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NONRETURNABLE CONTAINERS: PENALTY

**House Bill 5061 (Substitute H-1 with
House floor amendments)
First Analysis (11-5-98)**

**Sponsor: Rep. Michael Griffin
First House Committee: Commerce
Second House Committee: Regulatory
Affairs**

THE APPARENT PROBLEM:

Prior to 1990, unclaimed deposits on returnable beer and soda containers remained in the hands of wholesalers and bottlers who distributed the product to retailers. That practice was changed by Public Act 148 of 1989, which required the money from unclaimed deposits to be deposited in the Bottle Deposit Fund. From there, the money is redistributed, with 75 percent going to another fund, the Cleanup and Redevelopment Trust Fund (for environmental cleanup projects), and 25 percent being redistributed to retailers.

Since Public Act 148 has been implemented, however, a few problems have arisen. One concerns the number of out-of-state (foreign) beer and soda cans and bottles that are redeemed for a refund in the state. According to a study prepared by Michigan Consultants, entitled "Analysis of Foreign Containers in the Michigan Deposit Stream", approximately four billion beer, soft drink, and wine cooler cans and bottles that require a 10-cent deposit are purchased each year in the state. Redemption of foreign containers, from which no deposit was collected, accounts for approximately four percent of the total number of redemptions. However, according to the study, each one percent of total redemptions from non-Michigan containers results in a loss of approximately \$4 million to the system, so a four percent foreign redemption rate would reduce revenue to the Cleanup and Redevelopment Trust Fund by about \$16 million a year.

Often, a foreign container may be inadvertently returned for a deposit refund along with Michigan cans and bottles after a person has returned from an out-of-state trip, or when entertaining out-of-state guests who have brought beverage containers with them. The problem is with those people who

systematically return large numbers of out-of-state containers in a deliberate attempt to obtain refunds on the containers, and those who rent vans and trailers and haul tens of thousands of out-of-state cans and bottles from other states. Currently, it is not illegal to redeem foreign cans for a deposit, except that if more than \$100 is collected in refunds, a person could be prosecuted under existing fraud statutes. Just last year, two New York residents were arrested in Macomb County and charged with fraud after being caught returning thousands of out-of-state bottles and cans for the deposit money. It is believed by many that if a law were adopted to specifically prohibit the return of out-of-state containers for a refund and to establish penalties for violators, the number of foreign containers would be reduced, thus increasing revenues for environmental cleanup programs.

The second problem concerns the plight of wholesalers who have become overredeemers. An overredeemer is a wholesaler who has paid out more in refunds than he or she has collected in deposit money. This situation occurs when people purchase beverages in returnable containers at one store or geographic area and return the empty containers at another. Especially hard hit are certain beer and wine distributors. Under the Michigan Liquor Control Code, beer and wine distributorships are tightly regulated by geographic area. Most soft drink distributors, on the other hand, are not affected in the same way because they are owned by the soft drink manufacturer, and so can file consolidated reports that can adjust container dislocation, as it is called, internally.

Adding to this problem of overredemption is the problem of foreign containers. Though foreign containers account for only four percent of the total statewide redemption amount, a sampling of redeemed

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containers in Southwestern and Southeastern Michigan conducted by Michigan Consultants as part of their study revealed that a significant amount of foreign cans and bottles were being redeemed in border areas. In Southwestern Michigan, foreign containers accounted for just under 7 percent of the total number of containers surveyed, where in Southeastern Michigan, foreign containers accounted for over 30 percent of redeemed containers. One beer and wine distributor in one of the sample areas reported in the study that his business suffers losses of about \$60,000 annually in overredemption. A large part of this is due to redemption of foreign containers. If the foreign redemption problem were solved, he could become an underredeemer, perhaps generating up to \$30,000 to the Bottle Deposit Fund. For other overredeemers, even though a reduction in the number of foreign containers redeemed for refunds would help, another solution has been proposed. Industry members have asked for the chance to even out the overredeemer/underredeemer situation amongst themselves by allowing an underredeemer to purchase empty returnable containers from an overredeemer. The state would still receive the balance of unclaimed deposits, but allowing this practice would relieve some wholesalers from the burden year after year of paying out more in refunds than they collect in deposits.

