

Ninety-Nine Bottles of Beer in the River: Why Iowa’s Broken Bottle Bill Needs Major Reform

Ethan J. Dunn*

ABSTRACT: Iowa’s bottle bill needs major reform. For years the bottle deposit system made Iowans happy while also keeping land across the state litter-free. However, the COVID-19 pandemic demonstrated deep cracks that formed in the system over years of neglect. With no signs of improvement, dealers and distributors alike began blatantly breaking the law without any repercussions, leaving citizens with few options for container returns. The Iowa Legislature passed a modest reform in the spring of 2022, but the changes it implemented only exacerbate the problem by allowing grocery stores to opt out of accepting returns, making these returns more burdensome. The changes have made returning containers for consumers more difficult while failing to offer real solutions to the problems faced. By borrowing ideas from other states’ bottle bills, (such as increased deposit prices, expanded container eligibility, and requiring redemption by grocers with penalties included) Iowa can save the bottle bill and continue to promote the law’s ultimate goal: to protect the environment.

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* J.D. Candidate, The University of Iowa College of Law, 2024; B.S. Journalism and Mass Communications, Iowa State University, 2020. I would like to thank my friends and family for their unwavering support not only throughout my Note writing process, but also my entire law school journey. Additionally, I want to thank everyone involved with the *Iowa Law Review* for their hard work in ensuring this Note is as polished as can be!

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INTRODUCTION

Iowa is one of a small number of states that has implemented a bottle deposit system¹ requiring consumers to pay a small deposit when purchasing popular drinks. Dealers² then provide the consumer that same price as a refund when they return bottles or cans for recycling.³ Enacted in 1979,⁴ Iowa's bottle bill has become a hallmark of the state and remained popular for its effectiveness in reducing litter.⁵

Unfortunately, no system is without its fair share of problems, and Iowa's bottle bill is no exception. Cracks began forming in the archaic system years before the COVID-19 pandemic pushed the system into turmoil.⁶ Once the pandemic hit, dealers stopped accepting bottle returns but continued to charge deposits while consumers were left with bags of cans and bottles without an easy way to get their deposits refunded.⁷

The Iowa Legislature responded to this problem in 2022 by passing the first major bottle bill revision since the law's inception over forty years prior.

1. JOE SIMPSON, LEGIS. SERVS. AGENCY, 1231240, BEVERAGE CONTAINER DEPOSIT LAWS AND IOWA'S BOTTLE BILL 1 (2021).

2. The term "dealer" refers to places of business that sell cans and bottles which require a deposit. IOWA CODE § 455C.1 (2023). This group includes retailers, grocers, and other similarly situated businesses.

3. See Jeffrey B. Wagenbach, Note, *The Bottle Bill: Progress and Prospects*, 36 SYRACUSE L. REV. 759, 761-64 (1985).

4. IOWA CODE § 455C.2 (1979).

5. O. Kay Henderson, *Survey Finds Iowa's Bottle Bill Remains Popular*, RADIO IOWA (Mar. 9, 2022), <https://www.radioiowa.com/2022/03/09/survey-finds-iowas-bottle-bill-remains-popular> [<https://perma.cc/5CW6-NVDL>].

6. See, e.g., James Q. Lynch, *Iowa's 40-Year-Old Iowa Bottle Bill 'Falling Apart,' Economist Says*, QUAD-CITY TIMES (Feb. 7, 2019), https://qctimes.com/news/local/govt-and-politics/iowa-s-40-year-old-iowa-bottle-bill-falling-apart-economist-says/article_66194921-2ae3-50ef-a21f-de8914ec12f3.html (on file with the *Iowa Law Review*).

7. See Katie Akin, *Lawmakers Inch Closer to Bottle Bill Compromise*, IOWA CAP. DISPATCH (Mar. 31, 2022, 4:41 PM), <https://iowacapitaldispatch.com/2022/03/31/lawmakers-inch-closer-to-bottle-bill-compromise> [<https://perma.cc/F8MV-4ASX>]; *House Video (2022-04-12)*, IOWA LEGIS., at 5:09:32 PM (Apr. 4, 2022), <https://www.legis.iowa.gov/dashboard?view=video&chamber=H&clip=h20220412044945016&offset=376&bill=SF%202378&dt=2022-04-12> [<https://www.legis.iowa.gov/perma/0122202411378>].

While plugging some holes, such as increasing funding to redemption centers,⁸ the bill largely only increased the burdens on consumers. Under the revised law, dealers are often allowed to refuse can and bottle returns, making any such return more burdensome on consumers as they will be forced to travel increased distances to make returns.⁹ The revised law also gives distributors¹⁰ the exclusive right to profit off this hardship by keeping any unclaimed deposits.¹¹ Additionally, the legislature chose not to increase the deposit amount from the decades-old five cents. Adjusted for inflation, the deposit price today is worth almost a quarter of what it was when the system was first enacted, reducing incentives for consumers to return their containers. Simply stated, the new law has failed to protect the individual citizens who are affected by the law every day.

This Note argues that the 2022 revisions to Iowa's bottle bill damaged a system that was already languishing in disrepair. The most recent changes do not demonstrate any governmental concern for the environment or the consumer, which is where the law's priorities should lie. Without swift and aggressive action, the entire system could find itself on the edge of extinction. To save the law, and ultimately improve it, the Iowa Legislature should borrow the most effective parts of bottle deposit laws from across the country and implement them back home. Simple steps such as increasing the deposit price, providing convenient return options, and widening the law's scope can help protect Iowa's landscape and provide citizens with an efficient and effective bottle bill.

I. WHAT IS A BOTTLE BILL?

A bottle bill, also known as a bottle deposit law, is a statutory scheme that requires consumers to pay a small deposit on each eligible canned and bottled beverage they purchase.¹² Once finished with the container, the consumer returns it to a dealer or a redemption center that refunds their initial deposit.¹³ These deposits typically range anywhere from five to fifteen cents depending on the state and container in question.¹⁴ From there, the dealer or redemption center returns the containers to distributors who, in turn, provide the dealer the price of the deposit refunded to the consumer plus, in many states, a handling

8. S. File 2378, 89th Gen. Assemb., Reg. Sess. (Iowa 2022). From this point on, this piece of legislation is cited at its new code section in the 2023 edition as all of the sections are now in effect. *Id.* The only exception to this is where the legislative history is discussed.

9. See IOWA CODE § 455C.1 (2023); *id.* § 455C.4.

10. The term "distributor" refers to manufacturers of popular can and bottle beverages who sell to dealers within the state. *Id.* § 455C.1. This group is responsible for picking up returned containers from the dealers and taking them to be recycled. Examples of distributors are the Coca-Cola Company and PepsiCo, Inc.

11. *Id.* § 455C.18.

12. See Wagenbach, *supra* note 3, at 761–63.

13. *Id.* at 761–64.

14. *Bottle Bill States and How They Work*, TOMRA (Sept. 8, 2021), <https://www.tomra.com/en/verse-vending/media-center/feature-articles/bottle-bill-states-and-how-they-work> [<https://perma.cc/9WGF-VB5S>].

fee.¹⁵ Throughout the process, each container travels from the consumer to a dealer or redemption center before traveling again to a distributor, who is ultimately responsible for recycling the container.

