

8775

2009-2010 Regular Sessions

I N A S S E M B L Y

June 8, 2009

Introduced by M. of A. ABBATE, GUNTHER, HOYT -- Multi-Sponsored by -- M. of A. CUSICK, DelMONTE, FIELDS, GABRYSZAK, KOON, LATIMER, MAGEE, MORELLE, PRETLOW, REILLY, SPANO -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and part SS of chapter 59 of the laws of 2009 amending the environmental conservation law and the economic development law relating to including additional beverage containers and providing for the return of unclaimed deposits on beverage containers to the state for deposit into the environmental protection fund, 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. 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, water, SODA WATER, beer,
5 other malt beverages and [a] wine [product] PRODUCTS as defined in
6 subdivision thirty-six-a of section three of the alcoholic beverage
7 control law AND BOTTLED WATER AS DEFINED IN SUBDIVISION FOURTEEN OF THIS
8 SECTION. "Malt beverages" means any beverage obtained by the alcoholic
9 fermentation or infusion or decoction of barley, malt, hops, or other
10 wholesome grain or cereal and water including, but not limited to ale,
11 stout or malt liquor. ["Water" means any beverage identified through the
12 use of letters, words or symbols on its product label as a type of
13 water, including any flavored water or nutritionally enhanced water,
14 provided, however, that "water" does not include any beverage identified
15 as a type of water to which a sugar has been added.]
16 S 2. Section 27-1003 of the environmental conservation law is amended
17 by adding two new subdivisions 14 and 15 to read as follows:

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

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1 14. "BOTTLED WATER" SHALL MEAN ANY PRODUCT, INCLUDING NATURAL SPRING
2 OR WELL WATER TAKEN FROM MUNICIPAL OR PRIVATE UTILITY SYSTEMS OR OTHER
3 WATER, DISTILLED WATER, DE-IONIZED WATER, WHICH ARE PUT INTO SEALED
4 BOTTLES, PACKAGES, OR OTHER CONTAINERS, TO BE SOLD FOR DOMESTIC CONSUMP-
5 TION OR CULINARY USE, INVOLVING A LIKELIHOOD OF SUCH WATERS BEING
6 INGESTED BY HUMAN BEINGS AND SUBJECT TO SECTION TWO HUNDRED TWENTY-FIVE
7 OF THE PUBLIC HEALTH LAW. BOTTLED WATER SHALL NOT INCLUDE A BOTTLED
8 WATER BEVERAGE AS DEFINED IN SUBDIVISION FIFTEEN OF THIS SECTION.

9 15. "BOTTLED WATER BEVERAGE" IS ANY NON-CARBONATED BEVERAGE INTENDED
10 FOR HUMAN CONSUMPTION THAT CONTAINS ADDED INGREDIENTS SUCH AS FLAVORS,
11 COLORINGS, OR SWEETENERS THAT PRECLUDE SUCH BEVERAGE FROM BEING LABELED
12 AS OR PROPERTY CATEGORIZED AS BOTTLED WATER AS DEFINED IN SUBDIVISION
13 FOURTEEN OF THIS SECTION.

14 S 3. Subdivisions 5, 6, 7 and 8 of section 27-1007 of the environ-
15 mental conservation law, as added by section 4 of part SS of chapter 59
16 of the laws of 2009, are amended and a new subdivision 12 is added to
17 read as follows:

18 5. A deposit initiator's or distributor's failure to pick up empty
19 beverage containers[, including containers processed in a reverse vend-
20 ing machine,] from a redemption center, dealer or the operator of a
21 reverse vending machine, shall be a violation of this title.

