

MAINE STATE LEGISLATURE

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STATE OF MAINE
112TH LEGISLATURE
SECOND REGULAR SESSION

HANDLING FEES AND RECAPTURE
OF UNCLAIMED REFUNDS UNDER THE
RETURNABLE CONTAINER LAW
Report of a Study by the
JOINT STANDING COMMITTEE ON
BUSINESS AND COMMERCE

February, 1986

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Handling Fees and Recapture of Unclaimed Refunds Under the
Returnable Container Law

INTRODUCTION

Maine's returnable container law has been in effect since January, 1978. In most circumstances, the distributor initiates the deposit of at least 5¢. In other words, the dealer first pays the required deposit to the distributor and then charges the consumer when a purchase is made. Consumers receive back the deposit when empties are returned either to a dealer (retail store) or a redemption center. The dealer or redemption center returns the empties to the distributor who then pays the refund value plus a handling fee of at least 2¢.

Two proposals concerning the bottle bill were presented to the Joint Standing Committee on Business and Commerce during the 1st Regular Session of the 112th Legislature. One proposal was to increase the handling fee, and the other was to capture the unclaimed deposits or "float" for State use. Neither bill was enacted. Instead the Committee decided that these two proposals raised numerous questions and recommended a study be conducted. The basic questions to be answered by this study are:

1. Is the handling fee a necessary part of the "Bottle Bill"?
2. If a handling fee is necessary, should the handling fee be raised?
3. Who should set the handling fee and what standard should be used?
4. Should the State try to capture the unclaimed deposit money now held by distributors?

The Subcommittee held a full day of public hearings in October, 1985, and three half days of hearings and work sessions in January and February, 1986. During those hearings the Subcommittee heard from distributors, retail store owners, redemption center owners, and a representative from the Audubon Society.

UNCLAIMED DEPOSITS

I. Background

Testimony to the Committee suggested that there are 457,000,000 to 600,000,000 containers with deposits sold every year in Maine. Although there has been no study, it is estimated that the return rate for bottles and cans in Maine is 95%. Not all bottles have the same amount of deposit so an average deposit on nonreturns must be calculated in order to decide how much money is being retained by distributors. The Bureau of Taxation last year estimated the average deposit to be 7.5¢, and the softdrink distributors estimated that the average deposit was 6.6¢ for their cans and bottles. At a 95% estimated return rate the total amount of unclaimed deposits then is somewhere between \$1,508,100 and \$2,250,000, depending upon which figures one uses. Not all this amount is held by distributors in Maine. Approximately half of the deposits on beer containers are held by out of state manufacturers who initiate the deposit. Also, some stores initiate the deposit on some "off-brands" that they bring into the state. Without a thorough study and some level of auditing, it is difficult to say exactly how much each distributor is retaining.

The first issue that the Committee addressed was whether it would be constitutional to capture the unclaimed deposits. During the first regular session, the Committee received testimony that the proposed bill was an escheat statute and would result in an unconstitutional taking of property without due process of law. However, the Legislative Analyst disagreed with this position saying that a bill meeting constitutional requirements could be drafted characterizing the unclaimed deposits as a tax to accomplish the goals of the "Bottle Bill". (See memo in Appendix A).

The Committee then decided to concentrate on costs to consumers and on whether the unclaimed deposits represented a windfall to the distributors. Distributors supplied data to show their increased costs due to the bottle bill. A 1980 study from the General Accounting Office showed that after the initial capital outlay, costs over time should decrease with a bottle bill due to savings from using refillables (See Appendix B). Distributors in Maine disagree with this and testified that their costs have increased due to the bottle bill (See Appendix C). It is interesting to note that the handling fee distributors must pay to dealers is approximately 5 times the estimated amount of unclaimed deposits.

Distributors also testified that they use the unclaimed deposits or "float" money to help offset the costs due to the bottle bill. They believe that if this money were taken from them, it would result in an increase in cost to the consumer. The higher prices would also increase the problem they already have in sales in border communities where out of state products are available at a lower price because of Maine's higher taxes.

