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

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I N S E N A T E

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Introduced by Sens. KRUEGER, DUANE, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to returnable beverage containers; and to repeal sections 27-1005 and 27-1007 and subdivision 2 of section 27-1011 of the environmental conservation law relating thereto

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

Section 1. Section 27-1001 of the environmental conservation law, as added by chapter 200 of the laws of 1982, is amended to read as follows:
S 27-1001. Legislative findings.
The legislature hereby finds that litter composed of discarded [soft-drink, beer and ale] bottles and cans, ESPECIALLY BEVERAGE CONTAINERS, is a growing problem of state concern and a direct threat to the health and safety of the citizens of this state. Discarded beverage bottles and cans create a hazard to vehicular traffic, a source of physical injury to pedestrians, farm animals and machinery and an unsightly accumulation of litter which must be disposed of at increasing public expense. Beverage bottles and cans also create an unnecessary addition to the state's and municipalities' already overburdened solid waste and refuse disposal systems. Unsegregated disposal of such bottles and cans creates an impediment to the efficient operation of resource recovery plants. Further, the legislature finds that the uninhibited discard of beverage containers constitutes a waste of both mineral and energy resources. The legislature hereby finds that requiring a deposit on all beverage containers, along with certain other facilitating measures, will provide a necessary incentive for the economically efficient and environmentally benign collection and recycling of such containers.

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

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S 2. Subdivision 1 of section 27-1003 of the environmental conservation law, as amended by chapter 778 of the laws of 1988, is amended to read as follows:

1. "Beverage" means carbonated soft drinks, NON-CARBONATED FLAVORED DRINKS, BOTTLED WATER CONSISTING OF mineral water, soda water OR ANY OTHER FORM OF WATER, beer, other malt beverages and a wine product as defined in subdivision thirty-six-a of section three of the alcoholic beverage control law. "Malt beverages" means any beverage obtained by the alcoholic fermentation or infusion or decoction of barley, malt, hops, or other wholesome grain or cereal and water including, but not limited to ale, stout or malt liquor. THE FOLLOWING SHALL BE DEEMED EXCLUDED FROM THE DEFINITION OF A "BEVERAGE": FROZEN OR POWDERED CONCENTRATES, FRESH MILK, MILK SUBSTITUTES, DRINKS WHICH CONTAIN SEVENTY PER CENTUM OR MORE OF NATURAL FRUIT OR VEGETABLE JUICES, AND MEDICINES.

S 3. Section 27-1003 of the environmental conservation law is amended by adding five new subdivisions 12, 13, 14, 15 and 16 to read as follows:

12. "BEVERAGE MANUFACTURER" MEANS A PERSON WHO:

A. BOTTLES, CANS OR OTHERWISE PACKAGES BEVERAGES IN BEVERAGE CONTAINERS EXCEPT THAT IF SUCH PACKAGING IS FOR A DISTRIBUTOR HAVING THE RIGHT TO BOTTLE, CAN OR OTHERWISE PACKAGE THE SAME BRAND OF BEVERAGE, THEN SUCH DISTRIBUTOR SHALL BE THE BEVERAGE MANUFACTURER; OR

B. IMPORTS FILLED BEVERAGE CONTAINERS INTO THE UNITED STATES.

13. A "DEPOSIT INITIATOR" FOR EACH BEVERAGE CONTAINER FOR WHICH A REFUND VALUE IS ESTABLISHED UNDER SECTION 27-1005 OF THIS TITLE SHALL BE:

A. THE BEVERAGE MANUFACTURER WITH RESPECT TO SUCH CONTAINER IF SUCH MANUFACTURER:

(I) MAINTAINS A PLACE OF BUSINESS IN THIS STATE; OR

(II) TRANSPORTS OR CAUSES TO BE TRANSPORTED, OTHER THAN BY COMMON CARRIER, BEVERAGE CONTAINERS INTO THIS STATE; OR

(III) SOLICITS BUSINESS EITHER BY EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, OR OTHER REPRESENTATIVES IN THIS STATE; OR

(IV) PERFORMS ANY OTHER ACTIVITY THAT CREATES A NEXUS FOR PURPOSES OF THE IMPOSITION OF THE REQUIREMENTS OF THIS TITLE UNDER THE CONSTITUTION OF THE UNITED STATES AND APPLICABLE DECISIONAL LAW INTERPRETING THE SAME.

B. A DISTRIBUTOR OF SUCH CONTAINER IF SUCH DISTRIBUTOR'S PURCHASE OF SUCH CONTAINER WAS NOT, DIRECTLY OR INDIRECTLY, FROM A REGISTERED DEPOSIT INITIATOR, AND THE DISTRIBUTOR:

(I) MAINTAINS A PLACE OF BUSINESS IN THIS STATE; OR

(II) TRANSPORTS OR CAUSES TO BE TRANSPORTED, OTHER THAN BY COMMON CARRIER, BEVERAGE CONTAINERS INTO THIS STATE; OR

(III) SOLICITS BUSINESS EITHER BY EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS OR OTHER REPRESENTATIVES IN THIS STATE; OR

(IV) PERFORMS ANY OTHER ACTIVITY THAT CREATES A NEXUS FOR PURPOSES OF THE IMPOSITION OF THE REQUIREMENTS OF THIS TITLE UNDER THE CONSTITUTION OF THE UNITED STATES AND APPLICABLE DECISIONAL LAW INTERPRETING THE SAME.

C. ANY BEVERAGE MANUFACTURER OR DISTRIBUTOR, PURSUANT TO AN ELECTION FILED WITH THE COMMISSIONER OF TAXATION AND FINANCE, IF PERMITTED PURSUANT TO REGULATIONS PROMULGATED BY SUCH COMMISSIONER.

D. A DEALER WITH RESPECT TO SUCH CONTAINER WHO SELLS SUCH CONTAINER IN THIS STATE, WHOSE PURCHASE OF SUCH CONTAINER WAS NOT, DIRECTLY OR INDIRECTLY, FROM A REGISTERED DEPOSIT INITIATOR.

ANY BEVERAGE MANUFACTURER, DISTRIBUTOR OR DEALER MAY APPOINT A DESIGNEE TO PERFORM ITS OBLIGATIONS AS A DEPOSIT INITIATOR AS DESCRIBED IN SECTION 27-1013 OF THIS TITLE, IN WHICH EVENT THE LIABILITY OF SUCH BEVERAGE MANUFACTURER, DISTRIBUTOR, OR DEALER AND OF SUCH DESIGNEE THEREOF, UNDER SECTION 27-1013 OF THIS TITLE, SHALL BE JOINT AND SEVERAL. THE DEPARTMENT AND THE DEPARTMENT OF TAXATION AND FINANCE SHALL BE INFORMED OF ANY SUCH DESIGNATION IN A MANNER PRESCRIBED BY THE DEPARTMENT.

14. "REFUND VALUE" MEANS THE DEPOSIT ON A BEVERAGE CONTAINER, AS PROVIDED IN SECTION 27-1005 OF THIS TITLE, THE TITLE TO WHICH SHALL BE HELD BY THE STATE OF NEW YORK UNTIL REDEEMED, OR AS HEREIN PROVIDED, FOR UNREDEEMED BEVERAGE CONTAINERS.

15. "REVERSE VENDING MACHINE" MEANS A DEVICE WHICH AUTOMATICALLY PROVIDES A RECEIPT FOR A REFUND VALUE OR A REFUND TO A REDEEMER OF A BEVERAGE CONTAINER IN THE AMOUNT OF THE REFUND VALUE OF THE BEVERAGE CONTAINER, UPON PLACEMENT OF THE BEVERAGE CONTAINER ON OR WITHIN THE DEVICE FOR ELECTRONIC VALIDATION OF DEPOSIT REQUIREMENTS.

