

# Legislative Analysis

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## EXCLUDE ALCOHOL POUCH CONTAINERS FROM BOTTLE DEPOSIT LAW

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**House Bill 5660 (as reported without amendment)**

**Sponsor: Rep. Jim Stamas**

**Committee: Regulatory Reform**

**First Analysis (5-28-12)**

**BRIEF SUMMARY:** The bill would exclude alcohol pouch containers from being subjected to the state's 10-cent bottle deposit.

The Michigan Beverage Containers Initiated Law of 1976 is a voter initiated law and, therefore, amendments to the act require a 3/4 vote of the Legislature for passage.

**FISCAL IMPACT:** The provisions of the bill that would specifically exclude alcohol pouch containers from the deposit requirement would not reduce any currently collected revenue to the State, but would exclude the State from collecting any future revenues from the unclaimed deposits of these containers. See *Fiscal Information* below for a detailed fiscal analysis.

### **THE APPARENT PROBLEM:**

The Michigan Beverage Containers Act was enacted by voters in 1976 and took effect in 1978 to reduce roadside litter and help clean up the environment. The bill established a 10-cent deposit on soft drinks, soda water, carbonated natural or mineral water, other non-alcoholic carbonated drinks; beer, ale, other malt drink of any alcoholic content; or a mixed wine or spirit drink that is contained in an airtight metal, glass, paper, or plastic container, or a container composed of a combination of those materials.

According to testimony, pouch containers that contain alcoholic beverages are relatively new to the retail market. Generally speaking, these pouch containers are flexible, laminated-foil plastic pouches that resemble miniature bottles and are a popular way to sell pre-made mixed drinks and cocktails. They are not recyclable and currently do not have a 10-cent deposit.

At issue is a Department of Treasury interpretation that has concluded the plain language of the statute would include pouch containers under the definition of beverage containers, making them subject to the 10-cent deposit. The Department of Treasury has given the Legislature until June 1, 2012, to weigh in on the issue before instituting its interpretation of the statute.

House Bill 5660 is an attempt to exempt these pouch containers from the 10-cent deposit requirement. Many in the industry feel placing a deposit on the containers would present an undue hardship on business owners and create numerous logistical issues.

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

The bill would amend the Beverage Containers Initiated Law of 1976 to exclude alcohol pouch containers from being subjected to the 10-cent bottle deposit.

Under the act, only "beverage containers" require a deposit and may be redeemed. "Beverage container" means an airtight metal, glass, paper, or plastic container, or a *container composed of a combination of these materials*, which, at the time of sale, contains up to one gallon of a beverage.

House Bill 5660 would specify that a "*container composed of a combination of these materials*" would not include a container composed in whole or part of aluminum and plastic or aluminum and paper in combination, if the aluminum content represents 20% or less of the unfilled container weight, and the weight of the container materials represent 5% or less of the total weight of the filled container.

MCL 445.571

### ***BACKGROUND INFORMATION:***

For a detailed explanation of bottle deposit revenues, see the House Fiscal Agency memo "Michigan Bottle Deposit Law Program" at:

[http://www.house.mi.gov/hfa/PDFs/DEQ%20Bottle%20Deposit%20Return%20Memo\\_May%202012.pdf](http://www.house.mi.gov/hfa/PDFs/DEQ%20Bottle%20Deposit%20Return%20Memo_May%202012.pdf)

### ***FISCAL INFORMATION:***

The Michigan Beverage Containers Initiated Law of 1976 established the Michigan Bottle Deposit Program. The Department of Treasury collects information on the amount of bottle deposits collected by retailers and the amount of bottles that are returned. The difference between these two amounts constitutes the unclaimed bottle deposits. The revenue from these unclaimed deposits reverts to the State and is collected from retailers by Treasury.

House Bill 5660 would exempt certain beverage containers from the 10-cent bottle return requirement. Currently, bottle deposits are not required to be paid or collected on these aluminum and plastic or paper pouch beverage containers. Thus, the bill's provisions that would specifically exclude them from the deposit requirement would not reduce any currently collected revenue to the State. The bill's provisions, however, would exclude the State from collecting any future revenues from the unclaimed deposits of these containers.

