

4736--A

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. KRUGER, 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

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; to amend the environmental conservation law, in relation to returnable beverage containers; and to repeal certain provisions of the environmental conservation law relating thereto

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9 tion law is REPEALED.
10 S 3. Paragraph (a) of subdivision 3 of section 27-1007 of the environ-
11 mental conservation law, as added by section 4 of part SS of chapter 59
12 of the laws of 2009, is amended to read as follows:
13 (a) The dealer has a written agreement with a redemption center, be it
14 either at a fixed physical location within the same county and within
15 one-half mile of the dealer's place of business, or a mobile redemption
16 center, operated by a redemption center, that is located within one-
17 quarter mile of the dealer's place of business. The redemption center

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

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1 must have a written agreement with the dealer to accept containers on
2 behalf of the dealer; and the redemption center's hours of operation
3 must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of
4 a mobile redemption center, the hours of operation must cover at least
5 four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The deal-
6 er must post a conspicuous, permanent sign, meeting the size and color
7 specifications set forth in subdivision two of this section, open to
8 public view, identifying the location and hours of operation of the
9 affiliated redemption center or mobile redemption center; [and] OR

10 S. 4. Subdivision 1 of section 27-1007 of the environmental conserva-
11 tion law, as added by section 4 of part SS of chapter 59 of the laws of
12 2009, is amended to read as follows:

13 1. (a) A dealer shall accept at his or her place of business from a
14 redeemer any empty beverage containers of the design, shape, size,
15 color, composition and brand sold or offered for sale by the dealer, and
16 shall pay to the redeemer the refund value of each such beverage
17 container as established in section 27-1005 of this title. Redemptions
18 of refund value must be in legal tender, or a scrip or receipt from a
19 reverse vending machine, provided that the scrip or receipt can be
20 exchanged for legal tender for a period of not less than [sixty] THIRTY
21 days without requiring the purchase of other goods. SUCH SCRIP OR
22 RECEIPT SHALL CLEARLY INDICATE THE EXPIRATION THEREOF. The use or pres-
23 ence of a reverse vending machine shall not relieve a dealer of any
24 obligations imposed pursuant to this section. If a dealer utilizes a
25 reverse vending machine to redeem containers, the dealer shall provide
26 redemption of beverage containers when the reverse vending machine is
27 full, broken, under repair or does not accept a type of beverage
28 container sold or offered for sale by such dealer and may not limit the
29 hours or days of redemption except as provided by subdivision three of
30 this section.

31 (b) Beginning March first, two thousand ten, a dealer whose place of
32 business is part of a chain engaged in the same general field of busi-
33 ness which operates ten or more units in this state under common owner-
34 ship and whose business exceeds: (i) forty thousand square feet but is
35 less than sixty thousand square feet shall install and maintain at least
36 three reverse vending machines at the dealer's place of business; (ii)
37 sixty thousand square feet but is less than eighty-five thousand square
38 feet shall install and maintain at least four reverse vending machines
39 at the dealer's place of business; or (iii) eighty-five thousand square
40 feet shall install and maintain at least eight reverse vending machines
41 at the dealer's place of business; provided, however, that the require-
42 ments of this paragraph to install and maintain reverse vending machines
43 shall not apply to a dealer that sells only refrigerated beverage
44 containers of twenty ounces or less where each beverage container is
45 sold as an individual container that is not connected to or packaged
46 with any other beverage container.

47 (c) A dealer to which paragraph (b) of this subdivision does not apply
48 and whose place of business is at least forty thousand square feet which
49 does not utilize reverse vending machines to process empty beverage
50 containers for redemption shall: (i) establish and maintain a dedicated
51 area within such business to accept beverage containers for redemption;
52 (ii) adequately staff such area to facilitate efficient acceptance and
53 processing of such containers during business hours; and (iii) post one
54 or more conspicuous signs conforming to the size and color requirements
55 described in subdivision two of this section at each public entrance to

1 the business which describes where in the business the redemption area
2 is located.

