

SB 243

Measure Title: RELATING TO THE DEPOSIT BEVERAGE CONTAINER PROGRAM.

Description: Requires retail dealers with more than seventy-five thousand square feet of retail space to operate redemption centers. Effective 10/1/2009.

Introducer(s): GABBARD, HOOSER

2/17/2009 The committee(s) on ENE recommend(s) that the measure be PASSED, UNAMENDED. The votes in ENE were as follows: 4 Aye(s): Senator(s) Gabbard, Green, Ihara, Hemmings; Aye(s) with reservations: none ; 0 No(es): none; and 3 Excused: Senator(s) English, Hooser, Kokubun.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON HEALTH Mach 4, 2009, 3:00 P.M.

(Testimony is 5 pages long)

TESTIMONY IN STRONG SUPPORT OF SB 243

Aloha Chair Ige and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, strongly supports SB 243, requiring that certain retailers take back deposit containers at their store.

The single best way to ensure easy, convenient redemption for Hawaii's consumers is to mandate that grocery stores and retailers of a certain size take back the bottles and cans that they sell, just like every other deposit law state.

Hawaii's bottle law has proven to be an overwhelming success for Hawaii's environment, with three billion bottles and cans being diverted from Hawaii's landfills. Beyond waste diversion, the new recycling law reduced litter, created jobs, and provided new opportunities for churches, charities, and schools to fundraise. The recycling program proves that a little change can make a big difference.

Despite its success with redeeming over three billion beverage containers, ***the bottle law can be improved***. Residents have rightfully complained about the cumbersome redemption process, with infrequent redemption centers and spotty hours of operation (and service).¹ A recent Department of Health study indicated 29% of respondents would prefer to redeem their containers at stores or the place where the bottles were bought. To this end, 27% of respondents complained in a recent study that it was "too much of a hassle" to redeem containers. "When respondents were asked how much of the redemption center they normally use changed in the past year, 66% of them said that it worsened a little.

Hawai'i is currently the only state with a bottle law that does not require grocery stores to 'close the loop' on recycling. Hawai'i should require that stores over a certain size (or over a certain sales threshold) provide redemption, exempting most "mom and pop" stores. SB 243 will do this, requiring that large, "big box" stores over 75,000 square feet provide for redemption. Stores would not need to staff a redemption center; they could simply install "reverse vending machines" at the store or in the parking lot.

Such an improvement to our bottle law will streamline the redemption process and provide residents with convenient recycling where they shop, when they shop.

¹ See "Tracking Participation In and Attitudes Toward the HI-5 Deposit Beverage Container Recycling Program" (April 2008), available at http://hawaii.gov/health/environmental/waste/sw/sw/hi5/support/HI5_2008SurveyReport.pdf

We strongly recommend, however, that this measure be amended to include regular grocery stores in the beverage container redemption program. We recommend that stores 10,000 feet and larger be required to take back bottles and cans, just like they do in every other bottle law state (see attached pages on take-back requirements from other states). Setting the size limit at 10,000 square feet would provide more opportunities to recycle for residents (at the Foodlands, Safeways, etc. where they shop) while excluding the smaller, mom-and-pop stores (for comparison, most "7-11" stores in Hawai'i are smaller than 10,000 square feet).

As a reminder to this Committee, the legislature has tried previously to encourage the voluntary use of reverse vending machines by offering rebates to retailers and recyclers who use them. The rebates ranged from \$30,000 to \$90,000 (depending on store size), effectively covering a majority of the cost of such machines. These enticements failed to increase the number of stores participating in the redemption program. It is unfortunate that the retailers and grocery stores have refused to play a role in Hawaii's beverage container program by providing easy, convenient recycling – just as they do in the other bottle law states where they operate. SB 243—properly amended to include more of the everyday grocery stores that residents patronize—will ensure that they participate in this recycling program to keep the products that they profit from out of our landfills and off our beaches.

