

# 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)

**STATE OF MAINE  
117TH LEGISLATURE  
FIRST REGULAR SESSION**

**Final Report  
of the**

**TASK FORCE TO REVIEW  
THE BEVERAGE CONTAINER  
DEPOSIT LAWS**

**January 1996**

**Staff:**

**John B. Knox, Legislative Analyst  
Deborah Friedman, Legislative Analyst**

**Office of Policy & Legal Analysis  
Rooms 101/107/135, 13 State House Sta.  
Augusta, Maine 04333  
(207)287-1670**

**Members:**

**Rep. Jack L. Libby, Chair  
Rep. Thomas M. Davidson  
Rep. David C. Shiah  
Rep. Ernest C. Greenlaw  
Gerry Prentice  
Lucinda White**



## TABLE OF CONTENTS

	Page #
Executive Summary	i
I. Introduction	1
A. Inception of the Study	1
Chart 1	2
B. Study Charge	6
C. Methodology	6
II. Background	7
A. Secondary Research Information	7
B. Other States	12
C. The System in Maine	14
III. Conclusions & Recommendations	16
A. Changes in the minimum container deposit value	16
B. The impact of the returnable container law on municipal solid waste and the corresponding costs of the returnable container laws	17
C. The status of municipal recycling for materials currently covered by the returnable container laws	17
D. The extent of fraudulent redemption and misredemption of beverage containers	20
E. The need for additional licensure and regulation of redemption centers operating in the State	21
F. Beverage container sorting and pickup requirements for redemption centers, distributors and 3rd party agents	22
G. Enforcement, including the responsible agency and penalties	25
Bibliography	
Appendices	
A. Enabling Legislation (Resolves 1995, Chapter 52)	
B. List of Commission Members	
C. List of Invited Witnesses	
D. Recommended Legislation (by all members)	
E. Additional Minority Report Legislation	
F. Statewide Redemption Tracking of Five Companies	
G. Additional Legislation for Consideration	



## **EXECUTIVE SUMMARY**

The Resolve creating the Task Force to Review the Beverage Container Laws was initiated by the Joint Standing Committee on Business and Economic Development, the committee with primary jurisdiction over beverage container deposit laws. Since the 1990 expansion of the bottle bill to cover juice, water and tea containers, the Business and Economic Development Committee has been confronted with numerous complaints and bills proposing changes to the bottle bill. In 1995, after facing 7 such bills, the committee created the Task Force to help resolve some of the major issues identified by the beverage industry.

The Task Force determined at its first meeting that it would not address the question of whether to repeal the bottle bill or the expanded portion of it. Given the severe limits on time and the number of meetings authorized, the lack of required analytical data and the lack of sophisticated analytical expertise, the Task Force decided to focus on methods of improving the existing law rather than examining its repeal.

The Task Force identified overredemption and fraudulent redemption as the major problem requiring resolution. Overredemption occurs when a container for which no deposit has been collected is redeemed in Maine. This may occur when a distributor brings containers into Maine without initiating the deposit, or when a person knowingly collects containers outside the State and brings them into Maine to collect the deposit. The Task Force examined a number of options for resolving this issue, including reducing the deposit from 5 cents to 3 cents per container; licensing businesses involved in implementing the bottle bill, including manufacturers, distributors and redemption centers; increasing enforcement efforts and penalties for violations; and requiring unique container markings for products sold in Maine.

The Task Force also reviewed options for improving the workings of the system, including container sorting and pick-up. Although the system generally works well, redemption centers, distributors and manufacturers all had some complaints as well as suggestions for improvement to tighten up the system.

### **Recommendations**

On the issue of overredemption, the Task Force recommends the following:

- Registration of manufacturers, distributors and third party pick-up agents;
- Licensure of redemption centers, including full-time redemption centers and retailers who accept empty beverage containers and receive a handling fee for sorting and handing over the containers to deposit initiators;

## ii Beverage Container Deposit Laws

- Filing of statements by persons redeeming more than \$50 of containers, certifying under penalty of law that the containers were purchased in Maine;
- Reporting of activity by all segments of the industry to aid in enforcement and analysis of the bottle bill. In the past, only deposit initiators filed reports and they reported only the quantity of deposits collected and refunds given. This proposal requires reporting additional information, including containers sold, names of distributors and 3rd party pick-up agents and numbers of containers picked up.
- Review by the Department of Agriculture, Food and Rural Resources of data available to analyze and evaluate the beverage container deposit laws; and
- Dedication of license fees and fines to pay for improved enforcement efforts by the Department of Agriculture, Food and Rural Resources.

The Task Force believes that these efforts will decrease overredemption. In addition to these efforts, however, the Task Force recommends periodic evaluation of the program, which may help to determine the adequacy of these efforts. The issue of decreasing the deposit from 5 cents to 3 cents, which if believed would reduce the incentive for fraudulent redemption, may need to be considered in the future if these efforts are not enough. One Task Force member recommends reducing the deposit amount immediately.

The Task Force also makes the following recommendations clarifying the obligation of distributors and third party pick-up agents to pick up empty beverage containers from redemption centers and retailers:

- Requiring exclusive distributors to pick up from retail stores to whom they sell products and from all redemption centers in their territory and requiring non-exclusive items to be picked up by the deposit initiator statewide. Currently, exclusive distributors pick up from their retail stores and from redemption centers specifically designated to serve customers of those retail stores. Deposit initiators of products sold through non-exclusive distributorships must pick up from retailers to whom those products are sold and from redemption centers designated to serve those retailers;
- Codifying in statute the requirement, currently contained in department rule, that those who pick up containers pay for them within 10 business days; and
- Adding a requirement that the invoice signed at the time of pick up governs the amount payable to the redemption center or retailer, rather than allowing those who pick up containers to dispute the amounts payable at a later date.

## **I. Introduction**

### **A. Inception of the Study**

On December 31, 1990 juices, iced tea and bottled water were included in Maine's laws regarding beverage container deposits. These additions are generally referred to as the expanded bottle bill. Maine was and is the only state that currently includes these items in its beverage container deposit laws.

Since the inception of the expanded bottle bill the Committee on Business and Economic Development has had at least two bills each year seeking to change or improve various aspects of the law. (See Chart 1 for a description of the bills.) In 1995, seven proposals were brought to the Committee.

Considering this legislative history, particularly that of 1995, the Committee on Business and Economic Development recommended that LD 1345 become a study of the beverage container laws, Resolves 1995, chapter 52 (Appendix A). The document that you are reading is the report of the task force commissioned to conduct that study.



## CHART 1

### A Summary of Legislative Proposals Considered Since the 1990 Expansion of the Bottle Bill

#### 1991:

LD 1497	An Act to Increase Distributor Acceptance of Beverage Containers and to Clarify the Sorting Obligations of Contracted Agents	ONTP
---------	--	------

#### SUMMARY:

This bill provided that if a contracted agent performs the pick-up obligation of a beverage distributor under the returnable container law, the contracted agent is responsible for sorting the beverage containers by brand. The bill also provided that a distributor has the obligation to pick up beverage containers of any kind and size in which a particular brand of beverage is sold even if the distributor does not sell all sizes and kinds of beverage containers of that brand.

LD 1863	An Act to Improve the Returnable Beverage Container Law	PUBLIC 491
---------	---	---------------

#### SUMMARY:

This bill prohibits the use of stickers as the method of affixing the refund value to beverage containers sold through nonexclusive distributorships. This restriction is necessary in order to prevent parties other than the legally authorized initiators of the deposit from determining the amount of, and initiating, the deposit.

#### 1992:

LD 2131	An Act Relating to Unredeemed Deposits	PUBLIC 819
---------	--	---------------

#### SUMMARY:

Currently, Maine law states that if the minimum legal deposit on a container is abandoned it is to be held in trust for the State. Section 1866-A states that the deposit initiator is to pay to the State quarterly 50% of these unclaimed deposits, i.e. those not claimed within 60 days. The remainder becomes the property of the deposit initiator. If the deposit initiator pays out more in refund values than it collects over a 1 year period it is to be reimbursed by the State.

This bill exempts refillable containers from this provision and thereby allows the deposit initiator to retain all abandoned deposits.

House Amendment "A" (H-1123) to Committee Amendment "A" left initiators of deposit of refillable containers subject to current reporting requirements and clarified that all other unclaimed minimum deposits on these containers escheat to the State with 50% being retained by the deposit initiators, except that 100% is retained by initiators of deposits on refillable containers.

House Amendment "C" (H-1197) to Committee Amendment "A" made it clear that deposit initiators for refillable containers retain all unclaimed deposits.

LD 2214	An Act Relating to Exempt Novelty Beverage Containers from the Deposit Laws	ONTP
---------	---	------

**SUMMARY:**

This bill exempted the unclaimed deposits held by a deposit initiator on novelty beverage containers from the amount that the deposit initiator must remit to the Treasurer of State.

**1993:**

LD 97	An Act Regarding the Labeling of Returnable Containers	ONTP
-------	--	------

**SUMMARY:**

This bill required that returnable containers be labeled with the refund value and the word "Maine" or the abbreviation "ME" in letters of not less than 1/4 inch type size.

LD 141	An Act Concerning the Reimbursement of Beverage Container Handling Costs	ONTP
--------	--	------

**SUMMARY:**

This bill reduced the amount that beverage deposit initiators must reimburse the dealer or redemption center for the cost of handling beverage containers from 3¢ to 2 1/2¢ per container.

LD 452	An Act to Amend the Maine Returnable Bottle Bill	ONTP
--------	--	------

**SUMMARY:**

This bill required that persons responsible for the pick up of empty beverage containers pay the dealers and local redemption centers, at the time of pickup, all of the refund, deposit and handling charges related to the beverage containers being picked up. In addition, this bill tied the minimum pickup number at licensed redemption centers to the quantities that are delivered to dealers served by the redemption centers.

**1994:**

LD 1750	An Act to Amend the Labeling Requirement of Containers for the Purpose of Recycling	ONTP
---------	---	------

**SUMMARY:**

This bill required a person who manufactures beverage containers that are over the maximum size requirement for refundable beverage containers to indicate on the beverage container that there is no deposit on the beverage container but that the beverage container is recyclable.

LD 1810	An Act to Strengthen the Maine Bottle Deposit Laws	PUBLIC 703
---------	--	---------------

**SUMMARY:**

The original bill required manufacturers of beverage products to register with the State and identify who will initiate the deposit and collect the empty containers. The bill also increased penalties to \$100 for each container and \$25,000 for each tender of containers for those who knowingly return empty containers not originally sold in the State.

