

STATE OF NEW YORK

237--B

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. MAY, BRESLIN, BRISPORT, GONZALEZ, HOYLMAN-SIGAL, JACKSON, KRUEGER, RAMOS, RIVERA, SALAZAR, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- 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, in relation to returnable bottles and to retention and use of funds for the beverage container assistance program

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, 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, carbonated water, noncarbonated 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"~~

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

LBD00531-08-3

~~does not include any beverage identified as a type of water to which a sugar has been added~~].

§ 2. 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 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.

§ 3. 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 the 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 shall indicate any expiration date and the dealer shall 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 shall 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

1 four reverse vending machines at the dealer's place of business. The
2 requirements of ~~[paragraph (b) of]~~ this subdivision to install and main-
3 tain reverse vending machines shall not apply to a dealer that: (i)
4 sells only beverage containers of twenty ounces or less where such
5 beverage containers are packaged in quantities fewer than six; (ii)
6 sells beverage containers and devotes no more than five percent of its
7 floor space to the display and sale of consumer commodities, as defined
8 in section two hundred fourteen-h of the agriculture and markets law; or
9 (iii) obtains a waiver from the commissioner authorizing dealers to
10 provide consumers with an alternative technology that: (A) determines if
11 the container is redeemable, (B) provides protections against fraud
12 through a system that validates each container redeemed by reading the
13 universal product code and, except with respect to refillable contain-
14 ers, renders the container unredeemable, (C) accumulates information
15 regarding containers redeemed, and (D) issues legal tender, or a scrip,
16 receipt, or other form of credit for the refund value, that can be
17 exchanged for legal tender for a period of not less than sixty days
18 without requiring the purchase of other goods and includes any expira-
19 tion date on the scrip, receipt, or other form of credit. Notwithstand-
20 ing the foregoing, if the alternative technology does not allow consum-
21 ers to immediately obtain the refund value of the redeemed container, a
22 dealer shall be permitted to deploy such alternative technology only if
23 it also offers an alternative that allows consumers to conveniently and
24 immediately obtain such refund value through a reverse vending machine
25 or other alternative method.

26 (c) A dealer to which paragraph (b) of this subdivision does not apply
27 and whose place of business is at least forty thousand square feet which
28 does not utilize reverse vending machines to process empty beverage
29 containers for redemption shall: (i) establish and maintain a dedicated
30 area within such business to accept beverage containers for redemption;
31 (ii) adequately staff such area to facilitate efficient acceptance and
32 processing of such containers during business hours; and (iii) post one
33 or more conspicuous signs conforming to the size and color requirements
34 described in subdivision two of this section at each public entrance to
35 the business which describes where in the business the redemption area
36 is located. The commissioner may establish in rules and regulations
37 additional standards for the efficient processing of beverage containers
38 by such dealers.

39 (d) For the purposes of this subdivision on any day that a dealer is
40 open for less than twenty-four hours, the dealer may restrict or refuse
41 the payment of refund values during the first and last hour the dealer
42 is open for business.

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

45 "NEW YORK BOTTLE BILL OF RIGHTS

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

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

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

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

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

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

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

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

21 3. On or after June first, two thousand nine, a dealer may limit the
22 number of empty beverage containers to be accepted for redemption at the
23 dealer's place of business to no less than seventy-two containers per
24 visit, per redeemer, per day, provided that:

25 (a) The dealer has a written agreement with a redemption center, be it
26 either at a fixed physical location [~~within the same county and within~~
27 ~~one-half mile of the dealer's place of business~~], or a mobile redemption
28 center[~~7~~] operated by a redemption center[~~7, that is located within one-~~
29 ~~quarter mile of the dealer's place of business~~]. The redemption center
30 must have a written agreement with the dealer to accept containers on
31 behalf of the dealer; and the redemption center's hours of operation
32 must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of
33 a mobile redemption center, the hours of operation must cover at least
34 four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The deal-
35 er must post a conspicuous, permanent sign, meeting the size and color
36 specifications set forth in subdivision two of this section, open to
37 public view, identifying the location and hours of operation of the
38 affiliated redemption center or mobile redemption center; and

39 (b) The dealer provides, at a minimum, a consecutive two hour period
40 between 7:00 a.m. and 7:00 p.m. daily whereby the dealer will accept up
41 to two hundred forty containers, per redeemer, per day, and posts a
42 conspicuous, permanent sign, meeting the size and color specifications
43 set forth in subdivision two of this section, open to public view, iden-
44 tifying those hours. The dealer may not change the hours of redemption
45 without first posting a thirty day notice; and

46 (c) The dealer's primary business is the sale of food or beverages for
47 consumption off-premises, and the dealer's place of business is less
48 than ten thousand square feet in size.

49 4. A deposit initiator shall accept from a dealer or operator of a
50 redemption center any empty beverage container of the design, shape,
51 size, color, composition and brand sold or offered for sale by the
52 deposit initiator, and shall pay the dealer or operator of a redemption
53 center the refund value of each such beverage container as established
54 by section 27-1005 of this title. A deposit initiator shall accept and
55 redeem all such empty beverage containers from a dealer or redemption
56 center without limitation on quantity.

