

HOUSE BILL No. 5612

January 16, 2008, Introduced by Rep. Sak and referred to the Committee on Commerce.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 162; and to repeal acts
and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 162. RECYCLING FEE

SEC. 16201. AS USED IN THIS PART:

(A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL
QUALITY.

(B) "FUND" MEANS THE RECYCLING FUND CREATED IN SECTION 16205.

(C) "GOODS SOLD AT RETAIL" MEANS TANGIBLE PERSONAL PROPERTY,
INCLUDING FOOD, THE OWNERSHIP OF WHICH IS TRANSFERRED BY A PERSON
REGULARLY AND PRINCIPALLY ENGAGED IN THE BUSINESS OF SELLING

1 TANGIBLE PERSONAL PROPERTY TO BUYERS FOR USE OR CONSUMPTION AND NOT
2 FOR RESALE. GOODS SOLD AT RETAIL INCLUDE, BUT ARE NOT LIMITED TO,
3 GOODS SOLD TO A PERSON WHOSE MEMBERSHIP IN A CLUB OR OTHER
4 ORGANIZATION ENTITLES THE PERSON TO BUY THE GOODS FROM THE SELLER.

5 (D) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
6 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

7 (E) "RECYCLING" MEANS THE ACT OF TREATING OR PROCESSING AN
8 ITEM SO THAT IT OR THE MATERIALS FROM WHICH IT IS MADE MAY BE USED
9 AGAIN.

10 (F) "RECYCLING FEE" MEANS THE FEE ESTABLISHED UNDER SECTION
11 16203.

12 (G) "SALES TRANSACTION" MEANS A TRANSACTION INVOLVING THE SALE
13 OF GOODS SOLD AT RETAIL HAVING AN AGGREGATE PRETAX VALUE OF \$2.00
14 OR MORE. THE TRANSACTION MAY INCLUDE THE SALE OF GOODS THAT ARE NOT
15 GOODS SOLD AT RETAIL OR THAT ARE EXCLUDED UNDER THIS SUBDIVISION,
16 BUT THE AGGREGATE VALUE IS CALCULATED ONLY ON THE GOODS SOLD AT
17 RETAIL THAT ARE NOT EXCLUDED UNDER THIS SUBDIVISION. SALES
18 TRANSACTION DOES NOT INCLUDE THE SALE OF ANY OF THE FOLLOWING:

19 (i) GOODS SOLD FROM A VENDING MACHINE.

20 (ii) MOTOR FUEL, AS THAT TERM IS DEFINED IN SECTION 4 OF THE
21 MOTOR FUEL TAX ACT, 2000 PA 403, MCL 207.1004.

22 (iii) A PRESCRIPTION DRUG SOLD FOR HUMAN USE.

23 (iv) ELECTRICITY, STEAM, GAS, WATER, COMMUNICATION, OR A
24 SIMILAR GOOD DELIVERED TO THE PUBLIC BY PIPE, WIRE, CABLE, OR
25 SIMILAR MEANS.

26 SEC. 16203. (1) BEGINNING ON OCTOBER 1, 2008, A RECYCLING FEE
27 IS LEVIED ON EACH SALES TRANSACTION IN THIS STATE.

1 (2) THE RECYCLING FEE IS 1 CENT FOR EACH SALES TRANSACTION.

2 (3) THE RECYCLING FEE SHALL BE COLLECTED AT THE SAME TIME AND
3 IN THE SAME MANNER AS THE TAX IMPOSED UNDER THE GENERAL SALES TAX
4 ACT, 1933 PA 167, MCL 205.51 TO 205.78.

5 (4) IF A FEE PAYER HAS A REASONABLE BASIS, BASED ON THE
6 HISTORY OF THE FEE PAYER'S SALES TRANSACTIONS, TO MAKE A GOOD-FAITH
7 ESTIMATE THAT LESS THAN \$20.00 IN RECYCLING FEES WILL BE LEVIED ON
8 THE FEE PAYER IN A MONTH, THE FEE PAYER MAY ELECT NOT TO PAY THE
9 FEE. A FEE PAYER THAT MAKES THE ELECTION UNDER THIS SUBSECTION
10 SHALL NOT REIMBURSE HIMSELF OR HERSELF FOR THE RECYCLING FEE, AS
11 PROVIDED IN SECTION 16204, WHILE THE ELECTION IS EFFECTIVE.

12 (5) AN ELECTION UNDER SUBSECTION (4) IS EFFECTIVE UNTIL THE
13 FEE PAYER HAS A REASONABLE BASIS, BASED ON THE HISTORY OF THE FEE
14 PAYER'S SALES TRANSACTIONS SINCE THE ELECTION, TO ESTIMATE THAT THE
15 NUMBER OF THE FEE PAYER'S AVERAGE MONTHLY SALES TRANSACTIONS FOR
16 THE PREVIOUS 12 MONTHS EXCEEDED 2,000.

17 (6) THE RECYCLING FEE IMPOSED UNDER THIS ACT SHALL BE
18 ADMINISTERED BY THE STATE TREASURER UNDER 1941 PA 122, MCL 205.1 TO
19 205.31.

