STATE OF NEW YORK

7428--A

2023-2024 Regular Sessions

IN SENATE

May 24, 2023

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to registration as a redemption center and the handling fee paid to any dealer or operator of a redemption center

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 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, is amended to read as follows:

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.

§ 2. Paragraphs a and c 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, are amended to read as follows:

a. Quarterly payments. An amount equal to [~~eighty~~] **forty-seven** 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

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

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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~~] fifty-three 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.

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~~] forty-seven percent of all amounts remaining in the refund value account 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.

§ 3. Section 27-1013 of the environmental conservation law, as amended by section 7 of part F of chapter 58 of the laws of 2013, is amended to read as follows:

§ 27-1013. Redemption centers.

1. (a) (i) As of the effective date of the chapter of the laws of two thousand twenty-four that amended this section and subject to applicable provisions of local and state law, any person, firm or corporation which establishes a redemption center, at which redeemers and dealers may return empty beverage containers and receive payment of the refund value of such beverage containers, shall submit an application to the commissioner for registration as a condition of operation.

(ii) Any redemption center in business on or before April first, two thousand twenty-four may continue to operate as if the department had issued such redemption center a registration required by regulations adopted under this section; provided, however, that such redemption center shall submit a renewal application to the commissioner in accordance with applicable regulations by the thirty-first of December next succeeding the effective date of this subparagraph.

(iii) An application for registration or renewal shall be in a form prescribed by the commissioner and shall, at a minimum, require the name and physical address of the redemption center, the name, address and contact information of the owner and/or operator of the redemption center, the names and addresses of each dealer or distributor with which the redemption center has contracted to collect, sort and obtain the refund value and handling fee of empty beverage containers, as applicable, the number of beverage containers redeemed by the redemption center during the preceding twelve months, as applicable, and such other information as the commissioner deems necessary for proper administration of

this title. The commissioner may require applications for registration to be submitted electronically. The commissioner shall electronically issue a redemption center registration certificate or renewal certificate in a form prescribed by the commissioner within thirty days of receipt of such application. A registration certificate or renewal certificate issued pursuant to this subdivision shall be issued for one year and shall be subject to annual renewal in accordance with procedures specified by the commissioner.

(iv) Any registered redemption center that ceases operations shall notify the commissioner of such cessation in writing within thirty days in a form prescribed by the commissioner.

(b) The commissioner shall issue a registration or renewal within thirty days of the submission of an application by a person, firm or corporation which establishes a redemption center in accordance with the provisions of this section, subject to applicable provisions of local and state laws. An application for registration or renewal shall be deemed approved if the department fails to act on such application within thirty days of submission. Registrations and renewals shall be issued at no cost to the applicant. The costs attributable to the department for the review and processing of registration and renewal applications pursuant to this section shall be paid for out of the state's portion of the outstanding balance in the refund value account which is regularly deposited into the general fund in accordance with section 27-1012 of this title.

(c) After due notice and opportunity of hearing, pursuant to the provisions of section 71-1709 of this chapter, the department may deny an application for registration or renewal or revoke a registration. In determining whether or not to revoke a registration, the commissioner shall, at a minimum, take into consideration the compliance history of an applicant, good faith efforts of an applicant to comply, any economic benefit from noncompliance and whether any violation was procedural in nature. The commissioner's determination to revoke a registration is subject to review under article seventy-eight of the civil practice law and rules.

(d) Any person, firm or corporation required to be registered under this section which, without being registered, redeems beverage containers in this state, shall not be eligible to receive a handling fee for any such redeemed beverage containers, and if such person, firm or corporation has received such a handling fee, it shall be promptly refunded.