Bottle bills incentivize recycling and remove plastic waste from the environment.¹⁶ However, only ten states have adopted them: “California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, Michigan, New York, Oregon, and Vermont.”¹⁷ States that have enacted bottle bills have a significantly higher recycling rate than those that have not.¹⁸

A. HISTORY OF BOTTLE BILLS IN THE UNITED STATES

In the late nineteenth and early twentieth centuries, soft drinks and other beverages were largely consumed either on-site at a bar or restaurant or in individual bottles that consumers returned to manufacturers after use to be cleaned, refilled, and reused.¹⁹ Unfortunately, these bottles were incredibly costly to produce, both in price and time.²⁰ To combat high prices, manufacturers required consumers to pay deposits on the bottles to encourage them to return their bottles after consuming the beverage.²¹

After World War II, the United States experienced an expansive period of innovation in the can and bottle industry.²² Expensive, reusable bottles were replaced with new, one-way containers designed to be used just once and discarded.²³ While the new designs offered manufacturers a cheap, efficient alternative to the reusable containers of the past, they contributed to a growing litter problem across the country.²⁴ The resulting environmental damage has occupied the public’s conscience and resulted in calls for change.

State legislatures, looking for ways to reduce litter and improve the environment, took aim at the bottled beverage industry. In 1953, Vermont legislators proposed a bill banning “non-refillable bottles.”²⁵ However, this attempt failed due to heavy pushback from the beer industry ultimately leading to the bill’s defeat.²⁶ Other states were not dissuaded by Vermont’s failure.

15. See Container Recycling Inst., *What Is a Bottle Bill?*, BOTTLE BILL RES. GUIDE, <https://www.bottlebill.org/index.php/about-bottle-bills/what-is-a-bottle-bill> [<https://perma.cc/U49Y-LTEV>]; Wagenbach, *supra* note 3, at 761–63.

16. See Container Recycling Inst., *Bottle Bills Promote Recycling and Reduce Waste*, BOTTLE BILL RES. GUIDE, <https://www.bottlebill.org/index.php/benefits-of-bottle-bills/bottle-bills-promote-recycling-and-reduce-waste> [<https://perma.cc/4CDY-L996>].

17. SIMPSON, *supra* note 1, at 1.

18. Container Recycling Inst., *supra* note 16.

19. Finn Arne Jørgensen, *A Pocket History of Bottle Recycling*, ATLANTIC (Feb. 27, 2013), <https://www.theatlantic.com/technology/archive/2013/02/a-pocket-history-of-bottle-recycling/273575> (on file with the *Iowa Law Review*).

20. *Id.*

21. *Id.*

22. *See id.*

23. *Id.*

24. *See id.*

25. *Id.*

26. *Id.*

Oregon was the first state to successfully take its own shot at combating the growing environmental problem.²⁷

1. The First United States Bottle Bill: Oregon 1971

Oregon became the first state in the country to enact what we today would call a bottle bill in 1971.²⁸ However, passage of this statute was no simple feat. Legislators first introduced a version of the bill during the 1969 legislative session after a suggestion by a constituent named Richard Chambers.²⁹ Chambers was disgusted by the sheer amount of litter he discovered while hiking through the Oregon landscape and proposed creating a bottle deposit system.³⁰ The first bill, like its predecessor in Vermont, was defeated by aggressive lobbying by the bottle industry.³¹ Despite this initial setback, the bill continued to gain support. Governor Tom McCall took great interest in the new bill, providing new momentum for a bottle deposit law.³² During the 1971 legislative session, a small group of legislators introduced a new and improved bottle bill for consideration,³³ but, once again, the bottle industry pushed back both locally and nationally.³⁴ This time, however, McCall was able to acquire enough support to pass the bill in the House on a fifty-four to six vote and twenty-two to eight in the Senate.³⁵ McCall signed the bill into law on July 2, 1971.³⁶

This first legislative success looked very different from the bottle bills we know today. The legislature's goal was to encourage bottlers "to package their products for distribution in Oregon in returnable, multiple-use deposit bottles" which would ultimately lead to a reduction of litter in the state.³⁷ To this end, it instituted a deposit and refund system for many containers similar to the ones used by bottle bill states today. However, the law went further and also banned the distribution of "pull top cans."³⁸

27. See generally Richard L. Caswell & Steven L. Verhulst, *The Oregon Bottle Bill*, 54 OR. L. REV. 175 (1975) (discussing the legislative intent of the Oregon Bottle Bill as well as how it functionally works).

28. *Oregon's Evolving Bottle Bill*, OR. DEP'T ENV'T QUALITY, <https://www.oregon.gov/deq/re cycling/pages/bottle-bill.aspx> [<https://perma.cc/79RW-TSEH>].

29. See Caswell & Verhulst, *supra* note 27, at 175; Mark Henkels, *Beverage Container Act (Bottle Bill)*, OR. ENCYCLOPEDIA (Mar. 24, 2022), https://www.oregonencyclopedia.org/articles/beverage_container_act_bottle_bill [<https://perma.cc/T9FR-Q2NR>].

30. Henkels, *supra* note 29.

31. *Id.*; see *supra* notes 25–26 and accompanying text.

32. Henkels, *supra* note 29.

33. See Caswell & Verhulst, *supra* note 27, at 176.

34. Henkels, *supra* note 29.

35. See Caswell & Verhulst, *supra* note 27, at 176–77.

36. *Id.* at 178.

37. *Am. Can Co. v. Or. Liquor Control Comm'n*, 517 P.2d 691, 694 (Or. Ct. App. 1973).

38. See Caswell & Verhulst, *supra* note 27, at 178.

2. Litigation of Oregon's Bottle Bill

The Oregon law quickly spurred litigation challenging its constitutionality, but, despite heavy pushback, the Oregon Court of Appeals upheld the law.³⁹ A collection of in-state and out-of-state plaintiffs joined forces to attack the bottle bill claiming it violated the federal Commerce Clause, Due Process Clause, and Equal Protection Clause.⁴⁰ The plaintiffs feared that the legislation would lead to “a substantial reduction in Oregon sales of soft drinks.”⁴¹ The court dismissed the plaintiffs’ Due Process Clause claim with little discussion and, instead, focused on the Commerce Clause and Equal Protection Clause claims.⁴²

The plaintiffs first claimed that the bill violated the Commerce Clause because it would have a substantial, negative impact on the flow of products between states.⁴³ While the court recognized this potential effect, it declined to accept it as a reason to strike down the bill. Instead, the court accepted the legislature’s claimed purpose of reducing litter and waste from the environment as sufficient to overcome any Commerce Clause concerns.⁴⁴ It did acknowledge that legislation like this brings about winners and losers; however, that alone was not enough to strike down the law.⁴⁵ The law did not discriminate against out-of-state parties for the purpose of giving local businesses an advantage.⁴⁶ Rather “the statute regulate[d] evenhandedly to effectuate a legitimate local public interest” which demonstrated to the court a valid use of the state’s police power under the Commerce Clause.⁴⁷

The court then moved to the equal protection claim.⁴⁸ The plaintiffs claimed “an affirmative right to engage in interstate commerce analogous to the rights of freedom from discrimination based upon race, religion or sex and the right to engage in travel.”⁴⁹ According to the plaintiffs, this “right to engage in interstate commerce” should subject the law to strict scrutiny review.⁵⁰

39. See *Am. Can Co.*, 517 P.2d at 705.

40. *Id.* at 694.

41. *Id.* at 695.

42. *Id.* at 703–04.

43. See *id.* at 696–97.

44. See *id.* at 698–99.

45. See *id.* at 696 (“[The Commerce Clause] was not meant to usurp the police power of the states which was reserved under the Tenth Amendment. Therefore, although most exercises of the police power affect interstate commerce to some degree, not every such exercise is invalid under the Commerce Clause.”).

46. *Id.* at 703.

47. *Id.* at 697 (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

48. *Id.* at 704–05. The court quickly dismissed the Due Process Clause claim made by the plaintiffs with little discussion. *Id.* at 704. The plaintiffs claimed the court should “weigh the legislative purpose against the” oppressions felt by individuals, but since the court largely considered this when looking at the Commerce Clause argument, it concluded the argument was without merit. *Id.* (“The United States Supreme Court has not struck down economic legislation on the basis of substantive due process since the Depression.”).