20 (7) THE STATE TREASURER SHALL PRESCRIBE THE FORMS NECESSARY
21 FOR THE ADMINISTRATION OF THIS ACT AND MAY PROMULGATE NECESSARY
22 RULES UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,
23 MCL 24.201 TO 24.328.

24 SEC. 16204. (1) A FEE PAYER SHALL REIMBURSE HIMSELF OR HERSELF
25 BY ADDING THE AMOUNT OF THE RECYCLING FEE TO THE COST OF EACH SALES
26 TRANSACTION.

27 (2) A FEE PAYER MAY RETAIN 3/4 OF A PERCENT OF THE RECYCLING

1 FEES LEVIED ON HIM OR HER FOR ADMINISTRATIVE COSTS.

2 SEC. 16205. (1) THE RECYCLING FUND IS CREATED WITHIN THE STATE
3 TREASURY.

4 (2) MONEY FROM THE RECYCLING FEE SHALL BE DEPOSITED IN THE
5 FUND. THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
6 ANY OTHER SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER
7 SHALL DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL
8 CREDIT TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

9 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
10 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

11 (4) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
12 APPROPRIATION, AS FOLLOWS:

13 (A) FIFTY PERCENT OF THE MONEY SHALL BE DISTRIBUTED TO LOCAL
14 UNITS OF GOVERNMENT TO BE EXPENDED FOR RECYCLING AND WASTE
15 DIVERSION PROGRAMS OPERATED BY THE LOCAL UNITS. MONEY SHALL BE
16 DISTRIBUTED UNDER THIS SUBDIVISION IN PROPORTION, AS DETERMINED BY
17 THE DEPARTMENT, TO THE AMOUNT OF MONEY EXPENDED BY THE LOCAL UNIT
18 OF GOVERNMENT FOR RECYCLING AND WASTE DIVERSION PROGRAMS IN THE
19 PREVIOUS YEAR, NOT INCLUDING MONEY DISTRIBUTED UNDER THIS
20 SUBDIVISION.

21 (B) FORTY PERCENT OF THE MONEY SHALL BE EXPENDED AS GRANTS TO
22 FUND PERSONS WHO CONDUCT RECYCLING AND WASTE DIVERSION PROGRAMS,
23 INCLUDING GOVERNMENTAL AND NONGOVERNMENTAL ENTITIES. GRANTS UNDER
24 THIS SUBDIVISION MAY BE DISTRIBUTED TO ELEMENTARY AND SECONDARY
25 SCHOOLS IN THIS STATE TO FUND RECYCLING AND WASTE DIVERSION
26 PROJECTS CONDUCTED BY THE STUDENTS AND RECYCLING AND WASTE
27 DIVERSION EDUCATION.

1 (C) TEN PERCENT OF THE MONEY SHALL BE EXPENDED FOR A
2 COMPREHENSIVE PUBLIC LITTER ABATEMENT PROGRAM THAT INCLUDES
3 EDUCATION ABOUT AND ADVOCATION OF LITTER ABATEMENT.

4 SEC. 16207. (1) THE DEPARTMENT OF TREASURY MAY REQUIRE A
5 PERSON, BY NOTICE SERVED UPON THAT PERSON, TO FILE A REPORT, MAKE A
6 STATEMENT UNDER OATH, OR KEEP OR DISCLOSE RECORDS AS THE DEPARTMENT
7 OF TREASURY DETERMINES NECESSARY TO SHOW THE AMOUNT OF THE
8 RECYCLING FEE TO BE LEVIED ON THAT PERSON.

9 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), A PERSON WHO FAILS
10 TO COMPLY WITH THIS PART IS SUBJECT TO A CIVIL FINE OF NOT LESS
11 THAN \$100.00 OR MORE THAN \$1,000.00 AND IS LIABLE FOR THE COSTS OF
12 PROSECUTION.

13 (3) A PERSON WHO KNOWINGLY REIMBURSES HIMSELF OR HERSELF FOR
14 THE RECYCLING FEE AS PROVIDED IN SECTION 16204 IN A MANNER OR
15 AMOUNT CONTRARY TO THIS PART, WHO KNOWINGLY FAILS TO TRANSMIT THE
16 CORRECT AMOUNT OF RECYCLING FEES LEVIED ON HIM OR HER, OR WHO
17 KNOWINGLY FAILS TO ACCURATELY COMPLETE A FORM REQUIRED BY THE
18 DEPARTMENT OF TREASURY UNDER THIS PART IS GUILTY OF A MISDEMEANOR
19 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF
20 NOT MORE THAN \$1,000.00, OR BOTH.

21 SEC. 16209. THIS PART IS REPEALED IF 1976 IL 1, MCL 445.571 TO
22 445.576, IS AMENDED TO REQUIRE DEPOSITS AND REDEMPTION OF DEPOSITS
23 ON TYPES OF BEVERAGE CONTAINERS FOR WHICH DEPOSITS AND REDEMPTION
24 OF DEPOSITS ARE NOT REQUIRED UNDER THAT ACT ON THE EFFECTIVE DATE
25 OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

26 Enacting section 1. This amendatory act does not take effect
27 unless Senate Joint Resolution ____ or House Joint Resolution ____

1 (request no. 05840'07) of the 94th Legislature becomes a part of
2 the state constitution of 1963 as provided in section 1 of article
3 XII of the state constitution of 1963.