

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

B. Of the fines and forfeitures collected for traffic infractions under sections 511, 2354, 2356, 2360, 2380, 2387 and 2388, 7% accrues to the General Fund, 6% accrues to the Law Enforcement Agency Reimbursement Fund and the balance accrues to the General Highway Fund; and

C. Of the fines and forfeitures collected for violations other than traffic infractions under sections 511, 2354, 2356, 2360, 2380, 2387 and 2388, only \$5 or 13%, whichever is greater, accrues to the General Fund and the balance accrues to the Highway Fund.

Sec. 7. 36 MRSA §1865 is enacted to read:

§1865. Deposit of use taxes paid on certain fuels

The Treasurer of State shall deposit all use taxes received for fuel consumed by vehicles operating on rails and qualifying for a fuel tax refund under section 3218 and taxed under this chapter into the Rail Preservation and Assistance Fund established in Title 23, section 7103.

Sec. 8. 36 MRSA §2621-A, sub-§3, ¶F, as enacted by PL 1991, c. 591, Pt. N, §3 and affected by §4, is repealed.

Sec. 9. 36 MRSA §2625, as repealed and replaced by PL 1983, c. 571, §8, is amended to read:

§2625. Return and payment

Every railroad company incorporated under the laws of this State or doing business in this State shall file with the State Tax Assessor annually, on or before April 15th, a railroad excise tax return, on a form prescribed by the State Tax Assessor. The tax ~~shall~~ **must** be paid in equal installments on the next June 15th, September 15th and December 15th. The Treasurer of State shall deposit all taxes paid under this chapter into the Railroad Preservation and Assistance Fund established under Title 23, section 7103.

Sec. 10. 36 MRSA §3218-A is enacted to read:

§3218-A. Refunds of tax for fuel used by railroads

Beginning July 1, 2004, the assessor shall monitor the amount of refunds paid under section 3218 for fuel consumed by vehicles operating on rails and monitor the amount of use tax paid on fuel consumed by vehicles operating on rails under chapter 215.

Sec. 11. Review of taxes imposed on railroads; legislation. The Joint Standing Committee on Taxation shall review statutory provisions for taxes that apply to companies operating railroads in the State, consider the impact of these provisions and

recommend revisions to the tax statutes to improve the viability of railroads operating in the State. The committee shall conduct the review and develop recommendations during interim meetings authorized by the presiding officers of the Legislature. The committee may report out a bill to the Second Regular Session of the 121st Legislature pertaining to taxation of companies operating railroads in Maine.

Sec. 12. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 23, section 7103, subsection 1; Title 29-A, section 2602, subsection 4, paragraphs B and C; and Title 36, section 2625 take effect July 1, 2005. That section of this Act that enacts Title 36, section 1865 takes effect July 1, 2005. That section of this Act that repeals Title 36, section 2621-A, subsection 3, paragraph F takes effect July 1, 2005.

See title page for effective date, unless otherwise indicated.

CHAPTER 499

S.P. 326 - L.D. 985

**An Act To Improve the State's
Returnable Bottle Law and Adjust
Handling Fees**

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

Sec. 1. 32 MRSA §1862, sub-§2-A is enacted to read:

2-A. Commingling agreement. "Commingling agreement" means an agreement between 2 or more initiators of deposit allowing the beverage containers for which they have initiated deposits to be commingled by dealers and redemption centers, as described in section 1866-D.

Sec. 2. 32 MRSA §1862, sub-§8-A, as enacted by PL 2001, c. 661, §2, is amended to read:

8-A. Initiator of deposit or initiator. "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person who initiates a deposit on a beverage container under section 1863-A.

Sec. 3. 32 MRSA §1862, sub-§12-E is enacted 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.

Sec. 4. 32 MRSA §1865, sub-§3, as enacted by PL 2001, c. 661, §3, is 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 ~~shall~~ 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, 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 ~~H-A 2-A~~ and subject to review by the joint standing committee of the Legislature having jurisdiction over business and economic development matters.

