

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1813

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H.P. 1324

House of Representatives, February 27, 1996

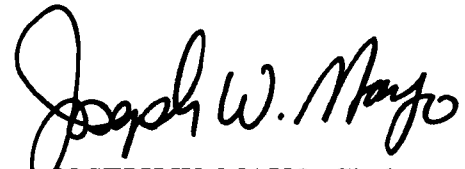
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### **An Act to Make Changes in the Beverage Container Deposit Laws.**

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Reported by Representative CAMERON for the Joint Standing Committee on Business and Economic Development pursuant to Resolve 1995, chapter 52, section 8.

Reference to the Joint Standing Committee on Business and Economic Development suggested and printing ordered under Joint Rule 20.

  
JOSEPH W. MAYO, Clerk

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 4 MRSA §807, sub-§3, ¶H,** as amended by PL 1995, c.  
419, §2, is further amended to read:

6 H. A person who is not an attorney, but has been designated  
7 to represent either the Department of Human Services, under  
8 Title 22, section 3473, subsection 3, or the Department of  
9 Mental Health and Mental Retardation, under Title 34-B,  
10 section 1204, subsection 7, in Probate Court proceedings; ~~or~~

12 **Sec. 2. 4 MRSA §807, sub-§3, ¶I,** as enacted by PL 1995, c. 419,  
13 §3, is amended to read:

14 I. A person who is not an attorney, but is representing the  
15 Department of Human Services in a child support enforcement  
16 matter as provided by Title 14, section 3128-A, subsection 7  
17 and Title 19, section 504-C, subsection 10. This paragraph  
18 is repealed October 1, 1998; or

20 **Sec. 3. 4 MRSA §807, sub-§3, ¶J** is enacted to read:

22 J. A person who is not an attorney but is representing the  
23 Department of Agriculture, Food and Rural Resources as  
24 provided in Title 32, section 1869-A.

26 **Sec. 4. 5 MRSA §10051, sub-§1,** as amended by PL 1995, c. 65,  
27 Pt. A, §9 and affected by §153 and Pt. C, §15, is further amended  
28 to read:

30 **1. Jurisdiction.** Except as provided in section 10004;  
31 Title 8, section 279-B; Title 10, section 8003; Title 20-A,  
32 sections 10712 and 10713; Title 29-A; Title 32, chapters 28, 105  
33 and 114; and Title 35-A, section 3132, the Administrative Court  
34 has exclusive jurisdiction upon complaint of any agency or, if  
35 the licensing agency fails or refuses to act within a reasonable  
36 time, upon complaint of the Attorney General, to revoke or  
37 suspend licenses issued by the agency and has original  
38 jurisdiction upon complaint of an agency to determine whether  
39 renewal or reissuance of a license of that agency may be refused.

42 **Sec. 5. 30-A MRSA §4221, sub-§2, ¶A,** as amended by PL 1991, c.  
43 688, §2, is further amended to read:

44 A. The commissioner shall also establish certification  
45 standards and a program to certify familiarity with court  
46 procedures for:

48 (1) Plumbing inspectors appointed under this section;

50

- 2 (2) Code enforcement officers, as set forth in section 4452 and in Title 38, section 441;
- 4 (3) Department of Environmental Protection employees, as set forth in Title 38, section 342, subsection 7; and
- 6 (4) Maine Land Use Regulation Commission employees, as set forth in Title 12, section 685-C, subsection 9; and
- 8 (5) Department of Agriculture, Food and Rural Resources employees as set forth in Title 32, section 1869-A.

14 Certification under this paragraph is effective for a period of 3 years unless sooner revoked or suspended by the Administrative Court upon complaint by the commissioner on grounds of fraud, negligence, misconduct or incompetence in the performance of duties. After being certified by the commissioner under this paragraph, a plumbing inspector may serve civil process on persons who violate the plumbing and subsurface wastewater disposal rules of the department. The municipal officers may also authorize the inspector to represent the municipality in District Court under section 4452.

26 **Sec. 6. 32 MRSA §1862, sub-§1**, as amended by PL 1993, c. 77, §1, is further amended to read:

28 **1. Beverage.** "Beverage" means beer, ale or other drink produced by fermenting malt, spirits, wine, wine coolers, soda, noncarbonated water and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption, except for farm-produced apple cider, unflavored rice milk, unflavored soymilk, milk and dairy-derived products.

36 **Sec. 7. 32 MRSA §1862, sub-§§12-E and 12-F** are enacted to read:

38 **12-E. Redemption center.** "Redemption center" means a person who accepts beverage containers for redemption from dealers or consumers and receives reimbursement for handling costs pursuant to section 1866, subsection 4.

44 **12-F. Third-party pick-up agent.** "Third-party pick-up agent" means a person who has assumed the container pick-up responsibility imposed on a deposit initiator under section 1866, subsection 5.

48 **Sec. 8. 32 MRSA §1863-A**, as enacted by PL 1991, c. 819, §3, is repealed and the following enacted in its place:

2       **§1863-A. Refund value**

4           To encourage container reuse and recycling, every beverage  
6           container sold or offered for sale to a consumer in this State  
8           must have a deposit and refund value. The person who initiates  
10           the deposit shall determine the deposit and refund value  
12           according to the type, kind and size of the beverage container.  
14           The deposit and refund value for wine and spirits containers of  
16           greater than 50 milliliters may not be less than 15¢. The  
18           deposit and refund value of all other beverage containers may not  
20           be less than 5¢.

