

# MAINE STATE LEGISLATURE

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SME  
ROBS

L.D. 1324

Date: 5/23/11

(Filing No. H-314)

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3 ENVIRONMENT AND NATURAL RESOURCES

4 Reproduced and distributed under the direction of the Clerk of the House.

5 STATE OF MAINE  
6 HOUSE OF REPRESENTATIVES  
7 125TH LEGISLATURE  
8 FIRST REGULAR SESSION

9 COMMITTEE AMENDMENT "A" to H.P. 970, L.D. 1324, Bill, "An Act To  
10 Create Consistency and Fairness in Maine's Bottle Bill"

11 Amend the bill by striking out everything after the enacting clause and before the  
12 summary and inserting the following:

13 'Sec. 1. 32 MRSA §1865, sub-§3, as amended by PL 2003, c. 499, §4, is further  
14 amended to read:

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

30 Sec. 2. 32 MRSA §1866, sub-§4, ¶C, as enacted by PL 2003, c. 499, §6, is  
31 amended to read:

32 C. The reimbursement that the initiator of the deposit is obligated to pay the dealer  
33 or redemption center pursuant to paragraph A or B must be reduced by 1/2¢ for any  
34 returned container that is subject to a qualified commingling agreement that allows  
35 the dealer or redemption center to commingle beverage containers of like product  
36 group, material and size. A commingling agreement is qualified for purposes of this  
37 paragraph if the department determines that ~~50% or more of the~~ beverage containers

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of like product group, material and size for which the deposits are being initiated in the State are covered by the commingling agreement. Once the initiator of deposit has established a qualified commingling agreement for containers of a like product group, material and size, the department shall allow additional brands to be included from a different product group if they are of like material. The State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall make every reasonable effort to enter into a qualified commingling agreement under this ~~subparagraph~~ paragraph with every other initiator of ~~deposits~~ deposit for beverage containers that are of like product group, size and material as the beverage containers for which the State is the initiator of deposit.

Sec. 3. 32 MRSA §1866, sub-§11 is enacted to read:

11. Private right of action; containers not originally sold in the State. An initiator of deposit may maintain a civil action in Superior Court against a person, other than a local redemption center licensed in accordance with section 1871-A, that tenders to a redemption center or retailer more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

Sec. 4. 32 MRSA §1871-A, sub-§1, as corrected by RR 2001, c. 2, Pt. A, §41, is amended to read:

1. **Procedures; licensing fees.** The department shall adopt rules establishing the requirements and procedures for issuance of licenses and annual renewals under this section, including a fee structure. Initial rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted effective after calendar year 2003 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and are subject to review by the joint standing committee of the Legislature having jurisdiction over ~~business and economic development~~ environmental and natural resources matters.

Sec. 5. 32 MRSA §1872, sub-§2, as enacted by PL 1989, c. 585, Pt. D, §§9 and 11, is amended to read:

2. **Penalty.** ~~Following the 1st year warning period, a~~ A violation of this section is a civil violation for which a forfeiture of ~~\$20~~ \$100 per container in excess of 48 beverage containers may be adjudged.

Sec. 6. 32 MRSA §1872, sub-§3-A is enacted to read:

3-A. Private right of action; containers not originally sold in the State. An initiator of deposit may maintain a civil action in Superior Court against a person, other than a local redemption center licensed in accordance with section 1871-A, in possession of more than 48 beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

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Sec. 7. 38 MRS.A §2201, first ¶, as amended by PL 1995, c. 465, Pt. A, §72 and affected by Pt. C, §2, is further amended to read:

3 The Maine Solid Waste Management Fund, referred to in this section as the "fund," is  
4 established as a nonlapsing fund to support programs administered by the State Planning  
5 Office and the Department of Environmental Protection. The fund must be segregated  
6 into 2 subsidiary accounts. The first subsidiary account, called operations, receives all  
7 fees established and received under article 1. The 2nd subsidiary account, called  
8 administration, receives all fees established under this article and under Title 36, chapter  
9 719, and all funds recovered by the department as reimbursement for departmental  
10 expenses incurred to abate imminent threats to public health, safety and welfare posed by  
11 the illegal disposal of solid waste and all unclaimed deposits returned to the State under  
12 Title 32, chapter 28.