3 (D) The commissioner [may] SHALL establish in rules and regulations
4 additional standards for the efficient processing of beverage containers
5 by such dealers. SUCH RULES AND REGULATIONS SHALL INCLUDE A PROVISION
6 FOR A WAIVER FROM THE REQUIREMENTS OF THIS SECTION IF A DEALER CAN
7 REASONABLY DEMONSTRATE THAT THEY PLAN TO IMPLANT AN ALTERNATIVE MECH-
8 ANISM FOR CONVENIENTLY AND EFFICIENTLY ACCEPTING BEVERAGE CONTAINERS FOR
9 REDEMPTION. SUCH REGULATIONS MAY ALSO PROVIDE THAT A DEALER UNDER
10 SUBPARAGRAPH (III) OF PARAGRAPH (B) OF THIS SUBDIVISION MAY MAINTAIN
11 LESS THAN EIGHT BUT GREATER THAN FIVE REVERSE VENDING MACHINES IF SUCH
12 DEALER CAN DEMONSTRATE THAT EIGHT REVERSE VENDING MACHINES ARE NOT
13 NECESSARY FOR THE CONVENIENT AND EFFICIENT REDEMPTION OF BEVERAGE
14 CONTAINERS.

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

19 (F) FOR THE PURPOSES OF THIS SUBDIVISION A DEALER SHALL NOT INCLUDE A
20 RETAIL OR WHOLESALE ESTABLISHMENT, OTHER THAN A FOOD SERVICE ESTABLISH-
21 MENT, WHERE TWENTY-FIVE PERCENT OR MORE OF GROSS SALES INCLUDE
22 PRESCRIPTION OR NON-PRESCRIPTION MEDICINES AND/OR ANY COOKED OR UNCOOKED
23 ARTICLE OF FOOD, DRINK, CONFECTION OR CONDIMENT USED FOR OR INTENDED TO
24 BE USED FOR HUMAN CONSUMPTION OFF THE PREMISES, IS STORED, SOLD,
25 PREPARED, COOKED OR OFFERED FOR SALE AT RETAIL SUCH AS CANDY MANUFACTUR-
26 ERS, CONFECTIONERIES, FISH MARKETS, FRUIT AND VEGETABLE MARKETS, GROCERY
27 STORES, CONVENIENCE STORES, MEAT MARKETS, NUT STORES, DRESSED POULTRY
28 MARKETS, RETAIL BAKERIES, BAKERY OUTLETS, OR ANY SIMILAR ESTABLISHMENTS.

29 S 5. Subdivision 1 of section 27-1012 of the environmental conserva-
30 tion law, as added by section 8 of part SS of chapter 59 of the laws of
31 2009, is amended to read as follows:

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

47 S 6. Part SS of chapter 59 of the laws of 2009 amending the environ-
48 mental conservation law and the economic development law relating to
49 including additional beverage containers, is amended by adding a new
50 section 15-a to read as follows:

51 S 15-A. ON OR BEFORE SEPTEMBER 30, 2010, THE COMMISSIONER OF ENVIRON-
52 MENTAL CONSERVATION, IN CONJUNCTION WITH THE COMMISSIONER OF TAXATION
53 AND FINANCE, SHALL SUBMIT A REPORT TO THE GOVERNOR, THE TEMPORARY PRESI-
54 DENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, AND THE CHAIRS OF THE
55 SENATE AND ASSEMBLY ENVIRONMENTAL CONSERVATION COMMITTEES, REGARDING ANY
56 ISSUES OF FRAUD OR REDEMPTION OF NON-NEW YORK STATE BEVERAGE CONTAINERS.

1 SUCH REPORT SHALL INCLUDE ANY DATA RELATING TO THE OCCURRENCE AND
2 FREQUENCY OF SUCH FRAUD OR IMPROPER REDEMPTION. WHEN PREPARING THE
3 REPORT, THE COMMISSIONERS MAY CONSULT WITH BOTTLERS, DEPOSIT INITIATORS,
4 AND/OR DISTRIBUTORS TO DETERMINE IF, AND TO WHAT EXTENT, FRAUD OR
5 IMPROPER REDEMPTION HAS OCCURRED. IN ADDITION TO THE COLLECTION AND
6 REPORTING OF THE DATA, THE REPORT SHALL CONTAIN ANY SUGGESTED LEGISLA-
7 TIVE RECOMMENDATIONS THAT CAN BE IMPLEMENTED TO THWART SUCH FRAUD OR
8 IMPROPER REDEMPTION IN THE FUTURE.

9 S 7. This act shall take effect immediately; provided, however that
10 the amendments to chapter 59 of the laws of 2009 made by section one of
11 this act shall be deemed to have been in full force and effect on and
12 after April 1, 2009; provided that the amendments to section 27-1007 of
13 the environmental conservation law made by sections three and four of
14 this act shall take effect on the same date and in the same manner as
15 part SS of chapter 59 of the laws of 2009, takes effect.