22           **Sec. 9. 32 MRSA §1863-C** is enacted to read:

24       **§1863-C. Initiation of deposit**

26           The following persons are required to initiate the deposit  
28           on beverage containers that are sold in this State.

30           1. Refillable containers. For refillable beverage  
32           containers other than wine and spirits containers, the  
34           manufacturers shall initiate the deposit.

36           2. Nonrefillable containers; exclusive distributors. For  
38           nonrefillable beverage containers other than wine and spirits  
40           containers that are sold through geographically exclusive  
42           distributorships, the distributor shall initiate the deposit.

44           3. Nonrefillable containers; nonexclusive distributors.  
46           For nonrefillable beverage containers other than wine and spirits  
48           containers that are not sold through geographically exclusive  
50           distributorships, the manufacturer shall initiate the deposit  
          unless the manufacturer has notified the distributor in writing  
          that the distributor is to initiate the deposit.

4. Wine and spirits containers. For wine and spirits  
          containers, the distributor shall initiate the deposit.

**Sec. 10. 32 MRSA §1865, sub-§1-A**, as amended by PL 1991, c.  
          819, §4, is further amended to read:

**1-A. Labels; nonrefillable containers; nonexclusive**  
          **distributorships.** With respect to nonrefillable beverage  
          containers the deposits for which are initiated pursuant to  
          section 1863-A 1863-C, subsection 3, the refund value and the  
          word "Maine" or the abbreviation "ME" must be clearly indicated  
          on every refundable beverage container sold or offered for sale  
          by a dealer in this State, by permanently embossing or  
          permanently stamping the beverage containers, except in instances

when the initiator of the deposit has specific permission from the department to use stickers or similar devices. The refund value may not be indicated on the bottom of the container. Metal beverage containers must be permanently embossed or permanently stamped on the tops of the containers.

**Sec. 11. 32 MRSA §1865, sub-§1-B,** as enacted by PL 1995, c. 437, §1, is amended to read:

**1-B. Labels; nonrefillable containers; exclusive distributorships.** Notwithstanding subsection 1 and with respect to nonrefillable beverage containers, for the deposits that are initiated pursuant to section 1863-A 1863-C, subsection 2, the refund value and the word "Maine" or the abbreviation "ME" may be clearly indicated on refundable beverage containers sold or offered for sale by a dealer in this State by use of stickers or similar devices if those containers are not otherwise marked in accordance with subsection 1. A redemption center shall accept containers identified by stickers in accordance with this subsection or by embossing or stamping in accordance with subsection 1.

**Sec. 12. 32 MRSA §1865, sub-§2,** as repealed and replaced by PL 1991, c. 819, §5, is amended to read:

**2. Brand name.** Refillable glass beverage containers of carbonated beverages, for which the deposit is initiated under section 1863-A 1863-C, subsection 1, that have a refund value of not less than 5¢ and a brand name permanently marked on the container are not required to comply with subsection 1. The exception provided by this subsection does not apply to glass beverage containers that contain spirits, wine or malt liquor as those terms are defined by Title 28-A, section 2.

**Sec. 13. 32 MRSA §1866,** as amended by PL 1995, c. 395, Pt. P, §2, is further amended to read:

**§1866. Redemption of beverage containers**

**1. Dealer acceptance.** Except as provided in this section, a dealer may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealer, or refuse to pay in cash the refund value of the returned beverage container as established by section 1863-A. This section does not require an operator of a vending machine to maintain a person to accept returned beverage containers on the premises where the vending machine is located.

2           **2. Permissive refusal by dealer.** A dealer may refuse to  
3 accept from a consumer or other person, and to pay the refund  
4 value on any beverage container, if the place of business of the  
5 dealer ~~and the kind, size and brand of beverage container are~~ is  
6 included in ~~an order of the department approving the license of a~~  
7 redemption center under pursuant to section 1867 1867-D,  
8 subsection 5.

9  
10           **2-A. Limitation on number of returnables accepted by**  
11 **dealer.** A dealer may limit the total number of beverage  
12 containers ~~which he~~ that the dealer will accept from any one  
13 consumer or other person in any one business day to 240  
14 containers, or any ~~other~~ number greater than 240. A dealer who  
15 is not licensed as a redemption center may not accept containers  
16 with a total refund value in excess of \$50 from any person on any  
17 one business day.

18           **2-B. Limitation on dealer hours for returning containers.** A  
19 dealer may refuse to accept beverage containers during no more  
20 than 3 hours in any one business day. If a dealer refuses to  
21 accept containers under this subsection, the hours during which  
22 he the dealer will not accept containers ~~shall~~ must be  
23 conspicuously posted.

24           **2-C. Acceptance of beverage containers by redemption**  
25 **centers.** This subsection governs acceptance of beverage  
26 containers by licensed redemption centers.

27  
28           **A.** A licensed redemption center may not refuse to accept  
29 from any consumer or other person not a dealer any empty,  
30 unbroken and reasonably clean beverage container that is  
31 labeled in accordance with section 1865 or refuse to pay in  
32 cash the refund value of the returned beverage container as  
33 established by section 1863-A. Notwithstanding this  
34 subsection, a licensed redemption center may refuse to  
35 accept:

36  
37           (1) Discontinued beverage containers as defined by  
38 department rule;

39  
40           (2) Containers tendered by a person who refuses to  
41 complete and sign a statement if required to do so in  
42 accordance with paragraph B;

43  
44           (3) Beverage containers not sold as filled containers  
45 in the area in which the redemption center is located  
46 and for which pickup is not required under subsection  
47 5; and

2                   (4) Other containers for which the department makes a  
3                   finding that there is inadequate pick-up service.