Committee Amendment "A" (H-839) removed the registration provision of the bill and substituted a complaint procedure through the Department of Agriculture, Food and Rural Resources. It also increased

#### 4 Beverage Container Deposit Laws

to \$1,000 the penalty for persons who fail to fulfill their statutory obligation to pick up beverage containers.

Senate Amendment "A" to Committee Amendment "A" (S-605) removed the complaint procedure and the increase in the pick-up penalty from the committee amendment.

#### 1995:

LD 52	An Act Concerning the Labeling of Refundable Beverage Containers	PUBLIC 437
-------	--	---------------

##### SUMMARY:

This bill allowed nonrefillable containers from exclusive distributorships to have their refund value and the state identification indicated by stickers.

Committee Amendment "A" (S-210) qualified the provision in the bill by stating that stickers may be used only on bottles not otherwise marked. The amendment also required redemption centers to accept containers with either form of marking.

LD 385	An Act to Expand Maine's Bottle Law	ONTP
--------	-------------------------------------	------

##### SUMMARY:

This bill added certain plastic containers to the beverage containers that require a deposit and a refund. The containers must be made of HDPE, a recyclable plastic, and must be labeled with those letters.

LD 687	An Act Regarding Unredeemed Deposits on Beverage Containers	The Committee was incorporated into House Amendment "A" (H-628) to LD 706 (Current Services Budget). PUBLIC 368
--------	---	---

##### SUMMARY:

This bill repealed the laws relating to unclaimed beverage container deposits.

These laws require each deposit initiator to keep account of all deposits received and deposits reimbursed. On a quarterly basis, each deposit initiator is required to pay to the State one-half of the difference between deposits received and reimbursed. The law appears to require that at the end of each year the State refund the amount of overredemption to a deposit initiator who has paid out more in reimbursements than has been received as deposits. The Treasurer of State, however, has held by rule that only 50% of the overredemption will be returned to deposit initiators. The Treasurer's rationale for limiting the reimbursement to 50% of the minimum deposit is based upon the fact that the State itself has only received 50% of the unclaimed deposits.

Committee Amendment "A" (H-498) phased out the laws relating to unclaimed beverage container deposits, with the exception of laws allowing for any necessary audit and enforcement activity against deposit initiators who failed to meet their prior statutory responsibilities.

This amendment stated that reimbursements are to be no greater than 50% of over-redeemed minimum deposits and made this retroactive by declaring in the Statement of Fact that this was the original intent of

the Legislature. The amendment further stated that there is no statutory right to any reimbursements for over-redemptions in calendar year 1995.

Senate Amendment "A" to Committee Amendment "A" (S-330) required the Treasurer of State to pay deposit initiators for a maximum of 50% of documented over-redeemed minimum deposits in calendar year 1995, regardless of whether sufficient revenues from deposits collected during calendar year 1995 remain.

LD 700	An Act Concerning Fraudulent Redemptions	PUBLIC 85
--------	--	--------------

**SUMMARY:**

Current law prohibits tendering for redemption more than 240 beverage containers if the person making the tender knows that these containers were not purchased in Maine.

This bill lowered this limit to 48 containers and extended the prohibition to having possession of such containers. It also required that persons tendering more than 240 containers certify that they were purchased in Maine.

Committee Amendment "A" (H-134) removed the possession and certification components of the bill, leaving the revised limit of 48 containers. It added a provision that dealers must post a sign indicating that redemption of containers purchased out of state may be against the law.

LD 789	An Act Allowing Retailers to Limit the Number of Returnables They Accept	ONTP
--------	--	------

**SUMMARY:**

Currently dealers may limit the number of beverage containers that they will accept from one consumer to no less than 240.

This bill limited the number of returnable beverage containers that a retailer must accept from one consumer to 24 containers.

LD 1345	Resolve to Require a Review of the Beverage Container Deposit Laws	RESOLVE 52
---------	--	---------------

**SUMMARY:**

This bill amended the law regarding returnable beverage containers to define 3rd-party pickup agents and impose on them the same requirements imposed on the distributors or manufacturers the agents represent. This bill also clarified the duties of dealers and redemption centers regarding the sorting of containers for return to distributors or 3rd-party pickup agents.

Committee Amendment "A" (H-450) deleted the bill and instead required a task force to study the problems that the expansion of the beverage container laws has appeared to create in the implementation of these laws.

LD 1374	An Act to Increase the Returnable Bottle Fee	ONTP
---------	--	------

**SUMMARY:**

This bill raised the minimum deposit and refund value of beverage containers from 5¢ to 10¢. This bill also raised the minimum deposit and refund value of wine and spirits containers from 15¢ to 30¢.

## **B. Study Charge**

It was the basic intent of the study charge that the Task Force determine ways in which to make the expanded bottle bill function more satisfactorily. The specific issues required to be studied were:

1. Changes in the minimum container deposit value;
2. The impact of the returnable container law on municipal solid waste and the corresponding costs of the returnable container laws;
3. The status of municipal recycling for materials currently covered by the returnable container laws.
4. The extent of fraudulent redemption and misredemption of beverage containers;
5. The need for additional licensure and regulation of redemption centers operating in the State;
6. Beverage container sorting and pickup requirements for redemption centers, distributors and 3rd-party agents; and
7. Enforcement, including the responsible agency and penalties.

The formatting of the major section of this report essentially follows the questions outlined in the previous paragraphs.

## **C. Methodology**

The Task Force was composed of (1) 4 members of the Legislature, two from each major political party; (2) a representative of the Department of Agriculture, Food & Rural Resources, the administering agency; and (3) a representative of the State Planning Office, which has assumed most of the remaining responsibilities of the defunct Maine Waste Management Agency (Appendix B). The enabling legislation called for both houses of the Legislature to be represented. However, no Senator was appointed. The State Planning Office appointed a person from the Office of the Attorney General.

The enabling legislation was emergency legislation and called for appointments to be made within 30 days of the effective date of the legislation which was July 3, 1995 and the Task Force to be convened within 15 days of the adjournment of the First Session of the 117th Legislature, which was June 30, 1995. In actual occurrence, appointments were made August 30th and the first meeting was September 20, 1995.

The final bill as passed called for three meetings with a reporting date of November 15, 1995. Meetings were held September 25, October 4 and October 11 at which time the Task Force decided more meetings were required. A bill was put in and accepted by the Legislative Council requesting that the reporting date be moved back to November 30, 1995 (LR 2599).

In planning the agenda for its meetings, the Task Force was cognizant of the fact that most people charged with administering, enforcing or amending the bottle bill find the State's bottle deposit system and laws very complex and by the fact that with the elimination of the Maine Waste Management Agency and cut-backs in the Department of Agriculture, Food & Rural Resources, there was little state expertise on the subject.

Because of these factors, and, importantly, because the Task Force indicated at a very early stage that it would not be considering the abolishment of the extended bottle bill, the Task Force received virtually all its testimony from the industry, i.e. manufacturers, distributors and redemption centers. This testimony was received initially on a formal basis from invited speakers (Appendix C). In later meetings it took an informal public hearing format with a great deal of give and take. The Task Force would like to thank those industry members who devoted much time and effort to assisting it with its work.

## **II. Background**

### **A. Secondary Research Information**

#### **1. Previous Studies**

The Task Force identified five fairly recent studies that bear upon the issues in this study. Quotations from each study follow:

- a. Solid Waste: Trade-offs involved in Beverage Container Deposit Legislation; United States General Accounting Office, November 1990.

"Existing studies generally conclude that beverage container deposit laws entail additional costs but also benefit the environment. Quantifying a law's potential costs and benefits with a high degree of confidence is unlikely.

Although deposit systems can divert potential revenue away from curbside recycling programs, most states with a deposit law have found that local curbside programs can coexist with deposit systems. Curbside and deposit systems in combination are more costly than either is alone, but deposit systems' costs are borne primarily by the beverage industry while curbside

program costs are borne by municipalities. As landfill disposal costs increase, a dual curbside/deposit system becomes more cost-effective for municipalities.

We believe that the desirability of national beverage container deposit legislation is essentially a public policy decision in which value judgments must be made about the trade-offs between costs and environmental benefits.”

b. An Economic & Waste Management Analysis of Maine's Bottle Deposit Legislation; Maine Agricultural Experiment Station, University of Maine, April 1991. (A report for the National Food Processors Association)

“One important aspect of the system is whether the beverage is distributed under an exclusive distributorship. Beer, soda, and wine are distributed primarily through private, exclusive distributorships. The many products included under the “juice” category are sometimes distributed by several distributors within the same geographic area.

The non-overlapping territory of the exclusive distributorships allows the distributors to easily identify which UBCs they are responsible to collect. For the most part, beverages are redeemed within the same region that they are purchased. Thus, the beer/soda distributors can assume that the UBCs in their territory were initially distributed through them. This is important since the collector of the UBCs (the distributor in this case) pays the redeemer eight cents per unit, five cents for the deposit that has been paid to the consumer and three cents for UBC handling.

Since many of the juices are not distributed through exclusive distributorships, the juice distributors are reluctant to initiate the deposit. Thus, for most of the juice products, the deposit is initiated by the manufacturer, who is then responsible for UBC collection. Most juice UBCs are collected by “third-party pick-up”, the collection of UBCs by an independent agent under contract.

In return for the 3-cent handling fee, retailers and redemption centers must sort redeemed UBCs. For beer/soda the sorting requirement has always been by distributor, material type, and size. Unfortunately, the sorting for expanded bottle bill items is more complicated and some controversy exists. The law states that the sorting required is by distributor and material only. Some redeemers of UBCs, however, are performing the additional sorting of UBCs by manufacturer, beverage type, container size, and container type. Since there are a large number of juice and juice-product manufacturers and container sizes and types, this level of sorting

results in significant labor, sorting space, and time to fill the minimum number of cases for pick-up.

Maine's bottle deposit legislation has had a significant impact on recycling.

With only minor exceptions, all UBCs redeemed are recycled.

Many municipalities are starting their own curbside or drop-off recycling programs. For the case of "no bottle bill," the curbside program recycled 1,928 tons at \$41 per ton. For the case of the "original bottle bill," the curbside and original bottle bill combined recycled 2,593 tons at \$294 per ton. For the case of the "expanded bottle bill," the curbside and expanded bottle bill recycled 3,081 tons at \$300 per ton. Combined, municipal recycling efforts and a bottle bill will capture a larger quantity of recyclables. The cost of the combined systems, however, is much greater. There are many advantages and disadvantages to the original and expanded bottle bills. At the manufacturing level the bottle bill requires additional container labeling, extra supplies, extra storage area, and an increase in administrative costs. For the deposit initiator, there is the problem of collection and security.

