

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1026

6
7 H.P. 716

House of Representatives, March 13, 1985

8 On Motion of Representative Brannigan of Portland, referred to the
9 Committee on Business and Commerce. Sent up for concurrence and ordered
printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Warren of Scarborough.

Cosponsored by Representative Masterman of Milo.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Recover Certain Refund Values
18 Retained under the Beverage Container
19 Law.
20

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

23 32 MRSA c. 28-A is enacted to read:

24 CHAPTER 28-A

25 BEVERAGE CONTAINER REFUND FEE

26 §1881. Purpose

27 The Legislature finds that a substantial number
28 of beverage containers upon which a refund is re-
29 quired are not being returned for a return of the re-
30 fund value due to breakage or other reasons. In
31 these instances, the refund value is being retained
32 by the manufacturers and distributors or the beverage
33 containers. It is the intent of the Legislature to

1 recapture the refund value on beverage containers
2 which are not returned.

3 §1882. Definitions

4 As used in this chapter, unless the context oth-
5 erwise indicates, the following terms have the fol-
6 lowing meanings.

7 1. Beverage. "Beverage" means beer, ale or oth-
8 er drink produced by fermenting malt, soda water or
9 other nonalcoholic carbonated drink in liquid form
10 and intended for human consumption.

11 2. Beverage container. "Beverage container"
12 means a glass, metal or plastic bottle, can, jar or
13 other container which has been sealed by a manufac-
14 turer and which, at the time of sale, contained one
15 gallon or less of a beverage.

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

19 4. Dealer. "Dealer" means a person who sells,
20 offers to sell or engages in the sale of beverages in
21 beverage containers to a consumer, including, but not
22 limited to, an operator of a vending machine contain-
23 ing beverages in beverage containers.

24 5. Distributor. "Distributor" means a person
25 who engages in the sale of beverages in beverage con-
26 tainers to a dealer in this State and includes a man-
27 ufacturer who engages in those sales.

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

32 7. Manufacturer. "Manufacturer" means a person
33 who bottles, cans or otherwise places beverages in
34 beverage containers for sale to distributors or deal-
35 ers.

36 8. Person. "Person" means an individual, part-
37 nership, corporation or other legal entity.

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

4 10. Use or consumption. "Use or consumption"
5 means the exercise of any right or power over a bev-
6 erage incident to the ownership, other than the sale,
7 storage or retention for the purposes of sale of a
8 beverage.

9 §1883. Refund fee

10 A refund fee is imposed on every refundable bev-
11 erage container sold or offered for sale to a consum-
12 er in this State. Each distributor shall, prior to
13 distributing any refundable beverage container in
14 this State, pay a refund fee to the State Tax Asses-
15 sor for each container. The refund fee shall be an
16 amount equal to 90% of the refund value of the con-
17 tainer.

18 §1884. Dealer as distributor

19 When a dealer or group of dealers receive a ship-
20 ment or consignment of, or in any other manner ac-
21 quires, refundable beverage containers outside the
22 State for sale to consumers in the State, that dealer
23 or dealers shall comply with this chapter as if they
24 were distributors as well as dealers.

25 §1885. Containers marked

26 Every refundable beverage container sold or of-
27 fered for sale in this State by a dealer shall be
28 clearly marked to indicate that the refund fee has
29 been paid. The beverage container may be marked by
30 embossing, stamping, labeling on the container or its
31 cap or other method of secure attachment. The State
32 Tax Assessor shall approve all markings for contain-
33 ers.

34 §1886. Refund fee stamps

35 1. Purchase. Each distributor who desires to
36 stamp the beverage container shall purchase the re-
37 fund fee stamps from the State Tax Assessor. The
38 stamp, when affixed to the beverage container, shall

1 be evidence of payment of the refund fee. The stamp
2 shall be of a design established by the State Tax As-
3 essor.

4 2. Resale of stamps prohibited. No distributor
5 may sell or transfer stamps issued under this chap-
6 ter.

7 3. Redemption. The State Tax Assessor shall re-
8 deem any unused uncanceled stamps presented within
9 one year of the date of purchase by any licensed dis-
10 tributor or dealer, at a price equal to the amount
11 paid for it by that dealer or distributor. The Trea-
12 asurer of State shall provide, out of money collected
13 pursuant to this chapter, the funds necessary for the
14 redemption.