Please review the attached listing of retailer "take back" requirements from other bottle law states. We hope this committee amends SB 243 to include more stores in Hawaii's bottle law program.

Thank you for the opportunity to testify.

REVIEW OF REGULATIONS FROM OTHER BOTTLE LAW STATES

1. Maine

- Anyone who sells, beverages in redeemable containers, including vending machines, is a dealer. Me. Rev. Stat. Ann. tit. 32, §1862(5).
- “[A] dealer may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealer” Me. Rev. State. Ann. tit. 32, §1866(1).
- A dealer may refuse to accept containers if the type of the container and the dealer are covered by an order permitting a redemption center. Me. Rev. State. Ann. tit. 32, §1866(2).
- **LIMIT:** 240 containers per person per day. Me. Rev. State. Ann. tit. 32, §1866(2-A).
- A dealer may refuse to accept containers during no more than 3 hours each day. If the dealer chooses to do this, the hours during which he or she will not accept containers must be posted. Me. Rev. State. Ann. tit. 32, §1866(2-B).
- The only exemption is for apple cider produced in the state. Code. Me. R. §01-001-15.

Link to Statute: <http://janus.state.me.us/legis/statutes/32/title32sec1867.html>

Link to Regulations: <http://www.maine.gov/sos/cec/rules/01/001/001c360.doc>

2. Vermont

- The Vermont statute requires all **retailers** to accept and pay the refund for any beverage containers “of the kind, size and brand sold by the retailer” 10 V.S.A. §1523(a)(1).
- Containers may be redeemed during no less than 40 hours per week, during regular operating hours. 10 V.S.A. § 1522(d).
- A retailer may refuse to accept containers, with the prior approval of the Secretary of the Agency of Natural Resources, if there is a redemption center serving the public need. 10 V.S.A. § 1523(b).

- Retailers may refuse to accept containers that are dirty, broken, or were not purchased in Vermont. 10 V.S.A. § 1532(c).

Website Statute: <http://www.leg.state.vt.us/statutes/sections.cfm?Title=10&Chapter=053>

3. Massachusetts

- Any dealer must accept any empty beverage container of the size, brand, and type which the dealer sells and pay the customer the refund for the container. Mass. Gen. Laws Ch. 94 §323(b).
- Dealers must accept containers during their normal business hours. *Id.*
- Dealers may refuse to accept containers contaminated with foreign material. Mass. Gen. Laws Ch. 94 §323(f).
- In addition to retail establishments, any person can establish a redemption center. Mass. Gen. Laws Ch. 94 §323(e).

- A redemption center may choose what containers it will accept. *Id.*

Link to Massachusetts General Law: <http://www.mass.gov/legis/laws/mgl/94-321.htm>

4. Connecticut

- A dealer must accept “any empty beverage containers of the kind, size and brand sold by the dealer” at the dealer’s place of business unless the container contains foreign material or is not labeled in accordance with the statute. Conn. Gen. Stat. Ch. 446d §22a-245(b).
- A dealer may also refuse to accept containers if the dealer “sponsors, solely or with others, a redemption center which is located within a one-mile radius of such place of business and which accepts beverage containers of the kind, size and brand sold by such dealer at such place of business or unless there is established by others, a redemption center which is located within a one-mile radius of such place of business and which accepts beverage containers of the kind, size and brand sold by such dealer at such place of business.” *Id.*
- A dealer may also refuse to accept containers 60 days after the dealer discontinues the sale of a particular kind, size or brand of beverage, but the dealer must post notice of the date on which he or she will stop accepting that particular type of container. *Id.*
- A person may apply to the Commissioner of Environmental Protection to establish a redemption center. Conn. Gen. Stat. Ch. 446d §22a-245(a) (formerly §22a-79).
 - “Any person establishing a redemption center shall have the right to determine what kind, size and brand of beverage container shall be accepted. Any redemption center may be established to serve all persons or to serve certain specified dealers.” *Id.*