Grocery stores have cited numerous problems including sanitation, lack of adequate storage space for redemption, and labor training and redemption scheduling problems.

The bottle bills are expensive to consumers. This lower-level cost is estimated to equal 5.7 cents per container for beer/soda and 7.5 cents per container for wine/liquor and juices.

There are three major advantages of the bottle bills. First, they substantially reduce the quantity of beverage containers that are littered. Second, the redemption incentive ensures a high redemption rate. And third, bottle redemption has helped boost the overall recycling attitude of consumers. In short, although expensive, bottle bills are an effective means of recycling."

c. Bottle Bills & Curbside Recycling; Congressional Research Service; January 27, 1993.

This report compares the merits of curbside and deposit programs and concludes that:

- “ • Comparisons between the two systems are difficult to make.
- The two methods are not designed to serve exactly the same purposes.



- Deposit systems collect more of their target materials than do curbside programs.
- The materials collected by deposit systems are generally of a higher quality.
- Deposit-refund systems cost more to operate on a per-ton-collected basis. These additional costs are internalized in product prices. Curbside systems, while costing less, depend on tax revenues, making the ability to maintain or expand levels of curbside service dependent on local government budgets.
- Deposit systems “skim” potential sources of revenue from curbside programs, but they also reduce operating costs of curbside collection and processing.
- Studies suggest that local governments would achieve a greater diversion of solid waste from disposal at a lower cost per ton if both a bottle bill and a curbside collection program were in place.”

d. Beverage Container Redemption Laws; California Futures, March 1993.

“The provisions which we regard as necessary to continuously attaining 70-90 percent recycling, at the lowest cost per container, are as follows:

- Redemption value of at least 2-cents
- Central deposit fund, to minimize handling costs
- Privatized administration, to minimize administration costs

Provisions of note which are not included because they violate the least-cost criteria and are not vital to the attainment of 70 percent redemption, are as follows:

- Mandated retailer refunds or redemption centers
- Handling fees or processing fees

e. Beyond the Original Bottle Bill, Northbridge Environmental Management Consulting, Oct-Nov, 1994. (A report for the Grocery Manufacturers Association of America)

- “• The expansion affects far fewer containers and much less of the wastestream than originally thought. Containers covered by the expansion account for approximately 15,000 tons of municipal solid waste, just over 1 percent of total Maine municipal solid waste. About 13,500 tons of that total is collected through the deposit program.
- Costs to collect containers under the expansion are much higher than for traditional deposit programs (i.e., those covering beer and soft

drinks) and much higher than costs for drop-off or curbside programs. High collection charges (as high as 30¢ per container in some cases) and a high handling fee (3¢ per container) account for these high costs.

We estimated the average cost at over \$300 per ton of solid waste collected; for plastic and aluminum containers, the cost per ton is over \$1,000 and \$4,000 respectively.

- Operationally, the expansion has encountered numerous implementation problems such as “overredemption” (greater than 100 percent of containers sold being returned for refund). This overredemption is caused by both fraudulent redemption of containers and by firms’ inability to initiate deposits on all containers sold in Maine.

These implementation problems stem from the program’s attempt to regulate products sold through non-exclusive distribution channels (e.g., many juices, fruit drinks, and bottled water).”

f. Preliminary Analysis: The Cost & Benefits of Bottle Bills, Tellus Institute, January, 1995. (A report for the United States Environmental Protection Agency)

“A consistent and discouraging finding was that the available data and published studies are almost entirely incomplete and/or out of date.

Based on the latest available (mid-1980s), we estimate that the cost of the traditional redemption system to the private sector is 2.9 cents per redeemed container. We believe that published studies have often erred in assuming unrealistically high wages for retail workers.

Streamlined sorting and record-keeping requirements in California reduce the costs of redemption in that state’s unique deposit system. Adjusted for comparability with traditional systems, the California system would have a net benefit of 0.5 cents per redeemed container.

Any losses to municipal waste management systems as a result of traditional bottle bills can be eliminated by allowing local recycling programs to claim the refunds for deposit containers they recycle.

Litter reduction, although poorly documented, appears to be substantial in bottle bill states.

Elevated recycling rates due to bottle bills reduce many types of air and water pollution, including greenhouse gas emissions.

We estimate an annual net cost to industry and government of either \$12.06 or \$7.90 per capita under the traditional approach, versus a net benefit of \$2.08 under the California approach.

In California, the state rather than the individual bottlers is responsible for the deposits, and for handling the empties.”

## B. Other States

Source: Beverage Container Deposit Systems in the 90's. Container Recycling Institute, March, 1993.

### 1. Types of Beverages

As of the end of 1992, 10 states had beverage container deposit system laws. The breakdown of beverages affected is as follows:

	# States
Beer	10
Soft Drinks	10
Mineral Water	6
Malt	4
Wine Cooler	3
Liquor	3
Carbonated Mineral Water	3
Canned Cocktails	1 (Michigan)
Soda Water	1 (New York)
Juice	1 (Maine)
Water	1 (Maine)
Tea	1 (Maine)

## 2. Deposit Value

All deposits are 5¢ except the following:

Maine	Wine/Liquor	= 15¢
California	Less than 24 ozs.	=2.5¢
Michigan	Non-refill	=10¢
Oregon	Standard refill	=3¢
Vermont	Liquor	=15¢

A breakdown of handling fees is as follows:

	# States
3¢	2 (Maine, Vermont)
2¢	4
1¢	1
None	1
Other	8

## 3. Redemption Rate

Maine reports its redemption rate by type of beverage. New York is the only other state that does so. Redemption of beer/soft drinks in Maine was 92% and in New York approximately 73%. Juice redemption in Maine was 75%. (Source: Beverage Container Deposit Systems in the 90's, Container Recycling Institute, March, 1993.)

## 4. Redemption Infrastructure

All states utilize retail stores for redemption, except California which has only state certified redemption centers. Seven states have redemption centers in addition to retailers, with Vermont's being state certified.

## 5. Unclaimed Deposits

Unclaimed deposits are retained by the distributor/bottler in 7 states including Maine, effective January 1, 1996. In the other 3 states these deposits are handled as follows:

California - Program administration and grants to non-profits

Massachusetts - Retained by state

Michigan - 75% for environmental, 25% for handling fee

#### 6. Curbside recycling

In 1992 Maine had curbside recycling serving 14% of the population. Four other beverage deposit states report this data. The average is 31% and the range 44% to 20%.

#### 7. Administration

Maine's program is administered by the Department of Agriculture, Food & Rural Resources. Of the nine states reporting, three states have the Department of Environmental Protection as the administering agent. Three have the Department of Conservation or Natural Resources. Oregon utilizes the Liquor Control Commission and Vermont "the Industry", with oversight by the Natural Resources agency.

#### 8. Detailed analysis of the law

The Task Force did not conduct a detailed analysis of the laws on all other states. However, it is worthy of note that Vermont has a law which prohibits the sale of a deposit marked container that is also sold in other contiguous states which do not offer a deposit on that container.

### C. The System in Maine

The workings of the bottle bill differ for the various beverage types. One important aspect of the system is whether the beverage is distributed under an exclusive distributorship. If a beverage is distributed with an exclusive distributorship, then, within a given geographic area, the beverage is distributed by a sole company. Beer, soda, and wine are distributed primarily through private, exclusive distributorships. Liquor is a special case, where the state controls all distribution and sales of the product, yet it is still an exclusive distributorship. The many products included under the "juice" category are sometimes distributed by several distributors within the same geographic area.

The deposit initiation and the collection of used beverage containers (UBCs) also varies by beverage type. For the original bottle deposit beverages (beer/soda), the distributors initiate the deposit and collect the UBCs. The primary method used to collect the beer/soda UBCs is "reverse distribution," which involves collecting UBCs from retail outlets following delivery of product. After beverages are moved into the stores, UBCs are loaded onto the truck. These trucks also may visit redemption centers along their routes to collect their UBCs.

The non-overlapping territory of the exclusive distributorships allows the distributors to easily identify which UBCs they are responsible to collect. For the

most part, beverages are redeemed within the same region that they are purchased. Thus, the beer/soda distributors can assume that the UBCs in their territory were initially distributed through them. This is important since the collector of the UBCs (the distributor in this case) pays the redeemer eight cents per unit, five cents for the deposit that has been paid to the consumer and three cents for UBC handling.

Since many of the juices are not distributed through exclusive distributorships, the juice distributors were reluctant to initiate the deposit. Thus, for most of the juice products, the deposit is initiated by the manufacturer, who is then responsible for UBC collection. Most juice UBCs are collected by "third-party pick-up", the collection of UBCs by an independent agent under contract.

UBCs are redeemable at the place where the beverages were purchased, or at redemption centers. Although few exercise the option, retailers are allowed to limit redemption hours or direct the redemption of their returned containers to a near-by redemption center. In return for the 3-cent handling fee, retailers and redemption centers must sort redeemed UBCs. For beer/soda the sorting requirement imposed by department rule has always been by distributor, material type, and size, (e.g., 2-liter plastic bottles for each distributor, 12-ounce aluminum cans for each distributor, etc.). Unfortunately, the sorting for expanded bottle bill items is more complicated and some controversy exists. The department rule states that the sorting required is by distributor and material only. Some redeemers of UBCs, however, are performing the additional sorting of UBCs by manufacturer, beverage type, container size, and container type (e.g., glass bottle versus can). Since there are a large number of juice and juice-product manufacturers and container sizes and types, this level of sorting results in significant labor, sorting space, and time to fill the minimum number of cases for pick-up.

One variation to the above plan involves the redemption of UBCs at large retail grocery stores. Some stores have purchased "reverse-vending" machines as well as glass crushers. Reverse-vending machines are machines in which customers insert aluminum cans and plastic bottles. These machines electronically scan the container's product code (to ensure a record of quantity of each beverage container redeemed) and then partially crush and store the UBCs. Glass UBCs are scanned manually by store personnel and then crushed according to color. The UBC material from these stores is then hauled to one of three Maine UBC-processing centers for further processing in preparation for shipment to recyclers.

### III. Conclusions & Recommendations

This section follows the order of the study subjects listed in the enabling legislation.