16. "THIRD PARTY AGENT" MEANS A PERSON WHO CONTRACTS WITH ONE OR MORE MANUFACTURERS, DEALERS OR DISTRIBUTORS TO COLLECT, SORT OR OTHERWISE HANDLE EMPTY BEVERAGE CONTAINERS FOR OR ON BEHALF OF SUCH MANUFACTURERS, DEALERS OR DISTRIBUTORS.

S 4. Sections 27-1005 and 27-1007 of the environmental conservation law are REPEALED and two new sections 27-1005 and 27-1007 are added to read as follows:

S 27-1005. REFUND VALUE.

NO PERSON SHALL SELL OR, IN THE CASE OF A PERSON OTHER THAN A DEPOSIT INITIATOR, OFFER FOR SALE A BEVERAGE CONTAINER IN THIS STATE UNLESS THE DEPOSIT THEREON IS OR HAS BEEN INITIATED BY A REGISTERED DEPOSIT INITIATOR AND UNLESS SUCH CONTAINER HAS:

1. A REFUND VALUE OF NOT LESS THAN TEN CENTS;

2. THE REFUND VALUE CLEARLY INDICATED THEREON AS PROVIDED IN SECTION 27-1011 OF THIS TITLE.

S 27-1007. MANDATORY ACCEPTANCE.

EXCEPT AS PROVIDED IN SECTION 27-1009 OF THIS TITLE:

1. 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 BY THE DEALER, AND SHALL PAY TO THE REDEEMER THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE. REDEMPTIONS OF REFUND VALUE MUST BE IN LEGAL TENDER. THE USE OR PRESENCE OF A REVERSE VENDING MACHINE SHALL NOT RELIEVE A DEALER OF ANY OBLIGATIONS IMPOSED PURSUANT TO THIS SECTION. 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 THAT THE DEALER IS OPEN FOR BUSINESS.

2. A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR SHALL ACCEPT FROM A DEALER OR OPERATOR OF A REDEMPTION CENTER ANY EMPTY BEVERAGE CONTAINERS OF THE DESIGN, SHAPE, SIZE, COLOR, COMPOSITION AND BRAND SOLD BY THE DISTRIBUTOR, AND SHALL PAY THE DEALER OR OPERATOR OF A REDEMPTION CENTER THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE.

3. IN ADDITION TO THE REFUND VALUE OF A BEVERAGE CONTAINER AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE, A DEPOSIT INITIATOR SHALL PAY TO ANY DEALER, OR OPERATOR OF A REDEMPTION CENTER, A HANDLING FEE OF THREE CENTS FOR EACH BEVERAGE CONTAINER ACCEPTED BY THE DEPOSIT INITIATOR FROM SUCH DEALER, OPERATOR OF A REDEMPTION CENTER, DISTRIBUTOR OR THIRD PARTY AGENT. PAYMENT OF THE HANDLING FEE SHALL BE AS COMPENSATION

FOR COLLECTING, SORTING AND PACKAGING OF EMPTY BEVERAGE CONTAINERS FOR TRANSPORT BACK TO THE DEPOSIT INITIATOR OR ITS DESIGNEE. PAYMENT OF THE HANDLING FEE MAY NOT BE CONDITIONED ON THE PURCHASE OF ANY GOODS OR SERVICES. A DISTRIBUTOR WHO DOES NOT INITIATE DEPOSITS ON A TYPE OF BEVERAGE CONTAINER IS CONSIDERED A DEALER ONLY FOR THE PURPOSE OF RECEIVING A HANDLING FEE FROM A DEPOSIT INITIATOR.

3-A. ON OR AFTER, JANUARY FIRST, TWO THOUSAND TEN, IN A CITY WITH A POPULATION GREATER THAN ONE MILLION, A DEALER MAY LIMIT THE NUMBER OF EMPTY BEVERAGE CONTAINERS TO BE ACCEPTED FOR REDEMPTION AT THE DEALER'S PLACE OF BUSINESS TO NO LESS THAN SEVENTY-TWO CONTAINERS PER VISIT, PER REDEEMER, PER DAY, PROVIDED THAT:

A. A REDEMPTION CENTER, BE IT EITHER A LICENSED FIXED PHYSICAL LOCATION THAT IS LOCATED IN THE SAME COUNTY AND WITHIN ONE-HALF MILE OF THE DEALER'S PLACE OF BUSINESS, OR A MOBILE REDEMPTION CENTER OPERATED BY A LICENSED REDEMPTION CENTER THAT IS LOCATED WITHIN ONE-QUARTER MILE OF THE DEALER'S PLACE OF BUSINESS; AND THE REDEMPTION CENTER HAS A WRITTEN AGREEMENT WITH THE DEALER TO ACCEPT CONTAINERS ON BEHALF OF THE DEALER; AND THE REDEMPTION CENTER'S HOURS OF OPERATION COVER AT LEAST 9:00 A.M. THROUGH 7:00 P.M. DAILY OR IN THE CASE OF A MOBILE REDEMPTION CENTER, THE HOURS OF OPERATIONS COVER AT LEAST FOUR CONSECUTIVE HOURS BETWEEN 8:00 A.M. AND 8:00 P.M. DAILY; AND THE DEALER POSTS A CONSPICUOUS, PERMANENT SIGN OPEN TO PUBLIC VIEW, IDENTIFYING THE LOCATION AND HOURS OF OPERATION OF THE AFFILIATED REDEMPTION CENTER OR MOBILE REDEMPTION CENTER; OR

B. THE DEALER PROVIDES, AT A MINIMUM, A CONSECUTIVE TWO HOUR PERIOD BETWEEN 7:00 A.M. AND 7:00 P.M. DAILY WHEREBY THE DEALER WILL ACCEPT UP TO TWO HUNDRED FORTY CONTAINERS, PER REDEEMER, PER DAY, AND POSTS A CONSPICUOUS, PERMANENT SIGN, OPEN TO THE PUBLIC VIEW, IDENTIFYING THOSE HOURS. THE DEALER MAY NOT CHANGE THE HOURS OF REDEMPTION WITHOUT FIRST POSTING A THIRTY DAY NOTICE; OR

C. THE DEALER'S PRIMARY BUSINESS IS THE SALE OF FOOD OR BEVERAGES FOR CONSUMPTION OFF-PREMISES, AND THE DEALER'S PLACE OF BUSINESS IS LESS THAN EIGHT THOUSAND SQUARE FEET IN SIZE.

4. A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR ON A BRAND SHALL ACCEPT FROM A DISTRIBUTOR WHO DOES NOT INITIATE DEPOSITS ON THAT BRAND ANY EMPTY BEVERAGE CONTAINERS OF THAT BRAND AND SHALL PAY THE DISTRIBUTOR THE REFUND VALUE OF EACH SUCH BEVERAGE CONTAINER, AS ESTABLISHED BY SECTION 27-1005 OF THIS TITLE. IN ADDITION, THE DEPOSIT INITIATOR SHALL PAY TO SUCH DISTRIBUTOR FOR EACH SUCH BEVERAGE CONTAINER THE HANDLING FEE ESTABLISHED UNDER SUBDIVISION THREE OF THIS SECTION.

5. NO PERSON SHALL RETURN OR ASSIST ANOTHER TO RETURN AN EMPTY BEVERAGE CONTAINER FOR ITS REFUND VALUE IF SUCH CONTAINER HAD PREVIOUSLY BEEN ACCEPTED FOR REDEMPTION BY A DEPOSIT INITIATOR WHO INITIATES DEPOSITS ON BEVERAGE CONTAINERS OF THE SAME BRAND.

