

5647

2009-2010 Regular Sessions

I N S E N A T E

May 26, 2009

Introduced by Sen. KRUGER -- (at request of the Governor) -- read twice
and ordered printed, and when printed to be committed to the Committee
on Finance

AN ACT to amend chapter 59 of the laws of 2009, amending the environ-
mental conservation law and the economic development law, relating to
including additional beverage containers as returnable containers, in
relation to the effectiveness of certain provisions thereof; 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 16 of part SS of chapter 59 of the laws of 2009,
2 amending the environmental conservation law and the economic development
3 law relating to including additional beverage containers as returnable
4 containers, is amended to read as follows:
5 S 16. This act shall take effect immediately, provided however, that:
6 1. sections two and three of this act shall take effect April 1, 2009;
7 2. sections four, five, six, seven, nine, and eleven of this act shall
8 take effect June 1, 2009; and
9 3. section eight of this act shall take effect on April 1, 2009 except
10 that the requirements to make deposits, file reports and make with-
11 drawals and payments under section 27-1012 of the environmental conser-
12 vation law, as added by section eight of this act, with respect to
13 containers defined as beverage containers prior to April 1, 2009, shall
14 first apply to the period beginning on April 15, 2009 and ending May 31,
15 2009, and with respect to all other beverage containers shall first
16 apply to the period beginning on [June] JULY 1, 2009 and ending August
17 31, 2009, provided that such other beverage containers will not be
18 required to have a refund value as required under section 27-1005 of the
19 environmental conservation law, as added by section four of this act,

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

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NOR SHALL A PERSON BE CONSIDERED A DEPOSIT INITIATOR FOR SUCH BEVERAGE CONTAINERS until [June] JULY 1, 2009. However, no refunds shall be paid to a deposit initiator pursuant to paragraph b of subdivision 4 of section 27-1012 of the environmental conservation law, as added by section eight of this act prior to March 1, 2010.

S 2. Subdivision 1, the opening paragraph of subdivision 2 and subdivisions 4 and 6 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 to read as follows:

1. (a) 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 or offered for sale by the dealer, and shall pay to the redeemer the refund value of each such beverage container as established in section 27-1005 of this title. Redemptions of refund value must be in legal tender, or a scrip or receipt from a reverse vending machine, provided that the scrip or receipt can be exchanged for legal tender for a period of not less than [sixty] THIRTY days without requiring the purchase of other goods. The use or presence of a reverse vending machine shall not relieve a dealer of any obligations imposed pursuant to this section. If a dealer utilizes a reverse vending machine to redeem containers, the dealer shall provide redemption of beverage containers when the reverse vending machine is full, broken, under repair or does not accept a type of beverage container sold or offered for sale by such dealer and may not limit the hours or days of redemption except as provided by subdivision three of this section.

(b) Beginning March first, two thousand ten, a dealer whose place of business is part of a chain engaged in the same general field of business which operates ten or more units in this state under common ownership and whose business [exceeds]: (i) IS AT LEAST forty thousand square feet but is less than sixty thousand square feet shall install and maintain at least three reverse vending machines at the dealer's place of business; (ii) IS AT LEAST sixty thousand square feet but is less than eighty-five thousand square feet shall install and maintain at least four reverse vending machines at the dealer's place of business; or (iii) IS AT LEAST eighty-five thousand square feet shall install and maintain at least eight reverse vending machines at the dealer's place of business; provided, however, that the requirements of this paragraph to install and maintain reverse vending machines shall not apply to a dealer that sells only [refrigerated] beverage containers of twenty ounces or less where each beverage container is sold as an individual container that is not connected to or packaged with any other beverage container.

(c) A DEALER MAY APPLY FOR AND THE DEPARTMENT MAY GRANT AN EXEMPTION IN WHOLE OR IN PART FROM THE REQUIREMENTS OF SUBPARAGRAPHS (I), (II), AND (III) OF PARAGRAPH (B) OF THIS SUBDIVISION. AN APPLICATION FOR SUCH AN EXEMPTION SHALL BE ACCOMPANIED BY SUCH INFORMATION AS THE DEPARTMENT REQUIRES AND MAY INCLUDE BUT NEED NOT BE LIMITED TO INFORMATION RELATING TO THE APPLICANT'S RETAIL BEVERAGE SALES VOLUME, PATTERNS AND RATES OF REDEMPTION, AND THE CAPACITY OF REVERSE VENDING MACHINES USED OR OTHER FORM OF REDEMPTION TECHNOLOGY TO BE USED. EXEMPTIONS MAY BE LIMITED TO A SPECIFIC TIME PERIOD, SUBJECT TO RENEWAL, AMENDMENT AND REVOCATION, AND MAY INCLUDE REPORTING REQUIREMENTS TO ASSURE ADEQUATE MANAGEMENT OF REDEEMED CONTAINERS.