4                   B. A person who tenders beverage containers totaling more  
5                   than \$50 in refund value on any one business day must sign a  
6                   statement as described in this paragraph. A redemption  
7                   center must obtain a signed statement from each person who  
8                   tenders beverage containers totaling more than \$50 in  
9                   redemption value on any one business day.

10                   (1) The statement must be on a form supplied by the  
11                   department and must include the name of the redemption  
12                   center, the total refund value of containers redeemed  
13                   and the name, address and signature of the person who  
14                   tenders the containers. The redemption center shall  
15                   verify the identity of the person completing the form  
16                   by reviewing the person's motor vehicle license or  
17                   other photographic identification.

18                   (2) The statement must inform the person of the  
19                   penalty for knowingly tendering containers not  
20                   purchased in this State.

21                   (3) Except as provided in subparagraph (4), the  
22                   statement must also inform the person that, by signing  
23                   the statement, that person certifies that to the best  
24                   of that person's knowledge the containers were  
25                   purchased in this State. The statement must also  
26                   notify the person that filing a false statement is a  
27                   Class D crime pursuant to Title 17-A, section 453 and  
28                   subjects the person to a possible fine and term of  
29                   imprisonment.

30                   (4) The department shall produce a separate statement  
31                   to be completed by a person who tenders beverage  
32                   containers on behalf of a nonprofit, charitable  
33                   organization when the purpose of the collection and  
34                   redemption of containers is to raise funds for the  
35                   organization. The statement must require the person to  
36                   give the person's name, the name of the organization  
37                   and the source of the beverage containers but may not  
38                   require the person who tenders the beverages to certify  
39                   that, to the best of that person's knowledge, the  
40                   containers were purchased in the State. The statement  
41                   must also notify the person that filing a false  
42                   statement is a Class D crime pursuant to Title 17-A,  
43                   section 453 and subjects the person to a possible fine  
44                   and term of imprisonment.



2           (5) The redemption center shall file all statements  
3           required under this paragraph quarterly with the  
4           department and make the statements available to the  
5           department or any other person authorized to enforce  
6           this law upon request.

8           **2-D. Application to containers originally sold in the**  
9           **State.** The obligations to accept or take empty beverage  
10           containers and to pay the refund value and handling fees for  
11           those containers as described in this section apply only to  
12           containers originally sold in this State as filled beverage  
13           containers.

14           **2-E. Unlawful tender of containers.** A person who tenders  
15           to a dealer, distributor, 3rd-party pick-up agent, redemption  
16           center or manufacturer more than 48 empty beverage containers  
17           within 7 consecutive days that the person knows or has reason to  
18           know were not originally sold in this State as filled beverage  
19           containers is subject to the enforcement action and civil  
20           penalties set forth in sections 1867-B, 1867-C, 1867-D and 1869.  
21           At each location where customers tender containers for  
22           redemption, dealers and redemption centers shall conspicuously  
23           display a sign with the following information in letters that are  
24           at least one inch in height: "WARNING: Persons who tender  
25           containers that were not originally purchased in this State may  
26           be subject to a fine of the greater of \$100 per container or  
27           \$25,000 for each tender. (32 MRSA, section 1869, subsection 5)."  
28

30           **3. Distributor acceptance.** A distributor may not refuse to  
31           accept from any dealer or ~~local~~ licensed redemption center any  
32           empty, unbroken and reasonably clean beverage container that is  
33           labeled in accordance with section 1865 and that is of the kind,  
34           size and brand sold by the distributor or refuse to pay to the  
35           dealer or ~~local~~ licensed redemption center the refund value of a  
36           beverage container as established by section 1863-A. Payment to  
37           the dealer or redemption center must be made not later than 10  
38           business days after pickup of the beverage containers by the  
39           distributor or the distributor's agent. The invoice signed at  
40           the time of pickup determines the amount payable to a dealer or  
41           redemption center. Notwithstanding this subsection, a  
42           distributor may refuse to accept discontinued beverage containers  
43           as defined by department rule.

44           **4. Reimbursement of handling costs.** Reimbursement of  
45           handling costs is governed by this subsection.

46           **A.** In addition to the payment of the refund value, the  
47           initiator of the deposit under section 1863-A 1863-C,  
48           subsections 1, 2 and 4 shall reimburse the dealer or ~~local~~  
49           licensed redemption center for the cost of handling beverage  
50

2 containers subject to ~~section 1863-A~~, this chapter in an amount that equals at least 3¢ per returned container.

4 B. In addition to the payment of the refund value, the  
6 initiator of the deposit under section 1863-A 1863-C,  
8 subsection 3 shall reimburse the dealer or ~~local~~ licensed  
10 redemption center for the cost of handling beverage  
12 containers subject to section 1863-A in an amount that  
equals at least 3¢ per returned container. The initiator of  
the deposit may reimburse the dealer or ~~local~~ licensed  
redemption center directly or indirectly through a  
~~contracted~~ 3rd-party pick-up agent.

14 **5. Obligation to pick up containers.** The obligation to  
pick up beverage containers subject to this chapter is determined  
16 as follows.

