

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4783

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:

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

1 costs of prosecution. Each day a violation occurs, a separate
2 offense is committed.

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

6 (a) If the filled beverage containers of the nonalcoholic
7 beverages purchased in another state have a value of less than
8 \$200.00, the distributor is guilty of a misdemeanor punishable by
9 imprisonment for not more than 93 days or a fine of not more than
10 \$500.00 or 3 times the value, whichever is greater, or both
11 imprisonment and a fine.

12 (b) If either of the following applies, the distributor is
13 guilty of a misdemeanor punishable by imprisonment for not more
14 than 1 year or a fine of not more than \$2,000.00 or 3 times the
15 value, whichever is greater, or both imprisonment and a fine:

16 (i) The filled beverage containers of the nonalcoholic
17 beverages purchased in another state have a value of \$200.00 or
18 more but less than \$10,000.00.

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

22 (c) If either of the following applies, the distributor is
23 guilty of a felony punishable by imprisonment for not more than 5
24 years or a fine of not more than \$10,000.00 or 3 times the value,
25 whichever is greater, or both imprisonment and a fine:

26 (i) The filled beverage containers of the nonalcoholic
27 beverages purchased in another state have a value of \$10,000.00 or
28 more but less than \$20,000.00.

29 (ii) The distributor violates subdivision (b) (i) and has 1 or

1 more prior convictions for committing or attempting to commit an
2 offense under this subsection. For purposes of this subparagraph, a
3 prior conviction does not include a conviction for a violation or
4 attempted violation of subdivision (a) or (b) (ii).

5 (d) If either of the following applies, the distributor is
6 guilty of a felony punishable by imprisonment for not more than 15
7 years or a fine of not more than \$15,000.00 or 3 times the value,
8 whichever is greater, or both imprisonment and a fine:

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

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

17 (e) If either of the following applies, the distributor is
18 guilty of a felony punishable by imprisonment for not more than 15
19 years or a fine of not more than \$25,000.00 or 3 times the value,
20 whichever is greater, or both imprisonment and a fine:

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

24 (ii) The distributor violates subdivision (d) (i) and has 2 or
25 more prior convictions for committing or attempting to commit an
26 offense under this section. For purposes of this subparagraph, a
27 prior conviction does not include a conviction for a violation or
28 attempted violation of subdivision (a) or (b) (ii).

29 (f) If either of the following applies, the distributor is

1 guilty of a felony punishable by imprisonment for not more than 20
2 years or a fine of not more than \$35,000.00 or 3 times the value,
3 whichever is greater, or both imprisonment and a fine:

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

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

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

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

18 (b) If the prosecuting attorney intends to seek an enhanced
19 sentence based upon the defendant having 1 or more prior
20 convictions, the prosecuting attorney shall include on the
21 complaint and information a statement listing the prior conviction
22 or convictions. The existence of the defendant's prior conviction
23 or convictions must be determined by the court, without a jury, at
24 sentencing or at a separate hearing for that purpose before
25 sentencing. The existence of a prior conviction may be established
26 by any evidence relevant for that purpose, including, but not
27 limited to, 1 or more of the following:

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

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

1 (iii) Information contained in a presentence report.

2 (iv) The defendant's statement.

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

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

10 Enacting section 2. This amendatory act does not take effect
11 unless House Bill No. 4782 of the 101st Legislature is enacted into
12 law.