Under Michigan's Bottle Deposit Program, current law requires that 25% of the funding from unclaimed deposits be returned to retailers and 75% be deposited into the Cleanup and Redevelopment Trust Fund. This funding is then directed to 3 funds within the Department of Environmental Quality:

- 80% to the Cleanup and Redevelopment Fund (used for cleanup and redevelopment of specific contaminated sites)
- 10% to the Community Pollution Prevention Fund (provides grants to local governments for waste-reduction projects and education)
- 10% remains in the Cleanup and Redevelopment Trust Fund (until a total of \$200 million is deposited)

In FY 2009-10, the State received \$17.3 million revenue from unclaimed bottle deposits. Of this amount, \$4.3 million was distributed to retailers and \$12.9 million was directed to the three DEQ funds listed above. Through the unclaimed bottle deposit program, from 1997 to 2010, the State has collected a total of \$214.8 million from unclaimed bottle receipts. Retailers received \$53.7 million of this revenue in that time span and the DEQ received \$161.1 million.

### ***ARGUMENTS:***

#### ***For:***

When voters adopted the bottle deposit law in 1976, some feel there was no intent to include alcohol pouch containers, because they simply did not exist at the time. According to testimony, there is currently no method available to recycle the pouch containers. Even if there was a deposit, and retailers were required to collect them, they would have to store the containers or throw them away. This is counter-productive and places a heavy burden on small business owners. The possibility of having to store used alcohol pouch containers could pose significant sanitary issues for store owners.

Some feel that extending the 10-cent deposit to alcohol pouch containers could put the industry, at least in Michigan, in serious jeopardy. According to testimony, there were over 175,000 cases of pouched alcohol sold in the state last year, generating roughly \$900,000 in tax revenue. There are companies in Michigan that manufacture the pouch container that could be adversely impacted by a drop in sales. As previously mentioned, the pouch containers are not recyclable and the reverse vending machines that are common in most grocery stores are not equipped to process these pouches. This could force some store owners to purchase new machines costing upwards of \$15,000. This could be a burdensome expense for some businesses. If the cost of the machine is more than sales of alcohol pouch drinks, some stores may simply stop carrying the product.

Placing the 10-cent deposit on pouch containers would also make Michigan out-of-line with the rest of states that have deposit laws. Michigan is currently one of 11 states with a beverage container deposit law and, according to testimony, none of the other states require a deposit on alcohol pouch containers.

#### ***Against:***

There is concern that by exempting specific containers from the bottle deposit law, it will encourage the industry to move away from recyclable bottles and toward containers, such

as the plastic/aluminum pouches, which are not recyclable. A move in this direction could have negative consequences for the environment and lead to increased materials being deposited into landfills.

Many also feel that the statute enacted by voters in 1976 is very clear: the intent was to require beverage containers that are made of metal, glass, paper, or plastic, or any combination of those materials, to be covered under the bottle deposit law. Specifically exempting containers that contain these materials would directly contradict the intent of the voters.

As drafted, the bill exempts containers composed in whole or in part of aluminum and plastic, or aluminum and paper in combination, if the aluminum content represents 20% or less of the unfilled container weight and the weight of the container materials represent 5% or less of the total weight of the filled container. It is unclear whether this language would capture all of the alcohol pouch containers that are currently on the market.

It has been suggested that instead of exempting specific containers from the 10-cent deposit, the Legislature should look recycling opportunities in general and what can be done to improve recycling on a larger scale.

***POSITIONS:***

American Beverage Corporation supports the bill. (5-23-12)

Associated Food and Petroleum Dealers supports the bill. (5-23-12)

Bemis Company, Inc. supports the bill. (5-23-12)

Diageo supports the bill. (5-23-12)

Distilled Spirits Council of the United States supports the bill. (5-23-12)

Michigan Beer and Wine Wholesalers Association supports the bill. (5-23-12)

Michigan Food and Beverage Association supports the bill. (5-23-12)

Michigan Grocers Association supports the bill. (5-23-12)

Michigan Retailers Association supports the bill. (5-23-12)

Michigan Restaurant Association supports the bill. (5-23-12)

Michigan Spirits Association supports the bill. (5-23-12)

Meijer, Inc. supports the bill. (5-23-12)

National Wine and Spirits of Michigan supports the bill. (5-23-12)

Spartan Stores, Inc. supports the bill. (5-23-12)

Walmart supports the bill. (5-23-12)

Wine Institute of California supports the bill. (5-23-12)

Michigan Department of Treasury is neutral on the bill. (5-23-12)

Clean Water Action opposes the bill. (5-23-12)

Michigan Environmental Council opposes the bill. (5-23-12)

MillerCoors opposes the bill. (5-23-12)

Anheuser Busch opposes the bill. (5-23-12)

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■ 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.