

STATE OF NEW YORK

237--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. MAY, BRESLIN, BRISPORT, GONZALEZ, HOYLMAN-SIGAL, JACKSON, KRUEGER, RAMOS, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to returnable bottles and to retention and use of funds for the beverage container assistance program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 27-1003 of the environmental
2 conservation law, as amended by section 2 of part SS of chapter 59 of
3 the laws of 2009, is amended to read as follows:
4 1. "Beverage" means carbonated soft drinks, noncarbonated soft drinks,
5 noncarbonated fruit or vegetable juices containing less than one hundred
6 percent fruit or vegetable juice, coffee and tea beverages, carbonated
7 fruit beverages, carbonated water, noncarbonated water, beer, other malt
8 beverages [~~and a~~], wine, liquor, distilled spirit coolers, and cider and
9 wine [~~product~~] products as defined in [~~subdivision thirty-six-a of~~]
10 section three of the alcoholic beverage control law. "Malt beverages"
11 means any beverage obtained by the alcoholic fermentation or infusion or
12 decoction of barley, malt, hops, or other wholesome grain or cereal and
13 water including, but not limited to ale, stout or malt liquor. "Water"
14 means any beverage identified through the use of letters, words or
15 symbols on its product label as a type of water, including any flavored
16 water or nutritionally enhanced water[, ~~provided, however, that "water"~~
17 ~~does not include any beverage identified as a type of water to which a~~
18 ~~sugar has been added~~].

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00531-04-3

§ 2. Subdivision 12 of section 27-1003 of the environmental conservation law, as added by section 3 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

12. "Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the universal product code (UPC) on containers to determine if the container is redeemable and accumulates information regarding containers redeemed, including the number of such containers redeemed, thereby enabling the reverse vending machine to accept containers from redeemers and to issue a scrip or receipt for their refund value. Such definition shall also apply to alternative technology approved by the commissioner pursuant to subparagraph (iii) of paragraph (b) of subdivision one of section 27-1007 of this title.

§ 3. Section 27-1007 of the environmental conservation law, as added by section 4 of part SS of chapter 59 of the laws of 2009, paragraph (b) of subdivision 1 as amended by chapter 459 of the laws of 2011, and subdivision 12 as added by section 3 of part F of chapter 58 of the laws of 2013, is amended to read as follows:

§ 27-1007. Mandatory acceptance.

Except as provided in section 27-1009 of this title:

1. (a) A dealer shall accept at his or her place of business from a redeemer any empty beverage containers of the design, shape, size, color, composition and brand sold or offered for sale by the dealer, and shall pay to the redeemer the refund value of each such beverage container as established in section 27-1005 of this title. Redemptions of refund value must be in legal tender, or a scrip or receipt from a reverse vending machine, provided that the scrip or receipt can be exchanged for legal tender for a period of not less than sixty days without requiring the purchase of other goods. In the event such scrip or receipt expires, such scrip or receipt shall indicate any expiration date and the dealer shall post a conspicuous sign indicating how many days a redeemer has to exchange the scrip or receipt for legal tender. If such notification is not provided, a dealer must redeem the full refund value indicated on any legible scrip or receipt. The use or presence of a reverse vending machine shall not relieve a dealer of any obligations imposed pursuant to this section. If a dealer utilizes a reverse vending machine to redeem containers, the dealer shall provide redemption of beverage containers when the reverse vending machine is full, broken, under repair or does not accept a type of beverage container sold or offered for sale by such dealer and may not limit the hours or days of redemption except as provided by subdivision three of this section.

(b) Beginning March first, two thousand ten, a dealer whose place of business is part of a chain engaged in the same general field of business which operates ten or more units in this state under common ownership and whose business has at least: (i) forty thousand but less than sixty thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least two reverse vending machines at the dealer's place of business; (ii) sixty thousand but less than eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least three reverse vending machines at the dealer's place of business; or (iii) eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least four reverse vending machines at the dealer's place of business. The requirements of ~~[paragraph (b) of]~~ this subdivision to install and main-

tain reverse vending machines shall not apply to a dealer that: (i) sells only beverage containers of twenty ounces or less where such beverage containers are packaged in quantities fewer than six; (ii) sells beverage containers and devotes no more than five percent of its floor space to the display and sale of consumer commodities, as defined in section two hundred fourteen-h of the agriculture and markets law; or (iii) obtains a waiver from the commissioner authorizing dealers to provide consumers with an alternative technology that: (A) determines if the container is redeemable, (B) provides protections against fraud through a system that validates each container redeemed by reading the universal product code and, except with respect to refillable containers, renders the container unredeemable, (C) accumulates information regarding containers redeemed, and (D) issues legal tender, or a scrip, receipt, or other form of credit for the refund value, that can be exchanged for legal tender for a period of not less than sixty days without requiring the purchase of other goods and includes any expiration date on the scrip, receipt, or other form of credit. Notwithstanding the foregoing, if the alternative technology does not allow consumers to immediately obtain the refund value of the redeemed container, a dealer shall be permitted to deploy such alternative technology only if it also offers an alternative that allows consumers to conveniently and immediately obtain such refund value through a reverse vending machine or other alternative method.