18 A. A distributor that initiates the deposit under section  
1863-A 1863-C, subsection 2 or 4 has the obligation to pick  
20 up any empty, unbroken and reasonably clean beverage  
22 containers of the particular kind, size and brand sold by  
the distributor from dealers to whom that distributor has  
sold those beverages and from licensed redemption centers  
24 ~~designated to serve those dealers pursuant to an order~~  
entered under section 1867 located in the territory in which  
26 the distributor sells those beverages. ~~A distributor that,~~  
~~within this State, sells beverages under a particular label~~  
28 ~~exclusively to one dealer, which dealer offers those labeled~~  
~~beverages for sale at retail exclusively at the dealer's~~  
30 ~~establishment, shall pick up any empty, unbroken and~~  
~~reasonably clean beverage containers of the kind, size and~~  
32 ~~brand sold by the distributor to the dealer only from these~~  
~~licensed redemption centers that serve the various~~  
34 ~~establishments of the dealer, under an order entered under~~  
~~section 1867. A dealer that manufactures its own beverages~~  
36 ~~for exclusive sale by that dealer at retail has the~~  
~~obligation of a distributor under this section. The~~  
38 ~~commissioner may establish by rule, in accordance with the~~  
~~Maine Administrative Procedure Act, criteria prescribing the~~  
40 ~~manner in which distributors shall fulfill the obligations~~  
~~imposed by this paragraph. The rules may establish a~~  
42 ~~minimum number or value of containers below which a~~  
~~distributor is not required to respond to a request to pick~~  
44 ~~up empty containers. Any rules promulgated under this~~  
~~paragraph must allocate the burdens associated with the~~  
46 ~~handling, storage and transportation of empty containers to~~  
~~prevent unreasonable financial or other hardship.~~

48 B. The initiator of the deposit under section 1863-A  
50 1863-C, subsection 3 has ~~the obligation to~~ shall pick up any

2 empty, unbroken and reasonably clean beverage containers of  
3 the particular kind, size and brand sold by the initiator  
4 from dealers to whom a distributor has sold those beverages  
5 and from licensed redemption centers ~~designated to serve~~  
6 ~~these dealers pursuant to an order entered under section~~  
7 1867. The obligation may be fulfilled by the initiator  
8 directly or indirectly through a ~~contracted~~ 3rd-party  
9 pick-up agent.

10 C. The commissioner may establish by rule, in accordance  
11 with the Maine Administrative Procedure Act, criteria  
12 prescribing the manner in which distributors shall fulfill  
13 the obligations imposed by this section. The rules may  
14 establish a minimum number or value of containers below  
15 which a deposit initiator is not required to respond to a  
16 request to pick up empty containers and a time period within  
17 which pickup must be made. Any rules adopted under this  
18 paragraph must allocate among distributors, 3rd-party  
19 pick-up agents, dealers and redemption centers the burdens  
20 associated with the handling, storage and transportation of  
21 empty containers to prevent unreasonable financial or other  
22 hardship.

23 5-A. Obligation to make proper tender. A licensed  
24 redemption center may not tender to the person required to pick  
25 up empty beverage containers a bag or other unit of empty  
26 containers that contains fewer empty containers than claimed or  
27 containers of a type other than that which the person performing  
28 the pickup has agreed to pick up or has an obligation to pick up.

29 ~~8.--Application to containers originally sold in the State.~~  
30 ~~The obligations to accept or take empty beverage containers and~~  
31 ~~to pay the refund value and handling fees for such containers as~~  
32 ~~described in subsections 1, 2, 3, 4 and 5 apply only to~~  
33 ~~containers originally sold in this State as filled beverage~~  
34 ~~containers. A person who tenders to a dealer, distributor,~~  
35 ~~redemption center or bottler more than 48 empty beverage~~  
36 ~~containers that the person knows or has reason to know were not~~  
37 ~~originally sold in this State as filled beverage containers is~~  
38 ~~subject to the enforcement action and civil penalties set forth~~  
39 ~~in this subsection. At each location where customers tender~~  
40 ~~containers for redemption, dealers and redemption centers must~~  
41 ~~conspicuously display a sign in letters that are at least one~~  
42 ~~inch in height with the following information: "WARNING:~~  
43 ~~Persons tendering containers for redemption that were not~~  
44 ~~originally purchased in this State may be subject to a fine of~~  
45 ~~the greater of \$100 per container or \$25,000 for each tender.~~  
46 ~~(32-MRSA-Section-1866)."~~ A person who violates the provisions of

~~this subsection is subject to a civil penalty of the greater of \$100 for each container or \$25,000 for each tender of containers.~~

2  
4       **Sec. 14. 32 MRSA §1867**, as amended by PL 1991, c. 819, §12, is repealed.

6               **Sec. 15. 32 MRSA §§1867-A to 1867-F** are enacted to read:

8  
10       **§1867-A. Registration and reporting by manufacturers**

12       **1. Registration.** A manufacturer of beverages that are offered for sale in beverage containers in this State shall register annually with the department on a form provided by the department. The department may combine this registration requirement with any other registration requirements that apply to those manufacturers, provided the fee and information required for the purposes of implementing this chapter are collected.

18       **2. Registration fee.** The department shall set a registration fee in an amount sufficient to administer, enforce and periodically evaluate this chapter but not to exceed the following:

24               **A.** Five hundred dollars for a person who manufactures a beverage that is sold in a state contiguous to this State in a container that is labeled in accordance with section 1865; and

28               **B.** Three hundred dollars for all other manufacturers.

