

Legislative Analysis



BOTTLE LAW REVISIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4780 as referred to second committee
Sponsor: Rep. Mike Mueller

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

House Bill 4781 as referred
Sponsor: Rep. Andrew Fink

House Bill 4782 as referred
Sponsor: Rep. Tim Sneller

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

1st Committee: Regulatory Reform
2nd Committee: Rules and Competitiveness
Complete to 5-27-21

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).

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

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 become law unless each bill to which it is tie-barred is also enacted into law.

Each bill would take effect 90 days after its enactment.

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.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-18-21):

- Michigan State Police
- Michigan Soft Drink Association

The following entities indicated support for the bills:

- Michigan League of Conservation Voters (5-18-21)
- Michigan Manufacturers Association (5-18-21)
- Michigan Teamsters (5-18-21)
- Michigan Environmental Council (5-25-21)
- UBCR (5-25-21)
- Schupan and Sons (5-25-21)
- Midwest Independent Retailers Association (5-25-21)

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Marcus Coffin
Ben Gielczyk
Robin Risko
Austin Scott

■ 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.