

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

SECOND SPECIAL SESSION
June 19, 2018 to September 13, 2018

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
DECEMBER 13, 2018

ONE HUNDRED AND TWENTY-NINTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2018 to June 20, 2019

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 2019

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

Augusta, Maine
2019

**CHAPTER 526
H.P. 1171 - L.D. 1628**

**An Act To Implement
Recommendations of the
Department of Environmental
Protection Regarding the
State's Container Redemption
Laws**

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

Sec. 1. 36 MRSA §1760, sub-§93, as amended by PL 2015, c. 166, §13, is further amended to read:

93. Plastic bags sold to redemption centers. Sales to a local redemption center licensed under Title 38, section 3113 of plastic bags used by the redemption center to sort, store or transport returnable beverage containers.

Sec. 2. 38 MRSA §352, sub-§5-A, as amended by PL 2009, c. 374, §1, is further amended to read:

5-A. Accounting system. In order to determine the extent to which the functions set out in this section are necessary for the licensing process or are being performed in an efficient and expeditious manner, the commissioner shall require that all employees of the department involved in any aspect of these functions keep accurate and regular daily time records. These records must describe the matters worked on, services performed and the amount of time devoted to those matters and services, as well as amounts of money expended in performing those functions. Records must be kept for a sufficient duration of time as determined by the commissioner to establish to the commissioner's satisfaction that the fees are appropriate.

TABLE I

MAXIMUM FEES IN DOLLARS

TITLE 36 SECTION	PROCESSING FEE	CERTIFICATION FEE
656, sub-§1, ¶E, Pollution Control Facilities		
A. Water pollution control facilities with capacities at least 4,000 gallons of waste per day and §1760, sub-§29, water pollution control facilities	\$250	\$20

B. Air pollution control and §1760, sub-§30, air pollution control facilities	250	20
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TITLE 38 SECTION	PROCESSING FEE	LICENSE FEE
344, sub-§7, Permit by rule	\$50	\$0
413, Waste discharge licenses	See section 353-B	
420-D, Storm water management		
A. If structural means of storm water control are used	\$400 for the first acre of disturbed area, plus \$200 for each additional whole acre of disturbed area	\$100 for the first acre of disturbed area, plus \$50 for each additional whole acre of disturbed area
B. If solely vegetative means of storm water control are used	\$200 for the first acre of disturbed area, plus \$100 for each additional whole acre of disturbed area	\$50 for the first acre of disturbed area, plus \$25 for each additional whole acre of disturbed area
C. When a permit by rule is required	\$55	none
If a project described in paragraph A or B is reviewed and approved by a professional engineer at a soil and water conservation district office that has a memorandum of understanding with the department concerning review of projects pursuant to this section, the total applicable fee is reduced to a processing fee of \$100 for the first acre of disturbed area, plus a license fee of \$50 for each additional whole acre of disturbed area.		
480-E, Natural resources protection		
A. Any alteration of a protected natural resource, except coastal wetlands and coastal sand dunes, causing less than 20,000 square feet of alteration of the resource	140	50
B. Any alteration of a coastal wetland causing less than 20,000 square feet of alteration of the resource	240	60

