

4736--B

Cal. No. 298

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. KRUGER, MONSERRATE, DIAZ, ESPADA, STACHOWSKI, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading

AN ACT to amend chapter 59 of the laws of 2009, amending the environmental conservation law and the economic development law relating to including additional beverage containers, in relation to the effectiveness thereof; relating to including additional beverage containers, in relation to requiring a study on fraud and improper redemption; and to amend the environmental conservation law, in relation to returnable beverage containers

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

1 Section 1. Subdivision 1 of section 16 of part SS of chapter 59 of the
2 laws of 2009, amending the environmental conservation law and the
3 economic development law relating to including additional beverage
4 containers, is amended to read as follows:
5 1. [sections] SECTION two [and] OF THIS ACT SHALL TAKE EFFECT OCTOBER
6 1, 2009;
7 1-A. SECTION three of this act shall take effect April 1, 2009;
8 S 2. Subdivision 12 of section 27-1012 of the environmental conserva-
9 tion law, as added by section 8 of part SS of chapter 59 of the laws of
10 2009, is amended to read as follows:
11 12. Beginning on [June] JANUARY first, two thousand [nine] TEN each
12 deposit initiator shall register the container label of any beverage
13 offered for sale in the state on which it initiates a deposit. Any such
14 registered container label shall bear a universal product code. [Such

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

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1 universal product code shall be New York state specific, in order to
2 identify the beverage container as offered for sale exclusively in New
3 York state, and as a means of preventing illegal redemption of beverage
4 containers purchased out-of-state.] Registration must be on forms as
5 prescribed by the department and must include the universal product code
6 for each combination of beverage and container manufactured. The commis-
7 sioner may require that such forms be filed electronically. The deposit
8 initiator shall renew a label registration whenever that label is
9 revised by altering the universal product code or whenever the container
10 on which it appears is changed in size, composition or glass color.

11 S 3. Paragraph (a) of subdivision 3 of section 27-1007 of the environ-
12 mental conservation law, as added by section 4 of part SS of chapter 59
13 of the laws of 2009, is amended to read as follows:

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

28 S 4. Subdivision 1 of section 27-1007 of the environmental conserva-
29 tion law, as added by section 4 of part SS of chapter 59 of the laws of
30 2009, is amended to read as follows:

31 1. (a) A dealer shall accept at his or her place of business from a
32 redeemer any empty beverage containers of the design, shape, size,
33 color, composition and brand sold or offered for sale by the dealer, and
34 shall pay to the redeemer the refund value of each such beverage
35 container as established in section 27-1005 of this title. Redemptions
36 of refund value must be in legal tender, or a scrip or receipt from a
37 reverse vending machine, provided that the scrip or receipt can be
38 exchanged for legal tender for a period of not less than [sixty] THIRTY
39 days without requiring the purchase of other goods. SUCH SCRIP OR
40 RECEIPT SHALL CLEARLY INDICATE THE EXPIRATION THEREOF. The use or pres-
41 ence of a reverse vending machine shall not relieve a dealer of any
42 obligations imposed pursuant to this section. If a dealer utilizes a
43 reverse vending machine to redeem containers, the dealer shall provide
44 redemption of beverage containers when the reverse vending machine is
45 full, broken, under repair or does not accept a type of beverage
46 container sold or offered for sale by such dealer and may not limit the
47 hours or days of redemption except as provided by subdivision three of
48 this section.

49 (b) Beginning March first, two thousand ten, a dealer whose place of
50 business is part of a chain engaged in the same general field of busi-
51 ness which operates ten or more units in this state under common owner-
52 ship and whose business exceeds: (i) forty thousand square feet but is
53 less than sixty thousand square feet shall install and maintain at least
54 three reverse vending machines at the dealer's place of business; (ii)
55 sixty thousand square feet but is less than eighty-five thousand square
56 feet shall install and maintain at least four reverse vending machines

1 at the dealer's place of business; or (iii) eighty-five thousand square
2 feet shall install and maintain at least eight reverse vending machines
3 at the dealer's place of business; provided, however, that the require-
4 ments of this paragraph to install and maintain reverse vending machines
5 shall not apply to a dealer that sells only refrigerated beverage
6 containers of twenty ounces or less where each beverage container is
7 sold as an individual container that is not connected to or packaged
8 with any other beverage container. THIS PARAGRAPH SHALL NOT APPLY TO
9 RETAIL ESTABLISHMENTS IN WHICH THE SALES OF CONSUMER COMMODITIES, AS
10 DEFINED IN SECTION TWO HUNDRED FOURTEEN-H OF THE AGRICULTURE AND MARKETS
11 LAW, DO NOT EXCEED TEN PERCENT OF ANNUAL GROSS SALES.

