

LAWS OF NEW YORK, 2009
CHAPTER 59, PART SS

THE "BIGGER BETTER BOTTLE LAW"

Section 1. Section 27-1001 of the environmental conservation law, as added by chapter 200 of the laws of 1982, is amended to read as follows: § 27-1001. Legislative findings.

The legislature hereby finds that litter composed of discarded [~~soft-drink, beer and ale bottles and cans~~] **beverage containers** is a growing problem of state concern and a direct threat to the health and safety of the citizens of this state. Discarded beverage [~~bottles and cans~~] **containers** create a hazard to vehicular traffic, a source of physical injury to pedestrians~~[7]~~ **and** farm animals [~~and~~], **a hazard to farm and other** machinery and an unsightly accumulation of litter which must be disposed of at increasing public expense. Beverage [~~bottles and cans~~] **containers** also create an unnecessary addition to the state's and municipalities' already overburdened solid waste and refuse disposal systems. Unsegregated disposal of such [~~bottles and cans~~] **containers** creates an impediment to the efficient operation of resource recovery plants. Further, the legislature finds that the uninhibited discard of beverage containers constitutes a waste of both mineral and energy resources. The legislature hereby finds that requiring a deposit on all beverage containers, along with certain other facilitating measures, will provide a necessary incentive for the economically efficient and environmentally benign collection and recycling of such containers.

§ 2. Subdivisions 1 and 2 of section 27-1003 of the environmental conservation law, subdivision 1 as amended by chapter 778 of the laws of 1988 and subdivision 2 as amended by chapter 546 of the laws of 1986, are amended to read as follows:

1. "Beverage" means carbonated soft drinks, [~~mineral~~] water, [~~soda water~~], beer, other malt beverages and a wine product 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. "Beverage container" means the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar used for containing **less than** one gallon or [~~3.8~~] **3.78** liters [~~or less~~] at the time of sale **or offer for sale** of a beverage intended for use or consumption in this state. Beverage containers sold or **offered for sale or** distributed aboard aircraft or ships shall be considered as intended for use or consumption outside this state.

§ 3. Subdivisions 6 and 9 of section 27-1003 of the environmental conservation law, as added by chapter 200 of the laws of 1982, are amended and four new subdivisions 2-a, 5-a, 12 and 13 are added to read as follows:

2-a. "Bottler" means a person, firm or corporation who:

a. bottles, cans or otherwise packages beverages in beverage containers except that if such packaging is for a distributor having the right to bottle, can or otherwise package the same brand of beverage, then

such distributor shall be the bottler; or

b. imports filled beverage containers into the United States.

5-a. A "deposit initiator" for each beverage container for which a refund value is established under section 27-1005 of this title means:

a. the bottler of the beverage in such container;

b. the distributor of such container if such distributor's purchase of such container was not, directly or indirectly, from a registered deposit initiator;

c. a dealer of such container who sells or offers for sale such container in this state, whose purchase of such container was not, directly or indirectly, from a registered deposit initiator; or

d. an agent acting on behalf of a registered deposit initiator.

6. "Distributor" means any person, firm or corporation which [~~bottles, cans or otherwise fills or packages beverage containers, or which~~] engages in the sale or offer for sale of [~~such~~] beverages in beverage containers to a dealer.

9. "Redemption center" means any [~~establishment offering to pay the refund value of a beverage container~~] person offering to pay the refund value of an empty beverage container to a redeemer, or any person who contracts with one or more dealers or distributors to collect, sort and obtain the refund value and handling fee of empty beverage containers for, or on behalf of, such dealer or distributor under the provisions of section 27-1013 of this title.

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.

13. "Universal product code" or "UPC code" means a standard for encoding a set of lines and spaces that can be scanned and interpreted into numbers to identify a product. Universal product code may also mean any accepted industry barcode which replaces the UPC code including EAN and other codes that may be used to identify a product.

§ 4. Sections 27-1005 and 27-1007 of the environmental conservation law are REPEALED and two new sections 27-1005 and 27-1007 are added to read as follows:

§ 27-1005. Refund value.

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

§ 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. 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 vend-

ing 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) 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) 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) 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 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 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, 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 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.

(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.

(c) A deposit initiator or distributor shall pick up empty beverage containers from the dealer or redemption center at reasonable times and intervals as determined in rules or regulations promulgated by the department.

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.

§ 5. Section 27-1009 of the environmental conservation law, as added by chapter 200 of the laws of 1982, is amended to read as follows:

§ 27-1009. Refusal of acceptance.

