

Legislative Analysis



BOTTLE LAW REVISIONS

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<http://www.house.mi.gov/hfa>

House Bill 4780 as reported from committee
Sponsor: Rep. Mike Mueller

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

House Bill 4781 as reported
Sponsor: Rep. Andrew Fink

House Bill 4782 as reported
Sponsor: Rep. Tim Sneller

House Bill 4783 as reported
Sponsor: Rep. Tyrone A. Carter

1st Committee: Regulatory Reform
2nd Committee: Rules and Competitiveness
Complete to 6-2-21

BRIEF 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 the Department of State Police (MSP).

FISCAL IMPACT: House Bill 4780 would result in administrative costs for the Department of Treasury, decreased revenue for the Department of the Environment, Great Lakes, and Energy (EGLE), and increased revenue for MSP. House Bill 4783 would have an indeterminate fiscal impact on state and local costs related to corrections and the courts. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Money from bottle deposit collections on carbonated beverages and alcoholic beverages that are not refunded are deposited into the Bottle Deposit Fund. The way in which money from that fund is distributed has not been revised in 24 years. The last major change was made in 1996, when the state needed to find new revenue sources to meet its environmental obligations (see **Background Information**). Many things have changed since 1996, including growing costs by distributors to obtain and maintain the equipment and processes to collect and recycle the redeemed containers efficiently and safely. Although a portion of the unredeemed bottle deposits are shared with retailers, distributors receive nothing to offset those costs.

In addition, it is reported that a growing number of unscrupulous distributors are bringing in truckloads of carbonated beverages from out of state, without initiating the 10-cent deposit when selling the product to retailers, which results in a loss each year for Michigan-based beverage companies (approximately \$10 million annually) and less revenue for the state's unclaimed bottle deposit fund. If enforcement efforts could be increased, as by instituting harsher penalties for not originating the deposit on each container and earmarking a portion of

the unredeemed bottle deposits for law enforcement efforts by the Michigan State Police, perhaps fraudulent activities could be curtailed.

Legislation has been offered to address these issues.

THE CONTENT OF THE BILLS:

House Bill 4781 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 4783 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 4781 (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 4781 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 4781 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 4781 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 4782 would amend the Code of Criminal Procedure to place the felony penalties contained in HB 4783 for a violation of HB 4781 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 or more but less than \$20,000: Class E felony against public order with a maximum term of imprisonment of 5 years.
- Value of \$20,000 or more but less than \$50,000: Class C felony against public order with a maximum term of imprisonment of 15 years.
- Value of \$50,000 or more but less than \$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 4780 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:

- The first \$1.0 million to the Bottle Bill Enforcement Fund for disbursement to MSP for use in enforcing the act and investigating violations. If the fund balance at the end of the fiscal year were greater than \$3.0 million, deposits to the fund would be suspended until the fund balance fell below \$2.0 million.
- After the disbursement of the first \$1.0 million to the fund, the remaining amount would be disbursed as follows:
 - 75% to the Cleanup and Redevelopment Trust Fund.
 - 25% 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.

Three years after the bill's effective date, MSP would have to report to the legislature on its efficacy in enforcing the act. The report would have to contain at least the minimum number of beverage and deposit containers seized and the deposit value in Michigan of those containers.

MCL 445.573c

Effectiveness provisions

Each bill would take effect 90 days after its enactment. House Bills 4781 and 4782 are both tie-barred to HB 4783. House Bill 4780 is tie-barred to HBs 4781, 4782, and 4783. House Bill 4783 is tie-barred to HB 4781. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

BACKGROUND INFORMATION:

Until 1989 PA 148 was enacted, the deposit paid on a deposit-bearing can or bottle that was not returned remained in the hands of the wholesaler or bottler who distributed the product to the retailer. Since then, beverage manufacturers and distributors must turn over the difference between the amount collected in deposits and the amount paid out in refunds for deposit into the Bottle Deposit Fund. The 1989 legislation also required 75% of the money in the Bottle Deposit Fund to be distributed to the Michigan Unclaimed Bottle Fund and 25% to dealers based on the number of empty returnable bottles each handled. During the first 10 years of the existence of the Michigan Unclaimed Bottle Fund (that is, from 1990 to 2000), any money received by the fund and interest earned on that money was to remain permanently in the fund. Money received by the fund thereafter, plus any interest on that money and any interest on the money deposited during the first 10 years, was to be distributed evenly each year between the Environmental Response Fund (for toxic contamination cleanup), the Longer Term Maintenance Trust Fund (for prevention of environmental contamination), and the Clean Michigan Fund (for solid waste grant programs). The Unclaimed Bottle Fund principal was intended to remain intact.