(c) A dealer to which paragraph (b) of this subdivision does not apply and whose place of business is at least forty thousand square feet which does not utilize reverse vending machines to process empty beverage containers for redemption shall: (i) establish and maintain a dedicated area within such business to accept beverage containers for redemption; (ii) adequately staff such area to facilitate efficient acceptance and processing of such containers during business hours; and (iii) post one or more conspicuous signs conforming to the size and color requirements described in subdivision two of this section at each public entrance to the business which describes where in the business the redemption area is located. The commissioner may establish in rules and regulations additional standards for the efficient processing of beverage containers by such dealers.

(d) For the purposes of this subdivision on any day that a dealer is open for less than twenty-four hours, the dealer may restrict or refuse the payment of refund values during the first and last hour the dealer is open for business.

2. A dealer shall post a conspicuous sign, at the point of sale, that states:

"NEW YORK BOTTLE BILL OF RIGHTS

STATE LAW REQUIRES US TO REDEEM EMPTY RETURNABLE BEVERAGE CONTAINERS OF THE SAME TYPE AND BRAND THAT WE SELL OR OFFER FOR SALE

YOU HAVE CERTAIN RIGHTS UNDER THE NEW YORK STATE RETURNABLE CONTAINER ACT:

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size, whether you bought the beverage from the dealer or not. It is illegal to return containers for refund that you did not pay a deposit on in New York state.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

1 THE RIGHT to return your empties any day, any hour, except for the
2 first and last hour of the dealer's business day (empty containers may
3 be redeemed at any time in 24-hour stores).

4 THE RIGHT to return your containers if they are empty and intact.
5 Washing containers is not required by law, but is strongly recommended
6 to maintain sanitary conditions.

7 The New York state returnable container act can be enforced by the New
8 York state department of environmental conservation, the New York state
9 department of agriculture and markets, the New York state department of
10 taxation and finance, the New York state attorney general and/or by your
11 local government."

12 Such sign must be no less than eight inches by ten inches in size and
13 have lettering a minimum of one quarter inch high, and of a color which
14 contrasts with the background. The department shall maintain a toll free
15 telephone number for a "bottle bill complaint line" that shall be avail-
16 able from 9:00 a.m. to 5:00 p.m. each business day to receive reports of
17 violations of this title. The telephone number shall be listed on any
18 sign required by this section.

19 3. On or after June first, two thousand nine, a dealer may limit the
20 number of empty beverage containers to be accepted for redemption at the
21 dealer's place of business to no less than seventy-two containers per
22 visit, per redeemer, per day, provided that:

23 (a) The dealer has a written agreement with a redemption center, be it
24 either at a fixed physical location [~~within the same county and within~~
25 ~~one-half mile of the dealer's place of business~~], or a mobile redemption
26 center[~~7~~] operated by a redemption center[~~, that is located within one-~~
27 ~~quarter mile of the dealer's place of business~~]. The redemption center
28 must have a written agreement with the dealer to accept containers on
29 behalf of the dealer; and the redemption center's hours of operation
30 must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of
31 a mobile redemption center, the hours of operation must cover at least
32 four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The deal-
33 er must post a conspicuous, permanent sign, meeting the size and color
34 specifications set forth in subdivision two of this section, open to
35 public view, identifying the location and hours of operation of the
36 affiliated redemption center or mobile redemption center; and

37 (b) The dealer provides, at a minimum, a consecutive two hour period
38 between 7:00 a.m. and 7:00 p.m. daily whereby the dealer will accept up
39 to two hundred forty containers, per redeemer, per day, and posts a
40 conspicuous, permanent sign, meeting the size and color specifications
41 set forth in subdivision two of this section, open to public view, iden-
42 tifying those hours. The dealer may not change the hours of redemption
43 without first posting a thirty day notice; and

44 (c) The dealer's primary business is the sale of food or beverages for
45 consumption off-premises, and the dealer's place of business is less
46 than ten thousand square feet in size.

47 4. A deposit initiator shall accept from a dealer or operator of a
48 redemption center any empty beverage container of the design, shape,
49 size, color, composition and brand sold or offered for sale by the
50 deposit initiator, and shall pay the dealer or operator of a redemption
51 center the refund value of each such beverage container as established
52 by section 27-1005 of this title. A deposit initiator shall accept and
53 redeem all such empty beverage containers from a dealer or redemption
54 center without limitation on quantity.

