

JAN 31 2005
ENVIRONMENTAL PROTECTION

HOUSE FILE 166
BY SHOULTZ

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the acceptance of empty beverage containers by
2 dealers of beverages, the reimbursement amount paid by a
3 distributor for empty beverage containers, a property tax
4 exemption for glass recyclers, and providing civil penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 166

1 Section 1. Section 427.1, subsection 19, unnumbered
2 paragraph 8, Code 2005, is amended to read as follows:

3 For the purposes of this subsection, "pollution-control
4 property" means personal property or improvements to real
5 property, or any portion thereof, used primarily to control or
6 abate pollution of any air or water of this state or used
7 primarily to enhance the quality of any air or water of this
8 state and "recycling property" means personal property or
9 improvements to real property or any portion of the property,
10 used primarily in the manufacturing process and resulting
11 directly in the conversion of waste plastic, wastepaper
12 products, waste paperboard, ~~or~~ waste wood products, or waste
13 glass into new raw materials or products composed primarily of
14 recycled material. In the event such property shall also
15 serve other purposes or uses of productive benefit to the
16 owner of the property, only such portion of the assessed
17 valuation thereof as may reasonably be calculated to be
18 necessary for and devoted to the control or abatement of
19 pollution, to the enhancement of the quality of the air or
20 water of this state, or for recycling shall be exempt from
21 taxation under this subsection.

22 Sec. 2. Section 455C.1, subsections 1 and 2, Code 2005,
23 are amended to read as follows:

24 1. "Beverage" ~~means~~ includes, but is not limited to, wine
25 ~~as defined in section 123.37, subsection 37,~~ alcoholic liquor
26 ~~as defined in section 123.37, subsection 5,~~ and beer all as
27 defined in section 123.3, ~~subsection 7, mineral water, soda~~
28 ~~water and similar carbonated soft drinks~~ and any nonalcoholic
29 carbonated and noncarbonated drinks excluding grade 'A' milk
30 and milk products as specified in the grade 'A' pasteurized
31 milk ordinance, as provided in section 192.102, in liquid form
32 and intended for human consumption. "Beverage" does not
33 include any of the following:

34 a. A liquid that is any of the following:
35 (1) A syrup.

1 (2) In a concentrated form.

2 (3) Typically added as a minor flavoring ingredient in
3 food or drink, such as extracts, cooking additives, sauces, or
4 condiments.

5 b. A liquid that is ingested in very small quantities and
6 consumed for medicinal purposes only.

7 c. A liquid that is designed and consumed only as a
8 nutritional supplement, as defined by the department, and not
9 as a beverage.

10 d. Products frozen at the time of sale to the consumer,
11 or, in the case of institutional users such as hospitals and
12 nursing homes, at the time of sale to such users.

13 e. Products designed to be consumed in a frozen state.

14 f. Instant drink powders.

15 g. Seafood, meat, or vegetable broths or soups but not
16 juices.

17 h. Farm-produced apple cider that has not been heated,
18 pasteurized, or otherwise processed.

19 i. Infant formula.

20 2. "Beverage container" means any ~~sealed-glass, plastic,~~
21 ~~or-metal~~ bottle, can, jar ~~or-carton~~, or other container made
22 of glass, metal, or plastic containing a beverage which has
23 been sealed by a manufacturer. "Beverage containers" for
24 noncarbonated drinks, excluding alcoholic liquor, wine, and
25 fruit juices and drinks, includes only those containers with a
26 maximum capacity of not more than two liters and not less than
27 one hundred forty-seven milliliters. "Beverage containers"
28 made of high-density polyethylene for fruit juices and drinks
29 includes only those containers with a maximum capacity of less
30 than one-half gallon.

31 Sec. 3. Section 455C.2, subsection 2, Code 2005, is
32 amended to read as follows:

33 2. In addition to the refund value provided in subsection
34 1 of this section, a dealer, or person operating a redemption
35 center who redeems empty beverage containers or a dealer agent

1 shall be reimbursed by the distributor required to accept the
2 empty beverage containers an amount which is ~~one-cent~~ two
3 cents per container. A dealer, dealer agent, or person
4 operating a redemption center may compact empty metal beverage
5 containers with the approval of the distributor required to
6 accept the containers.

7 Sec. 4. Section 455C.4, subsection 2, Code 2005, is
8 amended by striking the subsection.

9 Sec. 5. Section 455C.7, Code 2005, is amended to read as
10 follows:

11 455C.7 **UNAPPROVED REDEMPTION CENTERS.**

12 Any person may establish a redemption center ~~which has not~~
13 ~~been approved by the department~~, at which a consumer may
14 return empty beverage containers and receive payment of the
15 refund value of the beverage containers. The establishment of
16 ~~an unapproved~~ a redemption center shall not relieve any dealer
17 from the responsibility of redeeming any empty beverage
18 containers of the kind and brand sold by the dealer.

19 Sec. 6. NEW SECTION. 455C.11 **SCHEDULE OF FINES --**
20 **VIOLATIONS.**

21 1. The commission shall establish, by rule, a schedule or
22 range of civil penalties which may be administratively
23 assessed. The schedule shall provide procedures and criteria
24 for the administrative assessment of penalties of not more
25 than ten thousand dollars for violations of this chapter or
26 rules, permits, or orders adopted or issued under this
27 chapter. In adopting a schedule or range of penalties and in
28 proposing or assessing a penalty, the commission and director
29 shall consider among other relevant factors the following:

30 a. The costs saved or likely to be saved by noncompliance
31 by the violator.