	.015/sq. ft. alteration	.005/sq. ft. alteration		300/MW	50/MW
C. Any alteration of a protected natural resource, except coastal sand dunes, causing 20,000 square feet or more of alteration of the resource			2. Generating		
C-1. Significant ground-water well	4,577	1,961	1304, Waste management		
C-2. Activity within a community public water supply primary protection area	183	64	A. Septage disposal		
D. Any alteration of a coastal sand dune	3,500	1,500	1. Site designation	50	25
E. Condition compliance	84	0	B. Land application of sludges and residuals program approval		
F. Minor modification	184	0	1. Industrial sludge	400	400
485-A, Site location of development			2. Municipal sludge	300	275
A. Residential subdivisions			3. Bioash	300	275
1. Affordable housing	50/lot	50/lot	4. Wood ash	300	75
2. On public water and sewers	175/lot	175/lot	5. Food waste	300	75
3. All Other	250/lot	250/lot	6. Other residuals	300	175
B. Industrial parks	460/lot	460/lot	C. Landfill		
C. Mining	1,500	1,000	1. Closing plans for secure landfills	1,500	1,500
D. Structures	4,000	2,000	2. Closing plans for attenuation landfills	500	500
E. Other	1,000	1,000	3. Post-closure report	175	175
543, Oily waste discharge	40	160	4. Preliminary information reports	175	175
560, Vessels at anchorage	125	100	5. License transfers	500	175
587, Ambient air quality or emissions standards variances	5,050	50	6. Special waste disposal		
590, Air emissions licenses	See section 353-A		a. One-time disposal of quantities of 6 cubic yards or less	50	50
633, Hydropower projects			b. One-time disposal of quantities greater than 6 cubic yards	100	100
A. New or expanded generating capacity	450/MW	50/MW	c. Program approval for routine disposal of a special waste	300	300
B. Maintenance and repair or other structural alterations not involving an increase in generating capacity	150	150	7. Minor revision for secure landfills	600	100
33 United States Code, Chapter 26, Water Quality Certifications, in conjunction with applications for hydropower project licensing or relicensing			8. Minor revision for attenuation landfills	100	100
A. Initial consultation	1,000	0	9. Public benefit determination	175	175
B. Second consultation	1,000	0	D. Incineration facility		
C. Application			2. License transfer	175	175
1. Storage	1,000	0	E. License transfer other than for landfills and incinerators	100	100
			F. Minor revision for septage facilities and solid waste facilities other than landfills	100	100
			G. Permit by rule for one-time activities	100	100

TABLE II
WASTE MANAGEMENT FEES - ANNUAL LICENSE

MAXIMUM FEES IN DOLLARS

TITLE 38 SECTION	PROCESSING FEE	ANNUAL LICENSE FEE
1278, Asbestos abatement		
A. Asbestos abatement contractor	\$0	\$650
B. Asbestos abatement worker	0	50
C. Asbestos consultant	0	650
D. Asbestos analytical laboratory	0	400
E. Training provider	0	500
F. Other categories of asbestos professionals except asbestos abatement workers	0	100
G. Notification		
1. Project size greater than 100 square feet or 100 linear feet and less than 500 square feet or 2,500 linear feet	100	0
2. Project size 500 square feet or 2,500 linear feet, or greater, and less than 1,000 square feet or 5,000 linear feet	150	0
3. Project size 1,000 square feet or 5,000 linear feet, or greater	300	0
1304, Waste management		
A. Septage disposal		
1. Landspreading	\$550	\$250
2. Storage	50	75
B. Residuals compost facility		
1. Type I	150	150
3. Type II and Type III less than 3,500 cubic yards	700	500
5. Type II and Type III 3,500 cubic yards or greater	1,400	850

C. Land application of sludges and residuals		
1. Sites with program approval		
a. Industrial sludge	150	250
b. Municipal sludge	75	200
c. Bioash	75	200
d. Wood ash	50	125
e. Food waste	50	125
f. Other residuals	50	125
2. Sites without program approval		
a. Industrial sludge	300	550
b. Municipal sludge	150	250
c. Bioash	150	250
d. Wood ash	75	200
e. Food waste	75	200
f. Other	75	200
1310-N, Solid waste facility siting		
A. Landfill		
1. Existing, nonsecure municipal solid waste landfills accepting waste from fewer than 15,000 people	3,500	3,500
2. Existing, nonsecure municipal solid waste landfills accepting waste from more than 15,000 people	3,500	3,500
3. New or expanded for secure landfill	5,000	8,500
5. Nonsecure wood waste or demolition debris landfills, or both, if less than or equal to 6 acres	700	750
B. Incineration facilities		
1. New or expanded for the acceptance of municipal or special wastes, or both	3,500	5,000
2. Municipally owned and operated solid waste incinerators with licensed capacity of 10 tons per day or less	3,500	1,000
C. Transfer station and storage facility	750	175
D. Tire storage facility	400	450

F. Processing facility other than municipal solid waste composting	700	700
G. Beneficial use activities other than agronomic utilization		
3. Fuel substitution	700	500
4. Beneficial use without risk assessment	700	200
5. Beneficial use with risk assessment	1,400	500
H. Permit by rule for ongoing activities	100	100
<u>3109, Redemption centers</u>	<u>0</u>	<u>100</u>

Sec. 3. 38 MRSA §3102, sub-§12, as enacted by PL 2015, c. 166, §14, is repealed.

