



Legislative Testimony

Oregon Criminal Defense Lawyers Association

March 14, 2019

The Honorable Senator Dembrow, Chair
Senate Committee on the Environment and Natural Resources, Members

Re: Testimony concerning SB 522:

Senate Bill 522 aims to fix the problem of exceeding redemptions for out-of-state bottles. Specifically, it aims to prevent schemes involving larger efforts to collect out of state recyclables and bring them into Oregon in order to collect a higher rate. To deter this interstate incentive, SB 522 creates a Class D violation for the redemption of 25 or more beverage containers that a person knows or has reason to know were sold outside of Oregon.

We appreciate the Bottle Bill and what a success it has been in this state.

However, we wish to express concerns about unintended consequences of creating a violation.

This Bill will affect those in poverty who use collection as a source of income, and deter recycling.

Oregon's Bottle Bill has served the public interest of recycling and preventing litter for almost 50 years. Latently, it created a supplemental source of income for folks in tough economic situations, ranging from houseless to the housed.¹ People go through extensive efforts to amass bottles over days or weeks in order to bring them to a bottle drop site. If they happened to pick up a 30 pack of beer that was bought in Vancouver, they could be facing \$110 fine for trying to make \$3.² A person would have to collect an additional 1100 bottles to pay that fine.

For someone who uses this laborious process as a source of income, a \$110 fine for 25 bottles is oppressive. Recycling is an important public interest, and is undermined by a punitive disincentive does not align with the Bottle Bill's original goals. It is far more reasonable for the industry to simply not honor redemption for out of state bottles, as this still results in recycling materials, than it is to levy \$110 on someone who is financially struggling.

The mental state in the Bill includes people who do not know whether the bottles are from out of state.

Knowing or has good reason to know is an overbroad mental state for this violation. "Or has good reason to know" has been interpreted by Oregon Courts to mean an objectively reasonable belief regarding facts available at that time.³ This mental state would target those who intentionally collect out of state bottles specifically to

¹ Helen Hill, *Reducing Waste and Empowering People in Poverty* Street Roots (August 17 2018) [<https://news.streetroots.org/2018/08/17/reducing-waste-and-empowering-people-poverty>] (accessed March 14, 2019); Carolyn Abate, *How Homeless Recyclers Make a Living Redeeming Recyclables*, PBS (May 13, 2016) [<http://www.pbs.org/independentlens/blog/how-homeless-recyclers-make-living-redeeming-recyclables/>] (accessed March 14, 2019)

² Oregon.Gov, *Bottle Bill Frequently Asked Questions* [<https://www.oregon.gov/deq/recycling/Pages/Bottle-Bill.aspx>] (accessed March 14, 2019)

³ *State v. Vanburen*, 262 Or App 715, 726-27 (2014)(Interpreting varying uses of the phrase regarding possession of stolen property).

exploit Oregon's higher rate, as well as someone who are simply collecting roadside litter near the border they suspect may have been tossed out by someone travelling on an interstate.

The mental state should reflect those who specifically intend to exploit the system. In order to avoid those redeeming in good faith, we suggest the Bill use the language "knowing with the purpose to redeem containers not sold in this state". This precludes accidental redemptions, and target those who are specifically and purposefully bringing in out of state bottles for the Oregon rate.

Thank you for the opportunity to submit written testimony on SB 522.

For questions or comments contact:

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About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of criminal justice reform within the criminal and juvenile justice systems.

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