

MAINE STATE LEGISLATURE

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(After Deadline)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1561

H. P. 1382

House of Representatives, April 27, 1981

(Approved for introduction by a Majority of the Legislative Council pursuant to Joint Rule 27)

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative L. Higgins of Scarborough.

Cosponsors: Representative Post of Owl's Head, Senator Perkins of Hancock and Senator Clark of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Recover Certain Refund Values Retained under the Beverage Container Law.

Be it enacted by the People of the State of Maine, as follows:

32 MRSA c. 28-A is enacted to read:

CHAPTER 28-A

BEVERAGE CONTAINER REFUND FEE

§ 1881. Purpose

The Legislature finds that a substantial number of beverage containers upon which a refund is required are not being returned for a return of the refund value due to breakage or other reasons. In these instances, the refund value is being retained by the manufacturers and distributors of the beverage containers. It is the intent of the Legislature to recapture the refund value on beverage containers which are not returned.

§ 1882. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt, soda water or other nonalcoholic carbonated drink in liquid form and intended for human consumption.

2. Beverage container. "Beverage container" means a glass, metal or plastic bottle, can, jar or other container which has been sealed by a manufacturer and which, at the time of sale, contained one gallon or less of a beverage.

3. Consumer. "Consumer" means an individual who purchases a beverage in a beverage container for use or consumption.

4. Dealer. "Dealer" means a person who sells, offers to sell or engages in the sale of beverages in beverage containers to a consumer, including, but not limited to, an operator of a vending machine containing beverages in beverage containers.

5. Distributor. "Distributor" means a person who engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer who engages in such sales.

6. In this State. "In this State" means within the exterior limits of the State and includes all territory within these limits owned by or ceded to the United States.

7. Manufacturer. "Manufacturer" means a person who bottles, cans or otherwise places beverages in beverage containers for sale to distributors or dealers.

8. Person. "Person" means an individual, partnership, corporation or other legal entity.

9. Refundable beverage container. "Refundable beverage container" means any beverage container which has a refund value for purposes of chapter 28.

10. Use or consumption. "Use or consumption" means the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale, storage or retention for the purposes of sale of a beverage.

§ 1883. Refund fee

A refund fee is imposed on very refundable beverage container sold or offered for sale to a consumer in this State. Each distributor shall, prior to distributing any refundable beverage container in this State, pay a refund fee to the State Tax Assessor for each container. The refund fee shall be an amount equal to 90% of the refund value of the container.

§ 1884. Dealer as distributor

When a dealer or group of dealers receive a shipment or consignment of, or in any other manner acquires, refundable beverage containers outside the State for sale to consumers in the State, such dealer or dealers shall comply with this chapter as if they were distributors as well as dealers.

§ 1885. Containers marked

Every refundable beverage container sold or offered for sale in this State by a dealer shall be clearly marked to indicate that the refund fee has been paid. The beverage container may be marked by embossing, stamping, labeling on the container or its cap, or other method of secure attachment. The State Tax Assessor shall approve all markings for containers.

§ 1886. Refund fee stamps

1. **Purchase.** Each distributor who desires to stamp the beverage container shall purchase the refund fee stamps from the State Tax Assessor. The stamp, when affixed to the beverage container, shall be evidence of payment of the refund fee. The stamp shall be of a design established by the State Tax Assessor.

2. **Resale of stamps prohibited.** No distributor may sell or transfer stamps issued under this chapter.

3. **Redemption.** The State Tax Assessor shall redeem any unused uncanceled stamps presented within one year of the date of purchase by any licensed distributor or dealer, at a price equal to the amount paid for it by that dealer or distributor. The Treasurer of State shall provide, out of money collected pursuant to this chapter, the funds necessary for the redemption.

4. **Use of metering machines.** The State Tax Assessor, if he determines that it is practicable to stamp containers by means of a metering machine, may, in lieu of selling stamps under this section, authorize any distributor to use any metering machine approved by him. The metering machine shall be sealed by the State Tax Assessor before being used in accordance with rules prescribed by him. Any distributor authorized by the State Tax Assessor to affix stamps to containers by means of a metering machine shall file with the State Tax Assessor a bond issued by a surety company licensed to do business in this State, in such amount as the State Tax Assessor may fix, conditioned upon the payment of the fee upon containers so stamped. The bond shall be in full force and effect for a period of one year and a day after the expiration of the bond, unless a certificate is issued by the State Tax Assessor to the effect that all fees due to the State have been paid. In the discretion of the State Tax Assessor, cash may be accepted in lieu of a surety bond, the cash to be paid over by the State Tax Assessor to the Treasurer of State, who may deposit or hold the cash subject to further order of the State Tax Assessor. The State Tax Assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of fees due from the distributor using that machine, which fees shall be due and payable upon demand of the State Tax Assessor or his duly authorized agent.

