

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

An Act To Promote Recycling Program Integration and Efficiencies

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

Sec. 1. 17 MRSA §1841, sub-§3, as enacted by PL 2009, c. 487, Pt. A, §2, is amended to read:

3. Glass prohibited. The use of glass is prohibited in games of skill pursuant to Title ~~3238~~, section ~~18733118~~.

Sec. 2. 28-A MRSA §705, sub-§1-D, as enacted by PL 2003, c. 349, §2, is amended to read:

1-D. Credit for deposits. This section does not prohibit a licensee from giving credit to a purchaser for the actual amount of the deposit on beverage containers as defined in Title ~~3238~~, section ~~18623102~~, subsection 2 or on the packages or original containers as a credit on any sale or from paying the amount actually charged for such a deposit on the packages or original containers.

Sec. 3. 28-A MRSA §1355-A, sub-§2, ¶G, as enacted by PL 2011, c. 629, §22, is amended to read:

G. A licensee that is a brewery or small brewery may sell on the premises during regular business hours and within the hours of legal sale to nonlicensees liquor produced at the licensed premises. The volume of the package may not exceed 15.5 gallons and must be consumed off the premises. The sale of packages described in this paragraph must comply with keg tagging requirements provided in section 714. Each licensee shall submit a monthly report to its wholesaler detailing sales made directly from the premises. The wholesaler shall calculate the fees for any bottle deposit and submit an invoice to the licensee for expenses associated with the requirements prescribed in Title ~~3238~~, chapter ~~2833~~ including the retailer handling fee, state container deposit and a mutually agreed-upon pick-up fee.

Sec. 4. 28-A MRSA §1355-A, sub-§3, ¶C, as enacted by PL 2011, c. 629, §22, is amended to read:

C. Notwithstanding any other provision of this Title, a brewery or small brewery licensed in accordance with this section may sell from the establishment at the site of the brewery licensed for the sale of alcoholic beverages to be consumed on the premises malt liquor to be consumed off the premises under the conditions specified in this paragraph.

(1) Only malt liquor brewed at the brewery where the on-premises establishment is licensed may be sold at the on-premises establishment.

(2) Malt liquor must be dispensed in bottles provided by and with labels unique to the brewery of 32 to 64 ounces in volume.

- (3) No more than 6 bottles may be prefilled at any one time.
- (4) A deposit may be charged per bottle. Bottles sold under this paragraph are not subject to Title ~~3238~~, chapter ~~2833~~.
- (5) The bottle in which the malt liquor is dispensed must be sealed by the licensee with a seal that is tamper-evident.
- (6) Malt liquor dispensed in accordance with this paragraph must be consumed off the premises.
- (7) All sales of malt liquor from the on-premises establishment for off-premises consumption must be accompanied by a sales receipt with a time stamp that indicates time of purchase.
- (8) Sale of malt liquor from the on-premises establishment for off-premises consumption may not be made after 10:00 p.m.

The bureau may adopt rules to enforce this paragraph. Rules adopted in accordance with this paragraph are routine technical rules in accordance with Title 5, chapter 375, subchapter 2-A.

Sec. 5. 28-A MRSA §1403-A, sub-§15, as enacted by PL 2009, c. 373, §1, is amended to read:

15. Not subject to beverage container law. Notwithstanding Title ~~3238~~, chapter ~~2833~~, wine shipped pursuant to this section does not require a refund value for beverage container control purposes.

Sec. 6. 28-A MRSA §1651, sub-§1, ¶C, as amended by PL 1993, c. 615, §5, is further amended to read:

C. The commission shall add any cost to the State related to handling containers returned for refund pursuant to Title ~~3238~~, section ~~1863-A3103~~ to the established price without markup.

Sec. 7. 28-A MRSA §2075, sub-§2-A, as amended by PL 2003, c. 452, Pt. P, §6 and affected by Pt. X, §2, is further amended to read:

2-A. Evidence. The possession of more than 8 quarts of spirits in one or more containers that are not labeled in accordance with Title ~~3238~~, section ~~18653105~~ is prima facie evidence of a violation of this section.