Sec. 4. 38 MRSA §3102, sub-§13, as enacted by PL 2015, c. 166, §14, is amended to read:

13. Manufacturer. "Manufacturer" means a person ~~who bottles, cans or otherwise places beverages in beverage containers for sale to distributors or dealers, that:~~

A. Sells or offers for sale a beverage in the State under the manufacturer's brand or label;

B. Licenses another person to sell or offer for sale a beverage in the State under the manufacturer's brand or label;

C. Imports into the United States for sale or offering for sale in the State a beverage that is manufactured outside of the United States by another person without a presence in the United States; or

D. Is an out-of-state wholesaler of liquor that holds a certificate of approval issued pursuant to Title 28-A.

Sec. 5. 38 MRSA §3102, sub-§§16-A, 17-A, 17-B and 17-C are enacted to read:

16-A. Pick-up agent. "Pick-up agent" means an initiator of deposit, a distributor or a contracted agent of an initiator of deposit or a distributor that receives redeemed beverage containers from a redemption center and transports those containers for recycling.

17-A. Proprietary information. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

17-B. Recycling. "Recycling" or "recycle" means a series of activities by which material that has reached the end of its current use is processed into material for use in the production of new products.

17-C. Redemption center. "Redemption center" means a place of business that deals in acceptance of empty returnable beverage containers from either consumers or from dealers, or both, and that is licensed under section 3113.

Sec. 6. 38 MRSA §3105, sub-§5, as enacted by PL 2015, c. 166, §14, is amended to read:

5. 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, 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 environmental and natural resources matters.~~

Sec. 7. 38 MRSA §3106, as amended by PL 2019, c. 133, §1, is further amended to read:

§3106. Application

1. Dealer acceptance. Except as otherwise provided in this section, a dealer operating a retail space of 5,000 square feet or more 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 3103. ~~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, unless the dealer has a written agreement with a redemption center to provide redemption services on behalf of the dealer and that redemption center:~~

A. Is located within 10 miles from the dealer, as measured along public roadways; or

B. If there is no redemption center located within 10 miles from the dealer under paragraph A, is the redemption center in closest proximity to the dealer, as measured along public roadways.

This subsection 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 included in an order of the department approving a redemption center under section 3109.

3. Limitation or number of returnables accepted. A dealer may limit the total number of beverage containers that the 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.

4. Limitation on 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 the dealer will not accept containers must be conspicuously posted.

5. 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 3103.

6. Obligation to preserve recycling value. Notwithstanding subsection 8, a distributor or its agent may refuse to accept, or pay the refund value and handling costs to a dealer, redemption center or other person for, a beverage container that has been processed by a reverse vending machine in a way that has reduced the recycling value of the container below current market value. This subsection may not be interpreted to prohibit a written processing agreement between a distributor and a dealer or redemption center and does not relieve a distributor of its obligation under subsection 8 to accept empty, unbroken and reasonably clean beverage containers. The department shall adopt rules to establish the recycling value of beverage containers under this subsection and the rules may authorize the use of a 3rd-party vendor to determine if a beverage container has been processed by a reverse vending machine in a manner that has reduced the recycling value below current market value. The rules must outline the method of allocating among the parties involved the payment for 3rd-party vendor costs. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2 A.

7. 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 3103, subsections 1, 2 and 4 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 3103, in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010, at least 4¢ for containers picked up on or after March 1, 2010 and before January 1, 2020 and at least 4 1/2¢ for containers picked up on or after January 1, 2020. 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 3103, subsection 3 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 3103 in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010, at least 4¢ for containers picked up on or after March 1, 2010 and before January 1, 2020 and at least 4 1/2¢ for containers picked up on or after January 1, 2020. 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.

~~D. Paragraphs A and B 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 3103, 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 3103 in an amount that equals at least 3¢ per returned container, except that, beginning January 1, 2020, the initiator of deposit shall reimburse the dealer or local redemption center at least 3 1/2¢ per returned container.~~

8. Obligation to pick up and recycle containers. The obligation to pick up and recycle beverage containers subject to this chapter is determined as follows.

