



Senate Fiscal Agency
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House Bills 4780 through 4783 (as passed by the House)

Sponsor: Representative Mike Mueller (H.B. 4780)
Representative Andrew Fink (H.B. 4781)
Representative Tim Sneller (H.B. 4782)
Representative Tyrone A. Carter (H.B. 4783)

House Committee: Regulatory Reform
Rules and Competitiveness

Senate Committee: Regulatory Reform

Date Completed: 9-28-21

CONTENT

House Bill 4781 would amend the beverage container deposit law to require a distributor selling a dealer a nonalcoholic beverage to originate a 10-cent deposit on the container at the time of sale to the dealer and maintain a record of that deposit.

House Bill 4783 would amend the beverage container law to prescribe misdemeanor and felony penalties of varying severity for violations of House Bill 4781.

House Bill 4782 would amend the sentencing guidelines within the Code of Criminal Procedure to include the felonies proposed under House Bill 4783.

House Bill 4780 would amend the beverage container deposit law to do the following:

- Create the "Bottle Bill Enforcement Fund" within the Department of the Treasury.
- Require the first \$1.0 million deposited into the Bottle Deposit Fund to be disbursed to the Bottle Bill Enforcement Fund for the Department of State Police (MSP) to use to enforce the law.
- Specify that if the Bottle Bill Enforcement Fund balance exceeded \$3.0 million at the end of a fiscal year, deposits into the Bottle Bill Enforcement Fund would be suspended until the balance fell below \$2.0 million.
- Require the MSP, three years after the bill's effective date, to report to the Legislature on the efficacy of its enforcement of the law.

House Bill 4780 is tie-barred to House Bills 4781 through 4783. House Bill 4781 and House Bill 4783 are tie-barred. House Bill 4782 is tie-barred to House Bill 4783.

Each bill would take effect 90 days after its enactment.

House Bill 4781

The bill would amend the beverage container deposit law to require a distributor that sold a dealer a nonrefillable container that contained 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 the container at the time of sale to the dealer. The bill would require the distributor to maintain a record of that deposit for purposes of its annual filing pertaining to deposits originated and refunds granted on beverage containers.

House Bill 4783

Penalties

Generally, under the beverage container deposit law, a dealer, distributor, manufacturer, or other person that violates the beverage container deposit law is subject to a fine of no less than \$100 or no more than \$1,000 and is liable for the costs of prosecution. Each day a violation occurs counts as a separate offense.

Under the bill, a distributor that, with the intent to defraud or cheat, violated House Bill (HB) 4781 would be guilty of a crime punishable as follows:

- If the filled beverage containers of the nonalcoholic beverages purchased in another state had a value of less than \$200, the distributor would be guilty of a misdemeanor punishable by up to 93 days' imprisonment or a fine of up to \$500 or three times the value of the containers, whichever was greater, or both imprisonment and a fine.
- The distributor would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of not more than \$2,000 or three times the value of the containers, whichever was greater, or both imprisonment and a fine, if either the filled beverage containers purchased in another state had a value of \$200 or more but less than \$1,000; or, if the distributor violated the 'under \$200' tier and had one or more prior conviction for committing or attempting to commit a violation of HB 4781.
- The distributor would be guilty of a felony punishable by up to five years' imprisonment or a fine of not more than \$10,000 or three times the value of the containers, whichever was greater, or both imprisonment and a fine, if either the filled beverage containers of the nonalcoholic beverages purchased in another state had a value of \$1,000 or more but less than \$20,000; or, if the distributor violated the '\$200 to \$1,000' tier and had one or more prior convictions for a violation over the \$200 threshold.
- The distributor would be guilty of a felony punishable by up to 15 years' imprisonment or a fine of not more than \$15,000 or three times the value of the containers, whichever was greater, or both imprisonment and a fine, if either the filled beverage containers had a value of \$20,000 or more but less than \$50,000; or, if the distributor violated the '\$1,000 to \$20,000' tier and had two or more prior convictions for violations over the \$200 threshold.
- The distributor would be guilty of a felony punishable by up to 15 years' imprisonment or a fine of not more than \$25,000 or three times the value of the containers, whichever is greater, or both imprisonment and a fine, if either the filled beverage containers had a value of \$50,000 or more but less than \$100,000; or, if the distributor violated the '\$20,000 to \$50,000' tier and had two or more prior convictions for violations over the \$200 threshold.
- The distributor would be guilty of a felony punishable by up to 20 years' imprisonment or a fine of not more than \$35,000 or three times the value of the containers, whichever was greater, or both imprisonment and a fine, if either the filled beverage containers had a value of \$100,000 or more; or, if distributor violated the '\$50,000 to \$100,000' threshold and had two or more prior convictions over the \$200 threshold.