6. NOTWITHSTANDING THE PROVISIONS OF SECTION 27-1009 OF THIS TITLE, A DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR SHALL ACCEPT BEVERAGE CONTAINERS AS PROVIDED IN THIS TITLE, IF THE DEALER, OR OPERATOR OF A REDEMPTION CENTER SHALL HAVE ACCEPTED AND PAID THE REFUND VALUE OF SUCH BEVERAGE CONTAINERS.

7. NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE TO THE CONTRARY, A DISTRIBUTOR, DEALER, OR OPERATOR OF A REDEMPTION CENTER SHALL ACCEPT ALL BEVERAGE CONTAINERS MARKED FOR DEPOSIT IN NEW YORK STATE AND SHALL PAY THE REFUND VALUE MARKED ON THE BEVERAGE CONTAINER.

S 5. Section 27-1009 of the environmental conservation law, as added by chapter 200 of the laws of 1982, is amended to read as follows:

S 27-1009. Refusal of acceptance.

1. A dealer or operator of a redemption center may refuse to accept from a redeemer, and a [distributor] DEPOSIT INITIATOR'S AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR OR THIRD PARTY AGENT may refuse to accept from a dealer or operator of a redemption center any empty beverage container which does not state thereon a refund value as established by section 27-1005 and provided by section 27-1011 of this title.

2. A dealer or operator of a redemption center may also refuse to accept any broken bottle, corroded or dismembered can, or any beverage container which contains a significant amount of foreign material, as determined in rules and regulations to be promulgated by the commissioner. [Notwithstanding the provisions of this subdivision, a distributor shall accept beverage containers as provided in subdivision two of section 27-1007 of this title, if the dealer shall have accepted and paid the refund value of such beverage containers.]

S 6. Subdivision 2 of section 27-1011 of the environmental conservation law is REPEALED and subdivisions 3 and 4 are renumbered subdivisions 2 and 3.

S 7. Section 27-1013 of the environmental conservation law, as amended by chapter 149 of the laws of 1983, is amended to read as follows:

S 27-1013. Redemption centers.

The commissioner is hereby empowered to promulgate rules and regulations governing (1) the circumstances in which dealers and distributors, individually or collectively, are required to accept the return of empty beverage containers, and make payment therefor; (2) the sorting of the containers which a [distributor] DEPOSIT INITIATOR OR AGENT ACTING ON BEHALF OF A DEPOSIT INITIATOR may require of dealers and redemption centers; (3) the [pick up] COLLECTION of returned beverage containers by [distributors] A DEPOSIT INITIATOR'S AGENT ACTING ON BEHALF OF DEPOSIT INITIATORS, OR THIRD PARTY AGENTS including the party to whom such expense is to be charged, the frequency of such pick ups and the payment for refunds and handling fees thereon; (4) the right of dealers to restrict or limit the number of containers redeemed, the rules for redemption at the dealers' place of business, and the redemption of containers from a beverage for which sales have been discontinued, and to issue permits to persons, firms or corporations which establish redemption centers, subject to applicable provisions of local and state laws, at which redeemers and dealers may return empty beverage containers and receive payment of the refund value of such beverage containers. No dealer or distributor, as defined in section 27-1003 OF THIS TITLE, shall be required to obtain a permit to operate a redemption center at the same location as the dealer's or distributor's place of business. Operators of such redemption centers shall receive payment of the refund value of each beverage container from the appropriate [manufacturer or distributor] DEPOSIT INITIATOR as provided under [sections] SECTION 27-1007 [and 27-1009] of this title.

S 8. The environmental conservation law is amended by adding a new section 27-1012 to read as follows:

S 27-1012. DEPOSIT AND DISPOSITION OF REFUND VALUES.

1. EACH DEPOSIT INITIATOR SHALL DEPOSIT IN A REFUND VALUE ACCOUNT AN AMOUNT EQUAL TO THE REFUND VALUE REQUIRED TO BE INITIATED UNDER SECTION 27-1005 OF THIS TITLE WHICH IS RECEIVED WITH RESPECT TO EACH BEVERAGE CONTAINER SOLD BY SUCH DEPOSIT INITIATOR. SUCH DEPOSIT INITIATOR SHALL HOLD SUCH AMOUNTS IN TRUST FOR THE STATE. A REFUND VALUE ACCOUNT SHALL BE AN INTEREST-BEARING ACCOUNT ESTABLISHED IN A BANKING INSTITUTION APPROVED BY THE COMMISSIONER OF TAXATION AND FINANCE AND LOCATED IN THIS

STATE, THE DEPOSITS IN WHICH ARE INSURED BY AN AGENCY OF THE FEDERAL GOVERNMENT. DEPOSITS OF SUCH AMOUNTS SHALL BE MADE NOT LESS FREQUENTLY THAN EVERY FIVE BUSINESS DAYS. ALL INTEREST, DIVIDENDS AND RETURNS EARNED ON THE ACCOUNT SHALL BE PAID DIRECTLY INTO SAID ACCOUNT. SUCH MONEYS SHALL BE KEPT SEPARATE AND APART FROM ALL OTHER MONEYS IN THE POSSESSION OF THE DEPOSIT INITIATOR. THE COMMISSIONER OF TAXATION AND FINANCE MAY SPECIFY A SYSTEM OF ACCOUNTS AND RECORDS TO BE MAINTAINED WITH RESPECT TO ACCOUNTS ESTABLISHED UNDER THIS SUBDIVISION.

2. PAYMENTS OF REFUND VALUES PURSUANT TO SECTION 27-1007 OF THIS TITLE AND PAYMENTS MADE PURSUANT TO SECTION 27-1016 OF THIS TITLE SHALL BE PAID FROM SUCH REFUND VALUE ACCOUNT. NO OTHER PAYMENT OR WITHDRAWAL FROM SUCH ACCOUNT MAY BE MADE EXCEPT AS PRESCRIBED BY THIS TITLE.

3. EACH DEPOSIT INITIATOR SHALL FILE QUARTERLY REPORTS WITH THE COMMISSIONER OF TAXATION AND FINANCE ON A FORM AND IN THE MANNER PRESCRIBED BY SUCH COMMISSIONER. THE QUARTERLY REPORTS REQUIRED BY THIS SUBDIVISION SHALL BE FILED FOR THE QUARTERLY PERIODS ENDING ON THE LAST DAY OF MAY, AUGUST, NOVEMBER AND FEBRUARY OF EACH YEAR, AND EACH SUCH REPORT SHALL BE FILED WITHIN TWENTY DAYS AFTER THE END OF THE QUARTERLY PERIOD COVERED THEREBY. EACH SUCH REPORT SHALL INCLUDE, IN ADDITION TO ANY OTHER INFORMATION SUCH COMMISSIONER SHALL DETERMINE APPROPRIATE, THE FOLLOWING INFORMATION:

A. THE BALANCE IN THE REFUND VALUE ACCOUNT AT THE BEGINNING OF THE QUARTER FOR WHICH THE REPORT IS PREPARED;

B. ALL SUCH DEPOSITS CREDITED TO SUCH ACCOUNT AND ALL INTEREST, DIVIDENDS OR RETURNS RECEIVED ON SUCH ACCOUNT, DURING SUCH QUARTER;

C. ALL WITHDRAWALS FROM SUCH ACCOUNT DURING SUCH QUARTER, INCLUDING ALL REIMBURSEMENTS PAID PURSUANT TO SUBDIVISION TWO OF THIS SECTION, ALL SERVICE CHARGES ON THE ACCOUNT, AND ALL PAYMENTS MADE PURSUANT TO SUBDIVISION FOUR OF THIS SECTION; AND

D. THE BALANCE IN SUCH ACCOUNT AT THE CLOSE OF SUCH QUARTER.

4. A. AN AMOUNT EQUAL TO THE BALANCE OUTSTANDING IN THE REFUND VALUE ACCOUNT AT THE CLOSE OF EACH QUARTER SHALL BE PAID TO THE COMMISSIONER OF TAXATION AND FINANCE AT THE TIME THE REPORT PROVIDED FOR IN SUBDIVISION THREE OF THIS SECTION IS REQUIRED TO BE FILED. IF THE PROVISIONS OF THIS SECTION WITH RESPECT TO SUCH ACCOUNT HAVE NOT BEEN FULLY COMPLIED WITH, EACH DEPOSIT INITIATOR SHALL PAY TO SUCH COMMISSIONER AT SUCH TIME, IN LIEU OF THE AMOUNT DESCRIBED IN THE PRECEDING SENTENCE, AN AMOUNT EQUAL TO THE BALANCE WHICH WOULD HAVE BEEN OUTSTANDING ON SUCH DATE HAD SUCH PROVISIONS BEEN FULLY COMPLIED WITH.