A. A distributor that initiates the deposit under section 3103, subsection 2 or 4 has the obligation to pick up and recycle 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 3109.~~ 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 3109~~ are located within 25 miles from the dealer, as measured along public roadways. 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 adopted under this paragraph must allocate the burdens associated with the handling, storage and transportation and recycling of empty containers to prevent unreasonable financial or other hardship.

B. The initiator of the deposit under section 3103, subsection 3 has the obligation to pick up and recycle 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 3109.~~ The obligation may be fulfilled by the initiator directly or indirectly through a contracted agent.

C. An initiator of the deposit under section 3103, subsection 2, 3 or 4 has the obligation to pick up and recycle 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 other-

wise obligated to pick up and recycle pursuant to paragraphs A and B.

D. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation under this subsection to pick up and recycle 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~~ every 15 days. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation to make additional pickups when a redemption center has collected 10,000 beverage containers from that initiator of deposit or from the initiators of deposit who are members of a commingling agreement.

The ~~obligation~~ obligations 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. A contracted agent hired to pick up beverage containers for one or more initiators of deposit is deemed to have made a pickup at a redemption center for those initiators of deposit when it picks up beverage containers belonging to those initiators of deposit.

9. Plastic bags. A dealer or redemption center has an obligation to pick up plastic bags that are used by that dealer or redemption center to contain beverage containers. Plastic bags used by a dealer or redemption center and the cost allocation of these bags must conform to rules adopted by the department concerning size and gauge. ~~Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

10. 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, 5, 7 and 8 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 consumers 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. (38 MRSA Section 3106)." 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.

11. License revocation. The department may revoke the license of a dealer or redemption center that has been adjudged to have committed a violation of this section.

12. Bulk redemption. In order to prevent fraud from the redemption of beverage containers not originally sold in this State, this subsection governs the redemption of more than 2,500 beverage containers.

A. A person tendering for redemption more than 2,500 beverage containers at one time to a dealer or redemption center must provide to the dealer or redemption center that person's name and address and the license plate number of the vehicle used to transport the beverage containers. The dealer or redemption center redeeming these beverage containers shall forward that information to the department within 10 days, and the information must be kept on file for a minimum of 12 months.

B. After complying at least once with the requirements of paragraph A, a person need not comply with paragraph A each subsequent time that person tenders to a dealer or redemption center for redemption more than 2,500 beverage containers if:

- (1) All of the containers were collected at one location in this State;
- (2) All proceeds of the refund value benefit a nonprofit organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under the United States Internal Revenue Code of 1986, Section 501(c)(3); and
- (3) The person tendering the containers for redemption signs a declaration indicating the person's name, the address of the collection point and the name of the organization or organizations that will receive the refund value.

13. 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 3113, 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. 8. 38 MRS §3107, as enacted by PL 2015, c. 166, §14, is amended to read:

§3107. 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. Once the initiator of deposit has established a qualified commingling agreement pursuant to the requirements of subsection 1-A, the department shall allow additional brands of beverage containers from a different product group to be included in the commingling agreement if those additional brands are of like material to those containers already managed under the commingling agreement.

For the purposes of this chapter and notwithstanding any provision of this chapter to the contrary, the State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, is deemed to be managing returned containers for which the State has initiated deposits in a commingling program pursuant to a qualified commingling agreement as long as the State allows a dealer or redemption center to commingle returned containers of like material.

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 3106, subsection 8 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.

1-A. Qualified commingling agreements. The department shall determine that a commingling agreement is qualified for the purposes of this chapter if:

A. Fifty percent or more of beverage containers of like product group, material and size for which the deposits are being initiated in the State are included in the commingling agreement;

B. The initiators of deposit included in the commingling agreement are initiators of deposit for beverage containers containing wine and each initiator of deposit sells no more than 100,000 gallons of wine or 500,000 beverage containers containing wine in a calendar year; or

C. The commingling agreement has been approved by the department pursuant to subsection 3-A.

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.