55 5. A deposit initiator's or distributor's failure to pick up empty
56 beverage containers, including containers processed in a reverse vending

1 machine, from a redemption center, dealer or the operator of a reverse
2 vending machine, in a timely manner and at reasonable times as shall be
3 provided by the department pursuant to the regulations promulgated
4 pursuant to paragraph (c) of subdivision eight of this section shall be
5 a violation of this title.

6 6. In addition to the refund value of a beverage container as estab-
7 lished by section 27-1005 of this title, a deposit initiator shall pay
8 to any dealer or operator of a redemption center a handling fee of
9 [~~three and one-half~~] six cents for each beverage container accepted by
10 the deposit initiator from such dealer or operator of a redemption
11 center. Payment of the handling fee shall be as compensation for
12 collecting, sorting and packaging of empty beverage containers for
13 transport back to the deposit initiator or its designee. Payment of the
14 handling fee may not be conditioned on the purchase of any goods or
15 services, nor may such payment be made out of the refund value account
16 established pursuant to section 27-1012 of this title. A distributor who
17 does not initiate deposits on a type of beverage container is considered
18 a dealer only for the purpose of receiving a handling fee from a deposit
19 initiator.

20 7. A deposit initiator on a brand shall accept from a distributor who
21 does not initiate deposits on that brand any empty beverage containers
22 of that brand accepted by the distributor from a dealer or operator of a
23 redemption center and shall reimburse the distributor the refund value
24 of each such beverage container, as established by section 27-1005 of
25 this title. In addition, the deposit initiator shall reimburse such
26 distributor for each such beverage container the handling fee estab-
27 lished under subdivision six of this section. Without limiting the
28 rights of the department or any person, firm or corporation under this
29 subdivision or any other provision of this section, a distributor shall
30 have a civil right of action to enforce this subdivision, including,
31 upon three days notice, the right to apply for temporary and preliminary
32 injunctive relief against continuing violations, and until arrangements
33 for collection and return of empty containers or reimbursement of such
34 distributor for such deposits and handling fees are made.

35 8. It shall be the responsibility of the deposit initiator or distrib-
36 utor to provide to a dealer or redemption center a sufficient number of
37 bags, cartons, or other suitable containers, at no cost, for the packag-
38 ing, handling and pickup of empty beverage containers that are not
39 redeemed through a reverse vending machine. The bags, cartons, or
40 containers must be provided by the deposit initiator or distributor on a
41 schedule that allows the dealer or redemption center sufficient time to
42 sort the empty beverage containers prior to pick up by the deposit
43 initiator or distributor. In addition:

44 (a) When picking up empty beverage containers, a deposit initiator or
45 distributor shall not require a dealer or redemption center to load
46 their own bags, cartons or containers onto or into the deposit initi-
47 ator's or distributor's vehicle or vehicles or provide the staff or
48 equipment needed to do so. However, where pallets or skids, bags,
49 cartons or containers are readily movable only by means of a forklift or
50 similar equipment, a deposit initiator or distributor may require a
51 dealer or redemption center to move or load such items at no cost using
52 a forklift or similar equipment belonging to the dealer or redemption
53 center provided that such equipment and appropriate staff are readily
54 available.

55 (b) A deposit initiator or distributor shall not require empty
56 containers to be counted at a location other than the redemption center

1 or dealer's place of business. The dealer or redemption center shall
2 have the right to be present at the count. In the event of a discrepancy
3 between the count of the dealer or redemption center and the count of
4 the deposit initiator or distributor for containers not processed
5 through a reverse vending machine all such empty containers shall be
6 retained and a re-count may be requested. The re-count may be held at a
7 location other than the redemption center or dealer's place of business
8 only if the dealer or redemption center agrees and is present.

9 (c) A deposit initiator or distributor shall pick up empty beverage
10 containers from the dealer or redemption center in a timely manner and
11 at reasonable times [~~and intervals~~] as shall be determined in rules or
12 regulations promulgated by department no later than one hundred eighty
13 days after the effective date of the chapter of the laws of two thousand
14 twenty-three that amended this paragraph.

15 9. No person shall return or assist another to return to a dealer or
16 redemption center an empty beverage container for its refund value if
17 such container had previously been accepted for redemption by a dealer,
18 redemption center, or deposit initiator who initiates deposits on beverage
19 containers of the same brand.

20 10. A redeemer, dealer, distributor or redemption center shall not
21 knowingly redeem an empty beverage container on which a deposit was
22 never paid in New York state.

23 11. Notwithstanding the provisions of subdivision two of section
24 27-1009 of this title, a deposit initiator or distributor shall accept
25 and redeem beverage containers as provided in this title, if the dealer
26 or operator of a redemption center shall have accepted and paid the
27 refund value of such beverage containers.

