

Legislative Analysis



BOTTLE LAW REVISIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5422 (H-1) as reported from committee
Sponsor: Rep. Jim Lilly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5423 (H-5) as reported
Sponsor: Rep. Brandt Iden

House Bill 5424 as reported
Sponsor: Rep. John Chirkun

House Bill 5425 as reported
Sponsor: Rep. Tim Sneller

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 12-6-20

SUMMARY:

Taken together, the bills would do the following:

- Require a distributor to originate a 10-cent deposit on sales to a dealer of nonrefillable containers of a nonalcoholic beverage and to maintain a record of the deposits.
- Create enhanced criminal penalties, based on the value of the filled beverage containers of nonalcoholic beverages, for a distributor who violated the above provisions with the intent to defraud and cheat.
- Create the Bottle Bill Enforcement Fund; include an allocation to the new fund in the required distribution of money from the Bottle Deposit Fund; and direct money designated to the new fund to state and local law enforcement.

House Bill 5422 would add a new section to the beverage container deposit law (the Initiated Law of 1976) to require a *distributor* that sells to a *dealer* a nonrefillable container that contains a beverage (not including beer, ale, or other malt drink of whatever alcoholic content, or a mixed wine drink or mixed spirit drink) to originate a 10-cent deposit on that container at the time of sale to the dealer. In addition, the distributor would have to maintain a record of that deposit for purposes of the required annual filing under section 3a of the act. (The annual report pertains to deposits originated and refunds granted on beverage containers.)

Under the act, a *dealer* means a person who sells or offers for sale to consumers within this state a beverage in a beverage container, including an operator of a vending machine containing a beverage in a beverage container. A *distributor* means a person who sells beverages in beverage containers to a dealer within this state, including a manufacturer who engages in such sales.

Proposed MCL 445.574c

House Bill 5424 would amend the beverage container deposit law to provide enhanced criminal penalties for a distributor that, with the intent to defraud or cheat, failed to fulfill the requirements of HB 5422 (originate a 10-cent deposit on a nonrefillable, nonalcoholic beverage container and maintain a record of deposits).

Currently, a dealer, distributor, manufacturer, or other person that violates the act is subject to a fine of not less than \$100 or more than \$1,000 and is liable for the costs of prosecution; each day a violation occurs is a separate offense. This penalty would remain unchanged.

Under the bill, a distributor who violated the provisions of HB 5422 with the intent to defraud and cheat would be subject to the following penalties based on the value of the filled beverage containers of nonalcoholic beverages purchased in another state:

- For a value of less than \$200, a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500 or three times the value, whichever is greater, or both imprisonment and a fine.
- For either of the following, a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$2,000 or three times the value, whichever is greater, or both imprisonment and a fine:
 - Value of at least \$200 but less than \$1,000.
 - Value of less than \$200 and the distributor has one or more prior convictions for violating the provisions of HB 5422 with the intent to defraud and cheat.
- For either of the following, a felony punishable by imprisonment for up to five years or a fine of up to \$10,000 or three times the value, whichever is greater, or both imprisonment and a fine:
 - Value of at least \$1,000 but less than \$20,000.
 - Value of at least \$200 but less than \$1,000 and the distributor has one or more prior convictions (with some exceptions) for violating the provisions of HB 5422 with the intent to defraud and cheat.
- For either of the following, a felony punishable by imprisonment for up to 15 years or a fine of up to \$15,000 or three times the value, whichever is greater, or both imprisonment and a fine:
 - Value of at least \$20,000 but less than \$50,000.
 - Value of at least \$1,000 but less than \$20,000 and the distributor has two or more prior convictions (with some exceptions) for a violation of the beverage container deposit law.
- For either of the following, a felony punishable by imprisonment for up to 15 years or a fine of up to \$25,000 or three times the value, whichever is greater, or both imprisonment and a fine:
 - Value of at least \$50,000 but less than \$100,000.
 - Value of at least \$20,000 but less than \$50,000 and the distributor has two or more prior convictions (with some exceptions) for a violation of the beverage container deposit law.
- For either of the following, a felony punishable by imprisonment for up to 20 years or a fine of up to \$35,000 or three times the value, whichever is greater, or both imprisonment and a fine:
 - Value of \$100,000 or more.

- Value of at least \$50,000 but less than \$100,000 and the distributor has two or more prior convictions (with some exceptions) for a violation of the beverage container deposit law.