#### A. Changes in the minimum container deposit value

##### 1. Findings

The Task Force very quickly identified misredemption as the major problem facing the regulation of beverage containers. The principle cause appears to be manufacturers selling Maine marked containers in other states, for which no Maine deposit is initiated. Two problems result. First, a person may either knowingly or unknowingly break the law by bringing the empty containers to Maine for redemption. A second problem is the failure of out of state distributors to initiate any deposit on product that is sold in Maine. These problems are particularly severe for the extended bottle bill items, i.e. juice and tea, which are handled by a number of distributors, some out of state. In order not to require production or stocking of double inventories the manufacturer bottles all product in Maine marked containers.

There was considerable interest in reducing the value of misredemption by cutting the deposit to 3¢, cutting the handling fee to 2¢ or cutting the combination of the two to 6¢. The following other arguments were made to support the idea of a 5¢ to 3¢ reduction in the handling fee:

- a. Consumers will benefit because the actual cost of purchasing beverages will decrease 2¢ per unit or 48¢ per case. ( $24 \times 2¢ = 48¢$ )
- b. A reduction of 48¢ per case in the actual costs to purchase beverages in Maine will make Maine more competitive with the price of beverages in New Hampshire.
- c. There will be less incentive to purchase beverages in New Hampshire, consume them in Maine, return them for deposit in Maine and end up in Maine's Waste Stream.
- d. This 2¢ reduction in the unit deposit (from 5¢ to 3¢) will free up \$9,000,000 for the increased in-state purchases by Maine's consumers.
- e. Redemption centers would benefit from this reduction in deposit from 5¢ to 3¢ per unit because they would be tying up less capital while waiting for the distributors' reimbursement. Redemption outlets gross return on investment would increase to 100%. Furthermore, they would still receive

the 3¢ handling fee for their sorting and the 3¢ deposit reimbursement they pay to the consumer.

f. Beverage wholesalers would benefit because, if they redeem a container that was purchased in New Hampshire, Massachusetts, Vermont, Connecticut or other deposit states, they would not be paying out 8¢ per unit for the fraudulent return, they would be paying out only 6¢ (3¢ deposit plus 3¢ handling fee). Importantly, this has a very significant positive impact on companies that are over-redeeming a large number of empties because of the expanded bottle bill.

g. The State of Maine will see increased tax revenues. Increases of in-state sales will generate increased excise tax collections on beer, increased sales tax collections on beer and soft drinks, non-carbonated beverages, and increased corporate tax collections.

## 2. Recommendations

The Task Force was impressed by these arguments. However, the majority were concerned with a possible reduction in the rate of redemption, the use of cumbersome number of cents (3¢) and the deviation from the universal 5¢ rate in neighboring states, and decided to recommend that the results of their other recommendations be evaluated before recommending this reduction. One member, however, submitted a minority report recommending this change for all containers. (See Appendix G)

### **B. The impact of the returnable container law on municipal solid waste and the corresponding costs of the returnable container laws, and**

### **C. The status of municipal recycling for materials currently covered by the returnable container laws**

#### 1. Recommendation

The Task Force considered (1) the data available, (2) the time available, (3) the money available for obtaining the sophisticated analysis needed for this issue, and (4) the free expertise available for analysis and concluded at its first meeting that it could not address the issues posed by these questions, issues which basically question whether the extended bottle bill should be repealed.

In spite of this decision, several manufacturers presented testimony opposed to the extended bottle bill. The Task Force concluded from this testimony from manufacturers of the cost of the program to them that a study dealing with the issues in sections B and C should be conducted, but only after sufficient time has passed for the recommendations contained in this report to



be assessed. While recommending that the actual evaluation should be postponed, the Task Force feels it is very important to begin collection of the data necessary for such an evaluation at the earliest possible moment. Importantly it should be noted that Task Force proposals regarding needed information would require additional sorting of containers. This proposal ran into considerable industry opposition based on the cost of this sorting.

The Task Force is also recommending that the Department of Agriculture, Food and Rural Resources conduct a study into what reports are needed for evaluating success of the extended bottle bill and the least expensive way of obtaining them, including the use of sampling and inmate labor. Results are to be reported to the Committee on Business and Economic Development.

## 2. Support Information

- a. Because the Task Force is proposing an eventual evaluation of the extended bottle bill, testimony is included on that subject both to support the recommendation and as background for those designing such a study.

### (1) In Favor of Continuing the Extended Bottle Bill

The following testimony was given in favor of the expanded bottle bill:

The Task Force heard testimony from redemption centers that if just the “expanded” portion of the bottle bill were repealed:

- An estimated 16,500 tons of glass, aluminum, steel and plastic containers would reenter the waste stream. Whether those materials are buried, burned or recycled, the management of an additional 16,500 tons of waste will cost local governments and taxpayers between \$.4 million and \$.3 million annually.
- Maine’s statewide 33% recycling rate would drop by nearly 2 percentage points.
- Dozens of small family-owned redemption centers would be forced out of business and hundreds of jobs would be lost.

The position of the Maine Municipal Association is as indicated below (It should be noted that individual municipalities did not testify based on the Task Force’s assurance that the extended bottle bill would not be discussed):

- The “bottle bill” achieves a 75% to 98% recycling rate. Without a deposit system we would expect a significant amount of returnable containers to enter the municipal solid waste stream to be landfilled.
- The bottle bill diverts approximately 48,000 tons annually from the municipal solid waste stream.
- Municipalities associated with regional solid waste facilities are facing unprecedented cost increases as a result of the U.S. Supreme Court decision in C&A Carbone v. Town of Clarkstown, 1145 Ct. 1677, 128 L.Ed.399 (1994), that resulted in the loss of municipal authority over the flow of municipal solid waste.
- Municipalities are examining several options to reduce the cost of solid waste disposal. Recent studies suggest the pay-per-bag method of disposal is considered the most successful in reducing the volume of solid waste. The pay-per-bag method of disposal offers a financial incentive to recycle and provides user equity. Residents who produce less disposable trash and chose to recycle benefit from lower cost. The advantage of this policy decision is that user equity is realized as households pay according to the amount of solid waste they chose to “throw away” or recycle. The bottle bill already offers the same user equity and financial incentive at no cost to non-users and property tax payers.
- There is general agreement within the municipal recycling community that the redeemable bottle system is an expensive method of recycling; however other methods of recycling are similarly expensive and shift the cost from the consumer onto the property tax. Any discussion of repeal of the existing law is incomplete without consideration of a plan to recycle beverage containers without increasing municipal budgets or solid waste disposal fees.

## (2) Against Continuing the Extended Bottle Bill

### (A) Veryfine Foods

“There is an enormous incentive for traditional wholesalers and distributors to consider “beating the system”. Beating the system means, not reporting Maine sales to Veryfine Products, Inc. (initiator of the deposit), thereby enabling our company to collect the deposit on the front-end. Also, because this potential for product diversion exists, none of our distributors located within Maine (16 total, was 30 in 1993) will pay third party collection fees or handling fees as they fear being placed at a competitive

disadvantage with the 533 Veryfine distributors in neighboring states.

The net result is that Veryfine Products, Inc. has incurred a bottom line margin hit of \$1,390,000 since 1991! We wish to do our share, but we can't afford to continue doing "business" this way."

(B) Coca-Cola Foods (Minute Maid Juices and Hi-C)

- "(i) Our case volume is down at least 30% due to loss of packaging options.
- (ii) Our costs are higher by 12.4 to 17.4 cents per container due to handling fees and pick-up charges; costs that will ultimately be paid by the citizens.
- (iii) Over-redemption (be it out-of-state empty containers redeemed in Maine or multiple redemption of uncrushed containers, or illegal sales for which no deposit was collected) is driving costs up substantially. Redemptions were 142% of deposits collected in 1993, 281% in 1994, and 126% through the first six months of 1995.
- (iv) It is not profitable for us to maintain a single-serve package under the deposit law."

b. Relative to the need for reports it is worth noting the following quotes from an article in a November, 1995 Maine Times "Beverage Industry Controls the Data: Does It Have the Votes?" which quotes two Maine legislators as follows: "When you have an industry that is being regulated and also has a monopoly on information, it obviously impairs your ability to make a decision," "Trying to obtain accurate information to gauge the bottle bill has always been an uphill battle," and "I would like to challenge the industry on that claim, but I lack the necessary data."

**D. The extent of fraudulent redemption and misredemption of beverage containers**

**1. Findings**

The Task Force received considerable information on overredemption and was convinced by it that overredemption is a major problem. Some of this information is in section 2 (a) preceding. The Task Force did not have the time or expertise to evaluate the specific accuracy of the data presented and believed that there was not a tremendous amount to be gained by putting one definite figure on the volume of overredemption.

The Task Force determined that overredemption came from the following causes:

1. Producer/Initiator ships product into Maine without reporting to the State Treasurer. If a deposit was collected on the container, but the sale was not reported, this will appear in Treasury Department records to be overredemption, although in reality it is not. If no deposit was collected, this will actually result in overredemption.
2. Producer/Initiators ship Maine marked \$.05 deposit product into New Hampshire and other nearby states. A consumer may purchase the container in the other state and redeem it in Maine. Because no deposit was collected, the deposit initiator must pay out of his own pocket.
3. The third area of fraudulent redemption occurs when a redemption center knowingly accepts a pick-up truck full of containers marked for Maine deposit. These containers were never sold or consumed in Maine. These containers come from New Hampshire or farther. This constitutes a fraudulent redemption.
4. The other possible leak in the system causing over redemption is reverse vending. A similar UPC marked container to a \$.05 Maine container being put through a machine is probably a small source of the problem

The Task Force did not have the data required to prioritize these causes.

**E. The need for additional licensure and regulation of redemption centers operating in the State.**

1. Findings

The Task Force felt that some form of registration was desirable for the following reasons:

- a. To enable the administering agency to better keep track of those in the industry.
- b. Through threat of revocation, to add an additional possible penalty for not conforming to the beverage container statutes and rules.
- c. To raise funds for better administration, enforcement and periodic evaluation.

