

ESTABLISH PENALTY FOR ATTEMPTING TO RETURN NON-RETURNABLE CONTAINERS

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House Bills 4051 and 4092 (as reported without amendments)

Sponsor: Rep. Kenneth Kurtz

Committee: Regulatory Reform

Complete to 3-5-13

A SUMMARY OF HOUSE BILLS 4051 & 4092 AS REPORTED FROM COMMITTEE

House Bill 4051 would amend the Michigan Beverage Containers Initiated Law 1 of 1976 (commonly referred to as the Bottle Deposit Law) to establish penalties for *attempting* to return non-returnable containers.

Current law (MCL 445.574a) prohibits returning or attempting to return non-returnable containers but the penalties in statute only apply to the individuals that have actually returned the containers. The bill would extend the existing penalties referenced below to also apply to the action of *attempting* to return the same quantities of non-returnable containers.

Currently, individuals are prohibited from returning or attempting to return beverage containers that the person knows or should have known (1) were not purchased in the state or (2) did not have a deposit paid at the time of purchase. Individuals found in violation of either provision are subject to the following penalties:

- For returning between 25 and 100 non-returnable containers, a maximum civil fine of \$100.
- For returning between 100 and 10,000 non-returnable containers or a second offense of returning between 25 and 100 nonreturnable containers, a misdemeanor punishable by up to 93 days imprisonment and/or a maximum fine of \$1,000.
- For returning between 100 and 10,000 non-returnable containers for a second or subsequent time, a misdemeanor punishable by up to one-year imprisonment and/or a maximum fine of \$2,000.
- For returning 10,000 or more non-returnable containers, a Class H felony against the public order punishable by up to five years imprisonment and/or a maximum fine of \$5,000.

House Bill 4092 would make a complementary amendment to the Code of Criminal Procedure to establish the felony penalty for attempting to return non-returnable containers in the sentencing guidelines. (This applies to the category of returning or attempting to return 10,000 or more non-returnables.) It appears that this would be the only Class H felony for which an attempt would be subject to the sentencing guidelines provisions.

FISCAL IMPACT:

Penalties/Corrections

To the extent that the bill results in a greater number of convictions, it could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Unclaimed Bottle Deposit Revenues

From 1990 to 2008, the average annual return rate of Michigan's bottle deposit program has been 97.3%. This means that approximately 3% of purchased beverage containers with bottle deposits were not redeemed. Since the consumer pays up front for the bottle deposit, more revenue is collected than is returned to the customers.

Michigan's Bottle Law (Michigan Beverage Containers Initiated Law of 1976) requires that of these unclaimed bottle deposits, twenty-five percent must be returned to the retailers and seventy-five percent must be deposited into the Cleanup and Redevelopment Trust Fund within the Department of Environmental Quality (DEQ). In FY 2010, these unclaimed deposits totaled \$17.3 million – of which, \$4.3 million was distributed to retailers and \$12.9 million was deposited into the Fund. DEQ uses these revenues to fund the cleanup and redevelopment of contaminated sites and provide grants to local governments to help reduce waste production and pollution.

To the extent that these bills result in fewer fraudulent returns, more revenue would be available from unclaimed deposits to distribute to retailers and to the DEQ for contaminated site cleanups and pollution prevention programs.

For an overview of the revenues from the Bottle Deposit Law Program, see:
http://www.house.mi.gov/hfa/PDFs/DEQ%20Bottle%20Deposit%20Return%20Memo_May%202012.pdf

POSITIONS:

The Department of State Police supports the bills. (2-26-13)

The Associated Food and Petroleum Dealers supports the bills. (2-19-13)

The Michigan Beer and Wine Wholesalers Association supports House Bill 4051. (2-19-13)

The Michigan Environmental Council supports the bills. (2-26-13)

The Michigan Food and Beverage Association supports House Bill 4051. (2-19-13)

The Michigan Soft Drink Association supports House Bill 4051. (2-26-13)

BACKGROUND INFORMATION AND DISCUSSION:

Michigan, with its ten-cent deposit on returnable bottles and cans, has the highest redemption rate (roughly 97 percent) of any state with a bottle deposit. However, the ten-cent deposit has also made Michigan a target for fraudulent redemptions. This problem was famously highlighted in a 1996 episode of the sitcom *Seinfeld* in which two of the characters (Kramer and Newman) attempt to smuggle a mail truck full of returnable containers from New York to return them for Michigan's ten-cent deposit, instead New York's five-cent deposit.

Currently, the Bottle Deposit Law prohibits individuals from returning or attempting to return beverage containers that the person knows or should have known (1) were not purchased in the state or (2) did not have a deposit paid at the time of purchase. The law contains penalties for actually returning nonrefundable containers but does not contain a penalty for *attempting* to return those same containers. The issue of fraudulent returns is especially prevalent in Michigan's border communities where businesses are reportedly suffering financial losses as a result (because they pay out more in deposits than they collect). The bill is intended to help crack down on the fraudulent returns by extending the current penalties for returning nonrefundable containers to also apply to the attempted return of those same containers.

There was concern expressed that individuals found guilty of fraudulently returning containers could be sentenced to jail time. Some feel that punishment is too harsh and would result in an increased expense for the correctional system. It was recommended that the punishment for fraudulently returning containers should consist only of a fine.

Some also felt the corresponding range of bottles (for example, 25-100 would result in a civil fine) was unclear as to whether it applied to a single offense or could be applied to multiple transactions. For example, would an individual need to return 25 or more containers in a single transaction to be guilty under act or would multiple transactions that totaled 25 or more containers satisfy the requirements of the act? If the provisions of the bill could be applied to multiple transactions, some feel it would place undue burden on business owners who would be forced to keep track of how many containers each individual was returning.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.