15 4. Use of metering machines. The State Tax As-
16 essor, if he determines that it is practicable to
17 stamp containers by means of a metering machine, may,
18 in lieu of selling stamps under this section, autho-
19 rize any distributor to use any metering machine ap-
20 proved by him. The metering machine shall be sealed
21 by the State Tax Assessor before being used in ac-
22 cordance with rules prescribed by him. Any distribu-
23 tor authorized by the State Tax Assessor to affix
24 stamps to containers by means of a metering machine
25 shall file with the State Tax Assessor a bond issued
26 by a surety company licensed to do business in this
27 State, in such amount as the State Tax Assessor may
28 fix, conditioned upon payment of the fee upon con-
29 tainers so stamped. The bond shall be in full force
30 and effect for a period of one year and a day after
31 the expiration of the bond, unless a certificate is-
32 sued by the State Tax Assessor to the effect that all
33 fees due to the State have been paid. In the discre-
34 tion of the State Tax Assessor, cash may be accepted
35 in lieu of a surety bond, the cash to be paid over by
36 the State Tax Assessor to the Treasurer of State, who
37 may deposit or hold the cash subject to further order
38 of the State Tax Assessor. The State Tax Assessor
39 shall cause each metering machine approved by him to
40 be read and inspected at least once a month and shall
41 determine as of the time of each inspection the
42 amount of fees due from the distributor using that
43 machine, which fees shall be due and payable upon de-
44 mand of the State Tax Assessor or his duly authorized
45 agent.

1 §1887. Application

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

14 2. Reimbursement to distributors. Quarterly,
15 the State Tax Assessor shall, upon proof satisfactory
16 to him and in accordance with rules promulgated by
17 him, pay to each distributor an amount equal to the
18 number of the refundable beverage containers accepted
19 by the distributor during that quarter times the re-
20 fund fee paid on those containers; except that no
21 distributor may cumulatively receive more reimburse-
22 ment than he has paid, cumulatively, in refund fees.
23 The Treasurer of State shall provide the commissioner
24 with funds necessary for that payment from the money
25 held in the special fund created under subsection 1.
26 If in any quarter there are not sufficient funds in
27 the special fund to pay all requests from distribu-
28 tors under this section, those requests not paid
29 shall be paid as soon as possible from money received
30 during the next quarter.

31 §1888. Sale of unmarked beverage containers prohib-
32 ited

33 No distributor may sell, and no other person may
34 sell, offer for sale, display for sale or possess
35 with the intent to sell, any refundable beverage con-
36 tainers which are not marked in accordance with sec-
37 tion 1885, provided that a distributor may keep on
38 hand unmarked beverage containers for a period not
39 exceeding 72 hours. Any unmarked refundable beverage
40 containers in the possession of a distributor shall
41 be presumed to have been held by him for more than 72
42 hours, unless proof is shown to the contrary. Any
43 person violating any provisions of this section is

1 guilty of a Class E crime, provided that no imprison-
2 ment may be imposed for a first offense.

3 §1889. Fraudulent markings

4 It is a violation of this chapter for any person
5 to make, utter, forge or counterfeit, with the intent
6 to defraud, any marking prescribed by the State Tax
7 Assessor under this chapter or to cause or procure
8 the same to be done, or to knowingly utter, publish,
9 pass or render as true, any false, altered, forged or
10 counterfeit marking, or to knowingly possess any such
11 false, altered, forged or counterfeit markings, or to
12 use more than once any stamp provided for and re-
13 quired by this chapter. For purposes of this section,
14 any beverage container marked pursuant to section
15 1885, for which a refund fee has not been paid shall
16 be considered to be a false, altered, forged or coun-
17 terfeit marking. Any person violating any provision
18 of this section is guilty of a Class E crime, pro-
19 vided that no imprisonment is imposed for a first of-
20 fense.

21 §1890. Records; examination by commissioner

22 The State Tax Assessor and his authorized agents
23 may examine the books, papers and records of any dis-
24 tributor in this State for the purpose of determining
25 whether this chapter has been fully complied with,
26 and may investigate and examine the stock of beverage
27 containers in or upon any premises where the beverage
28 containers are possessed, stored or sold for the pur-
29 pose of determining whether this chapter is being
30 obeyed.

31 §1891. Administration; rules

32 The administration of this chapter is vested in
33 the State Tax Assessor. All forms necessary and
34 proper for the enforcement of this chapter shall be
35 prescribed and furnished by the State Tax Assessor.
36 The State Tax Assessor shall appoint such agents,
37 clerks, stenographers and other assistants as he
38 deems necessary for effecting the purpose of this
39 chapter, subject to the Personnel Law. The State Tax
40 Assessor may prescribe rules, not inconsistent with
41 the law, to carry into effect this chapter, which

1 rules, when reasonably designed to carry out the in-
2 tent and purpose of this chapter, shall be prima fa-
3 cie evidence of its proper interpretation. The State
4 Tax Assessor shall, at least annually and more often
5 in his discretion, publish for distribution all rules
6 prescribed and such rules as appear to him to be of
7 general interest.

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

11 STATEMENT OF FACT

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

18 This bill establishes a refund fee which shall be
19 imposed upon all refundable beverage containers dis-
20 tributed in this State. The refund fee shall be equal
21 to 90% of the refund value of the container. Distrib-
22 utors will be reimbursed for containers which are re-
23 turned to them and the State will retain the funds
24 for containers that are not returned. This allows
25 the State to recapture the current "float funds"
26 maintained by container distributors. The distribu-
27 tors retain 10% of these "float funds" to make this a
28 cost-free program for them.

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