49. *Id.* at 704.

50. *Id.* If the court had applied strict scrutiny review, the law almost certainly would have been struck down. While the law may be furthering a compelling government interest (keeping

The court rejected this line of reasoning in full; It did not believe this right was fundamental nor similar to the rights cited.⁵¹ Instead, the court took guidance from the U.S. Supreme Court case *McGowan v. Maryland*, which established that “[t]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.”⁵² This precedent led the court to believe the bottle bill was well within the State’s power to regulate.⁵³

Finding all of the plaintiffs’ arguments insufficient, the court determined that Oregon’s bottle bill was constitutional and upheld the law in full.⁵⁴ Not only did this case pave the way for other states to pass their own bottle bills, it has become a cornerstone for courts across the country to uphold similar bottle deposit legislation.⁵⁵

B. ENVIRONMENTAL IMPACT OF BOTTLE BILLS

Regardless of one’s inclination on the necessity of bottle bills, their effectiveness in cleaning up the environment cannot be disputed. Oregon, for example, saw a significant drop in single-use plastic containers in roadside litter after enacting its bottle bill.⁵⁶ Michigan saw a similar drop in 1979, a few short years after passing its bottle bill.⁵⁷ Iowa is no exception to this trend. It has documented that the recycling rates of bottles and cans covered by the state’s bottle bill is notably higher than that of other containers.⁵⁸ The data shows these bills work.

Additionally, bottle bills provide dealers, consumers, and distributors alike with incentives to tackle environmental problems head on.⁵⁹ They also encourage, and often require, consumers to return only containers which have been properly cleaned, making the recycling process both cheaper and more effective.⁶⁰

the environment litter-free), the method is likely not the least intrusive means available meaning it is not “narrowly tailored.”

51. *Id.*

52. *Id.* (quoting *McGowan v. Maryland*, 366 U.S. 420, 425 (1961)).

53. *Id.*

54. *Id.* at 705.

55. *See, e.g.,* *Bowie Inn, Inc. v. City of Bowie*, 335 A.2d 679, 681, 687 (Md. 1975); *Mid-State Distrib. Co. v. City of Columbia*, 617 S.W.2d 419, 422–26 (Mo. Ct. App. 1981); *Me. Beer & Wine Wholesalers Ass’n v. State*, 619 A.2d 94, 96–98 (Me. 1993).

56. Henkels, *supra* note 29.

57. M.L. O’TOOL, MAINT. DIV., MICH. DEP’T OF TRANSP., MICHIGAN ROADSIDE LITTER COMPOSITION SURVEY: FINAL REPORT 13 (1979) (on file with the *Iowa Law Review*).

58. *See* SIMPSON, *supra* note 1, at 5–6 (showing the bill’s effectiveness in ensuring these bottles do not end up as litter).

59. *See* Wagenbach, *supra* note 3, at 767–68; Clayton Coleman, *Bottle Bills and Curbside Collection: An Overview of Recycling Policy Approaches*, ENV’T & ENERGY STUDY INST. (Sept. 21, 2018), <https://www.eesi.org/articles/view/bottle-bills-and-curbside-collection-an-overview-of-recycling-policy-approa> [https://perma.cc/C28C-WEVR].

60. *See* Coleman, *supra* note 59.

Bottle bill states have also been shown to have higher recycling rates than the national average.⁶¹ The Container Recycling Institute found that “states with bottle bills have a beverage container recycling rate of around [sixty percent], while non-deposit states only reach about [twenty-four percent].”⁶² According to a 2006 study from the Container Recycling Institute, the eleven states that had bottle bills at that time contributed to just under fifty percent of all beverage containers recycled in the country.⁶³ Eleven states recycling at the rate of the other thirty-nine states demonstrates just how effective these laws are.⁶⁴

C. IOWA’S BOTTLE BILL

Iowa’s bottle bill was originally passed in 1978 and went into effect a year later in 1979.⁶⁵ Governor Robert Ray played a significant role in drafting the legislation.⁶⁶ During the mid-1970s, Governor Ray published a set of initiatives that he coined “Iowa 2000.”⁶⁷ The initiatives were intended to help Iowans decide how the state should look by the year 2000.⁶⁸ Ray discovered that one of the largest and fastest growing concerns of Iowans across the state was the increasing litter problem and, in response, he proposed and backed Iowa’s first bottle bill.⁶⁹

1. The Original Iowa Law

The original law was modeled after Vermont’s bottle bill.⁷⁰ It required a deposit of five cents be paid by consumers upon the purchase of every eligible container.⁷¹ When consumers were finished, they could return the container

61. Container Recycling Inst., *supra* note 16.

62. *Bottle Bills*, CONTAINER RECYCLING INST., <https://www.container-recycling.org/index.php/issues/bottle-bills> [<https://perma.cc/UD39-H4M5>].

63. Container Recycling Inst., *supra* note 16.

64. Some have questioned how effective recycling is in reducing environmental problems. *See, e.g.*, Hailong Cui & Greys Sošić, *Recycling Common Materials: Effectiveness, Optimal Decisions, and Coordination Mechanisms*, 274 EUR. J. OPERATIONAL RSCH. 1055, 1055 (2019). This is mainly because the acts of recycling in turn add more harmful products into the environment, potentially offsetting any benefit initially gained. *Id.* However, this question is not at issue in this Note. Recycling these cans and bottles still ensures they do not end up in a ditch or in a river, and decreasing litter is reason enough to protect bottle bills.

65. SIMPSON, *supra* note 1, at 1.

66. J.C. “Buz” Brenton, *Bottle Bill Changed Iowa’s Landscape for the Better*, DES MOINES REG. (Dec. 27, 2017, 9:58 AM), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2017/12/27/bottle-bill-changed-iowas-landscape-better/984161001> [perma.cc/KR5K-KAQC].

67. *Id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*; IOWA CODE § 455C.2 (1979). While the law explicitly allowed for deposits greater than five cents to be charged, the deposit has always functionally been five cents.

to a dealer or redemption center to receive a refund of their deposit.⁷² A simple yet familiar system.

This original bill required all dealers to accept returns and issue refunds, making returns easy and convenient for consumers.⁷³ The distributors were then required to pick up the returned containers from dealers and redemption centers and reimburse them for the five-cent deposits which had been paid to consumers.⁷⁴ For their efforts, distributors also paid dealers and redemption centers a one-cent handling fee upon each container they accepted and returned to the distributor.⁷⁵

Since its inception, the bottle bill has seen relatively little change. Prior to the 2022 legislative changes to the law, the Iowa Legislature had only amended the bottle bill twenty-one times in its forty-two-year life.⁷⁶ Most of these were minor revisions while some were more expansive, such as adding alcoholic beverages to the list of those requiring a deposit.⁷⁷ However, the heart of the bill remained untouched: The deposit price remained the same, the handling fee remained the same, and the redemption process remained the same.

2. The 2022 Changes to the Bottle Bill

Despite the lack of legislative changes to the law, Iowans have continued to debate the bottle bill for decades. While immensely popular, its logistical imperfections have caused some legislators to call for its outright repeal.⁷⁸ For example, Representative Shannon Lundgren has claimed that every player in the system is breaking the law, leaving consumers out to dry.⁷⁹ While some Democrats in the House sought to expand the law, some Republicans suggested shrinking or repealing it altogether.⁸⁰ This deadlock prevented any meaningful change to the antiquated bottle deposit system.⁸¹ Something big needed to happen to overcome this giant hurdle.