B. ALL MONEYS COLLECTED OR RECEIVED BY SUCH COMMISSIONER PURSUANT TO THIS SECTION SHALL BE DEPOSITED AND DISPOSED OF IN THE MANNER PROVIDED BY SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW ("DEPOSIT AND DISPOSITION OF REVENUE"); PROVIDED, HOWEVER, THAT THE PAYMENT INTO THE STATE TREASURY PROVIDED FOR IN SUCH SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW SHALL BE TO THE CREDIT OF THE ENVIRONMENTAL PROTECTION FUND FOR SUBSEQUENT TRANSFER TO THE UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWO OF SECTION NINETY-TWO-S OF THE STATE FINANCE LAW AND PROVIDED, FURTHER, THAT WHEREVER INCONSISTENT, THE PROVISIONS OF SECTION NINETY-TWO-S OF THE STATE FINANCE LAW SHALL PREVAIL OVER THE PROVISIONS OF SUCH SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW. THE AMOUNT TO BE DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND SHALL BE CERTIFIED TO THE COMPTROLLER BY THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR HER DELEGATE, WHO SHALL DETERMINE SUCH AMOUNT TO THE BEST OF HIS OR HER ABILITY FROM ALL INFORMATION IN HIS OR HER POSSESSION BUT WHO SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. WHERE THE AMOUNT

SO DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND IN ANY SUCH DISTRIBUTION IS MORE OR LESS THAN THE AMOUNT THEN DUE TO SUCH FUND, THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE CERTIFIED TO THE COMPTROLLER BY THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR HER DELEGATE, AS AFORESAID, BUT HE OR SHE SHALL NOT BE HELD LIABLE FOR ANY INACCURACY IN SUCH CERTIFICATE. THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT SHALL BE SO CERTIFIED TO THE COMPTROLLER AS SOON AFTER THE DISCOVERY OF THE OVERPAYMENT OR UNDERPAYMENT AS REASONABLY POSSIBLE AND SUBSEQUENT PAYMENTS AND DISTRIBUTIONS BY THE COMPTROLLER TO THE ENVIRONMENTAL PROTECTION FUND SHALL BE ADJUSTED BY SUBTRACTING THE AMOUNT OF ANY SUCH OVERPAYMENT FROM OR BY ADDING THE AMOUNT OF ANY SUCH UNDERPAYMENT TO SUCH NUMBER OF SUBSEQUENT PAYMENTS AND DISTRIBUTIONS AS THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE SHALL CONSIDER REASONABLE IN VIEW OF THE AMOUNT OF THE OVERPAYMENT OR UNDERPAYMENT AND ALL OTHER FACTS OR CIRCUMSTANCES.

5. FROM THE MONEYS RECEIVED AND COLLECTED BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, WITHIN THIRTY DAYS OF THE DATE THE SUM OF SUCH MONEYS FIRST EXCEEDS AN AMOUNT EQUAL TO ONE HUNDRED MILLION DOLLARS, ONE HUNDRED MILLION DOLLARS SHALL BE DEPOSITED BY THE COMPTROLLER TO THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW FOR DISPOSITION AS PROVIDED UNDER SUCH SECTION; AND ONE HUNDRED MILLION DOLLARS SHALL BE REQUIRED TO BE DEPOSITED ANNUALLY THEREAFTER TO THE ENVIRONMENTAL PROTECTION FUND IN THE FOLLOWING MANNER: ON OR BEFORE THE TWELFTH DAY OF EACH MONTH AFTER SUCH FIRST DEPOSIT (EXCEPTING THE FIRST AND SECOND MONTHS OF EACH FISCAL YEAR), THE COMPTROLLER SHALL DEPOSIT INTO SUCH FUND FROM THE MONEYS RECEIVED AND COLLECTED PURSUANT TO SUCH SUBDIVISION FOUR OF THIS SECTION WHICH HAVE BEEN DEPOSITED AND REMAIN TO THE CREDIT OF THE STATE COMMISSIONER OF TAXATION AND FINANCE OR THE STATE COMPTROLLER IN THE BANKS, BANKING HOUSES OR TRUST COMPANIES REFERRED TO IN SECTION ONE HUNDRED SEVENTY-ONE-A OF THE TAX LAW AT THE CLOSE OF BUSINESS ON THE LAST DAY OF THE PRECEDING MONTH, AN AMOUNT EQUAL TO ONE-TENTH OF THE ANNUAL AMOUNT REQUIRED TO BE DEPOSITED IN SUCH FUND PURSUANT TO THIS SUBDIVISION FOR THE FISCAL YEAR IN WHICH SUCH DEPOSIT IS REQUIRED TO BE MADE. IN THE EVENT SUCH AMOUNT OF MONEYS SO REMAINING TO THE CREDIT OF THE STATE COMMISSIONER OF TAXATION AND FINANCE OR THE STATE COMPTROLLER IS LESS THAN THE AMOUNT REQUIRED TO BE DEPOSITED IN SUCH FUND BY THE COMPTROLLER, AN AMOUNT EQUAL TO THE SHORTFALL SHALL BE DEPOSITED IN SUCH FUND BY THE COMPTROLLER WITH SUBSEQUENT DEPOSITS, AS SOON AS THE REVENUE IS AVAILABLE. IF THE MONEYS RECEIVED AND COLLECTED BY THE COMMISSIONER OF TAXATION AND FINANCE PURSUANT TO SUBDIVISION FOUR OF THIS SECTION DURING ANY STATE FISCAL YEAR EXCEED THE SUM OF ONE HUNDRED MILLION DOLLARS BY THE CLOSE OF SUCH FISCAL YEAR, THE SURPLUS REMAINING AT THE CLOSE OF THE FISCAL YEAR, TOGETHER WITH THE INTEREST EARNED THEREON, SHALL REMAIN AVAILABLE FOR FUTURE APPROPRIATION TO THE ENVIRONMENTAL PROTECTION FUND IN SUBSEQUENT FISCAL YEARS, AND MAY BE UTILIZED: TO MAKE UP ANY SHORTFALL IN RECEIPTS FROM BEVERAGE CONTAINER DEPOSITS IN SUCH SUBSEQUENT FISCAL YEARS; TO RECOMPENSE THE DEPARTMENT OF TAXATION AND FINANCE FOR THE MONTHLY COST OF SERVICES AND EXPENSES RELATED TO ADMINISTERING THE PROVISIONS OF THIS SECTION IN SUCH SUBSEQUENT FISCAL YEARS; AND/OR FOR MUNICIPAL PROJECTS IN SUCH SUBSEQUENT FISCAL YEARS, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