22 6. In addition to the refund value of a beverage container as estab-
23 lished by section 27-1005 of this title, a deposit initiator shall pay
24 to any dealer or operator of a redemption center a handling fee of three
25 and one-half cents for each beverage container accepted by the deposit
26 initiator from such dealer or operator of a redemption center. A DEPOS-
27 IT INITIATOR SHALL PAY TO ANY DEALER OR OPERATOR OF A RECYCLING CENTER A
28 HANDLING FEE OF TWO CENTS FOR EACH BEVERAGE CONTAINER REDEEMED BY A
29 DEALER OR OPERATOR OF A REDEMPTION CENTER THROUGH A REVERSE VENDING
30 MACHINE. Payment of the handling fee shall be as compensation for
31 collecting, sorting, SEPARATING PLASTIC CONTAINERS FROM GLASS AND SEPA-
32 RATING GLASS CONTAINERS BY COLOR, and packaging of empty beverage
33 containers for transport back to the deposit initiator or its designee.
34 Payment of the handling fee may not be conditioned on the purchase of
35 any goods or services, nor may such payment be made out of the refund
36 value account established pursuant to section 27-1012 of this title. A
37 distributor who does not initiate deposits on a type of beverage
38 container is considered a dealer only for the purpose of receiving a
39 handling fee from a deposit initiator.

40 7. A deposit initiator on a brand shall accept from a distributor who
41 does not initiate deposits on that brand any empty beverage containers
42 of that brand accepted by the distributor from a dealer or operator of a
43 redemption center and shall reimburse the distributor the refund value
44 of each such beverage container, as established by section 27-1005 of
45 this title. In addition, the deposit initiator shall reimburse such
46 distributor for each such beverage container the handling fee estab-
47 lished under subdivision six of this section. [Without limiting the
48 rights of the department or any person, firm or corporation under this
49 subdivision or any other provision of this section, a distributor shall
50 have a civil right of action to enforce this subdivision, including,
51 upon three days notice, the right to apply for temporary and preliminary
52 injunctive relief against continuing violations, and until arrangements
53 for collection and return of empty containers or reimbursement of such
54 distributor for such deposits and handling fees are made.]

55 8. [It shall be the responsibility of the deposit initiator or
56 distributor to provide to a dealer or redemption center a sufficient

1 number of bags, cartons, or other suitable containers, at no cost, for
2 the packaging, handling and pickup of empty beverage containers that are
3 not redeemed through a reverse vending machine. The bags, cartons, or
4 containers must be provided by the deposit initiator or distributor on a
5 schedule that allows the dealer or redemption center sufficient time to
6 sort the empty beverage containers prior to pick up by the deposit
7 initiator or distributor. In addition:]

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

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

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

21 12. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION TO THE CONTRA-
22 RY, WITH RESPECT TO EMPTY BEVERAGE CONTAINERS OF BEVERAGES SOLD OR
23 CONSUMED ON-PREMISES OR AT OUTDOOR OR INDOOR GATHERINGS, FUNCTIONS,
24 OCCASIONS OR EVENTS, NO HANDLING FEE SHALL BE PAYABLE TO ANY DISTRIBUTU-
25 TOR, DEALER OR OPERATOR OF A REDEMPTION CENTER.

26 S 4. Section 27-1012 of the environmental conservation law, as added
27 by section 8 of part SS of chapter 59 of the laws of 2009, is amended to
28 read as follows:

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

31 1. [Each deposit initiator shall deposit in a refund value account an
32 amount equal to the refund value initiated under section 27-1005 of this
33 title which is received with respect to each beverage container sold by
34 such deposit initiator. Such deposit initiator shall hold the amounts in
35 the refund value account in trust for the state. A refund value account
36 shall be an interest-bearing account established in a banking institu-
37 tion located in this state, the deposits in which are insured by an
38 agency of the federal government. Deposits of such amounts into the
39 refund value account shall be made not less frequently than every five
40 business days. All interest, dividends and returns earned on the refund
41 value account shall be paid directly into said account. The monies in
42 such accounts shall be kept separate and apart from all other monies in
43 the possession of the deposit initiator. The commissioner of taxation
44 and finance may specify a system of accounts and records to be main-
45 tained with respect to accounts established under this subdivision.

