

# 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-1) 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 3-12-20**

**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; redistribute money from the Bottle Deposit Fund to include disbursements to the new fund, the Renew Michigan Fund, and distributors; and direct money designated to the new fund to state and local law enforcement.

**FISCAL IMPACT:** The bill would have fiscal implications for the state and local units of government. Please 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 manner 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**, below). 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 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 the beverage companies.

If enforcement efforts could be increased, such as instituting harsher penalties for not originating the deposit on each container, fraudulent activities could be curtailed. Further, some feel it is time to shift some of the revenue from the unredeemed deposits to recycling efforts rather than the bulk of the revenue being directed to environmental cleanup programs such as brownfield redevelopments.

Legislation has been offered to address these issues.

### ***THE CONTENT OF THE BILLS:***

**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 redesignate money from the Bottle Deposit Fund.

Currently, 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 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:

- 50% to the Department of Environment, Great Lakes, and Energy (EGLE) to be disbursed as follows:
  - The first \$25.0 million to the Cleanup and Redevelopment Trust Fund.
  - After the above is satisfied, the next \$5.0 million to the Renew Michigan Fund, created under the Income Tax Act, to be used for recycling purposes as described in that act.
  - Any amount greater than \$30.0 million to the Cleanup and Redevelopment Trust Fund. (That is, after the \$25.0 million and \$5.0 million disbursements were made as described above, if any money remained in EGLE's 50% share, it would also go to the Cleanup and Redevelopment Trust Fund.)
- 25% to dealers [this is the current disbursement to dealers].

- 20% to distributors to be apportioned to each based on the number of empty returnable containers handled by the distributor, as determined by the Department of Treasury.
- 5% 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.

The bill would create the Bottle Bill Enforcement Fund as a revolving fund in the Department of Treasury. The department would administer the fund, and money deposited in the fund would not revert to the general fund. 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 to be determined by the Department of Treasury.

MCL 445.573c

#### Tie-bars and effective date

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 tie-bar means that a bill cannot become law unless the bill to which it is tie-barred is also enacted into law.

Each bill would take effect 90 days after its enactment.

### ***BACKGROUND:***

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

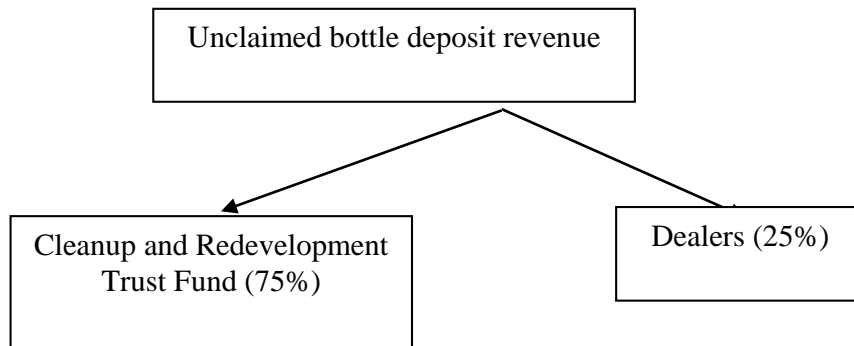
**House Bill 5423** would increase administrative costs for the Department of Treasury by an indeterminate, but likely negligible, amount. It is estimated that the department would be able to absorb any marginal costs under current appropriation levels.

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 5% 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.