Link to Statute: <http://www.cga.ct.gov/2001/pub/Chap446d.htm#sec22a-243.htm>

5. New York

- A dealer is required to accept at his or her place of business “any empty beverage containers of the design, shape, size, color, composition and brand sold by the dealer . . .” NY Environmental Conservation Law §27-1007(1).
- A dealer may refuse to accept an empty beverage container if: (1) the container does not state a refund value; (2) the bottle is broken; (3) the can is corroded or dismembered; (3) the container contains a significant amount of foreign material. NY Environmental Conservation Law § 27-1009(1)-(2).
- The Department of Environmental Conservation is authorized to promulgate rules that would allow dealers and redemption centers to limit the kind and number of containers that particular facility will accept, but it has not done so. NY Environmental Conservation Law §27-1013.

Link to Statute: <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

6. Delaware

- A dealer shall accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, and pay the consumer the refund on the appropriately labeled returnable beverage container. Del. Code Ann., tit. 7, §6057.
- A dealer may refuse to refund deposits on beverage containers if a redemption center or centers are established in the vicinity which serve the public need. Id.
- A dealer or redemption center may refuse to refund deposits on beverage containers which are broken, or unclean, or not empty. Id.
- **LIMIT:** Such dealer or center may refuse to accept beverage containers from any person who attempts to return 120 or more containers at the same time, or within a 1-week period. Id.
- Any dealer or distributor or manufacturer or person or any combination thereof may establish a redemption center subject to approval of the Department. Del. Code Ann., tit. 7, §6056(a).

Link to statute:

<http://www.delcode.state.de.us/title7/c060/sc03/index.htm>

Link to regulations: <http://www.dnrec.state.de.us/DNREC2000/Divisions/AWM/hw/sw/pdf/bevreg.pdf>

7. Michigan

- Dealers are required to provide “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” on the premises or within 100 yards of the premises. Mich. Comp. Laws §445.572(2).
- “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).” Mich. Comp. Laws §445.572(3) (emphasis added).
- A dealer may refuse to pay a refund when accepting an empty container if that dealer does not require a deposit when he or she sells returnable beverage containers. Mich. Comp. Laws §445.572(5).
- A dealer or distributor has discretion to refuse to accept containers that do not clearly state the refund value of the container and “Michigan.” Mich. Comp. Laws §445.572(7)
- **LIMIT:** In addition, a dealer is not required to accept empty containers for a refund of more than \$25 on a single given day. Mich. Comp. Laws §445.572(10).

Links to statute: [http://www.legislature.mi.gov/\(S\(y1ksaimi44igdd55i4yeumrg\)\)/mileg.aspx?page=getobject&objectname=mcl-initiated-law-of-1976](http://www.legislature.mi.gov/(S(y1ksaimi44igdd55i4yeumrg))/mileg.aspx?page=getobject&objectname=mcl-initiated-law-of-1976)

<http://www.deq.state.mi.us/documents/deq-wmd-swp-Bottle-Bill.doc>

8. Iowa

- Dealers must accept “any empty beverage container of the kind, size and brand sold by the dealer” Iowa Code §455C.3(1)
- A dealer may refuse to accept any empty container that does not have a refund value on it. Iowa Code §455C.4(1).
- A dealer is also permitted to refuse to accept an empty beverage container if the dealer and the kind and brand of container are covered by an order approving a redemption center. Iowa Code §455C.4(2).
- Dealers may also refuse to accept alcoholic beverage containers that were originally sold at a state liquor store. Iowa Code §455C.4(3).
- Any person may establish a redemption center, subject to the approval of the Department of Natural Resources. Iowa Code §455C.6(1).

