

JAN 26 2005  
ENVIRONMENTAL PROTECTION

HOUSE FILE 138  
BY SHOULTZ

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to recycling by providing for the acceptance of  
2 empty beverage containers, increasing the reimbursement amount  
3 paid by a distributor for empty beverage containers, adding to  
4 the list of materials for which recycling property may be used  
5 to receive a pollution-control or recycling property tax  
6 exemption, and providing civil penalties.

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

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HF 138

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 glass  
13 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.2, subsection 2, Code 2005, is  
23 amended to read as follows:

24 2. In addition to the refund value provided in subsection  
25 1 of this section, a dealer, or person operating a redemption  
26 center who redeems empty beverage containers or a dealer agent  
27 shall be reimbursed by the distributor required to accept the  
28 empty beverage containers an amount which is ~~one-cent~~ three  
29 cents per container. A dealer, dealer agent, or person  
30 operating a redemption center may compact empty metal beverage  
31 containers with the approval of the distributor required to  
32 accept the containers.

33 Sec. 3. Section 455C.4, subsection 2, Code 2005, is  
34 amended by striking the subsection.

35 Sec. 4. Section 455C.7, Code 2005, is amended to read as

1 follows:

2 455C.7 UNAPPROVED REDEMPTION CENTERS.

3 Any person may establish a redemption center ~~which has not~~  
4 ~~been approved by the department,~~ at which a consumer may  
5 return empty beverage containers and receive payment of the  
6 refund value of the beverage containers. The establishment of  
7 ~~an unapproved~~ a redemption center shall not relieve any dealer  
8 from the responsibility of redeeming any empty beverage  
9 containers of the kind and brand sold by the dealer.

10 Sec. 5. Section 455C.12, Code 2005, is amended by adding  
11 the following new subsection:

12 NEW SUBSECTION. 6. The state is precluded from bringing a  
13 criminal action against the person if the department has  
14 initiated a civil enforcement proceeding pursuant to section  
15 455C.17.

16 Sec. 6. NEW SECTION. 455C.17 SCHEDULE OF CIVIL PENALTIES  
17 -- VIOLATIONS.

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

27 a. The costs saved or likely to be saved by noncompliance  
28 by the violator.

29 b. The gravity of the violation.

30 c. The degree of culpability of the violator.

31 d. The maximum penalty authorized for the violation under  
32 this chapter.

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

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

5 2. The commission shall provide, by rule, a procedure for  
6 the screening of alleged violations to determine which cases  
7 may be appropriate for the administrative assessment of civil  
8 penalties. However, the screening procedure shall not limit  
9 the discretion of the department to refer any case to the  
10 attorney general for legal action.

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

26 4. All civil penalties assessed by the department and  
27 interest on the penalties shall be deposited in the general  
28 fund of the state.

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

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

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EXPLANATION

35 This bill relates to acceptance of empty beverage

1 containers by dealers of beverages.

2 The bill eliminates the ability of a dealer of beverages to  
3 refuse to accept any empty beverage container if the place of  
4 business of the dealer and the kind and brand of empty  
5 beverage containers are included in an order of the department  
6 of natural resources approving a redemption center.

7 The bill increases the reimbursement amount received by a  
8 dealer or person operating a redemption center who redeems  
9 empty beverage containers from 1 cent per container to 3 cents  
10 per container. The reimbursement amount, commonly referred to  
11 as a handling fee, is paid by the distributor who collects the  
12 beverage containers from the dealer or person operating a  
13 redemption center. The bill makes conforming amendments  
14 related to the elimination of approved redemption centers.

15 The bill requires the department to establish, by rule, a  
16 schedule or range of civil penalties which may be  
17 administratively assessed. The bill provides that the  
18 schedule shall provide procedures and criteria for the  
19 administrative assessment of penalties of not more than  
20 \$10,000 for violations of Code chapter 455C or rules, permits,  
21 or orders adopted or issued pursuant to Code chapter 455C.  
22 The bill provides factors to consider in the adoption of a  
23 schedule or range of penalties. The bill provides that  
24 penalties may be administratively assessed only after an  
25 opportunity for a contested case hearing which may be combined  
26 with a hearing on the merits of the alleged violation. The  
27 bill provides that violations not fitting within the schedule,  
28 or violations which the environmental protection commission  
29 determines should be referred to the attorney general for  
30 legal action, shall not be governed by the schedule. The bill  
31 requires the commission to establish a screening procedure for  
32 alleged violations. The bill provides payment requirements  
33 and provisions for judicial review of civil penalties. The  
34 bill provides that all civil penalties assessed by the  
35 department and interest on the penalties shall be deposited in

1 the general fund of the state. The bill provides that the  
2 commission or the director is not required to pursue an  
3 administrative remedy before seeking a remedy in the courts of  
4 this state. The bill provides that the state is precluded  
5 from bringing a criminal action against a person if the  
6 department has initiated a civil enforcement proceeding.

7 Currently, pollution-control or recycling property is  
8 exempt from taxation. "Recycling property" is personal  
9 property or improvements to real property or any portion of  
10 the property, used primarily in the manufacturing process and  
11 resulting directly in the conversion of waste plastic,  
12 wastepaper products, waste paperboard, or waste wood products  
13 into new raw materials or products composed primarily of  
14 recycled material. The bill adds glass to the list of  
15 materials that are converted into new raw materials or  
16 products composed primarily of recycled material.

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