(e) The commissioner shall promulgate rules and regulations governing the performance of audits in connection with pick-ups of redeemed beverage containers. Such audits shall be conducted by the department at the request of a distributor, deposit initiator, redemption center or dealer, upon no less than two business days' notice, to monitor beverage container pick-ups and party compliance with the provisions of this chapter. A distributor, deposit initiator, redemption center or dealer may request the department to conduct an audit no more than ten times per calendar year with respect to each pick up agent or redemption center with which the requester conducts pick up transactions. Such audits shall, at a minimum, include the following parameters: (i) all audits shall be conducted on an entire pick-up shipment at one of two locations, including at the site of such redemption center or site at which such pick up shipment of redeemed beverage containers is delivered and counted; (ii) a department auditor shall be present at the redemption center at which such audit shall be performed to witness the weigh-

ing of all individual bags of beverage containers included in the pick-up transaction; (iii) a department inspector shall be present at the delivery/counting site of such pick up shipment of redeemed beverage containers at the time of such audit to witness the counting of containers; and (iv) there shall be a secure chain of custody between the pick-up location and point of delivery/counting that shall remain secured until audited in the presence of the department's auditor. Audit results shall be promptly reported to the distributor, deposit initiator, redemption center and/or dealer whose pick up transaction is the subject of such audit.

2. The commissioner is hereby empowered to promulgate rules and regulations governing (a) the circumstances in which deposit initiators, dealers and distributors, individually or collectively, are required to accept the return of empty beverage containers, including beverage containers processed through reverse vending machines and make payment therefor; (b) the sorting of the containers which a deposit initiator or distributor may require of dealers and redemption centers; (c) the collection of returned beverage containers by deposit initiators or distributors, including the party to whom such expense is to be charged, the frequency of such pick ups and the payment for refunds and handling fees thereon; (d) the right of dealers to restrict or limit the number of containers redeemed, the rules for redemption at the dealers' place of business, and the redemption of containers from a beverage for which sales have been discontinued; (e) [~~to issue~~] registrations and renewals issued to persons, firms or corporations which establish redemption centers, subject to applicable provisions of local and state laws, at which redeemers and dealers may return empty beverage containers and receive payment of the refund value of such beverage containers[~~. Such registrations shall be issued at no cost. Should the department require by regulations adopted pursuant to this paragraph that redemption centers must obtain a registration as a condition of operation, any redemption center in business as of March first, two thousand thirteen that previously provided the department with the notification information required by regulations in effect as of such date may continue to operate as if the department had issued such redemption center a registration required by regulations adopted under this paragraph; provided, however, that such redemption center shall provide the department with any other information required by regulations adopted pursuant to this paragraph. The department may, after due notice and opportunity of hearing, pursuant to the provisions of section 71-1709 of this chapter, deny an application or revoke a registration. In determining whether or not to revoke a registration the commissioner shall at a minimum, take into consideration the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit from noncompliance and whether the violation was procedural in nature. The commissioner's determination to revoke a registration is subject to review under article seventy-eight of the civil practice law and rules~~]; and (f) the operation of mobile redemption centers in order to ensure that to the best extent practicable containers are not proffered for redemption to a deposit initiator or distributor outside of the geographic area where such deposit initiator sells containers and initiates deposits.

[~~2.~~] 3. The department may require a redemption center to obtain a permit, as an alternative to registration if such center is located at the same facility or site as another solid waste management facility otherwise subject to the requirements of title seven of this article or the regulations promulgated pursuant thereto.

[~~3.~~] **4.** No dealer or distributor, as defined in section 27-1003 of this title, shall be required to obtain a permit to operate a redemption center at the same location as the dealer's or distributor's place of business. Operators of such redemption centers shall receive payment of the refund value of each beverage container from the appropriate deposit initiator or distributor as provided under section 27-1007 of this title.

[~~4.~~] **5.** Each dealer and redemption center shall require any person tendering for redemption more than two thousand five hundred containers at one time to such dealer or redemption center to provide such person's name and address and the license plate of the vehicle used to transport the containers, or, in the case of an agent or employee of a not-for-profit corporation, a sales tax exemption certificate. The dealer or redemption center redeeming the beverage containers shall keep the information on file for a minimum of twelve months and provide same to the department upon request.

§ 4. Subdivisions 2, 3 and 4 of section 27-1015 of the environmental conservation law, as amended by section 8 of part F of chapter 58 of the laws of 2013, are amended and two new subdivisions 4-a and 4-b are added to read as follows:

2. Any distributor, deposit initiator, redemption center or dealer who violates any provision of this title, except as provided in section 27-1012 **and paragraph (d) of subdivision one of section 27-1013** of this title **and subdivisions three, four, four-a and four-b of this section**, shall be liable to the state of New York for a civil penalty of not more than one thousand dollars, and an additional civil penalty of not more than one thousand dollars for each day during which each such violation continues. Any civil penalty may be assessed following a hearing or opportunity to be heard.

