

# Legislative Analysis

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## **BOTTLE BILL VIOLATIONS**

### **House Bills 6440 & 6442-6444**

**Sponsor: Rep. Steve Bieda**

### **House Bill 6441**

**Sponsor: Rep. Rebekah Warren**

**Committee: Great Lakes and Environment**

**Complete to 9-15-08**

## **A SUMMARY OF HOUSE BILL 6440 - 6444 AS INTRODUCED 9-11-08**

House Bills 6440 through 6442 and 6444 would revise the Initiated Law of 1976—commonly known as the "Bottle Bill"—to:

- Propose grants for retrofitting reverse vending machines so that they can reject out-of-state containers.
- Revise penalties for the knowing return of out-of-state beverage containers for deposit refunds.
- Add new violations applying to dealers and distributors who accept such containers or submit them for refunds (but provide an affirmative defense to those dealers and distributors that have a written policy against employee redemptions of nonreturnables).
- Allow the attorney general or a county prosecutor to bring a civil action for civil fines.
- Allow dealers to limit consumers to \$5 per day in bottle deposit refunds (\$25 per day if the retailer has reverse vending machines).

House Bills 6441, 6442, and 6444 are tie-barred to one another.

House Bill 6443 would amend the Code of Criminal Procedure to put the new and revised penalties for bottle law violations into sentencing guidelines. It is tie-barred to House Bill 6441

## **DETAILED SUMMARY:**

House Bill 6440 would direct the state treasurer to disburse up to \$2 million in grants, upon appropriation, from the state's Cleanup and Redevelopment Trust Fund over two fiscal years (2008-2009 and 2009-2010) to retrofit reverse vending machines so they can reject containers not sold in Michigan.

House Bill 6441 would revise civil and criminal penalties for consumers who return out-of-state beverage containers for refunds, and add new provisions applying to dealers and distributors.

- Consumer violations. It is currently unlawful for a person to return or attempt to return a beverage container for a refund that the person knows or should know was not purchased in Michigan or did not have a deposit paid on it when purchased. The bill would amend penalties as follows:

Improper return, 25 to 100 containers.

- (1) First offense: decriminalized (no longer considered a misdemeanor); maximum fine raised from \$100 to \$500 and classified a civil fine.
- (2) Second or subsequent offense: misdemeanor; up to 93 days in prison, fine, or both; restitution. Maximum fine increased from \$500 to \$1,000.

Improper return, more than 100 containers.

- (1) First offense: misdemeanor; up to 93 days in prison, fine, or both; maximum fine raised from \$500 to \$1,000; restitution.
- (2) Second or subsequent offense: felony; up to two years in prison, a fine of \$5,000, or both; restitution.

- Dealer violations. Dealers would now be prohibited from knowingly accepting and paying a deposit for nonreturnable containers or knowingly delivering nonreturnable containers to a distributor for a refund. (But enforcing a written policy against employee redemptions of nonreturnable containers would provide an affirmative defense to some dealers and distributors. See below.)

Improper acceptance or delivery, 25 to 100 containers.

First or subsequent offense: civil fine up to \$500.

Improper acceptance or delivery, more than 100 containers.

- (1) First offense: misdemeanor, up to 93 days in prison, fine of up to \$1,000, or both.
- (2) Second or subsequent offense; felony, up to two years in prison, fine of up to \$5,000, or both.

- Distributor violations. Distributors would now be prohibited from (1) knowingly accepting nonreturnable containers from dealers and paying deposits for them; or (2) knowingly delivering a nonreturnable container to a manufacturer for a refund. (But enforcing a written policy against employee redemptions of nonreturnable containers would provide an affirmative defense to some dealers and distributors. See below.)

Improper acceptance or delivery, 25 to 100 containers.

First or subsequent offense: civil fine up to \$500.

Improper acceptance or delivery, more than 100 containers.

- First offense: misdemeanor; up to 93 days in prison, fine of up to \$1,000, or both; restitution.
- Second or subsequent offense: felony; up to two years in prison, fine of up to \$5,000, or both; restitution.

- Affirmative defense for dealers and distributors. A dealer or distributor who adopts and enforces a written policy banning the redemption of nonreturnable containers by employees would have an affirmative defense if charged with a violation of this section of the bottle bill. The written policy would have to be in effect and enforced at the time of the violation and continue to be in effect and enforced.
- Restitution. As indicated above, in addition to any other penalties, a person found guilty of a misdemeanor or felony violation would have to pay restitution equal to the amount of loss caused by the violation.
- Actions to recover civil fine. The attorney general or a county prosecutor could bring an action to recover a civil fine. Such a civil fine would be payable to the state and credited to the General Fund.

House Bill 6442 would require the language of the warning sign that must be posted on dealer premises where returnable containers are redeemed to reflect the increased penalties.

House Bill 6444 would allow, but not require, dealers to limit beverage container refunds to \$5 per person day (\$25 per day if the dealer has one or more reverse vending machines).

[Note: Because Michigan's "bottle bill" was initiated legislation, it can only be amended by a 3/4 majority of both chambers.]

## **FISCAL IMPACT:**

These bills would reduce the amount of money otherwise available for environmental cleanups by \$2,000,000. If the changes made through these bills occur, funding for previously authorized cleanup projects could be reduced, thereby delaying or suspending current efforts to restore and redevelop contaminated properties.

The bills' fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. Generally, misdemeanor sanctions are a local responsibility; two-year misdemeanors, however, constitute an exception. Unlike other misdemeanors, two-year misdemeanors are subject to sentencing guidelines, and offenders placed on probation for two-year misdemeanors are supervised by MDOC probation agents.

The two-year misdemeanors to be created by the bills would be Class H offenses against public order. Exclusive of sentences for habitual offenders, sentencing guidelines ranges for Class H offenders vary from 0-1 month (for which a nonprison sanction is required) to 5 - 17 months (for which either prison or a nonprison sanction may be ordered).

The average appropriated cost of incarceration in a state prison is about \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational

costs. The state's average cost of parole and probation supervision is about \$2,100 per supervised offender per year. Costs of any jail incarceration would be borne by the county; those costs vary by county. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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