II. Conclusions

For a variety of reasons, most members of the Committee did not want to try to capture the float money. Some members believed that there was no windfall and that any money in unclaimed deposits should be used to offset the increases due to the bottle bill. Some members did not want to cause any additional burdens on business or higher prices to consumers. Another reason expressed was that since the return rate is probably very high, the amount of unclaimed deposits is relatively small. Additionally, the expense of administering the program would be too costly for such a small amount. One member of the Committee thought that looking at the increased costs was irrelevant and some sort of reporting mechanism was needed in order to verify exactly how much the "float" is.

Although the Committee did agree that they did not want to try to capture the unclaimed deposits at this time, most wanted the "float" amount to be watched. If the return rate were to drop significantly, then the retained deposits would increase. If this were to happen, then there might be reason to capture the "float". However, the Committee did not want to require reporting, as Massachusetts does, since distributors said it would add burdensome record keeping to their operations.

Recommendations

A majority of of the Committee recommended that the Department of Agriculture keep track of the approximate amount of the "float" and report back periodically to the Business and Commerce Committee. The Department of Agriculture is the logical department since it has already been designated to administer the returnable container law.

HANDLING FEE

I. Background

The handling fee was originally set at 1¢ per container. In 1980 it was increased to 2¢ per container. At the 1st Regular Session of the 112th Legislature various amounts ranging from an increase of 1/4¢ to 1¢ were proposed. No increase was passed.

Representatives from redemption centers testified that due to increased costs, an increase in the handling fee is needed. Some testified that they may go out of business if no increase is passed. Others testified that they have had to cut back certain services, such as picking up bottles, in order to cut their rising costs.

Representatives from retail stores that handle their own bottles testified that an increase in handling fees was needed since the present handling fee of 2¢ does not cover costs. Other stores, especially convenience type stores, rely heavily on redemption centers to handle their bottles. Representatives of these stores expressed the fear that some redemption centers might go out of business if there is no increase in the handling fee. Retail stores handle approximately 75% of returned containers without the use of a redemption center. Redemption centers, including ones that sell products, handle the other 25%.

On the other side, distributors expressed concerns that any increase would cause consumer prices to rise and another burden to be added to their businesses. They fear that an increase in the handling fee might cause some distributors to go out of business.

Committee members expressed concerns for both sides and split on the vote for an increase. Reasons in voting for an increase included:

- 1) to give redemption centers a fair rate of return on their businesses;
- 2) to keep redemption centers from going out of business; and
- 3) to help retailers with their rising handling costs.

Reasons given in voting against an increase included:

- 1) insufficient evidence to show that an increase is needed at this time;
- 2) concern about the increase in consumer costs;
- 3) the fact that two states have "bottle bills" that appear to be working without any handling fee at all;
- 4) that an increase would make Maine the only state with a handling fee higher than 2¢.
- 5) that an increase might benefit retail stores more than redemption centers; and

6) that an increase would artificially stimulate competition among redemption centers. This may hurt marginal operations if too many redemption centers begin operating in a given area.

The Committee also expressed frustration at having to make such decisions on anecdotal evidence. Both sides presented good arguments as to whether there should or should not be an increase in the handling fee. The Committee explored the use of some price index as a standard (Appendix E) and discussed whether the Legislature was the appropriate body to hear the evidence and make the decision.

The Committee explored the reasons as to why the handling fee was set in the first place. William Ginn, chairman of Maine Citizens for Returnable Containers during the time the law was first initiated and later during the repeal effort, supplied some answers. He said that redemption centers, which could not exist without a handling fee, were necessary to insure that containers would be returned in a convenient and expeditious way. He also said there was an equity issue. Many stores take back more containers than they sell. Often this is the case in rural areas. Since some stores must absorb the costs of handling more containers than they actually sell, the handling fee helps to balance out the additional burden.

II. Conclusions

The Committee concluded that the public policy in having a handling fee is sound, and therefore, a handling fee should continue. Redemption centers appear to be an important part of the bottle bill by filling a need as well as for the convenience of consumers.

