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Legislative Document

No. 1055

H.P. 778

House of Representatives, February 28, 2019

An Act To Reduce Fraud in the Redemption of Beverage Containers

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BICKFORD of Auburn.
Cosponsored by Senator BELLOWS of Kennebec and
Representatives: AUSTIN of Gray, HARRINGTON of Sanford, MOONEN of Portland,
PIERCE of Falmouth, TIPPING of Orono, Senator: BLACK of Franklin.

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

2 **Sec. 1. 38 MRSA §3102, sub-§§1-A and 20-A** are enacted to read:

3 **1-A. Auditor.** "Auditor" means an initiator of deposit that conducts an audit of
4 beverage containers pursuant to section 3107, subsection 3-A or a person authorized by
5 an initiator of deposit to conduct an audit of beverage containers pursuant to section
6 3107, subsection 3-A.

7 **20-A. Shell.** "Shell" means a standard trade package made of fiberboard, wood or
8 plastic designed for packaging, carrying or transporting beverage containers.

9 **Sec. 2. 38 MRSA §3107, sub-§3-A** is enacted to read:

10 **3-A. Beverage container auditing.** The parties to a commingling agreement may
11 include in the agreement or in an amendment to the agreement provisions authorizing an
12 initiator of deposit subject to the agreement to request or conduct an audit of beverage
13 containers presented by a dealer or local redemption center to the initiator of deposit for
14 pickup or payment of refund value. Such provisions must:

15 A. Require that dealers and local redemption centers label each bag, shell, box or
16 other receptacle containing empty beverage containers covered by the agreement with
17 the following information:

18 (1) The business name, initials or other identifying mark of the dealer or local
19 redemption center; and

20 (2) The number of beverage containers contained within each bag, shell, box or
21 other receptacle that are eligible for payment of refund value;

22 B. Require that, prior to conducting an audit of beverage containers at the place of
23 business of a dealer or local redemption center, the auditor request that the dealer or
24 local redemption center submit to an on-premises audit. If the dealer or local
25 redemption center refuses to submit to an on-premises audit, the auditor may conduct
26 an off-premises audit;

27 C. Require that an audit of beverage containers be conducted on at least 1,000
28 beverage containers presented for pickup or payment of refund value by a dealer or
29 local redemption center or on at least 1,000 beverage containers contained within a
30 reverse vending machine;

31 D. Provide that if the audit results demonstrate that the total number of beverage
32 containers claimed to be contained within the audited bags, shells, boxes or other
33 receptacles on the labels required under paragraph A exceeds the total number of
34 beverage containers actually contained within the audited bags, shells, boxes or other
35 receptacles by more than 3%, the audited dealer or local redemption center fails the
36 audit and the initiator of deposit that requested or conducted the audit may withhold
37 the deposit and handling fee for the balance of the discrepancy and may take action
38 against the audited dealer or local redemption center as authorized under paragraph F;

39 E. Provide that if the audit results demonstrate that the total number of beverage
40 containers claimed to be contained within the audited bags, shells, boxes or other

1 receptacles on the labels required under paragraph A is less than the total number of
2 beverage containers actually contained within the audited bags, shells, boxes or other
3 receptacles, the initiator of deposit that requested or conducted the audit must
4 reimburse the audited dealer or local redemption center the deposit and handling fee
5 for the total number of beverage containers actually contained within the audited
6 bags, shells, boxes or other receptacles;

7 F. Authorize an initiator of deposit that requests or conducts an audit to take the
8 following actions with respect to an audited dealer or local redemption center that
9 fails an audit under paragraph D:

10 (1) For the first failed audit by the dealer or local redemption center, the initiator
11 of deposit must provide to the dealer or local redemption center a warning
12 regarding the actions that may be taken under subparagraphs (2) to (4) as a result
13 of any subsequent failed audits;