1. A dealer or operator of a redemption center may refuse to accept from a redeemer, and a ~~[distributor]~~ deposit initiator or distributor may refuse to accept from a dealer or operator of a redemption center any empty beverage container which does not state thereon a refund value as established by section 27-1005 and provided by section 27-1011 of this title.

2. A dealer or operator of a redemption center may also refuse to accept any broken bottle, corroded or dismembered can, or any beverage container which contains a significant amount of foreign material, as determined in rules and regulations to be promulgated by the commissioner. ~~[Notwithstanding the provisions of this subdivision, a distributor shall accept beverage containers as provided in subdivision two of section 27-1007 of this title, if the dealer shall have accepted and paid the refund value of such beverage containers.]~~

§ 6. Subdivision 2 of section 27-1011 of the environmental conservation law is REPEALED.

§ 7. Subdivisions 3 and 4 of section 27-1011 of the environmental conservation law, subdivision 3 as amended by chapter 834 of the laws of 1984 and subdivision 4 as amended by chapter 149 of the laws of 1983, are amended to read as follows:

~~[3-]~~ 2. No deposit initiator, distributor or dealer shall sell or offer for sale, at wholesale or retail in this state, any metal beverage container designed and constructed with a part of the container which is detachable in opening the container unless such detachable part will decompose by photodegradation or biodegradation.

~~[4-]~~ 3. No deposit initiator, distributor or dealer shall sell or offer for sale in this state beverage containers connected to each other by a separate holding device constructed of plastic which does not decompose by photodegradation or biodegradation.

§ 8. The environmental conservation law is amended by adding a new section 27-1012 to read as follows:

§ 27-1012. Deposit and disposition of refund values; registration; reports.

1. Each deposit initiator shall deposit in a refund value account an amount equal to the refund value initiated under section 27-1005 of this title which is received with respect to each beverage container sold by such deposit initiator. Such deposit initiator shall hold the amounts in the refund value account in trust for the state. A refund value account shall be an interest-bearing account established in a banking institution located in this state, the deposits in which are insured by an agency of the federal government. Deposits of such amounts into the refund value account shall be made not less frequently than every five business days. All interest, dividends and returns earned on the refund value account shall be paid directly into said account. The monies in such accounts shall be kept separate and apart from all other monies in the possession of the deposit initiator. The commissioner of taxation and finance may specify a system of accounts and records to be maintained with respect to accounts established under this subdivision.

2. Payments of refund values pursuant to section 27-1007 of this title shall be paid from each deposit initiator's refund value account. No other payment or withdrawal from such account may be made except as prescribed by this section.

3. Each deposit initiator shall file quarterly reports with the commissioner of taxation and finance on a form and in the manner prescribed by such commissioner. The commissioner of taxation and finance may require such reports to be filed electronically. The quarterly reports required by this subdivision shall be filed for the quarterly periods ending on the last day of May, August, November and February of each year, and each such report shall be filed within twenty days after the end of the quarterly period covered thereby. Each such report shall include all information such commissioner shall determine appropriate including but not limited to the following information:

a. the balance in the refund value account at the beginning of the quarter for which the report is prepared;

b. all such deposits credited to the refund value account and all interest, dividends or returns received on such account, during such quarter;

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, and all payments made pursuant to subdivision four of this section; and

d. the balance in the refund value account at the close of such quarter.

4. 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. 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.

b. Refund value account shortfall. In the event a deposit initiator pays out more in refund values than it collects in deposits of refund values during the course of a quarterly period as described in subdivision three of this section, 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. A deposit initiator must apply for a refund no later than twelve months after the due date for filing the quarterly report for the quarterly period for which the refund claim is made. No interest shall be payable for any refund paid pursuant to this paragraph.

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 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 quar-

terly 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.

5. All monies collected or received by the department of taxation and finance pursuant to this title shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected, the comptroller shall retain the amount determined by the commissioner of taxation and finance to be necessary for refunds out of which the comptroller must pay any refunds to which a deposit initiator may be entitled. After reserving the amount to pay refunds, the comptroller must, by the tenth day of each month, pay into the state treasury to the credit of the general fund the revenue deposited under this subdivision during the preceding calendar month and remaining to the comptroller's credit on the last day of that preceding month.