The Committee concluded that some standard is needed in order to determine when an increase is needed. The Committee also concluded that the Legislature is not the appropriate body to set the handling fee.

III. Recommendations

The Committee recommends that the Department of Agriculture assess the need of an increase yearly using a standard such as the consumer price index or other appropriate index to be determined by the Committee. This assessment should be determined in January of each year, except that in the first year (1986), it should be determined no later than August 1. The proposed legislation for this recommendation will be submitted as an emergency measure. Hence, if a need exists for raising the handling fee based on the Department of Agriculture's assessment, action can be taken immediately.

APPENDIX A



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October 11, 1985

To: Business & Commerce Committee
From: Jeri Gautschi, Legislative Assistant

Subj: LD 1026

I. QUESTIONS

Does LD 1026, which allows the State to keep 90% of unclaimed deposits on containers, result in an unconstitutional taking of property without due process of law?

If LD 1026 is constitutional, what is the possible effect from passage of the bill?

II. CONCLUSION

Although LD 1026 is most probably constitutional as a legitimate tax, passage of the bill would likely result in increased costs to consumers in the form of higher prices of beverages. Retained deposits by distributors are used to offset the direct costs of the bottle law.

III. DISCUSSION

Opponents of LD 1026 have characterized the bill as an escheat statute and, as such, an unconstitutional taking of property without due process of law. For this to be true, the deposits must be the absolute property of the distributors. However, consumers have a right to the desposit after returning the container to the distributor. Escheat statutes are permitted as long as the property being taken has been abandoned and the state has made efforts to notify the last known owner in a reasonable manner. Opponents say that these deposits have not been abandoned since they are the property of the distributor and not the consumer and thus cannot be escheated to the State.

There is no case law involving escheat of deposits or characterizing deposits as the absolute property of the distributor. Escheat cases often involve identifiable property, such as land, which has been taken or made virtually useless by restrictions or deposits or dividends for which the true owner could successfully assert a claim after the deposit or dividend has escheated to the State. Deposits or containers do not seem to fit into either category. Deposits are not property that distributors have acquired for their own business purposes. Distributors hold the deposit only because the law requires that consumers pay such deposits. If all containers are returned in good condition by consumers, then distributors are required by law to return all deposits that they are holding.

Deposits are better characterized as a tax. Over the years the Supreme Judicial Court in Maine has characterized a tax as "a charge either to raise money for public purposes or to accomplish some governmental end". Bd. of Overseers of the Bar v. Lee, 422A.2d 998. Since the purpose of the deposit is to keep the State free of litter, it could be called a tax, especially in light of the way LD 1026 is written. A tax refund is given to consumers when the governmental purpose is achieved, i.e., the bottle is returned and not thrown along the highway. Additionally, under the bill, distributors are refunded a portion of the unclaimed deposits.

Since LD 1026 appears to be a legitimate tax, the real issue is whether the end result will be increased costs to consumers for beverages. The Committee needs to look at a comparison of costs and revenues with a bottle law and without any bottle law. One such study was done in 1980 by the United States General Accounting Office (GAO) in relation to a national bottle bill. The comparison does not include a handling fee, but does show that revenues from retained deposits and recycling income more than pay for the changed costs due to the bottle bill, by about 2% of increased costs. If handling fees were to be included in costs, then it would appear that costs would far outweigh the revenue. Any increase in costs over revenues will likely be passed on to the consumer in higher prices for beverages. If there were no handling fee, the legislature would be able to recapture about 2% of the retained deposits without causing the costs to be greater than revenue according to the data from this study. This is about the same amount that it would cost to administer the program.

