

## BOTTLE BILL REVISIONS AND RVM ANTIFRAUD ACT

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**House Bill 5147 (Substitute H-4)**

**House Bill 6442 (Substitute H-1)**

**House Bill 6443 (Substitute H-1)**

**House Bill 6460 (Substitute H-3)**

**Sponsor: Rep. Steve Bieda**

**House Bill 6441 (Substitute H-2)**

**Sponsor: Rep. Rebekah Warren**

**Committee: Great Lakes and Environment**

**Senate Bill 1648 as introduced**

**Sponsor: Sen. Cameron Brown**

**Senate Committee: Appropriations**

### **First Analysis (12-4-08)**

**BRIEF SUMMARY:** This package of bills would address the problem of out-of-state beer and soft drink containers being fraudulently returned in Michigan for deposit refunds.

House Bill 5147 would create a new act called the "Reverse Vending Machine Antifraud Act" to establish standards for the RVMs used in 17 border counties (requiring them to reject certain foreign containers with at least 85 percent accuracy and to retain data on collections by distributor) and to make it a felony to tamper with an RVM or its data. The new RVM standards would be phased in over time and would apply first to specially-marked 12-ounce metal cans in border areas and later to specially-marked 20-ounce plastic and 12-ounce glass containers. The new standards would only take effect when the state appropriates at least \$500,000 to a fund to reimburse RVM manufacturers for retrofitting RVMs in border areas. That fund would be created by Senate Bill 1648, to which the bill is tie-barred.

House Bill 6441 would revise civil and criminal penalties for improper redemptions and adopt new dealer and distributor violations.

House Bill 6442 would require retail stores to update the warning signs placed in bottle redemption areas to reflect the new maximum penalties for improper redemptions.

House Bill 6460 would require special marks on brands of beverages sold or over-redeemed in high volumes in Michigan, starting with brands sold in 12-ounce metal cans. This bill would only take effect when the state appropriates at least \$500,000 for retrofitting RVMs under Senate Bill 1648, to which the bill is tie-barred.

House Bill 6443 would amend the Code of Criminal Procedure to put the felony violations contained in House Bill 6441 into sentencing guidelines.

The following bills previously included in the package were *not* reported from committee with recommendation:

House Bill 6440 would have directed the state treasurer to disburse up to \$2 million in grants, upon appropriation, from the Cleanup and Redevelopment Trust Fund over two fiscal years (2008-09 and 2009-10) to retrofit reverse vending machines so they would reject containers not sold in Michigan.

House Bill 6444 would have allowed, but not required, dealers (retailers) to limit beverage container refunds to \$5 per person per day (\$25 per day if the dealer has one or more reverse vending machines).

**FISCAL IMPACT:** Adoption of a reverse vending machine retrofitting program in border areas could require as much as \$1 million from the State of Michigan over a number of years. An appropriation would be necessary to cover these costs.

### **THE APPARENT PROBLEM:**

Michigan, with its ten-cent deposit on returnable bottles and cans, has the highest redemption rate—over 97 percent—of any bottle deposit state in the nation but it is also a target for fraudulent redemptions. A 1996 episode of the NBC comedy *Seinfeld*, in which Kramer and Newman attempt to smuggle cans and bottles from New York to return them for Michigan's ten-cent deposit, instead New York's five-cent deposit, illustrated the potential for fraud. Nevertheless, even if Michigan's high redemption rate is inflated to some degree by fraudulent returns, it is generally agreed that since the Bottle Bill was enacted, bottle and can litter in the state has been dramatically reduced and returned containers provide a steady supply of aluminum, glass, and plastic for recycling markets. States without a bottle law or with only a five-cent deposit have more container litter and recycle far fewer beverage containers. Michigan's Bottle Bill originally covered beer, carbonated soft drinks, and mineral water and was later expanded to include wine coolers and canned cocktails. (Some groups contend that it should be expanded again to cover bottled water, teas, and sports drinks, which have exploded in popularity in recent years, but a pending bill to expand the Bottle Bill is not included in this package.<sup>1</sup>)

Even with Michigan's high redemption rate, and some degree of fraud, more bottle deposits are collected each year than are paid out in refunds. Information supplied by the Department of Treasury shows that total unclaimed bottle deposits since 1990 amount to just over \$227 million. In 2007 alone, the most recent year for which figures are available, Treasury estimates that there were \$8.9 million in unclaimed deposits.