14 (2) For the 2nd failed audit by the dealer or local redemption center, the initiator
15 of deposit may assess against the audited dealer or local redemption center the
16 percentage of the discrepancy determined during the failed audit on all beverage
17 containers picked up by the initiator of deposit at the failed audit;

18 (3) For the 3rd failed audit by the dealer or local redemption center, the initiator
19 of deposit may assess against the audited dealer or local redemption center the
20 percentage of the discrepancy determined during the failed audit on all beverage
21 containers picked up by the initiator of deposit from the dealer or local
22 redemption center within the 30 days following the failed audit; and

23 (4) For the 4th and any subsequent failed audit by the dealer or local redemption
24 center, the initiator of deposit may assess against the audited dealer or local
25 redemption center the percentage of the discrepancy determined during the failed
26 audit on all beverage containers picked up by the initiator of deposit from the
27 dealer or local redemption center within the 60 days following the failed audit.

28 In taking the actions authorized under subparagraphs (2) to (4), an initiator of deposit
29 may consider only those failed audits of the dealer or local redemption center that
30 were conducted by or at the request of the initiator of deposit within a one-year
31 period prior to the failed audit for which the initiator of deposit seeks to take such
32 authorized actions; and

33 G. Require an initiator of deposit that intends to take an action authorized under
34 paragraph F, subparagraphs (2) to (4) against an audited dealer or local redemption
35 center that failed an audit to provide written notice of the action, sent by certified
36 mail to the dealer or local redemption center, containing, at a minimum, the date of
37 the audit; the name of the initiator of deposit that requested the audit; the name of the
38 auditor who conducted the audit; the name of the person who presented the audited
39 beverage containers for pickup or payment of refund value on behalf of the dealer or
40 local redemption center; the total number of beverage containers that were claimed to
41 be contained within the audited bags, shells, boxes or other receptacles on the labels
42 required under paragraph A; the total number of beverage containers that were
43 actually contained within the audited bags, shells, boxes or other receptacles; the

1 action to be taken under paragraph F, subparagraphs (2) to (4); and the following
2 statement:

3 "You have 30 days from your receipt of this notice to contest the action
4 described in this notice by filing a grievance with the Department of
5 Environmental Protection. The filing must briefly describe the basis for
6 the grievance and must include a copy of this notice, and copies of the
7 filing must be provided to the initiator of deposit that requested the audit
8 and to the auditor named in this notice."

9 The department shall adopt rules, which are routine technical rules as defined in Title
10 5, chapter 375, subchapter 2-A, governing the conduct of a grievance hearing and the
11 issuance of a decision on a grievance. The rules must provide an informal process for
12 the conduct of grievance hearings and may not require compliance with strict
13 evidentiary rules at such hearings; must require the auditor to demonstrate to the
14 department's satisfaction that the dealer or local redemption center failed the audit
15 that constitutes the basis for the proposed action; and must require the department to
16 provide a written decision subsequent to the close of a grievance hearing to all parties
17 to the hearing.

18 **Sec. 3. 38 MRSA §3107, sub-§4**, as enacted by PL 2015, c. 166, §14, is amended
19 to read:

20 **4. Registration of commingling agreements.** Not later than 48 hours following the
21 execution or amendment of a commingling agreement, including an amendment that adds
22 an additional party to an existing agreement and an amendment that authorizes a beverage
23 container auditing process pursuant to subsection 3-A, the parties shall file a copy of the
24 commingling agreement or amendment with the department.

25 SUMMARY

26 This bill amends the State's bottle redemption laws to authorize initiators of deposit
27 subject to a commingling agreement to include in the agreement authorization to conduct
28 audits of beverage containers presented by a dealer or local redemption center for pickup
29 or payment of refund value and to take certain actions against the dealer or local
30 redemption center in the case of a failed audit. The bill also provides for a grievance
31 process whereby a dealer or local redemption center may file a grievance with the
32 Department of Environmental Protection to challenge an action taken by an initiator of
33 deposit in the case of a failed audit.