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Legislative Document

No. 1628

H.P. 1171

House of Representatives, April 25, 2019

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

Reported by Representative TUCKER of Brunswick for the Joint Standing Committee on Environment and Natural Resources pursuant to Joint Order 2019, H.P. 883.

Reference to the Committee on Environment and Natural Resources suggested and ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

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

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

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

9 **5-A. Accounting system.** In order to determine the extent to which the functions set
10 out in this section are necessary for the licensing process or are being performed in an
11 efficient and expeditious manner, the commissioner shall require that all employees of the
12 department involved in any aspect of these functions keep accurate and regular daily time
13 records. These records must describe the matters worked on, services performed and the
14 amount of time devoted to those matters and services, as well as amounts of money
15 expended in performing those functions. Records must be kept for a sufficient duration
16 of time as determined by the commissioner to establish to the commissioner's satisfaction
17 that the fees are appropriate.

18 **TABLE I**

19 **MAXIMUM FEES IN DOLLARS**

20	TITLE 36	PROCESSING FEE	CERTIFICATION
21	SECTION		FEE
22			
23	656, sub-§1, ¶E, Pollution Control		
24	Facilities		
25	A. Water pollution control facilities	\$250	\$20
26	with capacities at least 4,000 gallons		
27	of waste per day and §1760, sub-§29,		
28	water pollution control facilities		
29	B. Air pollution control and §1760,	250	20
30	sub-§30, air pollution control facilities		
31			
32	TITLE 38	PROCESSING FEE	LICENSE
33	SECTION		FEE
34			
35	344, sub-§7, Permit by rule	\$50	\$0
36	413, Waste discharge licenses	See section 353-B	
37	420-D, Storm water management		

1	A. If structural means of storm water	\$400 for the first	\$100 for the first
2	control are used	acre of disturbed	acre of disturbed
3		area, plus \$200 for	area, plus \$50 for
4		each additional	each additional
5		whole acre of	whole acre of
6		disturbed area	disturbed area
7	B. If solely vegetative means of storm	\$200 for the first	\$50 for the first acre
8	water control are used	acre of disturbed	of disturbed area,
9		area, plus \$100 for	plus \$25 for each
10		each additional	additional whole
11		whole acre of	acre of disturbed
12		disturbed area	area
13	C. When a permit by rule is required	\$55	none
14	If a project described in paragraph A or B is reviewed and approved by a		
15	professional engineer at a soil and water conservation district office that has a		
16	memorandum of understanding with the department concerning review of projects		
17	pursuant to this section, the total applicable fee is reduced to a processing fee of		
18	\$100 for the first acre of disturbed area, plus a license fee of \$50 for each		
19	additional whole acre of disturbed area.		
20	480-E, Natural resources protection		
21	A. Any alteration of a protected	140	50
22	natural resource, except coastal		
23	wetlands and coastal sand dunes,		
24	causing less than 20,000 square feet of		
25	alteration of the resource		
26	B. Any alteration of a coastal wetland	240	60
27	causing less than 20,000 square feet of		
28	alteration of the resource		
29	C. Any alteration of a protected	.015/sq. ft. alteration	.005/sq. ft. alteration
30	natural resource, except coastal sand		
31	dunes, causing 20,000 square feet or		
32	more of alteration of the resource		
33	C-1. Significant groundwater well	4,577	1,961
34	C-2. Activity within a community	183	64
35	public water supply primary protection		
36	area		
37	D. Any alteration of a coastal sand	3,500	1,500
38	dune		
39	E. Condition compliance	84	0
40	F. Minor modification	184	0
41	485-A, Site location of development		
42	A. Residential subdivisions		