Sec. 8. 28-A MRSA §2077, sub-§2-A, as amended by PL 2003, c. 452, Pt. P, §7 and affected by Pt. X, §2, is further amended to read:

2-A. Evidence. The possession of more than 6 gallons of malt liquor or 8 quarts of wine in one or more containers that are not labeled in accordance with Title ~~3238~~, section ~~18653105~~ is prima facie evidence of a violation of this section.

Sec. 9. 30-A MRSA §3771, sub-§1, as enacted by PL 2007, c. 549, §1, is amended to read:

1. Beverage container. "Beverage container" means a can, bottle, jar or other container made of aluminum or metal that is sealed by a manufacturer and contained, at the time of sale, a beverage, as defined by Title 3238, section 18623102, subsection 2, but does not include a beer keg.

Sec. 10. 32 MRSA c. 28, as amended, is repealed.

Sec. 11. 36 MRSA §112, sub-§8, ¶E, as enacted by PL 2011, c. 548, §10, is amended to read:

E. Administration of reports and payments required under Title 3238, section 1866-E3108.

Sec. 12. 36 MRSA §191, sub-§2, ¶QQ, as corrected by RR 2011, c. 1, §49 and amended by PL 2011, c. 380, Pt. Q, §2 and affected by §7 and amended by c. 439, §6 and affected by §12 and amended by c. 657, Pt. W, §5, is further amended to read:

QQ. The disclosure of registration, reporting and payment information to the Department of Agriculture, Conservation and Forestry necessary for the administration of Title 3238, chapter 2833;

Sec. 13. 36 MRSA §1760, sub-§93, as enacted by PL 2011, c. 380, Pt. FFFF, §1 and affected by §2, is amended to read:

93. Plastic bags sold to redemption centers. Sales to a local redemption center licensed under Title 3238, section 1871-A3113 of plastic bags used by the redemption center to sort, store or transport returnable beverage containers.

Sec. 14. 38 MRSA c. 33 is enacted to read:

CHAPTER 33

MANUFACTURERS, DISTRIBUTORS AND DEALERS OF BEVERAGE CONTAINERS

§ 3101. Purpose

1. Legislative findings. The Legislature finds that beverage containers are a major source of nondegradable litter and solid waste in this State and that the collection and disposal of this litter and solid waste constitute a great financial burden for the citizens of this State.

2. Intent. It is the intent of the Legislature to create incentives for the manufacturers, distributors, dealers and consumers of beverage containers to reuse or recycle beverage containers thereby removing the blight on the landscape caused by the disposal of these containers on the highways and lands of the State and reducing the increasing costs of litter collection and municipal solid waste disposal.

§ 3102. Definitions

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

1. Beverage. "Beverage" means beer, ale or other drink produced by fermenting malt, spirits, wine, hard cider, wine coolers, soda or noncarbonated water and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption, except for unflavored rice milk, unflavored soymilk, milk and dairy-derived products.

2. Beverage container. "Beverage container" means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. "Beverage container" does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents and the container is filled with a nonalcoholic beverage.

3. 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 3107.

4. Commissioner. "Commissioner" means the Commissioner of Environmental Protection.

5. Consumer. "Consumer" means an individual who purchases a beverage in a beverage container for use or consumption.

6. Dealer. "Dealer" means a person who sells, offers to sell or engages in the sale of beverages in beverage containers to a consumer, including, but not limited to, an operator of a vending machine containing beverages in beverage containers.

7. Department. "Department" means the Department of Environmental Protection.

8. Distributor. "Distributor" means a person who engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer who engages in such sales.

9. Hard cider. "Hard cider" means a beverage produced by fermentation of the juice of fruit, including, but not limited to, flavored, sparkling or carbonated cider that contains not less than 1/2 of 1% alcohol by volume and not more than 7% alcohol by volume.

10. In this State. "In this State" or "in the State" means within the exterior limits of the State and includes all territory within these limits owned by or ceded to the United States of America.

11. 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 3103.

12. Local redemption center. "Local 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 must be licensed under section 3113.

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

14. Nonrefillable. "Nonrefillable" means a beverage container that, after being used by a consumer, is not to be reused as a beverage container by a manufacturer.

15. Operator of a vending machine. "Operator of a vending machine" means an owner of a vending machine, the person who refills it or the owner or lessee of the property upon which it is located.