30       **3. Reporting requirements.** Each manufacturer required to register shall accurately report to the department:

34               **A.** The brand name of each product for which the manufacturer initiates the deposit;

36               **B.** The name and business address of each distributor who sells that manufacturer's product in this State;

38               **C.** The number of filled beverage containers sold to distributors for sale in this State;

40               **D.** The name and business address of each of the manufacturer's 3rd-party pick-up agents; and

42               **E.** The number of beverage containers redeemed by the manufacturer.

44       The department shall determine the schedule and form for reporting pursuant to this section.

2           **4. Suspension, revocation or refusal to renew**  
3 **registration.** The department may refuse to renew a registration  
4 **after providing an opportunity for a hearing in accordance with**  
5 **Title 5, chapter 375, subchapter IV.** The department may file an  
6 **action in Administrative Court to suspend or revoke the**  
7 **registration of a manufacturer for violation of this chapter or**  
8 **rules adopted pursuant to this chapter.**

10 **§1867-B. Registration and reporting by distributors**

12           **1. Registration required.** Every distributor shall register  
13 **annually with the department on a form provided by the department.**

14           **2. Registration fee.** The department shall set a  
15 **registration fee in an amount sufficient to administer, enforce**  
16 **and periodically evaluate this chapter but not to exceed \$300.**

18           **3. Reporting requirements.** Each distributor when  
19 **registering shall accurately report the following information:**

22           **A. The number of filled beverage containers sold to dealers**  
23 **in this State;**

24           **B. The number of empty beverage containers collected from**  
25 **dealers or redemption centers;**

28           **C. The territory within which the distributor distributes**  
29 **products; and**

30           **D. The brand name of each product sold in this State for**  
31 **which the distributor initiates a deposit.**

34 **The department shall determine the schedule and form for**  
35 **reporting pursuant to this section.**

36           **4. Suspension, revocation or refusal to renew**  
37 **registration.** The department may refuse to renew a registration  
38 **after providing an opportunity for a hearing in accordance with**  
39 **Title 5, chapter 375, subchapter IV.** The department may file an  
40 **action in Administrative Court to suspend or revoke the**  
41 **registration of a distributor for violation of this chapter or**  
42 **rules adopted pursuant to this chapter.**

44 **§1867-C. Registration, reporting and obligations of 3rd-party**  
45 **pick-up agents**

2 1. Registration required. A 3rd-party pick-up agent shall  
register annually with the department on a form provided by the  
department.

4  
6 2. Registration fee. The department shall set a  
registration fee in an amount sufficient to administer, enforce  
and periodically evaluate this chapter but not to exceed \$150.

8  
10 3. Obligations. A 3rd party pick-up agent is liable for  
failure to comply with this chapter to the same extent as if the  
agent were the person on whose behalf the agent operates.

12  
14 4. Reporting requirements. Each 3rd-party pick-up agent  
shall report accurately to the department: the name of each  
deposit initiator for which that person serves as 3rd-party  
pick-up agent; the territory served by the agent; the brand  
names, sizes and types of beverage and the construction materials  
of the beverage containers the agent is obligated to pick up; and  
the number of each that are picked up for each deposit initiator.

20  
22 The department shall determine the schedule and form for  
reporting pursuant to this section.

24 5. Suspension, revocation or refusal to renew  
registration. The department may refuse to renew a registration  
after providing an opportunity for a hearing in accordance with  
26 Title 5, chapter 375, subchapter IV. The department may file an  
action in Administrative Court to suspend or revoke the  
28 registration of a 3rd-party pick-up agent for violation of this  
chapter or rules adopted pursuant to this chapter.

30  
32 **§1867-D. Licensing of redemption centers**

34 1. Licensing requirement. A person may not operate a  
redemption center without being licensed by the department.  
36 Application for a license or license renewal must be made  
annually on a form supplied by the department.

38  
40 2. License fee. The department shall set a license fee in  
an amount sufficient to administer, enforce and periodically  
evaluate this chapter but not to exceed \$150.

42  
44 3. Contents of license application. The application for a  
license must state the name and address of the person responsible  
for the establishment and operation of the center, a description

2 of the location and operation of the proposed center and other  
3 information determined necessary by the department to evaluate  
4 the application.

5 **4. Approval of application.** The commissioner shall issue a  
6 license to the applicant if the commissioner finds that the  
7 center is:

8 A. Located in a place convenient for likely customers and  
9 will operate a sufficient number of hours to provide  
10 adequate service to those customers;

11 B. Capable of being operated in a manner that complies with  
12 requirements of this chapter and with sanitation standards  
13 established by department rule; and

14 C. In compliance with applicable local ordinances.

15 **5. Assumption of dealer obligations.** A redemption center  
16 may submit with its application one or more written requests from  
17 dealers that the redemption center assume the dealer's obligation  
18 under section 1866, subsection 1 to redeem beverage containers.  
19 The department shall evaluate those requests and if it finds that  
20 the redemption center will provide a convenient alternative for  
21 consumers to redemption by the dealer, the department must  
22 include in the redemption center's license a notation that the  
23 redemption center has assumed the obligations of that dealer.  
24 The department shall notify the dealer of the assumption.

25 **6. Term of license; transferability; renewal.** A license is  
26 valid for a period of one year from the date of issuance but may  
27 be suspended or revoked sooner as provided in this section. A  
28 license is not transferable. An application to renew a license  
29 must contain information determined necessary by the department  
30 to evaluate the application.

31 **7. Posted lists.** Each redemption center shall prominently  
32 display a list of the brand names, sizes and construction  
33 material of beverage containers that will not be accepted in  
34 accordance with section 1866, subsection 2-C.