For the purposes of the above penalties, the values of filled beverage containers of 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 of the filled beverage containers of nonalcoholic beverages purchased in another state.

Administration

If a prosecuting attorney intended to seek an enhanced sentence based upon the defendant's having one or more prior convictions, he or she would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a previous trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If a sentence for a conviction were enhanced by one or more prior convictions, the bill would prohibit those convictions from being used to further enhance the sentence for the conviction under Sections 10, 11, or 12 of Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure, which provide for sentencing enhancement under the habitual offender provisions.

House Bill 4782

The bill would amend the sentencing guidelines within the Code of Criminal Procedure to include the felony penalties proposed in HB 4783. The crime classifications for failure to originate and maintain record of deposits on certain containers, with intent to defraud or for a repeat offense, would be as follows:

- For containers valued at \$1,000 or more but less than \$20,000: Class E felony against public order with a statutory maximum of five years.
- For containers valued at or above \$20,000 but less than \$50,000: Class C felony against public order with a statutory maximum of 15 years.
- For containers valued at or above \$50,000 but less than \$100,000: Class C felony against public order with a statutory maximum of 15 years.
- For containers valued at or above \$100,000: Class B felony against public order with a statutory maximum of 20 years.

House Bill 4780

The beverage container deposit law establishes the Bottle Deposit Fund in the Department of Treasury as a revolving fund. The bill would amend the law to create the Bottle Bill Enforcement Fund within the Department. The Bottle Bill Enforcement Fund would be administered by the Department and the money deposited in the Bottle Bill Enforcement Fund would not revert to the General Fund.

The Department of Treasury must deposit the amount paid to the Department by underredeemers into the Bottle Deposit Fund for annual disbursement in the following manner:

- 75% to the Cleanup and Redevelopment Trust Fund.
- 25% to dealers to be apportioned to each dealer on the basis of the number of empty returnable containers handled by that dealer as determined by the Department.

Under the bill, the Department would have to deposit the amounts paid by underredeemers into the Bottle Deposit Fund for annual disbursement in the following manner:

- The first \$1.0 million to the Bottle Bill Enforcement Fund.
- After disbursement of the first \$1.0 million, the remaining amount would have to be disbursed as currently prescribed.

The Department would have to disburse the money deposited into the Bottle Bill Enforcement Fund to the MSP to enforce, and investigate violations of, the beverage container deposit law. If the Bottle Bill Enforcement Fund balance at the end of a fiscal year were greater than \$3.0 million, deposits into that Fund from the Bottle Deposit Fund would be suspended until the Fund balance fell below \$2.0 million.

Three years after the bill's effective date, the MSP would have to report to the Legislature on the efficacy of the MSP's enforcement of the beverage container deposit law. The report would have to contain at least the minimum number of beverage and deposit containers seized and the deposit value in the State of those containers.

MCL 445.573c (H.B. 4780)
Proposed MCL 445.574c (H.B. 4781)
MCL 771.14h (H.B. 4782)
MCL 445.574 (H.B. 4783)

Legislative Analyst: Christian Schmidt

FISCAL IMPACT

House Bills 4780 and 4781

The bills would have a minor fiscal impact on State government and no fiscal impact on local units of government.

The MSP would receive \$1.0 million in revenue as a result of the proposed new distribution. The increased funding for MSP would result in increased enforcement, along with minor administrative costs, resulting in an indeterminate impact on future bottle return revenue. The revenue would be deposited into the newly created Bottle Bill Enforcement Fund on an ongoing basis. The balance of the Fund at the close of the fiscal year would be limited to \$3.0 million. If the balance reached that level, further deposits would be suspended until the balance was less than \$2.0 million.

The bill would have a negative fiscal impact on the Department of Environment, Great Lakes, and Energy (DEGLE). Because of the distribution to MSP, DEGLE would not receive its 75% share on the reallocated \$1.0 million in initial revenue. However, any revenue changes would be limited to the first \$1.0 million and DEGLE would continue to receive the remaining revenue. That revenue would continue to be deposited into the Cleanup and Redevelopment Trust Fund.

The Department of Treasury would incur minor administrative costs.

House Bill 4782

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing

judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

House Bill 4783

The bill's criminal penalties could have a negative fiscal impact on the State and local government. Violations would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,400 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$5,800 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.