THE CONTENT OF THE BILL:

The bill would amend the Initiated Law of 1976 (the Beverage Container Deposit Law) to make it illegal for a person to knowingly return a nonreturnable bottle or can as a returnable container in order to obtain a deposit refund. Further, the bill would allow a distributor who refunded more deposit money than he or she collected to sell empty returnable containers to a distributor who had taken in more deposit money than he or she had refunded. Specifically, the bill would do the following:

Under the bill, a person could not return or attempt to return for a refund a beverage container that he or she knew or should have known was purchased in another state or did not have a deposit paid at the time of purchase. A person returning 25 or more returnable bottles and cans but less than 100 would be guilty of a misdemeanor punishable by a fine of not more than \$100. A subsequent violation or returning 100 or more cans and bottles would constitute a misdemeanor punishable by up to 93 days imprisonment or a fine of not more than \$500, or both. In addition, a court would have to order the person to pay restitution equal to the amount of loss caused by the violation.

Dealers, such as store owners, would be required to post a notice in the area where returnable containers are redeemed warning that a person returning an out-of-state nonreturnable container would be subject to penalties of up to 93 days in jail and a fine of \$500 and restitution. A dealer could be fined \$50 if the notice was not posted properly.

The bill would also allow an underredeemer (a distributor or manufacturer who collects more in deposits than what is paid out in refunds) to buy empty returnable beverage containers from an overredeemer (a distributor or manufacturer who paid out more in refunds than what he or she collected from deposits). The bill would establish reporting procedures for the transaction and would specify that a purchase or sale of empty returnable beverage containers made in January would be included in the report for the previous calendar year only.

MCL 445.572 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in an indeterminate increase in both costs and revenues to the state that would be contingent on the administrative costs associated with enforcing the bill's provisions and the amount of fines collected. Revenue generated from the fines would go to fund local libraries. Additionally, the agency reports that the new penalty provision should deter people from redeeming nonreturnable containers for a deposit, which could result in an increase of unclaimed bottle deposits, of which a significant percentage is returned to the state for environmental cleanup. The agency further reports that in 1997, of \$12.2 million in unclaimed bottle deposit revenue, 75 percent was earmarked for environmental cleanup and the remaining 25 percent was returned to retail beverage distributors on a proportional basis. If the number of nonreturnable containers returned for deposit was decreased, the unclaimed bottle deposit revenue should increase. (10-5-98)

ARGUMENTS:

For:

The problem with the redemption of foreign containers appears to be increasing in recent years. In the sampling conducted by Michigan Consultants, foreign containers represented at least 30 percent of the total amount of containers reviewed. Statewide, foreign containers account for up to four percent of containers

returned for a refund. With deposits collected on approximately 4 billion cans and bottles, this amounts to a yearly loss of about \$16 million. This significantly decreases the revenue going for environmental cleanup programs.

People who inadvertently return a pop or beer can or bottle purchased when traveling through another state do account for some of the foreign containers, but the problem is primarily with those who systematically and deliberately purchase beverage containers from neighboring states that do not require a deposit and then return the empty containers to Michigan retailers for a refund. Even more heinous are those who rent trucks and haul tons of empty non-returnable containers from other states to Michigan. If caught, a person could be prosecuted under fraud statutes, but only if at least \$100 was collected in refunds at a given time. A part of the problem is the increased use of reverse vending machines by retail establishments. Unlike the manual method whereby an employee verifies that a can or bottle is properly marked as a returnable container, a reverse vending machine cannot tell a can purchased in Michigan from a can purchased in Ohio or Indiana. It can only read the UPC label as to whether or not the particular brand of beverage is sold by that store. The machine then issues a slip corresponding to the number of cans and bottles returned. Reverse vending machines now process about 35 to 45 percent of containers returned for refund in the state. It is believed that the anonymity that the machines afford is in part responsible for the increase in foreign containers being redeemed at the machines.