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

23 (D) The commissioner [may] SHALL establish in rules and regulations
24 additional standards for the efficient processing of beverage containers
25 by such dealers. SUCH RULES AND REGULATIONS SHALL INCLUDE A PROVISION
26 FOR A WAIVER FROM THE REQUIREMENTS OF THIS SECTION IF A DEALER CAN
27 REASONABLY DEMONSTRATE THAT THEY PLAN TO IMPLANT AN ALTERNATIVE MECH-
28 ANISM FOR CONVENIENTLY AND EFFICIENTLY ACCEPTING BEVERAGE CONTAINERS FOR
29 REDEMPTION. SUCH REGULATIONS MAY ALSO PROVIDE THAT A DEALER UNDER
30 SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION MAY MAINTAIN
31 LESS THAN EIGHT BUT GREATER THAN FIVE REVERSE VENDING MACHINES IF SUCH
32 DEALER CAN DEMONSTRATE THAT EIGHT REVERSE VENDING MACHINES ARE NOT
33 NECESSARY FOR THE CONVENIENT AND EFFICIENT REDEMPTION OF BEVERAGE
34 CONTAINERS.

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

39 S 5. Subdivision 1 of section 27-1012 of the environmental conserva-
40 tion law, as added by section 8 of part SS of chapter 59 of the laws of
41 2009, is amended to read as follows:

42 1. Each deposit initiator shall deposit in a refund value account an
43 amount equal to the refund value initiated under section 27-1005 of this
44 title which is received with respect to each beverage container sold by
45 such deposit initiator. Such deposit initiator shall hold the amounts in
46 the refund value account in trust for the state. A refund value account
47 shall be an interest-bearing account established in a banking institu-
48 tion located in this state, the deposits in which are insured by an
49 agency of the federal government. Deposits of such amounts into the
50 refund value account shall be made not less frequently than every [five]
51 TEN business days. All interest, dividends and returns earned on the
52 refund value account shall be paid directly into said account. The
53 monies in such accounts shall be kept separate and apart from all other
54 monies in the possession of the deposit initiator. The commissioner of
55 taxation and finance may specify a system of accounts and records to be
56 maintained with respect to accounts established under this subdivision.

1 S 6. Part SS of chapter 59 of the laws of 2009 amending the environ-
2 mental conservation law and the economic development law relating to
3 including additional beverage containers, is amended by adding a new
4 section 15-a to read as follows:
5 S 15-A. ON OR BEFORE SEPTEMBER 30, 2010, THE COMMISSIONER OF ENVIRON-
6 MENTAL CONSERVATION, IN CONJUNCTION WITH THE COMMISSIONER OF TAXATION
7 AND FINANCE, SHALL SUBMIT A REPORT TO THE GOVERNOR, THE TEMPORARY PRESI-
8 DENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRS OF THE
9 SENATE AND ASSEMBLY ENVIRONMENTAL CONSERVATION COMMITTEES, REGARDING ANY
10 ISSUES OF FRAUD OR REDEMPTION OF NON-NEW YORK STATE BEVERAGE CONTAINERS.
11 SUCH REPORT SHALL INCLUDE ANY DATA RELATING TO THE OCCURRENCE AND
12 FREQUENCY OF SUCH FRAUD OR IMPROPER REDEMPTION. WHEN PREPARING THE
13 REPORT, THE COMMISSIONERS MAY CONSULT WITH BOTTLERS, DEPOSIT INITIATORS,
14 AND/OR DISTRIBUTORS TO DETERMINE IF, AND TO WHAT EXTENT, FRAUD OR
15 IMPROPER REDEMPTION HAS OCCURRED. IN ADDITION TO THE COLLECTION AND
16 REPORTING OF THE DATA, THE REPORT SHALL CONTAIN ANY SUGGESTED LEGISLA-
17 TIVE RECOMMENDATIONS THAT CAN BE IMPLEMENTED TO THWART SUCH FRAUD OR
18 IMPROPER REDEMPTION IN THE FUTURE.
19 S 7. This act shall take effect immediately; provided, however that
20 the amendments to chapter 59 of the laws of 2009 made by section one of
21 this act shall be deemed to have been in full force and effect on and
22 after April 1, 2009; provided that the amendments to section 27-1007 of
23 the environmental conservation law made by sections three and four of
24 this act shall take effect on the same date and in the same manner as
25 part SS of chapter 59 of the laws of 2009, takes effect.