2. Recommendation

- a. That redemption centers including retailers that receive the handling fee, be licensed and that manufacturers, distributors and 3rd party agents be registered.
- b. That persons tendering more than \$50 worth of containers be required by the redemption center to certify that they were purchased in Maine.
- c. That manufacturers and distributors that exacerbate the overredemption problem by selling Maine-marked containers in another state pay a higher registration fee than those manufacturers who have specially marked Maine containers.
- d. That all segments of the industry be required to report the number of containers sold and redeemed; in the case of manufacturers, the names of distributors and 3rd party pick-up agents; and, in the case of distributors and 3rd party agents, the territory, the brands of products for which a deposit is initiated or pick-up contracted for. Currently, the only reporting requirement is for deposit initiators and requires a report on information on the total number of deposits paid to, refunds paid from, and income earned on its deposit transaction account. (See Section III, subsection C, paragraphs 1 and 2b for further discussion of reporting)

### 3. Detail of Recommendation

The term “licensing” was chosen for redemption centers because certain qualifications will be required for the license, e.g. ability to conform with the laws, sanitation and adequate space. The other industry segments would require no qualifications and, thus, the term registration is used.

Fees are to be set by the Department of Agriculture, Food & Rural Resources not to exceed \$300 for manufacturers and distributors and \$150 for redemption centers and 3rd party agents. Manufacturers who sell containers in other states with markings indicating a Maine redemption value will pay an additional fee of \$200, in recognition of the additional regulation burden caused by such sales. As mentioned previously in this report, Vermont forbids such sales. (See II, B, 8.) However, the Task Force understands that law has not been enforced and was unsure how it realistically might be enforced.

## **F. Beverage container sorting and pickup requirements for redemption centers, distributors and 3rd party agents**

### 1. Findings

The Task Force finds that changes are necessary in sorting and pickup requirements to make the program function more efficiently and that these

changes should alleviate considerably the misredemption problems being experienced.

## 2. Recommendations

- a. Require redemption centers to accept all beverage containers except discontinued containers as defined by rule, containers not sold in the area, containers for which there is inadequate pickup and dirty containers.
- b. Require distributors of exclusive territory products to pick up containers at all redemption centers in their territory.
- c. Require redemption centers to tender fully and properly sorted bags of containers to distributors.
- d. Make third party agents liable for a violation to the same extent that the contracting manufacturer would be.
- e. Allow a dealer to designate a redemption center to assume the dealer's redemption obligation.
- f. Set a minimum number of containers which a deposit initiator must pick up.

## 3. Other Options

The following are other options considered by the Task Force and the reasons for rejecting them:

- a. Have consumers return containers to recycling centers, sorted by material, not by brand.

This would not appear to be workable under the current system. Fundamental to the current system is the concept that the deposit initiator is entitled to an accurate accounting of the number of containers redeemed. If all containers of one material are co-mingled, then the deposit initiator will not receive an accurate accounting.

- b. Pay on the basis of co-mingled rates based on an annual sampling.

Such a system would allow for a substantial reduction in the handling fee since that fee exists, in large part, to compensate for the cost of sorting containers. However, there are questions such as the effect on a deposit initiator losing market share and new entrants, which the Task Force did not have time to address.

- c. Give distributors greater freedom, within limits, to set sorting requirements.

The purpose of this would be to give manufacturers who sell through exclusive distributors an idea of their sales. Redemption centers objected to this on the basis of cost of the sort.

The Task Force is recommending that the Department of Agriculture, Food & Rural Resources determine an economical way of obtaining this data.

- d. Prohibit 3rd party agents from requiring sorting by brand. Treat same as distributors.

The Task Force considered that the issue is not sorting by brand, but by deposit initiator. The system must report back to the manufacturers their return data. They identified a number of questions but came to no conclusions on this issue. Some of the questions follow.

If it is concluded that manufacturer sorting by redemption centers is the only effective way to report return rates to the manufacturers, then perhaps a more equitable fee arrangement could cover the discrepancy in sorting between distributors and 3rd party pickup agents. Maybe some manufacturers would consider allowing qualified redemption centers to haul empties to the recycle facility, audit there, and provide their own billing, for the same fee the manufacturer is currently paying. Maybe for more competitive rates? In either case it needs to be determined whether the intent of the Legislature was for the expansion to have redemption center sorting by as many as 80 manufacturers compared to as few as 12 distributors.

- e. Require distributor to pick up all items of a brand sold even if that item is not sold by the distributor.

This suggestion came up very late in the study and the Task Force was unable to properly address it.

- f. Prohibit retail dealers from purchasing products from unregistered distributors or manufacturers. -- Members of the Commission disagree with this recommendation. Several members had interest in this but it came up too late in the study for a consensus to be reached. (See Appendix I for suggested draft of this legislation)

**G. Enforcement, including the responsible agency and penalties****1. Findings**

Current law gives administrative authority over the bottle bill to the Department of Agriculture, Food and Rural Resources, but currently there is no one person in the department whose sole responsibility is the bottle bill. Within the department are 2 staff people who assist with bottle bill issues, but whose primary assignment is to travel throughout the state performing food law inspections. Industry members and Task Force members are concerned that, despite the diligent efforts of these staff members, more active enforcement of the bottle bill is needed.

The current law also directs the State Police to enforce one specific portion of the law, the prohibition against possession of unmarked containers. This law has been viewed by some as prohibiting, or at least discouraging, other law enforcement officials from becoming active in enforcing the bottle bill.

**2. Recommendations**

The Task Force believes, first, that the Department of Agriculture, Food and Rural Resources needs to have staff members assigned solely to enforcement of the bottle bill. The Task Force identified license and registration fees as a source of revenue for providing staff for bottle bill enforcement. After reviewing financial information, the Task Force felt confident that the proposed license and registration fees for manufacturers, distributors, third party pick-up agents and redemption centers would provide enough funds to pay costs of staff who could make administration of the bottle bill their prime focus.

The Task Force also recommends broadening the category of persons authorized to enforce the law, to ensure that all law enforcement officials have the responsibility to enforce the law. In addition, the Task Force recommends enabling trained staff of the department to bring cases to court, similar to the authority granted to certain other departments. Employees of the Department of Environmental Protection, for example, can represent the department in civil cases in District Court, provided they have the proper training in court procedures. This enables the department to prosecute violations without depending on attorney time from the Office of the Attorney General.

Some Task Force members also suggest that the Legislature consider the possibility of enabling businesses to sue other businesses whose practices under the beverage container laws cause economic damage. One possibility would be allowing a business, such as a manufacturer, to sue another business such as a



distributor who is not in compliance with deposit collection obligations under the Maine Unfair Trade Practices Act. Currently, only the Attorney General or individuals can sue businesses under this Act. The Task Force did not take a formal vote on this idea due to a lack of time, but some members wished to convey interest in this concept to the Legislature. Statutory language to implement this change is included in Appendix I.

## BIBLIOGRAPHY

California Futures, March 1993. Beverage Container Redemption Laws.

Congressional Research Service, January 1993. Bottle Bills & Curbside Recycling.

Container Recycling Institute, March 1993. Beverage Container Deposit Systems in the 90's.

Dakin, Dennis J., Veryfine Products Inc., September 1995. Maine Deposit Law Study Group.

Fortin, Daniel, General Manager, Returnable Services, Inc., Augusta, Maine. Statewide Redemption Tracking of Five Companies.

Maine Agricultural Experiment Station, University of Maine, April 1991. An Economic & Waste Management Analysis of Maine's Bottle Deposit Legislation. (A report for the National Food Processors Association)

McDaniel, Robert G., Coca-Cola Foods, September 27, 1995. Testimony to the State of Maine Beverage Container Task Force.

Northbridge Environmental Management Consulting, Oct-Nov 1994. Beyond the Original Bottle Bill. (A report for the Grocery Manufacturers Association of America)

Tellus Institute, January 1995. Preliminary Analysis: The Cost & Benefits of Bottle Bills. (A report for the United States Environmental Protection Agency)

United States General Accounting Office, November 1990. Solid Waste: Trade-offs involved in Beverage Container Deposit Legislation.



## **APPENDIX A**

### **ENABLING LEGISLATION (Resolves 1995, Chapter 52)**



APPROVED

CHAPTER

JUL 3 '95

52

BY GOVERNOR

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-FIVE

H.P. 956 - L.D. 1345

**Resolve, to Require a Review of the Beverage Container  
Deposit Laws**

**Emergency preamble.** Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, since the addition of many items to Maine's beverage container deposit laws in 1989, the Legislature each year considers many bills concerning the functioning of these laws; and

Whereas, it is felt to be desirable to take the time necessary to have a comprehensive review of these laws; and

Whereas, the issues to be considered are so numerous and controversial that it will not be possible to resolve them by the next regular session of the Legislature unless this review is authorized on an emergency basis; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Creation and charge. Resolved:** That the Task Force to Review the Beverage Container Deposit Laws, referred to in this resolve as the "task force," is established. The task force is charged to review all aspects of the beverage container deposit laws and to report to the Legislature; and be it further

**Sec. 2. Membership. Resolved:** That the task force consists of 6 members as follows:

1. Two members of the Joint Standing Committee on Business and Economic Development and 2 members of the Joint Standing Committee on Natural Resources, chosen jointly by the President of the Senate and the Speaker of the House so that both houses of the Legislature are represented;

2. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's designated representative; and

3. The Director of the State Planning Office or the director's designated representative.

All appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. The Executive Director of the Legislative Council shall contact those authorities who have not made their appointments as of the required date; and be it further

**Sec. 3. Convening. Resolved:** That the Chair of the Legislative Council shall call the task force together for its first meeting no later than 15 days after adjournment of the First Regular Session of the 117th Legislature. If the first meeting is not called within the assigned time, the Governor shall call the first meeting for a date no later than 10 days after the initially required date. It is not necessary for all members to be appointed in order for the task force to meet. A quorum consists of a majority of those appointed; and be it further

**Sec. 4. Chair. Resolved:** That the senior appointed Legislator in legislative experience shall act as chair of the first meeting. The task force shall select a permanent chair from among the legislative members at the conclusion of the first meeting; and be it further

**Sec. 5. Study subject. Resolved:** That the task force shall study the beverage container deposit laws with the purpose of recommending to the Legislature how those laws might be amended to improve the program for all interested parties. In conducting its work, the task force shall study, but is not limited to, the following issues:

1. Changes in the minimum container deposit value;

2. The impact of the returnable container law on municipal solid waste and the corresponding costs of the returnable container laws;

3. The status of municipal recycling for materials currently covered by the returnable container laws;

4. The extent of fraudulent redemption and misredemption of beverage containers;

5. The need for additional licensure and regulation of redemption centers operating in the State;

6. Beverage container sorting and pickup requirements for redemption centers, distributors and 3rd-party agents; and

7. Enforcement, including the responsible agency and penalties.

In examining these issues, the task force may hold 3 meetings, including the initial organizational meeting. The task force shall hold its last meeting no later than October 15, 1995; and be it further

**Sec. 6. Staffing. Resolved:** That, at the task force's request, the Legislative Council shall provide staffing assistance if the task force has met the deadline for convening and agrees to meet the deadline for its final report; and be it further

**Sec. 7. Compensation. Resolved:** That the legislative members of the task force are entitled to per diem and expenses. Other members are not entitled to compensation; and be it further

**Sec. 8. Report. Resolved:** That, no later than November 15, 1995, the task force shall submit a written report together with any recommended legislation to the Joint Standing Committee on Business and Economic Development with a copy to the Executive Director of the Legislative Council and the Law and Legislative Reference Library. The task force shall make an oral report to the Joint Standing Committee on Business and Economic Development no later than January 30, 1996. The Joint Standing Committee on Business and Economic Development is authorized to report out any legislation during the Second Regular Session of the 117th Legislature concerning the findings and recommendations of the task force.