The COVID-19 pandemic provided the necessary push. The pandemic rocked the entire world, and Iowa's bottle bill was not spared. When the nation effectively shut down in early 2020, Iowa Governor Kim Reynolds temporarily suspended the requirement on grocers to accept container returns, citing

72. IOWA CODE § 455C.3.

73. *See id.*

74. *See id.*

75. *Id.* § 455C.2.

76. SIMPSON, *supra* note 1, at 1.

77. *Id.* at 1–2.

78. *See* Henderson, *supra* note 5; Brianne Pfannenstiel, *House Advances Repeal of Bottle Deposit While Promising Multi-Year Process*, DES MOINES REG. (Mar. 1, 2017, 7:09 PM), <https://www.desmoinesregister.com/story/news/elections/presidential/2017/03/01/house-advances-repeal-bottle-deposit-while-promising-multi-year-process/98609596> [<https://perma.cc/255J-BJ3X>].

79. *House Video (2022-04-12)*, *supra* note 7, at 5:09:32 PM.

80. *See* S. File 59, 88th Gen. Assemb., Reg. Sess. (Iowa 2019); H. File 412, 88th Gen. Assemb., Reg. Sess. (Iowa 2019).

81. *See* SIMPSON, *supra* note 1, at 3.

health and safety concerns.⁸² Even after the suspension ended, however, several stores chose to continue rejecting returns, facing little to no punishment for their actions.⁸³ The small number of redemption centers who continued to honor returns became overwhelmed by the increased demand.⁸⁴

While the cracks of the system were forming for years if not decades, the pandemic finally broke it, providing the necessary political push to jumpstart legislative reform.⁸⁵ For years legislators had talked about reforming, expanding, or outright repealing the law but, instead, it remained in a state of uncertainty.⁸⁶ Despite this legislative tension, the law itself has remained incredibly popular with Iowans. According to a poll published in early 2022, eighty-four percent of respondents supported the bottle bill with sixty-one percent wanting the bill expanded to include more containers.⁸⁷

In 2022, the legislature finally responded; the more than forty-year-old system was getting a makeover. That makeover, however, was going to have to be one of major compromise.⁸⁸ The bill, known as Senate File 2378, proposed several major changes.⁸⁹ First, the bill allowed dealers, for the first time since the law's inception, to refuse to accept returned containers if the dealer fell within certain defined exceptions. One such exception allowed holders of certain food licenses (grocery stores, for example) to form an agreement with an outside redemption center operating within ten or fifteen miles (depending on the population density of the county).⁹⁰ This effectively gave dealers the option of refusing to accept returns altogether if there was a nearby redemption

82. See Lee Rood, *Kick the Can: Iowa's Bottle Bill Was Falling Apart—and Then the Pandemic Made Things Worse*, DES MOINES REG. (Dec. 9, 2020, 3:07 PM), <https://www.desmoinesregister.com/story/news/investigations/readers-watchdog/2020/12/04/iowans-not-redeeming-cans-bottles-covid-19-pandemic-made-things-worse-deposit-recycling/6311790002> [<https://perma.cc/PM9D-WGH9>].

83. *Id.*; see also *House Video (2022-04-12)*, *supra* note 7, at 5:09:32 PM (showing Rep. Lundgren describe the difficulty consumers and herself face when trying to return cans and bottles after dealers began breaking the law by refusing returns prior to the 2022 amendments).

84. Rood, *supra* note 82.

85. See Lynch, *supra* note 6.

86. See Pfannenstiel, *supra* note 78.

87. Henderson, *supra* note 5.

88. *Compare House Video (2022-04-12)*, *supra* note 7, at 5:09:32 PM (showing Republican lawmaker's disappointment in the bill), with Stephen Gruber-Miller, *Iowa Grocery Stores Could Opt Out of Accepting Empty Cans, Bottles Under Legislative Deal*, DES MOINES REG. (May 23, 2022, 5:37 PM), <https://www.desmoinesregister.com/story/news/politics/2022/05/23/iowa-bottle-can-redemption-bill-goes-gov-kim-reynolds-after-senate-vote-lawmakers/9469337002> [<https://perma.cc/6K74-42QR>] (demonstrating the disappointment felt by Democrats that the bill did not expand the bottle deposit system). This is one of the options that allow dealers to refuse accepting returns: by entering an agreement with a mobile redemption center. Gruber-Miller, *supra*.

89. S. File 2378, 89th Gen. Assemb., Reg. Sess. (Iowa 2022).

90. IOWA CODE § 455C.4(2)(a)(3) (2023) (allowing for a dealer to opt out of accepting returns if “[t]he dealer’s place of business is in a county with a population of more than thirty thousand and within ten miles of an approved redemption center or if the dealer’s place of business is in a county with a population of thirty thousand or fewer and within fifteen miles of an approved redemption center”).

center. However, the radius provided for in the bill ultimately reduced the locations available for citizens to receive their refunds.

Senate File 2378 also increased the handling fee paid to redemption centers and dealers who continue to accept containers. Since the law's inception, redemption centers and dealers had received a one-cent handling fee per container processed.⁹¹ However, allowing dealers to refuse returns would drive more business to redemption centers, creating a large, concentrated influx of demand. To mitigate this anticipated burden shifting, the 2022 bill increased the handling fee to three cents per container.⁹²

Finally, the new law allowed for redemption centers to create and operate "mobile redemption systems" to receive and process returns.⁹³ These mobile centers essentially operate as trailers where consumers can bring their can and bottle returns.⁹⁴ The redemption centers then pay consumers their deposit within ten days of receiving the returns.⁹⁵ This time lag in receiving a refund could reduce the incentive to return recyclable containers.

Changes to Iowa's bottle deposit system were certainly needed; the story of Senate File 2378's passage demonstrates that fact. The bill received an overwhelming majority in both houses of the legislature as many warned that, without its passage, the law could be entirely repealed.⁹⁶ However, the final version of the bill provided its own set of challenges without entirely remedying the threat of a full repeal.⁹⁷ Recycling companies fear the new regulations will make dealers lazy and lead to fewer locations for Iowans to take their returns.⁹⁸ Democratic Senator Herman Quirnbach echoed this sentiment saying, "We're asked to believe in this mythology that somehow redemption centers will all of a sudden pop up across the countryside. I think that's ridiculous."⁹⁹

Many grocery stores, such as Fareway, had completely ignored the law for months without penalty as they refused to accept container returns; by allowing dealers to opt out of accepting returns under certain circumstances, Fareway can and will continue rejecting returns.¹⁰⁰ Additionally, any deposits paid by consumers but not collected (for failure to return the containers)

91. See SIMPSON, *supra* note 1, at 3.

92. See IOWA CODE § 455C.2.

93. *Id.* § 455C.1; Gruber-Miller, *supra* note 88. These mobile centers are one of the options which allow dealers to refuse accepting returns: by entering an agreement with a mobile redemption center.

94. Gruber-Miller, *supra* note 88.

95. *Id.*

96. *Id.*

97. The bill which was ultimately passed was the result of years of compromise and failed attempts. See S. File 59, 88th Gen. Assemb., Reg. Sess. (Iowa 2019); H. File 412, 88th Gen. Assemb., Reg. Sess. (Iowa 2019). This can also be seen by the number of amendments filed on the bill. See S. File 2378, 89th Gen. Assemb., Reg. Sess. (Iowa 2022). The floor debate in the House of Representatives also demonstrates the differing views about the bill. See *House Video (2022-04-12)*, *supra* note 7, at 4:56:03 PM (demonstrating different opinions and disagreements about the bill even though it received an overwhelming majority vote).

98. See Akin, *supra* note 7.

99. *Id.*

100. See *id.*

are kept by the distributors which only increases their incentive to make returning cans and bottles as difficult as possible.¹⁰¹ While the new bill does come with new civil penalties for any further disobedience, their enforcement and effectiveness remains an open question.