When the Bottle Bill was first enacted, unclaimed deposits were retained by bottlers and distributors. Since 1989, state law has assigned unclaimed deposits to the state and

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<sup>1</sup> House Bill 6000, introduced by Rep. Mark Meadows, would expand the Bottle Bill to cover bottled water, teas, and sports drinks.

retailers, with the state receiving 75 percent and retailers the other 25 percent.<sup>2</sup> Most of the state's share of unclaimed deposits currently goes to the Cleanup and Redevelopment Trust Fund.<sup>3</sup> The bills' proponents, including the Beer and Wine Wholesalers Association, say that the total amount of unclaimed deposits going to this environmental cleanup fund--and to retailers to defray their container handling expenses--would be much higher if there weren't so many fraudulent bottle returns. There is no reliable and current information about how much revenue the state is deprived of each year as a result of bottle redemption fraud. A 2000 report prepared for the Department of Environmental Quality estimated the value of annual fraudulent redemptions at \$10 million, but that report characterized this number as an estimate based on incomplete information.

Fraudulent returns and redemptions come in a variety of forms. Some people who live on either side of Michigan's borders with Ohio, Indiana, or Wisconsin return containers known to be purchased outside of Michigan for Michigan deposit refunds on a regular basis. Other people do this only occasionally after interstate travel. The Michigan Beer and Wine Wholesalers note that people who live near Michigan's border with Indiana can purchase a case of beer (24 cans) in Indiana, saving \$2.40 up front by not paying a deposit (and approximately 20 cents because Indiana's excise tax is lower) and return the empties to a Michigan store for a subsequent \$2.40 cent deposit refund, making it about \$5 per case cheaper to purchase a case of beer in Indiana instead of Michigan. Although it is currently unlawful to knowingly return a can or bottle not purchased in Michigan for a refund, there is no penalty for returning less than 25 foreign containers. The 25-container threshold would remain the same under House Bill 6461, but penalties would be stiffened for knowingly returning more than 100 containers at a time.

A second form of fraud involves more complex smuggling rings and/or inside jobs involving retailers or distributors. For instance, Michigan's Attorney General reported in a press release dated September 2007 that an investigation by the Michigan State Police, the Attorney General, Department of Environmental Quality, and the Department of Treasury called *Operation Can Scam* uncovered two Ohio-based smuggling rings that may have deprived the state of hundreds of thousands of dollars. The smugglers collected out-of-state containers by the millions, crushed them, bagged them in Michigan redemption bags, and sold them to several stores at a discount in Southeast Michigan. Fifteen arrest warrants were issued for the alleged smugglers and the owners of the stores involved. (As of December 1, 2008, the Attorney General's office said that these cases are still pending.) In addition, it is possible that at times some retailers, drivers, or other participants in the redemption system tamper with bags, reverse vending (RMV)

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<sup>2</sup>The Michigan Soft Drink Association lost a suit challenging the law requiring bottlers and distributors to turn over unclaimed deposits to the state, rather than retaining them. See Michigan Soft drink Association v. Department of Treasury, 206 Mich App 392 (1994). The Michigan Court of Appeals upheld the law and the Michigan Supreme Court denied MSDA leave to appeal.

<sup>3</sup>According to the DEQ's website, this fund is used to conduct state-funded cleanup projects at specific sites of environmental contamination and focuses on cleanup projects needed to protect public health and the environment. In particular, the money is used for sites with acute health or environmental problems and to cleanup leaking underground storage tank sites.

machines, or records to inflate redemption numbers. The package would make it a felony to tamper with an RVM or its data.

Finally, beer and wine wholesalers point out that the problem of out-of-state smuggling of alcoholic beverages and illegal foreign container redemption are related. According to a Michigan Beer and Wine Wholesalers Association document entitled, "Border Enforcement—The Right Approach,"<sup>4</sup> the problem of illegal importation of beer into Michigan from bordering states by individuals in quantities greater than 312 ounces per day compounds the foreign container problem and that the twin problems of illegal importation of beer and fraudulent foreign container redemptions translate into lost sales for Michigan businesses, lost jobs for Michigan residents, and lost tax revenue to the state.