The task force may take additional time to complete its study beyond the dates specified in this section if necessitated



by a failure of the task force to hold its first meeting on the date specified in this resolve; and be it further

**Sec. 9. Appropriation. Resolved:** That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1995-96

## LEGISLATURE

### Task Force to Review the Beverage Container Deposit Laws

Personal Services	\$660
All Other	1,340
TOTAL	<hr/> \$2,000

Provides funds for the per diem and expenses of legislative members and miscellaneous costs of the Task Force to Review the Beverage Container Deposit Laws.

**Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.

## **APPENDIX B**

### **LIST OF COMMISSION MEMBERS**



**TASK FORCE TO REVIEW THE BEVERAGE  
CONTAINER DEPOSIT LAWS  
(Chapter 52, RESOLVES 1995)**

**MEMBERSHIP**

**Joint Appointments by the President and Speaker**

Representative David C. Shiah  
RR2, Box 3500  
Bowdoinham, Maine 04008  
Home: (207)666-5902

Representative Jack L. Libby  
P.O. Box 147  
Kennebunk, Maine 04043  
Home: (207)985-3323

Representative Thomas M. Davidson  
P.O. Box 446  
Brunswick, Maine 04011  
Home: (207)721-0747

Representative Ernest C. Greenlaw  
P.O. Box 331  
Sebago Lake, Maine 04075  
Home: (207)642-4862

**Ex Officio**

Carl Flora - Replaced by Gerry Prentice  
Department of Agriculture  
28 State House Station  
Augusta, Maine 04333-0028  
Work: (207)287-3871

Lucinda White  
Office of Attorney General  
Designee of the State Planning Office  
6 State House Station  
Augusta, Maine 04333-0006  
Work: (207)626-8800

Sept. 11, 1995



## **APPENDIX C**

### **LIST OF INVITED WITNESSES**



## **List of Invited Witnesses**

### **Beverage Container Task Force**

Richard Collins, National Distribution Manager  
Perrier Group  
Greenwich, Connecticut

Dennis Dakin  
VP Foodservice and Vending Sales  
Veryfine Food Products

Dennis Damon, President  
Mt. Desert Spring Water  
Southwest Harbor, Maine

Gary Hillard, President & Daniel J. Fortin, General Manager  
Returnable Services, Inc.  
Augusta, Maine

Oakley Jones, General Manager  
Coca-Cola of Northern New England  
Treasurer & Past President of Maine Soft Drink Association

Robert McDaniel, Director  
Governmental Affairs  
Coca-Cola Foods  
Atlanta, Georgia

Joseph Mokarzel  
Maine Beverage Container Service  
Portland, Maine

Robert Newhouse, Store Operations Officer  
Bureau of Alcoholic Beverages

Larry Pullen  
Chief Operating Officer  
Seltzer & Rydholm  
President, Maine Soft Drink Association  
Auburn, Maine

Samuel B. Rowse, President  
Veryfine Products, Inc.  
Westford, Massachusetts

Dawn Tully  
The Bottle Shop  
Wells, Maine

Peter E. Welch, President  
RSVP Discount Beverage & Redemption Center  
Portland, Maine





## **APPENDIX D**

### **RECOMMENDED LEGISLATION** **(by all members)**



## APPENDIX D

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

**Sec. 1. 4 MRSA §807, sub-§3, ¶I** is enacted to read:

I. A person who is not an attorney but is representing the Department of Agriculture, Food and Rural Resources as provided in Title 32, section 1982, subsection 3.

**Sec. 2. 5 MRSA §10051, sub-§1** is amended to read:

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

**Sec. 3. 30-A MRSA §4221, sub-§2, ¶A** is amended as follows:

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

- (1) Plumbing inspectors appointed under this section;
- (2) Code enforcement officers, as set forth in section 4452 and in Title 38, section 441;
- (3) Department of Environmental Protection employees, as set forth in Title 38, section 342, subsection 7; ~~and~~
- (4) Maine Land Use Regulation Commission employees as set forth in Title 12, section 685-C, subsection 9; and
- (5) Department of Agriculture, Food and Rural Resources employees as set forth in Title 32, section 1872, subsection 3.

Sec. 4. 32 MRSA §1861, sub-§1 is amended to read:

**1. Beverage.** "Beverage" means beer, ale or other drink produced by fermenting malt, spirits, wine, wine coolers, soda or 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.

Sec. 5. 32 MRSA §1862, sub-§§12-E and 12-F are enacted to read:

**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.

**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 in section 1866, subsection 5.

Sec. 6. 32 MRSA §1863-A is repealed and reenacted to read:

**32 § 1863-A. Refund value.**

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

Sec. 7. 32 MRSA §1863-B is enacted to read:

**32 § 1863-B. Initiation of Deposit**

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

**1. Refillable containers.** For refillable beverage containers, other than wine and spirits containers, the manufacturer shall initiate the deposit.

**2. Nonrefillable containers; exclusive distributors.** For nonrefillable beverage containers, other than wine and spirits

containers, sold through geographically exclusive distributorships, the distributor shall initiate the deposit.

**3. Nonrefillable containers; non-exclusive** For nonrefillable beverage containers, other than wine and spirits container, not sold through geographically exclusive 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. 8. 32 MRSA §1865, sub-§§1-A, 1-B and 2** are 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, subsection 3~~ section 1863-B, 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.

**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, subsection 2~~ section 1863-B, 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.

**2. Brand name.** Refillable glass beverage containers of carbonated beverages, for which the deposit is initiated under ~~section 1863-A, subsection 1~~ section 1863-B, 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. 9. 32 MRSA §1866 is amended to read:

**32 § 1866. Application 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. **Permissive refusal by dealer.** A dealer may refuse to accept from a consumer or other person and to pay the refund value on any beverage container, if the place of business of the dealer ~~and the kind, size and brand of beverage container~~ are is included in an order of the department approving the license of a redemption center under pursuant to section 1867 1867-D, subsection 5.

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

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

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

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

(1) Discontinued beverage containers, as defined by department rule;

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

(3) Beverage containers not sold as filled containers in the area in which the redemption center is located, and for which pick up is not required under subsection 5; and

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

B. A person who tenders beverage containers totalling more than \$50 in refund value on any one business day must sign a statement described in this paragraph. A redemption center must obtain a signed statement from each person who tenders beverage containers totalling more than \$50 in redemption value on any one business day.

(1) The statement must be on a form supplied by the department and must include the name of the redemption center, the total refund value of containers redeemed, and the name, address and signature of the person making the tender of containers. The redemption center must verify the identity of the person completing the form by reviewing the person's motor vehicle operators' license or other photographic identification.

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

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

(4) The department shall produce a separate statement to be completed by a person tendering beverage containers on behalf of a non-profit, charitable organization, when the purpose of the collection and redemption of containers is to raise funds for the organization. The statement must require the person



to give his or her name, the name of the organization and the source of the beverage containers, but must not require the person tendering the beverages to certify that, to the best of that person's knowledge, the containers were purchased in Maine. The statement must also notify the person that filing a false statement is a Class D crime pursuant to Title 17-A, section 453 and subjects the person to a possible fine and term of imprisonment.

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

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

**2-E. Unlawful tender of containers.** A person who tenders to a dealer, distributor, third party pick-up agent, redemption center or manufacturer more than 48 empty beverage containers within 7 consecutive days that the person knows or has reason to know were not originally sold in this State as filled beverage containers is subject to the enforcement action and civil penalties set forth in section 1869, 1867-B, 1867-C and 1867-D. At each location where customers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering containers that were not originally purchased in this State may be subject to a fine of the greater of \$100 per container or \$25,000 for each tender. (32 MRSA Section 1866)."

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

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

A. In addition to the payment of the refund value, the initiator of the deposit under ~~section 1863-A, subsections 1, 2 and 4~~ section 1863-B, subsection 1, 2 and 4 shall reimburse the dealer or ~~local~~ licensed redemption center for the cost of handling beverage containers subject to ~~section 1863-A~~ this chapter, in an amount that equals at least 3¢ per returned container.

B. In addition to the payment of the refund value, the initiator of the deposit under ~~section 1863-A, subsection 3~~ section 1863-B, subsection 3 shall reimburse the dealer or licensed ~~local~~ redemption center for the cost of handling beverage 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 third party pick-up agent.

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

A. A distributor that initiates the deposit under ~~section 1863-A, subsection 2 or 4~~ section 1863-B, subsection 2 or 4 has the obligation to pick up any empty, unbroken and reasonably clean beverage 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 located in the territory in which the distributor sells product designated to serve these dealers pursuant to an order entered under section 1867. ~~--A distributor that, within this State, sells beverages under a particular label exclusively to one dealer, which dealer offers those labeled beverages for sale at retail exclusively at the dealer's establishment, shall pick up any empty, unbroken and reasonably clean beverage containers of the kind, size and brand sold by the distributor to the dealer only from these licensed redemption centers that serve the various establishments of the dealer, under an order entered under section 1867.~~ ~~--A dealer that manufactures its own beverages for exclusive sale by that dealer at retail has the obligation of a distributor under this section.~~ ~~--The commissioner may establish by rule, in accordance with the Maine Administrative Procedure Act, criteria prescribing the manner in which distributors shall fulfill the obligations imposed by this paragraph.~~ ~~--The rules may establish a minimum number or value of containers below which a distributor is not required to respond to a request to pick~~

~~up-empty-containers.--Any-rules-promulgated-under-this paragraph-must-allocate-the-burdens-associated-with-the handling,-storage-and-transportation-of-empty-containers-to prevent-unreasonable-financial-or-other-hardship.--~~

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

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

**5-A. Obligation to make proper tender.** A licensed redemption center must not tender to the person required to pick up empty beverage containers a bag or other unit of empty containers that contains fewer empty containers than claimed or containers of a type other than that which the person performing the pick-up has agreed to pick up or has an obligation to pick up.