Link to statute: <http://web.legis.state.ia.us/IACODE/1999SUPPLEMENT/455C/index.html>

9. Oregon

- A dealer must accept “any empty beverage containers of the kind, size and brand sold by the dealer” Or. Rev. Stat. § 459A.710(1)
- A dealer may refuse to accept any container if: (1) it does not state the refund value; (2) the dealer and the container are covered by an order approving a redemption center; (3) the container is visibly contaminated by any substance other than water, the original contents, or dust; (4) the container is damaged to the extent that the brand is unidentifiable. Or. Rev. Stat. § 459A.715(1)-(3).
- A dealer need not accept a container if the dealer: (a) Has not offered the product in the specific container size for sale within the past six months; (b) Has reasonable grounds to believe the container was sold at retail outside Oregon; or (c) Has reasonable grounds to believe that container was obtained from or through a distributor without paying the refund value Or. Admin. R. 845-020-0035.
- **LIMIT:** In addition, a dealer may refuse to accept more than 144 containers from any one person in a single day. Or. Rev. Stat. § 459A.715(2)(b).
- Any person may establish a redemption center upon approval of the Oregon Liquor Control Commission. Or. Rev. Stat. §459A.735(1).

Link to Statute: <http://landru.leg.state.or.us/ors/459a.html>

Link to Administrative Rules: http://arcweb.sos.state.or.us/rules/OARS_800/OAR_845/845_020.html

10. California

- Every dealer must either allow for redemption of empty containers at all open cash registers in the dealer’s place of business or at a specified location on the dealer’s premises, or the dealer must post a conspicuous sign notifying customers of the name and address of the certified recycling center or location(s) nearest to the dealer, “which redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m. . . .” Cal. Pub. Res. Code §14570.
- The Administrative Rules do not add any additional restrictions on recycling centers.

Link to Statute: <http://www.consrv.ca.gov/DOR/crcp/recyclers/Images/Act.pdf>

Link to Administrative Rules: <http://www.consrv.ca.gov/DOR/crcp/recyclers/Images/Regs.pdf>



Senator David Ige, Chair
Senator Josh Green, M.D., Vice Chair
Committee on Health

HEARING Wednesday, March 04, 2009
3:00 pm
Conference Room 016
State Capitol, Honolulu, Hawaii 96813

RE: **SB243, Relating to the Deposit Beverage Container Program**

Chair Ige, Vice Chair Green, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH stands in strong opposition to SB243. Retailers should not be mandated to become garbage collectors. The Department of Health has developed about 75 pages of sanitation regulations [Administrative Rules governing Food Establishment Sanitation (Title 11, Section 12)] with which businesses that sell food products must comply. Consumers expect and retailers must provide the highest level of sanitation where food products are sold. Collecting and storing redeemed containers inevitably attracts pests, including roaches, rats and ants. Preventing food contamination and controlling vermin infestation would require retailers utilize poisons and insecticides, which could pose health risks for our employees and our customers. Considering that most retailers are located in high density urban areas, these concerns must extend to neighboring residents.

Given the state of our economy, this is not the time to burden retailers with additional costs. For a retailer of this size, a workable redemption facility requires a minimum of from 10 to 15 reverse vending machines. Then add operating costs: 1) staffing to empty and clean the machines; 2) electricity to operate the machines; 3) security to prevent malicious damage; and 4) contract services to haul the redeemed containers off the property. These valuable resources should and must be allocated to retaining employees and their benefits, and avoiding layoffs.

According to a press release from the Department of Health, the redemption rate "remains high at 73%." The recycling industry is to be commended for their considerable investment in developing a network of redemption centers that undoubtedly account for this high redemption rate. And, as curbside recycling programs expand to include other areas on Oahu, it is highly likely that the remainder of unredeemed containers will be captured. One cannot deny that curbside recycling is the MOST CONVENIENT option.

Hawaii's retailers are not anti-environment. Hawaii's retailers currently recycle tons of waste: backhauling their shipping materials, recycling wooden pallets, and baling cardboard cartons for recycling. A recent survey of retailers revealed that in 2008, 10,000 tons of plastic and cardboard were shipped out of the state and NOT dumped into the landfill.

The members of the Retail Merchants of Hawaii respectfully urge you to hold SB243. Thank you for your consideration and for the opportunity to comment on this measure.


Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202