

S T A T E O F N E W Y O R K

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Introduced by M. of A. ABBATE, GUNTHER, HOYT, BENJAMIN, KOON, BOYLAND, PERALTA, BENEDETTO -- Multi-Sponsored by -- M. of A. CUSICK, DelMONTE, FIELDS, GABRYSZAK, LATIMER, MAGEE, MORELLE, PRETLOW, REILLY, SPANO, STIRPE -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to the collection and recycling of beverage containers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 5, 6, 7 and 8 of section 27-1007 of the envi-
2 ronmental conservation law, as added by section 4 of part SS of chapter
3 59 of the laws of 2009, are amended and a new subdivision 12 is added to
4 read as follows:
5 5. A deposit initiator's or distributor's failure to pick up empty
6 beverage containers[, including containers processed in a reverse vend-
7 ing machine,] from a redemption center, dealer or the operator of a
8 reverse vending machine, shall be a violation of this title.
9 6. In addition to the refund value of a beverage container as estab-
10 lished by section 27-1005 of this title, a deposit initiator shall pay
11 to any dealer or operator of a redemption center a handling fee of three
12 and one-half cents for each beverage container accepted by the deposit
13 initiator from such dealer or operator of a redemption center. A DEPOS-
14 IT INITIATOR SHALL PAY TO ANY DEALER OR OPERATOR OF A RECYCLING CENTER A
15 HANDLING FEE OF TWO CENTS FOR EACH BEVERAGE CONTAINER REDEEMED BY A
16 DEALER OR OPERATOR OF A REDEMPTION CENTER THROUGH A REVERSE VENDING
17 MACHINE. Payment of the handling fee shall be as compensation for
18 collecting, sorting, SEPARATING PLASTIC CONTAINERS FROM GLASS AND SEPA-
19 RATING GLASS CONTAINERS BY COLOR, and packaging of empty beverage

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

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1 containers for transport back to the deposit initiator or its designee.
2 Payment of the handling fee may not be conditioned on the purchase of
3 any goods or services[, nor may such payment be made out of the refund
4 value account established pursuant to section 27-1012 of this title]. A
5 distributor who does not initiate deposits on a type of beverage
6 container is considered a dealer only for the purpose of receiving a
7 handling fee from a deposit initiator.

8 7. A deposit initiator on a brand shall accept from a distributor who
9 does not initiate deposits on that brand any empty beverage containers
10 of that brand accepted by the distributor from a dealer or operator of a
11 redemption center and shall reimburse the distributor the refund value
12 of each such beverage container, as established by section 27-1005 of
13 this title. In addition, the deposit initiator shall reimburse such
14 distributor for each such beverage container the handling fee estab-
15 lished under subdivision six of this section. [Without limiting the
16 rights of the department or any person, firm or corporation under this
17 subdivision or any other provision of this section, a distributor shall
18 have a civil right of action to enforce this subdivision, including,
19 upon three days notice, the right to apply for temporary and preliminary
20 injunctive relief against continuing violations, and until arrangements
21 for collection and return of empty containers or reimbursement of such
22 distributor for such deposits and handling fees are made.]

23 8. [It shall be the responsibility of the deposit initiator or
24 distributor to provide to a dealer or redemption center a sufficient
25 number of bags, cartons, or other suitable containers, at no cost, for
26 the packaging, handling and pickup of empty beverage containers that are
27 not redeemed through a reverse vending machine. The bags, cartons, or
28 containers must be provided by the deposit initiator or distributor on a
29 schedule that allows the dealer or redemption center sufficient time to
30 sort the empty beverage containers prior to pick up by the deposit
31 initiator or distributor. In addition:]

32 (a) [When picking up empty beverage containers, a deposit initiator or
33 distributor shall not require a dealer or redemption center to load
34 their own bags, cartons or containers onto or into the deposit initi-
35 ator's or distributor's vehicle or vehicles or provide the staff or
36 equipment needed to do so.

37 (b)] A deposit initiator or distributor [shall not] MAY require empty
38 containers to be counted at a location other than the redemption center
39 or dealer's place of business. The dealer or redemption center shall
40 have the right to be present at the count.

41 [(c)] (B) A deposit initiator or distributor shall pick up empty
42 beverage containers from the dealer or redemption center at reasonable
43 times and intervals as determined in rules or regulations promulgated by
44 the department.

45 12. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION TO THE CONTRA-
46 RY, WITH RESPECT TO EMPTY BEVERAGE CONTAINERS OF BEVERAGES SOLD OR
47 CONSUMED ON-PREMISES OR AT OUTDOOR OR INDOOR GATHERINGS, FUNCTIONS,
48 OCCASIONS OR EVENTS, NO HANDLING FEE SHALL BE PAYABLE TO ANY DISTRIBU-
49 TOR, DEALER OR OPERATOR OF A REDEMPTION CENTER.