~~**8.--Application-to-containers-originally-sold-in-the State.--The-obligations-to-accept-or-take-empty-beverage containers-and-to-pay-the-refund-value-and-handling-fees-for such-containers-as-described-in-subsections-1,2,3,4-and-5 apply-only-to-containers-originally-sold-in-this-State-as filled-beverage-containers.--A-person-who-tenders-to-a-dealer, distributor,-redemption-center-or-bottler-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-is-subject-to-the-enforcement-action-and-civil penalties-set-forth-in-this-subsection.--At-each-location-where customers-tender-containers-for-redemption,-dealers-and redemption-centers-must-conspicuously-display-a-sign-in-letters that-are-at-least-one-inch-in-height-with-the-following**~~

~~information:--"WARNING:--Persons tendering containers that were not originally purchased in this State may be subject to a fine of the greater of \$100 per container or \$25,000 for each tender.--(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.~~

Sec. 10. 32 MRSA §1867 is repealed.

Sec. 11. 32 MRSA §§1867-A through 1867-F are enacted to read:

**§1867-A. Registration and Reporting by Manufacturers**

**1. Registration.** A manufacturer of beverages offered for sale in a beverage container 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 such manufacturers, provided the fee and information required for the purposes of implementing this chapter are collected.

**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:

**A. \$500 for a person who manufactures a beverage that is sold in a state contiguous to this State in a container that is labelled in accordance with section 1865; and**

**B. \$300 for all other manufacturers.**

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

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

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

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

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

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

The department shall determine the timing and form of reporting pursuant to this section.

**4. Suspension, revocation, refusal to renew registration.**

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

5. Violation of registration requirement. A manufacturer who fails to register as required in this section or whose registration is under suspension or revocation commits a civil violation for which a penalty of \$100 per day may be adjudged.

**§1867-B. Registration and Reporting by Distributors**

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

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 \$300.

3. Reporting requirements. Each distributor required to register shall accurately report the following information:

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

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

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

D. The brand name of each product for which the distributor initiates a deposit and which is sold in Maine.

The department shall determine the timing and form of reporting pursuant to this section.

**4. Suspension, revocation refusal to renew registration.**

The department may refuse to renew a registration after providing an opportunity for a hearing in accordance with Title 5, chapter 375, subchapter IV. The department may file an

action in Administrative Court to suspend or revoke the registration of a distributor for violation of this chapter or rules adopted pursuant to this chapter.

5. Violation of registration requirement. A distributor who is not registered with the department, or whose registration is under suspension or revocation commits a civil violation for which a penalty of \$100 per day may be adjudged.

#### **§1867-C. Registration, Reporting and Obligations of Third-party Pick-Up Agents**

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

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.

3. Obligations. A third 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.

4. Reporting requirements. Each third-party pick-up agent must accurately report to the department:

A. The name of each deposit initiator for which that person serves as third-party pick-up agent, the territory served by the agent, and the brand name, size, and type of beverage and material of beverage container the agent is obligated to pick up;

B. The number, type of beverage and material of empty beverage containers collected from dealers or redemption centers for each deposit initiator.

The department shall determine the timing and form of reporting pursuant to this section.

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

5. Violation of registration requirement. A third-party pick-up agent who is not registered with the department, or whose registration is under suspension or revocation commits a civil violation for which a penalty of \$100 per day may be adjudged.

## **§1867-D. Licensing of Redemption Centers**

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

**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.

**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 of the location and operation of the proposed center, and other information determined necessary by the department to evaluate the application.

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

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

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

**C. In compliance with applicable local ordinances;**

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

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

7. Posted lists. A list of the sizes, brand names and material of empty beverage containers that, in accordance with section 1866, subsection 2-C, will not be accepted must be prominently displayed at each redemption center.

8. Suspension, revocation, refusal to renew license. The department may refuse to renew a redemption center license after offering a hearing in accordance with Title 5, chapter 375, subchapter IV. The department may file an action in Administrative Court to suspend or revoke the license of a redemption center for violation of this chapter or any rule adopted pursuant to this chapter. If a license is revoked, the location of the redemption center may not be utilized for a redemption center by any person for the period of the revocation. In addition to powers of the Administrative Court, the department may suspend a license issued under this section as follows.

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

B. If a licensed redemption center accumulates demerit points in excess of the limit for suspension established by the department, the department shall notify the license holder that the license will be suspended effective 10 days after the date notice was sent unless that person requests a pre-suspension hearing.

C. If a hearing is required, the commissioner shall determine, by a preponderance of the evidence, whether a sufficient number of violations occurred to cause accumulation of demerit points justifying suspension. If the commissioner determines that sufficient demerit points were accumulated, suspension becomes effective immediately for a period determined by the commissioner, but not to exceed 90 days. If the commissioner determines that the suspension is not justified, the commissioner shall so rule.

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

## **32 § 1867-E. Dealer Reporting Requirements**

To aid in enforcing this chapter, the department may require dealers to provide the department the name of each distributor from whom the dealer purchased filled beverage



containers. The department shall provide adequate notice of the call for information.

### **32 § 1867-F. Confidentiality of Information**

Reports filed with the department pursuant to this chapter are not public records and may not be made available to the public for inspection. Reports may be made available to law enforcement officials and information contained in the report may be made available to the public in aggregate form in a manner that does not compromise the business competitiveness of any industry member.

**Sec. 12. 32 MRSA §1869 is amended to read:**

### **32 § 1869. Penalties**

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

**2. Separate violations.** Each day that such violation continues or exists shall constitute a separate offense.

**2-A. Registration and licensing penalties.** Violation of this chapter or rules adopted pursuant to it may result in suspension, revocation or non-renewal of a license or registration certificate issued under this chapter in addition to any civil or criminal penalties provided.

**2-B. Related penalties.** Violation of this chapter or rules adopted pursuant to it is prima facie evidence of a violation of the Maine Unfair Trade Practices Act, Title 5, chapter 10.

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

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

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

Sec. 13. 32 MRSA §1869-A is enacted to read:

**§1869-A. Enforcement**

The Attorney General and all other appropriate officials, including the commissioner, shall enforce this chapter and prosecute any persons found in violation. In addition to the authority provided in Title 7, sections 13 and 14, the commissioner, with prior approval of the Attorney General, may initiate a civil action for violation of this chapter. If certified as provided in Title 30-A, section 4221, subsection 2, the commissioner or employees of the department may serve civil process and represent the department in District Court in the prosecution of violations of this chapter.

Sec. 14. 32 MRSA §1871 is amended to read:

**32 § 1871. Rules and regulations**

The commissioner shall, in accordance with the Administrative Code and after a public hearing, adopt, amend and repeal such reasonable rules and regulations as it deems necessary to carry out and interpret the provisions, purposes and intent of this chapter. ~~The department shall have the authority to establish regulations governing local redemption centers which receive beverage containers from dealers supplied by distributors other than the distributors servicing the area in which the local redemption center is located in order to prevent the distributors servicing the area within which the redemption center is located from being unfairly penalized.~~

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

Sec. 15. 32 MRSA §1871-A is enacted to read:

**32 § 1871-A Beverage Container Deposit Regulation Fund**

There is created in the department a nonlapsing dedicated fund to be known as the "Beverage Container Deposit Regulation Fund." All fines and registration and licensing fees collected under this chapter must be deposited in the fund. The

department shall use the fund to pay the costs of enforcing, implementing and periodically evaluating this chapter and for no other purpose.

**Sec. 16. 32 MRSA §1872** is amended to read:

**32 § 1872. Unlawful possession of beverage containers**

A person is guilty of a violation of this section if that person possesses more than 48 beverage containers that are not labeled under section 1865. This section ~~shall~~ does not apply to possession of unlabeled, empty beverage containers by persons licensed or registered pursuant to this chapter or to licensed waste facilities as defined in Title 38, section 1303-C.

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

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

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

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

- A. The beverage containers stored or transported are intended solely for retail sale outside of the State;
- B. The beverage containers are being transported to and stored in a facility licensed under Title 28-A, section 1371, subsection 1 prior to labeling and subsequent retail sale within the State; or
- C. The person is licensed under Title 28-A, section 1401 to import malt liquor and wine into the State, the beverage containers contain malt liquor or wine and these containers are being transported or stored prior to labeling and subsequent retail sale within the State.

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

**Sec. 17. Study.** The Department of Agriculture, Food and Rural Resources shall analyze all data available and being collected relative to Maine's beverage container deposit laws. The Department shall determine whether this information would be adequate to evaluate the 1990 expansion of the beverage container deposit law to additional types of beverage containers, including evaluation of opportunities for recycling, adequacy of landfill space, effect on litter, cost to manufacturers and distributors, and financial effect on redemption center and recycling businesses and jobs.

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

The Department shall complete its analysis by December 1, 1996. If the Department determines that additional reporting involving cost is required the Department shall make a report on that subject to the Committee on Business and Economic Development by January 1, 1997. This report shall detail the necessity for the data, the cost to the industry of collecting it and what would be lost if it were not collected.

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

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

### **STATEMENT OF FACT**

The 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 third-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 law, within a limit determined by the legislation. Fees would be deposited in a dedicated fund reserved for use by the department in implementing, enforcing and evaluating the law.

2. It allows the Administrative Court to suspend or revoke registration 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 proposal 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 such 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 law 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 would be given an opportunity for a hearing before the commissioner and an appeal to the Superior Court before the suspension became effective.

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 Maine. There is a criminal penalty for falsely signing such a statement. Persons tendering containers on behalf of charitable organizations would be required to complete a form identifying themselves, the name of the organization and the source of the containers, but would not be required to certify that they were purchased in Maine. A redemption center that fails to obtain a required statement, or a person who fails to supply the required statement commits a Class E crime.