(D) A dealer to which paragraph (b) of this subdivision does not apply and whose place of business is at least forty thousand square feet which

1 does not utilize reverse vending machines to process empty beverage
2 containers for redemption shall: (i) establish and maintain a dedicated
3 area within such business to accept beverage containers for redemption;
4 (ii) adequately staff such area to facilitate efficient acceptance and
5 processing of such containers during business hours; and (iii) post one
6 or more conspicuous signs conforming to the size and color requirements
7 described in subdivision two of this section at each public entrance to
8 the business which describes where in the business the redemption area
9 is located. The commissioner may establish in rules and regulations
10 additional standards for the efficient processing of beverage containers
11 by such dealers.

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

16 A dealer shall post a conspicuous sign, at the [point] POINTS of
17 [sale] REDEMPTION, that states:

18 4. A deposit initiator OR DISTRIBUTOR shall accept from a dealer or
19 operator of a redemption center any empty beverage container of the
20 design, shape, size, color, composition and brand sold or offered for
21 sale by the deposit initiator OR DISTRIBUTOR, and shall pay the dealer
22 or operator of a redemption center the refund value of each such bever-
23 age container as established by section 27-1005 of this title. A deposit
24 initiator OR DISTRIBUTOR shall accept and redeem all such empty beverage
25 containers from a dealer or redemption center without limitation on
26 quantity.

27 6. In addition to the refund value of a beverage container as estab-
28 lished by section 27-1005 of this title, a deposit initiator OR DISTRIB-
29 UTOR shall pay to any dealer or operator of a redemption center a hand-
30 ling fee [of three and one-half cents] for each beverage container
31 accepted by the deposit initiator OR DISTRIBUTOR from such dealer or
32 operator of a redemption center. Payment of the handling fee shall be
33 as compensation for collecting, sorting and packaging of empty beverage
34 containers for transport back to the deposit initiator OR DISTRIBUTOR or
35 its designee. PRIOR TO OCTOBER FIRST, TWO THOUSAND NINE, THE HANDLING
36 FEE SHALL BE TWO CENTS. ON AND AFTER OCTOBER FIRST, TWO THOUSAND NINE,
37 THE HANDLING FEE SHALL BE PAYABLE IN THE FOLLOWING AMOUNTS:

38 (A) TO AN OPERATOR OF A REDEMPTION CENTER WHO IS NOT A DEALER: THREE
39 AND ONE-HALF CENTS FOR EACH BEVERAGE CONTAINER ACCEPTED FROM SUCH
40 REDEMPTION CENTER;

41 (B) TO A DEALER WHO IS A LICENSEE PURSUANT TO SECTION FIFTY-THREE OF
42 THE ALCOHOLIC BEVERAGE CONTROL LAW: THREE AND ONE-HALF CENTS FOR EACH
43 BEVERAGE CONTAINER ACCEPTED FROM SUCH DEALER;

44 (C) TO A DEALER OTHER THAN ONE DESCRIBED IN PARAGRAPH (B) OF THIS
45 SUBDIVISION WHOSE PLACE OF BUSINESS IS LESS THAN TEN THOUSAND SQUARE
46 FEET: THREE AND ONE-HALF CENTS FOR EACH BEVERAGE CONTAINER ACCEPTED FROM
47 SUCH PLACE OF BUSINESS;

48 (D) TO A DEALER OTHER THAN ONE DESCRIBED IN PARAGRAPH (B) OF THIS
49 SUBDIVISION WHOSE PLACE OF BUSINESS IS TEN THOUSAND SQUARE FEET OR
50 GREATER: TWO AND ONE-HALF CENTS FOR EACH BEVERAGE CONTAINER ACCEPTED
51 FROM SUCH PLACE OF BUSINESS.

52 A DEALER SHALL DISCLOSE THE SQUARE FOOTAGE OF ITS PLACE OF BUSINESS UPON
53 THE REQUEST OF A DEPOSIT INITIATOR, A DISTRIBUTOR, OR THE DEPARTMENT.
54 Payment of the handling fee may not be conditioned on the purchase of
55 any goods or services, nor may such payment be made out of the refund
56 value account established pursuant to section 27-1012 of this title. A

1 distributor who does not initiate deposits on a type of beverage
2 container is considered a dealer only for the purpose of receiving a
3 handling fee from a deposit initiator.

4 S 3. Subdivision 1 of section 27-1011 of the environmental conserva-
5 tion law, as amended by chapter 149 of the laws of 1983, is amended to
6 read as follows:

7 1. a. Every beverage container sold or offered for sale in this state
8 by a DEPOSIT INITIATOR, distributor or dealer shall clearly indicate by
9 permanently marking or embossing the container or by printing as part of
10 the product label the refund value of the container and the words "New
11 York" or the letters "NY"; provided, however, [in the case of] private
12 label beverages SHALL COMPLY WITH THIS LABELING REQUIREMENT BY NO LATER
13 THAN OCTOBER FIRST, TWO THOUSAND NINE; UNTIL SUCH TIME such information
14 may be embossed or printed on a label which is securely or permanently
15 affixed to the beverage container. Private label beverages shall be
16 defined as beverages purchased from a [beverage manufacturer] BOTTLER in
17 beverage containers bearing a brand name or trademark for sale at retail
18 directly by the owner or licensee of such brand name or trademark; or
19 through retail dealers affiliated with such owner or licensee by a coop-
20 erative or franchise agreement.