6. IF AT ANY TIME THE MONEYS CONTAINED IN A DEPOSIT INITIATOR'S REFUND VALUE ACCOUNT ARE INSUFFICIENT TO PERMIT A WITHDRAWAL AUTHORIZED BY THIS SECTION AND IF, AS A RESULT OF SUCH INSUFFICIENCY, FUNDS OTHER

THAN THOSE CONTAINED IN SUCH ACCOUNT ARE USED TO MAKE PAYMENTS WHICH OTHERWISE COULD HAVE BEEN MADE IN ACCORDANCE WITH THIS SECTION FROM MONEYS CONTAINED IN SUCH ACCOUNT, SUCH DEPOSIT INITIATOR MAY, THEREAFTER, UPON APPROVAL OF THE COMMISSIONER OF TAXATION AND FINANCE, WITHDRAW FROM SUCH ACCOUNT AND RETAIN FOR HIMSELF OR HERSELF AN AMOUNT EQUAL TO SUCH PAYMENTS. NOTHING HEREIN SHALL BE CONSTRUED TO RELIEVE SUCH DEPOSIT INITIATOR FROM AN OBLIGATION TO PAY EITHER THE REFUND VALUE AND HANDLING FEE FOR EACH REDEEMED BEVERAGE CONTAINER IN ACCORDANCE WITH THIS TITLE OR ANY AMOUNT REQUIRED BY SUBDIVISION FOUR OF THIS SECTION AT THE TIME PRESCRIBED IN SUCH SUBDIVISION.

7. THE COMMISSIONER AND THE COMMISSIONER OF TAXATION AND FINANCE MAY PROMULGATE, AND SHALL CONSULT EACH OTHER IN PROMULGATING, SUCH RULES AND REGULATIONS AS MAY BE NECESSARY OR DESIRABLE TO EFFECTUATE THE PURPOSES OF THIS SECTION. THE COMMISSIONER SHALL PROVIDE ALL NECESSARY AID AND ASSISTANCE TO THE COMMISSIONER OF TAXATION AND FINANCE IN CONNECTION WITH THE ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF THIS SECTION.

8. A. EACH DEPOSIT INITIATOR SHALL REGISTER WITH THE COMMISSIONER OF TAXATION AND FINANCE AS A DEPOSIT INITIATOR UNDER THIS TITLE. SUCH COMMISSIONER, UPON THE APPLICATION OF A DEPOSIT INITIATOR, SHALL, EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, REGISTER SUCH DEPOSIT INITIATOR. THE APPLICATION SHALL BE IN SUCH FORM AND CONTAIN SUCH INFORMATION AND SHALL BE FILED AT SUCH TIME AND UNDER SUCH CONDITIONS, AS SUCH COMMISSIONER MAY PRESCRIBE. NO DEPOSIT INITIATOR, UNLESS SO REGISTERED, SHALL MAKE ANY SALE WITHIN THIS STATE OF BEVERAGE CONTAINERS, EXCEPT A SALE, IF ANY, AS TO WHICH THIS STATE IS WITHOUT POWER TO IMPOSE SUCH CONDITION.

B. WHERE A PERSON FILES AN APPLICATION FOR REGISTRATION AS A DEPOSIT INITIATOR UNDER THIS SUBDIVISION, AND IN CONSIDERING SUCH APPLICATION THE COMMISSIONER OF TAXATION AND FINANCE ASCERTAINS THAT (I) ANY TAX IMPOSED UNDER THE TAX LAW OR ANY RELATED STATUTE, AS DEFINED IN SECTION EIGHTEEN HUNDRED OF THE TAX LAW, HAS BEEN FINALLY DETERMINED TO BE DUE FROM SUCH PERSON AND HAS NOT BEEN PAID IN FULL, OR (II) SUCH PERSON HAS BEEN CONVICTED OF A CRIME PROVIDED FOR IN THE TAX LAW OR THIS TITLE WITHIN ONE YEAR FROM THE DATE ON WHICH SUCH APPLICATION IS FILED, OR (III) SUCH PERSON'S REGISTRATION PURSUANT TO THIS SUBDIVISION HAS BEEN REVOKED OR SUSPENDED WITHIN ONE YEAR FROM THE DATE ON WHICH THE APPLICATION IS FILED, SUCH COMMISSIONER MAY REFUSE TO REGISTER THE APPLICANT AS A DEPOSIT INITIATOR.

C. WHERE A PERSON WHO IS REGISTERED UNDER THIS SUBDIVISION (I) WILLFULLY FAILS TO FILE A REPORT REQUIRED BY THIS TITLE, OR (II) WILLFULLY FILES, CAUSES TO BE FILED, GIVES OR CAUSES TO BE GIVEN A REPORT OR OTHER DOCUMENT REQUIRED UNDER THIS TITLE WHICH IS FALSE, OR (III) HAS BEEN CONVICTED OF A CRIME PROVIDED FOR IN THE TAX LAW OR THIS TITLE, THE COMMISSIONER OF TAXATION AND FINANCE MAY REVOKE OR SUSPEND SUCH REGISTRATION. PROVIDED, HOWEVER, THAT SUCH COMMISSIONER MAY REVOKE OR SUSPEND A REGISTRATION BASED ON THE GROUNDS SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH ONLY WHERE THE CONVICTION REFERRED TO OCCURRED NOT MORE THAN ONE YEAR PRIOR TO THE DATE OF DELIVERY OF THE NOTICE OF PROPOSED REVOCATION OR SUSPENSION. SUCH NOTICE OF PROPOSED REVOCATION OR SUSPENSION MUST BE GIVEN TO SUCH PERSON WITHIN THREE YEARS FROM THE DATE OF THE ACT OR OMISSION DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, EXCEPT THAT IN THE CASE OF ACTS INVOLVING FALSITY OR FRAUD UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH NOTICE MAY BE ISSUED AT ANY TIME.

D. A NOTICE OF REFUSAL SHALL BE GIVEN TO A PERSON APPLYING FOR SUCH REGISTRATION AND A NOTICE OF PROPOSED REVOCATION OR SUSPENSION SHALL BE

GIVEN TO A PERSON REGISTERED PURSUANT TO THIS SUBDIVISION IN THE MANNER PRESCRIBED FOR ISSUANCE OF A NOTICE OF DETERMINATION OF TAX UNDER ARTICLE TWENTY-EIGHT OF THE TAX LAW AND ALL THE PROVISIONS OF SUCH ARTICLE APPLICABLE TO A NOTICE OF DETERMINATION UNDER SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THE TAX LAW SHALL APPLY TO A NOTICE ISSUED PURSUANT TO THIS PARAGRAPH, INSOFAR AS SUCH PROVISIONS CAN BE MADE APPLICABLE TO THE NOTICE AUTHORIZED BY THIS PARAGRAPH, WITH SUCH MODIFICATIONS AS MAY BE NECESSARY IN ORDER TO ADAPT THE LANGUAGE OF SUCH PROVISIONS TO THE NOTICE AUTHORIZED BY THIS PARAGRAPH. ALL SUCH NOTICES SHALL CONTAIN A STATEMENT ADVISING THE PERSON TO WHOM IT IS ISSUED THAT THE NOTICE OF REFUSAL OR THE NOTICE OF REVOCATION OR SUSPENSION MAY BE CHALLENGED THROUGH A HEARING PROCESS AND THAT THE PETITION FOR SUCH CHALLENGE MUST BE FILED WITH THE DIVISION OF TAX APPEALS WITHIN NINETY DAYS AFTER THE ISSUANCE DATE OF SUCH NOTICE. IN THE CASE OF A PERSON APPLYING FOR REGISTRATION, A NOTICE OF REFUSAL TO REGISTER SHALL BE ISSUED PROMPTLY AFTER RECEIPT OF SUCH APPLICATION.