7. A redemption center would be required to accept any container sold in the area in which the redemption center is located, provided there is a pick-up service available for the container.
8. Distributors who initiate the deposit for exclusive distributorship items and for wine and spirits would be required to pick up containers from dealers and redemption centers located in the area in which they distribute products. Manufacturers whose products are distributed through non-exclusive distributorships, or their third-party pick-up agents, would be required to pick up containers statewide.
9. The bill adds farm-produced cider to the list of beverages exempt from the bottle bill. This is currently exempted in department rules.
10. The bill requires deposit initiators to pay dealers and redemption centers for picked up containers within 10 business days of the pick up, and provides that the invoice signed at the time of the pick up determines the amount due.
11. The proposal allows the department to call for information from retailers when needed to aid the department in enforcing the bottle bill.
12. The bill imposes reporting requirements on manufacturers, distributors and third-party pick-up agents and redemption centers. The bill also provides that the information is confidential, but may be used by law enforcement and may be released in aggregate form.
13. Violation of this law is made prima facie evidence of a violation of the Unfair Trade Practices Act.
14. Enforcement of the bottle bill is expanded to require the Attorney General, the commissioner of the Department of Agriculture, Food and Rural Resources, and all other appropriate officials to enforce the laws. Employees of the department would be authorized to prosecute complaints for civil violations in District Court, provided they are certified as proficient in court procedures.
15. The proposal would exempt licensed redemption centers and registered distributors, manufacturers and third-party pick-up agents from the prohibition against possession of unmarked containers, provided 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 law, and to determine

whether additional information would be needed to evaluate the law. 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.

7851 nrg

## **APPENDIX E**

### **ADDITIONAL MINORITY REPORT LEGISLATION**





## Appendix E

### **Minority Report: An Act to Make Changes in the Beverage Container Deposit Laws and To Reduce the Refund Value for Certain Beverage Containers.**

**NOTE:** *The minority report includes all changes included in the Majority Report, excluding the proposed section 1863-A. The minority report proposes the following change to section 1863-A:*

**Sec. 1. 32 MRSA §1863-A is repealed and replaced to read:**

#### **32 § 1863-A. Refund value.**

To encourage container reuse and recycling, every beverage container sold or offered for sale to a consumer in this State must have a deposit and refund value. The person who initiates the deposit shall determine the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value for wine and spirits containers of greater than 50 milliliters may not be less than 15¢. The deposit and refund value of all other beverage containers may not be less than 3¢.

#### **STATEMENT OF FACT**

This bill lowers the minimum deposit that must be collected and refunded on most beverage containers subject to the beverage container deposit law from 5¢ to 3¢. The deposit on liquor and wine containers would remain at 15¢



## **APPENDIX F**

### **STATEWIDE REDEMPTION TRACKING OF FIVE COMPANIES**



STATEWIDE REDEMPTION TRACKING OF FIVE COMPANIES

SUMMARY

VERYFINE

REPORTED 1994 RETURN RATE- 114%

BORDER REDEMPTION PROBLEM IS VERY EVIDENT

PROBABLE SALES TRACKING PROBLEM

CAMPBELLS

REPORTED 1994 RETURN RATE- THEY DON'T REPORT

BORDER REDEMPTION PROBLEM IS VERY EVIDENT

PROCTOR & GAMBLE

REPORTED 1993 RETURN RATE- 66%  
1994 -207%

NO EVIDENT BORDER PROBLEM

SALES TRACKING A DEFINITE PROBLEM

HANNAFORD

REPORTED 1994 RETURN RATE- 71%

NO BORDER OVERREDEMPTION PROBLEM

NO APPARENT SALES TRACKING PROBLEM

KOOLBURST- KRAFT GENERAL FOODS

REPORTED 1994 RETURN RATE- 83%

NO APPARENT BORDER OVERREDEMPTION

VERYFINE (JULY-SEPT 1995)

1,668,402 TOTAL UNITS REDEEMED STATEWIDE

VERYFINE HAS MANY SMALL SINGLE SERVE ITEMS THAT CAN EASILY BE TRANSPORTED

IN THE CASE OF VERYFINE WE HAVE A BORDER REDEMPTION PROBLEM AS INDICATED BY THE FOLLOWING:

335,570 UNITS OR 20% OF THE STATE TOTAL WAS REDEEMED IN YORK COUNTY

ASSUMING 360 REDEMPTION CENTERS IN MAINE- THE AVERAGE WOULD REDEEM 4,634 UNITS

HIGH VOLUME REDEMPS IN YORK COUNTY:

ANTHONYS	75,492 UNITS REDEEMED
KITTERY YORK REDEMP	72,174
WELLS REDEMP	31,936
BOTTLE SHOP	31,640
N. BERWICK REDEMP	30,946
LEBANON FARMS REDEMP	22,672

TOTAL 264,860 THIS IS 16% OF THE STATE TOTAL

ANTHONYS ALONG REDEEMED MORE THAN EACH OF NINE COUNTIES!

THESE SIX REDEMPS DID MORE VOLUME THAN ANY ENTIRE COUNTY INCLUDING CUMBERLAND COUNTY!

RSVP IS THE SINGLE BUSIEST REDEMPTION LOCATION IN MAINE AND THEY ONLY REDEEMED 20,112 VERYFINE BOTTLES

CAMPBELLS (JULY-SEPT 1995)

747,656 TOTAL UNITS REDEEMED STATEWIDE

160,376 OR 21.5% REDEEMED IN YORK COUNTY

CAMPBELLS HAS MANY SMALL SINGLE SERVE ITEMS WHICH CAN BE EASILY TRANSPORTED

IN THE CASE OF CAMPBELLS WE HAVE A BORDER REDEMPTION PROBLEM AS INDICATED BY THE FOLLOWING:

ASSUMING 360 REDEMPTION CENTERS IN MAINE- THE AVERAGE WOULD REDEEM 4,460 UNITS

HIGH VOLUME REDEMPS IN YORK COUNTY:

ANTONYS	39,036 UNITS REDEEMED
KITTERY	23,324
N. BERWICK	19,812
WELLS REDEMP	16,316
LEBANON FARMS REDEMP	15,908
BOTTLE SHOP	11,272

TOTAL 125,668 THIS IS 16.8% OF STATE TOTAL

ANTHONYS ALONG REDEEMED MORE THAN EACH OF NINE COUNTIES!

THESE SIX REDEMPS DID MORE VOLUME THAT ANY ENTIRE COUNTY INCLUDING CUMBERLAND COUNTY!

RSVP IS THE SINGLE BUSIEST REDEMPTION LOCATION IN MAINE AND THEY REDEEMED ONLY 3,204 UNITS!

PROCTOR & GAMBLE

667,130 TOTAL UNITS REDEEMED STATEWIDE

WITH PROCTOR & GAMBLE THEIR CONTAINERS ARE LARGE PLASTIC UNITS WHICH WOULD BE VERY BULKY TO TRANSPORT.

ACCORDING TO OUR FIGURES, THERE IS NO YORK COUNTY OVERREDEMPTION PROBLEM WITH THIS PRODUCT.

SALES TRACKING APPEARS TO BE THE PROBLEM HERE BASED ON THE FOLLOWING:

1993 REDEMPTION RATE WAS 66% WITH REPORTED DEPOSITS COLLECTED OF \$225,502 FOR THE YEAR

1994 REDEMPTION RATE WAS 122% WITH REPORTED DEPOSITS COLLECTED OF \$97,077 FOR THE YEAR. REPORTED SALES FIGURES FELL BY TWO THIRDS IN ONE YEAR, AND THE REPORTED REDEMPTION RATE INCREASED GREATLY.

THIS SHOWS HOW A COMPANY CAN HAVE FAIRLY EVEN REDEMPTION RATES STATEWIDE WITH NO APPARENT BORDER REDEMPTION PROBLEMS, YET SHOWS A PERCEIVED OVERREDEMPTION PROBLEM DUE TO LACK OF CORRECT SALES FIGURES.

HANNAFORD (JULY- SEPT 1995)

401,644 TOTAL UNITS REDEEMED STATEWIDE

HANNAFORD HAS BOTH SMALL SINGLE SERVE AND LARGE UNITS

REPORTED RETURN RATE FOR 1994 WAS 71%

ACCORDING TO FIGURES THERE IS NO OVERREDEMPTION PROBLEM IN YORK COUNTY OR ALONG THE MAINE BORDER

KOOLBURST- KRAFT GENERAL FOODS

REPORTED RETURN RATE FOR 1994 WAS 83%

FIGURES INDICATE THERE IS NO OVERREDEMPTION PROBLEM IN THE BORDER COUNTIES, OR NO OVERALL OVERREDEMPTION RATE.





## **APPENDIX G**

### **ADDITIONAL LEGISLATION FOR CONSIDERATION**



## APPENDIX G

### ADDITIONAL SUGGESTIONS FOR CONSIDERATION

The following proposals were not formally voted upon by the Task Force, but the concepts included are supported by one or more Task Force members. They are presented here for discussion and consideration by the Legislature as additional methods of improving implementation and enforcement of the beverage container deposit laws.

#### Suggestion #1. Limitations on Dealer Purchases

##### Option #1

##### 32 § 1867-G. Prohibition against Certain Dealer Purchases

A dealer may not purchase filled beverage containers in this State from a distributor or manufacturer who is not registered as required in this chapter.

OR

##### Option #2

##### 32 § 1867-G. Report of Purchases from Unregistered Seller

A dealer who purchases filled beverage containers in this State from a distributor or manufacturer who is not registered as required in this chapter shall report the name and business address of the distributor or manufacturer to the department within 30 days of the purchase.

### STATEMENT OF FACT

##### Option #1

This proposal prohibits retailers from making purchases in this State from distributors or manufacturers who are not registered under the beverage container deposit laws.

##### Option #2

This proposal requires a dealer who purchases filled beverage containers from a distributor or manufacturer who has failed to register with the State to report the name and business address of the distributor or manufacturer to the Department of Agriculture, Food and Rural Resources.

**Suggestion #2. Amendment of the Unfair Trade Practices Act**

**5 MRSA §213, sub-§1-A** is enacted to read:

**1-A. Court action -- trade or commerce.** Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section 207 or by any rule issued under section 207, subsection 2 may bring an action in the Superior Court, or in the District Court, for damages and such equitable relief, including an injunction, as the court deems necessary and proper. There shall be a right to trial by jury in any action brought in Superior Court under this section.

**STATEMENT OF FACT**

This bill allows business enterprises to sue under the Maine Unfair Trade Practices Act to enjoin other businesses from engaging in unfair trade practices or to recover for losses due to unfair trade practices by that other business. Currently, only individuals or the Attorney General can sue businesses under the Act.