13 **Sec. 8. Rulemaking; commingling agreements; plastic bags; redemption**  
14 **center locations.** By January 15, 2012, the Department of Agriculture, Food and Rural  
15 Resources shall undertake rulemaking in accordance with this section. The rulemaking  
16 must be in accordance with the Maine Revised Statutes, Title 5, chapter 375, and rules  
17 adopted pursuant to this section are routine technical rules as defined in Title 5, chapter  
18 375, subchapter 2-A.

19 **1. Commingling agreements.** The department shall amend its rules regarding  
20 commingling agreements in accordance with Title 32, section 1866, subsection 4,  
21 paragraph C.

22 **2. Plastic bags.** The department shall adopt rules regarding the size and gauge of  
23 plastic bags used by a dealer or redemption center as provided for in Title 32, section  
24 1866, subsection 5.

25 **3. Redemption center locations.** The department shall adopt rules regarding the  
26 licensing of redemption centers in accordance with the population requirements in Title  
27 32, section 1871-A, subsection 3.'

28 **SUMMARY**

29 The bill proposes to remove containers larger than 28 ounces from the bottle bill and  
30 to establish a uniform deposit of 5¢ for all containers. The amendment strikes those  
31 provisions. The amendment retains those sections of the bill that change the committee  
32 of jurisdiction that reviews major substantive rules. The amendment also adds provisions  
33 that:

34 1. Remove the requirement that 50% or more of like beverage containers for which  
35 deposits are initiated in the State must be covered in a commingling agreement. This  
36 allows initiators of deposit who do not initiate 50% or more of like beverage containers to  
37 enter into commingling agreements;

38 2. Incorporate the provisions of L.D. 900 that allow an initiator of deposit to bring a  
39 civil action against any person, other than a licensed redemption center, that is found in  
40 possession of or knowingly tenders to a redemption center or retailer more than 48  
41 beverage containers that were not originally sold in this State. It also increases the  
42 penalty for possession of containers not originally sold in this State to be consistent with

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COMMITTEE AMENDMENT "A" to H.P. 970, L.D. 1324

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the penalty for tendering such containers and removes reference to a first-year warning period from the penalty provision;

3. Clarify that unclaimed deposits received under the bottle bill are not deposited in the Maine Solid Waste Management Fund; and

4. Direct the Department of Agriculture, Food and Rural Resources to undertake rulemaking regarding commingling agreements, plastic bags and redemption center locations.

**FISCAL NOTE REQUIRED**  
**(See attached)**

**COMMITTEE AMENDMENT**

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Approved: 05/18/11 *mac*



# 125th MAINE LEGISLATURE

LD 1324

LR 472(02)

## An Act To Create Consistency and Fairness in Maine's Bottle Bill

Fiscal Note for Bill as Amended by Committee Amendment "A"  
Committee: Environment and Natural Resources

Fiscal Note Required: Yes

### Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
<b>Net Cost (Savings)</b>				
General Fund	\$640,000	\$640,000	\$640,000	\$640,000
<b>Revenue</b>				
General Fund	(\$640,000)	(\$640,000)	(\$640,000)	(\$640,000)

#### Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional fines may also increase General Fund revenue by minor amounts.

#### Fiscal Detail and Notes

Removing the requirement that 50% or more of like beverages for which deposits are initiated in the state must be covered in a commingling agreement will result in a General Fund revenue loss of \$640,000 per fiscal year starting in fiscal year 2011-12.

Additional costs to the Department of Agriculture, Food and Rural Resources associated with rulemaking can be absorbed with existing staff and within existing budgeted resources.