6. The commissioner and the commissioner of taxation and finance shall promulgate, and shall consult each other in promulgating, such rules and regulations as may be necessary to effectuate the purposes of this title. The commissioner and the commissioner of taxation and finance shall provide all necessary aid and assistance to each other, including the sharing of any information that is necessary to their respective administration and enforcement responsibilities pursuant to the provisions of this title.

7. a. Any person who is a deposit initiator under this title before April first, two thousand nine, must apply by June first, two thousand nine to the commissioner of taxation and finance for registration as a deposit initiator. Any person who becomes a deposit initiator on or after April first, two thousand nine shall apply for registration prior to collecting any deposits as such a deposit initiator. Such application shall be in a form prescribed by the commissioner of taxation and finance and shall require such information deemed to be necessary for proper administration of this title. The commissioner of taxation and finance may require that applications for registration must be submitted electronically. The commissioner of taxation and finance shall electronically issue a deposit initiator registration certificate in a form prescribed by the commissioner of taxation and finance within fifteen days of receipt of such application or may take an additional ten days if the commissioner of taxation and finance deems it necessary to consult with the commissioner before issuing such registration certificate. A registration certificate issued pursuant to this subdivision may be issued for a specified term of not less than three years and shall be subject to renewal in accordance with procedures specified by the commissioner of taxation and finance. The commissioner of taxation and finance shall furnish to the commissioner a complete list of registered deposit initiators and shall continually update such list as warranted. The commissioner shall share any information with the commissioner of taxation and finance that is necessary for the administration of this subdivision.

b. The commissioner of taxation and finance shall have the authority to revoke or refuse to renew any registration issued pursuant to this subdivision when he or she has determined or has been informed by the commissioner that any of the provisions of this title or rules and regulations promulgated thereunder have been violated. Such violations shall

include, but not be limited to, the failure to file quarterly reports, the failure to make payments pursuant to this subdivision, the providing of false or fraudulent information to either the department of taxation and finance or the department, or knowingly aiding or abetting another person in violating any of the provisions of this title. A notice of proposed revocation or non-renewal shall be given to the deposit initiator in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of the tax law shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to a notice authorized by this paragraph, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this paragraph. All such notices issued by the commissioner of taxation and finance pursuant to this paragraph shall contain a statement advising the deposit initiator that the revocation or non-renewal of registration may be challenged through a hearing process and the petition for such a challenge must be filed with the commissioner of taxation and finance within ninety days after such notice is issued. A deposit initiator whose registration has been so revoked or not renewed shall cease to do business as a deposit initiator in this state, until this title has been complied with and a new registration has been issued. Any deposit initiator whose registration has been so revoked may not apply for registration for two years from the date such revocation takes effect.

8. The commissioner of taxation and finance may require the maintenance of such accounts, records or documents relating to the sale of beverage containers, by any deposit initiator, bottler, distributor, dealer or redemption center as such commissioner may deem appropriate for the administration of this section. Such commissioner may make examinations, including the conduct of facility inspections during regular business hours, with respect to the accounts, records or documents required to be maintained under this subdivision. Such accounts, records and documents shall be preserved for a period of three years, except that such commissioner may consent to their destruction within that period or may require that they be kept longer. Such accounts, records and documents may be kept within the meaning of this subdivision when reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original accounts, records or documents.

9. a. Any person required to be registered under this section who, without being so registered, sells or offers for sale beverage containers in this state, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance in an amount not to exceed five hundred dollars for the first day on which such sales or offers for sale are made, plus an amount not to exceed five hundred dollars for each subsequent day on which such sales or offers for sale are made, not to exceed twenty-five thousand dollars in the aggregate.

b. Any deposit initiator who fails to maintain accounts or records pursuant to this section, unless it is shown that such failure was due to reasonable cause and not due to negligence or willful neglect, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance of not more than one thousand dollars for each quarter during which such failure occurred, and an additional penalty of not more than one thousand dollars for each quarter such failure continues.

10. The provisions of article twenty-seven of the tax law shall apply

to the provisions of this title for which the commissioner of taxation and finance is responsible, including collection of refund value amounts, in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section as determined by the commissioner of taxation and finance. Furthermore, for purposes of applying the provisions of article twenty-seven of the tax law, where the terms "tax" and "taxes" appear in such article, such terms shall be construed to mean "refund value" or "balance in the refund value account".

11. If any deposit initiator fails or refuses to file a report or furnish any information requested in writing by the department of taxation and finance or the department, the department of taxation and finance with the assistance of the department may, from any information in its possession, make an estimate of the deficiency and collect such deficiency from such deposit initiator.