16. Person. "Person" means an individual, partnership, corporation or other legal entity.

17. Premises. "Premises" means the property of the dealer or the dealer's lessor on which a sale is made.

18. Refillable. "Refillable" means a beverage container that, after being used by a consumer, is to be reused as a beverage container at least 5 times by a manufacturer.

19. Spirits. "Spirits" has the same meaning as in Title 28-A, section 2, subsection 31.

20. 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 beverage 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.

21. Rice milk. "Rice milk" means any liquid intended for internal human consumption of which the primary protein source is rice protein derived from partially milled brown rice.

22. Unflavored soymilk. "Unflavored soymilk" means any liquid containing no additional flavoring ingredients and intended for internal human consumption, the primary protein source of which is soy protein derived from whole soybeans, isolated soy protein, soy protein concentrate, soy flour, spray-dried tofu or spray-dried soymilk.

23. Use or consumption. "Use or consumption" means the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale, storage or retention for the purpose of sale of a beverage.

24. Wine. "Wine" has the same meaning as in Title 28-A, section 2, subsection 36, except that, for the purposes of this chapter, "wine" does not include wine coolers.

25. Wine cooler. "Wine cooler" means a beverage of less than 8% alcohol content by volume consisting of wine and:

A. Plain, sparkling or carbonated water; and

B. Any one or more of the following:

- (1) Fruit juices;
- (2) Fruit adjuncts;
- (3) Artificial or natural flavors or flavorings;
- (4) Preservatives;
- (5) Coloring; or
- (6) Any other natural or artificial blending material.

§ 3103. Refund value

To encourage container reuse and recycling, every beverage container sold or offered for sale to a consumer in this State must have a deposit and refund value. The deposit and refund value are determined according to the provisions of this section.

1. Refillable containers. For refillable beverage containers, except wine and spirits containers, the manufacturer shall determine the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value may not be less than 5¢.

2. Nonrefillable containers; exclusive distributorships. For nonrefillable beverage containers, except wine and spirits containers, sold through geographically exclusive distributorships, the distributor shall determine and initiate the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value may not be less than 5¢.

3. Nonrefillable containers; nonexclusive distributorships. For nonrefillable beverage containers, except wine and spirits containers, not sold through geographically exclusive distributorships, the deposit and refund value may not be less than 5¢.

4. Wine and spirits containers. For wine and spirits containers of greater than 50 milliliters, the refund value may not be less than 15¢.

§ 3104. Dealer as distributor

Whenever a dealer or group of dealers receives a shipment or consignment of, or in any other manner acquires, beverage containers outside the State for sale to consumers in the State, the dealer or dealers shall comply with this chapter as if they were distributors, as well as dealers.

§ 3105. Labels; stamps; brand names

1. Labels. Except as provided under subsections 2 and 4, the refund value and the word "Maine" or the abbreviation "ME" must be clearly indicated on every refundable beverage container sold or offered for sale by a dealer in this State, by embossing, stamping, labeling or other method of secure attachment to the beverage container. The refund value may not be indicated on the bottom of the container. Metal beverage containers must be embossed or stamped on the top of the container.

2. Labels; nonrefillable containers; nonexclusive distributorships. With respect to nonrefillable beverage containers the deposits for which are initiated pursuant to section 3103, subsection 3, the refund value and the word "Maine" or the abbreviation "ME" must be clearly indicated on every refundable beverage container sold or offered for sale by a dealer in this State, by permanently embossing or permanently stamping the beverage containers, except in instances when the initiator of the deposit has specific permission from the department to use stickers or similar devices. The refund value may not be indicated on the bottom of the container. Metal beverage containers must be permanently embossed or permanently stamped on the tops of the containers.

3. Labels; nonrefillable containers; exclusive distributorships. Notwithstanding subsection 1 and with respect to nonrefillable beverage containers, for the deposits that are initiated pursuant to section 3103, subsection 2, the refund value and the word "Maine" or the abbreviation "ME" may be clearly indicated on refundable beverage containers sold or offered for sale by a dealer in this State by use of stickers or similar devices if those containers are not otherwise marked in accordance with subsection 1. A redemption center shall accept containers identified by stickers in accordance with this subsection or by embossing or stamping in accordance with subsection 1.

