

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 28, 2011**

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

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**Augusta, Maine**  
**2011**

DEPARTMENT TOTAL - ALL FUNDS	\$0	\$3,110
SECTION TOTALS	2011-12	2012-13
GENERAL FUND	\$0	\$6,242
SECTION TOTAL - ALL FUNDS	\$0	\$6,242

**Sec. 9. Effective date.** This Act takes effect July 1, 2012.

Effective July 1, 2012.

**CHAPTER 429  
H.P. 970 - L.D. 1324**

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

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

**Sec. 1. 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~~ 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, 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~~ environmental and natural resources matters.

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

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 or that the initiators of deposit covered by the commingling agreement are initiators of deposit for wine containers who each sell no more than 100,000 gallons of wine or 500,000 beverage containers that contain wine in a calendar year. Once the initiator of deposit has established a qualified commingling agreement for containers of a like product group, material and size, the department shall allow additional brands to be included from a different product group if they are of like material. The State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall make every reasonable effort to enter into a qualified commingling agreement under this ~~subparagraph~~ paragraph with every other initiator of ~~deposits~~ deposit for beverage containers that are of like product group, size and material as the beverage containers for which the State is the initiator of deposit.

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

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

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

**1. Procedures; licensing fees.** The department shall adopt rules establishing the requirements and procedures for issuance of licenses and annual renewals under this section, including a fee structure. Initial rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted effective after calendar

year 2003 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and are subject to review by the joint standing committee of the Legislature having jurisdiction over ~~business and economic development~~ environmental and natural resources matters.

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

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

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

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

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

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

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

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

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

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

**Sec. 9. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 32, section 1866, subsection 4, paragraph C takes effect July 1, 2012.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 430

### H.P. 334 - L.D. 441

#### An Act To Reform Telecommunications Taxation

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

**Sec. 1. 36 MRSA §457**, as amended by PL 2009, c. 213, Pt. P, §1 and affected by §3, is further amended to read:

#### §457. State telecommunications excise tax

**1. Definitions.** As used in this section ~~subchapter~~, unless the context otherwise indicates, the following terms have the following meanings.

A. "Telecommunications business" means a person engaged in the activity of providing interactive 2-way communication services for compensation.

B. ~~"Telecommunications personal property~~ Qualified telecommunications equipment" means ~~personal property equipment~~ used for the transmission of any interactive 2-way communications, including voice, image, data and information, via a medium such as wires, cables, microwaves, radio waves, light waves or any combination of those or similar media. ~~"Telecommunications personal property~~ Qualified telecommunications equipment" includes ~~qualifying property equipment~~ used to provide telegraph service. ~~"Telecommunications personal property~~ Qualified telecommunications equipment" does not include ~~property equipment~~ used solely to provide value-added nonvoice services in which computer proc-