Sec. 5. 32 MRSA §1866, sub-§3, as amended by PL 1991, c. 819, §6, is further amended to read:

3. Distributor acceptance. A distributor may not refuse to accept from any dealer or local redemption center any empty, unbroken and reasonably clean beverage container or any beverage container that has been processed through an approved reverse vending machine that meets the requirements of rules adopted by the department pursuant to this chapter of the kind, size and brand sold by the distributor or refuse to pay to the dealer or local redemption center the refund value of a beverage container as established by section 1863-A.

Sec. 6. 32 MRSA §1866, sub-§4, as amended by PL 1991, c. 819, §7, 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¢ 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¢ 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, B and C of this subsection do not apply to a brewer 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 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¢ per returned container.

Sec. 7. 32 MRSA §1866, sub-§5, as amended by PL 1991, c. 819, §8, 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. 8. 32 MRSA §§1866-D and 1866-E are enacted to read:

§1866-D. Commingling of beverage containers

Notwithstanding any other provision of this chapter to the contrary, 2 or more initiators of deposit may enter into a commingling agreement through which some or all of the beverage containers for which the initiators have initiated deposits may be commingled by dealers and operators of redemption centers as provided in this section.

An initiator of deposit that enters into a commingling agreement pursuant to this section shall permit any other initiator of deposit to become a party to that agreement on the same terms and conditions as the original agreement.

1. Commingling requirement. If initiators of deposit enter into a commingling agreement pursuant to this section, commingling of beverage containers must be by all containers of like product group, material and size. An initiator of deposit required pursuant to section 1866, subsection 5 to pick up beverage containers subject to a commingling agreement also shall pick up all other beverage containers subject to the same agreement. The initiator of deposit may not require beverage containers that are subject to a commingling agreement to be sorted separately by a dealer or redemption center.

2. Commingling of like materials. For purposes of this section, containers are considered to be of like materials if made up of one of the following:

A. Plastic;

B. Aluminum;

C. Metal other than aluminum; and

D. Glass.

3. Commingling of like products. For purposes of this section, like products are those that are made up of one of the following:

A. Beer, ale or other beverage produced by fermenting malt, wine and wine coolers;

B. Spirits;

C. Soda;

D. Noncarbonated water; and

E. All other beverages.

4. Registration of commingling agreements.

Not later than 48 hours following the execution or amendment of a commingling agreement, including an amendment that adds an additional party to an existing agreement, the parties shall file a copy of the commingling agreement or amendment with the department.

§1866-E. Unclaimed deposits

The provisions of this section apply only to those beverage containers that are not subject to a commingling agreement pursuant to section 1866-D.

1. Deposit transaction fund. An initiator of deposit shall maintain a separate account to be known as the initiator's deposit transaction fund. The initiator shall keep that fund separate from all other revenues and accounts. The initiator shall place in that fund the refund value for all nonrefillable beverage containers it sells subject to the provisions of this chapter. Except as specified in subsections 3 and 4, amounts in the initiator's deposit transaction fund may only be expended to pay refund values for returned nonrefillable beverage containers. Amounts in the fund may not be used to pay the handling fees required by this chapter. The fund must be maintained by the initiator on behalf of consumers who have purchased products in refundable nonrefillable beverage containers and on behalf of the State; except as specified in subsections 3 and 4, amounts in the fund may not be regarded as income of the initiator.

2. Reports. An initiator of deposit shall report to the executive director of Maine Revenue Services within the Department of Administrative and Financial Services by the 20th day of each month concerning transactions affecting its deposit transaction fund in the preceding month. The report must be in a form prescribed by the executive director and must include: the number of nonrefillable beverage containers sold and the number of nonrefillable beverage containers returned in the applicable month; the amount of deposits received in and payments made from the fund in the applicable month and the most recent 3-month

period; any income earned on amounts in the fund during the applicable month; the balance in the fund at the close of the applicable month; and such other information as the executive director may require to perform the duties of this section.