The RVMs currently in use in Michigan are unable to detect foreign containers by product barcodes (although this could be done if manufacturers were willing to use barcodes identifying a beverage as intended for sale in Michigan as is reportedly being done in New York and certain New England states). Machines currently being used in Michigan simply scan a container's barcode to determine whether the container is a brand and size sold by the store, and, if so, the customer is issued a refund slip for that container, whether the can was purchased in Michigan or not. Some say that people who know that they are not truly entitled to deposit refund are more likely to use an RVM rather than look a clerk in the eye.

Moreover, cans and bottles are not marked in a way that allows retail employees to know for sure whether a can or bottle was purchased in Michigan, because beverage containers often bear deposit information for all of the deposit states on them. The top lid for soda in aluminum cans is usually a universal lid showing information for all of the deposit states. Even if a retail employee took the time to inspect each can or bottle individually, he or she probably could not tell whether the can or bottle was properly returnable in Michigan, if it is marked "MI 10 cents." If a container has Michigan deposit information on it, the person will be issued a refund whether or not the container was purchased in Michigan as many people assume that a can or bottle so marked is entitled to a deposit refund.

Some bottlers and beverage manufacturers are reluctant to adopt barcodes unique to Michigan, which would enable existing RVM machines to detect out of state containers, because barcodes go on near the beginning of the manufacturing process, and would require that products with Michigan bar codes be kept separate from other products intended for sale elsewhere. Keeping separate, segregated inventory of products intended for Michigan would be costly, they say. Some say that this would be a particular problem for soft drink bottlers who have large, multistate territories.

A workgroup of industry stakeholders that has been meeting to try to come up with a voluntary technological solution to the fraudulent redemption problem have so far looked only at possible ways to mark aluminum cans and to modify RVMs to read the mark.

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<sup>4</sup> <http://www.mbwwa.org/Portals/23/2007/Publications/BORDER%20ENFORCEMENT.pdf>.

The approach put forward by this workgroup is to put mark on the bottom of aluminum cans that would require retailers to purchase or lease new or upgraded RVMs. The advantage to bottlers of this approach over using a barcode solution is that they would be able to add this marking as a final step for product intended for Michigan, reducing the need for dual or multiple inventories. On the other hand, this solution would impose significant costs on reverse vending machine manufacturers and retailers.

RVM manufacturers would have to invent or adopt technology capable of reading these marks, test it to make sure it works to the required degree of accuracy, and manufacture new equipment. Retail stores would have to purchase or lease new RVM equipment or have existing equipment modified, if possible. An RVM that could read a special mark on the bottom of aluminum cans is currently being field tested. Work has not yet even begun to create special markings or RVM readers for other types of containers. Some people say that it is unlikely that a mark could go on the bottom of glass and plastic containers because of their shape, and so a different type of vision technology would have to be used in RVMs for glass and plastic. Work has not begun on marks or RVMs for those containers. Some people say that the particular mark being considered would not tell a consumer or a retail employee handling a return manually that the container was purchased in Michigan, so it would not prevent fraudulent returns that are handled manually, not by RVMs.

The problem of fraudulent returns is reportedly most severe in border areas of Michigan. For retailers in border areas, the problem of lost beverage sales to neighboring states with no bottle deposit law may be more significant than the costs associated with fraudulent returns. Any bottle deposit "dimes" that retailers collect are turned over to the distributor or wholesaler who supplies a particular beverage product to them, and they are reimbursed for any bottle deposit "dimes" that they pay out to customers by their distributors. Fraudulent returns do increase the number of bottles and cans that retailers must handle and impose additional handling costs accordingly. On the other hand, fraudulent returns may also increase foot traffic into their stores. Finally, artificially-inflated redemption numbers reduce the amount of unclaimed deposits and the 25 percent share of unclaimed deposits that go to retailers (which retailers say often amounts to a trivial amount per retailer per year).

Beverage bottlers or wholesalers may lose sales to the degree that Michigan customers go to neighboring states without a bottle deposit law to purchase beverages. In addition, beer wholesalers and beverage manufacturers who originate deposits in border areas sometimes end up redeeming many more "dimes" than they collect, but this doesn't necessarily wind up costing them as much as would initially appear. Those who pay out more dimes than they collect are known as "overredeemers" under state law and those who collect more dimes than they pay out are known as "underredeemers." After the end of a year, overredeemers make trades with underredeemers under a trading process created by state law, and by doing so, are compensated for the number of "dimes" that they paid out that exceed the number they collected. In addition, fraudulent redemptions also increase the quantity of scrap sales made by Michigan bottlers and manufacturers, with aluminum being the most valuable material collected through bottle and can returns.