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

50 3.] Each deposit initiator shall file quarterly reports with the
51 commissioner of taxation and finance on a form and in the manner
52 prescribed by such commissioner. The commissioner of taxation and
53 finance may require such reports to be filed electronically. The quar-
54 terly reports required by this subdivision shall be filed for the quar-
55 terly periods ending on the last day of May, August, November and Febru-
56 ary of each year, and each such report shall be filed within twenty days

1 after the end of the quarterly period covered thereby. Each such report
2 shall include all information such commissioner shall determine appro-
3 priate including but not limited to the following information:

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

6 b. all such deposits credited to the refund value account and all
7 interest, dividends or returns received on such account, during such
8 quarter;

9 c. all withdrawals from the refund value account during such quarter,
10 including all reimbursements paid pursuant to subdivision two of this
11 section, all service charges on the account, and all payments made
12 pursuant to subdivision four of this section; and

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

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

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

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

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

23 [4.] 2. a. Quarterly payments. [An] PAYMENTS OF REFUND VALUES PURSUANT
24 TO SECTION 27-1007 OF THIS TITLE, IN AN amount equal to eighty percent
25 of the [balance outstanding in the refund value account] UNREDEEMED
26 DEPOSITS HELD BY A DEPOSIT INITIATOR at the close of each quarter shall
27 be paid to the commissioner of taxation and finance at the time the
28 report provided for in subdivision [three] ONE of this section is
29 required to be filed. The commissioner of taxation and finance may
30 require that the payments be made electronically. The remaining twenty
31 percent of the balance outstanding at the close of each quarter shall be
32 the monies of the deposit initiator [and may be withdrawn from such
33 account by the deposit initiator]. If the provisions of this section
34 with respect to such account have not been fully complied with, each
35 deposit initiator shall pay to such commissioner at such time, in lieu
36 of the amount described in the preceding sentence, an amount equal to
37 the balance which would have been outstanding on such date had such
38 provisions been fully complied with. The commissioner of taxation and
39 finance may require that the payments be made electronically.

40 b. [Refund value account shortfall] OVER REDEMPTION. In the event a
41 deposit initiator pays out more in refund values than it collects in
42 deposits of refund values during the course of a quarterly period as
43 described in subdivision [three] ONE of this section, the deposit initi-
44 ator may apply to the commissioner of taxation and finance for a refund
45 of the amount of such excess payment of refund values [from sources
46 other than the refund value account], in the manner as provided by the
47 commissioner of taxation and finance. A deposit initiator must apply for
48 a refund no later than twelve months after the due date for filing the
49 quarterly report for the quarterly period for which the refund claim is
50 made. No interest shall be payable for any refund paid pursuant to this
51 paragraph.

52 c. Final report. A deposit initiator who ceases to do business in this
53 state as a deposit initiator shall file a final report and remit payment
54 of eighty percent of all [amounts remaining in the refund value account]
55 REFUND VALUES HELD BY THE DEPOSIT INITIATOR as of the close of the
56 deposit initiator's last day of business. The commissioner of taxation

1 and finance may require that the payments be made electronically. The
2 deposit initiator shall indicate on the report that it is a "final
3 report". The final report is due to be filed with payment twenty days
4 after the close of the quarterly period in which the deposit initiator
5 ceases to do business. In the event the deposit initiator pays out more
6 in refund values than it collects in such final quarterly period, the
7 deposit initiator may apply to the commissioner of taxation and finance
8 for a refund of the amount of such excess payment of refund values [from
9 sources other than the refund value account,] in the manner as provided
10 by the commissioner of taxation and finance.

11 [5.] 3. All monies collected or received by the department of taxation
12 and finance pursuant to this title shall be deposited to the credit of
13 the comptroller with such responsible banks, banking houses or trust
14 companies as may be designated by the comptroller. Such deposits shall
15 be kept separate and apart from all other moneys in the possession of
16 the comptroller. The comptroller shall require adequate security from
17 all such depositories. Of the total revenue collected, the comptroller
18 shall retain the amount determined by the commissioner of taxation and
19 finance to be necessary for refunds out of which the comptroller must
20 pay any refunds to which a deposit initiator may be entitled. After
21 reserving the amount to pay refunds, the comptroller must, by the tenth
22 day of each month, pay into the state treasury to the credit of the
23 general fund the revenue deposited under this subdivision during the
24 preceding calendar month and remaining to the comptroller's credit on
25 the last day of that preceding month.