35 **8. Suspension, revocation, refusal to renew license.** The  
36 department may refuse to renew a redemption center license after  
37 offering a hearing in accordance with Title 5, chapter 375,  
38 subchapter IV. The department may file an action in  
39 Administrative Court to suspend or revoke the license of a  
40 redemption center for violation of this chapter or any rule  
41 adopted pursuant to this chapter. If a license is revoked, the  
42

2 location of the redemption center may not be utilized for a  
3 redemption center by any person for the period of the  
4 revocation. In addition to powers of the Administrative Court,  
5 the department may suspend a license issued under this section as  
6 follows.

7  
8 A. The department shall adopt a rule establishing a system  
9 for assigning demerit points for each violation of this  
10 chapter by a licensed redemption center. The rule must also  
11 designate a level of point accumulation that will result in  
12 suspension of the redemption center license.

13  
14 B. If a licensed redemption center accumulates demerit  
15 points in excess of the limit for suspension established by  
16 the department, the department must notify the license  
17 holder that the license will be suspended effective 10 days  
18 after the date the notice was sent unless that person  
19 requests a presuspension hearing.

20 C. If a hearing is requested, the commissioner shall  
21 determine, by a preponderance of the evidence, whether a  
22 sufficient number of violations occurred to cause  
23 accumulation of demerit points justifying suspension. If  
24 the commissioner determines that sufficient demerit points  
25 were accumulated, suspension becomes effective immediately  
26 for a period determined by the commissioner but not to  
27 exceed 90 days. If the commissioner determines that the  
28 suspension is not justified, the commissioner shall make  
29 that ruling.

30  
31 D. The license holder may appeal a decision of the  
32 commissioner to the Superior Court as provided in Title 5,  
33 chapter 375, subchapter VII. License suspension is stayed  
34 during the period of the appeal.

35 **§1867-E. Dealer reporting requirements**

36  
37 To aid in enforcing this chapter, the department may require  
38 dealers to provide the name of each distributor from whom the  
39 dealer purchased filled beverage containers. The department  
40 shall provide adequate notice of the demand for information.  
41

42 **§1867-F. Confidentiality of information**

43  
44 Reports filed with the department pursuant to this chapter  
45 are not public records and may not be made available to the  
46 public for inspection. Reports may be made available to law  
47 enforcement officials and information contained in the report may  
48 be made available to the public in aggregate form in a manner



2 that does not compromise the business competitiveness of any  
3 industry member.

4 **Sec. 16. 32 MRSA §1869**, as amended by PL 1995, c. 395, Pt. P,  
5 §6, is further amended to read:

6 **§1869. Penalties**

7  
8  
9 **1. Civil violation.** A Unless a specific penalty is provided  
10 elsewhere, a violation of this chapter or of rules adopted  
11 pursuant to this chapter by any person shall--be is a civil  
12 violation for which a forfeiture of not more than \$100 may be  
13 adjudged.

14  
15 **2. Separate violations.** Each day that such violation  
16 continues or exists shall--~~constitute~~ constitutes a separate  
17 offense.

18  
19 **2-A. Registration and licensing penalties.** Violation of  
20 this chapter or rules adopted pursuant to this chapter may result  
21 in suspension, revocation or nonrenewal of a license or  
22 registration certificate issued under this chapter in addition to  
23 any civil or criminal penalties.

24  
25 **2-B. Related penalties.** Violation of this chapter or rules  
26 adopted pursuant to this chapter is prima facie evidence of a  
27 violation of the Maine Unfair Trade Practices Act.

28  
29 **4. Container pickup.** ~~Notwithstanding subsection 1,~~ A  
30 person who knowingly violates a provision of or rules adopted  
31 pursuant to section 1866, subsection 5 commits a civil violation  
32 for which a forfeiture of \$1,000 may be adjudged.

33  
34 **5. Unlawful tender or possession.** A person who violates  
35 section 1866, subsection 2-E or section 1872 commits a civil  
36 violation for which a civil penalty of the greater of \$25,000 for  
37 each tender or \$100 per container may be adjudged.

38  
39 **6. Failure to provide or obtain statement.** A person who  
40 fails to provide a statement as described in section 1866,  
41 subsection 2-C commits a Class E crime. A redemption center that  
42 fails to obtain a statement when required by section 1866,  
43 subsection 2-C commits a Class E crime.

44  
45 **Sec. 17. 32 MRSA §1869-A** is enacted to read:

46 **§1869-A. Enforcement**

47  
48  
49 The Attorney General and all other appropriate officials,  
50 including the commissioner, shall enforce this chapter and

2 prosecute any persons found in violation. In addition to the  
3 authority provided in Title 7, sections 13 and 14, the  
4 commissioner, with prior approval of the Attorney General, may  
5 initiate a civil action for violation of this chapter. If  
6 certified as provided in Title 30-A, section 4221, subsection 2,  
7 the commissioner or employees of the department may serve civil  
8 process and represent the department in District Court in the  
9 prosecution of violations of this chapter.

