

MAINE STATE LEGISLATURE

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No. 1696

S.P. 603

March 23, 2007

An Act To Amend Maine's Bottle Laws

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 SULLIVAN of York.

Cosponsored by Representative BEAUDETTE of Biddeford and Senators: BOWMAN of York, MARTIN of Aroostook, SCHNEIDER of Penobscot, Representatives: BEAUDOIN of Biddeford, CASAVANT of Biddeford, JACOBSEN of Waterboro, PILON of Saco.

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

2 **Sec. 1. 32 MRSA §1862, sub-§2-A**, as enacted by PL 2003, c. 499, §1, is
3 repealed.

4 **Sec. 2. 32 MRSA §1863-A, sub-§4**, as enacted by PL 1991, c. 819, §3, is
5 repealed and the following enacted in its place:

6 **4. Wine and spirits containers.** For wine and spirits containers, the refund value
7 may not be less than 5¢.

8 **Sec. 3. 32 MRSA §1865, sub-§3**, as amended by PL 2003, c. 499, §4, is further
9 amended to read:

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

25 **Sec. 4. 32 MRSA §1866, sub-§4**, as amended by PL 2003, c. 688, Pt. E, §1, and
26 c. 700, §1 and as affected by §6, is further amended to read:

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

29 A. In addition to the payment of the refund value, the initiator of the deposit under
30 section 1863-A, subsections 1, 2 and 4 shall reimburse the dealer or local redemption
31 center for the cost of handling beverage containers subject to section 1863-A, in an
32 amount that equals at least 3¢ per returned container for containers picked up by the
33 initiator before March 1, 2004 and at least ~~3-1/2¢~~ 5 1/2¢ for containers picked up on
34 or after March 1, 2004. ~~The initiator of the deposit may reimburse the dealer or local~~
35 ~~redemption center directly or indirectly through a party with which it has entered into~~
36 ~~a commingling agreement.~~

37 B. In addition to the payment of the refund value, the initiator of the deposit under
38 section 1863-A, subsection 3 shall reimburse the dealer or local redemption center for
39 the cost of handling beverage containers subject to section 1863-A in an amount that
40 equals at least 3¢ per returned container for containers picked up by the initiator

1 before March 1, 2004 and at least ~~3 1/2¢~~ 5 1/2¢ for containers picked up on or after
2 March 1, 2004. ~~The initiator of the deposit may reimburse the dealer or local~~
3 ~~redemption center directly or indirectly through a contracted agent or through a party~~
4 ~~with which it has entered into a commingling agreement.~~

5 ~~C. The reimbursement that the initiator of the deposit is obligated to pay the dealer~~
6 ~~or redemption center pursuant to paragraph A or B must be reduced by 1/2¢ for any~~
7 ~~returned container that is subject to a qualified commingling agreement that allows~~
8 ~~the dealer or redemption center to commingle beverage containers of like product~~
9 ~~group, material and size. A commingling agreement is qualified for purposes of this~~
10 ~~paragraph if the department determines that 50% or more of the beverage containers~~
11 ~~of like product group, material and size for which the deposits are being initiated in~~
12 ~~the State are covered by the commingling agreement. Once the initiator of deposit~~
13 ~~has established a qualified commingling agreement for containers of a like product~~
14 ~~group, material and size, the department shall allow additional brands to be included~~
15 ~~from a different product group if they are of like material. The State, through the~~
16 ~~Department of Administrative and Financial Services, Bureau of Alcoholic~~
17 ~~Beverages and Lottery Operations, shall make every reasonable effort to enter into a~~
18 ~~qualified commingling agreement under this subparagraph with every other initiator~~
19 ~~of deposits for beverage containers that are of like product group, size and material as~~
20 ~~the beverage containers for which the State is the initiator of deposit.~~

21 D. Paragraphs A, ~~and B and C~~ of this subsection do not apply to a brewer or vintner
22 who annually produces no more than 50,000 gallons of its product or a bottler of
23 water who annually sells no more than 250,000 containers each containing no more
24 than one gallon of its product. In addition to the payment of the refund value, an
25 initiator of deposit under section 1863-A, subsections 1 to 4 who is also a brewer or
26 vintner who annually produces no more than 50,000 gallons of its product or a bottler
27 of water who annually sells no more than 250,000 containers each containing no
28 more than one gallon of its product shall reimburse the dealer or local redemption
29 center for the cost of handling beverage containers subject to section 1863-A in an
30 amount that equals at least ~~3¢~~ 5¢ per returned container.