4. Brand name. Refillable glass beverage containers of carbonated beverages, for which the deposit is initiated under section 3103, subsection 1, that have a refund value of not less than 5¢ and a brand name permanently marked on the container are not required to comply with subsection 1. The exception provided by this subsection does not apply to glass beverage containers that contain spirits, wine or malt liquor as those terms are defined by Title 28-A, section 2.

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.

6. 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.

§ 3106. Application

1. Dealer acceptance. Except as provided in this section, a dealer 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.

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 and at least 4¢ for containers picked up on or after March 1, 2010. 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 and at least 4¢ for containers picked up on or after March 1, 2010. 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 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 paragraph with every other initiator of 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.

D. Paragraphs A, B and C 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.

8. 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 3103, 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 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. 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 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 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 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.

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 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 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.

§ 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.

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.

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.

§ 3108. Unclaimed deposits

The provisions of this section apply only to those beverage containers that are not subject to a commingling agreement pursuant to section 3107.

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 State Tax Assessor 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 assessor 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 assessor may require. The report required by this subsection must be treated by the assessor as a return, as the term is defined by Title 36, section 111, subsection 4.

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 State Tax Assessor the initiator's abandoned deposit amounts determined pursuant to subsection 3. Those amounts may be paid from the deposit transaction fund. Amounts collected by the assessor pursuant to this subsection must be treated by the assessor as a tax, as that term is defined by Title 36, section 111, subsection 5, and must be deposited in the General Fund.

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 Tax Assessor 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 assessor to an initiator may not exceed amounts paid by the initiator pursuant to subsection 4 in the preceding 24 months less amounts paid to the initiator pursuant to this subsection during that same 24-month period.

6. Administration by State Tax Assessor. The uniform tax administration provisions of Title 36, chapter 7 apply to the State Tax Assessor's administration of the reports and payments required by this section.

7. Small manufacturers, bottlers and brewers exempt. Except as otherwise provided in this subsection, a manufacturer who produces no more than 50,000 gallons of its product in a calendar year is exempt from the requirements of this section for that year. 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.

8. Removal of beverage. The department may remove from sale a beverage that is sold or distributed in the State by an initiator of deposit who is not in compliance with the reporting and payment requirements established in this section if the department is notified by the State Tax Assessor of that noncompliance. The department shall allow the sale of the beverage to resume upon notification by the State Tax Assessor that all delinquent reports have been submitted and all payments are current.

§ 3109. Redemption centers

1. Establishment. Local 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 and their distances from the local redemption center.

3. Approval. The commissioner may approve the licensing of a local redemption center if the redemption center complies with the requirements established under section 3113. 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 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 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 returned 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.

6. Withdrawal of approval. The District Court may, in a manner consistent with the Maine Administrative Procedure Act, withdraw approval of a local redemption center if there has not been compliance with the approval order or if the local redemption center no longer provides a convenient service to the public.

§ 3110. Prohibition on certain types of containers and holders

A beverage may not be sold or offered for sale to consumers in this State:

1. Flip tops. In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape; and

2. Plastic cans. In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel.

§ 3111. Penalties

1. Civil violation. A violation of this chapter by any person is a civil violation for which a fine of not more than \$100 may be adjudged.

2. Separate violations. Each day that a violation under subsection 1 continues or exists constitutes a separate offense.

3. Container pickup. Notwithstanding subsection 1, a person who knowingly violates a provision of section 3106, subsection 8 commits a civil violation for which a fine of \$1,000 may be adjudged.

§ 3112. Exception for beverage containers used on international flights

This chapter does not apply to any beverage container sold to an airline and containing a beverage intended for consumption on an aircraft flight in interstate or foreign commerce.

§ 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. Criteria for licensing rules. 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.

§ 3114. Beverage Container Enforcement Fund

1. Creation. The Beverage Container Enforcement Fund, referred to in this section as "the fund," is created under the jurisdiction and control of the department.

2. Sources of money. The fund consists of the following:

- A. Fees for issuance of licenses and license renewals under section 3113;
- B. Fees for registration of beverage container labels and registration renewals under section 3105, subsection 5; and
- C. All other money appropriated or allocated for inclusion in the fund.

