STATE OF NEW YORK

5028--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 6, 2019

Introduced by M. of A. ENGLEBRIGHT, LIFTON, THIELE, FAHY, D'URSO, GOTTFRIED, ORTIZ, PAULIN, LUPARDO, DenDEKKER, QUART, STIRPE, SANTABARBARA, SIMON, SEAWRIGHT, HUNTER -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to returnable bottles; and to amend chapter 58 of the laws of 2013 amending the environmental conservation law and the state finance law relating to the "Cleaner, Greener NY Act of 2013", in relation to the effectiveness thereof

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, beer, other malt beverages [~~and a~~]**, wine, liquor, distilled spirit coolers, and cider and** wine [~~product~~] **products** 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. "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~~].

§ 2. Subdivision 1 of section 27-1003 of the environmental conservation law, as amended by section one of this act, is amended to read as follows:

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

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1. "Beverage" means carbonated soft drinks, **noncarbonated soft drinks, noncarbonated fruit or vegetable juices containing less than one hundred percent fruit or vegetable juice, coffee and tea beverages, carbonated fruit beverages,** water, beer, other malt beverages, wine, liquor, distilled spirit coolers, and cider and wine products as defined in 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. "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.

§ 3. Subdivision 12 of section 27-1003 of the environmental conservation law, as added by section 3 of part SS of chapter 59 of the laws of 2009, is amended and a new subdivision 14 is added to read as follows:

12. "Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recognize the universal product code (UPC) on containers to determine if the container is redeemable and accumulates information regarding containers redeemed, including the number of such containers redeemed, thereby enabling the reverse vending machine to accept containers from redeemers and to issue a scrip or receipt for their refund value. **Such definition shall also apply to alternative technology approved by the commissioner pursuant to subparagraph (iii) of paragraph (b) of subdivision one of section 27-1007 of this title.**

14. "State-specific UPC code" means a universal product code and label design that is unique to New York or used only in New York and any other states that have a substantially similar refund value law.

§ 4. Section 27-1007 of the environmental conservation law, as added by section 4 of part SS of chapter 59 of the laws of 2009, paragraph (b) of subdivision 1 as amended by chapter 459 of the laws of 2011, and subdivision 12 as added by section 3 of part F of chapter 58 of laws of 2013, is amended to read as follows:

§ 27-1007. Mandatory acceptance.

Except as provided in section 27-1009 of this title:

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 days without requiring the purchase of other goods. **In the event such scrip or receipt expires, such scrip or receipt must indicate any expiration date and the dealer must post a conspicuous sign indicating how many days a redeemer has to exchange the scrip or receipt for legal tender. If such notification is not provided, a dealer must redeem the full refund value indicated on any legible scrip or receipt.** 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 has at least: (i) forty thousand but less than sixty thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least two reverse vending machines at the dealer's place of business; (ii) sixty thousand but less than eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least three reverse vending machines at the dealer's place of business; or (iii) eighty-five thousand square feet devoted to the display of merchandise for sale to the public shall install and maintain at least four reverse vending machines at the dealer's place of business. The requirements of paragraph (b) of this subdivision to install and maintain reverse vending machines shall not apply to a dealer that: (i) sells only beverage containers of twenty ounces or less where such beverage containers are packaged in quantities fewer than six; (ii) sells beverage containers and devotes no more than five percent of its floor space to the display and sale of consumer commodities, as defined in section two hundred fourteen-h of the agriculture and markets law; or (iii) obtains a waiver from the commissioner authorizing dealers to provide consumers with an alternative technology that: (A) determines if the container is redeemable, (B) provides protections against fraud through a system that validates each container redeemed by reading the universal product code and, except with respect to refillable containers, renders the container unredeemable, (C) accumulates information regarding containers redeemed, and (D) issues legal tender, or a scrip, receipt, or other form of credit for the refund value, that can be exchanged for legal tender for a period of not less than sixty days without requiring the purchase of other goods **and includes any expiration date on the scrip, receipt, or other from of credit**. Notwithstanding the foregoing, if the alternative technology does not allow consumers to immediately obtain the refund value of the redeemed container, a dealer shall be permitted to deploy such alternative technology only if it also offers an alternative that allows consumers to conveniently and immediately obtain such refund value through a reverse vending machine or other alternative method.

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

(d) For the purposes of this subdivision 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 the dealer is open for business.