3. Determination of abandoned deposit amounts. The initiator's abandoned deposit amount, at the end of each month, is the amount equal to the amount of deposits that are or should be in the fund, less the sum of:

A. Income earned on amounts in the fund during that month; and

B. The total amount of refund values received by the initiator for nonrefillable beverage containers during that month and the 2 preceding months.

Income on the fund may be transferred from the fund for use as funds of the initiator.

4. Transfer of abandoned deposit amounts.

By the 20th day of each month, an initiator shall turn over to the executive director of Maine Revenue Services within the Department of Administrative and Financial Services 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 executive director pursuant to this subsection must be deposited in the General Fund.

5. Reimbursement of initiators of deposit. If in any month the authorized payments from the deposit transaction fund by an initiator pursuant to this section exceed the funds that are or should be in the initiator's deposit transaction fund, the State shall reimburse the initiator, from amounts received pursuant to subsection 4, for those refunds paid by the initiator for nonrefillable beverage containers for which the funds that are or should be in the initiator's deposit transaction fund are insufficient; except that reimbursements paid by the State to an initiator may not exceed amounts paid by the initiator to the State pursuant to subsection 4 in the preceding 24 months less amounts paid by the State to the initiator pursuant to this subsection during that same 24-month period.

6. Small bottlers and brewers exempt. A brewer who produces no more than 50,000 gallons of its product or a bottler of water who sells no more than 250,000 containers each containing no more than one gallon of its product in a calendar year is exempt from the requirements of this section for that year.

Sec. 9. Appropriations and allocations.

The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Revenue Services - Bureau of 0002

Initiative: Appropriates funds to establish one Senior Tax Examiner position and other related operating costs. The fiscal year 2003-04 amount includes \$100,000 to contract for the computer programming necessary to add this new requirement to the computer system in order to account for, print and process returns.

General Fund	2003-04	2004-05
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$18,514	\$60,657
All Other	\$107,955	\$3,755
General Fund Total	\$126,469	\$64,412

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

	2003-04	2004-05
GENERAL FUND	\$126,469	\$64,412
DEPARTMENT TOTAL - ALL FUNDS	\$126,469	\$64,412

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Beverage Container Enforcement Fund 0971

Initiative: Appropriates funds to establish one Agricultural Compliance Officer position and operating costs necessary to verify commingling agreements.

General Fund	2003-04	2004-05
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$39,257	\$51,181
All Other	\$11,225	\$15,000
General Fund Total	\$50,482	\$66,181

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF DEPARTMENT TOTALS

	2003-04	2004-05
GENERAL FUND	\$50,482	\$66,181
DEPARTMENT TOTAL - ALL FUNDS	\$50,482	\$66,181

SECTION TOTALS	2003-04	2004-05
GENERAL FUND	\$176,951	\$130,593
SECTION TOTAL - ALL FUNDS	\$176,951	\$130,593

See title page for effective date.

CHAPTER 500

H.P. 977 - L.D. 1323

An Act To Adopt an Interstate Compact for Juveniles on Probation and Parole

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

Sec. 1. 34-A MRSA c. 9, sub-c. 6 is enacted to read:

SUBCHAPTER 6

THE INTERSTATE COMPACT FOR JUVENILES

§9901. Short title -- Article 1

This subchapter may be known and cited as "the Interstate Compact for Juveniles," which is referred to in this subchapter as "the compact."

§9902. Definitions -- Article 2

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bylaws. "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.

2. Commissioner. "Commissioner" means the voting representative of each compacting state appointed pursuant to section 9903.

3. Compact administrator. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

4. Compacting state. "Compacting state" means any state that has enacted the enabling legislation for this compact.

5. Court. "Court" means a court having jurisdiction over juveniles.

6. Deputy compact administrator. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this