Beer wholesalers note, however, that even if they are made whole on "dimes" through the trading process, they may have to borrow money to cover the overredemptions until trades can be made at the end of the year, and that when they trade with an underredeemer they also lose the scrap sale revenue associated with those bottles and cans. In addition, fraudulent returns increase their handling costs. Many soda and beer companies use the same third-party company, Used Beverage Container Recovery, LLC (UBCR)<sup>5</sup> to process their returnables, scrap sales, and bottle bill bookkeeping. As noted below in Background, beverage wholesalers and bottlers who originate bottle deposits are currently entitled to an MBT credit equal to 30.5 percent of their bottle law compliance costs.

Some of the proposed solutions might impose significant costs on reverse vending machine manufacturers to develop and test new technologies and manufacture new machines or retrofit existing ones.

Just as there have been much controversy over the years concerning who is entitled to unclaimed bottle deposits, controversy exists today over how the problem of fraudulent redemptions should be addressed, i.e., by law enforcement efforts such as "Operation Can Scam" or by new or improved technology such as requiring more sophisticated scanners inside reverse vending machines in Michigan or more clearly marked containers. And, whatever approach is taken, the issue becomes who should bear the cost.

Two of the bills in this package focus on technological solutions. House Bill 5147 would require that the RVMs used in border areas be able to detect foreign containers, starting with 12-ounce aluminum cans, and House Bill 6140 would require that beverage brands sold or overredeemed in large quantities during the previous year be specially-marked so that an RVM could determine that it is properly returnable. These bills are contingent on the passage of Senate Bill 1648, which would require the state to establish a Reverse Vending Machine Retrofitting Fund and the appropriation of at least \$500,000 into that fund, thus requiring the state to bear the cost of upgrading RVMs used in Michigan.

Other bills in the package focus on stiffening penalties for fraudulent returns (except for improper returns in low quantities) and creating new felony violations for fraudulent redemptions involving more than 10,000 containers or tampering with RVMs or their data.

## **DETAILED SUMMARY OF THE BILLS:**

### **House Bill 5147 (Substitute H-4)**

House Bill 5147 (Substitute H-4) would create the "Reverse Vending Machine Antifraud Act" to require reverse vending machines used in border areas in Michigan to correctly

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<sup>2</sup> According to its website, UBCR has facilities in Wixom and Grand Rapids and is the exclusive pick-up agent for the Michigan Soft Drink Association and the Michigan Beer and Wine Wholesalers. For more information, see <http://www.ubcrllc.com/index.html>.



identify and deny refunds to foreign beverage containers placed in them and to retain data concerning the number of containers collected by distributor.

Installation of vision technology into RVMs accepting glass and plastic beverage containers by January 1, 2011. [§5] By January 1, 2011, a reverse vending machine manufacturer (a person who designs, manufactures, sells, leases, services, or replaces reverse vending machines) would be required (1) to install "vision technology" into a sufficient sample of reverse vending machines (RVMs) that process glass and plastic beverage containers and (2) to conduct testing of the technology in a commercial environment or substantially similar testing environment.

Reverse vending machine requirements for border areas. RVM manufacturers would be prohibited from leasing, selling, or otherwise transferring RVMs for processing specified beverage containers for use in border areas of Michigan (counties bordering other states or Lower Peninsula counties contiguous with counties bordering other states)<sup>6</sup> unless the machines are able to identify and deny refunds to at least 85 percent of the nonreturnable containers placed in them and to maintain accurate data concerning the number of beverage containers collected by distributor. The 85-percent accuracy standard would apply first to designated 12-ounce metal containers (as of 90 days after the bill's effective date) and subsequently apply to designated 12-ounce glass containers and 20-ounce plastic containers (450 days after the bill's effective date).

Likewise, by subsequent deadlines, dealers in border areas of Michigan, if they use RVMs to process returnables, would have to use RVMs able to identify and deny refunds to nonreturnable beverage containers with 85 percent accuracy and that maintain data concerning the number of beverage containers collected by distributor. (The term "dealer" means persons, including vending machine operators, who sell or offer beverages in airtight containers of one gallon or less to Michigan consumers.)