JG/elk/3766

GAO Study (1980)

Table 19

Changes in Costs and Revenues of Brewers, Bottlers, Distributors, and Retailers
Associated with a National Deposit Law (in Millions of 1974 Dollars)

	1977 estimate 3-year changeover			1980 estimate 1-year changeover	
	<u>No law</u>	<u>With law Mix I</u>	<u>With law Mix II</u>	<u>No law</u>	<u>With law</u>
Costs					
Capital stock	\$ 668	\$ 1,486	\$ 3,116	\$ 86	\$1,292
Wages	8,753	9,746	10,540	3,005	3,878
New containers purchase	14,460	13,332	10,770	5,051	3,630
Beer transportation	1,081	1,118	1,327	380	410
Total	\$24,882	\$25,682	\$25,753	\$8,522	\$9,210
Change	--	+800	+871	--	+688
Revenues					
Retained deposits	\$ 536	\$ 2,602	\$ 2,299	\$ 146	585*
Recycling income	--	--	--	--	265**
Total	\$ 536	\$ 2,602	\$ 2,299	\$ 146	\$ (850)
Change	--	+2,066	+1,693	--	+704

Source: "Potential Effects of a National Mandatory Deposit on Containers," U.S. General Accounting Office, PAD-78-19, December 7, 1977, table 12, as revised in 1980.

* 90% return rate

** average .6 of 1 cent per container

does not
include
handling fees

50

APPENDIX C

BOTTLE BILL STUDY

Soft drinks

Increase in costs due to the Bottle Bill*

Delivery costs	\$ 2,250,000	(9¢/case)
Warehouse costs	2,750,000	(11¢/case)
Sorting costs	2,500,000	(10¢/case)
Production costs		
labor	\$ 684,000	(24¢/case)
overhead	741,000	(26¢/case)
Handling fee	<u>11,400,000</u>	
Total increase	\$20,325,000	

Increased Revenues due to Bottle Bill

Retained deposits	\$2,250,000	(average deposit 7.5¢)
Recycling income	2,308,500*	
Glass purchasing savings (on re-fillables)	<u>570,000*</u>	(20¢/case)
Total	\$5,128,500	

Net increase in costs = \$15,196,500

* Data supplied by Linda Smith Dyer

NOTE: The softdrink industry would rather use 6.6¢ as the average deposit which results in retained deposits totalling \$1.98 million.

Beer

Beer distributors did not supply data but said their costs due to the bottle bill have increased by 30%.

JG/elk/4727

APPENDIX D

MAINE GROCERS ASSOCIATION

CONTAINER BILL SURVEY

QUESTIONAIRES MAILED: 415
 RETURNS: 185 (44.6%)

1. DO YOU FEEL THIS HANDLING FEE SHOULD BE...

ELIMINATED ENTIRELY	2	1 %
INCREASED	115	62 %
REMAIN THE SAME	62	34 %
NO OPINION	6	3 %
INCREASE BY: ½ CENT	56	49 %
1 CENT	41	36 %
2-5 CENTS	<u>18</u>	16 %
	115	

2. DO YOU PRESENTLY HANDLE YOUR OWN CONTAINER REDEMPTION

YES	168	91 %
NO	17	9 %

3. INVESTMENT \$ 306,850.00

ELIMINATE	29,000.00
INCREASE	212,500.00
REMAIN THE SAME	65,350.00

organized for the Maine Food Industry in 1935

MAINE GROCERS ASSOCIATION

Arthur Charles
Executive Director

"Our Fiftieth Anniversary"
November Bulletin 1985

PLEASE COMPLETE THIS SURVEY AND RETURN TO M.G.A.

Dear Members:

It has recently come to the attention of the Maine Grocers Association that there is a possibility of some type of new legislation coming up this session involving the container redemption law.

In order to evaluate how you as a member feel about this legislation, we have enclosed a questionnaire that we ask you to fill out and return to us in the enclosed envelope.

The questions do represent some of the possible changes being contemplated by the upcoming new legislative session....Your prompt reply to the survey would help us a great deal...Thank you for your interest.

Sincerely, Signed William S. Bird, President, MG

CONTAINER BILL SURVEY

1. AT THIS TIME THERE IS A HANDLING FEE FOR ALL STORES AND REDEMPTION STORES OF .02 PER CONTAINER

DO YOU FEEL THIS HANDLING FEE SHOULD BE...