12. Beginning on June first, two thousand nine each deposit initiator shall register the container label of any beverage offered for sale in the state on which it initiates a deposit. Any such registered container label shall bear a universal product code. Such universal product code shall be New York state specific, in order to identify the beverage container as offered for sale exclusively in New York state, and as a means of preventing illegal redemption of beverage containers purchased out-of-state. Registration must be on forms as prescribed by the department and must include the universal product code for each combination of beverage and container manufactured. The commissioner may require that such forms be filed electronically. The deposit initiator shall renew a label registration whenever that label is revised by altering the universal product code or whenever the container on which it appears is changed in size, composition or glass color.

§ 9. Section 27-1013 of the environmental conservation law, as amended by chapter 149 of the laws of 1983, is amended to read as follows:

§ 27-1013. Redemption centers.

The commissioner is hereby empowered to promulgate rules and regulations governing (1) the circumstances in which dealers and distributors, individually or collectively, are required to accept the return of empty beverage containers, and make payment therefor; (2) the sorting of the containers which a deposit initiator or distributor may require of dealers and redemption centers; (3) the ~~[pick-up]~~ 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; (4) 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, and to issue permits 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. 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 ~~[manufacturer]~~ deposit initiator or distributor as provided under ~~[sections]~~ section 27-1007 ~~[and 27-1009]~~ of this title.

§ 10. Section 27-1014 of the environmental conservation law, as added by chapter 149 of the laws of 1983, is amended to read as follows:

§ 27-1014. [~~Limitation on~~] Authority to promulgate rules and regulations.

In addition to the authority of the commissioner, under sections 27-1009 and 27-1013 of this title, the commissioner shall [~~only have the power to promulgate rules and regulations governing the initiation of deposits, sale of beverages in containers through vending machines and for on-premises consumption, record keeping, refunding for refillable beverage containers, embossing, imprinting or labeling of refund values and enforcement of the provisions of this section and sections 27-1009 and 27-1013 of this title~~] have the power to promulgate rules and regulations necessary and appropriate [~~to~~] for the [~~implementation~~] administration of this title.

§ 11. Section 27-1015 of the environmental conservation law, as added by chapter 200 of the laws of 1982, subdivision 1 as designated and subdivision 2 as added by chapter 149 of the laws of 1983, is amended to read as follows:

§ 27-1015. Violations.

1. A violation of this title, except as otherwise provided in this section and section 27-1012 of this title, shall be a public nuisance. In addition, except as otherwise provided in this section and section 27-1012 of this title, any person who shall violate any provision of this title shall be liable to the state of New York for a civil penalty of not more than five hundred dollars, and an additional civil penalty of not more than five hundred dollars for each day during which each such violation continues. Any civil penalty may be assessed following a hearing or opportunity to be heard.

2. Any distributor or deposit initiator who violates any provision of this title, except as provided in section 27-1012 of this title, 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, acting alone or aided by another, to return any empty beverage [~~containers~~] container to a dealer or redemption center for [~~their~~] its refund value if the distributor or deposit initiator had previously accepted such beverage [~~containers~~] container from any dealer or operator of a redemption center. 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.

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. 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.

5. The department, the department of agriculture and markets, the department of taxation and finance and the attorney general are hereby authorized to enforce the provisions of this title. In addition, the provisions of section 27-1005 of this title and subdivisions one, two, three, four, five, ten and eleven of section 27-1007 of this title may be enforced by a county, city, town or village and the local legislative body thereof may adopt local laws, ordinances or regulations consistent with this title providing for the enforcement of such provisions.

§ 12. The environmental conservation law is amended by adding a new section 27-1016 to read as follows:

§ 27-1016. Public education.

The commissioner shall establish a public education program to disseminate information regarding implementation of this title. Such information shall include, but not be limited to, publication of the New York Bottle Bill of Rights as specified in subdivision two of section 27-1007 of this title; publication of information specifying the procedures necessary to establish a redemption center as provided in section 27-1013 of this title, including information regarding financial assistance available for the establishment of redemption centers as provided in section 27-1018 of this title; publication of information delineating the relevant rights and responsibilities of deposit initiators, distributors, dealers, redemption centers and redeemers under the provisions of this title; publication of information regarding the requirement that deposit initiators register with the department of taxation and finance; and publication of information on the general benefits of recycling.

§ 13. The environmental conservation law is amended by adding a new section 27-1018 to read as follows:

§ 27-1018. Beverage container assistance program.