3. Application of fund. The department may combine administration and inspection responsibilities of other programs it administers with administration and enforcement responsibilities under this chapter for efficiency purposes; however, money in the fund may be used to fund only the portion of staff time devoted to administration and enforcement activities under this chapter.

4. Revolving fund. The fund is a nonlapsing, revolving fund. All money in the fund must be continuously applied by the department to carry out the administrative and enforcement responsibilities of the department under this chapter.

§ 3115. Department administration

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. In addition to other actions required by this chapter, department responsibilities include the following.

1. Registry of labels. The department shall establish and maintain a registry of beverage container labels. The registry must contain the information for each beverage type and beverage container filed under section 3105, subsection 5 arranged and displayed in an organized and comprehensible manner. The department shall update the registry regularly and make information from the registry available upon request.

2. Provision of information. The department shall provide information about the operation of this chapter to any affected person whose premises it inspects or visits as part of its licensing and inspection responsibilities.

§ 3116. Denial of redemption center license

1. Denial of application. The department shall notify an applicant denied a license for a redemption center of the reasons for the denial. Written notification must be sent to the mailing address given by the applicant in the application for a redemption center license.

2. Aggrieved applicants. An applicant aggrieved by a decision made by the department may appeal the decision 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 must be filed and served within 30 days of the mailing of the department's decision.

§ 3117. Unlawful possession of beverage containers

A person is guilty of a violation of this section if that person possesses more than 48 beverage containers that are not labeled under section 3105. This section does not apply to licensed waste facilities as defined in section 1303-C, subsection 40.

1. Penalty. A violation of this section is a civil violation for which a fine of \$100 per container in excess of 48 beverage containers may be adjudged.

2. Enforcement. The Maine State Police shall enforce this section and prosecute any persons found in violation.

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.

4. Exempt facilities. The department may, by rule, adopt procedures for designating certain transportation activities and storage or production facilities or portions of facilities as exempt from this section. Any exemption granted under this subsection must be based on a showing by the person owning or operating the facility or undertaking the activity that:

A. The beverage containers stored or transported are intended solely for retail sale outside of the State;

B. The beverage containers are being transported to and stored in a facility licensed under Title 28-A, section 1371, subsection 1 prior to labeling and subsequent retail sale within the State; or

C. The person is licensed under Title 28-A, section 1401 to import malt liquor and wine into the State, the beverage containers contain malt liquor or wine and these containers are being transported or stored prior to labeling and subsequent retail sale within the State.

The department may require reporting of the numbers of beverage containers imported into and exported from the State under the terms of this subsection.

§ 3118. Glass-breaking games

A person, firm, corporation, association or organization may not hold, conduct or operate games of skill, as defined in Title 17, section 1831, subsection 6, that involve the breaking of glass. A violation of this section is a Class E crime.

Sec. 15. Transition. The following provisions govern the transfer of the administration of the provisions regarding returnable beverage containers under the Maine Revised Statutes, Title 32, chapter 28 from the Department of Agriculture, Conservation and Forestry to the Department of Environmental Protection.

1. The Department of Environmental Protection is the successor in every way to the powers, duties and functions of the Department of Agriculture, Conservation and Forestry under Title 32, chapter 28. The department may enter into a memorandum of understanding to foster the administration of this program.

2. All existing rules, regulations and procedures in effect, in operation or adopted by the Department of Agriculture, Conservation and Forestry or any of its administrative units or officers pursuant to Title 32, chapter 28 are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority. All rules, regulations and procedures administered pursuant to Title 32, chapter 28 are administered by the Department of Environmental Protection.

3. All existing contracts, agreements and compacts in effect under the authority of the Department of Agriculture, Conservation and Forestry under Title 32, chapter 28 continue in effect.

4. All records, property and equipment belonging to or allocated for the use of the Department of Agriculture, Conservation and Forestry for the purposes of Title 32, chapter 28 become, on the effective date of this Act, part of the property of the Department of Environment Protection.

5. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the Department of Agriculture, Conservation and Forestry used for the purposes of Title 32, chapter 28 may be used by the Department of Environment Protection until existing supplies of those items are exhausted.

SUMMARY

This bill transfers administration of the provisions regarding returnable beverage containers from the Department of Agriculture, Conservation and Forestry to the Department of Environmental Protection.