50 S 2. Section 27-1012 of the environmental conservation law, as added
51 by section 8 of part SS of chapter 59 of the laws of 2009, is amended to
52 read as follows:

53 S 27-1012. [Deposit and disposition] DISPOSITION of refund values;
54 registration; reports.

55 1. [Each deposit initiator shall deposit in a refund value account an
56 amount equal to the refund value initiated under section 27-1005 of this

1 title which is received with respect to each beverage container sold by
2 such deposit initiator. Such deposit initiator shall hold the amounts in
3 the refund value account in trust for the state. A refund value account
4 shall be an interest-bearing account established in a banking institu-
5 tion located in this state, the deposits in which are insured by an
6 agency of the federal government. Deposits of such amounts into the
7 refund value account shall be made not less frequently than every five
8 business days. All interest, dividends and returns earned on the refund
9 value account shall be paid directly into said account. The monies in
10 such accounts shall be kept separate and apart from all other monies in
11 the possession of the deposit initiator. The commissioner of taxation
12 and finance may specify a system of accounts and records to be main-
13 tained with respect to accounts established under this subdivision.

14 2. Payments of refund values pursuant to section 27-1007 of this title
15 shall be paid from each deposit initiator's refund value account. No
16 other payment or withdrawal from such account may be made except as
17 prescribed by this section.

18 3.] Each deposit initiator shall file quarterly reports with the
19 commissioner of taxation and finance on a form and in the manner
20 prescribed by such commissioner. The commissioner of taxation and
21 finance may require such reports to be filed electronically. The quar-
22 terly reports required by this subdivision shall be filed for the quar-
23 terly periods ending on the last day of May, August, November and Febru-
24 ary of each year, and each such report shall be filed within twenty days
25 after the end of the quarterly period covered thereby. Each such report
26 shall include all information such commissioner shall determine appro-
27 priate including but not limited to the following information:

28 a. [the balance in the refund value account at the beginning of the
29 quarter for which the report is prepared;

30 b. all such deposits credited to the refund value account and all
31 interest, dividends or returns received on such account, during such
32 quarter;

33 c. all withdrawals from the refund value account during such quarter,
34 including all reimbursements paid pursuant to subdivision two of this
35 section, all service charges on the account, and all payments made
36 pursuant to subdivision four of this section; and

37 d. the balance in the refund value account at the close of such quar-
38 ter.]

39 THE NUMBER OF CONTAINERS REQUIRED TO HAVE A REFUND VALUE SOLD BY THE
40 DEPOSIT INITIATOR DURING THE QUARTERLY PERIOD;

41 B. THE NUMBER OF CONTAINERS THAT WERE REDEEMED BY THE DEPOSIT INITI-
42 ATOR DURING THE QUARTERLY PERIOD;

43 C. THE NUMBER OF CONTAINERS THAT WERE UNREDEEMED BY THE DEPOSIT INITI-
44 ATOR DURING THE QUARTERLY PERIOD; AND

45 D. THE AMOUNTS PAID TO ANY DISTRIBUTOR, DEALER OR OPERATOR OF A
46 REDEMPTION CENTER FOR HANDLING FEES DURING THE QUARTER.

47 [4.] 2. a. Quarterly payments. [An] PAYMENTS OF REFUND VALUES PURSUANT
48 TO SECTION 27-1007 OF THIS TITLE, IN AN amount equal to eighty percent
49 of the [balance outstanding in the refund value account] UNREDEEMED
50 DEPOSITS HELD BY A DEPOSIT INITIATOR at the close of each quarter shall
51 be paid to the commissioner of taxation and finance at the time the
52 report provided for in subdivision [three] ONE of this section is
53 required to be filed. The commissioner of taxation and finance may
54 require that the payments be made electronically. The remaining twenty
55 percent of the balance outstanding at the close of each quarter shall be
56 the monies of the deposit initiator [and may be withdrawn from such

1 account by the deposit initiator]. If the provisions of this section
2 with respect to such account have not been fully complied with, each
3 deposit initiator shall pay to such commissioner at such time, in lieu
4 of the amount described in the preceding sentence, an amount equal to
5 the balance which would have been outstanding on such date had such
6 provisions been fully complied with. The commissioner of taxation and
7 finance may require that the payments be made electronically.