For the purposes of the above penalties, the values of filled beverage containers of the nonalcoholic beverages purchased in another state in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value involved in a violation.

A prosecuting attorney who intended to seek an enhanced sentence based on the defendant's having one or prior convictions would have to include on the complaint and information a statement listing the prior conviction or convictions. Determination of a defendant's prior conviction or convictions would be made by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. Existence of a prior conviction could be established by any relevant evidence, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If a sentence under the bill was enhanced by one or more prior convictions, those prior convictions could not be used to further enhance the sentence for the conviction under section 10, 11, or 12 of Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure, which provides for sentencing enhancement under the habitual offender provisions.

MCL 445.574

House Bill 5425 would amend the Code of Criminal Procedure to place the felony penalties contained in HB 5424 for a violation of HB 5422 into the sentencing guidelines portion of the act. The crime classifications and levels for failure of a distributor, with intent to defraud, to originate and maintain a record of deposits, based on the value of certain containers, or a repeat offense, would be as follows:

- Value of \$1,000 to \$20,000: Class E felony against public order with a maximum term of imprisonment of 5 years.
- Value of \$20,000 to \$50,000: Class C felony against public order with a maximum term of imprisonment of 15 years.
- Value of \$50,000 to \$100,000: Class C felony against public order with a maximum term of imprisonment of 15 years.
- Value of more than \$100,000: Class B felony against public order with a maximum term of imprisonment of 20 years.

MCL 777.14h

House Bill 5423 would amend the beverage container deposit law to reallocate money from the Bottle Deposit Fund and create the Bottle Bill Enforcement Fund.

The amount paid to the Department of Treasury by underredeemers (manufacturers or distributors who collect more deposits than paid out refunds for returned containers) is currently designated for disbursement as follows: 75% to the Cleanup and Redevelopment Trust Fund and 25% to dealers based on the number of empty returnable containers handled by a dealer.

Under the bill, money from the Bottle Deposit Fund would be disbursed as follows:

- 75% to be disbursed as follows:
 - The first \$1.0 million to the Bottle Bill Enforcement Fund for disbursement to the Department of State Police (MSP) and county and local law enforcement agencies for use in enforcing the act and investigating violations. MSP and county and local law enforcement agencies could apply for disbursements from the fund, and the Department of Treasury would have to disburse the funds in a manner determined by the Department of Treasury.
 - Any amount greater than \$1.0 million to the Cleanup and Redevelopment Trust Fund.
- 25% to dealers [this is the current disbursement to dealers].

The bill would create the Bottle Bill Enforcement Fund in the Department of Treasury as a revolving fund administered by the department. Money deposited in the fund would not revert to the general fund. Disbursements from the fund would have to be used as described above.

MCL 445.573c

Effectiveness provisions

House Bills 5422 and 5425 are both tie-barred to HB 5424. House Bill 5423 is tie-barred to HB 5422. House Bill 5424 is tie-barred to HB 5423. A bill cannot become law unless each bill to which it is tie-barred is also enacted into law.

Each bill would take effect 90 days after its enactment.

FISCAL INFORMATION:

House Bill 5422 would have no fiscal impact on state or local government.

House Bill 5423 would increase administrative costs for the Department of Treasury by an indeterminate, but likely negligible, amount. It is estimated that the department would be able to absorb any marginal costs under current appropriation levels.

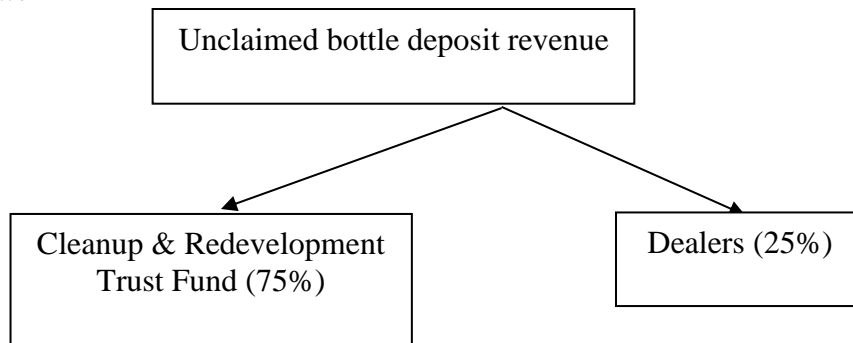
The bill would have a significant fiscal impact on the Department of State Police (MSP) and on county and local law enforcement agencies, by offering an additional revenue

source for such entities. The bill would allocate the first \$1.0 million of the revenue from unclaimed bottle deposits for the Bottle Bill Enforcement Fund. This funding would present a new revenue source for the MSP and other law enforcement agencies. Since the bill specifies that disbursements from the fund would be made after application, a potential distribution allocation is presently indeterminate.

