

Act No. 473
Public Acts of 1998
Approved by the Governor
December 31, 1998
Filed with the Secretary of State
January 4, 1999
EFFECTIVE DATE: April 1, 1999

**STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998**

Introduced by Reps. Griffin, LeTarte, Profit, Nye, Law, Raczkowski, Brackenridge, Jelinek, Owen, Hale and Oxender

ENROLLED HOUSE BILL No. 5061

AN ACT to amend the Initiated Law of 1976, entitled "A petition to initiate legislation to provide for the use of returnable containers for soft drinks, soda water, carbonated natural or mineral water, other nonalcoholic carbonated drink, and for beer, ale, or other malt drink of whatever alcoholic content, and for certain other beverage containers; to provide for the use of unredeemed bottle deposits; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies," by amending sections 2, 3b, and 4 (MCL 445.572, 445.573b, and 445.574), section 2 as amended by 1986 PA 235, section 3b as amended by 1996 PA 384, and section 4 as amended by 1982 PA 39, and by adding sections 4a and 4b.

The People of the State of Michigan enact:

Sec. 2. (1) A dealer within this state shall not sell, offer for sale, or give to a consumer a nonreturnable container or a beverage in a nonreturnable container.

(2) A dealer who regularly sells beverages for consumption off the dealer's premises shall provide on the premises, or within 100 yards of the premises on which the dealer sells or offers for sale a beverage in a returnable container, a convenient means whereby the containers of any kind, size, and brand sold or offered for sale by the dealer may be returned by, and the deposit refunded in cash to, a person whether or not the person is the original customer of that dealer, and whether or not the container was sold by that dealer.

(3) Regional centers for the redemption of returnable containers may be established, in addition to but not as substitutes for, the means established for refunds of deposits prescribed in subsection (2).

(4) Except as provided in subsections (5) and (7), a dealer shall accept from a person an empty returnable container of any kind, size, and brand sold or offered for sale by that dealer and pay to that person its full refund value in cash.

(5) A dealer who does not require a deposit on a returnable container when the contents are consumed in the dealer's sale or consumption area is not required to pay a refund for accepting that empty container.

(6) Except as provided in subsection (7), a distributor shall accept from a dealer an empty returnable container of any kind, size, and brand sold or offered for sale by that distributor and pay to the dealer its full refund value in cash.

(7) Each beverage container sold or offered for sale by a dealer within this state shall clearly indicate by embossing or by a stamp, a label, or other method securely affixed to the beverage container, the refund value of the container and the name of this state. A dealer or distributor may, but is not required to, refuse to accept from a person an empty returnable container which does not state on the container the refund value of the container and the name of this state.

This subsection does not apply to a refillable container having a refund value of not less than 10 cents, having a brand name permanently marked on it, and having a securely affixed method of indicating that it is a returnable container.

(8) A dealer within this state shall not sell, offer for sale, or give to consumers a metal beverage container, any part of which becomes detached when opened.

(9) A person, dealer, distributor, or manufacturer shall not return an empty container to a dealer for a refund of the deposit if a dealer has already refunded the deposit on that returnable container. This subsection does not prohibit a dealer from refunding the deposit on an empty returnable container each time the returnable container is sanitized by the manufacturer and reused as a beverage container.

(10) A dealer may accept, but is not required to accept, from a person, empty returnable containers for a refund in excess of \$25.00 on any given day.

(11) A manufacturer licensed by the commission shall not require a distributor licensed by the commission to pay a deposit to the manufacturer on a nonrefillable container. However, a manufacturer licensed by the commission and a distributor licensed by the commission may enter into an agreement providing that either or both may originate a deposit or any portion of a deposit on a nonrefillable container if the agreement is entered into freely and without coercion.

(12) A manufacturer shall refund the deposit paid on any container returned by a distributor for which a deposit has been paid by a distributor to the manufacturer.

