

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 985

S.P. 326

In Senate, February 25, 2003

An Act To Improve the State's Returnable Bottle Law and Adjust Handling Fees

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Senator BROMLEY of Cumberland and
Representatives: DUNLAP of Old Town, SULLIVAN of Biddeford.

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

4 **Sec. 1. 32 MRSA §1862, sub-§2-A** is enacted to read:

6 2-A. Commingling agreement. "Commingling agreement" means
8 an agreement between 2 or more initiators of deposit allowing the
10 beverage containers for which they have initiated deposits to be
12 commingled by dealers and redemption centers, as described in
14 section 1866-D.

16 **Sec. 2. 32 MRSA §1862, sub-§8-A**, as enacted by PL 2001, c.
18 661, §2, is amended to read:

20 **8-A. Initiator of deposit or initiator.** "Initiator of
22 deposit" or "initiator" means a manufacturer, distributor or
24 other person who initiates a deposit on a beverage container
26 under section 1863-A.

28 **Sec. 3. 32 MRSA §1865, sub-§3**, as enacted by PL 2001, c. 661,
30 §3, is amended to read:

32 **3. Label registration.** An initiator of deposit shall
34 register the container label of any beverage offered for sale in
36 the state on which it initiates a deposit. Registration must be
38 on forms or in an electronic format provided by the department
40 and shall must include the universal product code for each
42 combination of beverage and container manufactured. The
44 initiator of deposit shall renew a label registration annually
46 and whenever that label is revised by altering the universal
48 product code or whenever the container on which it appears is
changed in size, composition or glass color. The initiator of
deposit shall also include as part of the registration the method
of collection for that type of container, identification of all of the parties to a
commingling agreement that applies to the container and proof of
the collection agreement. The department may charge a fee for
registration and registration renewals under this subsection.
Rules adopted pursuant to this subsection that establish fees are
major substantive rules as defined in Title 5, chapter 375,
subchapter II-A 2-A and subject to review by the joint standing
committee of the Legislature having jurisdiction over business
and economic development matters.

44 **Sec. 4. 32 MRSA §1866, sub-§4**, as amended by PL 1991, c. 819,
46 §7, is further amended to read:

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

2 A. In addition to the payment of the refund value, the
3 initiator of the deposit under section 1863-A, subsections
4 1, 2 and 4 shall reimburse the dealer or local redemption
5 center for the cost of handling beverage containers subject
6 to section 1863-A, in an amount that equals at least ~~3¢~~ 5¢
7 per returned container. The initiator of the deposit may
8 reimburse the dealer or local redemption center directly or
9 indirectly through a party with which it has entered into a
10 commingling agreement.

11 B. In addition to the payment of the refund value, the
12 initiator of the deposit under section 1863-A, subsection 3
13 shall reimburse the dealer or local redemption center for
14 the cost of handling beverage containers subject to section
15 1863-A in an amount that equals at least ~~3¢~~ 5¢ per returned
16 container. The initiator of the deposit may reimburse the
17 dealer or local redemption center directly or indirectly
18 through a contracted agent or through a party with which it
19 has entered into a commingling agreement.

20 C. The reimbursement that the initiator of the deposit is
21 obligated to pay the dealer or redemption center pursuant to
22 paragraph A or B must be reduced either:

23
24 (1) By ~~1¢~~ for any returned container that is subject
25 to a qualified commingling agreement that allows the
26 dealer or redemption center to commingle beverage
27 containers of like material, size and product group. A
28 commingling agreement is qualified for purposes of this
29 subparagraph if the department determines that at least
30 50% of the beverage containers of like material, size
31 and product group for which deposits are being
32 initiated in the State are covered by the commingling
33 agreement. As the initiator of deposit for all spirits
34 sold in the State, the State is entitled to the ~~1¢~~
35 reduction in handling fee described in this
36 subparagraph without regard to whether it is a party to
37 a qualified commingling agreement; or

38
39 (2) By 1 1/2¢ for any returned container that is
40 subject to a qualified commingling agreement that
41 allows the dealer or redemption center to commingle
42 beverage containers of like material and size. A
43 commingling agreement is qualified for purposes of this
44 subparagraph if the department determines that at least
45 50% of the beverage containers of like material and
46 size for which the deposits are being initiated in the
47 State are covered by the commingling agreement. The
48 State, through the Department of Administrative and
49 Financial Services, Bureau of Alcoholic Beverages and
50

2 Lottery Operations, shall make every reasonable effort
3 to enter into a qualified commingling agreement under
4 this subparagraph with every other initiator of
5 deposits for beverage containers that are of like size
6 and material as the beverage containers for which the
7 State is the initiator of deposit.

8 **Sec. 5. 32 MRSA §1866, sub-§5**, as amended by PL 1991, c. 819,
9 §8, is further amended to read:

10 **5. Obligation to pick up containers.** The obligation to
11 pick up beverage containers subject to this chapter is determined
12 as follows.