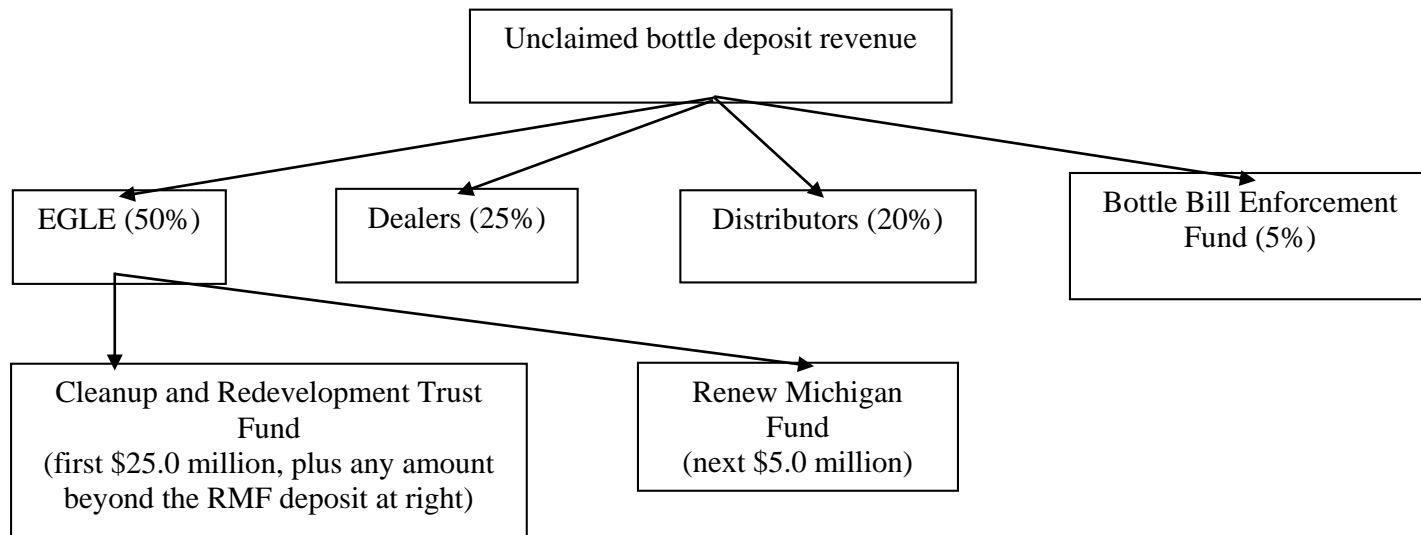
House Bill 5423 would reduce revenue for the Department of Environment, Great Lakes, and Energy. Under current law EGLE receives 75% of revenue from unclaimed bottle deposits in the Cleanup and Redevelopment Trust Fund and dealers receive the remaining 25% of revenue. The department distributes its share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

Under the bill the department would receive 50% of unclaimed bottle deposits to be split between recycling activities funded by the Renew Michigan Fund (RMF) and the aforementioned trust fund. The remaining revenue would be distributed to dealers (25%), distributors (20%), and the new Bottle Bill Enforcement Fund (5%) for law enforcement activities. Below is a comparison of current law and the bill.

Current law:



House Bill 5423 (H-1):



Unclaimed bottle deposit revenue has varied over time. The table below illustrates recent revenue:

Year	Revenue
2009	\$17,500,000
2010	16,600,000
2011	17,800,000
2012	21,100,000
2013	21,500,000
2014	22,300,000
2015	25,700,000
2016	30,000,000
2017	33,800,000
2018	42,800,000
Source: Department of Treasury	

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.

## ***ARGUMENTS:***

### ***For:***

The bill package has several central changes. First, HB 5422 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 5424 in turn creates a more stringent penalty for any distributor who does not originate the deposit or maintain the records as required under HB 5422. 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 5423 would divert a portion of the Bottle Deposit Fund revenue to state and local law enforcement agencies.

Further, HB 5423 would carve out 20% of the revenue in the Bottle Deposit Fund to be distributed among distributors based on the number of empty returnable bottles each



handles. The distribution may not fully offset all of the costs of implementing the bottle deposit program, but even a partial reimbursement will help to purchase or repair new equipment used in the collections, as well as cover other collection costs. By some accounts, the cost to distributors to initiate the deposit and ensure the containers are picked up and recycled has increased over 18% over the past decade due to increases in labor, insurance, trucking, equipment, maintenance, and other expenses. Beer distributors alone are reported to spend about \$50 million per year to implement the bottle deposit program and simply cannot continue to absorb all of the costs.

HB 5423 would reduce the amount of money from the Bottle Deposit Fund that will go directly to environmental cleanup programs, with at least \$5.0 a million a year going to fund recycling programs. Some feel that the original intent of the bottle deposit law was to encourage recycling and thereby keep containers from becoming litter; they feel that earmarking a portion of the unredeemed deposits for recycling projects helps return the law to its original intent.

For years, about 90% or more of returnable containers have been returned. The law is working. Now it is a matter of deciding what makes sense for today regarding distribution of deposits that are not redeemed. The bill package in its current form preserves more for environmental cleanup than the bills as introduced would have done, yet acknowledges that distributors, who are instrumental in keeping the bottle program functioning, should share in the unredeemed deposits and that law enforcement agencies should also receive some funding assistance in cracking down on fraudulent activities.

***Against:***

Some remain concerned regarding the impact the distribution changes may have on environmental cleanup programs. It could be argued that the state needs more, not less, funding to clean up contaminated sites. Currently, 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. Yes, increased funding for recycling may help, but money is also needed to remove the containers from the environment. As to money being diverted from environmental cleanup and given to distributors, some may say that the costs to implement the bottle deposit program is but one of the costs of doing business in the state and should not be subsidized considering that they are also making money by doing business here.

***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)
- Michigan Beer and Wine Wholesalers (3-4-20)

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)
- Shupan 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 following entities testified in opposition to HB 5423 (2-4-20):

- Michigan Environmental Council
- Michigan League of Conservation Voters

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.