10 **Sec. 18. 32 MRSA §1871**, as amended by PL 1995, c. 395, Pt. P,  
11 §7, is further amended to read:

12 **§1871. Rules**

13  
14 The commissioner shall, in accordance with the Maine  
15 Administrative Code Procedure Act and after a public hearing,  
16 adopt, amend and repeal such reasonable rules and ~~regulations as~~  
17 ~~it deems~~ the commissioner considers necessary to carry out and  
18 interpret the provisions, purposes and intent of this chapter.  
19 ~~The department shall have the authority to establish regulations~~  
20 ~~governing -- local -- redemption -- centers -- which -- receive -- beverage~~  
21 ~~containers -- from -- dealers -- supplied -- by -- distributors -- other -- than -- the~~  
22 ~~distributors -- servicing -- the -- area -- in -- which -- the -- local -- redemption~~  
23 ~~center -- is -- located -- in -- order -- to -- prevent -- the -- distributors -- servicing~~  
24 ~~the -- area -- within -- which -- the -- redemption -- center -- is -- located -- from -- being~~  
25 ~~unfairly -- penalized.~~

26  
27 The Treasurer of State has continuing authority to enforce  
28 rules, previously adopted in implementation of former section  
29 1866, subsection 7 and former section 1866-A, to conduct audits,  
30 to pursue payments owed or to seek penalties against any deposit  
31 initiator, in accordance with section 1869, subsections 1 and 2,  
32 who failed to meet that initiator's responsibilities under former  
33 sections section 1866, subsection 7 and former section 1866-A.

34  
35 **Sec. 19. 32 MRSA §1871-A** is enacted to read:

36 **§1871-A. Beverage Container Deposit Regulation Fund**

37  
38 There is created in the department a nonlapsing dedicated  
39 fund to be known as the "Beverage Container Deposit Regulation  
40 Fund." All registration and licensing fees collected under this  
41 chapter must be deposited in the fund. The department shall use  
42 the fund only to pay the costs of enforcing, implementing and  
43 periodically evaluating this chapter.

44  
45 **Sec. 20. 32 MRSA §1872**, as amended by PL 1989, c. 869, Pt. C,  
46 §7, is further amended to read:

47 **§1872. Unlawful possession of beverage containers**

48  
49 A person is guilty of a violation of this section if that  
50 person possesses more than 48 beverage containers that are not

2 labeled under section 1865. This section shall does not apply to  
3 possession of unlabeled empty beverage containers by a person  
4 licensed or registered pursuant to this chapter or to licensed  
5 waste facilities as defined in Title 38, section 1303-C.

6 ~~1.---Warning.---Any person committing a violation of this~~  
7 ~~section during the 10t year this section is in effect shall be~~  
8 ~~issued a warning that a violation of this section has occurred.~~

10 ~~2.---Penalty.---Following the 1st year warning period, a~~  
11 ~~violation of this section is a civil violation for which a~~  
12 ~~forfeiture of \$20 per container in excess of 48 beverage~~  
13 ~~containers may be adjudged.~~

14 ~~3.---Enforcement.---The Maine State Police shall enforce this~~  
15 ~~section and prosecute any persons found in violation.~~

18 **4. Exempt facilities.** The department may, by rule, adopt  
19 procedures for designating certain transportation activities and  
20 storage or production facilities or portions of facilities as  
21 exempt from this section. Any exemption granted under this  
22 subsection must be based on a showing by the person owning or  
23 operating the facility or undertaking the activity that:

24 A. The beverage containers stored or transported are  
25 intended solely for retail sale outside of the State;

28 B. The beverage containers are being transported to and  
29 stored in a facility licensed under Title 28-A, section  
30 1371, subsection 1 prior to labeling and subsequent retail  
31 sale within the State; or

32 C. The person is licensed under Title 28-A, section 1401 to  
33 import malt liquor and wine into the State, the beverage  
34 containers contain malt liquor or wine and these containers  
35 are being transported or stored prior to labeling and  
36 subsequent retail sale within the State.

38 The department may require reporting of the numbers of beverage  
39 containers imported into and exported from the State under the  
40 terms of this subsection.

42 **Sec. 21. Study.** The Department of Agriculture, Food and Rural  
43 Resources shall analyze all data available and being collected  
44 relative to the State's beverage container deposit laws. The  
45 department shall determine whether this information is adequate  
46 to evaluate the 1990 expansion of the beverage container deposit  
47 law to additional types of beverage containers, including  
48 evaluation of opportunities for recycling, adequacy of landfill

2 space, effect on litter, cost to manufacturers and distributors  
and financial effect on redemption centers and recycling  
4 businesses and jobs.

6 If the department concludes that available information is  
not adequate, it shall require additional reports from those  
8 types of businesses affected by the beverage container deposit  
laws if the cost of providing these additional reports is  
10 minimal. If the cost is substantial, the department shall  
determine the least costly way of obtaining the needed  
12 information, including the possible use of sampling and of inmate  
labor from the facilities of the Department of Corrections.

14 The department shall complete its analysis by December 1,  
1996. If the department determines that additional reporting  
16 involving cost is required, the department shall make a report on  
that subject to the joint standing committee of the Legislature  
18 having jurisdiction over business and economic development  
matters by January 1, 1997. This report must describe the  
20 necessity for the data, the cost to the industry of collecting it  
and what would be lost if it were not collected.

22 Upon request, the State Planning Office shall assist the  
24 department in the conduct of this analysis of the adequacy of  
information.

26 Funding for this study must be provided by the Beverage  
28 Container Deposit Regulation Fund.

30 **Sec. 22. Allocation.** The following funds are allocated from  
Other Special Revenue to carry out the purposes of this Act.

