

Legislative Analysis



REVISE ENFORCEMENT OF BOTTLE DEPOSIT LAW

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<http://www.house.mi.gov/hfa>

House Bill 4780 as enacted
Public Act 139 of 2021
Sponsor: Rep. Mike Mueller

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

House Bill 4781 as enacted
Public Act 140 of 2021
Sponsor: Rep. Andrew Fink

House Bill 4782 as enacted
Public Act 141 of 2021
Sponsor: Rep. Tim Sneller

House Bill 4783 as enacted
Public Act 142 of 2021
Sponsor: Rep. Tyrone A. Carter

1st House Committee: Regulatory Reform
2nd House Committee: Rules and Competitiveness
Senate Committee: Regulatory Reform
Complete to 1-26-23

SUMMARY:

Taken together, the bills 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 maintain a record of the deposits.
- Create criminal penalties, based on the value of the filled containers and any prior convictions, for a distributor that violates the above requirements with the intent to defraud or 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 allocated to the new fund to the Department of State Police (MSP).

House Bill 4781 amends the Initiated Law of 1976 (known as the bottle deposit law) to require a *distributor* that sells to a *dealer* a nonrefillable container that contains a beverage (except 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. The distributor must maintain a record of that deposit for purposes of the required annual filing under section 3a of the act, which pertains to deposits originated and refunds made on beverage containers.

A *dealer* means a person who sells or offers for sale a beverage in a beverage container to consumers in Michigan, including an operator of a vending machine.

A *distributor* means a person who sells beverages in beverage containers to a dealer in Michigan, including a manufacturer who engages in such sales.

Proposed MCL 445.574c

House Bill 4783 amends the bottle deposit law to provide that a distributor that violates HB 4781 (i.e., fails to originate a 10-cent deposit or maintain a record of deposits) with the intent to defraud or cheat is, based on the value of the filled beverage containers of nonalcoholic beverages purchased in another state and any prior convictions,¹ guilty of a crime and subject to penalties as follows:

- 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:
 - A value of at least \$200 but less than \$10,000.
 - A value of less than \$200 if the distributor has one or more prior convictions for violating HB 4781 with the intent to defraud or 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:
 - A value of at least \$10,000 but less than \$20,000.
 - A value of at least \$200 but less than \$10,000 if the distributor has one or more prior convictions for violating HB 4781 with the intent to defraud or cheat that involve beverage containers with a value of \$200 or more when filled.
- 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:
 - A value of at least \$20,000 but less than \$50,000.
 - A value of at least \$10,000 but less than \$20,000 if the distributor has two or more prior convictions for violating HB 4781 with the intent to defraud or cheat that involve beverage containers with a value of \$200 or more when filled.
- 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:
 - A value of at least \$50,000 but less than \$100,000.
 - A value of at least \$20,000 but less than \$50,000 if the distributor has two or more prior convictions for violating HB 4781 with the intent to defraud or cheat that involve beverage containers with a value of \$200 or more when filled.
- 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:
 - A value of \$100,000 or more.
 - A value of at least \$50,000 but less than \$100,000 if the distributor has two or more prior convictions for violating HB 4781 with the intent to defraud or cheat that involve beverage containers with a value of \$200 or more when filled.

¹ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction must include on the complaint and information a statement listing the prior conviction(s). The existence of the prior convictions must be determined by the court, without a jury, at sentencing or a separate presentencing hearing. A prior conviction may be established by any relevant evidence, such as a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information in a presentence report; or the defendant's statement.

For 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 may be aggregated to determine the total value involved in a violation.

If a sentence under the bill is enhanced by one or more prior convictions, those prior convictions cannot be used to further enhance the sentence under section 10, 11, or 12 of Chapter IX of the Code of Criminal Procedure, which provides for sentencing enhancement under the habitual offender provisions.

MCL 445.574

House Bill 4782 amends the Code of Criminal Procedure to add the felonies created by HB 4783 for a violation of HB 4781 to the sentencing guidelines. The crime classifications and levels for failure of a distributor to originate or maintain a record of deposits, with intent to defraud or cheat, are as follows, based on the value of the filled beverage containers involved in the violation or repeat offenses:

- A value of \$10,000 or more but less than \$20,000, or repeat offense: Class E felony against the public order with a maximum term of imprisonment of five years.
- A value of \$20,000 or more but less than \$50,000, or repeat offense: Class C felony against the public order with a maximum term of imprisonment of 15 years.
- A value of \$50,000 or more but less than \$100,000, or repeat offense: Class C felony against the public order with a maximum term of imprisonment of 15 years.
- A value of \$100,000 or more, or repeat offense: Class B felony against the public order with a maximum term of imprisonment of 20 years.

MCL 777.14h

House Bill 4780 amends the beverage 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 collected more deposits than paid out in refunds for returned containers) was previously 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 they handle.

Under the bill, money from the Bottle Deposit Fund is 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 balance of the Bottle Bill Enforcement Fund at the end of the fiscal year is greater than \$3.0 million, deposits to the fund must be suspended until the fund balance falls below \$2.0 million.
- After the disbursement of the first \$1.0 million to the Bottle Bill Enforcement Fund, the remaining amount is disbursed as before (75% to the Cleanup and Redevelopment Trust Fund and 25% to dealers).

The bill creates the Bottle Bill Enforcement Fund in the Department of Treasury as a revolving fund administered by the department. Money deposited in the fund does not revert to the general fund.

By March 27, 2025, the Department of State Police must report to the legislature on its efficacy in enforcing the act. The report must contain at least the minimum number of beverage and deposit containers seized and the deposit value in Michigan of those containers.

MCL 445.573c

The bills took effect March 27, 2022.

BRIEF DISCUSSION:

According to committee testimony, a growing number of unscrupulous 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 Michigan-based beverage companies (approximately \$10 million annually) and less revenue for the state's Bottle Deposit Fund. Supporters of the bills argue that, by instituting harsher penalties and earmarking funding assistance to law enforcement agencies to crack down on these fraudulent activities, the bills should reduce the amount paid out in refunds for containers that never had a deposit to begin with and result in more revenue from unredeemed deposits going to the Bottle Deposit Fund for distribution to dealers and for environmental programs.

FISCAL IMPACT:

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 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 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.

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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.