21 b. Such embossing or permanent imprinting on the beverage container
22 shall be the responsibility of the person, firm or corporation which
23 bottles, cans or otherwise fills or packages a beverage container or a
24 brand owner for whose exclusive account private label beverages are
25 bottled, canned or otherwise packaged; provided, however, that the duly
26 authorized agent of any such person, firm or corporation may indicate
27 such refund value by a label securely affixed on any beverage container
28 containing beverages imported into the United States.

29 C. BEGINNING OCTOBER FIRST, TWO THOUSAND NINE, EVERY BEVERAGE CONTAIN-
30 ER SOLD OR OFFERED FOR SALE IN THIS STATE BY A DEPOSIT INITIATOR,
31 DISTRIBUTOR OR DEALER SHALL, IN ADDITION TO THE REQUIREMENTS OF PARA-
32 GRAPHS A AND B OF THIS SUBDIVISION, ALSO BEAR A UNIVERSAL PRODUCT CODE.

33 S 4. Subdivision 12 of section 27-1012 of the environmental conserva-
34 tion law is REPEALED.

35 S 5. Paragraph a of subdivision 7 of section 27-1012 of the environ-
36 mental conservation law, as added by section 8 of part SS of chapter 59
37 of the laws of 2009, is amended to read as follows:

38 a. [Any person who is a deposit initiator under this title before
39 April first, two thousand nine, must apply by June first, two thousand
40 nine to the commissioner of taxation and finance for registration as a
41 deposit initiator. Any person who becomes a deposit initiator on or
42 after April first, two thousand nine shall apply for registration prior
43 to collecting any deposits as such a deposit initiator.] ANY PERSON WHO,
44 PRIOR TO JUNE FIRST, TWO THOUSAND NINE, IS A DEPOSIT INITIATOR WITH
45 RESPECT TO CONTAINERS DEFINED AS BEVERAGE CONTAINERS BEFORE APRIL FIRST,
46 TWO THOUSAND NINE, MUST APPLY BY JUNE FIRST, TWO THOUSAND NINE TO THE
47 COMMISSIONER OF TAXATION AND FINANCE FOR REGISTRATION AS A DEPOSIT
48 INITIATOR. ANY PERSON WHO BECOMES A DEPOSIT INITIATOR ON OR AFTER JUNE
49 FIRST, TWO THOUSAND NINE WITH RESPECT TO CONTAINERS DEFINED AS BEVERAGE
50 CONTAINERS PRIOR TO APRIL FIRST, TWO THOUSAND NINE SHALL APPLY FOR
51 REGISTRATION PRIOR TO COLLECTING ANY DEPOSITS AS SUCH A DEPOSIT INITI-
52 ATOR. ANY PERSON WHO BECOMES A DEPOSIT INITIATOR WITH RESPECT TO
53 CONTAINERS FIRST DEFINED AS BEVERAGE CONTAINERS ON OR AFTER APRIL FIRST,
54 TWO THOUSAND NINE SHALL APPLY FOR REGISTRATION BY THE LATER OF JULY
55 FIRST, TWO THOUSAND NINE OR PRIOR TO COLLECTING ANY DEPOSITS AS SUCH A
56 DEPOSIT INITIATOR. Such application shall be in a form prescribed by the

1 commissioner of taxation and finance and shall require such information
2 deemed to be necessary for proper administration of this title. The
3 commissioner of taxation and finance may require that applications for
4 registration must be submitted electronically. The commissioner of tax-
5 ation and finance shall electronically issue a deposit initiator regis-
6 tration certificate in a form prescribed by the commissioner of taxation
7 and finance within fifteen days of receipt of such application or may
8 take an additional ten days if the commissioner of taxation and finance
9 deems it necessary to consult with the commissioner before issuing such
10 registration certificate. A registration certificate issued pursuant to
11 this subdivision may be issued for a specified term of not less than
12 three years and shall be subject to renewal in accordance with proce-
13 dures specified by the commissioner of taxation and finance. The commis-
14 sioner of taxation and finance shall furnish to the commissioner a
15 complete list of registered deposit initiators and shall continually
16 update such list as warranted. The commissioner shall share any informa-
17 tion with the commissioner of taxation and finance that is necessary for
18 the administration of this subdivision.

19 S 6. This act shall take effect immediately; provided, however that:

20 (a) the amendments to chapter 59 of the laws of 2009 made by section
21 one of this act and the amendments made to sections 27-1011 and 27-1012
22 of the environmental conservation law by sections three and five of this
23 act shall be deemed to have been in full force and effect on and after
24 April 1, 2009; and

25 (b) the amendments to section 27-1007 of the environmental conserva-
26 tion law made by section two of this act shall take effect on the same
27 date and in the same manner as section 4 of part SS of chapter 59 of the
28 laws of 2009, as amended, takes effect.