§ 1887. Application

1. **Moneys held in special fund.** The State Tax Assessor shall pay the funds received pursuant to this chapter to the Treasurer of State who shall hold them in a special fund. At the end of each fiscal year, the State Tax Assessor, with the assistance of the Department of Finance and Administration, shall determine what portion of the money remaining in the fund will not be needed to reimburse distributors for returned containers or for administration of this section, and the Treasurer of State shall transfer an amount equal to that sum from the special fund to the General Fund.

2. **Reimbursement to distributors.** Quarterly, the State Tax Assessor shall, upon proof satisfactory to him and in accordance with rules promulgated by him, pay to each distributor an amount equal to the number of the refundable beverage containers accepted by the distributor during that quarter times the refund fee paid on those containers; except that no distributor may cumulatively receive more reimbursement than he has paid, cumulatively, in refund fees. The Treasurer of State shall provide the commissioner with funds necessary for that payment from the money held in the special fund created under subsection 1. If in any quarter there are not sufficient funds in the special fund to pay all request from distributors under this subsection, those requests not paid shall be paid as soon as possible from money received during the next quarter.

§ 1888. Sale of unmarked beverage containers prohibited

No distributor may sell, and no other person may sell, offer for sale, display for sale or possess with intent to sell, any refundable beverage containers which are not marked in accordance with section 1885, provided that a distributor may keep on hand unmarked beverage containers for a period not exceeding 72 hours. Any unmarked refundable beverage containers in the possession of a distributor shall be presumed to have been held by him for more than 72 hours, unless proof is shown to the contrary. Any person violating any provisions of this section is guilty of a Class E crime, provided that no imprisonment may be imposed for a first offense.

§ 1889. Fraudulent markings

It is a violation of this chapter for any person to make, utter, forge or counterfeit, with the intent to defraud, any marking prescribed by the State Tax Assessor under this chapter or to cause or procure the same to be done, or to knowingly utter, publish, pass or render as true, any false, altered, forged or counterfeit marking, or to knowingly possess any such false, altered, forged or counterfeit markings, or to use more than once any stamp provided for and required by this chapter. For purposes of this section, any beverage container marked pursuant to section 1885 for which a refund fee has not been paid shall be considered to be a false, altered, forged or counterfeit marking. Any person violating any provision of this section is guilty of a Class E crime, provided that no imprisonment is imposed for a first offense.

§ 1890. Records; examination by commissioner

The State Tax Assessor and his authorized agents may examine the books, papers and records of any distributor in this State for the purpose of determining whether this chapter has been fully complied with, and may investigate and examine the stock of beverage containers in or upon any premises where the beverage containers are possessed, stored or sold for the purpose of determining whether this chapter is being obeyed.

§ 1891. Administration; rules

The administration of this chapter is vested in the State Tax Assessor. All forms necessary and proper for the enforcement of this chapter shall be prescribed and furnished by the State Tax Assessor. The State Tax Assessor shall appoint such agents, clerks, stenographers and other assistants as he deems necessary for effecting the purpose of this chapter, subject to the Personnel Law. The State Tax Assessor may prescribe rules, not inconsistent with the law, to carry into effect this chapter, which rules, when reasonably designed to carry out the intent and purpose of this chapter, shall be prima facie evidence of its proper interpretation. The State Tax Assessor shall, at least annually and more often in his discretion, publish for distribution all rules prescribed and such rules as appear to him to be of general interest.

The costs of administering this chapter shall be paid out of the special fund held by the Treasurer of State.

STATEMENT OF FACT

There are 600,000,000 refundable beverage containers sold in this State each year. It is estimated that 5% of those containers are not returned for their refund value. The refund value paid for those containers by the consumer is currently retained by the distributor.

This bill establishes a refund fee which shall be imposed upon all refundable beverage containers distributed in this State. The refund fee shall be equal to 90% of the refund value of the container. Distributors will be reimbursed for containers which are returned to them and the State will retain the funds for containers that are not returned. This allows the State to recapture the current "float funds" maintained by container distributors. The distributors retain 10% of these "float funds" to make this a cost-free program for them.