32  
34 1996-97  
36 **AGRICULTURE, FOOD AND RURAL  
RESOURCES, DEPARTMENT OF**

38 **Marketing Services**

40	Positions - Other Count	(3.0)
42	Personal Services	\$85,330
	All Other	12,500
44	Total	<hr/> \$97,830

46  
48 Provides funds for 2 Consumer Food Inspector  
positions, one Clerk Typist III position and  
operating costs necessary to administer new  
50 regulatory requirements of the beverage  
container deposit laws.

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**FISCAL NOTE**

1996-97

**APPROPRIATIONS/ALLOCATIONS**

Other Funds \$97,830

**REVENUES**

Other Funds \$110,000

The Department of Agriculture, Food and Rural Resources will require additional annual Other Special Revenue allocations of \$97,830 in fiscal year 1996-97 for the costs of administering certain expanded regulatory requirements of the beverage container deposit laws. The estimated annual costs in fiscal years 1997-98 and 1998-99 are approximately \$110,000.

The additional licensure and registration requirements pertaining to the beverage container deposit laws will increase dedicated revenue to the Department of Agriculture, Food and Rural Resources by \$110,000 annually beginning in fiscal year 1996-97.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.70 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

The additional costs associated with enforcing the bottle bill can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

**STATEMENT OF FACT**

This bill makes the following changes in the law relating to the beverage container deposit laws.

1. It requires registration with the Department of Agriculture, Food and Rural Resources of all manufacturers, distributors and 3rd-party pick-up agents who perform functions under the law. The department is required to establish a registration fee that will cover the costs of implementing, enforcing and evaluating the beverage container deposit laws, within a limit determined by this bill. Fees would be deposited in a dedicated fund reserved for use by the department in implementing, enforcing and evaluating the laws.

2. It allows the Administrative Court to suspend or revoke licenses for failure to comply with requirements of the law, such as initiation of deposits and pick-up obligations. The law provides a civil penalty for failure to register.

3. The bill also requires licensing of redemption centers, which are defined to include all persons who redeem beverage containers and receive a handling fee for doing so. This will require a retailer to be licensed as a redemption center and to follow requirements for those centers, unless the retailer has designated a redemption center to assume its responsibilities or the retailer turns unsorted empty containers over to a redemption center and does not receive a handling fee. To qualify for a license, a redemption center must demonstrate that the location and hours are convenient for consumers, that it complies with local ordinances and that it can be operated in a manner that complies with the deposit laws and rules.

4. A redemption center license may be revoked or suspended by the Administrative Court for violation of the law. Also, the bill requires the department to establish a demerit point system, similar to that used in the driver license law, under which redemption centers will receive points for each violation found by department personnel. If sufficient points are accumulated, the department may suspend the license for up to 60 days. Licensees must be given an opportunity for a hearing before the commissioner and an appeal to the Superior Court before the suspension takes effect.

5. The bill rewrites provisions of the law relating to the determination of refund values and initiation of deposits to clarify those provisions.

6. A redemption center that accepts more than \$50 worth of containers from any person on a single day must obtain a signed statement from that person identifying the person tendering the containers and signifying that, to the best of that person's knowledge, the containers were originally purchased in the State. There is a criminal penalty for falsely signing such a statement. Persons tendering containers on behalf of charitable

2 organizations would be required to complete a form identifying  
themselves, the name of the organization and the source of the  
4 containers, but would not be required to certify that they were  
purchased in this State. A redemption center that fails to  
6 obtain a required statement or a person who fails to supply the  
required statement commits a Class E crime.

8 7. A redemption center is required to accept any container  
sold in the area in which the redemption center is located,  
10 provided there is a pick-up service available for the container.

12 8. Distributors who initiate the deposit for exclusive  
distributorship items and for wine and spirits are required to  
14 pick up containers from dealers and redemption centers located in  
the area in which they distribute products. Manufacturers whose  
16 products are distributed through nonexclusive distributorships or  
their 3rd-party pick-up agents are required to pick up containers  
18 statewide.

20 9. The bill adds farm-produced cider to the list of  
beverages exempt from the bottle bill. This exemption is  
22 currently in department rules.

24 10. The bill requires deposit initiators to pay dealers and  
redemption centers for picked-up containers within 10 business  
26 days of the pickup and provides that the invoice signed at the  
time of the pickup determines the amount due.

28 11. The proposal allows the department to call for  
30 information from retailers when needed to aid the department in  
enforcing the bottle bill.

32 12. The bill imposes reporting requirements on  
34 manufacturers, distributors and 3rd-party pick-up agents and  
redemption centers. The bill also provides that the information  
36 is confidential but may be used by law enforcement and may be  
released in aggregate form.

38 13. Violation of this law is made prima facie evidence of a  
40 violation of the Unfair Trade Practices Act.

42 14. Enforcement of the bottle bill is expanded to require  
the Attorney General, the Commissioner of Agriculture, Food and  
44 Rural Resources and all other appropriate officials to enforce  
the laws. Employees of the department are authorized to  
46 prosecute complaints for civil violations in District Court, if  
the employees are certified as proficient in court procedures.

48 15. The bill exempts licensed redemption centers and  
50 registered distributors, manufacturers and 3rd-party pick-up

agents from the prohibition against possession of unmarked  
containers if the containers are empty.

16. Finally, the bill requires the Department of  
Agriculture, Food and Rural Resources to evaluate the information  
available on the beverage container deposit laws and to determine  
whether additional information would be needed to evaluate the  
laws. The proposal also requires the department to find ways to  
require additional information and to return to the Legislature  
with a proposal if significant cost would be involved in  
obtaining the information.