E. UPON TIMELY APPLICATION THEREFOR, A HEARING SHALL BE SCHEDULED, AND WITHIN THREE MONTHS FROM SUCH APPLICATION FOR HEARING IN THE DIVISION OF TAX APPEALS (DETERMINED WITH REGARD TO ANY POSTPONEMENTS OF ANY SCHEDULED HEARING OR CONFERENCE MADE AT THE REQUEST OF THE APPLICANT) THE ADMINISTRATIVE LAW JUDGE SHALL RENDER A DETERMINATION EITHER UPHOLDING THE REVOCATION OR SUSPENSION OR REFUSAL TO REGISTER DECISION OF THE COMMISSIONER OF TAXATION AND FINANCE OR ORDERING SUCH COMMISSIONER TO REINSTATE OR REGISTER THE APPLICANT. WITHIN FIFTEEN DAYS AFTER THE GIVING OF NOTICE OF THE ADMINISTRATIVE LAW JUDGE'S DETERMINATION, THE APPLICANT OR SUCH COMMISSIONER MAY TAKE EXCEPTION TO THE DETERMINATION. IF AN EXCEPTION IS TAKEN, THE TAX APPEALS TRIBUNAL, WITHIN SEVENTY-FIVE DAYS FROM THE DATE OF NOTICE TO THE TRIBUNAL THAT EXCEPTION IS BEING TAKEN TO AN ADMINISTRATIVE LAW JUDGE'S DETERMINATION, SHALL ISSUE A DECISION EITHER AFFIRMING OR REVERSING SUCH DETERMINATION. IF THE ADMINISTRATIVE LAW JUDGE RENDERS A DETERMINATION ORDERING SUCH COMMISSIONER TO REINSTATE OR REGISTER THE APPLICANT AND SUCH COMMISSIONER TAKES EXCEPTION TO SUCH DETERMINATION, SUCH COMMISSIONER SHALL NOT BE REQUIRED TO REINSTATE OR REGISTER THE APPLICANT UNLESS AND UNTIL THE TAX APPEALS TRIBUNAL ISSUES A DECISION AFFIRMING SUCH DETERMINATION.

F. AFTER THE COMMISSIONER OF TAXATION AND FINANCE HAS REFUSED TO REGISTER AN APPLICANT BY A NOTICE OF REFUSAL OR HAS SUSPENDED OR REVOKED A PERSON'S REGISTRATION BY A NOTICE OF SUSPENSION OR REVOCATION ISSUED TO SUCH PERSON AND SUCH DECISION HAS BECOME FINAL AS PROVIDED FOR IN THIS SUBDIVISION, SUCH PERSON IS PROHIBITED FROM ENGAGING IN ANY BUSINESS IN THIS STATE FOR WHICH SUCH REGISTRATION IS REQUIRED. IF DESPITE SUCH PROHIBITION SUCH PERSON ENGAGES OR CONTINUES TO BE SO ENGAGED IN SUCH BUSINESS, SUCH COMMISSIONER MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN SUCH PERSON FROM SO ENGAGING IN SUCH BUSINESS.

9. THE COMMISSIONER OF TAXATION AND FINANCE MAY REQUIRE THE MAINTENANCE OF SUCH ACCOUNTS, RECORDS OR DOCUMENTS RELATING TO THE SALE OF BEVERAGE CONTAINERS, BY ANY BEVERAGE MANUFACTURER, DISTRIBUTOR, DEALER, OR REDEMPTION CENTER AS SUCH COMMISSIONER MAY DEEM APPROPRIATE FOR THE ADMINISTRATION OF THIS SECTION. THE COMMISSIONER OF TAXATION AND FINANCE MAY MAKE EXAMINATIONS, INCLUDING THE CONDUCT OF FACILITY INSPECTIONS DURING REGULAR BUSINESS HOURS, WITH RESPECT TO THE ACCOUNTS, RECORDS OR DOCUMENTS REQUIRED TO BE MAINTAINED UNDER THIS SUBDIVISION. SUCH ACCOUNTS, RECORDS AND DOCUMENTS SHALL BE PRESERVED FOR A PERIOD OF THREE YEARS, EXCEPT THAT SUCH COMMISSIONER MAY CONSENT TO THEIR DESTRUCTION WITHIN THAT PERIOD OR MAY REQUIRE THAT THEY BE KEPT LONGER. SUCH

ACCOUNTS, RECORDS AND DOCUMENTS MAY BE KEPT WITHIN THE MEANING OF THIS SUBDIVISION WHEN REPRODUCED BY ANY PHOTOGRAPHIC, PHOTOSTATIC, MICROFILM, MICRO-CARD, MINIATURE PHOTOGRAPHIC OR OTHER PROCESS WHICH ACTUALLY REPRODUCES THE ORIGINAL ACCOUNTS, RECORDS OR DOCUMENTS.

10. A. THE PROVISIONS OF SECTIONS ELEVEN HUNDRED THIRTY-EIGHT THROUGH ELEVEN HUNDRED FORTY-THREE AND ELEVEN HUNDRED FORTY-FIVE THROUGH ELEVEN HUNDRED FORTY-SEVEN OF THE TAX LAW, EXCEPT FOR SUBPARAGRAPH (I) OF PARAGRAPH THREE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FORTY-FIVE OF THE TAX LAW, SHALL APPLY TO THE PROVISIONS OF THIS TITLE IN THE SAME MANNER AND WITH THE SAME FORCE AND EFFECT AS IF THE LANGUAGE OF SUCH PROVISIONS HAD BEEN INCORPORATED IN FULL INTO THIS TITLE AND HAD EXPRESSLY REFERRED TO THE AMOUNT REQUIRED TO BE PAID TO THE COMMISSIONER OF TAXATION AND FINANCE UNDER THIS TITLE, EXCEPT TO THE EXTENT THAT ANY OF SUCH PROVISIONS IS EITHER INCONSISTENT WITH A PROVISION CONTAINED IN THIS TITLE OR IS NOT RELEVANT TO THIS TITLE. PROVIDED, HOWEVER, THAT THE COMMISSIONER OF TAXATION AND FINANCE MAY DETERMINE THE EXISTENCE OF A DEFICIENCY ON THE BASIS OF EXTERNAL INDICES, INCLUDING, IN ADDITION TO THOSE SET FORTH IN PARAGRAPH ONE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-EIGHT OF THE TAX LAW, SALES TERRITORY, RECORDS OF SALES, RECORDS OR REPORTS OF REFUND VALUES PAID OR BEVERAGE CONTAINERS REDEEMED PURSUANT TO THE PROVISIONS OF THIS TITLE, STOCK OF BEVERAGE CONTAINERS, TYPES OF BEVERAGE CONTAINERS OR OTHER FACTORS. PROVIDED FURTHER, HOWEVER, THAT NOTWITHSTANDING THE PROVISIONS OF SECTION ELEVEN HUNDRED FORTY-SIX OF THE TAX LAW, THE COMMISSIONER OF TAXATION AND FINANCE OR HIS OR HER DESIGNEE, OR ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF TAXATION AND FINANCE, SHALL NOT BE SUBJECT TO SUCH PROVISIONS WITH RESPECT TO COMMUNICATION BY SUCH COMMISSIONER, DESIGNEE, OFFICER OR EMPLOYEE WITH THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION, WITH HIS OR HER DESIGNEE, OR WITH ANY OFFICER OR EMPLOYEE OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, WITH RESPECT TO THE ADMINISTRATION AND ENFORCEMENT OF THIS SECTION.