1	1. Affordable housing	50/lot	50/lot
2	2. On public water and sewers	175/lot	175/lot
3	3. All Other	250/lot	250/lot
4	B. Industrial parks	460/lot	460/lot
5	C. Mining	1,500	1,000
6	D. Structures	4,000	2,000
7	E. Other	1,000	1,000
8	543, Oily waste discharge	40	160
9	560, Vessels at anchorage	125	100
10	587, Ambient air quality or emissions	5,050	50
11	standards variances		
12	590, Air emissions licenses	See section 353-A	
13	633, Hydropower projects		
14	A. New or expanded generating	450/MW	50/MW
15	capacity		
16	B. Maintenance and repair or other	150	150
17	structural alterations not involving an		
18	increase in generating capacity		
19	33 United States Code, Chapter 26, Water		
20	Quality Certifications, in conjunction with		
21	applications for hydropower project		
22	licensing or relicensing		
23	A. Initial consultation	1,000	0
24	B. Second consultation	1,000	0
25	C. Application		
26	1. Storage	1,000	0
27	2. Generating	300/MW	50/MW
28	1304, Waste management		
29	A. Septage disposal		
30	1. Site designation	50	25
31	B. Land application of sludges and		
32	residuals program approval		
33	1. Industrial sludge	400	400
34	2. Municipal sludge	300	275
35	3. Bioash	300	275
36	4. Wood ash	300	75
37	5. Food waste	300	75
38	6. Other residuals	300	175
39	C. Landfill		
40	1. Closing plans for secure	1,500	1,500
41	landfills		

1	E. Training provider	0	500
2	F. Other categories of asbestos	0	100
3	professionals except asbestos		
4	abatement workers		
5	G. Notification		
6	1. Project size greater than 100	100	0
7	square feet or 100 linear feet and		
8	less than 500 square feet or 2,500		
9	linear feet		
10	2. Project size 500 square feet or	150	0
11	2,500 linear feet, or greater, and		
12	less than 1,000 square feet or		
13	5,000 linear feet		
14	3. Project size 1,000 square feet	300	0
15	or 5,000 linear feet, or greater		
16	1304, Waste management		
17	A. Septage disposal		
18	1. Landspreading	\$550	\$250
19	2. Storage	50	75
20	B. Residuals compost facility		
21	1. Type I	150	150
22	3. Type II and Type III less than	700	500
23	3,500 cubic yards		
24	5. Type II and Type III 3,500	1,400	850
25	cubic yards or greater		
26	C. Land application of sludges and		
27	residuals		
28	1. Sites with program approval		
29	a. Industrial sludge	150	250
30	b. Municipal sludge	75	200
31	c. Bioash	75	200
32	d. Wood ash	50	125
33	e. Food waste	50	125
34	f. Other residuals	50	125
35	2. Sites without program approval		
36	a. Industrial sludge	300	550
37	b. Municipal sludge	150	250
38	c. Bioash	150	250
39	d. Wood ash	75	200
40	e. Food waste	75	200
41	f. Other	75	200
42	1310-N, Solid waste facility siting		

1	A. Landfill		
2	1. Existing, nonsecure municipal	3,500	3,500
3	solid waste landfills accepting		
4	waste from fewer than 15,000		
5	people		
6	2. Existing, nonsecure municipal	3,500	3,500
7	solid waste landfills accepting		
8	waste from more than 15,000		
9	people		
10	3. New or expanded for secure	5,000	8,500
11	landfill		
12	5. Nonsecure wood waste or	700	750
13	demolition debris landfills, or		
14	both, if less than or equal to 6		
15	acres		
16	B. Incineration facilities		
17	1. New or expanded for the	3,500	5,000
18	acceptance of municipal or special		
19	wastes, or both		
20	2. Municipally owned and	3,500	1,000
21	operated solid waste incinerators		
22	with licensed capacity of 10 tons		
23	per day or less		
24	C. Transfer station and storage	750	175
25	facility		
26	D. Tire storage facility	400	450
27	F. Processing facility other than	700	700
28	municipal solid waste composting		
29	G. Beneficial use activities other than		
30	agronomic utilization		
31	3. Fuel substitution	700	500
32	4. Beneficial use without risk	700	200
33	assessment		
34	5. Beneficial use with risk	1,400	500
35	assessment		
36	H. Permit by rule for ongoing	100	100
37	activities		
38	<u>3109, Redemption centers</u>	<u>0</u>	<u>100</u>

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

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

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

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

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

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

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

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

13 **16-A. Pick-up agent.** "Pick-up agent" means an initiator of deposit, a distributor or
14 a contracted agent of an initiator of deposit or a distributor that receives redeemed
15 beverage containers from a redemption center and transports those containers for
16 recycling.