3-A. Commingling by 3rd party or stewardship organization. Subject to the requirements of this subsection, an initiator of deposit may enter into a commingling agreement for its beverage containers to be managed in a commingling program operated by a 3rd party or by a stewardship organization as defined in section 1771, subsection 8-A. The 3rd party or stewardship organization shall submit a plan for the operation of the commingling program to the department for review and approval as a qualified commingling agreement. A commingling program under this subsection must:

A. Require redemption centers to commingle all beverage containers of initiators of deposit included in the program by like material;

B. Establish standards to provide for fair apportionment of costs among initiators of deposit included in the program either on the basis of the count of containers redeemed or on the total weight of containers marketed in the State. These standards may provide for determination of the amount to be paid to a redemption center as based on the unit counts generated by a reverse vending machine, as long as the reverse vending machine is subject to periodic audits by the 3rd party or stewardship organization on a schedule approved by the department; and

C. Require that, no later than the 20th day of the month following the end of March, June, September and December, each initiator of deposit included in the program report to the 3rd party or stewardship organization operating the program regarding its sales of beverages into the State for

the previous 3-month period by brand and by number of nonrefillable beverage containers sold by product size and material type as well as the average beverage container weight by material type and size. The 3rd party or stewardship organization shall assign financial responsibility for the costs of operating the program to the initiators of deposit included in the program based on each initiator of deposit's proportion of the total weight of beverage containers marketed in the State by material type or by actual count of containers redeemed;

The 3rd party or stewardship organization operating the program may require an initiator of deposit included in the program to provide financial assurance in the form of a deposit no greater than the initiator of deposit's anticipated costs for beverage container deposits, redemption center handling costs and any contractual fees for up to 4 months of anticipated sales in the State. The 3rd party or stewardship organization shall retain any financial assurance required pursuant to this subsection in a separate account. In the event that an initiator of deposit that has provided financial assurance in accordance with this subsection fails to reimburse the 3rd party or stewardship organization for its incurred costs within 90 days of receipt of an invoice for such costs, the 3rd party or stewardship organization may cover those invoiced costs using the financial assurance provided by the initiator of deposit in accordance with this subsection.

The department may approve no more than 2 commingling agreements as qualified commingling agreements under this subsection and may not approve a qualified commingling agreement under this subsection for a period exceeding 10 years.

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.

5. Reapproval of qualified commingling agreements. This subsection provides for the reapproval of qualified commingling agreements that have been approved or reapproved by the department pursuant to this section.

A. The initiators of deposit participating in a qualified commingling agreement under this section that was approved as a qualified commingling agreement prior to November 9, 2016 shall, no later than July 1, 2021, submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department.

B. The initiators of deposit participating in a qualified commingling agreement under this section that was approved or reapproved on or after

November 9, 2016 must submit to the department an application for reapproval of that commingling agreement in a form prescribed by the department at least 6 months prior to the date of expiration of the department's prior approval or reapproval.

C. After review of an application submitted under this subsection, the department may reapprove the commingling agreement for an additional period not to exceed 10 years.

Sec. 9. 38 MRSA §3109, as enacted by PL 2015, c. 166, §14, is amended to read:

§3109. Redemption centers

1. Establishment. ~~Local redemption~~ Redemption centers may be established and operated by any person or municipality, agency or regional association as defined in section 1303-C, subsection 24, subject to the approval of the commissioner, to serve local dealers and consumers, at which consumers may return empty beverage containers as provided under section 3106.

2. Application for approval. Application for approval of a ~~local~~ redemption center must be filed with the department. The application must state the name and address of the person responsible for the establishment and operation of the center, ~~the kinds, sizes and brand names of beverage containers that will be accepted and the names and addresses of dealers to be served~~ each dealer with whom the redemption center has entered into a written agreement to provide redemption services in accordance with section 3106, subsection 1 and their distances from the local redemption center, as measured along public roadways, and must include a statement that the redemption center will accept and manage all beverage containers the labels for which are registered in accordance with section 3105.

