$22 million to \$27 million would be diverted to the state (with 50 percent going to the retailers) under the bill. (The exact amount would depend on separate calculations for beer and soft drinks since the bill has a separate threshold for each category.) The Michigan Merchants Council uses an estimate of \$48 million in annual unclaimed deposits for all beer and soft drink distributors.

ARGUMENTS:

For:

This compromise bill, which is acceptable to beer distributors, has several advantages:

- It will end the controversy over the amount of unclaimed deposits on beer and soft drinks by putting in place a mandatory reporting system.
- It will allow distributors of beer and soft drinks to keep a certain portion of unclaimed deposits to help offset costs of administering the deposit law, thus recognizing that there are such costs to wholesalers, and will prevent the kind of price increases that would be necessary if all unclaimed deposits were confiscated by the state.
- If the value of unclaimed deposits is as high as some people maintain (as improbable as that seems to the wholesalers), it will generate revenue for the state to use for environmental cleanup. Any amount of unclaimed deposits over \$12 million would go to the state; as written, the bill would provide retailers half of the surplus in recognition of the costs imposed on them by the deposit law. (If wholesalers are right about unclaimed deposits, the bill represents a continuation of the status quo.)

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- It provides a formula for deciding how much each company with more deposits collected than refunds paid out must contribute to the state, a formula that takes into account, as other proposals do not, that some 30 percent of distributors pay out more in refunds than they collect in deposits.
- It represents a compromise by beer wholesalers who say that courts and the attorney general have opined that the unclaimed deposits belong to the person originating the deposit (brewers or wholesalers of beer and bottlers or distributors of soft drinks) and not to "the public" or the state.

Against:

Deposits on bottles and cans are paid by the public, and the revenue from unclaimed deposits belongs to the public-at-large. The petition being circulated by the Michigan United Conservation Clubs (MUCC) recognizes this and would require all unclaimed deposits to be escheated to the state for eventual use in major environmental cleanup efforts. Here is an opportunity to use new money to create a large, unique, long-term fund that has the potential, supporters say, of devoting \$6 billion to cleanup efforts over the next 50 years. Unclaimed deposits should not remain in the hands of wholesalers. The legislature should reject this version of the bill and substitute for it the petition language. Otherwise, as has happened in the past, the legislature's actions will be overridden by a vote of the people. It should be remembered that the deposit law is on the books due a vote of the people in 1976 after resistance by the industry and the legislature. (Wine coolers were added to the deposit law only after the threat of another petition drive.) Efforts to deal with the issue of unclaimed deposits have been made since 1978 without any legislative response.

Besides, wholesalers are already amply compensated for their work in implementing the deposit law. A study done by Public Sector Consultants for the Department of Natural Resources says the industry's costs over the years have been more than offset by revenue from price increases, recycling income, interest on the deposits held, and unclaimed deposits. Over ten years, for example, wholesalers have likely earned \$386 million in recycling income, and each year earn substantial sums in interest on the \$470 million in deposits they hold. (The Michigan Merchants Council argues that wholesalers earn \$50 million to \$60 million in interest on money held between the time a deposit is collected from the retailer and a refund paid to the retailer.) The DNR study estimates that 1988 income from recycling alone (\$80 million) would be greater than the cost of collecting and processing containers. This means revenue from other deposit-related sources is pure profit. The wholesalers would not suffer — and would not have to raise prices — if the revenue from unclaimed deposits was put back in the hands of the rightful owners, the public. Even if prices had to be raised, the increase would amount to no more than a few cents per six-pack of soft drinks. Supporters of the petition drive, moreover, say that if there is such great concern over prices, the legislature should consider doing away with the exclusive territories enjoyed by monopolistic beer wholesalers, which would allow retailers to seek out the best price for the product.

Response: Rather than urging confiscation of wholesalers' revenues to fund cleanup programs, the misinformed supporters of the ill-advised petition drive should be congratulating wholesalers and retailers of beer and soft drinks for their role in cleaning up the state's

environment. By one estimate, in ten years the deposit law has saved the equivalent of six square miles of landfill space. Thanks to the industry, disposal costs have been saved, litter has been reduced, energy has been conserved (through increased recycling), and more than 4,000 new jobs have been generated. (All of which is recorded in the DNR report.) The deposit law is a waste and litter control measure. It is wrongheaded to turn it into a revenue-raising device for the state. Beer and soft drink distributors dispute the figures in the DNR-commissioned study. That study overestimates the number of containers sold, underestimates the number returned, inflates the value of recycled scrap, and ignores the substantial costs of implementing and administering the law. A study done for the Michigan Soft Drink Association by Temple, Barker, and Sloane says that costs associated with the deposit law outstripped revenue in 1988 by \$14.2 million. The study estimated the value of unclaimed deposits at \$9.1 million and of scrap revenue at \$15.8 million. Increased labor costs due to the deposit law alone very nearly offset that income. (While it may be good for the state's economy that the deposit law has created over 4,000 jobs, as the DNR study reports, the fact remains that the wholesalers and retailers who bear the brunt of that law must find the revenue to pay all those additional employees.) Furthermore, wholesalers and bottlers incurred significant initial capital costs to comply with the deposit law (\$93.9 million for soft drink bottlers) and continue to incur such costs each year (new facilities, new equipment, trucks, etc.) Taking away all unclaimed deposits would be to impose a back-door tax on the consuming public because prices would have to be increased to make up the difference.

Against:

Traditionally, the concerns of retailers regarding the deposit law have been ignored. While wholesalers are compensated for their aggravations and costs by the value of unclaimed deposits, recycling scrap, and interest on the deposit "float," retailers have had no help in facing the increased equipment, storage, and labor costs imposed by passage of the bottle deposit law. Retailers cite a study showing that the cost of handling deposits amounts to 2.8 cents per container and some estimates put the figure much higher. For example, the Kroger Company has estimated its costs per container in 1989 at four cents per container, 3.2 cents of which is attributable to wages, fringe benefits, and payroll taxes for the employees needed to process returned containers. Kroger says that it sells about 1 million beer and soft drink containers each week and redeems about 1.6 million.

Seven of the nine states with deposit laws have retail handling fees, retailers say, whereby wholesalers or bottlers pay, for example, two cents to retailers when refunding deposits previously collected. Some retailers believe Michigan should adopt this system. (At least one supermarket chain has advocated a tax credit against the single business tax for retailers who are overredeemers, although this is not supported by most retailers.) House Bill 4704 recognizes the problem by designating 50 percent of unclaimed deposits over \$12 million to retailers, but it does not say how it will be distributed and it allows the threshold to grow by five percent each year, which will erode any available revenue over time. The administrative problem of returning a pool of money to thousands of businesses would be considerable.

POSITIONS:

The Michigan Beer and Wine Wholesalers Association supports the bill. (5-12-89)

The Associated Food Dealers would support the bill if the provision increasing the threshold amount by five percent each year is removed. (5-15-89)

The Department of Natural Resources has said it supports the language of the petition being circulated by The Committee To Keep Michigan Clean. (5-11-89)

The Michigan United Conservation Clubs (MUCC) is opposed to the bill and supports the petition language. (5-9-89)

The Michigan Interfaith Council on Alcohol Problems (MICAP) is opposed to the bill and is supporting the petition drive. (5-9-89)

A representative of The Public Interest Research Group in Michigan (PIRGIM) testified against the bill and in favor of the petition language before the House Liquor Control Committee. (5-11-89)

The Michigan Merchants Council and Associates Inc. is opposed to the bill in its present form. (5-11-89)

The Michigan Grocers Association is opposed to the bill in its current form. (5-15-89)