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

21 **17-B. Redemption center.** "Redemption center" means a place of business that
22 deals in acceptance of empty returnable beverage containers from either consumers or
23 from dealers, or both, and that is licensed under section 3113.

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

26 **5. Label registration.** An initiator of deposit shall register the container label of any
27 beverage offered for sale in the State on which it initiates a deposit. Registration must be
28 on forms or in an electronic format provided by the department and must include the
29 universal product code for each combination of beverage and container manufactured.
30 The initiator of deposit shall renew a label registration annually and whenever that label
31 is revised by altering the universal product code or whenever the container on which it
32 appears is changed in size, composition or glass color. The initiator of deposit shall also
33 include as part of the registration the method of collection for that type of container,
34 identification of a collection agent, identification of all of the parties to a commingling
35 agreement that applies to the container and proof of the collection agreement. The
36 department may charge a fee for registration and registration renewals under this
37 subsection. ~~Rules adopted pursuant to this subsection that establish fees are major~~
38 ~~substantive rules as defined in Title 5, chapter 375, subchapter 2-A and subject to review~~
39 ~~by the joint standing committee of the Legislature having jurisdiction over environmental~~
40 ~~and natural resources matters.~~

1 **Sec. 7. 38 MRSA §3106**, as enacted by PL 2015, c. 166, §14, is amended to read:

2 **§3106. Application**

3 **1. Dealer acceptance.** Except as otherwise provided in this section, a dealer
4 operating a retail space of 5,000 square feet or more may not refuse to accept from any
5 consumer or other person not a dealer any empty, unbroken and reasonably clean
6 beverage container ~~of the kind, size and brand sold by the dealer~~, or refuse to pay in cash
7 the refund value of the returned beverage container as established by section 3103 unless
8 the dealer has a written agreement with a redemption center that is located within 10
9 miles from the dealer, as measured along public roadways, to provide redemption
10 services on behalf of the dealer. This section does not require an operator of a vending
11 machine to maintain a person to accept returned beverage containers on the premises
12 where the vending machine is located.

13 ~~**2. Permissive refusal by dealer.** A dealer may refuse to accept from a consumer or~~
14 ~~other person and to pay the refund value on any beverage container, if the place of~~
15 ~~business of the dealer and the kind, size and brand of beverage container are included in~~
16 ~~an order of the department approving a redemption center under section 3109.~~

17 **3. Limitation on number of returnables accepted.** A dealer may limit the total
18 number of beverage containers that the dealer will accept from any one consumer or other
19 person in any one business day to 240 containers, or any other number greater than 240.

20 **4. Limitation on hours for returning containers.** A dealer may refuse to accept
21 beverage containers during no more than 3 hours in any one business day. If a dealer
22 refuses to accept containers under this subsection, the hours during which the dealer will
23 not accept containers must be conspicuously posted.

24 **5. Distributor acceptance.** A distributor may not refuse to accept from any dealer
25 or ~~local~~ redemption center any empty, unbroken and reasonably clean beverage container
26 or any beverage container that has been processed through an approved reverse vending
27 machine that meets the requirements of rules adopted by the department pursuant to this
28 chapter of the kind, size and brand sold by the distributor or refuse to pay to the dealer or
29 ~~local~~ redemption center the refund value of a beverage container as established by section
30 3103.

31 **6. Obligation to preserve recycling value.** Notwithstanding subsection 8, a
32 distributor or its agent may refuse to accept, or pay the refund value and handling costs to
33 a dealer, redemption center or other person for, a beverage container that has been
34 processed by a reverse vending machine in a way that has reduced the recycling value of
35 the container below current market value. This subsection may not be interpreted to
36 prohibit a written processing agreement between a distributor and a dealer or redemption
37 center and does not relieve a distributor of its obligation under subsection 8 to accept
38 empty, unbroken and reasonably clean beverage containers. The department shall adopt
39 rules to establish the recycling value of beverage containers under this subsection and the
40 rules may authorize the use of a 3rd-party vendor to determine if a beverage container has
41 been processed by a reverse vending machine in a manner that has reduced the recycling
42 value below current market value. The rules must outline the method of allocating

1 among the parties involved the payment for 3rd-party vendor costs. ~~Rules adopted under~~
2 ~~this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter~~
3 ~~2-A.~~

4 **7. Reimbursement of handling costs.** Reimbursement of handling costs is
5 governed by this subsection.

