



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bills 1391 through 1394 (as introduced 6-17-08)

Sponsor: Senator Cameron S. Brown (S.B. 1391)

Senator Randy Richardville (S.B. 1392)

Senator Jason E. Allen (S.B. 1393)

Senator Ron Jelinek (S.B. 1394)

Committee: Commerce and Tourism

Date Completed: 11-10-08

### **CONTENT**

**Senate Bills 1391, 1393, and 1394 would amend the beverage container deposit law to do all of the following:**

- Revise the penalties for knowingly returning nonrefundable beverage containers to a dealer for a refund.**
- Prescribe penalties for a dealer or distributor who knowingly accepted and paid a deposit for nonreturnable containers.**
- Include felony penalties for a repeat violation of either offense involving more than 100 containers.**
- Allow a dealer or distributor, for a violation by an employee, to raise as an affirmative defense that it had and enforced a written policy prohibiting redemption of nonreturnable containers.**
- Revise a requirement that a dealer post a notice of the penalties for returning out-of-State nonreturnable containers.**
- Revise the value of empty returnable containers that a dealer is permitted, but is not required, to accept in a day.**

**Senate Bill 1392 would amend the Code of Criminal Procedure to include felony offenses proposed by Senate Bill 1391 in the sentencing guidelines.**

Senate Bills 1391, 1393, and 1394 are tie-barred to each other. Senate Bill 1392 is tie-barred to Senate Bill 1391.

Under the beverage container deposit law, "dealer" means a person who sells or offers for sale to consumers within Michigan a beverage in a beverage container, including an operator of a vending machine containing a beverage in a beverage container. "Distributor" means a person who sells beverages in beverage containers to a dealer within Michigan, and includes a manufacturer who engages in such sales. "Manufacturer" means a person who bottles, cans, or otherwise places beverages in beverage containers for sale to distributors, dealers, or consumers.

"Beverage container" means an airtight metal, glass, paper, or plastic container, or a container composed of a combination of those materials that, at the time of sale, contains one gallon or less of a beverage. "Beverage" means a soft drink, soda water, carbonated

natural or mineral water, or other nonalcoholic carbonated drink; beer, ale, or other malt drink of whatever alcoholic content; or a mixed wine drink or mixed spirit drink.

### **Senate Bill 1391**

Under the beverage container deposit law, a person may not return or attempt to return to a dealer for a refund either of the following:

- A beverage container that the person knows or should know was not purchased in Michigan as a filled returnable container.
- A beverage container that the person knows or should know did not have a deposit paid for it at the time of purchase.

Currently, a violation is punishable as shown in Table 1.

Table 1

Nonreturnable Containers	Status	Maximum Penalty
25-100	Misdemeanor	\$100
More than 100, or a repeat violation of 25-100	Misdemeanor	93 days and/or \$500

Under the bill, a violation would be punishable as shown in Table 2.

Table 2

Nonreturnable Containers	Status	Maximum Penalty
25-100	Civil Violation	\$500
More than 100, or a repeat violation of 25-100	Misdemeanor	93 days and/or \$1,000
Repeat violation of more than 100	Felony	2 years and/or \$5,000

The bill specifies that the Attorney General or a county prosecutor could bring an action to recover a civil fine. A civil fine imposed under the bill would be payable to the State and would have to be credited to the General Fund.

#### Dealer & Distributor Penalties

The bill would prohibit a dealer from knowingly accepting from, and paying a deposit to, a person for a nonreturnable container or knowingly delivering a nonreturnable container to a distributor for a refund.

The bill also would prohibit a distributor from knowingly accepting from, and paying a deposit to, a dealer for a nonreturnable container or knowingly delivering a nonreturnable container to a manufacturer for a refund.

A violation by a dealer or a distributor would be punishable as shown in Table 2.

#### Affirmative Defense

In an action against a dealer or distributor under the bill, for a violation committed by an employee of the dealer or distributor, it would be an affirmative defense that the dealer or distributor had in force at the time of the violation and continued to have in force a written policy prohibiting the redemption of nonreturnable containers by employees and that the dealer or distributor enforced and continued to enforce the policy. (An affirmative defense is new matter that constitutes a defense to a complaint, or evidence that outweighs the evidence against the defense.)

## Restitution

Under the law, a person found guilty of returning or attempting to return a nonreturnable beverage container for a refund must be ordered by the court to pay restitution equal to the amount of loss caused by the violation. Under the bill, in addition to the other applicable penalties, a person found guilty of a misdemeanor or felony would have to pay restitution equal to the amount of loss.

### **Senate Bill 1392**

The bill would include felony violations proposed by Senate Bill 1391 in the sentencing guidelines. Each of those offenses would be a Class H felony against the public order with a statutory maximum sentence of two years.

### **Senate Bill 1393**

Under the beverage container deposit law, a dealer must post a notice in the portion of the dealer's premises where returnable containers are redeemed, informing customers of the penalty for returning out-of-State nonreturnable containers. Currently, that posting must refer to penalties of up to 93 days in jail, a fine of \$500, and restitution. Under the bill, it would have to refer to penalties of up to two years in jail, a fine of \$5,000, and restitution.

A dealer who fails to comply with this requirement is subject to a maximum fine of \$50. The bill would refer to a "civil" fine.

### **Senate Bill 1394**

Currently, the beverage container deposit law provides that a dealer may accept, but is not required to accept, empty returnable containers from a person in excess of \$25 on any given day. The bill would delete that provision. Instead, a dealer could accept, but would not be required to accept, empty returnable containers from a person for a refund that exceeded \$5 on any given day. If a dealer used one or more reverse vending machines to redeem beverage containers, however, the dealer could accept, but would not be required to accept, empty returnable containers from a person for a refund that exceeded \$25 on any given day.

"Reverse vending machine" would mean a device designed to identify properly an empty returnable container and provide a means for a deposit refund.

MCL 445.574a (S.B. 1391)  
777.14h (S.B. 1392)  
445.574b (S.B. 1393)  
445.572 (S.B. 1394)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bills 1391 and 1392**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses involving the improper return, acceptance, or delivery of nonrefundable containers. An offender convicted of a Class H felony under the bills would receive a sentencing guidelines minimum sentence range of 0-1 month to 5-17 months. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as

well as the cost of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue would benefit public libraries.

To the extent that offenders currently are convicted of a violation involving the return of fewer than 100 nonreturnable containers, changing the offense from a misdemeanor to a civil violation would reduce costs of incarceration and penal fine revenue. Civil fine revenue would be deposited in the General Fund.

### **Senate Bill 1393**

The bill would have an indeterminate fiscal impact on State and local government. Civil fine revenue would go to the General Fund.

### **Senate Bill 1394**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would limit bottle returns, there could be an increase in the balance of the Bottle Deposit Fund. Of the Bottle Deposit Fund, 75% goes to the Cleanup and Redevelopment Fund, and 25% is distributed to dealers.

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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.