Nevertheless, fearful of an outraged public, legislators agreed to this watered-down compromise and put the bill into effect throughout 2022.¹⁰² The legislature insisted that grocers have the ability to opt out of accepting redemptions immediately, citing that those issues are “deemed of immediate importance.”¹⁰³ The remainder of the provisions were phased in throughout 2022, with the final provisions entering law on November 15, 2023.¹⁰⁴

II. HOW THE 2022 CHANGES IN IOWA ARE INSUFFICIENT

This Part describes the issues posed by the 2022 changes to Iowa’s bottle bill. As mentioned earlier, the ultimate bill that passed was the result of major debate and compromise, leaving few satisfied.¹⁰⁵ Many of the major changes, however, solely benefit dealers and distributors—not the environment or people. These changes are at odds with the sentiment of the majority of Iowans.¹⁰⁶ This Part will focus on three specific problems with the 2022 changes to the bottle bill: (1) it allows dealers to opt out of accepting returns; (2) it creates perverse incentives for distributors by allowing them to keep all unclaimed deposits; and (3) it fails to include popular, more modern containers in the list of those requiring a deposit.

A. DEALERS’ ABILITY TO OPT OUT OF ACCEPTING RETURNS

To see how the bill favors dealers over consumers, one need not look further than the language allowing dealers to completely opt out of accepting can and bottle returns.¹⁰⁷ While dealers are still required to charge consumers a five-cent deposit on every can and bottle, they may now refuse to accept returns under certain circumstances.¹⁰⁸ The most controversial of these is found in subsection (c) which allows dealers to refuse to accept can and bottle returns if:

The dealer’s place of business is in a county with a population of more than thirty thousand and within ten miles of an approved redemption center or if the dealer’s place of business is in a county with a population

101. *See id.*

102. S. File 2378, 89th Gen. Assemb., Reg. Sess. (Iowa 2022).

103. *Id.*

104. *Id.*

105. *See House Video (2022-04-12)*, *supra* note 7, at 4:56:03 PM (demonstrating the wide-ranging disagreement which existed between legislators during the bill’s passage).

106. *See Henderson*, *supra* note 5.

107. *See* IOWA CODE § 455C.1; *id.* § 455C.4.

108. *See id.* § 455C.1; *id.* § 455C.2; *id.* § 455C.4.

of thirty thousand or fewer and within fifteen miles of an approved redemption center.¹⁰⁹

This language frustrates consumers' ability to return containers and reclaim their deposit price. Adding more roadblocks to the return process reduces the incentives to return them at all. Five cents is already a miniscule amount in today's society;¹¹⁰ it is a value that many would trade away for the convenience of simply throwing containers in a landfill.

Additionally, the distances provided by the new law (of ten or fifteen miles) are neither close nor convenient for many citizens around the state. Many people, especially those in cities and college towns, rely on public transportation to move around the community.¹¹¹ Adding an additional trip disincentivizes consumers to return these containers. Reaching a location that still accepts containers and issues refunds could, for instance, require a consumer to transfer buses at an interchange, adding unnecessary cost and time.

The bill does not incentivize Iowans with their own personal vehicle for transportation either. Think of a single mom who is already short on time to complete errands. An additional trip across town after picking up groceries could very easily be off the table for a bag of five-cent deposits. So, what happens to these containers? Perhaps they will be recycled anyway and kept out of Iowa ditches, but there is also a substantial chance they end up cluttering the Iowa landscape instead.¹¹²

The additional steps required for redemption will only lead to decreased motivation to return containers, leading to more containers in rivers, ditches, and streets across the state. Adding such a pernicious extra step for consumers disincentivizes participation and erodes support for the system. Ultimately, these changes threaten the life of Iowa's bottle bill.

B. NEGATIVE DISTRIBUTOR INCENTIVES

The frustration created by returning cans and bottles under the new system plays a large part in the next issue with the bill: Distributors are allowed to keep unclaimed deposits.¹¹³ While distributors are required to pay a three-cent

109. *Id.* § 455C.4(2)(a)(3).

110. See *CPI Inflation Calculator*, U.S. BUREAU LAB. STAT., <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=0.05&year1=197901&year2=202201> [<https://perma.cc/FQJ4-ZT8L>] (showing a more than fourfold price increase between the value of five cents in 1979, when the bottle bill was passed, and the present day).

111. In 2014, the Ames bus system, which services Iowa State University, serviced more than 6.6 million riders. *CyRide Total Passengers per Year FY1977 - FY2021*, CYRIDE (2021), <https://www.cyrider.com/home/showpublisheddocument/10149/637704971450830000> [<https://perma.cc/WN5B-L4H3>]. Des Moines buses have a similar popularity as the city's ridership in 2017 exceeded 4.5 million. DES MOINES AREA REG'L TRANSIT AUTH., *TRANSIT IMPACT REPORT 9* (2017), <https://www.ridedart.com/sites/default/files/DART%20White%20Paper.pdf> [<https://perma.cc/B93G-JHP7>].

112. Litter rates of non-bottle bill states indicate this as the result. See Container Recycling Inst., *Litter Studies in Bottle Bill States*, BOTTLE BILL RES. GUIDE (Jan. 16, 2024), <https://www.bottlebill.org/index.php/benefits-of-bottle-bills/litter-studies-in-bottle-bill-states> [<https://perma.cc/LSN4-F4K4>].

113. IOWA CODE § 455C.18.

handling fee when receiving containers, the statute also provides that “[a]ny amount of refund value or handling fees possessed by a distributor after the distributor has made payments required pursuant to this chapter shall be considered the property of the distributor.”¹¹⁴ So, while they are required to make a small payment to the dealers per each returned container, distributors likely come out ahead—if consumers return fewer containers, their unclaimed deposits increase the profits of distributors. Quite simply, this language incentivizes distributors to make the return process difficult in order to prevent consumers from returning containers so they may collect the unclaimed deposits for themselves. The bottling industry has proven to be immensely powerful.¹¹⁵ Giving it this kind of incentive system can only lead to one thing: a strong push toward making consumer refunds as difficult as possible to increase their profit margins.

Distributors have plenty of options to harm consumers under this statutory scheme. They are, at the moment, responsible for picking up returned cans and bottles from the dealers.¹¹⁶ Frustrating the easy movement of these containers encourages dealers to opt out of accepting can and bottle returns in the first place. No dealers want a mountain of cans and bottles stuck in their store while they wait for distributors to pick them up. This forces consumers who wish to return their cans and bottles to seek out redemption centers, creating new hardships for consumers and leading to fewer containers being returned. Additionally, it leads to more money flowing into distributors’ pockets, all while the Iowa landscape suffers. Do distributors need some sort of compensation for the part they play in this process? Of course they do. However, giving them the entirety of unclaimed deposits is harmful to the system as a whole.

C. THE NARROW COVERAGE OF THE LAW

Iowa’s updated bottle bill also fails to include a wide range of containers from requiring deposits. Prior to the 2022 changes, the bottle bill only required a deposit for cans and bottles of soda, beer, wine, liquor, “mineral water, soda water and similar carbonated soft drinks.”¹¹⁷ This list is relatively small considering the large number of newer containers on the market.¹¹⁸ If the objective of the bill is to reduce litter in the environment,¹¹⁹ the list falls

114. *Id.*

115. See Peter W. Schroth & Walter Mugdan, *Bottling Up the Throwaways: An Improved Bill and Some Thoughts for Future Drafters*, 51 J. URB. L. 227, 232 (1973); Henkels, *supra* note 29 (demonstrating the lobbying ability of the bottling industry in defeating Oregon’s first bottle bill); Jørgensen, *supra* note 19 (demonstrating the power of the bottling industry through its defeat of Vermont’s original bottle bill).