1 5. A deposit initiator's or distributor's failure to pick up empty
2 beverage containers, including containers processed in a reverse vending
3 machine, from a redemption center, dealer or the operator of a reverse
4 vending machine, in a timely manner and at reasonable times as shall be
5 provided by the department pursuant to the regulations promulgated
6 pursuant to paragraph (c) of subdivision eight of this section shall be
7 a violation of this title.

8 6. In addition to the refund value of a beverage container as estab-
9 lished by section 27-1005 of this title, a deposit initiator shall pay
10 to any dealer or operator of a redemption center a handling fee of
11 [~~three and one-half~~] six cents for each beverage container accepted by
12 the deposit initiator from such dealer or operator of a redemption
13 center. Payment of the handling fee shall be as compensation for
14 collecting, sorting and packaging of empty beverage containers for
15 transport back to the deposit initiator or its designee. Payment of the
16 handling fee may not be conditioned on the purchase of any goods or
17 services, nor may such payment be made out of the refund value account
18 established pursuant to section 27-1012 of this title. A distributor who
19 does not initiate deposits on a type of beverage container is considered
20 a dealer only for the purpose of receiving a handling fee from a deposit
21 initiator.

22 7. A deposit initiator on a brand shall accept from a distributor who
23 does not initiate deposits on that brand any empty beverage containers
24 of that brand accepted by the distributor from a dealer or operator of a
25 redemption center and shall reimburse the distributor the refund value
26 of each such beverage container, as established by section 27-1005 of
27 this title. In addition, the deposit initiator shall reimburse such
28 distributor for each such beverage container the handling fee estab-
29 lished under subdivision six of this section. Without limiting the
30 rights of the department or any person, firm or corporation under this
31 subdivision or any other provision of this section, a distributor shall
32 have a civil right of action to enforce this subdivision, including,
33 upon three days notice, the right to apply for temporary and preliminary
34 injunctive relief against continuing violations, and until arrangements
35 for collection and return of empty containers or reimbursement of such
36 distributor for such deposits and handling fees are made.

37 8. It shall be the responsibility of the deposit initiator or distrib-
38 utor to provide to a dealer or redemption center a sufficient number of
39 bags, cartons, or other suitable containers, at no cost, for the packag-
40 ing, handling and pickup of empty beverage containers that are not
41 redeemed through a reverse vending machine. The bags, cartons, or
42 containers must be provided by the deposit initiator or distributor on a
43 schedule that allows the dealer or redemption center sufficient time to
44 sort the empty beverage containers prior to pick up by the deposit
45 initiator or distributor. In addition:

46 (a) When picking up empty beverage containers, a deposit initiator or
47 distributor shall not require a dealer or redemption center to load
48 their own bags, cartons or containers onto or into the deposit initi-
49 ator's or distributor's vehicle or vehicles or provide the staff or
50 equipment needed to do so. However, where pallets or skids, bags,
51 cartons or containers are readily movable only by means of a forklift or
52 similar equipment, a deposit initiator or distributor may require a
53 dealer or redemption center to move or load such items at no cost using
54 a forklift or similar equipment belonging to the dealer or redemption
55 center provided that such equipment and appropriate staff are readily
56 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 shall be determined in rules or regulations promulgated by the department no later than one hundred eighty days after the effective date of the chapter of the laws of two thousand twenty-three that amended this paragraph.

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 shall be authorized to audit any reverse vending machine.

14. Notwithstanding any provision of this section to the contrary, a dealer shall not be required to accept from a redeemer any empty beverage container:

(a) at the premises of a brewery, farm brewery, cidery, farm cidery, distillery, farm distillery, meadery, farm meadery, winery, or micro-winery, as such terms are defined by section three of the alcoholic beverage control law, where such dealer is licensed to sell alcoholic beverages for consumption off such premises;

(b) at any premises selling alcoholic beverages for off-premises consumption pursuant to a temporary license under the alcoholic beverage control law; or

(c) at a farmers market, as such term is defined by the department of agriculture and markets.

§ 4. 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

1 charges do not exceed the maximum amount authorized by the commissioner,
2 and all payments made pursuant to subdivision four of this section; and
3 § 5. Section 27-1014 of the environmental conservation law, as amended
4 by section 10 of part SS of chapter 59 of the laws of 2009, is amended
5 to read as follows:

6 § 27-1014. Authority to promulgate rules and regulations.

7 In addition to the authority of the commissioner, under sections
8 27-1007, 27-1009, 27-1012, and 27-1013 of this title, the commissioner
9 shall have the power to promulgate rules and regulations necessary and
10 appropriate for the administration of this title.

11 § 6. Section 27-1005 of the environmental conservation law, as added
12 by section 4 of part SS of chapter 59 of the laws of 2009, is amended to
13 read as follows:

14 § 27-1005. Refund value.

15 No person shall sell or offer for sale a beverage container in this
16 state unless the deposit on such beverage container is or has been
17 collected by a registered deposit initiator and unless such container
18 has a refund value of not less than [~~five~~] ten cents which is clearly
19 indicated thereon as provided in section 27-1011 of this title.

20 § 7. This act shall take effect one year after the date upon which it
21 shall have become a law. Effective immediately, the addition, amendment
22 and/or repeal of any rule or regulation necessary for the implementation
23 of this act on its effective date are authorized to be made and
24 completed on or before such effective date.