6 A. In addition to the payment of the refund value, the initiator of the deposit under
7 section 3103, subsections 1, 2 and 4 shall reimburse the dealer or ~~local~~ redemption
8 center for the cost of handling beverage containers subject to section 3103, in an
9 amount that equals at least 3¢ per returned container for containers picked up by the
10 initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after
11 March 1, 2004 and before March 1, 2010 and at least 4¢ for containers picked up on
12 or after March 1, 2010. The initiator of the deposit may reimburse the dealer or ~~local~~
13 redemption center directly or indirectly through a party with which it has entered into
14 a commingling agreement.

15 B. In addition to the payment of the refund value, the initiator of the deposit under
16 section 3103, subsection 3 shall reimburse the dealer or ~~local~~ redemption center for
17 the cost of handling beverage containers subject to section 3103 in an amount that
18 equals at least 3¢ per returned container for containers picked up by the initiator
19 before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1,
20 2004 and before March 1, 2010 and at least 4¢ for containers picked up on or after
21 March 1, 2010. The initiator of the deposit may reimburse the dealer or ~~local~~
22 redemption center directly or indirectly through a contracted agent or through a party
23 with which it has entered into a commingling agreement.

24 C. The reimbursement that the initiator of the deposit is obligated to pay the dealer or
25 redemption center pursuant to paragraph A or B must be reduced by 1/2¢ for any
26 returned container that is ~~subject to~~ managed in a commingling program in
27 accordance with a qualified commingling agreement that allows the dealer or
28 redemption center to commingle beverage containers of like ~~product group,~~ material
29 and size. ~~A commingling agreement is qualified for purposes of this paragraph if the~~
30 ~~department determines that 50% or more of the beverage containers of like product~~
31 ~~group, material and size for which the deposits are being initiated in the State are~~
32 ~~covered by the commingling agreement or that the initiators of deposit covered by the~~
33 ~~commingling agreement are initiators of deposit for wine containers who each sell no~~
34 ~~more than 100,000 gallons of wine or 500,000 beverage containers that contain wine~~
35 ~~in a calendar year. Once the initiator of deposit has established a qualified~~
36 ~~commingling agreement for containers of a like product group, material and size, the~~
37 ~~department shall allow additional brands to be included from a different product~~
38 ~~group if they are of like material. The State, through the Department of~~
39 ~~Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery~~
40 ~~Operations, shall make every reasonable effort to enter into a qualified commingling~~
41 ~~agreement under this paragraph with every other initiator of deposit for beverage~~
42 ~~containers that are of like product group, size and material as the beverage containers~~
43 ~~for which the State is the initiator of deposit.~~

44 D. ~~Paragraphs A, B and C do not apply to a brewer who annually produces no more~~
45 ~~than 50,000 gallons of its product or a bottler of water who annually sells no more~~

1 than 250,000 containers each containing no more than one gallon of its product. In
2 addition to the payment of the refund value, an initiator of deposit under section
3 3103, subsections 1 to 4 who is also a brewer who annually produces no more than
4 50,000 gallons of its product or a bottler of water who annually sells no more than
5 250,000 containers each containing no more than one gallon of its product shall
6 reimburse the dealer or local redemption center for the cost of handling beverage
7 containers subject to section 3103 in an amount that equals at least 3¢ per returned
8 container.

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

11 A. A distributor that initiates the deposit under section 3103, subsection 2 or 4 has
12 the obligation to pick up and recycle any empty, unbroken and reasonably clean
13 beverage containers of the particular kind, size and brand sold by the distributor from
14 dealers to whom that distributor has sold those beverages and from licensed
15 redemption centers ~~designated to serve those dealers pursuant to an order entered~~
16 ~~under section 3109.~~ A distributor that, within this State, sells beverages under a
17 particular label exclusively to one dealer, which dealer offers those labeled beverages
18 for sale at retail exclusively at the dealer's establishment, shall pick up any empty,
19 unbroken and reasonably clean beverage containers of the kind, size and brand sold
20 by the distributor to the dealer only from those licensed redemption centers that serve
21 the various establishments of the dealer, under an order entered under section 3109
22 are located within 25 miles from the dealer, as measured along public roadways. A
23 dealer that manufactures its own beverages for exclusive sale by that dealer at retail
24 has the obligation of a distributor under this section. The commissioner may
25 establish by rule, in accordance with the Maine Administrative Procedure Act,
26 criteria prescribing the manner in which distributors shall fulfill the obligations
27 imposed by this paragraph. The rules may establish a minimum number or value of
28 containers below which a distributor is not required to respond to a request to pick up
29 empty containers. Any rules adopted under this paragraph must allocate the burdens
30 associated with the handling, storage and transportation and recycling of empty
31 containers to prevent unreasonable financial or other hardship.

