

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act To Amend Maine's Bottle Laws

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

**Sec. 1. 32 MRSA §1862, sub-§2-A**, as enacted by PL 2003, c. 499, §1, is repealed.

**Sec. 2. 32 MRSA §1863-A, sub-§4**, as enacted by PL 1991, c. 819, §3, is repealed and the following enacted in its place:

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

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

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

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

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

B. In addition to the payment of the refund value, the initiator of the deposit under section 1863-A, subsection 3 shall reimburse the dealer or 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 for containers picked up by the initiator before March 1, 2004 and at least ~~3-1/2¢~~ 1/2¢ for containers picked up on or after March 1, 2004. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a contracted agent or through a party with which it has entered into a commingling agreement.

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

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

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

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

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

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

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

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

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

**5-A. Size and weight.** A distributor may not require the sorting of a beverage container in a size category not listed in this subsection. A beverage container of a size that does not conform to a size category listed in this subsection must be sorted in the category that most closely matches the size of the container. A distributor shall provide a dealer or local redemption center with a universal bag gauged

for each size category listed in this subsection. A distributor may accept or reject a filled gauged bag on sight if the distributor determines the bag was not filled correctly. The size categories for beverage containers include:

- A. Containers that are 8-ounces aluminum;
- B. Containers that are 12-ounces aluminum;
- C. Containers that are 12-ounces other than aluminum;
- D. Containers that are 16-ounces aluminum;
- E. Containers that are 20-ounces other than aluminum;
- F. Containers that are 33.8-ounces other than aluminum;
- G. Containers that are 67.6-ounces other than aluminum; and
- H. Containers that are 128-ounces other than aluminum.

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

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

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

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

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

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

**§ 1866-F. Commingling prohibited**

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

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

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

**Sec. 13. 32 MRSA §1874** is enacted to read:

**§ 1874. Private right of action**

A local redemption center may bring a private right of action against a distributor to enforce the provisions of this chapter.

**SUMMARY**

This bill amends the bottle redemption laws in the following ways:

1. It reduces the minimum allowable deposit for wine and spirit containers from 15¢ to 5¢;
2. It increases the collection and handling fee for beverage containers by 2¢;
3. It prohibits the commingling of beverage containers of like or dissimilar product groups, materials or size of 2 or more initiators of deposit except for 12-ounce aluminum containers;
4. It lists size categories in which beverage containers must be sorted and requires distributors to provide gauged bags to dealers and local redemption centers;
5. It redirects funds from abandoned deposits from the General Fund to the Department of Education;
6. It increases the penalty for a violation of the beverage container laws for a distributor from a fine of no more than \$100 to a fine of no more than \$1,000; and
7. It allows a private right of action for a local redemption center to enforce the bottle redemption laws against a distributor.