

# MAINE STATE LEGISLATURE

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*Bottle Bill Manufacturers Handling Charge*

*32 M.R.S.A., 1866*

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 2, 1978

To: Clayton Davis, Director, Division of Inspections, Department of Agriculture

From: Sarah Redfield, Assistant Attorney General

Re: Returnable Beverage Containers, Manufacturers Handling Charges

This is in response to your memo of March 3, 1978, in which you ask for an opinion of the Attorney General's Office concerning the charging by a manufacturer of beverages to a distributor of such beverages of a 24 cents per case "handling charge." You indicate in your memo that the extra handling of shells and containers required by Title 32 M.R.S.A., c. 28 (hereinafter sometimes referred to as the "bottle bill") in fact falls upon the distributors and not the bottlers or manufacturers. Nevertheless, this charge is not unlawful pursuant to the bottle bill.

In passing the returnable beverage legislation, the Maine Legislature considered and rejected several options and approaches to the question of disposal of beverage containers. One such option was L.D. 1889 proposed in the Regular Session of the 107th Legislature. This legislation, if adopted, would have defined "beverage container" in a manner which would have required beverage containers to be refillable and would have left all other matters of implementation of the law to the private sector. The Statement of Fact for L.D. 1889 explicitly provided that if enacted it would allow "normal economic considerations to determine its implementation." Another option was proposed in the First Special Session of the 107th Legislature by L.D. 2250 which would have set up a distribution tax and legislatively allocated the financing of the bottle bill to distributors. The legislation actually adopted is somewhere between these in that it provides for a minimum deposit and also for reimbursement of one cent per container by a distributor to a dealer. See,

generally, 32 M.R.S.A. § 1866. While you may be correct that the actual increase in cost for handling the returnable beverage containers falls on the distributor, as opposed to the bottler, this distribution of costs between the manufacturer and distributor is not addressed by the bottle bill. Inasmuch as the statute itself does not explicitly address the situation, and the legislative history shows no manifest intent that the State regulate the situation, it is beyond the scope of the authority of the Department of Agriculture to concern itself with this activity. See, generally, State v. Fin & Feather Club, 316 A.2d 351 (Me., 1974) and, compare, Small v. Maine Board of Registration and Examination in Optometry, 293 A.2d 786 (Me., 1972), concerning authority of administrative agencies.

*Sarah Redfield*

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SARAH REDFIELD  
Assistant Attorney General

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