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An Act To Reduce Fraud in the Processing of Beverage Containers

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

Sec. 1. 32 MRSA §1862, sub-§12-E, as enacted by PL 2003, c. 499, §3, is amended to read:

12-E. Reverse vending machine. "Reverse vending machine" means an automated device that uses a laser scanner and microprocessor to accurately recognize the universal product code on containers and to accumulate information regarding containers redeemed, enabling the reverse vending machine to accept containers from redeemers and to issue script for the containers' refund value. "Reverse vending machine" does not include a hand scanner or other similar device.

Sec. 2. 32 MRSA §1865, sub-§4 is enacted to read:

4. Removal of product. A product that is sold or distributed in the State that is not in compliance with the initiator of deposit or the labeling registration requirements established in this section may be removed from sale by the department.

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

3-A. Obligation to preserve recycling value. Notwithstanding subsection 5, a distributor or its agent may refuse to accept from a dealer, redemption center or other person, and refuse to pay the refund value and handling costs for, a beverage container that has been processed in a way that reduces its recycling value below the current price quoted for the applicable material in a secondary materials pricing index for the New York-New England region. This subsection may not be interpreted to prohibit a processing arrangement that is mutually agreed upon in writing between the distributor and the dealer or redemption center.

The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A regarding the recycling value of beverage containers.

Sec. 4. 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, quantity in the aggregate 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, quantity in the aggregate 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~~must 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~~adopted 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, quantity in the aggregate 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. 5. 32 MRSA §1866, sub-§8, as amended by PL 1995, c. 85, §1, is further amended to read:

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~~costs 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~~or redemption center that tenders to a dealer, distributor, redemption center or bottler more than 48 empty beverage containers that the person ~~or redemption center~~ 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 for redemption 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. 6. 32 MRSA §1866, sub-§9 is enacted to read:

9. Fraud prevention and bulk redemption. In order to prevent fraud from the redemption of beverage containers not originally sold in this State, the following requirements apply.

A. A person tendering for redemption more than 1,000 empty beverage containers to a dealer or redemption center shall sign a declaration indicating that all beverage containers presented for redemption were collected in the State. The declaration must also include the person's name and address and any other identifying information the department considers necessary. The dealer or redemption center redeeming the beverage containers shall forward the declaration to the department within 10 days and keep the information on file for a minimum of 12 months.

B. A person tendering for redemption more than 1,000 empty beverage containers to a dealer or redemption center that were collected at one location in this State and all proceeds of the refund value of which benefit a registered nonprofit or not-for-profit corporation shall sign a declaration indicating the person's name, the address of the collection point and the name of the organization receiving the refund value. Subsequent tendering of more than 1,000 empty beverage containers by that person collected at the location identified in the declaration is exempt from the requirements of paragraph A.

Sec. 7. 32 MRSA §1866, sub-§10 is enacted to read:

10. License revocation. The department may revoke the license of a dealer or redemption center not in compliance with the requirements of this section.

Sec. 8. 32 MRSA §1867, sub-§4, as amended by PL 2001, c. 661, §7, is further amended to read:

4. Redemption center acceptance refund account. A local redemption center 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 a dealer served by the center as long as the label for the container is registered under section 1865, subsection 3 or refuse to pay in cash the refund value of the returned beverage container as established by section 1863-A. A redemption center or reverse vending machine is not obligated to count containers or to pay a cash refund at the time the beverage container is returned as long as the amount of the refund value due is placed into an account to be held for the benefit of the customer and funded in a manner that allows the customer to obtain deposits due within 2 business days of the time of the return.

SUMMARY

This bill makes a series of changes to Maine's so-called "bottle bill."

1. The bill clarifies that the definition of "reverse vending machine" does not include devices such as hand scanners.

2. The bill provides the Department of Agriculture, Food and Rural Resources with the authority to remove any product from sale if that product has not been properly registered pursuant to the Maine Revised Statutes, Title 32, section 1865, subsection 3.

3. The bill allows the distributor to refuse to accept any beverage container that has been processed in a way that reduces the recycling value of the beverage container below current prices.

4. The bill clarifies that the distributor is obligated to pick up beverage containers from dealers to whom that distributor has sold those beverages and from licensed redemption centers designated to serve those dealers in the same quantity as was sold to the dealer.

5. The bill requires any person who tenders more than 1,000 beverage containers for redemption at any dealer or redemption center to provide a name and address and sign a declaration indicating that the containers were collected in Maine. The bill requires that the information be forwarded to the department and kept on file by the dealer or redemption center for a minimum of one year. A person tendering more than 1,000 beverage containers collected at a fixed location when the proceeds are given to not-for-profit groups is, after declaration of a name and address of the collection point, exempt from this requirement.

6. The bill relieves a redemption center of the obligation to pay the cash value for returnable beverage containers at the time they are presented for refund if the redemption center has established a deposit account on behalf of a customer and credits that account within 2 business days of the date of return.