ELIMINATED ENTIRELY

INCREASED (If you checked "Increased" please indicate how much _____ ¢)

REMAIN THE SAME

2. DO YOU PRESENTLY HANDLE YOUR OWN CONTAINER REDEMPTION ____ YES: ____ NO

(If you checked "NO", please tell us how you do handle your containers as this time)

3. IF YOU HAVE FOUND IT NECESSARY TO SPEND DOLLARS RENOVATING YOUR STORE OR BUSINESS TO ACCOMMODATE CONTAINER HANDLING, PLEASE TELL APPROXIMATELY THE AMOUNT YOU HAD TO SPEND \$ _____.

STORE NAME _____ ADDRESS _____

YOUR NAME _____ NO. OF STORES IN MAINE _____

Additional Comments _____

Please return this entire sheet

APPENDIX E

BOTTLE BILL
USE OF MINIMUM WAGE AS A STANDARD

<u>Year</u>	<u>Minimum Wage</u>	<u>% Increase</u>
1975	\$2.30	
1979	\$2.90	26%
1983	\$3.45	17.2%
1986	\$3.55	2.9%
1987	\$3.65	2.8%

Using 1¢ as a starting point:

1979	$.26 \times .01 = .0026$	$.01 + .0026 = .0126$
1983	$.172 \times .0126 = .0021672$	$.0126 + .0021672 = .0147672$
1986	$.029 \times .0147672 = .0004282$	$.0147672 + .0004282 = .0151952$
1987	$.028 \times .0151952 = .0004254$	$.0151952 + .0004254 = .0156206$

Using 2¢ as a starting point:

1980	2¢	
1983	$.172 \times .02 = .00344$	$.02 + .00344 = .02344$
1986	$.029 \times .02344 = .0006797$	$.02344 + .0006797 = .0241197$
1987	$.028 \times .0241197 = .0006753$	$.0241197 + .0006753 = .024795$

BOTTLE BILL
USE OF CONSUMER PRICE INDEX AS A STANDARD

<u>C.P.I.</u>		<u>% OF INCREASE</u>	
Dec.	'76	174.3	-
Dec.	'77	186.1	6.8
Dec.	'78	202.9	9%
Dec.	'79	229.9	13%
Dec.	'80	258.4	12.4%
Dec.	'81	281.5	8.9%
Dec.	'82	292.4	3.9%
Dec.	'83	303.5	3.8%
Dec.	'84	315.5	4%
Dec.	'85	327.4	3.8%

USING C.P.I.
Starting with 1¢ in 1977

1977	1¢	.0100
1978	9% x 1¢ = .0009	<u>+.0009</u> .0109
1979	13% x .0109 = .001417	<u>.0109</u> <u>+.001417</u> .012317
1980	12.4% x .012317 = .0015273	<u>.012317</u> <u>+.0015273</u> .0138443
1981	8.9% x .0138443 = .0012321	<u>.0138443</u> <u>+.0012321</u> .0150764
1982	.039 x .0150764 = .0005879	<u>.0150764</u> <u>+.0005879</u> .0156643
1983	.038 x .0156643 = .0005952	<u>.0156643</u> <u>+.0005952</u> .0162595
1984	.04 x .0162595 = .0006503	<u>.0006503</u> <u>+.0162595</u> .0175601
1985	.038 x .0175601 = .0006672	<u>.0175601</u> <u>+.0006672</u> .0182273

Using C.P.I. Starting with
2¢ in 1980

1981	.02¢ x .089% <u>.00178¢</u>	.02¢ + .00178¢ <u>.02178¢</u>
1982	.02178¢ x .039% <u>.00084942¢</u>	.02178¢ + .00084942¢ <u>.02262942¢</u>
1983	.02262942¢ x .038% <u>.000859918¢</u>	.02262942¢ + .000859918¢ <u>.023489338¢</u>
1984	.023489338¢ x .04% <u>.0009395735¢</u>	.023489338¢ + .0009395735¢ <u>.0244289115¢</u>
1985	.0244289225¢ x .038% <u>.0009282986¢</u>	.0244289115¢ + .0009282986¢ <u>.025372101¢</u>