Date by which RVM manufacturers must only lease or sell RVMs able to identify foreign containers with at least 85 percent accuracy (and maintain accurate data) in state border areas	
<u>Type of Beverage Container</u>	<u>Compliance deadline</u>
"Designated" metal beverage containers (specially-marked 12-oz. metal containers)	90 days after bill's effective date
"Designated" glass beverage containers (specially-marked 12-oz glass containers)	450 days after bill's effective date
Designated plastic beverage containers (specially-marked 20-oz plastic containers)	450 days after bill's effective date

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<sup>6</sup> The bill would apply in the following counties: Berrien, Branch, Cass, Calhoun, Dickinson, Gogebic, Hillsdale, Iron, Jackson, Kalamazoo, Lenawee, Menominee, Monroe, St. Joseph, Van Buren, Washtenaw, and Wayne.

Date by which dealers can only use RVMs able to identify foreign containers with at least 85 percent accuracy (and maintain accurate data) in state border areas	
<u>Type of Beverage Container</u>	<u>Compliance deadline</u>
"Designated" metal beverage containers (specially-marked 12-oz. metal containers)	360 days after bill's effective date
"Designated" glass beverage containers (specially-marked 12-oz glass containers)	2 years after bill's effective date
"Designated" plastic beverage containers (specially-marked 20-oz plastic containers)	2 years after bill's effective date

Extensions of time based on technical difficulties. The bill would authorize the Department of Treasury to grant up to an 180-day extension of time for any of these deadlines if an RVM manufacturer demonstrates that material and technical issues arising during testing prevents the manufacturer from meeting the bill's requirements.

Felony violations (machine or data modification). The bill would make it a felony to modify, or to assist another person's efforts to modify, a reverse vending machine used or intended for use in Michigan to prevent it from meeting the bill's standards. Fraudulently changing, altering, or modifying data collected by the RVM, or assisting someone else to do this, would also be made a felony. Violations of these felony provisions would be punishable by imprisonment for not more than two years, a fine of not more than \$10,000, or both. In addition, persons convicted of felony violations would have to make restitution to the state and to any dealer or distributor for any loss caused by the violation. [Note: The package does not yet include a bill putting the felony violations contained in House Bill 5147 into sentencing guidelines but one is anticipated. House Bill 6443 currently puts only the felonies contained in House Bill 6441 into sentencing guidelines.]

Retention of RVM data. Each Michigan dealer would have to retain RVM data for at least two years and make data relating to a distributor's brands available for inspection by the distributor and provide copies to the distributor on request.

Inspection of machines and records. Each dealer would have to allow the Department of Treasury and any law enforcement agency as defined in the bill (the Attorney General; city, village, or township police; sheriff department; or the State Police) to inspect the dealer's reverse vending machines and data for the purpose of enforcing the act.

Investigation of complaints by Treasury. The Department of Treasury would have to investigate complaints alleging violations of the bill. If it determines a violation has occurred, it would have to notify the appropriate law enforcement agency.

Penalties. Except for the felonies described above, violations of the RVM law would be considered misdemeanors punishable by not more than 90 days in prison, a fine of not more than \$10,000, or both. In addition, persons convicted of misdemeanor violations



would have to make restitution to the state and to any dealer or distributor for any loss caused by the violation.

No misdemeanor violations if state retrofitting money is not available. No dealer (retailer) or RVM manufacturer could be found guilty of a misdemeanor of the RVM requirements if funds are not available to RVM manufacturers to retrofit machines in the "Reverse Vending Machine Retrofitting Fund" (to be created by Senate Bill 1648). (The felony violations relating to tampering with RVMs or their data could apparently take effect whether or not retrofitting funds are available).

Effective date. House Bill 5147 (Substitute H-4) would take effect on the date that the Reverse Vending Machine Retrofitting Fund to be created by Senate Bill 1647 receives appropriated funds of at least \$500,000.

Tie-bars. House Bill 5147 is tie-barred to House Bill 6460 (or Senate Bill 1532) (requiring special marks on high-volume brands) and Senate Bill 1648 (requiring at least \$500,000 to be appropriated for retrofitting RVMs).

### **House Bill 6441 (Substitute H-2)**

House Bill 6441 (Substitute H-2) would revise civil and criminal penalties for persons who return out-of-state beverage containers for refunds, and add new provisions applying to dealers (retailers) and distributors.

Consumer violations. It is currently unlawful for a person to return or attempt to return a beverage container for a refund that the person knows or should know was not purchased in Michigan or did not have a deposit paid on it when purchased. The bill would amend penalties as follows:

#### **Improper return (Consumer), 25 to 100 containers**

First offense: Civil offense; maximum civil fine of \$100.