8 b. [Refund value account shortfall] OVER REDEMPTION. In the event a
9 deposit initiator pays out more in refund values than it collects in
10 deposits of refund values during the course of a quarterly period as
11 described in subdivision [three] ONE of this section, the deposit initi-
12 ator may apply to the commissioner of taxation and finance for a refund
13 of the amount of such excess payment of refund values [from sources
14 other than the refund value account], in the manner as provided by the
15 commissioner of taxation and finance. A deposit initiator must apply for
16 a refund no later than twelve months after the due date for filing the
17 quarterly report for the quarterly period for which the refund claim is
18 made. No interest shall be payable for any refund paid pursuant to this
19 paragraph.

20 c. Final report. A deposit initiator who ceases to do business in this
21 state as a deposit initiator shall file a final report and remit payment
22 of eighty percent of all [amounts remaining in the refund value account]
23 REFUND VALUES HELD BY THE DEPOSIT INITIATOR as of the close of the
24 deposit initiator's last day of business. The commissioner of taxation
25 and finance may require that the payments be made electronically. The
26 deposit initiator shall indicate on the report that it is a "final
27 report". The final report is due to be filed with payment twenty days
28 after the close of the quarterly period in which the deposit initiator
29 ceases to do business. In the event the deposit initiator pays out more
30 in refund values than it collects in such final quarterly period, the
31 deposit initiator may apply to the commissioner of taxation and finance
32 for a refund of the amount of such excess payment of refund values [from
33 sources other than the refund value account,] in the manner as provided
34 by the commissioner of taxation and finance.

35 [5.] 3. All monies collected or received by the department of taxation
36 and finance pursuant to this title shall be deposited to the credit of
37 the comptroller with such responsible banks, banking houses or trust
38 companies as may be designated by the comptroller. Such deposits shall
39 be kept separate and apart from all other moneys in the possession of
40 the comptroller. The comptroller shall require adequate security from
41 all such depositories. Of the total revenue collected, the comptroller
42 shall retain the amount determined by the commissioner of taxation and
43 finance to be necessary for refunds out of which the comptroller must
44 pay any refunds to which a deposit initiator may be entitled. After
45 reserving the amount to pay refunds, the comptroller must, by the tenth
46 day of each month, pay into the state treasury to the credit of the
47 general fund the revenue deposited under this subdivision during the
48 preceding calendar month and remaining to the comptroller's credit on
49 the last day of that preceding month.

50 [6.] 4. The commissioner and the commissioner of taxation and finance
51 shall promulgate, and shall consult each other in promulgating, such
52 rules and regulations as may be necessary to effectuate the purposes of
53 this title. The commissioner and the commissioner of taxation and
54 finance shall provide all necessary aid and assistance to each other,
55 including the sharing of any information that is necessary to their

1 respective administration and enforcement responsibilities pursuant to
2 the provisions of this title.

3 [7. a.] 5. Any person who is a deposit initiator under this title
4 before April first, two thousand nine, must apply by June first, two
5 thousand nine to the commissioner of taxation and finance for registra-
6 tion as a deposit initiator. Any person who becomes a deposit initiator
7 on or after April first, two thousand nine shall apply for registration
8 prior to collecting any deposits as such a deposit initiator. Such
9 application shall be in a form prescribed by the commissioner of taxa-
10 tion and finance and shall require such information deemed to be neces-
11 sary for proper administration of this title. The commissioner of taxa-
12 tion and finance may require that applications for registration must be
13 submitted electronically. The commissioner of taxation and finance shall
14 electronically issue a deposit initiator registration certificate in a
15 form prescribed by the commissioner of taxation and finance within
16 fifteen days of receipt of such application or may take an additional
17 ten days if the commissioner of taxation and finance deems it necessary
18 to consult with the commissioner before issuing such registration
19 certificate. A registration certificate issued pursuant to this subdivi-
20 sion may be issued for a specified term of not less than three years and
21 shall be subject to renewal in accordance with procedures specified by
22 the commissioner of taxation and finance. The commissioner of taxation
23 and finance shall furnish to the commissioner a complete list of regis-
24 tered deposit initiators and shall continually update such list as
25 warranted. The commissioner shall share any information with the commis-
26 sioner of taxation and finance that is necessary for the administration
27 of this subdivision.