B. ANY PERSON REQUIRED TO BE REGISTERED UNDER THIS SECTION WHO, WITHOUT BEING SO REGISTERED, MAKES SALES OF BEVERAGE CONTAINERS IN THIS STATE, IN ADDITION TO ANY OTHER PENALTY IMPOSED BY THIS TITLE, SHALL BE SUBJECT TO A PENALTY IN AN AMOUNT NOT EXCEEDING FIVE HUNDRED DOLLARS FOR THE FIRST DAY ON WHICH SUCH SALES ARE MADE, PLUS AN AMOUNT NOT EXCEEDING TWO HUNDRED DOLLARS FOR EACH SUBSEQUENT DAY ON WHICH SUCH SALES ARE MADE, NOT TO EXCEED TEN THOUSAND DOLLARS IN THE AGGREGATE.

C. ANY DEPOSIT INITIATOR WHO FAILS TO MAINTAIN ACCOUNTS OR RECORDS PURSUANT TO THIS SECTION, UNLESS IT IS SHOWN THAT SUCH FAILURE WAS DUE TO REASONABLE CAUSE AND NOT DUE TO NEGLIGENCE OR WILLFUL NEGLECT, SHALL BE SUBJECT TO A PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH QUARTER DURING WHICH SUCH FAILURE OCCURRED OR CONTINUES.

D. THE PENALTIES PRESCRIBED IN PARAGRAPHS B AND C OF THIS SUBDIVISION SHALL BE SUBJECT TO THE ADMINISTRATIVE PROVISIONS APPLICABLE TO PENALTIES PRESCRIBED IN SECTION ELEVEN HUNDRED FORTY-FIVE OF THE TAX LAW.

S 9. Section 92-s of the state finance law, as added by chapter 610 of the laws of 1993, subdivision 3 as amended by chapter 145 of the laws of 2004, subdivision 6 as amended by chapter 432 of the laws of 1997, paragraph (d) of subdivision 6 as amended by section 13 of part E of chapter 61 of the laws of 2000, subdivision 7 as amended by chapter 611 of the laws of 1993 and subdivision 9 as amended by section 1 of part B of chapter 59 of the laws of 2008, is amended to read as follows:

S 92-s. Environmental protection fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation

and finance a special fund to be known as the "environmental protection fund".

2. [a.] (A) The comptroller shall establish the following separate and distinct accounts within the environmental protection fund:

(i) solid waste account;

(ii) UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT;

(III) parks, recreation and historic preservation account;

[(iii)] (IV) open space account; and

[(iv)] (V) environmental protection transfer account.

[b.] (B) All [monies] MONEYS received by the comptroller for deposit in the environmental protection fund shall be deposited first to the credit of the environmental protection transfer account. No [monies] MONEYS shall be expended from any such account for any project except pursuant to appropriation by the legislature.

3. Such fund shall consist of the amount of revenue collected within the state from the amount of revenue, interest and penalties deposited pursuant to section fourteen hundred twenty-one of the tax law, the amount of fees and penalties received from easements or leases pursuant to subdivision fourteen of section seventy-five of the public lands law and the money received as annual service charges pursuant to section four hundred four-l of the vehicle and traffic law, all moneys required to be deposited therein from the contingency reserve fund pursuant to section two hundred ninety-four of chapter fifty-seven of the laws of nineteen hundred ninety-three, all moneys required to be deposited pursuant to section thirteen of chapter six hundred ten of the laws of nineteen hundred ninety-three, repayments of loans made pursuant to section 54-0511 of the environmental conservation law, all moneys to be deposited from the Northville settlement pursuant to section one hundred twenty-four of chapter three hundred nine of the laws of nineteen hundred ninety-six, provided however, that such moneys shall only be used for the cost of the purchase of private lands in the core area of the central Suffolk pine barrens pursuant to a consent order with the Northville industries signed on October thirteenth, nineteen hundred ninety-four and the related resource restoration and replacement plan, the amount of penalties required to be deposited therein by section 71-2724 of the environmental conservation law, ALL MONEYS REQUIRED TO BE DEPOSITED PURSUANT TO SECTION 27-1012 OF THE ENVIRONMENTAL CONSERVATION LAW, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. All such revenue shall be initially deposited into the environmental protection fund, for application as provided in subdivision [five] FOUR of this section.

[5] 4. Revenues in the environmental protection fund shall be kept separate and shall not be commingled with any other moneys in the custody of the comptroller. All deposits of such revenues shall, if required by the comptroller, be secured by obligations of the United States or of the state having a market value equal at all times to the amount of such deposits and all banks and trust companies are authorized to give security for such deposits. Any such revenues in such fund may, upon the discretion of the comptroller, be invested in obligations in which the comptroller is authorized to invest pursuant to section ninety-eight-a of this article.

[6] 5. (a) All moneys heretofore and hereafter deposited in the environmental protection transfer account shall be transferred by the comptroller to the solid waste account, THE UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT, the parks, recre-

ation and historic preservation account or the open space account upon the request of the director of the budget.

(b) Moneys from the solid waste account shall be available, pursuant to appropriation and upon certificate of approval of availability by the director of the budget, for any non-hazardous municipal landfill closure project; municipal waste reduction or recycling project, as defined in article fifty-four of the environmental conservation law; for the purposes of section two hundred sixty-one and section two hundred sixty-four of the economic development law; any project for the development, updating or revision of local solid waste management plans pursuant to sections 27-0107 and 27-0109 of the environmental conservation law; and for the development of the pesticide sales and use data base in conjunction with Cornell University pursuant to title twelve of article thirty-three of the environmental conservation law.

(c) AFTER RECOMPENSING THE DEPARTMENT OF TAXATION AND FINANCE EACH MONTH FOR THE COST OF SERVICES AND EXPENSES RELATED TO ADMINISTERING THE PROVISIONS OF SECTION 27-1012 OF THE ENVIRONMENTAL CONSERVATION LAW FOR THE IMMEDIATE PRIOR MONTH, MONEYS REMAINING FROM THE UNCLAIMED BEVERAGE CONTAINER DEPOSITS STATE ASSISTANCE TO MUNICIPALITIES ACCOUNT SHALL BE AVAILABLE, PURSUANT TO APPROPRIATION AND UPON CERTIFICATE OF APPROVAL OF AVAILABILITY BY THE STATE DIRECTOR OF THE BUDGET, FOR ANY NON-HAZARDOUS MUNICIPAL LANDFILL CLOSURE PROJECT; FOR ANY MUNICIPAL WASTE REDUCTION OR RECYCLING PROJECT; FOR ANY MUNICIPAL PARK PROJECT; FOR ANY HISTORIC PRESERVATION PROJECT; FOR ANY HERITAGE AREA PROJECT; OR FOR ANY LOCAL WATERFRONT REVITALIZATION PROJECT, AS DEFINED IN ARTICLE FIFTY-FOUR OF THE ENVIRONMENTAL CONSERVATION LAW; OR FOR ANY COMBINATION OF THE FOREGOING PROJECTS. PROVIDED, HOWEVER, THAT THE TOTAL OF MONEYS APPROPRIATED FROM THIS ACCOUNT IN ANY STATE FISCAL YEAR SHALL BE ALLOCATED BY STATE ENVIRONMENTAL CONSERVATION DEPARTMENT REGION BASED UPON NONREDEMPTION RATES IN EACH REGION, AS DETERMINED BY SUCH DEPARTMENT FROM INFORMATION IT HAS RECEIVED PURSUANT TO SECTION 27-1018 OF THE ENVIRONMENTAL CONSERVATION LAW. SUCH APPROPRIATION FOR THE FISCAL YEAR THAT BEGINS NEXT FOLLOWING THE EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION, BY THE CHAPTER OF THE LAWS OF TWO THOUSAND NINE, WHICH ADDED THIS SENTENCE SHALL BE BASED ON THE MOST RECENT REPORT OF THE STATE ENVIRONMENTAL CONSERVATION DEPARTMENT ON "BEVERAGE CONTAINER DEPOSIT AND REDEMPTION STATISTICS" COMPLETED PRIOR TO THE DATE SUCH APPROPRIATION SHALL HAVE BECOME A LAW AND WHICH WAS PREPARED PURSUANT TO 6 NYCRR S 367.11 (OR A COGNATE PROVISION OF A SUCCESSOR REGULATION). PROVIDED FURTHER, HOWEVER, THAT THE AMOUNT OF ANY APPROPRIATION MADE FROM THIS ACCOUNT SHALL BE DISREGARDED FOR THE PURPOSE OF DETERMINING THE AMOUNT OF ANY OTHER APPROPRIATION FROM ANY OTHER ACCOUNT WHETHER OR NOT SUCH OTHER APPROPRIATION IS OR WILL BE MADE, OR REQUIRED TO BE MADE, FOR THE SAME PROJECT OR PURPOSE, FOR GENERAL MUNICIPAL PURPOSES OR FOR LOCAL ASSISTANCE. ACCORDINGLY, THE AMOUNT OF STATE AID TO MUNICIPALITIES OTHERWISE TO BE PROVIDED SHALL NOT BE REDUCED ON ACCOUNT OF THE ADDITIONAL FUNDING PROVIDED BY THIS ACCOUNT, AND FUNDING FROM THIS ACCOUNT SHALL BE SUPPLEMENTARY TO ANY SUCH OTHER LOCAL ASSISTANCE PROVIDED FROM ANY SOURCE OTHER THAN THIS ACCOUNT.