Subsequent offense: Misdemeanor; maximum 93 days, \$1,000 fine, or both.

#### **Improper return (Consumer), more than 100 but fewer than 10,000 containers**

First offense: Misdemeanor; maximum 93 days, \$1,000 fine, or both.

Subsequent offense: Misdemeanor; maximum 2 years, \$2,000 fine, or both.

#### **Improper return (Consumer), more than 10,000 containers**

First or subsequent offense: Felony; maximum five years, \$5,000 fine, or both.

Dealer violations. Dealers (retailers) would now be prohibited from knowingly accepting and paying a deposit for nonreturnable containers or knowingly delivering nonreturnable

containers to a distributor for a refund. (But enforcing a written policy against employee redemptions of nonreturnable containers would provide an affirmative defense in some cases. See below.)

**Improper acceptance or delivery (Dealer), 25 to 100 containers.**

First or subsequent offense: civil offense; maximum civil fine of \$100.

**Improper acceptance or delivery (Dealer), >100 but <10,000 containers.**

First offense: misdemeanor; maximum 93 days, \$1,000 fine, or both.

Subsequent offense: misdemeanor; maximum 1 year, \$1,000 fine, or both.

**Improper acceptance or delivery (Dealer), > 10,000 containers.**

First or subsequent offense: Felony; maximum 5 years, \$5,000 fine, or both.

Distributor violations. Distributors would now be prohibited from (1) knowingly accepting nonreturnable containers from dealers and paying deposits for them; or (2) knowingly delivering a nonreturnable container to a manufacturer for a refund. (But adopting and enforcing a written policy against employee redemptions of nonreturnable containers would provide an affirmative defense in some cases. See below.)

**Improper acceptance or delivery (Distributor), 25 to 100 containers.**

First or subsequent offense: Civil offense; maximum civil fine of \$100.

**Improper acceptance or delivery (Distributor), >100 but <10,000 containers.**

First offense: Misdemeanor; maximum 93 days, \$1,000 fine, or both.

Subsequent offense: Misdemeanor; maximum 1 year, \$2,000 fine, or both.

**Improper acceptance or delivery (Distributor), >10,000 containers.**

First or subsequent offense: Felony; maximum 5 years, \$5,000 fine, or both.

Affirmative defense for dealers and distributors. A dealer or distributor who has a written policy banning the redemption of nonreturnable containers by employees has an affirmative defense in an action against the dealer or distributor for a violation committed by an employee of the dealer or distributor, if the written policy is in effect and enforced at the time of the violation and the written policy is maintained in effect and enforced.

Restitution. In addition to any other penalties, a court would have to order a person found guilty of a misdemeanor or felony violation to pay restitution equal to the amount of loss caused by the violation.

Actions to recover civil fine. The attorney general or a county prosecutor could bring an action to recover a civil fine. A civil fine would be payable to the state and credited to the General Fund.

Tie-bar. House Bill 6441 is tie-barred to House Bill 6442 (or Senate Bill 1383).

#### **House Bill 6442 (Substitute H-1)**

House Bill 6442 (Substitute H-1) would require dealers (retailers) to update the notices currently required to be posted where returnables are redeemed to reflect the new maximum penalties for improperly returning an out-of-state container (two years in jail, \$5,000 fine, and restitution). The bill also specifies that the existing \$50 fine for dealers who violate this notice posting requirement is a civil fine.

Tie-bar. House Bill 6442 is tie-barred to House Bill 6441 (or Senate Bill 1391).

#### **House Bill 6443 (Substitute H-1)**

House Bill 6443 (Substitute H-1) would amend the Code of Criminal Procedure to put the felony violations contained in House Bill 6441 into sentencing guidelines.

Tie-bar. House Bill 6443 is tie-barred to House Bill 6441 (or Senate bill 1391).

#### **House Bill 6460**

House Bill 6460 would amend the Bottle Bill to prohibit dealers from selling certain brands of beverages without a required mark on the beverage container if the brand is one that was either sold or over-redeemed in large quantities in Michigan during the previous calendar year.

Covered brands. The bill would apply to brands that either (1) had sales of at least 500,000 case equivalents in Michigan in the previous calendar year or (2) had over-redemptions of more than 100,000 containers in the previous calendar year. The Michigan Liquor Control Commission would determine which brands were covered, presumably on an annual basis.