31 ~~E. Notwithstanding provisions of this subsection to the contrary, if a commingling~~
32 ~~agreement for a product group was filed with the department by March 1, 2004, an~~
33 ~~initiator of deposit, whether or not a party to that agreement, is not required to pay the~~
34 ~~1/2¢ handling fee increase required by this subsection until July 1, 2004 for beverage~~
35 ~~containers in that product group picked up by the initiator between March 1, 2004~~
36 ~~and July 1, 2004. Beginning July 1, 2004, an initiator of deposit shall pay the 1/2¢~~
37 ~~handling fee increase for beverage containers in that product group picked up by the~~
38 ~~initiator between March 1, 2004 and July 1, 2004 that are not covered by a qualified~~
39 ~~commingling agreement as of July 1, 2004.~~

40 The department shall adjust the handling fees annually based upon changes in the
41 Consumer Price Index published by the United States Department of Labor, Bureau of
42 Labor Statistics.

43 **Sec. 5. 32 MRSA §1866, sub-§5**, as amended by PL 2003, c. 499, §7, is further
44 amended to read:

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

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

23 B. The initiator of the deposit under section 1863-A, subsection 3 has the obligation
24 to pick up any empty, unbroken and reasonably clean beverage containers of the
25 particular kind, size and brand sold by the initiator from dealers to whom a distributor
26 has sold those beverages and from licensed redemption centers designated to serve
27 those dealers pursuant to an order entered under section 1867. The obligation may be
28 fulfilled by the initiator directly or indirectly through a contracted agent.

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

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

37 **Sec. 6. 32 MRSA §1866, sub-§5-A** is enacted to read:

38 **5-A. Size and weight.** A distributor may not require the sorting of a beverage
39 container in a size category not listed in this subsection. A beverage container of a size
40 that does not conform to a size category listed in this subsection must be sorted in the
41 category that most closely matches the size of the container. A distributor shall provide a
42 dealer or local redemption center with a universal bag gauged for each size category
43 listed in this subsection. A distributor may accept or reject a filled gauged bag on sight if

1 the distributor determines the bag was not filled correctly. The size categories for
2 beverage containers include:

- 3 A. Containers that are 8-ounces aluminum;
- 4 B. Containers that are 12-ounces aluminum;
- 5 C. Containers that are 12-ounces other than aluminum;
- 6 D. Containers that are 16-ounces aluminum;
- 7 E. Containers that are 20-ounces other than aluminum;
- 8 F. Containers that are 33.8-ounces other than aluminum;
- 9 G. Containers that are 67.6-ounces other than aluminum; and
- 10 H. Containers that are 128-ounces other than aluminum.

11 **Sec. 7. 32 MRSA §1866-D**, as enacted by PL 2003, c. 499, §8, is repealed.

12 **Sec. 8. 32 MRSA §1866-E, first ¶**, as enacted by PL 2003, c. 499, §8, is
13 repealed.

14 **Sec. 9. 32 MRSA §1866-E, sub-§4**, as amended by PL 2003, c. 700, §2 and as
15 affected by §6, is further amended to read:

16 **4. Transfer of abandoned deposit amounts.** By the 20th day of each month, an
17 initiator shall turn over to the State Tax Assessor the initiator's abandoned deposit
18 amounts determined pursuant to subsection 3. Those amounts may be paid from the
19 deposit transaction fund. Amounts collected by the assessor pursuant to this subsection
20 must be treated by the assessor as a tax, as that term is defined by Title 36, section 111,
21 subsection 5, and must be ~~deposited in the General Fund~~ transferred to the Department of
22 Education to be used as the Commissioner of Education determines appropriate.

23 **Sec. 10. 32 MRSA §1866-E, sub-§7**, as enacted by PL 2003, c. 700, §4 and as
24 affected by PL 2003, c. 700, §6, is repealed.

25 **Sec. 11. 32 MRSA §1866-F** is enacted to read:

26 **§1866-F. Commingling prohibited**

27 Commingling of beverage containers of like or dissimilar product groups, materials
28 or size of 2 or more initiators of deposit is prohibited, except for a container in the size
29 category listed in section 1866, subsection 5-A, paragraph B.

30 **Sec. 12. 32 MRSA §1869, sub-§1**, as enacted by PL 1975, c. 739, §16, is
31 amended to read:

32 **1. Civil violation.** A violation of this chapter by any person ~~shall be~~ is a civil
33 violation for which a ~~forfeiture~~ fine of not more than \$100 may be adjudged, unless the
34 person is a distributor, for which a fine of not more than \$1,000 may be adjudged.

