



**House  
Legislative  
Analysis  
Section**

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**UNCLAIMED DEPOSITS**

**House Bill 4704** as enrolled  
Second Analysis (8-10-89)

Sponsor: Rep. Michael J. Griffin  
House Committee: Liquor Control  
Senate Committee: None

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**House Bill 4246** as enrolled  
Third Analysis (8-10-89)

Mich. State Law Library

Sponsor: Rep. Jerry C. Bartnik  
1st House Committee: Conservation, Recreation and  
Environment  
2nd House Committee: Appropriations  
Senate Committee: Criminal Justice and Urban Affairs

H.B.s 4704 & 4246 (8-10-89)

***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 recently 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, earlier this year launched a new petition drive aimed at escheating all unclaimed deposits to the state to be held in a special trust fund for ten years before being put to use to fund solid and hazardous waste cleanup efforts, recycling programs, and environmental law enforcement. (The petition proposes that up to 20 percent of annual unclaimed deposit revenue 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 (and cite opinions from courts and the state's attorney general) and do not, in fact, offset the costs they incur administering the deposit law, even when recycling revenue is added in. Despite their philosophical objections, however, beer wholesalers (at least) have dropped their opposition to proposals to escheat unclaimed deposits to the state (although they characterize this as a "contribution" from them rather than a duty).

***THE CONTENT OF THE BILL:***

House Bill 4704 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 difference between the amount collected in deposits and the amount paid out in refunds. (The bill states that unclaimed deposits "are considered to be the property of the person purchasing the returnable container and are not the property of the distributor or manufacturer

who originated the deposit.") The money from unclaimed deposits would go into the Bottle Deposit Fund, which the bill would create, with 25 percent to be distributed among dealers and 75 percent to go to another fund, the Michigan Unclaimed Bottle Fund. That fund would be created by House Bill 4246, which would amend the Environmental Response Act. The revenue that accrues in the fund for the first ten years, and interest on that revenue, would remain untouched. After ten years, money going to the fund and all new interest earned on the fund would be disbursed in equal portions to three other funds: the Environmental Response Fund (for toxic contamination cleanup), the Clean Michigan Fund (for solid waste grant programs), and the newly created Long-Term Maintenance Fund (for prevention of environmental contamination).

House Bill 4704 would require, beginning March 1, 1991, 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. Businesses that were "underredeemers" (who took in more than they paid out) would have to pay to the treasury department the amount by which deposits collected exceeded refunds made. Businesses could, however, get credit for a year or years when they were overredeemers (that is, when they paid out more in refunds than they received in deposits). The value of overredemptions could be carried forward for not more than three years of underredemption or until the credit was depleted, whichever came first. The treasury department would determine by May 1, based on the reports, the total of deposits collected and redeemed and the total amount owed to the state, and by June 1, the department would have to publish and make available to the public the findings and send a report on the findings to the legislature. Treasury could audit the records of a business required to file reports. A civil penalty of up to \$1,000 would be assessed for failure to file a report and of up to \$5,000 for misrepresentation. Penalties for subsequent offenses would be up to \$5,000 and \$10,000 respectively. The department would be able to promulgate rules to implement the act if it deems them necessary.

**OVER**

The Long-Term Maintenance Trust Fund created by House Bill 4246 would be administered by a special board, which would be created no earlier than eight years after the bill took effect. The board would have five members, including the director of the Department of Natural Resources (or a designee) as an ex officio voting member, and four members from the general public appointed by the governor with the advice and consent of the Senate. Of the four, one would represent the interests of people involved in advancing the cause of conservation in all its phases, including natural resources management, environmental education, enhancement of fish and wildlife population, and prevention of environmental degradation; one would represent the interests of environmentally concerned citizens and groups; and two would have to be people knowledgeable in scientific and technical areas of study relevant to the long-term monitoring and maintenance of environmental contamination sites. Members would serve four-year terms, although the terms of the initial members would be staggered. The duties of the board would be to promulgate rules setting forth the criteria for projects designed to implement the purposes of the fund, to meet at least twice each year to pass judgment on DNR project recommendations, and to file an annual report with the governor and legislature summarizing proposals reviewed, expenditures authorized, and the effectiveness of expenditures in attaining goals. (The legislature could appropriate money from the Unclaimed Bottle Fund to cover the reasonable administrative costs of the trust fund board; this is the only exception to the requirement that all revenue remain untouched for ten years.)

House Bill 4246 would also require a study analyzing the public and private costs associated with various levels of cleanup standards for response activities under the Environmental Response Act, including the speed with which various levels of cleanup have been and can be accomplished. The Department of Management and Budget would contract out the study, and the contract would provide for the study's completion within six months. Copies of the study would be submitted to the legislature. The department would have to consult with the Department of Natural Resources and with the chairs of the House Committee on Conservation, Recreation, and Environment and the Senate Committee on Natural Resources and Environmental Affairs regarding the scope and design of the study.

MCL 445.573a et al. (House Bill 4704) and  
MCL 299.609a et al. (House Bill 4246)

### **FISCAL IMPLICATIONS:**

The estimate of the annual value of unclaimed deposits is controversial. Wholesalers estimate their value at \$12 million. 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. The Michigan Merchants Council uses an estimate of \$48 million in annual unclaimed deposits for all beer and soft drink distributors.

### **ARGUMENTS:**

#### **For:**

Deposits on bottles and cans are paid by the public, and the revenue from unclaimed deposits belongs to the public-at-large. The bills, which are very similar to the

petition language circulated by the Michigan United Conservation Clubs (MUCC), recognize 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; they belong to the people. Failure by the legislature to pass this legislation would only result in its being enacted, after a petition drive, by popular vote. It should be remembered that the deposit law is on the books due to 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.

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 will not suffer—and will not have to raise prices—if the revenue from unclaimed deposits is put back in the hands of the rightful owners, the public. Even if prices did go up, the increase would amount to no more than a few cents per six-pack of soft drinks.

#### **Against:**

Rather than urging confiscation of wholesalers' revenues to fund cleanup programs, the misinformed supporters of the ill-advised petition drive and of this legislation 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.

***For:***

This proposal provides a much-needed future funding source for the long-term monitoring of contaminated sites. Many sites continue to need monitoring after the initial clean-up operations. The Department of Natural Resources currently has funds for immediate response action and monitoring in order to stabilize the sites, but it does not have a source of funds for long-term monitoring. The new fund created in this legislation will in ten years' time receive one-quarter of the dollars flowing to the state from unredeemed deposits.

***For:***

The proposal recognizes the bottle deposit law's burden on retailers, whose interests and concerns have traditionally been ignored. While wholesalers are compensated for their aggravations and costs by the value of unclaimed deposits, recycled 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.

***Response:*** Some people believe retailers have raised their prices on beverages sold in deposit containers high enough to cover the costs associated with the bottle deposit law.

***Against:***

Some people believe the money from unclaimed bottle and can deposits ought to be available immediately to address unmet environmental needs, including the establishment of programs aimed at preventing environmental degradation. Under this proposal, no money will be available for ten years from unclaimed deposits. There are needs to be met today. Furthermore, there are other worthy programs that could logically benefit from unclaimed deposits, such as substance abuse prevention services.

***Response:*** The voters have just approved a bond issue that will allow over \$600 million to be spent on environmental programs. Those dollars should be employed first. The bill allows a substantial fund to grow over ten years; perhaps \$300 million to \$400 million will accrue over that time.

***Against:***

Wouldn't it be better to put more effort into improving the redemption rate for containers rather than create a group of parties and programs dependent on revenue generated by the failure of the public to return empty cans and bottles?