Effective dates. The date by which a marks would have to be placed on the containers of covered brands varies by type of container:

<b>Date by which Dealers could only sell High Volume Brands with Required Marks</b>	
<u>Size and Type of Beverage Container</u>	<u>Deadline</u>
12-ounce metal	90 days after bill's effective date
12-ounce glass	450 days after bill's effective date
20-ounce plastic	450 days after bill's effective date

Required marks; violation. A dealer could not sell, offer for sale, or give away a brand with high Michigan sales or overredemptions in the previous calendar year (in a 12-ounce metal, 12-ounce glass, or 20-ounce plastic container) unless the beverage container is marked to allow a reverse vending machine to determine if it is returnable in Michigan.

(Under the bill, this means it would either (1) contain a symbol, etching, mark, or other distinguishing characteristic that allows a vending machine to determine if the beverage container is returnable or (2) contain a symbol, etching, mark, or other distinguishing characteristic that indicates it is a beverage container sold outside the state and the lack of that symbol, etc. allows a reverse vending machine to determine if the beverage container is a returnable container.)

Manufacturers would have to place the symbol or symbol or mark on the containers and the mark would have to be unique to Michigan or used only in Michigan and one or more states with substantially similar laws.

Penalty. A violation would be a misdemeanor with a maximum sentence of 180 days' imprisonment, \$2,000 fine, or both. Section 4 of the Bottle Bill would not apply to a violation of the bill. (Section 4 currently provides that the minimum fine for a violation of the Bottle Bill is \$100 with a maximum of \$1,000, that a person who violates the act is liable for the costs of prosecution, and that each day a violation occurs, a separate offense is committed.)

Effective date. The bill would take effect on the date that the Reverse Vending Machine Retrofitting Fund to be created by Senate Bill 1647 receives appropriated funds of at least \$500,000.

### ***BACKGROUND INFORMATION:***

Unclaimed bottle deposits. When a deposit-bearing can or bottle is not returned, the deposit remains in the hands of the wholesaler or bottler who distributed the product to the retailer. When Michigan's Bottle Bill was first enacted, it did not specify who owned unclaimed deposits so they were kept by bottlers and distributors. Under Public Acts 148 and 157 of 1989, beverage manufacturers and distributors were required to turn over unclaimed deposits to the Michigan Unclaimed Bottle Deposit Fund, with 75 percent of the unclaimed deposits dedicated for state environmental projects and 25 percent being distributed to retailers to help offset their compliance costs.

The Michigan Soft drink Association (MSDA) challenged the law requiring bottlers and distributors to turn over unclaimed bottle deposits on constitutional grounds but it was upheld by the Michigan Court of Appeals in Michigan Soft drink Association v. Department of Treasury, 206 Mich App 392 (1994), with the Michigan Supreme Court subsequently denying leave to appeal. Public Act 384 of 1996 kept the same 75/25 percent split between the state and retailers but required the state portion to be deposited in the Cleanup and Environmental Trust Fund, rather than the Michigan Unclaimed Bottle Fund.

Bottle laws of other states and provinces. For the bottle laws of other states and Canadian provinces, see <http://www.bottlebill.org/about.htm>.

Bottle Bill Report. A report entitled "Michigan Bottle Bill; A Final Report to: Michigan Great Lakes Protection Fund," dated July 10, 2000, is available online at <http://www.deq.state.mi.us/documents/deq-water-greatlakes-protection-michiganbottle.pdf>.

Report on illegal alcohol importation. The Michigan Liquor Control Commission issued a report entitled "Illegal Importation of Alcohol into Michigan: An Assessment of the Issue and Recommendations," dated January 15, 2008, available online at [http://www.michigan.gov/documents/dleg/Illegal\\_Importation\\_of\\_Alcohol\\_1\\_14\\_08\\_221682\\_7.pdf](http://www.michigan.gov/documents/dleg/Illegal_Importation_of_Alcohol_1_14_08_221682_7.pdf)

New MBT tax credit for Michigan beverage distributors and manufacturers. A new "Bottle Deposit Administration Credit" was included in the Michigan Business Tax that replaced the Single Business. The new tax credit for beverage manufacturers and distributors is equal to 30.5 percent of any expenses they incur to comply with the Michigan's Bottle Bill (25 percent if the MBT surcharge is discontinued). This tax credit is not refundable and it may not be carried forward. Section 451 does not define "expenses" or specify the types of expenses that qualify for the credit. It does not appear to require bottlers and distributors to offset any revenue they may have relating to the Bottle Bill, such as interest collected by "underredeemers" or the proceeds of scrap sales. As this tax credit is new, it is not yet known what the total value of this credit will be to eligible businesses and how much tax revenue that the state would have otherwise collected will be reduced.