Because the machines have increased efficiency and reduced costs in processing returnable containers, it is unlikely that the retail industry would discontinue their use. Reportedly, the machines could be retooled to read the lid of a can to detect if it is a Michigan returnable container, but the cost, at several thousand dollars per machine, is prohibitive. Also, it is not known how accurately the machines could distinguish between foreign and Michigan containers. Perhaps the best approach at this time would be to enact a specific law prohibiting the deliberate fraudulent practice of returning foreign containers for a refund. The bill would make it a misdemeanor to knowingly return 25 or more foreign containers, with increased penalties for subsequent violations or for those returning 100 or more containers. A sign would have to be posted warning consumers that so doing could result in a fine or imprisonment, or both. For those who target the state as an opportunity to make easy money by

redeeming illegal cans and bottles, the penalties imposed by the bill would act as a deterrent, and would give some teeth to enforcement efforts. As people begin to become more aware that returning out-of-state containers for a refund is illegal, and that it decreases revenue to fund environmental programs, the amount of foreign containers being redeemed should decrease drastically.

Response:

Retailers should be required to place recycling containers near the area where bottles and cans are redeemed so that, should people find they have a nonreturnable container, the containers can be quickly and easily recycled. The law requiring deposits on beverage containers has greatly reduced the amount of roadside litter, eased the burden on landfills, and helped reclaim aluminum that would be otherwise wasted. Without recycling bins, people may be tempted to throw out the containers or even to redeem them illegally, instead of taking them back home and recycling them properly. Also, since reverse machines cannot accept even slightly damaged cans, the Bottle Act should also be amended to require retailers to manually accept a damaged can as long as it can be identified as being a returnable container.

For:

When a wholesaler collects more deposits on returnable containers than what he or she pays out in refunds (an underredeemer), the difference must be reported and sent to the state for deposit in the Bottle Deposit Fund. A wholesaler who pays out more in refunds than what is collected in deposits (an overredeemer) pays nothing. This actually results in the state collecting more than what actually constitutes unclaimed deposits. For instance, if retailer A collects \$15,000 in deposits, but gives out only \$5,000 in refunds, \$10,000 must be sent to the state. If retailer B collects \$5,000 in deposits, but gives out \$10,000 in refunds, nothing is sent to the state and the retailer is out \$5,000. So, between retailers A and B, \$20,000 is collected in deposits and \$15,000 is given out in refunds. Therefore, the state's share of the unclaimed deposits should be \$5,000. However, retailer A had to remit a \$10,000 difference between the deposits collected and money refunded. So, the state has actually taken more than its fair share at the expense of the overredeemer.

To correct this inequity, wholesalers have requested the opportunity to resolve the problem within their industry. Allowing an underredeemer to buy empty returnable containers from an overredeemer would allow the industry to "self-correct" and still ensure

that the state gets the full amount of unclaimed deposit money. For those wholesalers who have been chronic overredeemers, especially due to their geographic location, it would provide welcome economic relief.

Response:

The current law allows wholesalers to carry forward an overredemption amount for up to three years. This means that if a wholesaler is an overredeemer one year, but an underredeemer the next year, he or she can deduct the amount owed to the underredemption from the amount of the previous overredemption, thus recouping the previous loss. Therefore, this part of the bill is not really needed.

Rebuttal:

Some wholesalers have found that they are chronic overredeemers, meaning that they do not have alternate years of being underredeemers in which to recoup losses. Also, an overredemption amount can only be carried for three years, at which time it is lost if not used. Therefore, a wholesaler who is an overredeemer for four or more years, even if he or she should become an underredeemer in the fifth or subsequent year, would lose the credit for at least one of those years. Some overredeemers report losses totaling up to \$60,000 or more annually, which is a considerable amount to just lose. Even if a wholesaler can recoup the loss by becoming an underredeemer in the third year, he or she must still carry the loss for several years. The industry should be given the chance to solve this problem internally by keeping this provision in the bill.

Against:

Though well meaning, the changes proposed by the bill would reduce the amount of money being deposited in the Bottle Deposit Fund, which would in turn decrease the revenues being channeled to environmental programs and to the retailers, who carry the burden of collecting and processing the empty returnable containers.

POSITIONS:

The Michigan United Conservation Clubs (MUCC) supports the bill. (10-19-98)

The Michigan Beer and Wine Wholesalers Association supports the bill. (10-19-98)

The Michigan Soft Drink Association supports the concept of the bill. (10-23-98)

The Michigan Retailers Association does not support the bill in its current form. (10-21-98)

The Michigan Grocers Association opposes the bill. (10-21-98)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.