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

5621--B

2009-2010 Regular Sessions

I N S E N A T E

May 22, 2009

Introduced by Sens. KLEIN, C. JOHNSON, SAVINO, STACHOWSKI, FOLEY, AUBERTINE, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivision 1 of section 27-1003 of the environmental conservation law, as amended by section 2 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

1. "Beverage" means carbonated soft drinks, water, SODA WATER, beer, other malt beverages and [a] wine [product] PRODUCTS as defined in subdivision thirty-six-a of section three of the alcoholic beverage control law AND BOTTLED WATER AS DEFINED IN SUBDIVISION FOURTEEN OF THIS SECTION. "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. ["Water" means any beverage identified through the use of letters, words or symbols on its product label as a type of water, including any flavored water or nutritionally enhanced water, provided, however, that "water" does not include any beverage identified as a type of water to which a sugar has been added.]

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

LBD14047-04-9

S 2. Section 27-1003 of the environmental conservation law is amended by adding two new subdivisions 14 and 15 to read as follows:

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

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

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

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

6. 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 and one-half cents for each beverage container accepted by the deposit initiator from such dealer or operator of a redemption center. A DEPOSIT INITIATOR SHALL PAY TO ANY DEALER OR OPERATOR OF A RECYCLING CENTER A HANDLING FEE OF TWO CENTS FOR EACH BEVERAGE CONTAINER REDEEMED BY A DEALER OR OPERATOR OF A REDEMPTION CENTER THROUGH A REVERSE VENDING MACHINE. Payment of the handling fee shall be as compensation for collecting, sorting, SEPARATING PLASTIC CONTAINERS FROM GLASS AND SEPARATING GLASS CONTAINERS BY COLOR, 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, nor may such payment be made out of the refund value account established pursuant to section 27-1012 of this title. 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.

7. 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 accepted by the distributor from a dealer or operator of a redemption center and shall reimburse 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 reimburse such distributor for each such beverage container the handling fee established under subdivision six of this section. [Without limiting the rights of the department or any person, firm or corporation under this subdivision or any other provision of this section, a distributor shall have a civil right of action to enforce this subdivision, including, upon three days notice, the right to apply for temporary and preliminary injunctive relief against continuing violations, and until arrangements for collection and return of empty containers or reimbursement of such distributor for such deposits and handling fees are made.]

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

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

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

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

12. NOTWITHSTANDING ANYTHING CONTAINED IN THIS SECTION TO THE CONTRARY, WITH RESPECT TO EMPTY BEVERAGE CONTAINERS OF BEVERAGES SOLD OR CONSUMED ON-PREMISES OR AT OUTDOOR OR INDOOR GATHERINGS, FUNCTIONS, OCCASIONS OR EVENTS, NO HANDLING FEE SHALL BE PAYABLE TO ANY DISTRIBUTOR, DEALER OR OPERATOR OF A REDEMPTION CENTER.

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

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

1. [Each deposit initiator shall deposit in a refund value account an amount equal to the refund value 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 the amounts in the refund value account in trust for the state. A refund value account shall be an interest-bearing account established in a banking institution located in this state, the deposits in which are insured by an agency of the federal government. Deposits of such amounts into the refund value account shall be made not less frequently than every five business days. All interest, dividends and returns earned on the refund value account shall be paid directly into said account. The monies in such accounts shall be kept separate and apart from all other monies 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 shall be paid from each deposit initiator's refund value account. No other payment or withdrawal from such account may be made except as prescribed by this section.

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 commissioner of taxation and finance may require such reports to be filed electronically. 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 all information such commissioner shall determine appropriate including but not limited to 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 the refund value account and all interest, dividends or returns received on such account, during such quarter;

c. all withdrawals from the refund value 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 the refund value account at the close of such quarter.]

