

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. WOERNER, LUNSFORD, BUTTENSCHON, KELLES, MAHER, SIMPSON, STIRPE, LUPARDO, PAULIN, EPSTEIN, EACHUS, SIMON, McMAHON, SHIMSKY, LEMONDES, BEEPHAN, BRABENEC, GRAY, BLANKENBUSH, DAVILA, ANGELINO -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Environmental Conservation

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:

1 Section 1. Subdivision 6 of section 27-1007 of the environmental
2 conservation law, as added by section 4 of part SS of chapter 59 of the
3 laws of 2009, is amended to read as follows:

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

18 § 2. Paragraphs a and c of subdivision 4 of section 27-1012 of the
19 environmental conservation law, as added by section 8 of part SS of
20 chapter 59 of the laws of 2009, are amended to read as follows:

21 a. Quarterly payments. An amount equal to [~~eighty~~] **forty-seven** percent
22 of the balance outstanding in the refund value account at the close of
23 each quarter shall be paid to the commissioner of taxation and finance
24 at the time the report provided for in subdivision three of this section

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

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1 is required to be filed. The commissioner of taxation and finance may
2 require that the payments be made electronically. The remaining [~~twen-~~
3 ~~ty~~] fifty-three percent of the balance outstanding at the close of each
4 quarter shall be the monies of the deposit initiator and may be with-
5 drawn from such account by the deposit initiator. If the provisions of
6 this section with respect to such account have not been fully complied
7 with, each deposit initiator shall pay to such commissioner at such
8 time, in lieu of the amount described in the preceding sentence, an
9 amount equal to the balance which would have been outstanding on such
10 date had such provisions been fully complied with. The commissioner of
11 taxation and finance may require that the payments be made electron-
12 ically.

13 c. Final report. A deposit initiator who ceases to do business in this
14 state as a deposit initiator shall file a final report and remit payment
15 of [~~eighty~~] forty-seven percent of all amounts remaining in the refund
16 value account as of the close of the deposit initiator's last day of
17 business. The commissioner of taxation and finance may require that the
18 payments be made electronically. The deposit initiator shall indicate on
19 the report that it is a "final report". The final report is due to be
20 filed with payment twenty days after the close of the quarterly period
21 in which the deposit initiator ceases to do business. In the event the
22 deposit initiator pays out more in refund values than it collects in
23 such final quarterly period, the deposit initiator may apply to the
24 commissioner of taxation and finance for a refund of the amount of such
25 excess payment of refund values from sources other than the refund value
26 account, in the manner as provided by the commissioner of taxation and
27 finance.

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

31 § 27-1013. Redemption centers.

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

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

46 (iii) An application for registration or renewal shall be in a form
47 prescribed by the commissioner and shall, at a minimum, require the name
48 and physical address of the redemption center, the name, address and
49 contact information of the owner and/or operator of the redemption
50 center, the names and addresses of each dealer or distributor with which
51 the redemption center has contracted to collect, sort and obtain the
52 refund value and handling fee of empty beverage containers, as applica-
53 ble, the number of beverage containers redeemed by the redemption center
54 during the preceding twelve months, as applicable, and such other infor-
55 mation as the commissioner deems necessary for proper administration of
56 this title. The commissioner may require applications for registration

1 to be submitted electronically. The commissioner shall electronically
2 issue a redemption center registration certificate or renewal certifi-
3 cate in a form prescribed by the commissioner within thirty days of
4 receipt of such application. A registration certificate or renewal
5 certificate issued pursuant to this subdivision shall be issued for one
6 year and shall be subject to annual renewal in accordance with proce-
7 dures specified by the commissioner.

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

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

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

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

40 (e) The commissioner shall promulgate rules and regulations governing
41 the performance of audits in connection with pick-ups of redeemed bever-
42 age containers. Such audits shall be conducted by the department at the
43 request of a distributor, deposit initiator, redemption center or deal-
44 er, upon no less than two business days' notice, to monitor beverage
45 container pick-ups and party compliance with the provisions of this
46 chapter. A distributor, deposit initiator, redemption center or dealer
47 may request the department to conduct an audit no more than ten times
48 per calendar year with respect to each pick up agent or redemption
49 center with which the requester conducts pick up transactions. Such
50 audits shall, at a minimum, include the following parameters: (i) all
51 audits shall be conducted on an entire pick-up shipment at one of two
52 locations, including at the site of such redemption center or site at
53 which such pick up shipment of redeemed beverage containers is delivered
54 and counted; (ii) a department auditor shall be present at the redemp-
55 tion center at which such audit shall be performed to witness the weigh-
56 ing of all individual bags of beverage containers included in the pick-

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

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

51 [~~2-~~] 3. The department may require a redemption center to obtain a
52 permit, as an alternative to registration if such center is located at
53 the same facility or site as another solid waste management facility
54 otherwise subject to the requirements of title seven of this article or
55 the regulations promulgated pursuant thereto.