3. It shall be unlawful for a distributor**,** or deposit initiator, **redemption center or dealer,** acting alone or aided by another, to return any empty beverage container to a dealer or redemption center for its refund value if the distributor**,** or deposit initiator**, redemption center or dealer returning the empty beverage container** had **knowingly** previously accepted such beverage container from any dealer or operator of a redemption center or if **the distributor, deposit initiator, redemption center or dealer returning the empty beverage container knows that** such container was previously accepted by a reverse vending machine. A violation of this subdivision shall be a misdemeanor punishable by a fine of not less than five hundred dollars nor more than one thousand dollars and an amount equal to two times the amount of money received as a result of such violation. **A distributor, deposit initiator, redemption center or dealer which commits a subsequent violation of this subdivision shall be liable to the state of New York for a civil penalty of not less than one thousand dollars nor more than five thousand dollars, an amount equal to two times the amount of money received as a result of such violation and a revocation of the redemption center's registration or, as applicable, a withholding of an equivalent amount from the distributor's, deposit initiator's or dealer's refund value account, as set forth in section 27-1012 of this title, administered by the commissioner of taxation and finance. Any civil penalty may be assessed following a hearing or opportunity to be heard.**

4. Any person who willfully tenders to a dealer, distributor, redemption center or deposit initiator more than forty-eight empty beverage containers for which such person knows or should reasonably know that no deposit was paid in New York state may be assessed by the department a

civil penalty of up to one hundred dollars for each container or up to twenty-five thousand dollars for each such tender of containers. **A subsequent violation of this section may result in a civil penalty of up to fifty thousand dollars. Any civil penalty may be assessed following a hearing or opportunity to be heard.** At each location where a person tenders containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering for redemption containers on which a deposit was never paid in this state may be subject to a civil penalty of up to one hundred dollars per container or up to twenty-five thousand dollars for each such tender of containers." Any civil penalty may be assessed following a hearing or opportunity to be heard.

4-a. Any redemption center which willfully tenders to a deposit initiator more than forty-eight empty beverage containers for which such redemption center knows or should reasonably know that no deposit was paid in New York state may be assessed by the department a civil penalty of up to one hundred dollars for each container or up to twenty-five thousand dollars for each such tender of containers. A subsequent violation of this section may result in a civil penalty of up to fifty thousand dollars and revocation of such redemption center's registration. Any civil penalty may be assessed following a hearing or opportunity to be heard.

4-b. (a) A deposit initiator which upon audit discovers that a redemption center reported more beverage containers than were actually physically tendered shall provide written notice to the redemption center of such shortfall and shall provide a refund based on the actual tendered amount, provided that if such audit reveals a discrepancy between the redemption center's reported number of beverage containers and the actual physical count of ten percent or greater, the deposit initiator may withhold up to fifty percent of the handling fee otherwise payable to the redemption center for such tender, and provided further that upon any subsequent audit which produces a discrepancy of ten percent or more, the deposit initiator may withhold up to one hundred percent of the handling fee otherwise payable to such redemption center. Notwithstanding any other provisions of this title, any funds withheld by a deposit initiator pursuant to this paragraph may be retained by the deposit initiator to defray the costs of the auditing process.

(b) A redemption center which upon audit discovers that a deposit initiator underreported the number of beverage containers that were actually physically tendered shall provide written notice to the deposit initiator of such shortfall and shall receive payment from the deposit initiator based on the actual tendered amount, provided that if such audit reveals a discrepancy between the deposit initiator's reported number of beverage containers and the actual physical count of ten percent or greater, the redemption center shall be paid one hundred fifty percent of the handling fee otherwise payable to the redemption center for such tender, and provided further that upon any subsequent audit which produces a discrepancy of ten percent or more, the redemption center shall be paid two hundred percent of the handling fee otherwise payable to such redemption center.

§ 5. This act shall take effect on the thirtieth day after it shall have become a law.