2. A dealer shall post a conspicuous sign, at the point of sale, that states:

"NEW YORK BOTTLE BILL OF RIGHTS

STATE LAW REQUIRES US TO REDEEM EMPTY RETURNABLE BEVERAGE CONTAINERS OF THE SAME TYPE AND BRAND THAT WE SELL OR OFFER FOR SALE

YOU HAVE CERTAIN RIGHTS UNDER THE NEW YORK STATE RETURNABLE CONTAINER ACT:

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size, whether you bought the beverage from the dealer or not. It is illegal to return containers for refund that you did not pay a deposit on in New York state.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

THE RIGHT to return your empties any day, any hour, except for the first and last hour of the dealer's business day (empty containers may be redeemed at any time in 24-hour stores).

THE RIGHT to return your containers if they are empty and intact. Washing containers is not required by law, but is strongly recommended to maintain sanitary conditions.

The New York state returnable container act can be enforced by the New York state department of environmental conservation, the New York state department of agriculture and markets, the New York state department of taxation and finance, the New York state attorney general and/or by your local government."

Such sign must be no less than eight inches by ten inches in size and have lettering a minimum of one quarter inch high, and of a color which contrasts with the background. The department shall maintain a toll free telephone number for a "bottle bill complaint line" that shall be available from 9:00 a.m. to 5:00 p.m. each business day to receive reports of violations of this title. The telephone number shall be listed on any sign required by this section.

3. On or after June first, two thousand nine, 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) The dealer has a written agreement with a redemption center, be it either at a fixed physical location within the same county and within [~~one-half~~] **one** mile of the dealer's place of business, or a mobile redemption center, operated by a redemption center, that is located within one-quarter mile of the dealer's place of business. The redemption center must have a written agreement with the dealer to accept containers on behalf of the dealer; and the redemption center's hours of operation must 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 operation must cover at least four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The dealer must post a conspicuous, permanent sign, meeting the size and color specifications set forth in subdivision two of this section, open to public view, identifying the location and hours of operation of the affiliated redemption center or mobile redemption center; and

(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, meeting the size and color specifications

set forth in subdivision two of this section, open to public view, identifying those hours. The dealer may not change the hours of redemption without first posting a thirty day notice; and

(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 ten thousand square feet in size.

4. A deposit initiator shall accept from a dealer or operator of a redemption center any empty beverage container of the design, shape, size, color, composition and brand sold or offered for sale by the deposit initiator, 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. A deposit initiator shall accept and redeem all such empty beverage containers from a dealer or redemption center without limitation on quantity.

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, **in a timely manner and at reasonable times as provided by the department pursuant to the regulations promulgated pursuant to paragraph (c) of subdivision eight of this section** 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~~] **five** cents for each beverage container accepted by the deposit initiator from such dealer or operator of a redemption center. 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, 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. **However, where pallets or skids, bags, cartons or containers are readily movable only by means of a forklift or similar equipment, a deposit initiator or distributor may require a dealer or redemption center to move or load such items at no cost using a forklift or similar equipment belonging to the dealer or redemption center provided that such equipment and appropriate staff are readily available.**

(b) A deposit initiator or distributor shall not 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. **In the event of a discrepancy between the count of the dealer or redemption center and the count of the deposit initiator or distributor for containers not processed through a reverse vending machine all such empty containers shall be retained and a re-count may be requested. The re-count may be held at a location other than the redemption center or dealer's place of business only if the dealer or redemption center agrees and is present.**

(c) A deposit initiator or distributor shall pick up empty beverage containers from the dealer or redemption center **in a timely manner and** at reasonable times [~~**and intervals**~~] as determined in rules or regulations promulgated by the department **no later than April first, two thousand twenty**.

9. No person shall return or assist another to return to a dealer or redemption center an empty beverage container for its refund value if such container had previously been accepted for redemption by a dealer, redemption center, or deposit initiator who initiates deposits on beverage containers of the same brand.

10. A redeemer, dealer, distributor or redemption center shall not knowingly redeem an empty beverage container on which a deposit was never paid in New York state.

11. Notwithstanding the provisions of subdivision two of section 27-1009 of this title, a deposit initiator or distributor shall accept and redeem 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.

12. No person shall intentionally program, tamper with, render inaccurate, or circumvent the proper operation of a reverse vending machine to wrongfully elicit deposit monies when no valid, redeemable beverage container has been placed in and properly processed by the reverse vending machine.