116. IOWA CODE § 455C.3.

117. *Id.* § 455C.1 (2021).

118. Items which are not currently covered by Iowa’s bottle bill made up just short of fifty percent of beverage containers on the market in 2015. See *Market Share by Beverage and Package*, CONTAINER RECYCLING INST., <https://www.container-recycling.org/index.php/market-share-by-beverage-and-package> [<https://perma.cc/9HB9-SFBH>].

119. See Brenton, *supra* note 66.

short. Take, for example, sports drinks like Powerade or Gatorade. Under this language, neither of those beverages require a deposit upon purchase even though they account for a notable portion of bottled beverages sold.¹²⁰ Bottled and canned coffees also fall through the cracks. These “instant coffee” options have become increasingly popular and, without recycling incentives, will increasingly contribute to the litter problem.¹²¹

The 2022 bill sought to alleviate some of these problems, but far from all of them. Under current law, the list of containers requiring deposits now includes “high alcoholic content beer” as well as “canned cocktail[s].”¹²² While each addition helps reduce the potential litter found in the community, these two modest additions are not sufficient to combat the large number of containers which are still offered without a deposit.

Quite simply, the new bottle bill fails consumers by making returns more difficult. It fails consumers by incentivizing distributors to make returning cans and bottles more difficult. It fails the environment by failing to include a large portion of containers. Finally, it fails the majority of Iowans who wish to see the bottle bill expanded, not destroyed.¹²³

III. HOW IOWA CAN SAVE THE BOTTLE BILL

Part II demonstrated the many holes and problems created by the newest version of Iowa’s bottle bill. By failing to widen the scope of the bill while simultaneously making returns incredibly inconvenient for consumers, Iowa has created a risk that return rates in the state will plummet. If and when that decline occurs, the state will have failed the bottle bill’s ultimate purpose: keeping the state clean by recycling common use containers. This failure seems inevitable after the 2022 changes to the law—the changes actively frustrate consumers, threatening to drive the law’s popularity into the ground. If this succeeds, the Iowa Legislature will have the political capital to do what some Republicans have already called for: repeal the law.¹²⁴

The legislature needs to address these problems head on. However, they do not have to recreate the wheel to save the bottle bill; nine other states have similar systems currently in place.¹²⁵ Each state has given their respective law its own unique twist, providing a wide menu of options for Iowa to choose from. This Part focuses on remedying the issues identified in Part II.

120. See IOWA CODE § 455C.1; *Market Share by Beverage and Package*, *supra* note 118.

121. See Technavio, *Cold Brew Coffee Market to Record USD 1.37 Bn Growth—Driven by Increasing Popularity of Instant Coffee Among Millennials and Product Launches*, PR NEWSWIRE (Aug. 17, 2022, 2:15 AM), <https://www.prnewswire.com/news-releases/cold-brew-coffee-market-to-record-usd-1-37-bn-growth-driven-by-increasing-popularity-of-instant-coffee-among-millennials-and-product-launches-301605228.html> [<https://perma.cc/W823-SKM7>].

122. See IOWA CODE § 455C.1 (2023).

123. See Henderson, *supra* note 5.

124. See *House Video (2022-04-12)*, *supra* note 7, at 5:09:32 PM (demonstrating Rep. Lundgren’s staunch disapproval of having a bottle bill at all and his calls for its repeal).

125. SIMPSON, *supra* note 1, at 1.

Specifically, this Part argues that (1) Iowa should increase the deposit amount to ten cents to incentivize consumers to return their containers and increase funding for the system; (2) dealers should be required to accept container returns; (3) a portion of unclaimed deposits should be reinvested into the community and the system at large; and (4) Iowa should widen the scope of the bottle bill by roping in a larger proportion of containers currently on the market.

A. *INCREASE THE DEPOSIT TO TEN CENTS*

When Iowa's bottle bill was first implemented in 1979, five cents was chosen as the deposit price for all containers subject to the bill.¹²⁶ While perhaps an arbitrary number, it was intended to mean something to consumers.¹²⁷ A nominal amount could not accomplish the ultimate goal of persuading consumers to collect, clean, and return containers. Five cents today is not the same as five cents in 1979. Accounting for inflation, that same five-cent deposit in 1979 is equal to twenty-one cents in 2022.¹²⁸ This means that the deposit price today is almost four times less than when it was first enacted.¹²⁹ Consumers in Iowa today have less incentive to return cans and bottles than they once did.¹³⁰ If the goal of the bill is to get these containers recycled, lowering incentives is certainly not the way to do it.

This Note does not suggest increasing the deposit to twenty-one cents to fully account for inflation. Not only is that price unrealistic considering the amount of disagreement surrounding the topic in the Iowa Legislature,¹³¹ but it would make Iowa's deposit the highest in the country.¹³² However, a modest increase of the deposit price to ten cents per container would increase consumer incentives to return containers and increase funding for the system.¹³³

Take Oregon as an example of this suggestion in action. Its statute requires a ten-cent deposit per container which is an increase from its initial value of

126. IOWA CODE § 455C.2 (1979).

127. Since the deposit is meant to act as an incentive for consumers to return containers, see Schroth & Mugdan, *supra* note 115, at 231–32, the amount needs to mean something for that goal to be effective. A simply nominal amount would likely have little to no effect in encouraging people to return them.

128. See *CPI Inflation Calculator*, *supra* note 110.

129. See *id.*

130. See *supra* Section II.A. Less incentives to return these containers will lead to a decreased effectiveness in the law generally. See *supra* Section II.A.

131. See *House Video (2022-04-12)*, *supra* note 7 at 4:56:03 PM (showing the debate and stark differing opinions which existed on the floor of the House during the bill's final passage). The bill required years of debate and compromise and was amended eight times before it ultimately passed, showcasing the strong disagreement legislators felt about the topic. S. File 2378, 89th Gen. Assemb., Reg. Sess. (Iowa 2022).

132. See *Bottle Bill States and How They Work*, *supra* note 14.

133. Increased funds would come from using part of the proposed increased deposit to improve the bottle deposit system, see *infra* Section III.C.

five cents and took effect in 2017.¹³⁴ Since then, the return rate in the state of Oregon went from sixty-four percent to around ninety percent in 2020.¹³⁵ That is around a twenty-five percent increase in only a couple of years. In 2020, the system was responsible for recycling two billion containers.¹³⁶

As these numbers demonstrate, increasing the deposit price by only five cents can make a huge difference in the effectiveness of these systems, and Iowa certainly needs help in this department. Even before the newest bill was instituted, Iowa's redemption rate was trending in the wrong direction. In 2005, the redemption rate in Iowa was ninety-three percent—in 2018, that rate fell to just seventy-one percent.¹³⁷ Iowa should be attempting to reverse this trend, and Oregon provides a great case study in the efficacy of an easy, modest change.

B. REQUIRE DEALERS TO ACCEPT RETURNS AND ISSUE REFUNDS

If Oregon's 2017 changes to its bottle bill are any indication, raising the deposit price would go a long way in increasing Iowa's return rate. However, that action alone will not fully remedy the accessibility problems that the newest changes to Iowa's law ushered in. As discussed earlier in Section I.C.2, many grocery stores in Iowa are able to completely opt out of accepting can and bottle returns on their premises.¹³⁸ This change effectively requires consumers to make an additional trip to claim their deposit refunds.¹³⁹ In a state that already lacks a sufficient number of redemption centers to handle this increased demand,¹⁴⁰ something must change.