28 [b. The commissioner of taxation and finance shall have the authority
29 to revoke or refuse to renew any registration issued pursuant to this
30 subdivision when he or she has determined or has been informed by the
31 commissioner that any of the provisions of this title or rules and regu-
32 lations promulgated thereunder have been violated. Such violations shall
33 include, but not be limited to, the failure to file quarterly reports,
34 the failure to make payments pursuant to this subdivision, the providing
35 of false or fraudulent information to either the department of taxation
36 and finance or the department, or knowingly aiding or abetting another
37 person in violating any of the provisions of this title. A notice of
38 proposed revocation or non-renewal shall be given to the deposit initi-
39 ator in the manner prescribed for a notice of deficiency of tax and all
40 the provisions applicable to a notice of deficiency under article twenty-
41 seven of the tax law shall apply to a notice issued pursuant to this
42 paragraph, insofar as such provisions can be made applicable to a notice
43 authorized by this paragraph, with such modifications as may be neces-
44 sary in order to adapt the language of such provisions to the notice
45 authorized by this paragraph. All such notices issued by the commission-
46 er of taxation and finance pursuant to this paragraph shall contain a
47 statement advising the deposit initiator that the revocation or non-re-
48 newal of registration may be challenged through a hearing process and
49 the petition for such a challenge must be filed with the commissioner of
50 taxation and finance within ninety days after such notice is issued. A
51 deposit initiator whose registration has been so revoked or not renewed
52 shall cease to do business as a deposit initiator in this state, until
53 this title has been complied with and a new registration has been
54 issued. Any deposit initiator whose registration has been so revoked may
55 not apply for registration for two years from the date such revocation
56 takes effect.

1 8.] 6. The commissioner of taxation and finance may require the main-
2 tenance of such [accounts,] records or documents relating to the sale of
3 beverage containers, by any deposit initiator, bottler, distributor,
4 dealer or redemption center as such commissioner may deem appropriate
5 for the administration of this section. Such commissioner may make exam-
6 inations, including the conduct of facility inspections during regular
7 business hours, with respect to the [accounts,] records or documents
8 required to be maintained under this subdivision. Such [accounts,]
9 records and documents shall be preserved for a period of three years,
10 except that such commissioner may consent to their destruction within
11 that period or may require that they be kept longer. Such [accounts,]
12 records and documents may be kept within the meaning of this subdivision
13 when reproduced by any photographic, photostatic, microfilm, micro-card,
14 miniature photographic or other process which actually reproduces the
15 original [accounts,] records or documents.

16 [9.] 7. a. Any person required to be registered under this section
17 who, without being so registered, sells or offers for sale beverage
18 containers in this state, in addition to any other penalty imposed by
19 this title, shall be subject to a penalty to be assessed by the commis-
20 sioner of taxation and finance in an amount not to exceed five hundred
21 dollars for the first day on which such sales or offers for sale are
22 made, plus an amount not to exceed five hundred dollars for each subse-
23 quent day on which such sales or offers for sale are made, not to exceed
24 twenty-five thousand dollars in the aggregate.

25 b. Any deposit initiator who fails to maintain [accounts or] records
26 pursuant to this section, unless it is shown that such failure was due
27 to reasonable cause and not due to negligence or willful neglect, in
28 addition to any other penalty imposed by this title, shall be subject to
29 a penalty to be assessed by the commissioner of taxation and finance of
30 not more than one thousand dollars for each quarter during which such
31 failure occurred, and an additional penalty of not more than one thou-
32 sand dollars for each quarter such failure continues.

33 [10.] 8. The provisions of article twenty-seven of the tax law shall
34 apply to the provisions of this title for which the commissioner of
35 taxation and finance is responsible[, including collection of refund
36 value amounts,] in the same manner and with the same force and effect as
37 if the language of such article had been incorporated in full into this
38 section except to the extent that any provision of such article is
39 either inconsistent with a provision of this section or is not relevant
40 to this section as determined by the commissioner of taxation and
41 finance. [Furthermore, for purposes of applying the provisions of arti-
42 cle twenty-seven of the tax law, where the terms "tax" and "taxes"
43 appear in such article, such terms shall be construed to mean "refund
44 value" or "balance in the refund value account".

45 11.] 9. If any deposit initiator fails or refuses to file a report or
46 furnish any information requested in writing by the department of taxa-
47 tion and finance or the department, the department of taxation and
48 finance with the assistance of the department may, from any information
49 in its possession, make an estimate of the deficiency and collect such
50 deficiency from such deposit initiator.

51 [12.] 10. Beginning on June first, two thousand [nine each deposit
52 initiator] TEN ALL SUPPLIERS AND MANUFACTURES shall register the
53 container label of any beverage offered for sale in the state on which
54 it initiates a deposit. Any such registered container label shall bear a
55 universal product code. [Such universal product code shall be New York
56 state specific, in order to identify the beverage container as offered

1 for sale exclusively in New York state, and as a means of preventing
2 illegal redemption of beverage containers purchased out-of-state.]
3 Registration must be on forms as prescribed by the department and must
4 include the universal product code for each combination of beverage and
5 container manufactured. The commissioner may require that such forms be
6 filed electronically. The deposit initiator shall renew a label regis-
7 tration whenever that label is revised by altering the universal product
8 code or whenever the container on which it appears is changed in size,
9 composition or glass color.
10 S 3. This act shall take effect on the forty-fifth day after it shall
11 have become a law.