32 B. The initiator of the deposit under section 3103, subsection 3 has the obligation to
33 pick up and recycle any empty, unbroken and reasonably clean beverage containers
34 of the particular kind, size and brand sold by the initiator from dealers to whom a
35 distributor has sold those beverages and from licensed redemption centers ~~designated~~
36 ~~to serve those dealers pursuant to an order entered under section 3109.~~ The
37 obligation may be fulfilled by the initiator directly or indirectly through a contracted
38 agent.

39 C. An initiator of the deposit under section 3103, subsection 2, 3 or 4 has the
40 obligation to pick up and recycle any empty, unbroken and reasonably clean beverage
41 containers that are commingled pursuant to a commingling agreement along with any
42 beverage containers that the initiator is otherwise obligated to pick up and recycle
43 pursuant to paragraphs A and B.

44 D. The initiator of deposit or initiators of deposit who are members of a
45 commingling agreement have the obligation under this subsection to pick up and

1 recycle empty, unbroken and reasonably clean beverage containers of the particular
2 kind, size and brand sold by the initiator from dealers to whom a distributor has sold
3 those beverages and from licensed redemption centers ~~designated to serve those~~
4 ~~dealers~~ every 15 days. The initiator of deposit or initiators of deposit who are
5 members of a commingling agreement have the obligation to make additional pickups
6 when a redemption center has collected 10,000 beverage containers from that initiator
7 of deposit or from the initiators of deposit who are members of a commingling
8 agreement.

9 The ~~obligation~~ obligations of the initiator of the deposit under this subsection may be
10 fulfilled by the initiator directly or through a party with which it has entered into a
11 commingling agreement. A contracted agent hired to pick up beverage containers for one
12 or more initiators of deposit is deemed to have made a pickup at a redemption center for
13 those initiators of deposit when it picks up beverage containers belonging to those
14 initiators of deposit.

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

21 **10. Application to containers originally sold in the State.** The obligations to
22 accept or take empty beverage containers and to pay the refund value and handling fees
23 for such containers as described in subsections 1, 2, 5, 7 and 8 apply only to containers
24 originally sold in this State as filled beverage containers. A person who tenders to a
25 dealer, distributor, redemption center or bottler more than 48 empty beverage containers
26 that the person knows or has reason to know were not originally sold in this State as filled
27 beverage containers is subject to the enforcement action and civil penalties set forth in
28 this subsection. At each location where consumers tender containers for redemption,
29 dealers and redemption centers must conspicuously display a sign in letters that are at
30 least one inch in height with the following information: "WARNING: Persons tendering
31 containers for redemption that were not originally purchased in this State may be subject
32 to a fine of the greater of \$100 per container or \$25,000 for each tender. (38 MRSA
33 Section 3106)." A person who violates the provisions of this subsection is subject to a
34 civil penalty of the greater of \$100 for each container or \$25,000 for each tender of
35 containers.

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

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

41 A. A person tendering for redemption more than 2,500 beverage containers at one
42 time to a dealer or redemption center must provide to the dealer or redemption center
43 that person's name and address and the license plate number of the vehicle used to

1 transport the beverage containers. The dealer or redemption center redeeming these
2 beverage containers shall forward that information to the department within 10 days,
3 and the information must be kept on file for a minimum of 12 months.