BOTTLE BILL
Using Energy Portion of C.P.I. as an Index

<u>Year</u>	<u>Index</u>	<u>% Change</u>
1977	97.4	
1978	100.7	3.4%
1979	128.4	21.5%
1980	169.3	31.9%
1981	194.9	15.1%
1982	193.5	-.0007%
1983	191.6	-.0099%
1984	192.6	.005%
1985		

1977	1¢	
1978	.034x.01=.00034	.00034+.01=.01034
1979	.275x.01034=.003685	.01024+.003685=.014025
1980	.319x.014025=.0004473	.014025+.0004473=.0144723
1981	.151x.0144723=.0021853	.0144723+.0021853=.0166571
1982	.0007x.0166576=.0000116	.0166576-.0000116=.016645
1983	.0099x.0166459=.0000164	.0166459-.0000164=.016629
1984	.005x.0166295=.0000831	.0166295+.0000831=.016378

Increase with minimum wage .0056206
 Increase with energy index +.0063781

Using a weighted average

80% for minimum wage	.0044964
20% for energy	<u>.0012756</u>
	.0057720

1¢ + .0057720=.0157720 or \$.016

Energy Index from 1980 Starting with
2¢ in 1980

1980	2¢		
1981	$15.1\% \times .02 = .00302$		$.02 + .00302 = .02302$
1982	$.0007 \times .02302 = .0000161$		$.02302 - .0000161 = .0230$
1983	$.0099 \times .0230039 = .0022773$		$.0230039 - .0022773 = .0202266$
1984	$.005 \times .0202266 = .0001011$		$.0202266 + .0001011 = .0203277$

Increase using minimum wage = .004795
 Increase using energy index = .0003277

Using a weighted average
 $.8 \times .004795 = .003836$
 $.2 \times .0003277 = \underline{\underline{.0000655}}$
.0039015

$.02 + .0039015 = .0239015 = \$.024$

SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SIX

AN ACT Relating to Handling Fees and Unredeemed Deposits in
the Returnable Container Law

Emergency preamble Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, no increase in the handling fee has been granted since 1980; and...

Whereas, a hearing needs to be held before January 1, 1987, to determine the need for an increase in the handling fee; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

Sec. 1. Amend 32 MRS §1866, sub-§4.

4. Reimbursement by distributor. In addition to the payment of the refund value, the distributor shall reimburse the dealer or local redemption center for the cost of handling beverage containers, in an amount which equals at least 2¢ per returned container. The Commissioner may set a handling fee at an amount in excess of 2¢ as authorized in §1872.

Sec. 2. 32 MRSA §1872 is enacted to read:

§1872. Handling Fees

The Commissioner shall apply yearly increases in the consumer price index to the handling fee, in July of the year this section is enacted and thereafter in January of each year, to determine whether an increase in the handling fee is needed. No increase may be granted in increments of less than 1/4¢.

Sec. 3. 32 MRSA §1873 is enacted to read:

§1873. Unredeemed Deposits

The Commissioner shall report the estimated amount of unredeemed deposits to the Joint Standing Committee of the Legislature having jurisdiction over business and commerce yearly.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This bill gives the Department of Agriculture the authority to set the handling fee by applying increases in the consumer price index to the handling fee once a year. No increase would be added in increments of less than 1/4¢. Currently the handling fee, which is now 2¢, is set by legislative action only. There is no standard currently in the law which is used in determining what the handling fee should be. The Department of Agriculture is the department designated in the law to administer the "Bottle Bill".

The bill also charges the Department of Agriculture with the responsibility of reporting back yearly to the Business and Commerce Committee an estimate of the amount of unclaimed deposits retained by distributors. The purpose of this section is to help the Legislature determine whether distributors are receiving a windfall profit from deposits on containers which are never claimed.