26 [6.] 4. The commissioner and the commissioner of taxation and finance
27 shall promulgate, and shall consult each other in promulgating, such
28 rules and regulations as may be necessary to effectuate the purposes of
29 this title. The commissioner and the commissioner of taxation and
30 finance shall provide all necessary aid and assistance to each other,
31 including the sharing of any information that is necessary to their
32 respective administration and enforcement responsibilities pursuant to
33 the provisions of this title.

34 [7. a.] 5. Any person who is a deposit initiator under this title
35 before April first, two thousand nine, must apply by June first, two
36 thousand nine to the commissioner of taxation and finance for registra-
37 tion as a deposit initiator. Any person who becomes a deposit initiator
38 on or after April first, two thousand nine shall apply for registration
39 prior to collecting any deposits as such a deposit initiator. Such
40 application shall be in a form prescribed by the commissioner of tax-
41 ation and finance and shall require such information deemed to be neces-
42 sary for proper administration of this title. The commissioner of tax-
43 ation and finance may require that applications for registration must be
44 submitted electronically. The commissioner of taxation and finance shall
45 electronically issue a deposit initiator registration certificate in a
46 form prescribed by the commissioner of taxation and finance within
47 fifteen days of receipt of such application or may take an additional
48 ten days if the commissioner of taxation and finance deems it necessary
49 to consult with the commissioner before issuing such registration
50 certificate. A registration certificate issued pursuant to this subdivi-
51 sion may be issued for a specified term of not less than three years and
52 shall be subject to renewal in accordance with procedures specified by
53 the commissioner of taxation and finance. The commissioner of taxation
54 and finance shall furnish to the commissioner a complete list of regis-
55 tered deposit initiators and shall continually update such list as
56 warranted. The commissioner shall share any information with the commis-

1 sioner of taxation and finance that is necessary for the administration
2 of this subdivision.

3 [b. The commissioner of taxation and finance shall have the authority
4 to revoke or refuse to renew any registration issued pursuant to this
5 subdivision when he or she has determined or has been informed by the
6 commissioner that any of the provisions of this title or rules and regu-
7 lations promulgated thereunder have been violated. Such violations shall
8 include, but not be limited to, the failure to file quarterly reports,
9 the failure to make payments pursuant to this subdivision, the providing
10 of false or fraudulent information to either the department of taxation
11 and finance or the department, or knowingly aiding or abetting another
12 person in violating any of the provisions of this title. A notice of
13 proposed revocation or non-renewal shall be given to the deposit initi-
14 ator in the manner prescribed for a notice of deficiency of tax and all
15 the provisions applicable to a notice of deficiency under article twenty-
16 ty-seven of the tax law shall apply to a notice issued pursuant to this
17 paragraph, insofar as such provisions can be made applicable to a notice
18 authorized by this paragraph, with such modifications as may be neces-
19 sary in order to adapt the language of such provisions to the notice
20 authorized by this paragraph. All such notices issued by the commis-
21 sioner of taxation and finance pursuant to this paragraph shall contain a
22 statement advising the deposit initiator that the revocation or non-re-
23 newal of registration may be challenged through a hearing process and
24 the petition for such a challenge must be filed with the commissioner of
25 taxation and finance within ninety days after such notice is issued. A
26 deposit initiator whose registration has been so revoked or not renewed
27 shall cease to do business as a deposit initiator in this state, until
28 this title has been complied with and a new registration has been
29 issued. Any deposit initiator whose registration has been so revoked may
30 not apply for registration for two years from the date such revocation
31 takes effect.

32 8.] 6. The commissioner of taxation and finance may require the main-
33 tenance of such [accounts,] records or documents relating to the sale of
34 beverage containers, by any deposit initiator, bottler, distributor,
35 dealer or redemption center as such commissioner may deem appropriate
36 for the administration of this section. Such commissioner may make exam-
37 inations, including the conduct of facility inspections during regular
38 business hours, with respect to the [accounts,] records or documents
39 required to be maintained under this subdivision. Such [accounts,]
40 records and documents shall be preserved for a period of three years,
41 except that such commissioner may consent to their destruction within
42 that period or may require that they be kept longer. Such [accounts,]
43 records and documents may be kept within the meaning of this subdivision
44 when reproduced by any photographic, photostatic, microfilm, micro-card,
45 miniature photographic or other process which actually reproduces the
46 original [accounts,] records or documents.