134. The statute says that a retailer must charge at least a five-cent deposit, but this essentially comes out to a ten-cent deposit price as stores are required to refund the value of ten cents each time. By charging only a five-cent deposit price, the store would be losing money. *See* OR. REV. STAT. ANN. § 459A.705 (West Supp. 2023); JULES BAILEY, OR. BEVERAGE RECYCLING COOP., OREGON'S BOTTLE BILL: A COOPERATIVE APPROACH 3 (2020), https://portal.ct.gov/-/media/DEEP/waste_management_and_disposal/CCSMM/Increase-Recycling-Working-Group/Jules-Baley-Oregon-Beverage-Recycling-Cooperative.pdf [<https://perma.cc/UDZ4-QXZ7>]. The statutory increase to ten cents happened earlier, but the statute included provisions that would not make it effective until certain events occurred, which did not happen until 2017. *See* OR. REV. STAT. ANN. § 459A.705 (West Supp. 2023); BAILEY, *supra*, at 3.

135. BAILEY, *supra* note 134, at 4.

136. *Id.* at 5.

137. Rod Boshart, *Iowa Consumers Throw Away Millions by Forsaking Nickel Deposit on Empty Bottles*, GAZETTE (June 21, 2021, 6:45 AM), <https://www.thegazette.com/state-government/iowa-consumers-throw-away-millions-by-forsaking-nickel-deposit-on-empty-bottles> (on file with the *Iowa Law Review*).

138. *See supra* Section I.C.2.

139. *See supra* Section II.A.

140. Iowa has been losing redemption centers over the past decade, not gaining as this bill would require. *See* Julie Peitz Nickell & Michael Niehaus, *Hope Haven Redemption Center Looks Forward to 'Significant' Handling Fee Increase*, HAWK EYE (Sept. 2, 2022, 5:29 AM), <https://web.archive.org/web/20220902131258/https://eu.thehawkeye.com/story/news/2022/09/02/iowa-bottle-bill-gives-hope-haven-redemption-center-handling-fee-increase/10276316002> [<https://perma.cc/2T8K-8Z4D>]. Although the bill seems to contemplate that new redemption centers will begin popping up around the state, not all are convinced. *See* Akin, *supra* note 7.

So how can this situation be remedied? Reverting to Iowa's previous statutory requirement that dealers accept returns is one simple and necessary step.¹⁴¹ Indeed, Iowa required almost all dealers to accept container returns prior to the 2022 changes, and other states continue to have the same requirements. Take the state of Michigan as an example. Michigan's bottle bill requires dealers who regularly sell containers requiring a deposit 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."¹⁴² Specifically, the statute requires dealers to provide a return option on-site or "within [one-hundred] yards of the premises" where the containers are sold.¹⁴³

Michigan's one-hundred-yard threshold would be a drastic improvement over Iowa's current dealer-friendly requirement.¹⁴⁴ Under Michigan's system, if any additional travel is required for returning containers (apart from a normal trip to the grocery store), it is simply a walk away; it is not a drive to a neighboring town or a long string of buses. Additionally, Michigan's bottle bill shows concern for consumers by requiring returns be offered in a *convenient manner*.¹⁴⁵ Participation in Michigan's return system demonstrates the efficacy of this system—the state boasts an impressive eighty-nine percent return rate.¹⁴⁶

While Michigan has faced its fair share of dealer disobedience (similar to that seen in Iowa recently where dealers refused to accept returns), it has been able to ensure the system remains effective.¹⁴⁷ Largely, combating dealer disobedience comes down to enforcement of the law and funding for it; the next Section explores solutions for this in Iowa.¹⁴⁸ At this point, it is simply important to note the convenience wider access to return sites grants to consumers and the increased return rates associated with this convenience in other states.

Iowa should follow the data presented by the original policy of its own bottle bill as well as Michigan's modern law and require dealers not only to accept container returns, but to offer a return service in a convenient manner for consumers. By scrapping the leniency of the ten- to fifteen-mile requirement of the new law and requiring dealers to accept returns on-site or right next door, Iowa will restore an increased consumer incentive to make these returns.

141. See IOWA CODE § 455C.4 (2023); *id.* § 455C.4 (2021); see, e.g., ME. REV. STAT. ANN. tit. 38, § 3106 (West 2023).

142. MICH. COMP. LAWS ANN. § 445.572 (West 2023).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Bottle Bill States and How They Work*, *supra* note 14.

147. See Justin Bachman, *Michigan Store Not Accepting Your Bottle Return? Here's What You Can Do*, WZZM 13 (June 8, 2022, 6:50 PM), <https://www.wzzm13.com/article/money/what-to-do-if-sto-res-refuse-to-accept-returnable-cans-or-bottles/69-3b7c5184-edba-4ee7-ag16-19d099bab58d> [https://perma.cc/H58V-DF2T]. These problems are similar to the ones Iowa had during the pandemic.

148. See *infra* Section III.C.

C. DISTRIBUTORS MUST SHARE UNCLAIMED DEPOSITS WITH THE STATE

Cost is a dominant concern in the bottle bill debates.¹⁴⁹ Under Iowa's current system, the costs fall largely on the distributors who are required to pay a handling fee when accepting returns from dealers.¹⁵⁰ However, they are compensated for this burden with the ability to keep all unclaimed deposit values.¹⁵¹ This arrangement perversely incentivizes distributors to make returning containers as difficult as possible.¹⁵² This money could, and should, be used in more beneficial ways than allowing the distributors to increase profits.

Assuming Iowa increases its deposit price to ten cents,¹⁵³ the legislature has several options for how to allocate funds. For containers that are returned to dealers, the current three-cent handling fee should remain.¹⁵⁴ There is no doubt that requiring dealers to accept returns is costly to their bottom line. They must employ individuals to maintain the return system and, often, maintain return machines on their premises.¹⁵⁵ This three-cent handling fee would compensate dealers for these costs and efforts. Therefore, dealers would be given a total of thirteen cents per container processed: ten to refund them for the deposit and three to compensate their efforts in the form of a handling fee.

The above math, however, only applies to claimed deposits; the next question is what happens to the ten cents lost in the system when a container is not returned for processing? Distributors should be allowed to keep five cents of every unclaimed deposit as compensation for their payment of the handling fee. This is a number that the bottling industry should be inclined to support since it matches the current system they have signed on to.¹⁵⁶ Under a ten-cent deposit system, however, the five extra cents are up for grabs on every unclaimed deposit. Iowa should consider using this extra money to fund the bottle bill system at large and pursue other environmental goals. This mirrors Michigan's system which requires unclaimed deposits to escheat to the state.¹⁵⁷ Under Michigan's system, the entire unclaimed deposit amount

149. See Carolyn H. Fiske, Comment, *The Return to Returnables: New York Enacts a Bottle Bill*, 4 PACE L. REV. 141, 151 (1983) (“[T]he industry asserts . . . that the cost of such legislation outweighs the benefits.”).

150. IOWA CODE § 455C.2 (2023).

151. See *id.* § 455C.18. The problems this system presents have been identified earlier in this Note. See *supra* Section II.B.

152. See *supra* Section II.B.

153. See *supra* Section III.A.

154. See IOWA CODE § 455C.2.

155. Most retailers use backwards vending machines to process can and bottle returns. However, manual labor is still required to empty those machines, and storage is necessary to keep the containers in the interim before the distributors pick them up.

156. Under both this Note's proposed system and the current system, distributors would receive five cents for every unclaimed bottle deposit. See *id.* § 455C.18. It is only the additional five cents that would be acquired from each new unclaimed deposit—based on the increased price—that would end up with the state.

157. See MICH. COMP. LAWS ANN. § 445.573b (West Supp. 2023); Ryan Jeltema, *Michigan Cracking Down on Bottle Return Fraud with New Laws*, ABC 12 NEWS (Dec. 28, 2021), https://www.ab12.com/news/state/michigan-cracking-down-on-bottle-return-fraud-with-new-laws/article_edg

is directed toward various environmental causes throughout the state.¹⁵⁸ The suggestions in this Note are even more modest than that of Michigan; this Note only suggests fifty percent of the deposit price go to the state.

