

SENATE BILL No. 821

October 10, 2007, Introduced by Senators JELINEK, ANDERSON, RICHARDVILLE, PAPPAGEORGE, THOMAS, GILBERT, BASHAM, BIRKHOLZ, CLARKE, BARCIA, GLEASON, STAMAS, GARCIA, CHERRY, VAN WOERKOM and WHITMER and referred to the Committee on Appropriations.

A bill to require identifying marking of certain beverage containers; to prohibit the use of certain reverse vending machines; to prescribe penalties for violations of this act; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "bottle deposit fund antifraud act".

3 Sec. 3. As used in this act:

4 (a) "Add-on bar code" means an additional 5-digit bar code
5 that is embossed on or affixed to a beverage container immediately
6 to the right of the container's universal product code and that
7 identifies the beverage container as a returnable container.

1 (b) "Beverage container" means that term as defined in section
2 1 of the beverage container law, MCL 445.571.

3 (c) "Beverage container law" means the Initiated Law of 1976,
4 MCL 445.571 to 445.576.

5 (d) "Dealer" means that term as defined in section 1 of the
6 beverage container law, MCL 445.571.

7 (e) "Department" means the department of treasury.

8 (f) "Distributor" means that term as defined in section 1 of
9 the beverage container law, MCL 445.571.

10 (g) "Foreign container" means a beverage container that is not
11 marked with any of the following:

12 (i) An embossment, stamp, label, or other marking clearly
13 indicating the refund value and the name of this state as required
14 by section 2(7) of the beverage container law, MCL 445.572.

15 (ii) A universal product code or an add-on bar code identifying
16 the container as a returnable container under this act.

17 (h) "Law enforcement agency" means the attorney general or a
18 law enforcement agency as defined in section 2804 of the public
19 health code, 1978 PA 368, MCL 333.2804.

20 (i) "Machine report" means the printed weekly report produced
21 by a reverse vending machine and described in section 7(1)(c).

22 (j) "Manufacturer" means that term as defined in section 1 of
23 the beverage container law, MCL 445.571.

24 (k) "Person" means an individual, partnership, corporation,
25 association, limited liability company, governmental entity, or
26 other legal entity. The term includes a dealer, distributor, or
27 manufacturer.

1 (l) "Returnable container" means that term as defined in
2 section 1 of the beverage container law, MCL 445.571.

3 (m) "Reverse vending machine" means a device designed to
4 properly identify an empty returnable container and provide a means
5 for a deposit refund.

6 (n) "Reverse vending machine manufacturer" means a person who
7 engages in any of the following and the representatives of that
8 person:

9 (i) Designing or manufacturing a reverse vending machine.

10 (ii) Selling or leasing a reverse vending machine to a dealer
11 in this state.

12 (iii) Servicing or replacing a reverse vending machine of a
13 dealer in this state.

14 (o) "Universal product code" means the 12-digit identification
15 number and bar code system administered by GS1 US Inc. to uniquely
16 identify consumer products in the United States.

17 Sec. 5. (1) A person that manufactures beverage containers
18 shall not sell or offer to sell a beverage container that does not
19 meet 1 of the following to a manufacturer that intends to sell or
20 offer to sell a beverage in this state in that beverage container:

21 (a) A universal product code is affixed to the beverage
22 container that identifies that container as a returnable container
23 in this state.

24 (b) An add-on bar code is affixed to the beverage container
25 that identifies that container as a returnable container in this
26 state.

27 (2) A person that manufactures beverage containers shall not

1 sell or offer to sell a foreign container to a manufacturer that
2 intends to sell or offer to sell a beverage in this state in that
3 beverage container.

4 Sec. 7. (1) A dealer, distributor, or manufacturer shall not
5 use a reverse vending machine unless the reverse vending machine is
6 designed to do all of the following:

7 (a) Determine whether a beverage container is a returnable
8 container in this state by reading a universal product code or add-
9 on bar code affixed to the beverage container.

10 (b) Identify and refuse to provide a deposit refund for
11 foreign containers by reading a universal product code or add-on
12 bar code affixed to the beverage container.

13 (c) Provide an accurate printed report to the user of the
14 reverse vending machine on a weekly basis that contains all of the
15 following information for the preceding week:

16 (i) The number of returnable containers placed in the reverse
17 vending machine.

18 (ii) The brand name of each beverage container placed in the
19 reverse vending machine.

20 (iii) The kind, type, and size of each beverage container placed
21 in the reverse vending machine.

22 (iv) The number of foreign containers rejected by the reverse
23 vending machine.

24 (2) A person shall not change, alter, or modify a reverse
25 vending machine in a manner designed to prevent the reverse vending
26 machine from complying with subsection (1).

27 Sec. 9. (1) A dealer shall do all of the following with the

1 machine reports from each reverse vending machine used by that
2 dealer:

3 (a) Retain the originals of the machine reports for at least 2
4 years.

5 (b) Provide copies of the machine reports to each distributor
6 that provides refunds to the dealer under section 2(6) of the
7 beverage container law, MCL 445.572. A distributor may withhold
8 payment of a refund to a dealer that fails to provide the
9 distributor a copy of a machine report under this subdivision.

10 (c) Make the originals of the machine reports available for
11 inspection by each distributor that provides refunds to the dealer
12 under section 2(6) of the beverage container law, MCL 445.572. A
13 distributor may withhold payment of a refund to a dealer that fails
14 to allow the distributor to inspect the originals of the machine
15 reports under this subdivision.

16 (2) A dealer shall allow the department and any law
17 enforcement agency to inspect the dealer's reverse vending machines
18 and originals of the machine reports for the purpose of enforcing
19 this act.

20 (3) If the department receives a complaint of a violation of
21 this act, the department shall investigate to determine whether a
22 violation of this act has occurred.

23 (4) If the department determines or discovers that a violation
24 of this act has occurred, the department shall notify the
25 appropriate law enforcement agency of the violation.

26 (5) The responsibilities of the department under this section
27 do not limit the authority of any law enforcement agency to

1 investigate any alleged violation of this act that occurs in its
2 jurisdiction.

3 Sec. 11. (1) A person who violates this act is guilty of a
4 misdemeanor punishable by imprisonment for not more than 180 days
5 or a fine of not more than \$10,000.00, or both.

6 (2) In addition to the penalty imposed under subsection (1), a
7 court shall order a person convicted of a violation of this act to
8 make restitution to this state and to any dealer, manufacturer, or
9 distributor for any loss caused by the violation.