3. Approval. The commissioner may ~~by order~~ approve the licensing of a ~~local~~ redemption center if the redemption center complies with the requirements established under section 3113 and the applicable rules adopted pursuant to this chapter. ~~The order approving a local redemption center license must state the dealers to be served and the kinds, sizes and brand names of empty beverage containers that the center accepts.~~

4. Redemption center acceptance refund account. A ~~local~~ 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 of the kind, size and brand sold ~~by a dealer served by the center~~ in the State as long as the label for the container is registered under section 3105, subsection 5 or refuse to pay in cash the refund value of the returned beverage container as established by section 3103. 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 re-

turned as long as the amount of the refund value due is placed into an account to be held for the benefit of the consumer and funded in a manner that allows the consumer to obtain deposits due within 2 business days of the time of the return.

5. Posted lists. ~~A list of the dealers served and the kinds, sizes and brand names of empty beverage containers accepted must be prominently displayed at each local redemption center.~~

5-A. Beverage container handling. A redemption center shall tender to pick-up agents only beverage containers sold in the State that are placed in shells, shipping cartons, bags or other receptacles in a manner that facilitates accurate eligible beverage container unit counts.

5-B. Beverage container auditing. A redemption center shall prepare beverage containers for pickup by pick-up agents, which are subject to audit pursuant to rules adopted by the department in accordance with this subsection.

A. A redemption center shall label each shell, shipping carton, bag or other receptacle with the business name, initials, redemption center license number or other unique identifying mark and with the number of beverage containers contained in each shell, shipping carton, bag or other receptacle.

B. The department may audit shells, shipping cartons, bags or other receptacles that have been prepared for pickup by a redemption center.

(1) An audit may be conducted by the department on site at the redemption center or off site at a different location. Off-site audits may involve the use of bulk redemption technology.

(2) An audit must be conducted on a minimum of 1,000 beverage containers.

(3) If the results of an audit vary from the beverage container count labeled in accordance with paragraph A, the department shall, in the case of an on-site audit, require the redemption center to add or remove containers to address the variation in the results of the audit or, in the case of an off-site audit, require the redemption center to accept payment from the initiator of deposit or pick-up agent adjusted in accordance with the variation in the results of the audit.

(4) The department may deny an application for approval of a redemption center under subsection 2 if the redemption center, pursuant to audits conducted by the department in accordance with this subsection, has repeatedly prepared for pickup shells, shipping cartons, bags or other receptacles containing less

than 97% of the beverage containers that such shells, shipping cartons, bags or other receptacles are labeled as containing.

6. License revocation. ~~The District Court department~~ may, in a manner consistent with the Maine Administrative Procedure Act, ~~withdraw approval of a local~~ revoke the license of a redemption center if ~~there~~ the redemption center has not ~~been compliance complied~~ with the commissioner's approval order issued under subsection 3 or if the ~~local~~ redemption center no longer provides a convenient service to the public.

Sec. 10. 38 MRSA §3113, as enacted by PL 2015, c. 166, §14, is amended to read:

§3113. Licensing requirements

A license issued annually by the department is required before any person may initiate deposits under section 3103, operate a redemption center under section 3109 or act as a contracted agent for the collection of beverage containers under section 3106, subsection 8, paragraph B.

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 environmental and natural resources matters.~~

2. Redemption center licensing criteria. In ~~developing rules under subsection 1~~ for licensing redemption centers, the department shall consider at least the following:

- A. The health and safety of the public, including sanitation protection when food is also sold on the premises;
- B. The convenience for the public, including ~~standards governing~~ the distribution of centers by population or by distance, or both;
- C. The proximity of the proposed redemption center to existing redemption centers and the potential impact that the location of the proposed redemption center may have on an existing redemption center;
- D. The proposed owner's record of compliance with this chapter and rules adopted by the department pursuant to this chapter; and
- E. The hours of operation of the proposed redemption center and existing redemption centers in the proximity of the proposed redemption center.

3. Location of redemption centers; population requirements. The department may grant a license to a redemption center if the following requirements are met:

- A. The department may license up to 5 redemption centers in a municipality with a population over 30,000;
- B. The department may license up to 3 redemption centers in a municipality with a population over 20,000 but no more than 30,000; and
- C. The department may license up to 2 redemption centers in a municipality with a population over 5,000 but no more than 20,000.