However, by the mid-1990s, a number of events, including the insolvency of the Michigan Underground Storage Tanks Financial Assurance (MUSTFA) Fund, left the state looking for resources to finance the cleanup of “orphan shares” of contaminated sites and other environmental challenges. At that time, the Department of Environmental Quality proposed as a funding source, among other things, using \$20.0 million from unclaimed bottle deposits.

Instead, the legislature enacted several different acts to meet the challenges faced by the state. One new act, 1996 PA 384, eliminated the provisions of 1989 PA 148 regarding deposits being made from the Bottle Deposit Fund to the Unclaimed Bottle Fund, no expenditures being made from the Unclaimed Bottle Fund for its first 10 years, and preservation of that fund’s principal, and instead established the Cleanup and Redevelopment Trust Fund, with 75% of the money in the Bottle Deposit Fund being allocated to the new fund. (The remaining 25% continued to be disbursed to dealers.) Redesignating money from the Unclaimed Bottle Fund to the new Cleanup and Redevelopment Trust Fund was seen as a way to accomplish part of the state’s objectives in accomplishing its environmental cleanup objectives.

FISCAL INFORMATION:

House Bill 4780 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 MSP by allocating 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. The report required from MSP under the bill could entail negligible administrative costs for compilation and production. Given current administrative resources and the one-time nature of the report, this requirement would likely be sufficiently covered utilizing existing resources.

House Bill 4780 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 after 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%). The bill is unlikely to affect costs for EGLE.

The bill would have no fiscal impact on local governments.

House Bill 4781 would have no fiscal impact on state or local government.

House Bill 4782 is a companion bill to HB 4783 and amends sentencing guidelines. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 4783 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 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 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.

ARGUMENTS:

For:

The bill package has several central changes. First, HB 4781 would add a new provision to specifically require distributors to originate a 10-cent deposit on each beverage container containing a carbonated, nonalcoholic beverage (e.g., mineral water, sodas). The bill would not apply to beverages containing alcohol (though distributors will still be required under existing provisions to originate the 10-cent deposit and maintain proper records on those beverage containers) and would not add new products to the list of those requiring a deposit be collected. Even though this is currently required, the new provision makes it clear that a deposit must be originated on each beverage container containing a nonalcoholic beverage and that proper records must be maintained on the origination of the deposits. HB 4783 in turn would create a more stringent penalty for any distributor who does not originate the deposit or maintain the records as required under HB 4781. The harsher penalties should send a strong message that fraudulent activities under the bottle deposit law will not be tolerated. To aid efforts to curtail fraudulent activity, HB 4780 would divert a portion of the Bottle Deposit Fund revenue to state

and local law enforcement agencies. Together, the bill package should result in more revenue from unredeemed deposits going to environmental programs by reducing the amount paid out in refunds for containers that never generated a deposit to begin with. Further, the bill package acknowledges that law enforcement agencies should also receive some funding assistance in cracking down on fraudulent activities.

For:

The bills in their current form preserve the longstanding emphasis on directing the revenue from unclaimed bottle deposits to environmental cleanup programs. For example, some of the programs funded by the unclaimed bottle deposits involve water quality initiatives. With the recent water crisis in Flint, and PFAS contamination in other areas of the state, ensuring safe and adequate water for individual consumption and agricultural purposes is crucial. In addition, despite the effectiveness of the bottle deposit law, bottles and cans still litter the roadways, clog inland lakes and streams, and end up in landfills instead of being redeemed or recycled. Money is always needed to remove the containers from the environment.

POSITIONS:

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

- Michigan State Police (5-18-21)
- Michigan Soft Drink Association (5-27-21)

The following entities indicated support for the bills:

- Michigan Environmental Council (5-27-21)
- Michigan League of Conservation Voters (5-27-21)
- Michigan Chamber of Commerce (5-27-21)
- Michigan Manufacturers Association (5-27-21)
- Michigan Teamsters (5-27-21)
- Used Beverage Container Recycling, LLC (5-27-21)
- Schupan and Sons (5-27-21)
- Midwest Independent Retailers Association (5-25-21)

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