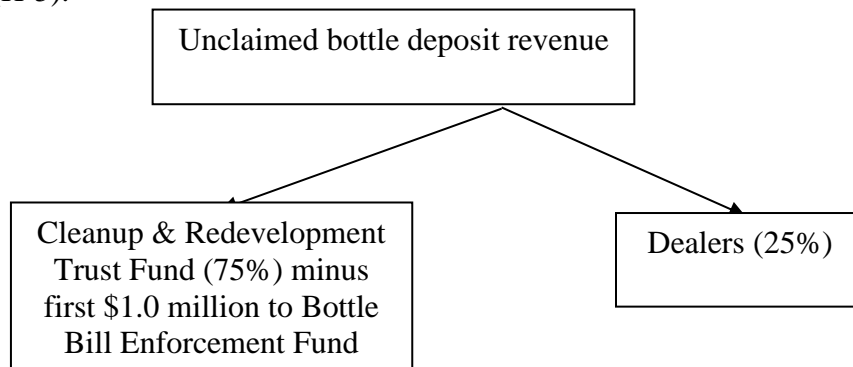
House Bill 5423 would reduce revenue for the Department of Environment, Great Lakes, and Energy. Under current law EGLE receives 75% of revenue from unclaimed bottle deposits in the Cleanup and Redevelopment Trust Fund and dealers receive the remaining 25% of revenue. The department distributes its share of revenue for non-petroleum remediation and redevelopment activities and for the growth of the trust fund.

Under the bill the department would receive 75% of unclaimed bottle deposits minus the aforementioned first \$1.0 million deposited to the Bottle Bill Enforcement Fund. The department's share would continue to be credited to the Cleanup and Redevelopment Trust Fund. The remaining revenue would continue to be distributed to dealers (25%). Below is a comparison of current law and the bill.

Current law:



HB 5423 (H-5):



The bill is unlikely to affect costs for EGLE; however, the bill would reduce revenues funding the costs.

The bill would have no fiscal impact on local governments.

House Bill 5424 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under the various provisions of the bill is not known. Violations could be either misdemeanors or felonies, depending on the circumstances. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5425 is a companion bill to HB 5424 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Midwest Independent Retailers Association (2-4-20)
- Michigan Soft Drink Association (3-4-20, and indicated support 12-2-20)
- Michigan Beer and Wine Wholesalers (3-4-20)

A representative of the Michigan Environmental Council testified in support of HB 5423. (12-2-20)

The following entities indicated support for the bills:

- Michigan Chamber of Commerce (3-4-20)
- Michigan Licensed Beverage Association (2-4-20)
- Michigan Manufacturers Association (2-4-20)
- Police Officers Association of Michigan (2-4-20)
- Schupan and Sons (3-4-20)
- UBCR, LLC (3-4-20)
- Michigan Retailers Association (support “with amendment”) (2-4-20)

The Michigan Sheriffs Association indicated support for HBs 5422 to 5424 “in concept.” (2-4-20)

The Michigan United Conservation Clubs indicated support for HBs 5422, 5424, and 5425. (3-4-20)

The Teamsters indicated support for HB 5425 (2-4-20) and for HBs 5423 and 5424 (3-4-20).

Representatives of the Department of Treasury testified to a neutral position, with concerns, on the bills. (2-4-20)

The Michigan Recycling Coalition indicated a neutral position on the bills. (2-4-20)

Representatives of the Department of Environment, Great Lakes, and Energy testified to a neutral position, with concerns, on the bills (2-4-20) and testified in opposition to HB 5423 as introduced (3-4-20).

A representative of the Michigan Municipal League testified in opposition to the bills. (3-4-20)

Representatives of the Michigan League of Conservation Voters testified in opposition to HB 5423. (2-4-20)

The following entities indicated opposition to HB 5423 (3-4-20):

- Sierra Club
- Clean Water Action
- Michigan United Conservation Clubs (as introduced)
- Michigan Manufacturers Association (as introduced)

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