

HOUSE BILL NO. 5424

January 28, 2020, Introduced by Reps. Chirkun, Sneller, Lilly and Iden and referred to the Committee on Regulatory Reform.

A bill to amend 1976 IL 1, entitled

"A petition to initiate legislation to provide for the use of returnable containers for soft drinks, soda water, carbonated natural or mineral water, other nonalcoholic carbonated drink, and for beer, ale, or other malt drink of whatever alcoholic content, and for certain other beverage containers; to provide for the use of unredeemed bottle deposits; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide remedies,"

by amending section 4 (MCL 445.574), as amended by 1998 PA 473.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:



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1 Sec. 4. (1) Except as provided in **subsection (2) and** sections
2 4a and 4b, a ~~person, dealer, distributor, or manufacturer, who or~~
3 **other person that** violates this act is subject to a fine of not
4 less than \$100.00 or more than \$1,000.00 and is liable for the
5 costs of prosecution. Each day a violation occurs, a separate
6 offense is committed.

7 (2) Subject to subsection (3), a distributor that, with the
8 intent to defraud or cheat, violates section 4c is guilty of a
9 crime punishable as follows:

10 (a) If the filled beverage containers of the nonalcoholic
11 beverages purchased in another state have a value of less than
12 \$200.00, the distributor is guilty of a misdemeanor punishable by
13 imprisonment for not more than 93 days or a fine of not more than
14 \$500.00 or 3 times the value, whichever is greater, or both
15 imprisonment and a fine.

16 (b) If any of the following apply, the distributor is guilty
17 of a misdemeanor punishable by imprisonment for not more than 1
18 year or a fine of not more than \$2,000.00 or 3 times the value,
19 whichever is greater, or both imprisonment and a fine:

20 (i) The filled beverage containers of the nonalcoholic
21 beverages purchased in another state have a value of \$200.00 or
22 more but less than \$1,000.00.

23 (ii) The distributor violates subdivision (a) and has 1 or more
24 prior convictions for committing or attempting to commit an offense
25 under this subsection.

26 (c) If any of the following apply, the distributor is guilty
27 of a felony punishable by imprisonment for not more than 5 years or
28 a fine of not more than \$10,000.00 or 3 times the value, whichever
29 is greater, or both imprisonment and a fine:



1 (i) The filled beverage containers of the nonalcoholic
2 beverages purchased in another state have a value of \$1,000.00 or
3 more but less than \$20,000.00.

4 (ii) The distributor violates subdivision (b) (i) and has 1 or
5 more prior convictions for committing or attempting to commit an
6 offense under this subsection. For purposes of this subparagraph, a
7 prior conviction does not include a conviction for a violation or
8 attempted violation of subdivision (a) or (b) (ii).

9 (d) If any of the following apply, the distributor is guilty
10 of a felony punishable by imprisonment for not more than 15 years
11 or a fine of not more than \$15,000.00 or 3 times the value,
12 whichever is greater, or both imprisonment and a fine:

13 (i) The filled beverage containers of the nonalcoholic
14 beverages purchased in another state have a value of \$20,000.00 or
15 more but less than \$50,000.00.

16 (ii) The distributor violates subdivision (c) (i) and has 2 or
17 more prior convictions for committing or attempting to commit an
18 offense under this section. For purposes of this subparagraph, a
19 prior conviction does not include a conviction for a violation or
20 attempted violation of subdivision (a) or (b) (ii).

21 (e) If any of the following apply, the distributor is guilty
22 of a felony punishable by imprisonment for not more than 15 years
23 or a fine of not more than \$25,000.00 or 3 times the value,
24 whichever is greater, or both imprisonment and a fine:

25 (i) The filled beverage containers of the nonalcoholic
26 beverages purchased in another state have a value of \$50,000.00 or
27 more but less than \$100,000.00.

28 (ii) The distributor violates subdivision (d) (i) and has 2 or
29 more prior convictions for committing or attempting to commit an



1 offense under this section. For purposes of this subparagraph, a
2 prior conviction does not include a conviction for a violation or
3 attempted violation of subdivision (a) or (b) (ii) .

4 (f) If any of the following apply, the distributor is guilty
5 of a felony punishable by imprisonment for not more than 20 years
6 or a fine of not more than \$35,000.00 or 3 times the value,
7 whichever is greater, or both imprisonment and a fine:

8 (i) The filled beverage containers of the nonalcoholic
9 beverages purchased in another state have a value of \$100,000.00 or
10 more.

11 (ii) The distributor violates subdivision (e) (i) and has 2 or
12 more prior convictions for committing or attempting to commit an
13 offense under this section. For purposes of this subparagraph, a
14 prior conviction does not include a conviction for a violation or
15 attempted violation of subdivision (a) or (b) (ii) .

16 (3) All of the following apply for purposes of subsection (2) :

17 (a) The values of filled beverage containers of the
18 nonalcoholic beverages purchased in another state in separate
19 incidents pursuant to a scheme or course of conduct within any 12-
20 month period may be aggregated to determine the total value
21 involved in the violation of subsection (2) .

22 (b) If the prosecuting attorney intends to seek an enhanced
23 sentence based upon the defendant having 1 or more prior
24 convictions, the prosecuting attorney shall include on the
25 complaint and information a statement listing the prior conviction
26 or convictions. The existence of the defendant's prior conviction
27 or convictions shall be determined by the court, without a jury, at
28 sentencing or at a separate hearing for that purpose before
29 sentencing. The existence of a prior conviction may be established



1 by any evidence relevant for that purpose, including, but not
2 limited to, 1 or more of the following:

3 (i) A copy of the judgment of conviction.

4 (ii) A transcript of a prior trial, plea-taking, or sentencing.

5 (iii) Information contained in a presentence report.

6 (iv) The defendant's statement.

7 (c) If the sentence for a conviction under subsection (2) is
8 enhanced by 1 or more prior convictions, those prior convictions
9 shall not be used to further enhance the sentence for the
10 conviction under section 10, 11, or 12 of chapter IX of the code of
11 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.

14 Enacting section 2. This amendatory act does not take effect
15 unless Senate Bill No.____ or House Bill No.____ (request no.
16 02698'19 *) of the 100th Legislature is enacted into law.