28 12. No person shall intentionally program, tamper with, render inaccurate,
29 or circumvent the proper operation of a reverse vending machine to
30 wrongfully elicit deposit monies when no valid, redeemable beverage
31 container has been placed in and properly processed by the reverse vending
32 machine.

33 13. The department and the department of taxation and finance shall be
34 authorized to audit any reverse vending machine.

35 14. Notwithstanding any provision of this section to the contrary, a
36 dealer shall not be required to accept from a redeemer any empty beverage
37 container:

38 (a) at the premises of a brewery, farm brewery, cidery, farm cidery,
39 distillery, farm distillery, meadery, farm meadery, winery, or micro-
40 winery where such dealer is licensed to sell alcoholic beverages for
41 consumption off such premises;

42 (b) at any premises selling alcoholic beverages for off-premises
43 consumption pursuant to a seven day license or temporary license under
44 this chapter; or

45 (c) at a farmers market, as such term is defined by the department of
46 agriculture and markets.

47 § 4. Paragraph c of subdivision 3 of section 27-1012 of the environmental
48 conservation law, as added by section 8 of part SS of chapter 59
49 of the laws of 2009, is amended to read as follows:

50 c. all withdrawals from the refund value account during such quarter,
51 including all reimbursements paid pursuant to subdivision two of this
52 section, all service charges on the account, provided that such service
53 charges do not exceed the maximum amount authorized by the commissioner,
54 and all payments made pursuant to subdivision four of this section; and

§ 5. Section 27-1014 of the environmental conservation law, as amended by section 10 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

§ 27-1014. Authority to promulgate rules and regulations.

In addition to the authority of the commissioner, under sections 27-1007, 27-1009, 27-1012, and 27-1013 of this title, the commissioner shall have the power to promulgate rules and regulations necessary and appropriate for the administration of this title.

§ 6. Section 27-1005 of the environmental conservation law, as added by section 4 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

§ 27-1005. Refund value.

No person shall sell or offer for sale a beverage container in this state unless the deposit on such beverage container is or has been collected by a registered deposit initiator and unless such container has a refund value of not less than [~~five~~] ten cents which is clearly indicated thereon as provided in section 27-1011 of this title.

§ 7. Subdivision 5 of section 27-1012 of the environmental conservation law, as amended by section 2 of part JJ of chapter 58 of the laws of 2017, is amended to read as follows:

5. All moneys collected or received by the department of taxation and finance pursuant to this title shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected, the comptroller shall retain the amount determined by the commissioner of taxation and finance to be necessary for refunds out of which the comptroller must pay any refunds to which a deposit initiator may be entitled. Of the total revenue collected, the comptroller shall retain an amount equal to two percent of the total of such revenues collected in the prior calendar year, to be distributed to the commissioner, as needed, for use under the beverage container assistance program pursuant to section 27-1018 of this title. After reserving the [~~amount~~] amounts to pay refunds and for use under the beverage container assistance program, the comptroller must, by the tenth day of each month, pay into the state treasury to the credit of the general fund the revenue deposited under this subdivision during the preceding calendar month and remaining to the comptroller's credit on the last day of that preceding month; provided, however, that, beginning April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received from the payments due each fiscal year pursuant to subdivision four of this section in excess of the greater of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 8. Section 27-1018 of the environmental conservation law, as added by section 13 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

§ 27-1018. Beverage container assistance program.

Notwithstanding any other provision of law to the contrary, within the amounts retained by the comptroller for use under the beverage container assistance program pursuant to subdivision five of section 27-1012 of

1 this title, and within the limits of any additional appropriations
2 therefor, the commissioner shall make state assistance payments to muni-
3 cipalities, businesses and not-for-profit organizations located in the
4 state, upon request or otherwise pursuant to the discretion of the
5 commissioner, for the cost of reverse vending machines located or to be
6 located in the state. Such state assistance payments shall not exceed
7 fifty percent of the costs of equipment, and/or the acquisition and/or
8 rehabilitation of real property or structures located or to be located
9 in the state related to the collecting, sorting, and packaging of empty
10 beverage containers subject to the provisions of this title. Such
11 payments may include costs related to the establishment of redemption
12 centers, including mobile redemption centers. For the purposes of this
13 section, municipalities and not-for-profit organizations shall have the
14 meaning as defined in section 54-0101 of this chapter and businesses
15 shall mean a dealer, distributor or redemption center as defined in this
16 title [~~that employs less than fifty employees~~].

17 § 9. This act shall take effect immediately; provided, however, that
18 sections one, two, three, four, five, and six of this act shall take
19 effect one year after the date upon which it shall have become a law.
20 Effective immediately, the addition, amendment and/or repeal of any rule
21 or regulation necessary for the implementation of this act on its effec-
22 tive date are authorized to be made and completed on or before such
23 effective date.