47 [9.] 7. a. Any person required to be registered under this section
48 who, without being so registered, sells or offers for sale beverage
49 containers in this state, in addition to any other penalty imposed by
50 this title, shall be subject to a penalty to be assessed by the commis-
51 sioner of taxation and finance in an amount not to exceed five hundred
52 dollars for the first day on which such sales or offers for sale are
53 made, plus an amount not to exceed five hundred dollars for each subse-
54 quent day on which such sales or offers for sale are made, not to exceed
55 twenty-five thousand dollars in the aggregate.

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

9 [10.] 8. The provisions of article twenty-seven of the tax law shall
10 apply to the provisions of this title for which the commissioner of
11 taxation and finance is responsible[, including collection of refund
12 value amounts,] in the same manner and with the same force and effect as
13 if the language of such article had been incorporated in full into this
14 section except to the extent that any provision of such article is
15 either inconsistent with a provision of this section or is not relevant
16 to this section as determined by the commissioner of taxation and
17 finance. [Furthermore, for purposes of applying the provisions of arti-
18 cle twenty-seven of the tax law, where the terms "tax" and "taxes"
19 appear in such article, such terms shall be construed to mean "refund
20 value" or "balance in the refund value account".

21 11.] 9. If any deposit initiator fails or refuses to file a report or
22 furnish any information requested in writing by the department of taxa-
23 tion and finance or the department, the department of taxation and
24 finance with the assistance of the department may, from any information
25 in its possession, make an estimate of the deficiency and collect such
26 deficiency from such deposit initiator.

27 [12.] 10. Beginning on June first, two thousand [nine each deposit
28 initiator] TEN ALL SUPPLIERS AND MANUFACTURES shall register the
29 container label of any beverage offered for sale in the state on which
30 it initiates a deposit. Any such registered container label shall bear a
31 universal product code. [Such universal product code shall be New York
32 state specific, in order to identify the beverage container as offered
33 for sale exclusively in New York state, and as a means of preventing
34 illegal redemption of beverage containers purchased out-of-state.]
35 Registration must be on forms as prescribed by the department and must
36 include the universal product code for each combination of beverage and
37 container manufactured. The commissioner may require that such forms be
38 filed electronically. The deposit initiator shall renew a label regis-
39 tration whenever that label is revised by altering the universal product
40 code or whenever the container on which it appears is changed in size,
41 composition or glass color.

42 S 5. Section 16 of part SS of chapter 59 of the laws of 2009 amending
43 the environmental conservation law and the economic development law
44 relating to including additional beverage containers and providing for
45 the return of unclaimed deposits on beverage containers to the state for
46 deposit into the environmental protection fund, is amended to read as
47 follows:

48 S 16. This act shall take effect immediately, provided however, that:

49 1. sections two and three of this act shall take effect April 1, 2009;

50 2. sections four, five, six, seven, nine, and eleven of this act shall
51 take effect [June] OCTOBER 1, 2009; and

52 3. section eight of this act shall take effect [on] April 1, 2009
53 except that the requirements to [make deposits,] file reports and make
54 [withdrawals and] payments under section 27-1012 of the environmental
55 conservation law, as added by section eight of this act, with respect to
56 containers defined as beverage containers prior to April 1, 2009, shall

1 first apply to the period beginning on [April] OCTOBER 15, 2009 and
2 ending [May] DECEMBER 31, 2009, and with respect to all other beverage
3 containers shall first apply to the period beginning on [June] OCTOBER
4 1, 2009 and ending [August 31, 2009] DECEMBER 31, 2009, provided that
5 such other beverage containers will not be required to have a refund
6 value as required under section 27-1005 of the environmental conserva-
7 tion law, as added by section four of this act until June 1, 2009.
8 However, no refunds shall be paid to a deposit initiator pursuant to
9 paragraph b of subdivision [4] 2 of section 27-1012 of the environmental
10 conservation law, as added by section eight of this act prior to March
11 1, 2010.

12 S 6. This act shall take effect immediately, provided that sections
13 three and four of this act shall take effect on the same date and in the
14 same manner as part SS of chapter 59 of the laws of 2009, takes effect.