13. The department and the department of taxation and finance are authorized to audit any reverse vending machine.

§ 5. Paragraph (b) of subdivision 3 of section 27-1011 of the environmental conservation law, as added by section 1 of part PP of chapter 58 of the laws of 2018, is amended and a new subdivision 4 is added to read as follows:

(b) comply with minimum post-consumer recycled material content and hole diameter limitations as defined in rules and regulations promulgat-

ed by the department **no later than April first, two thousand twenty**, and is recyclable and indicates a resin identification code.

4. (a) Effective January first, two thousand twenty-two, every glass beverage container shall contain a minimum percentage of thirty-five percent post-consumer glass and every aluminum beverage container shall contain a minimum percentage of thirty-five percent post-consumer aluminum.

(b) Effective January first, two thousand twenty-five, every polyethylene terephthalate (PET) beverage container shall contain no less than twenty-five percent post-consumer PET.

(c) Effective January first, two thousand thirty, every plastic beverage container shall contain no less than thirty percent post-consumer plastic.

(d) The department may, by regulation, grant a reduction or waiver of the percentage requirement established pursuant to this subdivision if the department finds and determines that it is technologically infeasible for the bottler to achieve the specified percent requirement.

§ 6. Paragraph c of subdivision 3 of 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:

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, **provided that such service charges do not exceed the maximum amount authorized by the commissioner,** and all payments made pursuant to subdivision four of this section; and

§ 7. Paragraph a of subdivision 4 of 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:

a. Quarterly payments. An amount equal to eighty percent of 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. 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. **However, until April first, two thousand twenty-five, a deposit initiator who initiates deposits on beverage containers with a state-specific universal product code may be entitled to pay an amount equal to seventy-five percent of the balance outstanding in the refund value account specifically attributable to beverage containers bearing such product code at the close of each quarter 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. No later than October first, two thousand twenty-four, the commissioner of taxation and finance shall submit a report to the governor and the legislature regarding the implementation of the state-specific universal product code and an evaluation of its effectiveness in decreasing fraud.** 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.

§ 8. Subdivision 12 of section 27-1012 of the environmental conservation law, as amended by section 6 of part F of chapter 58 of the laws of 2013, is amended to read as follows:

12. a. Each deposit initiator shall provide a report to the department describing all the types of beverage containers on which it initiates deposits. The report shall include the product name, type of beverage, size and composition of the beverage container, universal product code, **the presence of any state-specific universal product code and the percentage of products covered by such code, the methods used to prevent the fraudulent sale and redemption of beverage containers,** and any other information the department may require. Upon request, a deposit initiator shall also provide to the department a copy of the container label or a picture of any beverage container sold or offered for sale in this state on which it initiates a deposit. Such information shall be provided in a form as prescribed by the department. The department may require that such forms be filed electronically.

b. A bottler may place on a beverage container a **state-specific** universal product code [~~**or other distinctive marking that is specific to the state or used only in the state and any other states with laws substantially similar to this title**~~] as a means of preventing the sale or redemption of beverage containers on which no deposit was initiated.

c. A bottler or deposit initiator shall notify the department, in a form prescribed by the department, whenever a beverage container or beverage container label is revised by altering the universal product code, or whenever the container on which a universal product code appears is changed in size, composition or glass color, or whenever the container or container label on which a universal product code appears is changed to include a **state-specific** universal product code [~~**that is unique to the state or used only in the state and any other states with laws substantially similar to this title**~~].

§ 9. Section 27-1014 of the environmental conservation law, as amended by section 10 of part SS of chapter 59 of the laws of 2009, is amended to read as follows:

§ 27-1014. Authority to promulgate rules and regulations.

In addition to the authority of the commissioner, under sections **27-1007,** 27-1009**, 27-1011, 27-1012,** and 27-1013 of this title, the commissioner shall have the power to promulgate rules and regulations necessary and appropriate for the administration of this title.

§ 10. Section 12 of part F of chapter 58 of the laws of 2013 amending the environmental conservation law and the state finance law relating to the "Cleaner, Greener NY Act of 2013", as amended by section 2-b of part JJ of chapter 58 of the laws of 2017, is amended to read as follows:

§ 12. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2013; provided, however, that the amendments to subdivision 5-a of section 27-1015 of the environmental conservation law, as added by section nine of this act, shall expire and be deemed repealed on April 1, [~~**2019**~~] **2021**.

§ 11. This act shall take effect on April 1, 2020; provided, however, that section two of this act shall take effect on April 1, 2021. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.