Notwithstanding any other provision of law to the contrary, within the limits of appropriations therefor, the commissioner shall make state assistance payments to municipalities, businesses and not-for-profit organizations located in the state for the cost of reverse vending machines located or to be located in the state. Such state assistance payments shall not exceed fifty percent of the costs of equipment, and/or the acquisition and/or rehabilitation of real property or structures located or to be located in the state related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of this title. Such payments may include costs related to the establishment of redemption centers, including mobile redemption centers. For the purposes of this section, municipalities and not-for-profit organizations shall have the meaning as defined in section 54-0101 of this chapter and businesses shall mean a dealer, distributor or redemption center as defined in this title that employs less than fifty employees.

§ 14. Paragraph h of subdivision 1 of section 261 of the economic development law, as amended by chapter 471 of the laws of 1998, is amended to read as follows:

h. "Eligible project" shall mean actions taken by or on behalf of a New York business involving the acquisition, construction, alteration, repair or improvement of a building, fixtures, machinery or equipment, provided that such project results in:

(i) source reduction or material substitution, provided that the substitution of one hazardous substance, product or nonproduct output for another does not result in the creation of a new risk,

(ii) in-process recycling,

(iii) recycling or reuse of non-hazardous solid wastes,

- (iv) increased energy efficiency,
- (v) conservation of the use of water or other natural resources improvements in process economics,
- (vi) elimination of the purchase of materials, the production of which for the use of said firm would result in more waste or resource consumption, or
- (vii) other practices or technologies that reduce the use of hazardous materials or otherwise improve air or water quality.

The term "eligible project" shall also include actions taken by or on behalf of a business to support costs of equipment, and/or the acquisition and/or rehabilitation of real property or structures located or to be located in the state related to the collecting, sorting, and packaging of empty beverage containers as such terms are defined in title ten of article twenty-seven of the environmental conservation law. Such actions shall be eligible for state assistance payments under the beverage container assistance program pursuant to section 27-1018 of the environmental conservation law.

The term "eligible project" shall not include end of pipe pollution control technologies or practices where such controls or practices are designed primarily to achieve compliance with the environmental conservation law or regulations promulgated pursuant thereto, or energy recovery or incineration, or out-of-process recycling or reuse of hazardous waste or hazardous substances.

§ 15. Subdivisions 1 and 4 of section 54-0701 of the environmental conservation law, subdivision 1 as amended by chapter 146 of the laws of 2000, subdivision 4 as added by chapter 610 of the laws of 1993, are amended to read as follows:

1. "Cost" means the capital cost of a municipal recycling project including engineering and architectural services, surveys, plans and specifications; consultant and legal services; lands acquired pursuant to the conditions set forth in section 54-0709 of this title, and other direct capital expenses incident to such a project, less any federal assistance or other assistance received or to be received. "Cost" shall also include the capital, planning and promotional costs associated with waste reduction projects, the costs related to household hazardous waste collection and disposal programs, and the costs related to planning, educational and promotional activities associated with a recyclables recovery program. **"Cost" shall also include beverage container assistance program grants to municipalities and not-for-profit organizations pursuant to section 27-1018 of this chapter.** Provided, however, "cost" shall exclude any cost incurred prior to April first, nineteen hundred ninety-three, and shall further exclude costs related to planning, educational and promotional activities associated with a recyclables recovery program incurred prior to April first, two thousand.

4. "Recycling project" means recyclables recovery equipment, source separation equipment, a recyclables recovery program or any combination thereof required by a recyclables recovery program **and the reimbursement to municipalities and not-for-profit corporations, as such terms are defined in section 54-0101 of this article, for the cost of a redemption center as defined in section 27-1003 of this chapter.**

§ 16. This act shall take effect immediately, provided however, that:

- 1. sections two and three of this act shall take effect April 1, 2009;
- 2. sections four, five, six, seven, nine, and eleven of this act shall take effect June 1, 2009; and
- 3. section eight of this act shall take effect on April 1, 2009 except that the requirements to make deposits, file reports and make withdrawals and payments under section 27-1012 of the environmental conser-

vation law, as added by section eight of this act, with respect to containers defined as beverage containers prior to April 1, 2009, shall first apply to the period beginning on April 15, 2009 and ending May 31, 2009, and with respect to all other beverage containers shall first apply to the period beginning on June 1, 2009 and ending August 31, 2009, provided that such other beverage containers will not be required to have a refund value as required under section 27-1005 of the environmental conservation law, as added by section four of this act until June 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.