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

7 (1) All of the containers were collected at one location in this State;

8 (2) All proceeds of the refund value benefit a nonprofit organization that has
9 been determined by the United States Internal Revenue Service to be exempt
10 from taxation under the United States Internal Revenue Code of 1986, Section
11 501(c)(3); and

12 (3) The person tendering the containers for redemption signs a declaration
13 indicating the person's name, the address of the collection point and the name of
14 the organization or organizations that will receive the refund value.

15 **13. Private right of action; containers not originally sold in the State.** An
16 initiator of deposit may maintain a civil action in Superior Court against a person, other
17 than a local redemption center licensed in accordance with section 3113, that tenders to a
18 redemption center or retailer more than 48 empty beverage containers that the person
19 knows or has reason to know were not originally sold in this State as filled beverage
20 containers. If the initiator of deposit prevails in any action, the initiator of deposit is
21 entitled to an award of reasonable attorney's fees and court costs, including expert witness
22 fees.

23 **Sec. 8. 38 MRSA §3107**, as enacted by PL 2015, c. 166, §14, is amended to read:

24 **§3107. Commingling of beverage containers**

25 Notwithstanding any other provision of this chapter to the contrary, 2 or more
26 initiators of deposit may enter into a commingling agreement through which some or all
27 of the beverage containers for which the initiators have initiated deposits may be
28 commingled by dealers and operators of redemption centers as provided in this section.
29 No later than January 1, 2023, each initiator of deposit shall enter into a commingling
30 agreement pursuant to this section.

31 An initiator of deposit that enters into a commingling agreement pursuant to this
32 section shall permit any other initiator of deposit to become a party to that agreement on
33 the same terms and conditions as the original agreement. Once the initiator of deposit has
34 established a qualified commingling agreement pursuant to the requirements of
35 subsection 1-A, the department shall allow additional brands of beverage containers from
36 a different product group to be included in the commingling agreement if those additional
37 brands are of like material to those containers already managed under the commingling
38 agreement.

39 For the purposes of this chapter and notwithstanding any provision of this chapter to
40 the contrary, the State, through the Department of Administrative and Financial Services,
41 Bureau of Alcoholic Beverages and Lottery Operations, is deemed to be managing

1 returned containers for which the State has initiated deposits in a commingling program
2 pursuant to a qualified commingling agreement as long as the State allows a dealer or
3 redemption center to commingle returned containers of like material.

4 **1. Commingling requirement.** If initiators of deposit enter into a commingling
5 agreement pursuant to this section, commingling of beverage containers must be by all
6 containers of like product group, material and size. An initiator of deposit required
7 pursuant to section 3106, subsection 8 to pick up beverage containers subject to a
8 commingling agreement also shall pick up all other beverage containers subject to the
9 same agreement. The initiator of deposit may not require beverage containers that are
10 subject to a commingling agreement to be sorted separately by a dealer or redemption
11 center.

12 **1-A. Qualified commingling agreements.** The department shall determine that a
13 commingling agreement is qualified for the purposes of this chapter if:

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

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

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

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

- 25 A. Plastic;
- 26 B. Aluminum;
- 27 C. Metal other than aluminum; and
- 28 D. Glass.

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

- 31 A. Beer, ale or other beverage produced by fermenting malt, wine and wine coolers;
- 32 B. Spirits;
- 33 C. Soda;
- 34 D. Noncarbonated water; and
- 35 E. All other beverages.

36 **3-A. Commingling by 3rd party or stewardship organization.** Subject to the
37 requirements of this subsection, an initiator of deposit may enter into a commingling
38 agreement for its beverage containers to be managed in a commingling program operated

1 by a 3rd party or by a stewardship organization as defined in section 1771, subsection
2 8-A. The 3rd party or stewardship organization shall submit a plan for the operation of
3 the commingling program to the department for review and approval as a qualified
4 commingling agreement. A commingling program under this subsection must:

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

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

14 C. Require that, no later than the 20th day of the month following the end of March,
15 June, September and December, each initiator of deposit included in the program
16 report to the 3rd party or stewardship organization operating the program regarding
17 its sales of beverages into the State for the previous 3-month period by brand and by
18 number of nonrefillable beverage containers sold by product size and material type as
19 well as the average beverage container weight by material type and size. The 3rd
20 party or stewardship organization shall assign financial responsibility for the costs of
21 operating the program to the initiators of deposit included in the program based on
22 each initiator of deposit's proportion of the total weight of beverage containers
23 marketed in the State by material type or by actual count of containers redeemed;

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

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

38 **4. Registration of commingling agreements.** Not later than 48 hours following the
39 execution or amendment of a commingling agreement, including an amendment that adds
40 an additional party to an existing agreement, the parties shall file a copy of the
41 commingling agreement or amendment with the department.