For a municipality with a population of no more than 5,000, the department may license redemption centers in accordance with rules adopted by the department. ~~Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

4. Exceptions. Notwithstanding subsection 3:

- A. An owner of a redemption center who is renewing the license of a redemption center licensed by the department as of April 1, 2009 need not comply with subsection 3;
- B. An entity that is a ~~food establishment or distributor~~ licensed by or registered with the department need not comply with subsection 3;
- C. A reverse vending machine is not considered a redemption center for purposes of subsection 3 when it is located in a licensed redemption center; and
- D. The department may grant a license that is inconsistent with the requirements set out in subsection 3 only if the applicant has demonstrated a compelling public need for an additional redemption center in the municipality.

Sec. 11. 38 MRSA §3115, first ¶, as enacted by PL 2015, c. 166, §14, is amended to read:

The department shall administer this chapter and has the authority, following public hearing, to adopt necessary rules to carry it into effect. The department may adopt rules governing ~~local~~ redemption centers that 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. Rules adopted by the department pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the department pursuant to this chapter that establish or modify fees are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. In addition to other actions re-

quired by this chapter, department responsibilities include the following.

Sec. 12. 38 MRSA §3116, sub-§2, as enacted by PL 2015, c. 166, §14, is amended to read:

2. Aggrieved applicants. An applicant aggrieved by a decision made by the department may appeal the decision to the board in accordance with section 344, subsection 2-A or by filing an appeal with the Superior Court and serving a copy of the appeal upon the department in accordance with the Maine Rules of Civil Procedure, Rule 80C. The appeal to the board or to the Superior Court must be filed and served within 30 days of the mailing of the department's decision.

Sec. 13. 38 MRSA §3117, sub-§3, as enacted by PL 2015, c. 166, §14, is amended to read:

3. 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 3113, 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. 14. 38 MRSA §3119 is enacted to read:

§3119. Reporting requirements

This section establishes annual reporting requirements for initiators of deposit and for pick-up agents that are not initiators of deposit.

1. Initiator of deposit annual report. Each initiator of deposit shall report annually by March 1st to the department concerning its deposit transactions in the preceding calendar year. The report must be in a form prescribed by the department and must include the number of nonrefillable beverage containers sold by the initiator of deposit in the State by container size, by beverage type and by redemption value, delineated at a minimum into wine, spirits and all other beverage types, and must include the number of nonrefillable beverage containers returned to the initiator of deposit by beverage type and by redemption value.

2. Pick-up agent annual report. Each pick-up agent that is not an initiator of deposit shall report annually by March 1st to the department concerning the redemptions for each initiator of deposit it served in the preceding calendar year. The report must be in a form prescribed by the department and must include the number of nonrefillable containers returned by the pick-up agent to each initiator of deposit it served by redemption value, except that the pick-up agent may report by average weight and total weight of beverage containers returned by material type for containers

managed pursuant to a qualified commingling agreement under section 3107.

3. Proprietary information. Proprietary information submitted to the department in a report required under this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

Sec. 15. Initiator of deposit and pick-up agent reporting of beverage container sales and redemption data for calendar year 2018; report. No later than November 1, 2019, each initiator of deposit and each pick-up agent that is not an initiator of deposit shall report to the Department of Environmental Protection, in a manner consistent with the Maine Revised Statutes, Title 38, section 3119, information regarding its beverage container sales and redemptions for calendar year 2018 which must include for calendar year 2018 the number of containers picked up from each redemption center by container type and by redemption value. Upon receipt of the data under this section, the department shall assess the efficiency and convenience of the beverage container redemption system and develop recommendations to improve efficiencies in the handling and transportation of beverage containers and to ensure convenient collection of beverage containers for consumers. On or before January 15, 2020, the department shall submit a report to the Joint Standing Committee on Environment and Natural Resources detailing the department's findings and recommendations, including any proposed legislation. The report under this section may be included in the report required pursuant to Public Law 2019, chapter 133, section 3. After reviewing the report, the committee may report out legislation to the Second Regular Session of the 129th Legislature to implement recommendations contained in the report.

See title page for effective date.

CHAPTER 527

H.P. 1198 - L.D. 1671

**An Act To Amend the Laws
Governing the Maine Capital
Investment Credit To Ensure
Fairness for Maine Businesses
and To Reduce Taxes on
Lower-income Working
Families**

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