13 A. A distributor that initiates the deposit under section
14 1863-A, subsection 2 or 4 has the obligation to pick up any
15 empty, unbroken and reasonably clean beverage containers of
16 the particular kind, size and brand sold by the distributor
17 from dealers to whom that distributor has sold those
18 beverages and from licensed redemption centers designated to
19 serve those dealers pursuant to an order entered under
20 section 1867. A distributor that, within this State, sells
21 beverages under a particular label exclusively to one
22 dealer, which dealer offers those labeled beverages for sale
23 at retail exclusively at the dealer's establishment, shall
24 pick up any empty, unbroken and reasonably clean beverage
25 containers of the kind, size and brand sold by the
26 distributor to the dealer only from those licensed
27 redemption centers that serve the various establishments of
28 the dealer, under an order entered under section 1867. A
29 dealer that manufactures its own beverages for exclusive
30 sale by that dealer at retail has the obligation of a
31 distributor under this section. The commissioner may
32 establish by rule, in accordance with the Maine
33 Administrative Procedure Act, criteria prescribing the
34 manner in which distributors shall fulfill the obligations
35 imposed by this paragraph. The rules may establish a
36 minimum number or value of containers below which a
37 distributor is not required to respond to a request to pick
38 up empty containers. Any rules promulgated under this
39 paragraph must allocate the burdens associated with the
40 handling, storage and transportation of empty containers to
41 prevent unreasonable financial or other hardship.

42 B. The initiator of the deposit under section 1863-A,
43 subsection 3 has the obligation to pick up any empty,
44 unbroken and reasonably clean beverage containers of the
45 particular kind, size and brand sold by the initiator from
46 dealers to whom a distributor has sold those beverages and
47 from licensed redemption centers designated to serve those
48 beverages.

2 dealers pursuant to an order entered under section 1867.
The obligation may be fulfilled by the initiator directly or
indirectly through a contracted agent.

4
6 C. An initiator of the deposit under section 1863-A,
subsection 2, 3 or 4 has the obligation to pick up any
empty, unbroken and reasonably clean beverage containers
that are commingled pursuant to a commingling agreement
along with any beverage containers that the initiator is
otherwise obligated to pick up pursuant to paragraphs A and
B.

12
14 The obligation of the initiator of the deposit under this
subsection may be fulfilled by the initiator directly or through
a party with which it has entered into a commingling agreement.

16 **Sec. 6. 32 MRSA §§1866-D and 1866-E are enacted to read:**

18 **§1866-D. Commingling of beverage containers**

20
22 Notwithstanding any other provision of this chapter to the
contrary, 2 or more initiators of deposit may enter into a
commingling agreement through which some or all of the beverage
containers for which the initiators have initiated deposits may
be commingled by dealers and operators of redemption centers as
provided in this section.

28 An initiator of deposit that enters into a commingling
agreement pursuant to this section shall permit any other
initiator of deposit to become a party to that agreement on the
same terms and conditions as the original agreement.

32 **1. Commingling requirement.** If initiators of deposit enter
into a commingling agreement pursuant to this section,
commingling of beverage containers must be by:

36 A. All containers of like material, size and product group;
38 or

40 B. All containers of like material and size.

42 An initiator of deposit required pursuant to section 1866,
subsection 5 to pick up beverage containers subject to a
commingling agreement also shall pick up all other beverage
containers subject to the same agreement. The initiator of
deposit may not require beverage containers that are subject to a
commingling agreement to be sorted separately by a dealer or
redemption center.

2 2. Commingling of like materials. For purposes of this
3 section, containers are considered to be of like materials if
4 made up of one of the following:

5 A. Plastic;

6 B. Aluminum;

7 C. Metal other than aluminum; and

8 D. Glass.

9 3. Commingling of like products. For purposes of this
10 section, like products are those that are made up of one of the
11 following:

12 A. Beer, ale or other beverage produced by fermenting malt,
13 wine and wine coolers;

14 B. Spirits;

15 C. Soda;

16 D. Noncarbonated water; and

17 E. All other beverages.

18 4. Registration of commingling agreements. Not later than
19 48 hours following the execution or amendment of a commingling
20 agreement, including an amendment that adds an additional party
21 to an existing agreement, the parties shall file a copy of the
22 commingling agreement or amendment with the department.

23 **§1866-E. Abandoned and unclaimed deposits; reports and payments**

24 The provisions of this section apply only to those beverage
25 containers that are not subject to a qualified commingling
26 agreement pursuant to section 1866, subsection 4, paragraph C.

27 Deposits for beverage containers that are not subject to a
28 qualified commingling agreement are presumed abandoned and are
29 considered unclaimed deposits when retained by a manufacturer or
30 distributor 60 days after being collected during any 3-month
31 period ending the last day of March, June, September or
32 December. Deposit initiators must report deposit-related
33 activity and disburse unclaimed deposits in accordance with the
34 provisions of this section for all beverage containers not
35 subject to a qualified commingling agreement.

2 This bill also requires unclaimed deposits for beverage
containers not subject to a commingling agreement to be turned
over to the State for deposit into the General Fund.