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

B. THE NUMBER OF CONTAINERS THAT WERE REDEEMED BY THE DEPOSIT INITIATOR DURING THE QUARTERLY PERIOD;

C. THE NUMBER OF CONTAINERS THAT WERE UNREDEEMED BY THE DEPOSIT INITIATOR DURING THE QUARTERLY PERIOD; AND

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

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

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

c. Final report. A deposit initiator who ceases to do business in this state as a deposit initiator shall file a final report and remit payment of eighty percent of all [amounts remaining in the refund value account]

REFUND VALUES HELD BY THE DEPOSIT INITIATOR as of the close of the deposit initiator's last day of business. The commissioner of taxation and finance may require that the payments be made electronically. The deposit initiator shall indicate on the report that it is a "final report". The final report is due to be filed with payment twenty days after the close of the quarterly period in which the deposit initiator ceases to do business. In the event the deposit initiator pays out more in refund values than it collects in such final quarterly period, the deposit initiator may apply to the commissioner of taxation and finance for a refund of the amount of such excess payment of refund values [from sources other than the refund value account,] in the manner as provided by the commissioner of taxation and finance.

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

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

[7. a.] 5. Any person who is a deposit initiator under this title before April first, two thousand nine, must apply by June first, two thousand nine to the commissioner of taxation and finance for registration as a deposit initiator. Any person who becomes a deposit initiator on or after April first, two thousand nine shall apply for registration prior to collecting any deposits as such a deposit initiator. Such application shall be in a form prescribed by the commissioner of taxation and finance and shall require such information deemed to be necessary for proper administration of this title. The commissioner of taxation and finance may require that applications for registration must be submitted electronically. The commissioner of taxation and finance shall electronically issue a deposit initiator registration certificate in a form prescribed by the commissioner of taxation and finance within fifteen days of receipt of such application or may take an additional ten days if the commissioner of taxation and finance deems it necessary to consult with the commissioner before issuing such registration certificate. A registration certificate issued pursuant to this subdivision may be issued for a specified term of not less than three years and shall be subject to renewal in accordance with procedures specified by the commissioner of taxation and finance. The commissioner of taxation and finance shall furnish to the commissioner a complete list of registered deposit initiators and shall continually update such list as warranted. The commissioner shall share any information with the commissioner of taxation and finance that is necessary for the administration of this subdivision.

[b. The commissioner of taxation and finance shall have the authority to revoke or refuse to renew any registration issued pursuant to this subdivision when he or she has determined or has been informed by the commissioner that any of the provisions of this title or rules and regulations promulgated thereunder have been violated. Such violations shall include, but not be limited to, the failure to file quarterly reports, the failure to make payments pursuant to this subdivision, the providing of false or fraudulent information to either the department of taxation and finance or the department, or knowingly aiding or abetting another person in violating any of the provisions of this title. A notice of proposed revocation or non-renewal shall be given to the deposit initiator in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of the tax law shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to a 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 issued by the commissioner of taxation and finance pursuant to this paragraph shall contain a statement advising the deposit initiator that the revocation or non-renewal of registration may be challenged through a hearing process and the petition for such a challenge must be filed with the commissioner of taxation and finance within ninety days after such notice is issued. A deposit initiator whose registration has been so revoked or not renewed shall cease to do business as a deposit initiator in this state, until this title has been complied with and a new registration has been issued. Any deposit initiator whose registration has been so revoked may not apply for registration for two years from the date such revocation takes effect.

8.] 6. 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 deposit initiator, bottler, distributor, dealer or redemption center as such commissioner may deem appropriate for the administration of this section. Such commissioner 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.

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

b. 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, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance of not more than one thousand dollars for each quarter during which such failure occurred, and an additional penalty of not more than one thousand dollars for each quarter such failure continues.

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

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

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

S 5. Section 16 of 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, is amended to read as follows:

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

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

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

3. section eight of this act shall take effect [on] April 1, 2009 except that the requirements to [make deposits,] file reports and make [withdrawals and] payments under section 27-1012 of the environmental

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

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