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

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

6 B. The initiators of deposit participating in a qualified commingling agreement under
7 this section that was approved or reapproved on or after November 9, 2016 must
8 submit to the department an application for reapproval of that commingling
9 agreement in a form prescribed by the department at least 6 months prior to the date
10 of expiration of the department's prior approval or reapproval.

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

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

15 **§3109. Redemption centers**

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

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

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

36 **4. Redemption center acceptance refund account.** A ~~local~~ licensed redemption
37 center may not refuse to accept from any consumer or ~~other person not a dealer~~ any
38 empty, unbroken and reasonably clean beverage container of the kind, size and brand sold
39 ~~by a dealer served by the center in the State~~ as long as the label for the container is
40 registered under section 3105, subsection 5 or refuse to pay in cash the refund value of
41 the returned beverage container as established by section 3103. A redemption center or
42 reverse vending machine is not obligated to count containers or to pay a cash refund at

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

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

8 **5-A. Beverage container handling.** A redemption center shall tender to pick-up
9 agents only beverage containers sold in the State that are placed in shells, shipping
10 cartons, bags or other containers in a manner that facilitates accurate eligible beverage
11 container unit counts.

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

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

19 **§3113. Licensing requirements**

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

24 **1. Procedures; licensing fees.** The department shall adopt rules establishing the
25 requirements and procedures for issuance of licenses and annual renewals under this
26 section, including a fee structure. ~~Initial rules adopted pursuant to this subsection are
27 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted
28 effective after calendar year 2003 are major substantive rules as defined in Title 5,
29 chapter 375, subchapter 2-A and are subject to review by the joint standing committee of
30 the Legislature having jurisdiction over environmental and natural resources matters.~~

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

- 33 A. The health and safety of the public, including sanitation protection when food is
34 also sold on the premises;
- 35 B. The convenience for the public, including ~~standards governing~~ the distribution of
36 centers by population or by distance, or both;
- 37 C. The proximity of the proposed redemption center to existing redemption centers
38 and the potential impact that the location of the proposed redemption center may have
39 on an existing redemption center;

1 D. The proposed owner's record of compliance with this chapter and rules adopted
2 by the department pursuant to this chapter; and

3 E. The hours of operation of the proposed redemption center and existing redemption
4 centers in the proximity of the proposed redemption center.

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

7 A. The department may license up to 5 redemption centers in a municipality with a
8 population over 30,000;

9 B. The department may license up to 3 redemption centers in a municipality with a
10 population over 20,000 but no more than 30,000; and

11 C. The department may license up to 2 redemption centers in a municipality with a
12 population over 5,000 but no more than 20,000.

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

17 **4. Exceptions.** Notwithstanding subsection 3:

18 A. An owner of a redemption center who is renewing the license of a redemption
19 center licensed by the department as of April 1, 2009 need not comply with
20 subsection 3;

21 ~~B. An entity that is a food establishment or distributor licensed by or registered with~~
22 ~~the department need not comply with subsection 3;~~

23 C. A reverse vending machine is not considered a redemption center for purposes of
24 subsection 3 when it is located in a licensed redemption center; and

25 D. The department may grant a license that is inconsistent with the requirements set
26 out in subsection 3 only if the applicant has demonstrated a compelling public need
27 for an additional redemption center in the municipality.

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

30 The department shall administer this chapter and has the authority, following public
31 hearing, to adopt necessary rules to carry it into effect. The department may adopt rules
32 governing local redemption centers that receive beverage containers from dealers
33 supplied by distributors other than the distributors servicing the area in which the local
34 redemption center is located in order to prevent the distributors servicing the area within
35 which the redemption center is located from being unfairly penalized. Rules adopted by
36 the department pursuant to this chapter are routine technical rules as defined in Title 5,
37 chapter 375, subchapter 2-A, except that rules adopted by the department pursuant to this
38 chapter that establish or modify fees are major substantive rules as defined in Title 5,
39 chapter 375, subchapter 2-A. In addition to other actions required by this chapter,
40 department responsibilities include the following.