Under this new system, Iowa could send five cents of unclaimed deposits to its state trust account without negatively impacting dealers (who will already be compensated through the handling fee system) or distributors (who get the other five cents of unclaimed deposits).¹⁵⁹ Certainly, investing in statewide environmental initiatives is more important to the average consumer than providing distributors with a windfall. Additionally, this money could be used to fill in the gaps of the bottle bill system as they start to form, for instance, by punishing any lingering disobedience from dealers and distributors. Ultimately, this system would largely return unclaimed deposits to consumers through this statewide investment.

D. INCREASE THE REACH OF THE LAW

Iowa's bottle bill only includes a narrow group of containers used daily by citizens across the state.¹⁶⁰ Before the 2022 changes to the statute, the law only reached certain wine bottles, beer containers, liquor containers, mineral waters, and carbonated beverages such as sodas.¹⁶¹ A vast array of popular containers falls wholly outside this legislation. For example, bottled coffee, which has become increasingly popular in recent years,¹⁶² and sports drinks like Gatorade or Powerade that are ubiquitous throughout society.¹⁶³

This begs the question: Why are these drinks completely excluded from having a deposit paid upon them at purchase? One might think it is because they are not easily recyclable, but that is simply not the case.¹⁶⁴ Coffee and sports drinks are consumed in containers almost identical to those of alcoholic beverages or sodas.¹⁶⁵ There is no policy rationale behind excluding these

3ba94-67d9-11ec-a9d3-e7e58570e053.html [https://perma.cc/2T2P-PV3V] (showing where unclaimed deposits go in Michigan and where they help).

158. *FAQ: Bottle Deposit Law*, MICH. DEP'T ENV'T, GREAT LAKES, & ENERGY, <https://www.michigan.gov/egle/faqs/recycling/bottle-deposit-law> [https://perma.cc/2BW2-KYLG].

159. Michigan has no handling fee requirement. *See* MICH. COMP. LAWS ANN. § 445.573c (West Supp. 2023). The twenty-five percent that gets sent to the retailers is the state's way of compensating retailers for their efforts. *Id.*

160. *See* IOWA CODE § 455C.1 (2021).

161. *See id.*

162. *See Ready to Drink Canned, Bottled Cold Coffee on the Rise*, PREPARED FOODS (Oct. 8, 2014), <https://www.preparedfoods.com/articles/114527-ready-to-drink-canned-bottled-cold-coffee-on-the-rise> [https://perma.cc/AGU9-UWLU].

163. *See* Rachel Arthur, *Gatorade, Powerade & BodyArmor: How PepsiCo and Coca-Cola Are Playing in the Sports Drink Category*, BEVERAGEDAILY (Mar. 25, 2021, 1:53 PM), <https://www.beveragedaily.com/Article/2021/03/25/Gatorade-Powerade-BodyArmor-How-PepsiCo-and-Coca-Cola-are-playing-in-the-sports-drink-category> [https://perma.cc/PW3N-2AN6].

164. *See Are Your Bottles Recyclable?*, GATORADE, <https://contact.pepsico.com/gatorade/article/are-your-bottles-recyclable> [https://perma.cc/F7MY-R5ZM].

165. Imagine, for example, a Gatorade bottle and a bottle of Coke. They are similar shapes, sizes, and made of similar material. Yet only one of the two requires a deposit in Iowa.

popular drinks from the law because they can just as easily be recycled and also contribute to litter across the state.

The 2022 changes sought to address this problem, but its scope was far too limited. The legislature only added “high alcoholic content beer . . . [and] canned cocktail[s]” to the list of containers.¹⁶⁶ These modest additions to the law cover such a small number of containers that there is no real likelihood that they will have any material impact on litter in the state. Almost every other bottle bill state includes a much wider range of containers than Iowa; most states require deposits for all containers other than a small number of exceptions such as milk containers.¹⁶⁷

Maine’s bottle deposit statute, for example, requires a deposit to be paid on all “beer, ale or other drink produced by fermenting malt, spirits, wine, hard cider, wine coolers, soda or noncarbonated water and *all nonalcoholic carbonated or noncarbonated drinks* in liquid form and intended for internal human consumption, except for unflavored rice milk, unflavored soymilk, milk and dairy-derived products.”¹⁶⁸ This statute not only has an incredibly wide reach but is “future-proof” as well. Any new beverages that emerge or those not specifically contemplated at the time of enactment will likely be either a carbonated or non-carbonated drink and require a deposit.¹⁶⁹

Oregon’s bottle bill provides another possible model. Its statute requires deposits on certain enumerated containers as well as “[a]ny beverage . . . that is intended for human consumption and is in a quantity more than or equal to four fluid ounces and less than or equal to one and one-half liters.”¹⁷⁰ While there may still be exceptions to even this broad language, both Maine and Oregon’s expansive rules demonstrate the concern other states have shown towards these new beverages and containers.¹⁷¹

Iowa should consider drafting a statute with similarly broad language. It would be an easy way to include a larger number of containers in the law leading to, ideally, a higher recycling rate. As mentioned above, this language is adaptable to include future popular drink containers without the need for passing amendments. For example, the bottled coffee and sports drinks not included under Iowa’s current bottle bill would easily fall within the proposed statutory language. Not only does this language expand the bottle bill, but it also reduces the need for future legislative overhauls, leaving the calendar free for other important matters.

166. See IOWA CODE § 455C.1 (2023); *id.* § 455C.1 (2021).

167. See, e.g., ME. REV. STAT. ANN. tit. 38, § 3102 (West 2023) (“Beverage’ means . . . all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption, except for unflavored rice milk, unflavored soymilk, milk and dairy-derived products.”). This exception for milk containers is common throughout bottle bills.

168. *Id.* (emphasis added). This language excludes alcoholic beverages, but this is only because the state has a different way of determining the deposit values for those types of containers; it still does require deposits be paid. See *id.* § 3103.

169. No matter what currently unanticipated beverage appears in the future, the wide-reaching language of this bill will ensure it is covered. See *id.* § 3102.

170. OR. REV. STAT. ANN. § 459A.702 (West Supp. 2023).

171. See *id.*; ME. REV. STAT. ANN. tit. 38, § 3102 (West 2011).

CONCLUSION

Iowa's bottle bill has been a hallmark of the state for decades. Not only is it incredibly popular,¹⁷² but it has also been historically effective at increasing recycling rates for cans and bottles.¹⁷³ Its effectiveness has largely relied on the relative ease of the system to consumers. The 2022 changes to the law have destroyed that ease, reducing the incentive for consumers to return containers. Such hardships will surely only lead to decreased return rates across the state and more profits for distributors.

The suggestions in this Note would help bring Iowa's bottle bill into the twenty-first century. Raising the deposit price would increase consumer incentive to return their containers while also providing additional funding to the system at large. Requiring dealers to accept returns and issue refunds will make participation easier for consumers. Sharing unclaimed funds with the state will ensure the system is well-funded and remove pernicious incentives that currently exist for distributors and dealers. Finally, expanding the reach of the law will help modernize the system and decrease litter across the state. By putting the citizens of the State of Iowa first, we can transform the bottle bill into a system that works for all in Iowa.

172. Henderson, *supra* note 5.

173. Barbara Licklider, *Why It Still Matters, 40 Years Later, How a Child Helped Ray Push for Iowa's Bottle Bill*, DES MOINES REG. (Feb. 17, 2020, 9:24 AM), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2020/02/16/iowa-bottle-bill-got-key-push-40-years-ago-child/4762441002> (on file with the *Iowa Law Review*).