(D) Moneys from the parks, recreation and historic preservation account shall be available, pursuant to appropriation, for any municipal park project, historic preservation project, urban cultural park project, waterfront revitalization program, coastal rehabilitation project.

[(d)] (E) Moneys from the open space account shall be available, pursuant to appropriation, for any open space land conservation project,

bio-diversity stewardship and research pursuant to chapter five hundred fifty-four of the laws of nineteen hundred ninety-three, for the purposes of agricultural and farmland protection activities as authorized by article twenty-five-AAA of the agriculture and markets law, non-point source abatement and control projects pursuant to section 17-1409 of the environmental conservation law and section eleven-b of the soil and water conservation districts law, for Long Island Central Pine Barrens area planning or Long Island south shore estuary reserve planning pursuant to title thirteen of article fifty-four of the environmental conservation law, and for operation and management of the Albany Pine Bush preserve commission pursuant to subdivision two of section 54-0303 of the environmental conservation law.

[(e)] (F) The governor shall include a specific line appropriation in the capital projects budget describing individual open space land conservation projects proposed to be undertaken by the department of environmental conservation and/or the office of parks, recreation and historic preservation pursuant to title three of article fifty-four of the environmental conservation law and listed in the state open space land acquisition plan prepared pursuant to title two of article forty-nine of the environmental conservation law.

[7] 6. Notwithstanding any other provision of law, no state assistance payment authorized under this section or article fifty-four of the environmental conservation law may be applied, with respect to any project located within the area of New York county bounded by (a) the northern boundary of Fifty-ninth street and Fifty-ninth street extended; (b) the United States pierhead line; (c) the northern boundary of the area known as Battery Park City; and (d) eight hundred feet inland easterly from the United States bulkhead line:

(i) for, other than for recreational use or access inland of the existing bulkhead line, any roads, bridges, ramps or parking facilities or sewers or water mains;

(ii) for any site improvement, including sewers or water mains, to support residential, industrial or commercial development;

(iii) to excavate, place fill or plantings in, or place any piling, platform or structure, including a floating structure, in the Hudson river;

(iv) to plan, evaluate or study any project involving such excavation or placement as described in subparagraph (iii) of this paragraph; or

(v) for any purpose or project except where the commissioner of environmental conservation, with the approval of the director of the budget, enters into a contract with the city of New York or a state agency, but not with any public benefit corporation or public authority or any other person or entity, for the undertaking of the purpose or project. No part of the purpose or project may be subcontracted to any public benefit corporation, public authority, not-for-profit corporation, or municipality other than the city of New York, nor shall any such state assistance payment be paid to, on behalf of, or pursuant to any agreement with any such entity.

[8] 7. All payments of moneys from the fund shall be made on the audit and warrant of the comptroller.

[9.] 8. Notwithstanding any other law to the contrary and in accordance with section four of this chapter, the comptroller is hereby authorized at the direction of the director of the division of the budget to transfer moneys from the general fund to the environmental protection fund for the purpose of maintaining the solvency of the environmental protection fund. If, in any fiscal year, moneys in the envi-

ronmental protection fund are deemed insufficient by the director of the division of the budget to meet actual and anticipated disbursements from enacted appropriations or reappropriations made pursuant to this section, the comptroller shall at the direction of the director of the division of the budget, transfer from the general fund to the environmental protection fund moneys sufficient to meet such disbursements. Such transfers shall be made only upon certification of need by the director of the division of the budget, with copies of such certification filed with the chairperson of the senate finance committee, the chairperson of the assembly ways and means committee and the state comptroller. The aggregate amount of all transfers shall not exceed four hundred forty-seven million one hundred seventy-one thousand dollars.

S 10. The environmental conservation law is amended by adding a new section 27-1016 to read as follows:

S 27-1016. UNCLAIMED DEPOSIT.

1. FOR EACH UNCLAIMED BEVERAGE CONTAINER FOR WHICH A DEPOSIT INITIATOR ESTABLISHED A REFUND VALUE, THE DEPOSIT INITIATOR SHALL BE ENTITLED TO RETAIN FOR ITSELF FIVE CENTS PER BEVERAGE CONTAINER TO HELP COVER THE COST OF THE HANDLING FEE ON RETURNED BEVERAGE CONTAINERS ESTABLISHED BY SUBDIVISION THREE OF SECTION 27-1007 OF THIS TITLE.

2. THE HANDLING FEES OF THE DEALER, DISTRIBUTOR, REDEMPTION CENTER OR THIRD PARTY AGENT ON BEVERAGES ACCEPTED ACCORDING TO SECTION 27-1007 OF THIS TITLE SHALL BE PAID FROM THE MONEY RETAINED BY THE DEPOSIT INITIATORS ON UNCLAIMED BEVERAGE CONTAINERS.

S 11. Section 27-1019 of the environmental conservation law is renumbered section 27-1020 and two new sections 27-1018 and 27-1019 are added to read as follows:

S 27-1018. RECORD KEEPING REQUIREMENTS.

EACH DISTRIBUTOR WHO INITIATES A DEPOSIT ON A TYPE OF BEVERAGE CONTAINER SOLD IN THIS STATE SHALL MAINTAIN A RECORD OF ALL DEPOSITS INITIATED, ALL DEPOSITS REDEEMED, ALL HANDLING FEES PAID OUT AND ALL UNCLAIMED DEPOSITS RETAINED. EACH SUCH DISTRIBUTOR SHALL MAINTAIN THIS INFORMATION ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND SHALL REPORT THIS INFORMATION TO THE COMMISSIONER UPON SUCH REASONABLE FREQUENCY AS THE COMMISSIONER DEEMS NECESSARY.

S 27-1019. BEVERAGE CONTAINER DEPOSIT AND REDEMPTION REPORT.

ON OR BEFORE OCTOBER FIRST OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY BEVERAGE CONTAINER DEPOSIT AND REDEMPTION STATISTICS BASED UPON THE INFORMATION PROVIDED PURSUANT TO SECTION 27-1018 OF THIS TITLE.

S 12. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.