1 ~~[3-]~~ 4. No dealer or distributor, as defined in section 27-1003 of
2 this title, shall be required to obtain a permit to operate a redemption
3 center at the same location as the dealer's or distributor's place of
4 business. Operators of such redemption centers shall receive payment of
5 the refund value of each beverage container from the appropriate deposit
6 initiator or distributor as provided under section 27-1007 of this
7 title.

8 ~~[4-]~~ 5. Each dealer and redemption center shall require any person
9 tendering for redemption more than two thousand five hundred containers
10 at one time to such dealer or redemption center to provide such person's
11 name and address and the license plate of the vehicle used to transport
12 the containers, or, in the case of an agent or employee of a not-for-
13 profit corporation, a sales tax exemption certificate. The dealer or
14 redemption center redeeming the beverage containers shall keep the
15 information on file for a minimum of twelve months and provide same to
16 the department upon request.

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

21 2. Any distributor, deposit initiator, redemption center or dealer who
22 violates any provision of this title, except as provided in section
23 27-1012 and paragraph (d) of subdivision one of section 27-1013 of this
24 title and subdivisions three, four, four-a and four-b of this section,
25 shall be liable to the state of New York for a civil penalty of not more
26 than one thousand dollars, and an additional civil penalty of not more
27 than one thousand dollars for each day during which each such violation
28 continues. Any civil penalty may be assessed following a hearing or
29 opportunity to be heard.

30 3. It shall be unlawful for a distributor, or deposit initiator,
31 redemption center or dealer, acting alone or aided by another, to return
32 any empty beverage container to a dealer or redemption center for its
33 refund value if the distributor, or deposit initiator, redemption center
34 or dealer returning the empty beverage container had knowingly previous-
35 ly accepted such beverage container from any dealer or operator of a
36 redemption center or if the distributor, deposit initiator, redemption
37 center or dealer returning the empty beverage container knows that such
38 container was previously accepted by a reverse vending machine. A
39 violation of this subdivision shall be a misdemeanor punishable by a
40 fine of not less than five hundred dollars nor more than one thousand
41 dollars and an amount equal to two times the amount of money received as
42 a result of such violation. A distributor, deposit initiator, redemption
43 center or dealer which commits a subsequent violation of this subdivi-
44 sion shall be liable to the state of New York for a civil penalty of not
45 less than one thousand dollars nor more than five thousand dollars, an
46 amount equal to two times the amount of money received as a result of
47 such violation and a revocation of the redemption center's registration
48 or, as applicable, a withholding of an equivalent amount from the
49 distributor's, deposit initiator's or dealer's refund value account, as
50 set forth in section 27-1012 of this title, administered by the commis-
51 sioner of taxation and finance. Any civil penalty may be assessed
52 following a hearing or opportunity to be heard.

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

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

14 4-a. Any redemption center which willfully tenders to a deposit initi-
15 ator more than forty-eight empty beverage containers for which such
16 redemption center knows or should reasonably know that no deposit was
17 paid in New York state may be assessed by the department a civil penalty
18 of up to one hundred dollars for each container or up to twenty-five
19 thousand dollars for each such tender of containers. A subsequent
20 violation of this section may result in a civil penalty of up to fifty
21 thousand dollars and revocation of such redemption center's registra-
22 tion. Any civil penalty may be assessed following a hearing or opportu-
23 nity to be heard.

24 4-b. (a) A deposit initiator which upon audit discovers that a redemp-
25 tion center reported more beverage containers than were actually phys-
26 ically tendered shall provide written notice to the redemption center of
27 such shortfall and shall provide a refund based on the actual tendered
28 amount, provided that if such audit reveals a discrepancy between the
29 redemption center's reported number of beverage containers and the actu-
30 al physical count of ten percent or greater, the deposit initiator may
31 withhold up to fifty percent of the handling fee otherwise payable to
32 the redemption center for such tender, and provided further that upon
33 any subsequent audit which produces a discrepancy of ten percent or
34 more, the deposit initiator may withhold up to one hundred percent of
35 the handling fee otherwise payable to such redemption center. Notwith-
36 standing any other provisions of this title, any funds withheld by a
37 deposit initiator pursuant to this paragraph may be retained by the
38 deposit initiator to defray the costs of the auditing process.

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

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