

BEVERAGE CONTAINERS (EXCERPT)

Initiated Law 1 of 1976

445.574 Violation; penalty; separate offense; violations of section 4c; enhanced sentence; limitation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) 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 the violation of subsection (2).

(b) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or

more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions must 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 may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (i) A copy of the judgment of conviction.
- (ii) A transcript of a prior trial, plea-taking, or sentencing.
- (iii) Information contained in a presentence report.
- (iv) The defendant's statement.

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

History: 1976, Initiated Law 1, Eff. Dec. 3, 1978;—Am. 1982, Act 39, Imd. Eff. Mar. 16, 1982;—Am. 1998, Act 473, Eff. Apr. 1, 1999;—Am. 2021, Act 142, Eff. Mar. 27, 2022.

Popular name: Bottle Bill