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

3 **2. Aggrieved applicants.** An applicant aggrieved by a decision made by the
4 department may appeal the decision to the board in accordance with section 344,
5 subsection 2-A or by filing an appeal with the Superior Court and serving a copy of the
6 appeal upon the department in accordance with the Maine Rules of Civil Procedure, Rule
7 80C. The appeal to the board or to the Superior Court must be filed and served within 30
8 days of the mailing of the department's decision.

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

11 **3. Private right of action; containers not originally sold in the State.** An initiator
12 of deposit may maintain a civil action in Superior Court against a person, other than a
13 ~~local~~ redemption center licensed in accordance with section 3113, in possession of more
14 than 48 beverage containers that the person knows or has reason to know were not
15 originally sold in this State as filled beverage containers. If the initiator of deposit
16 prevails in any action, the initiator of deposit is entitled to an award of reasonable
17 attorney's fees and court costs, including expert witness fees.

18 **Sec. 14. 38 MRSA §3119** is enacted to read:

19 **§3119. Reporting requirements**

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

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

30 **2. Pick-up agent annual report.** Each pick-up agent that is not an initiator of
31 deposit shall report annually by March 1st to the department concerning the redemptions
32 for each initiator of deposit it served in the preceding calendar year. The report must be
33 in a form prescribed by the department and must include the number of nonrefillable
34 containers returned by the pick-up agent to each initiator of deposit it served by
35 redemption value, except that the pick-up agent may report by average weight and total
36 weight of beverage containers returned by material type for containers managed pursuant
37 to a qualified commingling agreement under section 3107.

38 **3. Proprietary information.** Proprietary information submitted to the department in
39 a report required under this section that is identified by the submitter as proprietary

1 information is confidential and must be handled by the department in the same manner as
2 confidential information is handled under section 1310-B.

3 **SUMMARY**

4 This bill, which is reported out by the Joint Standing Committee on Environment and
5 Natural Resources pursuant to Joint Order 2019, H.P. 883, implements the Department of
6 Environmental Protection's recommendations regarding the State's container redemption
7 laws as included in the department's annual report on the State's product stewardship
8 programs.

9 This bill makes a number of changes to the State's container redemption laws
10 including the following.

11 1. It amends the laws to provide that a dealer of beverage containers with 5,000 or
12 more square feet of retail space must accept beverage container returns unless the dealer
13 has a written agreement with a redemption center located within 10 miles of the dealer, as
14 measured along public roadways, to provide redemption services on the dealer's behalf.

15 2. It establishes an annual license fee for redemption centers of \$100. The current
16 annual license fee is \$50.

17 3. It clarifies the ability of the Department of Administrative and Financial Services,
18 Bureau of Alcoholic Beverages and Lottery Operations to manage its returned containers
19 as a qualified commingling program.

20 4. It eliminates the special handling fee for small brewers and bottlers of water.

21 5. It clarifies the obligation of initiators of deposit to recycle returned beverage
22 containers that the initiator of deposit has picked up or that a 3rd party has picked up on
23 the initiator of deposit's behalf.

24 6. It clarifies the requirements for qualified commingling agreements under the law,
25 provides for the creation of an additional commingling group to be operated by a 3rd
26 party or stewardship organization and requires all initiators of deposit to enter into a
27 commingling agreement by January 1, 2023.

28 7. It clarifies licensing standards and other requirements for redemption centers.

29 8. It clarifies the Department of Environmental Protection's rule-making and
30 administrative authority under the law.

31 9. It establishes annual reporting requirements for initiators of deposit and for pick-
32 up agents that are not initiators of deposit.

33 10. It makes a number of terminology changes and other technical changes to the
34 law.

35 The committee has not taken a position on the substance of the bill and by reporting
36 this bill out, the committee is not suggesting and does not intend to suggest that it agrees

1 or disagrees with any aspect of this bill. The committee is reporting the bill out for the
2 sole purpose of obtaining a printed bill that can be referred to the committee for a public
3 hearing and subsequent committee action in the normal course.