### ***FISCAL INFORMATION:***

The Department of Treasury testified that although the department is neutral on the bills, the administration would commit to finding \$1 million over a number of years to phase in retrofitted machines in border areas on an experimental basis.

### ***ARGUMENTS:***

#### ***For:***

Cracking down on fraudulent redemptions and spending money to retrofit machines in border areas would increase funds going to state for environmental cleanup and to retail stores to defray recycling costs.

The bill may help deter and punish fraud allegedly occurring with some reverse vending machines.

This package of bills may also help increase beverage sales in border areas of Michigan.

See the lengthy discussion of the need for this bill in the earlier section labeled *THE APPARENT PROBLEM*.

***Against:***

Critics say that the bill is putting the cart before the horse, requiring the state to spend money during an economic crisis on technology that is not ready to go. Would taxpayer money be better spent on other things?

A voluntary solution is more appropriate given the work already being done by the industry workgroup. The soft drink manufacturers are already using a new mark and RVM technology for aluminum cans is being tested.

A better solution to fraudulent redemption would be more border law enforcement, such as *Operation Can Scam*, not expensive technological mandates that will impose costs on retailers who already bear most of the costs of Michigan's bottle law. This is especially true since the retailers will have to purchase or retrofit their machines again in just a year or so for glass and plastic, assuming those technologies can be developed.

The Legislature should be expanding the successful bottle law rather than attacking fraudulent redemption via technology. In fact, adopting a technological approach to dealing with fraudulent redemption may make it more difficult to expand the bottle law in the future. Opponents of expansion will then say that it would be too costly to install even more new RVMs to deal with additional products.

The costs that fraudulent redemption imposes on beer distributors are not as serious as it first may seem since "overredeemers" can trade with "underredeemers" and a generous MBT tax credit was recently adopted to defray 30.5 percent of their costs of compliance with the bottle law. (This also applies to other beverage manufacturers or wholesalers who originate bottle deposits.)

The testing deadline for vision technology to deal with glass and plastic containers found in the bill is unworkable as it would have the testing of the RVMs occur after the RVMS would already have to be in use.

If one RVM manufacturer gets an extension because it cannot comply but another is able to comply, would a retail store with a longstanding relationship with an RVM manufacturer unable to meet the deadline have to switch and purchase RVMs from a manufacturer that is able to meet the deadline? If so, at what cost?

Would it be better to require bottlers and manufacturers make the changes needed to allow existing barcodes to identify and reject foreign cans and thereby avoid the cost of retrofitting RVMs?



## ***POSITIONS:***

Anheuser-Busch indicated support of House Bills 6442-6444 and support of House Bills 5147 & 6460 if retailers are held harmless on funding. (11-12-08)

The Michigan Beer and Wine Wholesalers Association supports the bills. (11-24-08)

The Michigan Environmental Council supports House Bills 6441-6443, and 6460 (11-25-08)

MillerCoors indicated support of the bills so long as efforts for funding continue. (11-12-08)

The Michigan Soft Drink Association supports House Bills 6441-6444 in concept, but opposes House Bills 5147 and 6460. (11-25-08)

The Michigan United Conservation Clubs supports efforts to minimize fraudulent redemptions but opposes House Bill 6444, not reported with recommendation, which would have placed a \$5 daily limit on consumer redemptions not using an RVM). (11-19-08)

The Department of Treasury is neutral on the bills except for House Bill 6444, which was not reported with recommendation, which it opposes.

Associated Food & Petroleum Dealers indicated opposition to the bills. (11-12-08)

Can and Bottle Systems, Inc., an RVM manufacturer, indicated opposition to the bills. (11-12-08)

Coca-Cola Bottling Company indicated opposition to House Bill 6460. (11-12-08)

Envipco, an RVM manufacturer, opposes House Bill 5147 (written testimony dated 11-12-08).

The Michigan Grocers Association is opposed to the bills. (11-24-08)

The Michigan Recreation and Park Association is opposed to the bills. (11-24-08)

Spartan Stores opposes the bills. (11-25-08)

TOMRA, an RVM manufacturer, opposes the bills. (11-25-08)

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