32 b. The gravity of the violation.

33 c. The degree of culpability of the violator.

34 d. The maximum penalty authorized for that violation under
35 this chapter.

1 Penalties may be administratively assessed only after an
2 opportunity for a contested case hearing which may be combined
3 with a hearing on the merits of the alleged violation.

4 Violations not fitting within the schedule, or violations
5 which the commission determines should be referred to the
6 attorney general for legal action, shall not be governed by
7 the schedule established under this subsection.

8 2. When the commission establishes a schedule for
9 violations, the commission shall provide, by rule, a procedure
10 for the screening of alleged violations to determine which
11 cases may be appropriate for the administrative assessment of
12 penalties. However, the screening procedure shall not limit
13 the discretion of the department to refer any case to the
14 attorney general for legal action.

15 3. A penalty shall be paid within thirty days of the date
16 the order assessing the penalty becomes final. When a person
17 against whom a civil penalty is assessed under this section
18 seeks timely judicial review of an order imposing the penalty
19 as provided under chapter 17A, the order is not final for the
20 purposes of this section until all judicial review processes
21 are completed. Additional judicial review may not be sought
22 after the order becomes final. A person who fails to timely
23 pay a civil penalty assessed by a final order of the
24 department shall pay, in addition, interest at the rate of one
25 and one-half percent of the unpaid balance of the assessed
26 penalty for each month or part of a month that the penalty
27 remains unpaid. The attorney general shall institute, at the
28 request of the department, summary proceedings to recover the
29 penalty and any accrued interest.

30 4. All civil penalties assessed by the department and
31 interest on the penalties shall be deposited in the general
32 fund of the state.

33 5. This section does not require the commission or the
34 director to pursue an administrative remedy before seeking a
35 remedy in the courts of this state.

1 Sec. 7. Section 455C.12, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 6. The state shall be precluded from
4 bringing a criminal action against a person under this chapter
5 if the department has initiated a civil enforcement proceeding
6 against the person pursuant to section 455C.11.

7 Sec. 8. Sections 455C.6 and 455C.10, Code 2005, are
8 repealed.

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EXPLANATION

10 This bill relates to acceptance of empty beverage
11 containers by dealers of beverages. The bill expands the list
12 of beverages whose containers are regulated under Code chapter
13 455C and amends the definition of "beverage container". The
14 newly regulated beverages include any nonalcoholic carbonated
15 and noncarbonated drinks excluding grade 'A' milk and milk
16 products as specified in the grade 'A' pasteurized milk
17 ordinance. The bill provides a list of exceptions to the
18 newly regulated beverages. The bill provides that "beverage
19 container" means a bottle, can, jar, or other container made
20 of glass, metal, or plastic containing a beverage. The bill
21 limits the definition by size for certain noncarbonated drinks
22 and beverage containers for fruit juices and drinks.

23 The bill increases the reimbursement amount received by a
24 dealer or person operating a redemption center who redeems
25 empty beverage containers from 1 cent per container to 2 cents
26 per container. The reimbursement amount, commonly referred to
27 as a handling fee, is paid by the distributor who collects the
28 beverage containers from the dealer or person operating a
29 redemption center.

30 The bill eliminates the ability of a dealer of beverages to
31 refuse to accept any empty beverage container if the place of
32 business of the dealer and the kind and brand of empty
33 beverage containers are included in an order of the department
34 of natural resources approving a redemption center.

35 The bill makes conforming amendments related to the

1 elimination of approved redemption centers.

2 The bill requires the department to establish, by rule, a
3 schedule or range of civil penalties which may be
4 administratively assessed for violations of Code chapter 455C
5 or rules, permits, or orders adopted or issued pursuant to
6 Code chapter 455C. The bill provides factors to consider in
7 the adoption of a schedule or range of penalties. The bill
8 provides that penalties may be administratively assessed only
9 after an opportunity for a contested case hearing which may be
10 combined with a hearing on the merits of the alleged
11 violation. The bill provides that violations not fitting
12 within the schedule, or violations which the environmental
13 protection commission determines should be referred to the
14 attorney general for legal action, shall not be governed by
15 the schedule. The bill requires the commission to establish a
16 screening procedure for alleged violations. The bill provides
17 payment requirements and provisions for judicial review of
18 civil penalties. The bill provides that all civil penalties
19 assessed by the department and interest on the penalties shall
20 be deposited in the general fund of the state. The bill
21 provides that the commission or the director is not required
22 to pursue an administrative remedy before seeking a remedy in
23 the courts of this state. The bill provides that the state is
24 precluded from bringing a criminal action against a person if
25 the department has initiated a civil enforcement proceeding.

26 Currently, pollution-control or recycling property is
27 exempt from taxation. "Recycling property" is personal
28 property or improvements to real property or any portion of
29 the property, used primarily in the manufacturing process and
30 resulting directly in the conversion of waste plastic,
31 wastepaper products, waste paperboard, or waste wood products
32 into new raw materials or products composed primarily of
33 recycled material. The bill adds waste glass to the list of
34 materials that are converted into new raw materials or
35 products composed primarily of recycled material.