(13) Subsections (4), (6), and (7) apply only to a returnable container that was originally sold in this state as a filled returnable container.

Sec. 3b. (1) The department of treasury may audit, assess, and collect the amount of money reflecting unclaimed bottle deposits owed to this state, and enforce the obligation to pay the amount of money reflecting unclaimed bottle deposits owed to this state, in the same manner as revenues and according to the provisions of 1941 PA 122, MCL 205.1 to 205.31.

(2) Not later than March 1, 1991 and not later than March 1 of each year thereafter, an underredeemer shall pay to the department of treasury that amount of money by which its annual total value of deposits exceeds its annual total value of refunds made on redeemed beverage containers, subject to the overredemption credit contained in this section.

(3) After March 1, 1991, an underredeemer who becomes an overredeemer in a subsequent year may credit the value of the overredemption in order to reduce the amount of money owed to the department of treasury under this section in 1 or more subsequent years as a result of that person again becoming an underredeemer. The value of the overredemption may be carried forward for not more than 3 years or until the credit granted in this section is completely depleted, whichever occurs first.

(4) A manufacturer who no longer originates deposits may carry the value of an overredemption back for prior years in order to utilize its credit, and reduce the amount of underredemption owed to the department of treasury under this section on a 1-time basis only. Utilization of this 1-time credit may be applied against underredemption amounts owed for reporting years commencing in 1990.

(5) As used in this section:

(a) "Overredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state is less than the annual total value of refunds made upon beverage containers redeemed within this state.

(b) "Underredeemer" means a distributor or manufacturer whose annual total value of deposits collected on beverage containers sold within this state exceeds annual total value of refunds made upon beverage containers redeemed within this state.

(6) In addition to the report prescribed in section 3a, if an underredeemer purchases empty returnable containers from an overredeemer, that purchase shall be reported by the underredeemer as a "refund made" and shall be reported by the overredeemer as a "deposit originated" in the report prescribed by section 3a. The report made by an underredeemer shall include the name and address of each overredeemer and the refund value of the empty returnable beverage containers purchased from each overredeemer. The report made by an overredeemer shall include the name and address of each underredeemer who purchased the returnable containers from that overredeemer and the refund value of the empty returnable beverage containers sold. The total consideration paid by an underredeemer to an overredeemer as authorized by this subsection shall equal the redemption value of the container.

(7) A purchase or sale made under subsection (6) during January of each year shall be included in the report for the previous calendar year only.

Sec. 4. Except as provided in sections 4a and 4b, a person, dealer, distributor, or manufacturer who violates this act is subject to a fine of not less than \$100.00 or more than \$1,000.00 and is liable for the costs of prosecution. Each day a violation occurs, a separate offense is committed.

Sec. 4a. (1) A person shall not return or attempt to return to a dealer for a refund 1 or more of the following:

(a) A beverage container that the person knows or should know was not purchased in this state as a filled returnable container.

(b) A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

(2) A person who violates subsection (1) is subject to 1 of the following:

(a) If the person returns 25 or more but not more than 100 nonreturnable containers, the person is guilty of a misdemeanor punishable by a fine of not more than \$100.00.

(b) If the person returns more than 100 nonreturnable containers or violates subdivision (a) for a second or subsequent time, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

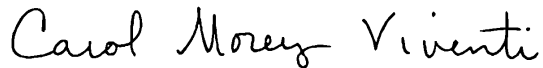
(c) A person found guilty under this subsection shall be ordered by the court to pay restitution equal to the amount of loss caused by the violation.

Sec. 4b. In that portion of the dealer's premises where returnable containers are redeemed, a dealer shall post a notice that says substantially the following: "A person who returns for refund an out-of-state nonreturnable container is subject to penalties of up to 93 days in jail and a fine of \$500.00 and restitution.". A dealer who fails to comply with this section is subject to a fine of not more than \$50.00.

Enacting section 1. This amendatory act takes effect April 1, 1999.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.