STRICKEN END OF YEAR
AMENDED COPY AS OF 9/25/2009

Intro. Res. No. 1797-2009 Laid on Table 9/17/2009
Introduced by Legislator Kennedy

RESOLUTION NO. -2009, ADOPTING LOCAL LAW NO. -2009, A LOCAL LAW TO ENFORCE THE NEW YORK STATE RETURNABLE DEPOSIT CONTAINER LAW

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on , 2009, a proposed local law entitled, "**A LOCAL LAW TO ENFORCE THE NEW YORK STATE RETURNABLE DEPOSIT CONTAINER LAW**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2009, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO ENFORCE THE NEW YORK STATE RETURNABLE DEPOSIT CONTAINER LAW

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that Suffolk County has consistently been a state and national leader in developing innovative and important legislation, particularly in the field of environmental protection.

This Legislature also finds and determines that in 1981, Suffolk County was the first County in New York State to establish a refundable bottle deposit program, encouraging the recycling of used beverage containers, with New York State establishing a State-wide returnable container deposit program the following year.

This Legislature further finds that, earlier in 2009, New York State enacted new legislation that expands upon the original returnable container deposit program.

This Legislature finds that this new State legislation requires businesses selling beverages in returnable containers to accept the return of containers for the products it sells, regardless of where the container was originally purchased, and establishes a “New York Bottle Bill of Rights”.

This Legislature determines that the new State Law authorizes counties, cities, towns and villages to pass local laws to establish a local enforcement policy for the State Returnable Container Deposit Law.

This Legislature also determines that, since Suffolk County has been a leader in the movement to establish container deposit programs in New York State, the County should also become a leader in enforcing the new State Returnable Container Deposit Law.

Therefore, the purpose of this law is to establish a local enforcement mechanism in Suffolk County for the State Returnable Container Deposit Law.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

"BEVERAGE" shall mean carbonated soft drinks, 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.

"BEVERAGE CONTAINER" shall mean the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar used for containing less than one gallon or 3.78 liters at the time of sale or offer for sale of a beverage intended for use or consumption in the state. Beverages sold or offered for sale or distributed aboard aircraft or ships are considered intended for use or consumption outside this state.

"BOTTLER" shall mean 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.

"COMMISSIONER" shall mean the Commissioner of the Department of Consumer Affairs.

"DEALER" shall mean any person, firm or corporation who engages in the sale of beverages in beverage containers to a consumer for off-premises consumption in Suffolk County.

"DEPOSIT INITIATOR" for each beverage container for which a refund value is established in Section 3 of this law shall mean:

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.

"DISTRIBUTOR" shall mean any person, firm, or corporation which engages in the sale or offer for sale of beverages in beverage containers to a dealer.

“PERSON” shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business organization of any kind.

“PLACE OF BUSINESS” shall mean the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

“REDEMPTION CENTER” shall mean any 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.

“REDEEMER” shall mean any person who demands the refund value provided for herein in exchange for the empty beverage container, but shall not include a dealer as defined in this section.

“REVERSE VENDING MACHINE” shall mean 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 machines to accept containers from redeemers and to issue a scrip or receipt for their refund value.

“UNIVERSAL PRODUCT CODE or UPC” shall mean 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.

“USE OR CONSUMPTION” shall mean the exercise of any right or power incident to the ownership of a beverage, other than the sale or the keeping or retention of a beverage for the purpose of sale.

Section 3. Refund Value.

No person shall sell or offer for sale a beverage container in Suffolk County 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 pursuant to §27-1011 of the NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW.

Section 4. Requirements.

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 3 of this local law. 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 (60) 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 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 F of this section.

B. Beginning March 1st, 2010, a dealer whose place of business is part of a chain engaged in the same general field of business which operates ten (10) 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 (3) 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 E 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 (24) hours, the dealer may restrict or refuse the payment of refund values during the first and last hour the dealer is open for business.

E. 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.

F. 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 (72) containers per visit, per redeemer per day, provided that:

1. 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 E of this section, open to public view, identifying the location and hours of operation of the affiliated redemption center or mobile redemption center; and

2. 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 (240) containers, per redeemer, per day, and posts a conspicuous permanent sign meeting the size and color specifications set forth in subdivision E of this section, open to public view, identifying those hours. The dealer may not change the hours of redemption without first posting a thirty (30) day notice; and

3. 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.

G. 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 3 of this local law. A deposit initiator shall accept and redeem all such empty beverage containers from a dealer or redemption center without limitation on quantity.

H. 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.

I. 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.

J. Notwithstanding the provisions of subdivision 2 of section 27-2009 of the NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW, 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.

Section 5. Penalties.

A. Any person who violates any provision of this law shall be liable for a civil penalty of five hundred dollars ($500), with an additional penalty of five hundred dollars ($500) for each day during which the violation continues. Any alleged violations of this law shall be subject to an administrative hearing.

B. Any distributor or deposit initiator who violates any provision of this title shall be liable for a civil penalty of not more than one thousand dollars ($1,000.00), and an additional civil penalty of not more than one thousand dollars ($1,000.00) for each day during which such violation continues. Any civil penalty may be assessed following an administrative hearing.

Section 6. Rules and Regulations.

The Commissioner is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this law.

Section 7. Administrative Hearing.

A. No fine shall be imposed until after a hearing has been held before the Commissioner, or his or her designee, upon at least ten (10) business days notice to the person charged with the violation.

B. Notice of the hearing shall be served upon the person charged with the violation, either personally or by certified mail, and shall contain a concise statement of the facts constituting the alleged violation or violations, as well as setting forth the date, time and place the hearing will be held.

C. The person against whom the charges are pending has the right to be heard in his or her defense and to be represented by counsel or have counsel appear on his or her behalf, and such person or the attorney for such person shall have the right to call witnesses and produce evidence on behalf of such person.

D. For the purpose of this chapter, the Commissioner, or his or her designee, may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents pertinent to the subject of the investigation.

E. A record of the hearing shall be taken and preserved and the Commissioner or his or her designee shall make a written determination of his or her findings.

Section 8. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 11. Effective Date.

This law shall take effect on the ninetieth (90th) day immediately subsequent to filing in the Office of the Secretary of State.

DATED:

APPROVED BY:

_____
County Executive of Suffolk County

Date: