

McKinney's ECL § 27-1003

Environmental Conservation Law ([Refs & Annos](#))

Chapter 43-B. Of the Consolidated Laws ([Refs & Annos](#))

☞ [Article 27](#). Collection, Treatment and Disposal of Refuse and Other Solid Waste ([Refs & Annos](#))

☞ [Title 10](#). Litter and Solid Waste Control ([Refs & Annos](#))

➡ **§ 27-1003. Definitions**

Whenever used in this title:

1. “Beverage” means 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.

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 3.78 liters 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.

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.

3. “Commissioner” means the commissioner of environmental conservation.

4. “Dealer” means every person, firm or corporation who engages in the sale of beverages in beverage containers to a consumer for off premises consumption in this state.

5. “Department” means the department of environmental conservation.

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 engages in the sale or offer for sale of beverages in beverage containers to a dealer.

7. "Place of business" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

8. "Redeemer" means every 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 subdivision four of this section.

9. "Redemption center" means 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 under the provisions of [section 27-1013](#) of this title.

10. "Use or consumption" means 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.

11. "Ship" or "ships" means any ocean going vessel used to carry passengers or freight in interstate or foreign commerce.

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

McKinney's ECL § 27-1009

Environmental Conservation Law ([Refs & Annos](#))

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▣ [Article 27](#). Collection, Treatment and Disposal of Refuse and Other Solid Waste ([Refs & Annos](#))

▣ [Title 10](#). Litter and Solid Waste Control ([Refs & Annos](#))

➡ **§ 27-1009. Refusal of acceptance**

1. A dealer or operator of a redemption center may refuse to accept from a redeemer, and a 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.

§ 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.

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12. "Reverse vending machine" means an automated device that uses a laser scanner, microprocessor, or other technology to accurately recog-

3 nize the universal product code (UPC) on containers to determine if the  
4 container is redeemable and accumulates information regarding containers  
5 redeemed, including the number of such containers redeemed, thereby  
6 enabling the reverse vending machine to accept containers from redeemers  
7 and to issue a scrip or receipt for their refund value.

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

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

16 § 27-1005. Refund value.

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

22 § 27-1007. Mandatory acceptance.

23 Except as provided in section 27-1009 of this title:

24 1. (a) A dealer shall accept at his or her place of business from a  
25 redeemer any empty beverage containers of the design, shape, size,  
26 color, composition and brand sold or offered for sale by the dealer, and  
27 shall pay to the redeemer the refund value of each such beverage  
28 container as established in section 27-1005 of this title. Redemptions  
29 of refund value must be in legal tender, or a scrip or receipt from a  
30 reverse vending machine, provided that the scrip or receipt can be  
31 exchanged for legal tender for a period of not less than sixty days  
32 without requiring the purchase of other goods. The use or presence of a  
33 reverse vending machine shall not relieve a dealer of any obligations  
34 imposed pursuant to this section. If a dealer utilizes a reverse vend-  
35 ing machine to redeem containers, the dealer shall provide redemption of  
36 beverage containers when the reverse vending machine is full, broken,  
37 under repair or does not accept a type of beverage container sold or  
38 offered for sale by such dealer and may not limit the hours or days of  
39 redemption except as provided by subdivision three of this section.

40 (b) Beginning March first, two thousand ten, a dealer whose place of  
41 business is part of a chain engaged in the same general field of busi-  
42 ness which operates ten or more units in this state under common owner-  
43 ship and whose business exceeds: (i) forty thousand square feet but is  
44 less than sixty thousand square feet shall install and maintain at least  
45 three reverse vending machines at the dealer's place of business; (ii)  
46 sixty thousand square feet but is less than eighty-five thousand square  
47 feet shall install and maintain at least four reverse vending machines  
48 at the dealer's place of business; or (iii) eighty-five thousand square  
49 feet shall install and maintain at least eight reverse vending machines  
50 at the dealer's place of business; provided, however, that the require-  
51 ments of this paragraph to install and maintain reverse vending machines  
52 shall not apply to a dealer that sells only refrigerated beverage  
53 containers of twenty ounces or less where each beverage container is  
54 sold as an individual container that is not connected to or packaged  
55 with any other beverage container.

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1 (c) A dealer to which paragraph (b) of this subdivision does not apply  
2 and whose place of business is at least forty thousand square feet which

3 does not utilize reverse vending machines to process empty beverage  
4 containers for redemption shall: (i) establish and maintain a dedicated  
5 area within such business to accept beverage containers for redemption;  
6 (ii) adequately staff such area to facilitate efficient acceptance and  
7 processing of such containers during business hours; and (iii) post one  
8 or more conspicuous signs conforming to the size and color requirements  
9 described in subdivision two of this section at each public entrance to  
10 the business which describes where in the business the redemption area  
11 is located. The commissioner may establish in rules and regulations  
12 additional standards for the efficient processing of beverage containers  
13 by such dealers.

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

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

20 "NEW YORK BOTTLE BILL OF RIGHTS

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

23 YOU HAVE CERTAIN RIGHTS UNDER THE NEW YORK STATE RETURNABLE CONTAINER  
24 ACT:

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

29 THE RIGHT to get your deposit refund in cash, without proof of  
30 purchase.

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

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

37 The New York state returnable container act can be enforced by the New  
38 York state department of environmental conservation, the New York state  
39 department of agriculture and markets, the New York state department of  
40 taxation and finance, the New York state attorney general and/or by your  
41 local government."

42 Such sign must be no less than eight inches by ten inches in size and  
43 have lettering a minimum of one quarter inch high, and of a color which  
44 contrasts with the background. The department shall maintain a toll  
45 free telephone number for a "bottle bill complaint line" that shall be  
46 available from 9:00 a.m. to 5:00 p.m. each business day to receive  
47 reports of violations of this title. The telephone number shall be list-  
48 ed on any sign required by this section.

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

53 (a) The dealer has a written agreement with a redemption center, be it  
54 either at a fixed physical location within the same county and within

1 one-half mile of the dealer's place of business, or a mobile redemption

2 center, operated by a redemption center, that is located within one-  
3 quarter mile of the dealer's place of business. The redemption center  
4 must have a written agreement with the dealer to accept containers on  
5 behalf of the dealer; and the redemption center's hours of operation  
6 must cover at least 9:00 a.m. through 7:00 p.m. daily or in the case of  
7 a mobile redemption center, the hours of operation must cover at least  
8 four consecutive hours between 8:00 a.m. and 8:00 p.m. daily. The dealer  
9 must post a conspicuous, permanent sign, meeting the size and color  
10 specifications set forth in subdivision two of this section, open to  
11 public view, identifying the location and hours of operation of the  
12 affiliated redemption center or mobile redemption center; and

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

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

23 4. A deposit initiator shall accept from a dealer or operator of a  
24 redemption center any empty beverage container of the design, shape,  
25 size, color, composition and brand sold or offered for sale by the  
26 deposit initiator, and shall pay the dealer or operator of a redemption  
27 center the refund value of each such beverage container as established  
28 by section 27-1005 of this title. A deposit initiator shall accept and  
29 redeem all such empty beverage containers from a dealer or redemption  
30 center without limitation on quantity.

31 5. A deposit initiator's or distributor's failure to pick up empty  
32 beverage containers, including containers processed in a reverse vending  
33 machine, from a redemption center, dealer or the operator of a reverse  
34 vending machine, shall be a violation of this title.

35 6. In addition to the refund value of a beverage container as estab-  
36 lished by section 27-1005 of this title, a deposit initiator shall pay  
37 to any dealer or operator of a redemption center a handling fee of three  
38 and one-half cents for each beverage container accepted by the deposit  
39 initiator from such dealer or operator of a redemption center. Payment  
40 of the handling fee shall be as compensation for collecting, sorting and  
41 packaging of empty beverage containers for transport back to the deposit  
42 initiator or its designee. Payment of the handling fee may not be condi-  
43 tioned on the purchase of any goods or services, nor may such payment be  
44 made out of the refund value account established pursuant to section  
45 27-1012 of this title. A distributor who does not initiate deposits on a  
46 type of beverage container is considered a dealer only for the purpose  
47 of receiving a handling fee from a deposit initiator.

48 7. A deposit initiator on a brand shall accept from a distributor who  
49 does not initiate deposits on that brand any empty beverage containers  
50 of that brand accepted by the distributor from a dealer or operator of a  
51 redemption center and shall reimburse the distributor the refund value  
52 of each such beverage container, as established by section 27-1005 of  
53 this title. In addition, the deposit initiator shall reimburse such  
54 distributor for each such beverage container the handling fee estab-  
55 lished under subdivision six of this section. Without limiting the  
56 rights of the department or any person, firm or corporation under this



1 subdivision or any other provision of this section, a distributor shall  
2 have a civil right of action to enforce this subdivision, including,  
3 upon three days notice, the right to apply for temporary and preliminary  
4 injunctive relief against continuing violations, and until arrangements  
5 for collection and return of empty containers or reimbursement of such  
6 distributor for such deposits and handling fees are made.

7 8. It shall be the responsibility of the deposit initiator or  
8 distributor to provide to a dealer or redemption center a sufficient  
9 number of bags, cartons, or other suitable containers, at no cost, for  
10 the packaging, handling and pickup of empty beverage containers that are  
11 not redeemed through a reverse vending machine. The bags, cartons, or  
12 containers must be provided by the deposit initiator or distributor on a  
13 schedule that allows the dealer or redemption center sufficient time to  
14 sort the empty beverage containers prior to pick up by the deposit  
15 initiator or distributor. In addition:

16 (a) When picking up empty beverage containers, a deposit initiator or  
17 distributor shall not require a dealer or redemption center to load  
18 their own bags, cartons or containers onto or into the deposit initi-  
19 ator's or distributor's vehicle or vehicles or provide the staff or  
20 equipment needed to do so.

21 (b) A deposit initiator or distributor shall not require empty  
22 containers to be counted at a location other than the redemption center  
23 or dealer's place of business. The dealer or redemption center shall  
24 have the right to be present at the count.

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

29 9. No person shall return or assist another to return to a dealer or  
30 redemption center an empty beverage container for its refund value if  
31 such container had previously been accepted for redemption by a dealer,  
32 redemption center, or deposit initiator who initiates deposits on bever-  
33 age containers of the same brand.

34 10. A redeemer, dealer, distributor or redemption center shall not  
35 knowingly redeem an empty beverage container on which a deposit was  
36 never paid in New York state.

37 11. Notwithstanding the provisions of subdivision two of section  
38 27-1009 of this title, a deposit initiator or distributor shall accept  
39 and redeem beverage containers as provided in this title, if the dealer  
40 or operator of a redemption center shall have accepted and paid the  
41 refund value of such beverage containers.

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

44 § 27-1009. Refusal of acceptance.

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

51 2. A dealer or operator of a redemption center may also refuse to  
52 accept any broken bottle, corroded or dismembered can, or any beverage  
53 container which contains a significant amount of foreign material, as  
54 determined in rules and regulations to be promulgated by the commission-  
55 er. [~~Notwithstanding the provisions of this subdivision, a distributor~~  
56 ~~shall accept beverage containers as provided in subdivision two of~~



1 ~~section 27-1007 of this title, if the dealer shall have accepted and~~  
2 ~~paid the refund value of such beverage containers.]~~

3 § 6. Subdivision 2 of section 27-1011 of the environmental conserva-  
4 tion law is REPEALED.

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

9 ~~[3.]~~ 2. No deposit initiator, distributor or dealer shall sell or  
10 offer for sale, at wholesale or retail in this state, any metal beverage  
11 container designed and constructed with a part of the container which is  
12 detachable in opening the container unless such detachable part will  
13 decompose by photodegradation or biodegradation.

14 ~~[4.]~~ 3. No deposit initiator, distributor or dealer shall sell or  
15 offer for sale in this state beverage containers connected to each other  
16 by a separate holding device constructed of plastic which does not  
17 decompose by photodegradation or biodegradation.

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

20 § 27-1012. Deposit and disposition of refund values; registration;  
21 reports.

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

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

41 3. Each deposit initiator shall file quarterly reports with the  
42 commissioner of taxation and finance on a form and in the manner  
43 prescribed by such commissioner. The commissioner of taxation and  
44 finance may require such reports to be filed electronically. The quar-  
45 terly reports required by this subdivision shall be filed for the quar-  
46 terly periods ending on the last day of May, August, November and Febru-  
47 ary of each year, and each such report shall be filed within twenty days  
48 after the end of the quarterly period covered thereby. Each such report  
49 shall include all information such commissioner shall determine appro-  
50 priate including but not limited to the following information:

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

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

1 c. all withdrawals from the refund value account during such quarter,  
2 including all reimbursements paid pursuant to subdivision two of this  
3 section, all service charges on the account, and all payments made  
4 pursuant to subdivision four of this section; and

5 d. the balance in the refund value account at the close of such quar-  
6 ter.

7 4. a. Quarterly payments. An amount equal to eighty percent of the  
8 balance outstanding in the refund value account at the close of each  
9 quarter shall be paid to the commissioner of taxation and finance at the  
10 time the report provided for in subdivision three of this section is  
11 required to be filed. The commissioner of taxation and finance may  
12 require that the payments be made electronically. The remaining twenty  
13 percent of the balance outstanding at the close of each quarter shall be  
14 the monies of the deposit initiator and may be withdrawn from such  
15 account by the deposit initiator. If the provisions of this section  
16 with respect to such account have not been fully complied with, each  
17 deposit initiator shall pay to such commissioner at such time, in lieu  
18 of the amount described in the preceding sentence, an amount equal to  
19 the balance which would have been outstanding on such date had such  
20 provisions been fully complied with. The commissioner of taxation and  
21 finance may require that the payments be made electronically.

22 b. Refund value account shortfall. In the event a deposit initiator  
23 pays out more in refund values than it collects in deposits of refund  
24 values during the course of a quarterly period as described in subdivi-  
25 sion three of this section, the deposit initiator may apply to the  
26 commissioner of taxation and finance for a refund of the amount of such  
27 excess payment of refund values from sources other than the refund value  
28 account, in the manner as provided by the commissioner of taxation and  
29 finance. A deposit initiator must apply for a refund no later than  
30 twelve months after the due date for filing the quarterly report for the  
31 quarterly period for which the refund claim is made. No interest shall  
32 be payable for any refund paid pursuant to this paragraph.

33 c. Final report. A deposit initiator who ceases to do business in this  
34 state as a deposit initiator shall file a final report and remit payment  
35 of eighty percent of all amounts remaining in the refund value account  
36 as of the close of the deposit initiator's last day of business. The  
37 commissioner of taxation and finance may require that the payments be  
38 made electronically. The deposit initiator shall indicate on the report  
39 that it is a "final report". The final report is due to be filed with  
40 payment twenty days after the close of the quarterly period in which the  
41 deposit initiator ceases to do business. In the event the deposit initi-  
42 ator pays out more in refund values than it collects in such final quar-  
43 terly period, the deposit initiator may apply to the commissioner of  
44 taxation and finance for a refund of the amount of such excess payment  
45 of refund values from sources other than the refund value account, in  
46 the manner as provided by the commissioner of taxation and finance.

47 5. All monies collected or received by the department of taxation and  
48 finance pursuant to this title shall be deposited to the credit of the  
49 comptroller with such responsible banks, banking houses or trust compa-  
50 nies as may be designated by the comptroller. Such deposits shall be  
51 kept separate and apart from all other moneys in the possession of the  
52 comptroller. The comptroller shall require adequate security from all  
53 such depositories. Of the total revenue collected, the comptroller shall  
54 retain the amount determined by the commissioner of taxation and finance  
55 to be necessary for refunds out of which the comptroller must pay any  
56 refunds to which a deposit initiator may be entitled. After reserving

1 the amount to pay refunds, the comptroller must, by the tenth day of  
2 each month, pay into the state treasury to the credit of the general  
3 fund the revenue deposited under this subdivision during the preceding  
4 calendar month and remaining to the comptroller's credit on the last day  
5 of that preceding month.

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

14 7. a. Any person who is a deposit initiator under this title before  
15 April first, two thousand nine, must apply by June first, two thousand  
16 nine to the commissioner of taxation and finance for registration as a  
17 deposit initiator. Any person who becomes a deposit initiator on or  
18 after April first, two thousand nine shall apply for registration prior  
19 to collecting any deposits as such a deposit initiator. Such application  
20 shall be in a form prescribed by the commissioner of taxation and  
21 finance and shall require such information deemed to be necessary for  
22 proper administration of this title. The commissioner of taxation and  
23 finance may require that applications for registration must be submitted  
24 electronically. The commissioner of taxation and finance shall elec-  
25 tronically issue a deposit initiator registration certificate in a form  
26 prescribed by the commissioner of taxation and finance within fifteen  
27 days of receipt of such application or may take an additional ten days  
28 if the commissioner of taxation and finance deems it necessary to  
29 consult with the commissioner before issuing such registration certif-  
30 icate. A registration certificate issued pursuant to this subdivision  
31 may be issued for a specified term of not less than three years and  
32 shall be subject to renewal in accordance with procedures specified by  
33 the commissioner of taxation and finance. The commissioner of taxation  
34 and finance shall furnish to the commissioner a complete list of regis-  
35 tered deposit initiators and shall continually update such list as  
36 warranted. The commissioner shall share any information with the commis-  
37 sioner of taxation and finance that is necessary for the administration  
38 of this subdivision.

39 b. The commissioner of taxation and finance shall have the authority  
40 to revoke or refuse to renew any registration issued pursuant to this  
41 subdivision when he or she has determined or has been informed by the  
42 commissioner that any of the provisions of this title or rules and regu-  
43 lations promulgated thereunder have been violated. Such violations shall  
44 include, but not be limited to, the failure to file quarterly reports,  
45 the failure to make payments pursuant to this subdivision, the providing  
46 of false or fraudulent information to either the department of taxation  
47 and finance or the department, or knowingly aiding or abetting another  
48 person in violating any of the provisions of this title. A notice of  
49 proposed revocation or non-renewal shall be given to the deposit initi-  
50 ator in the manner prescribed for a notice of deficiency of tax and all  
51 the provisions applicable to a notice of deficiency under article twenty-  
52 seven of the tax law shall apply to a notice issued pursuant to this  
53 paragraph, insofar as such provisions can be made applicable to a notice  
54 authorized by this paragraph, with such modifications as may be neces-  
55 sary in order to adapt the language of such provisions to the notice

1 er of taxation and finance pursuant to this paragraph shall contain a  
2 statement advising the deposit initiator that the revocation or non-re-  
3 newal of registration may be challenged through a hearing process and  
4 the petition for such a challenge must be filed with the commissioner of  
5 taxation and finance within ninety days after such notice is issued. A  
6 deposit initiator whose registration has been so revoked or not renewed  
7 shall cease to do business as a deposit initiator in this state, until  
8 this title has been complied with and a new registration has been  
9 issued. Any deposit initiator whose registration has been so revoked may  
10 not apply for registration for two years from the date such revocation  
11 takes effect.

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

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

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

44 10. The provisions of article twenty-seven of the tax law shall apply  
45 to the provisions of this title for which the commissioner of taxation  
46 and finance is responsible, including collection of refund value  
47 amounts, in the same manner and with the same force and effect as if the  
48 language of such article had been incorporated in full into this section  
49 except to the extent that any provision of such article is either incon-  
50 sistent with a provision of this section or is not relevant to this  
51 section as determined by the commissioner of taxation and finance.  
52 Furthermore, for purposes of applying the provisions of article twenty-  
53 seven of the tax law, where the terms "tax" and "taxes" appear in such  
54 article, such terms shall be construed to mean "refund value" or

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

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

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

23 § 27-1013. Redemption centers.

24 The commissioner is hereby empowered to promulgate rules and regu-  
25 lations governing (1) the circumstances in which dealers and distribu-  
26 tors, individually or collectively, are required to accept the return of  
27 empty beverage containers, and make payment therefor; (2) the sorting of  
28 the containers which a deposit initiator or distributor may require of  
29 dealers and redemption centers; (3) the ~~[pick-up]~~ collection of returned  
30 beverage containers by deposit initiators or distributors, including the  
31 party to whom such expense is to be charged, the frequency of such pick  
32 ups and the payment for refunds and handling fees thereon; (4) the right  
33 of dealers to restrict or limit the number of containers redeemed, the  
34 rules for redemption at the dealers' place of business, and the redemp-  
35 tion of containers from a beverage for which sales have been discontin-  
36 ued, and to issue permits to persons, firms or corporations which estab-  
37 lish redemption centers, subject to applicable provisions of local and  
38 state laws, at which redeemers and dealers may return empty beverage  
39 containers and receive payment of the refund value of such beverage  
40 containers. No dealer or distributor, as defined in section 27-1003 of  
41 this title, shall be required to obtain a permit to operate a redemption  
42 center at the same location as the dealer's or distributor's place of  
43 business. Operators of such redemption centers shall receive payment of  
44 the refund value of each beverage container from the appropriate  
45 ~~[manufacturer]~~ deposit initiator or distributor as provided under  
46 ~~[sections]~~ section 27-1007 ~~[and 27-1009]~~ of this title.

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

49 § 27-1014. ~~[Limitation on]~~ Authority to promulgate rules and regu-  
50 lations.

51 In addition to the authority of the commissioner, under sections  
52 27-1009 and 27-1013 of this title, the commissioner shall ~~[only have the~~  
53 ~~power to promulgate rules and regulations governing the initiation of~~  
54 ~~deposits, sale of beverages in containers through vending machines and~~



55 ~~for on-premises consumption, record keeping, refunding for refillable~~  
56 ~~beverage containers, embossing, imprinting or labeling of refund values~~  
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1 ~~and enforcement of the provisions of this section and sections 27-1009~~  
2 ~~and 27-1013 of this title]~~ have the power to promulgate rules and regu-  
3 lations necessary and appropriate ~~[to]~~ for the ~~[implementation]~~ adminis-  
4 tration of this title.

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

9 § 27-1015. Violations.

10 1. A violation of this title, except as otherwise provided in this  
11 section and section 27-1012 of this title, shall be a public nuisance.  
12 In addition, except as otherwise provided in this section and section  
13 27-1012 of this title, any person who shall violate any provision of  
14 this title shall be liable to the state of New York for a civil penalty  
15 of not more than five hundred dollars, and an additional civil penalty  
16 of not more than five hundred dollars for each day during which each  
17 such violation continues. Any civil penalty may be assessed following a  
18 hearing or opportunity to be heard.

19 2. Any distributor or deposit initiator who violates any provision of  
20 this title, except as provided in section 27-1012 of this title, shall  
21 be liable to the state of New York for a civil penalty of not more than  
22 one thousand dollars, and an additional civil penalty of not more than  
23 one thousand dollars for each day during which each such violation  
24 continues. Any civil penalty may be assessed following a hearing or  
25 opportunity to be heard.

26 3. It shall be unlawful for a distributor or deposit initiator, acting  
27 alone or aided by another, to return any empty beverage ~~[containers]~~  
28 container to a dealer or redemption center for ~~[their]~~ its refund value  
29 if the distributor or deposit initiator had previously accepted such  
30 beverage ~~[containers]~~ container from any dealer or operator of a redemp-  
31 tion center. A violation of this subdivision shall be a misdemeanor  
32 punishable by a fine of not less than five hundred dollars nor more than  
33 one thousand dollars and an amount equal to two times the amount of  
34 money received as a result of such violation.

35 4. Any person who willfully tenders to a dealer, distributor, redemp-  
36 tion center or deposit initiator more than forty-eight empty beverage  
37 containers for which such person knows or should reasonably know that no  
38 deposit was paid in New York state may be assessed by the department a  
39 civil penalty of up to one hundred dollars for each container or up to  
40 twenty-five thousand dollars for each such tender of containers. At each  
41 location where a person tenders containers for redemption, dealers and  
42 redemption centers must conspicuously display a sign in letters that are  
43 at least one inch in height with the following information: "WARNING:  
44 Persons tendering for redemption containers on which a deposit was never  
45 paid in this state may be subject to a civil penalty of up to one  
46 hundred dollars per container or up to twenty-five thousand dollars for  
47 each such tender of containers." Any civil penalty may be assessed  
48 following a hearing or opportunity to be heard.

49 5. The department, the department of agriculture and markets, the  
50 department of taxation and finance and the attorney general are hereby  
51 authorized to enforce the provisions of this title. In addition, the  
52 provisions of section 27-1005 of this title and subdivisions one, two,  
53 three, four, five, ten and eleven of section 27-1007 of this title may



54 be enforced by a county, city, town or village and the local legislative  
55 body thereof may adopt local laws, ordinances or regulations consistent  
56 with this title providing for the enforcement of such provisions.

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

3 § 27-1016. Public education.

4 The commissioner shall establish a public education program to dissem-  
5 inate information regarding implementation of this title. Such informa-  
6 tion shall include, but not be limited to, publication of the New York  
7 Bottle Bill of Rights as specified in subdivision two of section 27-1007  
8 of this title; publication of information specifying the procedures  
9 necessary to establish a redemption center as provided in section  
10 27-1013 of this title, including information regarding financial assist-  
11 ance available for the establishment of redemption centers as provided  
12 in section 27-1018 of this title; publication of information delineating  
13 the relevant rights and responsibilities of deposit initiators, distrib-  
14 utors, dealers, redemption centers and redeemers under the provisions of  
15 this title; publication of information regarding the requirement that  
16 deposit initiators register with the department of taxation and finance;  
17 and publication of information on the general benefits of recycling.

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

20 § 27-1018. Beverage container assistance program.

21 Notwithstanding any other provision of law to the contrary, within the  
22 limits of appropriations therefor, the commissioner shall make state  
23 assistance payments to municipalities, businesses and not-for-profit  
24 organizations located in the state for the cost of reverse vending  
25 machines located or to be located in the state. Such state assistance  
26 payments shall not exceed fifty percent of the costs of equipment,  
27 and/or the acquisition and/or rehabilitation of real property or struc-  
28 tures located or to be located in the state related to the collecting,  
29 sorting, and packaging of empty beverage containers subject to the  
30 provisions of this title. Such payments may include costs related to the  
31 establishment of redemption centers, including mobile redemption  
32 centers. For the purposes of this section, municipalities and not-for-  
33 profit organizations shall have the meaning as defined in section  
34 54-0101 of this chapter and businesses shall mean a dealer, distributor  
35 or redemption center as defined in this title that employs less than  
36 fifty employees.

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

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

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

47 (ii) in-process recycling,

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

49 (iv) increased energy efficiency,

50 (v) conservation of the use of water or other natural resources  
51 improvements in process economics,

52 (vi) elimination of the purchase of materials, the production of which

53 for the use of said firm would result in more waste or resource consump-  
54 tion, or

55 (vii) other practices or technologies that reduce the use of hazardous  
56 materials or otherwise improve air or water quality.

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1 The term "eligible project" shall also include actions taken by or on  
2 behalf of a business to support costs of equipment, and/or the acquisi-  
3 tion and/or rehabilitation of real property or structures located or to  
4 be located in the state related to the collecting, sorting, and packag-  
5 ing of empty beverage containers as such terms are defined in title ten  
6 of article twenty-seven of the environmental conservation law. Such  
7 actions shall be eligible for state assistance payments under the bever-  
8 age container assistance program pursuant to section 27-1018 of the  
9 environmental conservation law.

10 The term "eligible project" shall not include end of pipe pollution  
11 control technologies or practices where such controls or practices are  
12 designed primarily to achieve compliance with the environmental conser-  
13 vation law or regulations promulgated pursuant thereto, or energy recov-  
14 ery or incineration, or out-of-process recycling or reuse of hazardous  
15 waste or hazardous substances.

16 § 15. Subdivisions 1 and 4 of section 54-0701 of the environmental  
17 conservation law, subdivision 1 as amended by chapter 146 of the laws of  
18 2000, subdivision 4 as added by chapter 610 of the laws of 1993, are  
19 amended to read as follows:

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

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

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

44 1. sections two and three of this act shall take effect April 1, 2009;

45 2. sections four, five, six, seven, nine, and eleven of this act shall  
46 take effect June 1, 2009; and

47 3. section eight of this act shall take effect on April 1, 2009 except  
48 that the requirements to make deposits, file reports and make with-  
49 drawals and payments under section 27-1012 of the environmental conser-  
50 vation law, as added by section eight of this act, with respect to  
51 containers defined as beverage containers prior to April 1, 2009, shall

52 first apply to the period beginning on April 15, 2009 and ending May 31,  
53 2009, and with respect to all other beverage containers shall first  
54 apply to the period beginning on June 1, 2009 and ending August 31,  
55 2009, provided that such other beverage containers will not be required  
56 to have a refund value as required under section 27-1005 of the environ-  
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1 mental conservation law, as added by section four of this act until June  
2 1, 2009. However, no refunds shall be paid to a deposit initiator  
3 pursuant to paragraph b of subdivision 4 of section 27-1012 of the envi-  
4 ronmental conservation law, as added by section eight of this act prior  
5 to March 1, 2010.

6 PART TT

7 Section 1. Section 3.09 of the parks, recreation and historic preser-  
8 vation law is amended by adding a new subdivision 19-a to read as  
9 follows:

10 19-a. Prior to offering for sale to the public any merchandise, goods,  
11 commodities or food service at parks, recreation facilities, historic  
12 sites or other facilities under the jurisdiction of the office, make a  
13 written finding that the private sector is unable or unwilling to  
14 provide such merchandise, goods, commodities or food service under  
15 agreement with the office and under such terms and conditions as the  
16 commissioner determines are fair and reasonable to the state and neces-  
17 sary to serve the public interest. Any proceeds realized from the sale  
18 of such merchandise, goods, commodities or food service shall be depos-  
19 ited in the patron services account of the miscellaneous special revenue  
20 fund and shall be used by the office to defray the cost of operating and  
21 maintaining such parks, recreation facilities and historic sites.

22 § 2. This act shall take effect on the one hundred twentieth day after  
23 it shall have become a law.

24 PART UU

25 Section 1. The public authorities law is amended by adding a new  
26 section 2975-a to read as follows:

27 § 2975-a. Recovery of state governmental costs from industrial devel-  
28 opment agencies. 1. Notwithstanding any other provision of law to the  
29 contrary, industrial development agencies or authorities created pursu-  
30 ant to title one of article eighteen-A of the general municipal law or  
31 any other provision of law shall reimburse to New York state an alloca-  
32 ble share of state governmental costs attributable to the provision of  
33 services to industrial development agencies, as determined herein. The  
34 payment of such costs by industrial development agencies or authorities  
35 is a valid and proper purpose for which available agency or authority  
36 funds may be applied.

37 2. On November first of each year, the director of the budget shall  
38 determine the amount owed under this section by each industrial develop-  
39 ment agency or authority. The aggregate amount assessed under this  
40 section in any given state fiscal year may not exceed five million  
41 dollars.

42 3. The state treasurer shall impose and collect such assessments,  
43 which shall be paid no later than March thirty-first following the impo-  
44 sition of the assessments, and pay the same into the state treasury to  
45 the credit of the general fund.

46 4. On or before June first, two thousand nine, and annually on or

47 before June first, the director of the budget shall report to the  
48 respective chairpersons of the assembly ways and means committee and  
49 senate finance committee the amount of cost recovery obtained pursuant  
50 to this title for the state fiscal year ending on the preceding March  
51 thirty-first.

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1 § 2. This act shall take effect immediately and shall be deemed to  
2 have been in full force and effect on and after April 1, 2009.

3

PART VV

4 Section 1. The tax law is amended by adding a new section 30 to read  
5 as follows:

6 § 30. Bad check or failed electronic funds withdrawal fee. If, in  
7 payment of any amount due under a tax, fee, special assessment or other  
8 imposition administered by the commissioner, a person tenders a check or  
9 money order to the department, or the department, with the consent of a  
10 person, originates an electronic funds withdrawal against the designated  
11 bank account, and the check, money order or electronic funds withdrawal,  
12 as applicable, is returned without payment, the person must pay a fee to  
13 the commissioner of fifty dollars; provided, however, that in the case  
14 of an electronic funds withdrawal, the fee will not be paid if the  
15 reason for return of the payment is attributable to error of the depart-  
16 ment or its originating depository financial institution. The fee must  
17 be paid upon notice and demand, and will be assessed, collected and paid  
18 in the same manner as the tax, fee, special assessment or other imposi-  
19 tion to which the payment relates. All fees collected by the commission-  
20 er pursuant to this subdivision must be deposited monthly, to the credit  
21 of the general fund of the state. The commissioner will maintain a  
22 system of accounts showing the amount of money collected from the fee  
23 imposed by this section.

24 § 2. The tax law is amended by adding a new section 32 to read as  
25 follows:

26 § 32. Registration of tax return preparers. (a) For purposes of this  
27 section, the following terms have the specified meanings:

28 (1) "Attorney" means an attorney admitted to practice law in New York  
29 state or one or more of the other states or jurisdictions of the United  
30 States.

31 (2) "Certified public accountant" means an accountant licensed pursu-  
32 ant to section seventy-four hundred four of the education law or a simi-  
33 lar law of one or more of the other states or jurisdictions of the  
34 United States.

35 (3) "Commercial tax return preparer" means a tax return preparer who:

36 (A) prepared ten or more returns for compensation in the preceding  
37 calendar year and will prepare at least one return for compensation  
38 during the current calendar year; or (B) prepared fewer than ten returns  
39 in the preceding calendar year but will prepare ten or more returns for  
40 the current calendar year.

41 (4) "Commercial tax return preparation business" means an entity that  
42 employs individuals who prepare tax returns and that meets the thresh-  
43 olds described in paragraph three of this subdivision.

44 (5) "Creditor" means any person who makes a refund anticipation loan  
45 or who takes an assignment of a refund anticipation loan.

46 (6) "Facilitator" means a person who individually or in conjunction or  
47 cooperation with another person: (a) solicits the execution of, proc-  
48 esses, receives, or accepts an application or agreement for a refund

49 anticipation loan or refund anticipation check, (b) serves or collects  
50 upon a refund anticipation loan or refund anticipation check; or (c) in  
51 any other manner facilitates the making of a refund anticipation loan or  
52 refund anticipation check. This term excludes any employees of a facili-  
53 tator who provide only clerical or other comparable support services to  
54 such facilitator.

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1 (7) "Electronic" means computer technology.

2 (8) "Enrolled agent" means an agent enrolled to practice before the  
3 internal revenue service pursuant to section 10.4 of subpart A of part  
4 ten of title thirty-one of the code of federal regulations.

5 (9) "Public accountant" means an accountant licensed pursuant to  
6 section seventy-four hundred five of the education law or a similar law  
7 of one or more of the other states or jurisdictions of the United  
8 States.

9 (10) "Refund anticipation check" means a check, stored value card, or  
10 other payment mechanism which: (a) represents the proceeds of a tax  
11 refund; (b) was issued by a depository institution or other person that  
12 received a direct deposit of the tax refund or tax credits; and (c) a  
13 fee or other consideration is paid for such payment mechanism.

14 (11) "Refund anticipation loan" means a loan that is secured by or  
15 that the creditor arranges to be repaid directly or indirectly from the  
16 proceeds of an income tax refund or tax credits. A refund anticipation  
17 loan also includes any sale, assignment, or purchase of tax refund at a  
18 discount or for a fee, whether or not the amount is required to be  
19 repaid to the buyer or assignee if the internal revenue service or the  
20 department denies or reduces the amount of the tax refund.

21 (12) "Return" means a return or report relating to a tax administered  
22 by the commissioner.

23 (13) "Tax" means any tax, fee, special assessment or other imposition  
24 administered by the commissioner.

25 (14) "Tax return preparer" means an individual who prepares a substan-  
26 tial portion of any return for compensation. Enrolled agents or employ-  
27 ees of a tax return preparer or a commercial tax return preparation  
28 business who prepare returns for clients of that preparer or preparation  
29 business, as applicable, and partners who prepare returns for clients of  
30 a partnership engaged in a commercial tax return preparation business,  
31 are all "tax return preparers" for purposes of this section. Excluded  
32 from the definition of "tax return preparer" are attorneys, public  
33 accountants, and certified public accountants, who are registered with  
34 or licensed by the state, and employees preparing returns under the  
35 supervision of such attorneys, public accountants, and certified public  
36 accountants. Also excluded are volunteer tax preparers, employees of a  
37 business or partners in a partnership whose job responsibilities include  
38 preparation of only the business' or partnership's returns, and employ-  
39 ees of a tax return preparer or a commercial tax return preparation  
40 business who provides only clerical or other comparable services.

41 (b)(1) Each tax return preparer, who will prepare at least one return  
42 in a calendar year, and each facilitator, who will facilitate the making  
43 of a refund anticipation loan or refund anticipation check, must regis-  
44 ter electronically with the department for that calendar year, in  
45 accordance with instructions prescribed by the commissioner.

46 (2)(A) Upon completion of the registration process, each tax return  
47 preparer and facilitator will be issued a tax preparer or facilitator  
48 registration certificate. If an individual acts as both a tax return  
49 preparer and a facilitator, one registration certificate shall indicate



50 both activities.

51 (B) In accordance with instructions prescribed by the commissioner,  
52 each tax return preparer and facilitator will also be assigned a unique  
53 identification number by the department, which must be used by the tax  
54 return preparer and facilitator on each return which the tax return  
55 preparer is required to sign and each refund anticipation loan and  
56 refund anticipation check the facilitator is required to sign.

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1 (C) If a tax return preparer or facilitator is an employee or prospec-  
2 tive employee of a tax return preparer, a commercial tax return prepara-  
3 tion business, or a facilitator, the tax return preparer, commercial tax  
4 return preparation business or facilitator must ensure that the employee  
5 or prospective employee is properly registered with the department and  
6 possesses a valid tax preparer or facilitator registration certificate.  
7 If an individual acts as both a tax return preparer and a facilitator  
8 one registration certificate shall indicate both activities.

9 (3) Each registered tax return preparer and facilitator must electron-  
10 ically re-register with the department annually, in accordance with  
11 instructions prescribed by the commissioner. If, at any time during the  
12 year following registration or re-registration, as applicable, any  
13 information provided by the tax return preparer or facilitator upon  
14 registration or re-registration is no longer correct, the tax return  
15 preparer or facilitator must update his or her information in accordance  
16 with instructions prescribed by the commissioner.

17 (4) Each tax return preparer preparing any return must sign the docu-  
18 ment and include the unique identification number specified in paragraph  
19 two of this subdivision, in accordance with instructions prescribed by  
20 the commissioner.

21 (c)(1) Each commercial tax return preparer must electronically pay an  
22 annual fee of one hundred dollars to the department, in accordance with  
23 instructions prescribed by the commissioner. Registration of a commer-  
24 cial tax return preparer is not complete until payment of the fee is  
25 made.

26 (2) All fees received by the commissioner pursuant to this subdivi-  
27 sion, reduced by those amounts the commissioner determines are necessary  
28 to cover administrative costs to administer the registration program  
29 prescribed by this section and the costs of any reimbursements to  
30 commercial tax return preparers that may be required due to duplicative  
31 fee payments under this subdivision, must be deposited monthly to the  
32 credit of the general fund of the state. The commissioner will maintain  
33 a system of accounts showing the amount of money collected and disbursed  
34 from the fee imposed by this subdivision.

35 (d) The issuance of a tax preparer or facilitator registration certifi-  
36 cate to provide tax preparation services or refund anticipation loan  
37 services is not, and must not be advertised as, an endorsement by the  
38 department of the tax return preparer or the facilitator, or his or her  
39 qualifications or the services rendered by him or her.

40 (e) A tax return preparer who has not registered with the department,  
41 or a commercial tax return preparer who has not paid the required regis-  
42 tration fee, will not be allowed to represent his or her clients before  
43 the division of taxation or the division of tax appeals. This sanction  
44 is in addition to any penalties which may be imposed pursuant to subdivi-  
45 sion (f) of this section.

46 (f) (1) A tax return preparer or facilitator shall not: (A) charge or  
47 impose any fee, charge or other consideration in the making or facili-  
48 tating of a refund anticipation loan or refund anticipation check apart



49 from the fee charged by the creditor or bank that provided the loan or  
50 check;

51 (B) Engage in unfair or deceptive acts or practices in the facilitat-  
52 ing of a refund anticipation check or a refund anticipation loan,  
53 including making any oral statements contradicting any of the informa-  
54 tion required to be disclosed under the Taxpayer Bill of Rights as set  
55 forth in sections three hundred seventy-one through three hundred seven-  
56 ty-three of the general business law;

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1 (C) Directly or indirectly arrange for a third party to charge any  
2 interest, fee or charge related to a refund anticipation loan or refund  
3 anticipation check;

4 (D) Include any of the following provisions in any documents provided  
5 or signed to obtain a refund anticipation loan or refund anticipation  
6 check, including the loan application or agreement: (i) a hold harmless  
7 clause; (ii) a confession of judgment clause; (iii) a waiver of the  
8 right to a jury trial; (iv) any assignment of or order for payment of  
9 wages or other compensation for services; (v) a waiver of any provision  
10 of the Taxpayer Bill of Rights, as set forth in sections three hundred  
11 seventy-one through three hundred seventy-three of the general business  
12 law; or (vi) a waiver of the right to injunctive, declaratory, other  
13 equitable relief, or relief on a classwide basis. Any aforementioned  
14 waivers shall be deemed null, void and of no effect;

15 (E) Take or arrange for a creditor to take a security interest in any  
16 property interest of the taxpayer other than the proceeds of the tax  
17 refund to secure payment of a refund anticipation loan;

18 (F) Directly or indirectly, individually or in conjunction or cooper-  
19 ation with another person, engage in the collection of an outstanding or  
20 delinquent refund anticipation loan for any creditor or assignee;

21 (G) Refer, facilitate, solicit consumers or conduct business on behalf  
22 of, in conjunction with or on the same premises as a third party engaged  
23 in check cashing for a fee;

24 (H) Make a misrepresentation of fact in obtaining or attempting to  
25 obtain a registration; or

26 (I) Engage in any other action prohibited by rules promulgated by the  
27 commissioner.

28 (2) If a tax return preparer violates any one of the provisions  
29 provided for in this subdivision, then the tax return preparer must pay  
30 a penalty of five hundred dollars for each such violation, in addition  
31 to any other penalties provided for in this section.

32 (g) (1) If a tax return preparer or facilitator is required to regis-  
33 ter or re-register with the department pursuant to paragraph one or  
34 three of subdivision (b) of this section, as applicable, and fails to do  
35 so in accordance with the terms of this section, then the tax return  
36 preparer or facilitator must pay a penalty of two hundred fifty dollars.  
37 Provided, however, that if the tax return preparer or facilitator  
38 complies with the registration requirements of this section within nine-  
39 ty calendar days after notification of assessment of this penalty is  
40 sent by the department, then this penalty must be abated. If the tax  
41 return preparer or facilitator continues to fail to register or re-re-  
42 gister after the ninety calendar day period, the tax return preparer or  
43 facilitator must pay an additional penalty of five hundred dollars if  
44 the failure is for not more than one month, with an additional five  
45 hundred dollars for each additional month or fraction thereof during  
46 which the failure continues. Once the ninety calendar days specified in  
47 this paragraph have expired, the penalty can be waived only for good

48 cause shown by the tax return preparer or facilitator.  
49 (2) If a commercial tax return preparer fails to pay the fee as  
50 required in paragraph one of subdivision (c) of this section, for a  
51 calendar year, then the commercial tax return preparer must pay a penal-  
52 ty of fifty dollars for each return the commercial tax return preparer  
53 has filed with the department in that calendar year. Provided however,  
54 that if the commercial tax return preparer complies with the payment  
55 requirements of paragraph one of subdivision (c) of this section, within  
56 ninety calendar days after notification of the assessment of this penal-  
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1 ty is sent by the department, then this penalty must be abated. The  
2 maximum penalty that may be imposed under this paragraph on any commer-  
3 cial tax return preparer during any calendar year must not exceed five  
4 thousand dollars. Once the ninety calendar days specified in this para-  
5 graph have expired, the penalty can be waived only for good cause shown  
6 by the commercial tax return preparer.

7 (3) If a tax return preparer fails to sign his or her name to any  
8 return that requires the tax return preparer's signature, or a facilita-  
9 tor fails to sign his or her name to any refund anticipation loan or  
10 refund anticipation check facilitation documentation, then the tax  
11 return preparer or facilitator must pay a penalty in the amount of two  
12 hundred fifty dollars for each failure to so sign. Provided, however,  
13 that this penalty can be waived only for good cause shown by the tax  
14 return preparer or facilitator.

15 The maximum penalty imposed under this paragraph on any tax return  
16 preparer with respect to returns filed during any calendar year by the  
17 tax return preparer, or on any facilitator with respect to any refund  
18 anticipation loan or refund anticipation check facilitation documenta-  
19 tion completed during any calendar year by the facilitator must not  
20 exceed ten thousand dollars. Provided, however, that if a tax return  
21 preparer or facilitator has been penalized under this paragraph for a  
22 preceding calendar year and again fails to sign his or her name on any  
23 return that requires the tax return preparer's signature or again fails  
24 to sign his or her name on any refund anticipation loan or refund antic-  
25 ipation check facilitation documentation during a subsequent calendar  
26 year, then the penalty under this paragraph for each failure will be  
27 five hundred dollars, and no annual cap will apply.

28 (4) If a tax return preparer or a facilitator fails to include the  
29 unique identification number assigned by the department pursuant to  
30 subparagraph (B) of paragraph two of subdivision (b) of this section on  
31 any return, or any return anticipation loan or return anticipation check  
32 facilitation documentation that requires his or her signature, then the  
33 tax return preparer or facilitator must pay a penalty of one hundred  
34 dollars for each failure to include his or her unique identification  
35 number. Provided, however, that this penalty can be waived only for good  
36 cause shown by the tax return preparer or facilitator. The maximum  
37 penalty imposed under this paragraph on any tax return preparer or faci-  
38 litator with respect to returns filed during any calendar year must not  
39 exceed two thousand five hundred dollars; provided, however, that if a  
40 tax return preparer or facilitator has been penalized under this para-  
41 graph for a preceding calendar year and again fails to include the  
42 unique identification number on one or more returns during a subsequent  
43 calendar year, then the penalty under this paragraph for each failure  
44 will be two hundred fifty dollars, and no annual cap will apply.

45 (5) If a tax return preparer, facilitator or a commercial tax return  
46 preparation business employs an individual to prepare tax returns who is

47 not registered with the department and does not possess a valid tax  
48 preparer or facilitator registration certificate, then the tax return  
49 preparer, facilitator or commercial tax return preparation business, as  
50 applicable, will be subject to a penalty of five hundred dollars per  
51 occurrence. This penalty can be waived only for good cause shown.

52 (6) The penalties provided for by this subdivision must be paid upon  
53 notice and demand and will be assessed, collected and paid in the same  
54 manner as taxes under article twenty-seven of this chapter.

55 (g) The provisions of this section will apply exclusively to the  
56 registration of tax return preparers and facilitators with the depart-

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1 ment, payment of the registration fee if required by commercial tax  
2 return preparers, the signing of returns and use of the unique identifi-  
3 cation numbers assigned by the department upon registration. Other  
4 provisions of this chapter or any other provision of law prescribing  
5 additional requirements applicable to tax return preparers or facilita-  
6 tors will not be affected by the provisions of this section except as  
7 set forth expressly herein, and will remain in full force and effect.

8 § 3. Paragraphs 1 and 2 of subsection (u) of section 685 of the tax  
9 law are REPEALED.

10 § 4. The commissioner of taxation and finance shall convene a task  
11 force consisting of representatives from the department of taxation and  
12 finance, the state education department, the department of state, the  
13 consumer protection board, the banking department, the office of tempo-  
14 rary and disability assistance, the New York state bar, the New York  
15 state association of certified public accountants, enrolled agents with  
16 the internal revenue service, and other representatives of the tax  
17 return preparation industry in order to prepare a report addressing the  
18 following issues: determining the appropriate scope of the program for  
19 regulating tax return preparers and commercial tax return preparers;  
20 setting appropriate qualifications, including, but not limited to, mini-  
21 mum educational qualifications and continuing educational requirements  
22 for tax return preparers; examining issues and abuses involving refund  
23 anticipation loans and checks and considering any other matters the task  
24 force determines to be necessary or appropriate. The report required by  
25 this section will be submitted to the commissioner of taxation and  
26 finance, the governor, the speaker of the assembly and the temporary  
27 president of the senate no later than March 31, 2012. The commissioner  
28 of taxation and finance may promulgate regulations to implement any of  
29 the recommendations made by the task force.

30 § 5. Section 371 of the general business law, as added by chapter 432  
31 of the laws of 2008, is amended to read as follows:

32 § 371. Definitions. For the purposes of this article:

33 (a) "Facilitator" means a person who individually or in conjunction or  
34 cooperation with another person: (i) solicits the execution of, proc-  
35 esses, receives, or accepts an application or agreement for a refund  
36 anticipation loan or refund anticipation check; (ii) serves or collects  
37 upon a refund anticipation loan or refund anticipation check; or (iii)  
38 in any other manner that facilitates the making of a refund anticipation  
39 loan or refund anticipation check. This term excludes any employees of a  
40 facilitator who provide only clerical or other comparable support  
41 services to such facilitator.

42 (b) "Tax preparer" or "preparer" means a person, partnership, corpo-  
43 ration or other business entity, that in exchange for consideration  
44 advises or assists or offers to advise or assist in the preparation of  
45 income tax returns for another.

46 ~~[(b)]~~ (c) "Refund anticipation check" means a check, stored value  
47 card, or other payment mechanism: (i) representing the proceeds of a tax  
48 refund; (ii) which was issued by a depository institution or other  
49 person that received a direct deposit of the tax refund or tax credits;  
50 and (iii) for which a fee or other consideration has been paid for such  
51 payment mechanism.

52 (d) "Refund anticipation loan" means ~~[any loan a taxpayer may receive~~  
53 ~~against his or her anticipated income tax refund.~~

54 ~~(e)]~~ a loan that is secured by or that the creditor arranges to be  
55 repaid directly or indirectly from the proceeds of an income tax refund  
56 or tax credits. A refund anticipation loan also includes any sale,

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1 assignment, or purchase of tax refund at a discount or for a fee, wheth-  
2 er or not the amount is required to be repaid to the buyer or assignee  
3 if the internal revenue service or the department denies or reduces the  
4 amount of the tax refund.

5 (e) "Department" means the department of taxation and finance.

6 § 6. Section 372 of the general business law, as added by chapter 432  
7 of the laws of 2008, is amended to read as follows:

8 § 372. Consumer bill of rights regarding tax preparers. (a) A tax  
9 preparer shall provide his or her customers with a receipt containing an  
10 address and phone number at which the preparer can be contacted through-  
11 out the year.

12 (b) The department shall, in accordance with regulations promulgated  
13 by the commissioner of taxation and finance, produce and make available  
14 to taxpayers and tax preparers an informational flier regarding consum-  
15 ers' rights and laws concerning tax preparers to be called a "consumer  
16 bill of rights regarding tax preparers". The department shall consult  
17 with the state consumer protection board to enhance distribution of  
18 fliers to consumers. The flier shall also be made available on the  
19 ~~[department's]~~ department and the state consumer protection board's  
20 internet site, and shall contain information including, but not limited  
21 to, the following:

22 (1) postings required by state and federal laws, such as price posting  
23 and posting of qualifications;

24 (2) explanations of some of the commonly offered services and industry  
25 jargon, such as preparation of short and long federal forms, refund,  
26 electronic filing, express mail, direct deposit, refund anticipation  
27 check, refund anticipation loan, quick, instant, rapid, fast, fee, and  
28 interest;

29 (3) basic information on what a tax preparer is and is not required to  
30 do for a consumer, such as the preparer's responsibility to sign a  
31 return, that a tax preparer may not be required to accompany a consumer  
32 to an audit but the company may have a voluntary policy to accompany  
33 consumers to audits; and

34 (4) the telephone numbers of the department for information and  
35 complaints.

36 The flier shall be in a form which is easily reproducible by photocopy  
37 machine.

38 (c) The department shall coordinate its response to consumer tax  
39 preparer complaints with the state consumer protection board, pursuant  
40 to subdivision (b) of section five hundred fifty-three of the executive  
41 law, as the department deems appropriate.

42 (d) A copy of the consumer bill of rights regarding tax preparers  
43 shall be provided to individuals or businesses on request to the depart-  
44 ment, and shall be sent by the department no later than October

45 fifteenth of each year to each tax preparer who has been found to be in  
46 violation of this subdivision or any other provision of this section  
47 within the previous calendar year. Each tax preparer subject to this  
48 section shall obtain a current consumer's bill of rights regarding tax  
49 preparers from the department and shall reproduce it so that it is clear  
50 and legible. As of January first of each year, each tax preparer shall  
51 give to each customer, free of charge, a current, legible copy of the  
52 consumer's bill of rights regarding tax preparers prior to any  
53 discussion with the customer. Each such tax preparer shall also verbally  
54 direct the consumer to review the consumer bill of rights regarding tax  
55 preparers and shall answer any questions the consumer may have about its  
56 contents.

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1     ~~[(d)]~~ (e) (1) Any tax preparer who advertises the availability of a  
2 refund anticipation loan or refund anticipation check may not directly  
3 or indirectly represent such a loan as a refund. Any advertisement which  
4 mentions a refund anticipation loan must state conspicuously that it is  
5 a loan and that a fee or interest will be charged by the lending insti-  
6 tution. The advertisement must also disclose the name of the lending  
7 institution.

8     (2) (i) Before any taxpayer enters into a refund anticipation loan,  
9 the tax preparer facilitating such loan shall provide the following  
10 disclosure to the taxpayer in writing in at least fourteen-point type:

11     "YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN  
12 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.

13     IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN, YOU WILL BE  
14 TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE  
15 LOAN AMOUNT AND ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY  
16 YOU ACTUALLY RECEIVE IN YOUR TAX REFUND. IF YOUR REFUND IS DELAYED, YOU  
17 MAY HAVE TO PAY ADDITIONAL COSTS.

18     IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE  
19 TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$(insert amount).

20     IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPON-  
21 SIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN. AFTER THESE FEES ARE  
22 PAID, YOU WILL RECEIVE APPROXIMATELY \$ (insert amount) AS YOUR LOAN.

23     THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN  
24 IS (insert amount)%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL  
25 BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN.

26     IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO  
27 RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert  
28 date).

29     IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL  
30 RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRON-  
31 ICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO  
32 RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert  
33 date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX  
34 REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE  
35 YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date)."

36     (ii) Before any taxpayer enters into an agreement to receive a refund  
37 anticipation check, the tax preparer facilitating the agreement shall  
38 provide the following disclosure to the taxpayer in writing in at least  
39 fourteen-point type:

40     "YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION CHECK  
41 AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION. IF YOU DO  
42 TAKE OUT THIS REFUND ANTICIPATION CHECK, YOU WILL BE RESPONSIBLE TO PAY  
43 \$(insert amount) IN FEES FOR THE CHECK TO BE ISSUED BY (insert name of



44 issuer of refund anticipation check). YOU CAN AVOID THIS FEE AND STILL  
45 RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND  
46 DIRECTLY DEPOSITED INTO YOUR OWN BANK ACCOUNT. YOU CAN ALSO WAIT FOR THE  
47 FEDERAL OR STATE REFUND TO BE MAILED TO YOU.

48 IF YOU DO ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU CAN  
49 EXPECT TO RECEIVE YOUR CHECK BY APPROXIMATELY TWO BUSINESS DAYS OF  
50 (insert date).

51 IF YOU DO NOT ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU  
52 CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN  
53 ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN  
54 EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF  
55 (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR  
56 TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO

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1 RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert  
2 date)."

3 (iii) It shall be the obligation of the tax preparer to complete the  
4 required [~~disclosure~~] disclosures accurately with all relevant informa-  
5 tion for each taxpayer and to ensure that the completed disclosure form  
6 is signed by the taxpayer before he or she enters into a refund antic-  
7 ipation loan or a refund anticipation check, with a copy of the same  
8 provided to the taxpayer. The name and the unique identification number  
9 of the tax return preparer (and facilitator, if different) assigned  
10 pursuant to section thirty-two of the tax law must be included on the  
11 disclosure form provided to the taxpayer.

12 [~~(e)~~] (f)(1) If a taxpayer applies for a refund anticipation loan, the  
13 facilitator must also orally inform the taxpayer in the language prima-  
14 riarily used for oral communications between the facilitator and taxpayer:

15 (i) that the product is a loan that only lasts one to two weeks;

16 (ii) if the tax refund is less than expected, the taxpayer is liable  
17 for the full amount of the loan and must repay any difference;

18 (iii) if the refund is delayed for any reason, there may be additional  
19 costs, such as additional interest, that the taxpayer will have to pay;

20 (iv) the amount of the refund anticipation loan fee; and

21 (v) the refund anticipation loan interest rate.

22 (2) If a taxpayer applies for a refund anticipation check, the facili-  
23 tator must also orally inform the taxpayer in the language primarily  
24 used for oral communications between the facilitator and taxpayer:

25 (i) the amount of the refund anticipation check fee; and

26 (ii) that the taxpayer can receive a refund in the same amount of time  
27 without a fee if the tax return is filed electronically, and the consum-  
28 er chooses direct deposit to their own personal bank account.

29 (g) Any person, partnership, corporation or other business entity who  
30 violates any provision of this section or any of the regulations promul-  
31 gated pursuant to this section shall be liable for a civil penalty of  
32 not less than two hundred fifty dollars nor more than five hundred  
33 dollars for the first violation and for each succeeding violation a  
34 civil penalty of not less than five hundred dollars nor more than seven  
35 hundred fifty dollars. The penalties provided for by this subdivision  
36 must be paid upon notice and demand and will be assessed, collected and  
37 paid in the same manner as taxes under article twenty-seven of the tax  
38 law.

39 [~~(f)~~] (h) Apart from subdivision [~~(d)~~] (e) of this section and the  
40 accompanying penalties as listed in subdivision [~~(e)~~] (f) of this  
41 section, the provisions of this section shall not apply to:

42 (1) an officer or employee of a corporation or business enterprise



43 who, in his or her capacity as such, advises or assists in the prepara-  
44 tion of income tax returns relating to such corporation or business  
45 enterprise;

46 (2) an attorney at law who advises or assists in the preparation of  
47 income tax returns in the practice of law and the employees thereof;

48 (3) a fiduciary and the employees thereof who advise or assist in the  
49 preparation of income tax returns on behalf of the fiduciary estate, the  
50 testator, trustee, grantor or beneficiaries thereof;

51 (4) a certified public accountant licensed pursuant to the education  
52 law or licensed by one or more of the states or jurisdictions of the  
53 United States, and the employees thereof;

54 (5) a public accountant licensed pursuant to the education law and the  
55 employees thereof;

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1 (6) an employee of a governmental unit, agency or instrumentality who  
2 advises or assists in the preparation of income tax returns in the  
3 performance of his or her official duties; or

4 (7) an agent enrolled to practice before the internal revenue service  
5 pursuant to section 10.4 of subpart A of part ten of title thirty-one of  
6 the code of federal regulations.

7 § 7. This act shall take effect immediately, provided, however, that  
8 section one of this act shall apply to authorized tax documents required  
9 to be filed for tax years beginning on or after January 1, 2009, and  
10 section two of this act shall apply to tax return preparers filing  
11 personal income tax returns on or after December 31, 2009 and to tax  
12 return preparers who do not prepare income tax returns on or after  
13 December 31, 2010; and sections five and six of this act shall take  
14 effect on the same date as chapter 432 of the laws of 2008, takes  
15 effect.

16

#### PART WW

17 Section 1. Notwithstanding any other law, rule or regulation to the  
18 contrary, expenses of the department of health public service education  
19 program incurred pursuant to appropriations from the cable television  
20 account of the state miscellaneous special revenue funds shall be deemed  
21 expenses of the department of public service.

22 § 2. This act shall take effect immediately and shall be deemed to  
23 have been in full force and effect on and after April 1, 2009.

24

#### PART XX

25 Section 1. Section 16-s of section 1 of chapter 174 of the laws of  
26 1968 constituting the New York state urban development corporation act,  
27 as added by section 2 of part QQ of chapter 57 of the laws of 2008, is  
28 amended to read as follows:

29 § 16-s. The upstate agricultural economic development fund and healthy  
30 food / healthy communities initiative. 1. The upstate agricultural  
31 economic development fund and healthy food / healthy communities initi-  
32 ative is hereby created. The corporation is authorized, within available  
33 appropriations, to provide financial assistance in the form of loans,  
34 grants or contracts for services, to eligible entities as set forth in  
35 this subdivision to support the upstate revitalization fund to reduce  
36 the cost of financing the construction, expansion or renovation of agri-  
37 cultural economic development projects, to reduce the cost of agricul-  
38 tural inputs or to support activities related to the retention of exist-

39 ing farmers or the recruitment of new farmers and to increase the number  
40 of food markets providing affordable and nutritious foods in underserved  
41 areas.

42 2. Not-for-profit corporations, agricultural cooperative corporations,  
43 public benefit corporations, municipalities and educational institutions  
44 serving rural areas shall be eligible to apply for support under this  
45 subdivision for the following activities:

46 (a) Support for local efforts to identify new agricultural economic  
47 development opportunities, and to organize industry-wide collaborative  
48 efforts designed to develop growth strategies for the agricultural  
49 industry.

50 (b) Support for local or regional activities designed to provide busi-  
51 ness development and financial packaging assistance to new and expanding  
52 agricultural economic development projects.

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1 (c) Development and delivery of programs to promote the retention of  
2 existing farmers and to attract new farmers.

3 (d) Feasibility studies to determine the projected local, national  
4 and/or international demand for the proposed crop or product to be  
5 financed pursuant to this section and the suitability of the land and  
6 climate for such production.

7 (e) Support for land acquisition and/or the construction, acquisition  
8 or expansion of buildings, machinery and equipment associated with a  
9 project.

10 (f) Loans can be provided by the corporation to agricultural cooper-  
11 ative corporations, not-for-profit corporations and public benefit  
12 corporations for the purpose of providing low cost financing from such  
13 entities to projects for purposes described in this subdivision.

14 (g) Such projects shall be consistent with the environmental  
15 protection goals of the state.

16 [~~2-~~] 3. Community development financial institutions, as defined by  
17 paragraph (a) of subdivision 2 of section sixteen-o of this act, shall  
18 be eligible to apply for designation under this subdivision to perform  
19 the duties of a program administrator for the healthy food / healthy  
20 communities initiative.

21 (a) Program administrators will be required to enter into a contract  
22 with the corporation for the following responsibilities:

23 (i) raise matching capital to leverage state funds within three years  
24 of signing a contract with the corporation;

25 (ii) report, at least annually, on the sources and amounts of funds  
26 raised;

27 (iii) develop underwriting criteria; and

28 (iv) process loans and grants for food markets.

29 (b) Administrative costs of program administrators will be reimbursa-  
30 ble as set forth in either rules and regulations issued in accordance  
31 with paragraph (d) of subdivision 5 of this section or in a request for  
32 proposal.

33 (c) Eligible food markets are any entities in subparagraph (i) of this  
34 paragraph. Eligible food markets must demonstrate that their proposed  
35 project will benefit an underserved area, as defined in subparagraph  
36 (ii) of this paragraph.

37 (i) An eligible food market applicant may be a for-profit business  
38 enterprise (including a corporation, limited liability company, sole  
39 proprietor, cooperative or partnership), a nonprofit organization or a  
40 food cooperative.

41 (ii) An underserved area is defined as a low- or moderate-income

42 census tract, an area of below average supermarket density or an area  
43 having a supermarket customer base with more than 50 percent living in a  
44 low-income census tract.

45 (iii) Eligible uses for funds from state grants and loans to food  
46 markets include:

47 (A) pre-development costs for project feasibility, including profes-  
48 sional fees, market studies and appraisals;

49 (B) land assembly, including demolition and environmental remediation;

50 (C) site development;

51 (D) infrastructure improvements, including renovation, new  
52 construction or adaptive reuse; and

53 (E) equipment purchases.

54 (d) The program administrator shall review, and if appropriate  
55 approve, applications by food markets. The program administrator shall  
56 review applications every other month for as long as funds remain avail-

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1 able in the loan pool. The program administrator shall review each  
2 application to determine whether the proposed project is financially  
3 viable and demonstrates all of the following:

4 (i) makes a positive impact on the local economy;

5 (ii) increases revenues to the state, the host municipality, or the  
6 market region or creates a new agricultural economic development oppor-  
7 tunity;

8 (iii) adherence to sound land use principles;

9 (iv) promotes community development by working in conjunction with  
10 other programs;

11 (v) incorporates energy efficiency and green building principles; and

12 (vi) to the maximum extent practicable, provides healthy, nutritious  
13 food grown by sustainable agricultural practices.

14 4. Applications for assistance pursuant to this section, except for  
15 the healthy foods / healthy communities initiative, shall be reviewed  
16 and evaluated pursuant to eligibility requirements and criteria set  
17 forth in rules and regulations promulgated by the upstate chairman, in  
18 consultation with the commissioner of the department of agriculture and  
19 markets, and subject to approval by the board of directors of the  
20 upstate empire state development corporation. Approval of project appli-  
21 cations shall be made by the upstate chairman, in consultation with the  
22 commissioner of the department of agriculture and markets, subject to  
23 approval by the board of directors of the upstate empire state develop-  
24 ment corporation.

25 [3.] 5. Applications to be the program administrator for the healthy  
26 food / healthy communities initiative shall be reviewed and evaluated  
27 pursuant to eligibility requirements and criteria which may be set forth  
28 in either rules and regulations, a request for proposal or an applica-  
29 tion.

30 (a) Applications shall identify at least one food access, health or  
31 community development organization who will work with the program admin-  
32 istrator applicant to:

33 (i) analyze market opportunities in underserved areas;

34 (ii) recruit food market operators and developers;

35 (iii) pre-qualify food market applications on non-financial criteria;  
36 and

37 (iv) provide technical assistance with regard to operating grocery  
38 stores in low-income communities.

39 (b) Administrative costs of the food access, health or community  
40 development organization will be reimbursable as set forth in rules and

41 regulations issued in accordance with paragraph (d) of this subdivision  
42 or in a request for proposal.

43 (c) Approval of at least one program administrator shall be made by  
44 the upstate chairman, in consultation with the commissioner of the  
45 department of agriculture and markets, subject to approval by the board  
46 of directors of the upstate empire state development corporation.

47 (d) At his or her discretion, the upstate chairman of the corporation  
48 may promulgate rules and regulations, in consultation with the commis-  
49 sioner of the department of agriculture and markets, and subject to  
50 approval by the board of directors of the upstate empire state develop-  
51 ment corporation for the implementation of this section.

52 6. The corporation, in consultation with the commissioner of the  
53 department of agriculture and markets, shall submit a report to the  
54 director of the budget, the temporary president of the senate, the  
55 speaker of the assembly, the minority leader of the senate and the  
56 minority leader of the assembly on the investments and accomplishments  
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1 of the upstate agricultural economic development fund. Such report shall  
2 include, but not be limited to, information on the number of jobs  
3 created and retained, levels of private sector investment, economic  
4 benefit to the state and local economies and types of industries  
5 invested in. Such report shall be submitted by July 1, 2009 and July  
6 first every year thereafter.

7 ~~[4.]~~ 7. The corporation, in consultation with the commissioner of the  
8 department of agriculture and markets, shall submit a report to the  
9 director of the budget, the temporary president of the senate, the  
10 speaker of the assembly, the minority leader of the senate and the  
11 minority leader of the assembly evaluating the economic and social bene-  
12 fits of the upstate agricultural economic development fund. Such evalu-  
13 ation shall be prepared by an entity or entities independent of the  
14 corporation which shall be selected through a request for proposal proc-  
15 ess. Such evaluation shall be submitted by October 1, 2009 and October  
16 first every year thereafter.

17 ~~[5.]~~ 8. The corporation is hereby authorized to promulgate rules and  
18 regulations in accordance with the state administrative procedure act as  
19 are necessary to fulfill the purposes of this section.

20 ~~[6.]~~ 9. The provisions of section ~~[10]~~ ten and subdivision 2 of  
21 section ~~[16]~~ sixteen of ~~[the urban development corporation]~~ this act  
22 shall not apply to assistance provided under this section.

23 § 2. This act shall take effect immediately.

24 PART YY

25 Section 1. Paragraph b of subdivision 4 of section 15-0313 of the  
26 environmental conservation law, as amended by chapter 261 of the laws of  
27 1990, is amended to read as follows:

28 b. Such rules and regulations may specify the pesticides and chemicals  
29 and quantities and concentrations thereof which may be directly applied  
30 or used, which specified chemicals and pesticides shall be selected with  
31 maximum protection of life, health and property as criteria for their  
32 selection, and shall also provide for giving reasonable notice to  
33 persons likely to be adversely affected by such use of chemicals and may  
34 require consent of persons who may reasonably be expected to suffer  
35 substantial damage or injury thereby prior to the issuance of any permit  
36 for such use. A fee of ~~[fifty]~~ one hundred dollars shall accompany each  
37 permit.

38 § 2. Subdivision 2 of section 33-0901 of the environmental conserva-  
39 tion law, as amended by section 3 of part B of chapter 82 of the laws of  
40 2002, is amended to read as follows:

41 2. Any person desiring such a permit shall file an application  
42 containing such information required by the commissioner and in a form  
43 prescribed by the commissioner. The commissioner shall examine the  
44 application and shall issue or refuse to issue the permit requested  
45 therein. The commissioner shall impose whatever restrictions or condi-  
46 tions on the permit he deems appropriate in order to fully protect the  
47 public interest. Such a permit shall not be valid for more than two  
48 years as determined by the commissioner. A separate permit is required  
49 for each location in the state, and a fee for each location in the state  
50 of [~~three~~] six hundred dollars is required.

51 § 3. Section 33-0911 of the environmental conservation law, as amended  
52 by section 6 of part B of chapter 82 of the laws of 2002, subdivision 2  
53 as amended by section 2 of part U of chapter 59 of the laws of 2004, is  
54 amended to read as follows:

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1 § 33-0911. Certification and registration fees.

2 1. Every applicant for pesticide applicator certification shall pay an  
3 examination fee of [~~fifty~~] one hundred dollars for each examination.

4 2. a. Except as provided in paragraph b of this subdivision, fees for  
5 pesticide applicator certification shall be [~~two~~] four hundred [~~twenty-~~  
6 ~~five~~] fifty dollars for commercial pesticide applicator certification in  
7 one individual category, [~~seventy-five~~] one hundred fifty dollars for  
8 each additional category and [~~seventy-five~~] one hundred fifty dollars  
9 for each additional sub-category chosen. For private applicators a fee  
10 of twenty-five dollars for the initial certified private applicator and  
11 five dollars for subsequent applicators on the same farm or business  
12 shall be charged at the time of initial certification, renewal of  
13 certification or recertification.

14 b. Fees for pesticide applicator certification for a commercial pesti-  
15 cide applicator with only subcategory 3A-ornamentals, shade trees and  
16 turf or only subcategory 3B-turf shall be [~~one~~] two hundred dollars.

17 3. Pesticide businesses shall pay a registration fee of [~~four~~] nine  
18 hundred [~~fifty~~] dollars. When the applicant regularly maintains or oper-  
19 ates more than one business address a fee may be required for each of  
20 the applicant's business addresses in the state. Any agency which is a  
21 state agency, municipal corporation, public authority, or college shall  
22 be exempt from any fee for registration.

23 § 4. Section 33-0304 of the environmental conservation law, as amended  
24 by chapter 60 of the laws of 1993, is amended to read as follows:

25 § 33-0304. Fees.

26 All fees collected pursuant to this article shall be deposited into  
27 the environmental conservation special revenue fund to the credit of the  
28 environmental regulatory account; provided, however, that the first five  
29 million dollars collected pursuant to this article shall be deposited  
30 into the environmental protection fund established pursuant to section  
31 ninety-two-s of the state finance law.

32 § 5. Subdivisions a and b of section 33-0705 of the environmental  
33 conservation law, as amended by section 2 of part FF of chapter 59 of  
34 the laws of 2008, are amended to read as follows:

35 a. On or before July 1, 2011, [~~three~~] six hundred dollars for each  
36 pesticide proposed to be registered, provided that the applicant has  
37 submitted to the department proof in the form of a federal income tax  
38 return for the previous year showing gross annual sales, for federal

39 income tax purposes, of three million five hundred thousand dollars or  
40 less;

41 b. On or before July 1, 2011, for all others, [~~three~~] six hundred  
42 [~~ten~~] twenty dollars for each pesticide proposed to be registered;

43 § 6. Subdivision 5 of section 33-0922 of the environmental conserva-  
44 tion law, as amended by chapter 345 of the laws of 2008, is amended to  
45 read as follows:

46 5. When engaged in the commercial application of aquatic antifouling  
47 paints, an aquatic antifouling paint application business shall ensure  
48 that such aquatic antifouling paints are only applied by an employee who  
49 is a certified commercial pesticide applicator or technician certified  
50 in the application of aquatic antifouling paint or an aquatic antifoul-  
51 ing paint applicator, or a person who is a certified commercial pesti-  
52 cide applicator or technician certified in the application of aquatic  
53 antifouling paint or an aquatic antifouling paint applicator employed by  
54 another registered business with which such business has contracted to  
55 apply aquatic antifouling paints; provided, however, that until [~~Decem-~~  
56 ~~ber thirty-first, two thousand eight,~~] such time as authorization for  
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1 pesticide application by pesticide apprentices is repealed, aquatic  
2 antifouling paint registered as a general use pesticide may be applied  
3 by a commercial pesticide apprentice who is at least seventeen years of  
4 age and employed by such business (a) working under the direct super-  
5 vision of a certified commercial pesticide applicator, or (b) working  
6 under the supervision of a certified pesticide technician qualified in  
7 aquatic antifouling paints, if such application is otherwise done in  
8 compliance with the rules and regulations of the department, and who,  
9 during the handling and application of such paint, utilizes appropriate  
10 safety equipment including but not limited to a respirator, eye  
11 protection and skin protection.

12 § 7. This act shall take effect immediately and shall be deemed to  
13 have been in full force and effect on and after April 1, 2009.

14 PART ZZ

15 Section 1. Subdivisions 5 and 6 of section 72-1003 of the environ-  
16 mental conservation law, as amended by section 1 of part 01 of chapter  
17 62 of the laws of 2003, are amended to read as follows:

18 5. [~~two~~] four thousand dollars for affected land of an acreage greater  
19 than twenty acres and equal to or less than thirty acres; or

20 6. [~~four thousand dollars~~] eight thousand dollars for affected land of  
21 an acreage greater than thirty acres.

22 § 2. This act shall take effect immediately, and shall be deemed to  
23 have been in full force and effect on and after April 1, 2009.

24 PART AAA

25 Section 1. Section 70-0117 of the environmental conservation law is  
26 amended by adding a new subdivision 8 to read as follows:

27 8. (a) All persons required to obtain a permit from the department  
28 pursuant to section 24-0701 of this chapter shall submit to the depart-  
29 ment an application fee in an amount not to exceed the following:

30 (i) fifty dollars per application for a permit for a minor project as  
31 defined in this article or modification to any existing permit issued  
32 pursuant to section 24-0701 of this chapter;

33 (ii) fifty dollars per application for a permit for a residential



34 project defined as associated with one single family dwelling and  
35 customary appurtenances thereto;  
36 (iii) one hundred dollars per application for multiple family dwelling  
37 and customary appurtenances thereto;  
38 (iv) two hundred dollars per application for a permit for any other  
39 project as defined in this article.  
40 (b) All persons required to obtain a permit from the department pursu-  
41 ant to section 25-0402 of this chapter shall submit to the department an  
42 application fee in an amount not to exceed the following:  
43 (i) two hundred dollars per application for a permit for a minor  
44 project as defined in this article or modification to any existing  
45 permit issued pursuant to section 25-0402 of this chapter;  
46 (ii) nine hundred dollars per application for a permit for a project  
47 as defined in this article.  
48 (c) All fees collected pursuant to this subdivision shall be deposited  
49 into the environmental protection fund pursuant to section ninety-two-s  
50 of the state finance law.  
51 § 2. This act shall take effect April 1, 2009.  
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PART BBB

2 Section 1. The opening paragraph of subdivision 1 of section 72-0303  
3 of the environmental conservation law, as amended by section 1 of part D  
4 of chapter 413 of the laws of 1999, is amended to read as follows:  
5 Commencing January first, nineteen hundred ninety-four and every year  
6 thereafter all sources of regulated air contaminants identified pursuant  
7 to subdivision one of section 19-0311 of this chapter shall submit to  
8 the department [a] an annual fee ~~[not to exceed]~~ of forty-five dollars  
9 per ton up to ~~[six]~~ seven thousand tons annually of each regulated air  
10 contaminant as follows: forty-five dollars per ton for facilities with  
11 total emissions less than one thousand tons annually; fifty dollars per  
12 ton for facilities with total emissions of one thousand or more but less  
13 than two thousand tons annually; fifty-five dollars per ton for facili-  
14 ties with total emissions of two thousand or more but less than five  
15 thousand tons annually; and sixty-five dollars per ton for facilities  
16 with total emissions of five thousand or more tons annually. Such fee  
17 shall be sufficient to support an appropriation approved by the legisla-  
18 ture for the direct and indirect costs associated with the operating  
19 permit program established in section 19-0311 of this chapter. Such fee  
20 shall be established by the department and shall be calculated by divid-  
21 ing the amount of the current year appropriation from the operating  
22 permit program account of the clean air fund by the total tons of emis-  
23 sions of regulated air contaminants that are subject to the operating  
24 permit program fees from sources subject to the operating permit program  
25 pursuant to section 19-0311 of this chapter up to ~~[six]~~ seven thousand  
26 tons annually of each regulated air contaminant from each source;  
27 provided that, in making such calculation, the department shall adjust  
28 their calculation to account for any deficit or surplus in the operating  
29 permit program account of the clean air fund established pursuant to  
30 section ninety-seven-00 of the state finance law; any loan repayment  
31 from the mobile source account of the clean air fund established pursu-  
32 ant to section ninety-seven-00 of the state finance law; and the rate of  
33 collection by the department of the bills issued for the fee for the  
34 prior year.  
35 § 2. This act shall take effect June 1, 2009.

37 Section 1. Article 15 of the environmental conservation law is amended  
38 by adding a new title 33 to read as follows:

39 TITLE 33

40 WATER WITHDRAWAL REPORTING

41 Section 15-3301. Water withdrawal reporting.

42 § 15-3301. Water withdrawal reporting.

43 1. Any person who withdraws or is operating any system or method of  
44 withdrawal that has the capacity to withdraw more than 100,000 gallons  
45 of groundwater or surface water per day at a single tract of land, water  
46 source or place of business shall file a report with the department.  
47 Such report shall be filed on or before February first, two thousand ten  
48 and every February first thereafter. Any report filed in two thousand  
49 ten shall be based on those calendar months commencing after the effec-  
50 tive date of this section. The report shall be made on a form and  
51 contain such information as may be prescribed by the department and  
52 shall be based on the water withdrawals for the previous calendar year,  
53 and shall include but not be limited to:

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1 (a) the water source, the location of the water source and the source  
2 capacity if known;

3 (b) the amount of water withdrawn for the reporting period, including  
4 the average or peak withdrawals for intervals specified by the depart-  
5 ment;

6 (c) a description of the use of the water withdrawn; and

7 (d) estimated amounts of water to be returned, if any, the locations  
8 of such returns and the method of such returns.

9 2. The following water withdrawals are exempt from the reporting  
10 requirements of subdivision one of this section:

11 (a) a withdrawal for emergency fire suppression or other public emer-  
12 gency purposes;

13 (b) a withdrawal reported to the department under any program that  
14 requires the reporting of substantially similar data, including with-  
15 drawals regulated pursuant to the Susquehanna River Basin Compact, the  
16 Delaware River Basin Compact, the Great Lakes-St. Lawrence River Basin  
17 Water Resources Compact, public water supply permits, permits for Long  
18 Island water wells and permits issued pursuant to section 15-1505 of  
19 this article. The department shall record such withdrawals with the  
20 information from water withdrawals reported under this paragraph;

21 (c) closed loop, standing column, or similar non-extractive geothermal  
22 heat pumps; and

23 (d) reclaimed wastewater withdrawn for reuse.

24 3. All persons required to make a report under this title, except for  
25 withdrawals for an agricultural purpose and for a public water supply  
26 purpose, shall submit to the department a fee with such report in an  
27 amount of fifty dollars. For the purpose of this subdivision, "agricul-  
28 tural purpose" means the practice of farming for crops, plants, vines  
29 and trees, and the keeping, grazing, or feeding of livestock for sale of  
30 livestock or livestock products; and "public water supply purpose" shall  
31 mean water use by a public water supply system.

32 4. Revenue received from the reporting fees shall be deposited to the  
33 credit of the environmental protection fund established pursuant to  
34 section ninety-two-s of the state finance law.

35 § 2. This act shall take effect April 1, 2009.

37 Section 1. The environmental conservation law is amended by adding a  
38 new section 71-0213 to read as follows:

39 § 71-0213. Mandatory surcharge.

40 1. Whenever proceedings result in a conviction for an offense under  
41 this chapter there shall be levied, in addition to any sentence required  
42 or permitted by law, the following mandatory surcharges: (a) in the  
43 amount of twenty-five dollars for violations of sportfishing regulations  
44 set forth in 6 NYCRR 10; (b) in the amount of seventy-five dollars for  
45 all other offenses under this chapter provided, however, that  
46 convictions for offenses under articles seventeen, nineteen or twenty-  
47 seven of this chapter shall be subject to a mandatory surcharge equal to  
48 the greater of seventy-five dollars or six percent of any penalty or  
49 fine imposed. The mandatory surcharge shall be paid to the clerk of the  
50 court who shall remit such mandatory surcharge to the state comptroller  
51 provided, however, that in cases where the conviction was rendered by a  
52 town or a village justice court, the clerk of such court shall pay twen-  
53 ty-five dollars of such surcharge to the chief fiscal officer of the  
54 town or village in the case of surcharges resulting from paragraph (b)

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1 of this subdivision and ten dollars in the case of surcharges resulting  
2 from paragraph (a) of this subdivision and shall pay the remaining  
3 amounts of such mandatory surcharges to the state comptroller in the  
4 same manner as provided in section 71-0211 of this article. The comp-  
5 troller shall pay such monies into the state treasury to the credit of  
6 the general fund.

7 2. Any person who has paid a mandatory surcharge under the authority  
8 of this section which is ultimately determined not to be required by  
9 this section shall be entitled to a refund of such mandatory surcharge  
10 upon application to the state comptroller. The state comptroller shall  
11 require such proof as is necessary to determine whether a refund is  
12 required by law.

13 § 2. This act shall take effect immediately, provided, however the  
14 provisions of this act shall only apply to offenses committed on or  
15 after April 1, 2009.

17 Section 1. The New York state urban development corporation shall  
18 submit for approval to the director of the budget a comprehensive finan-  
19 cial plan for the corporation and its subsidiaries for expenditures,  
20 regardless of source, including but not limited to those from the debt  
21 service account, the excess debt service account, the housing repair and  
22 modernization fund account, the interest income account, and the econom-  
23 ic development income account, in such detail as the director of the  
24 budget may require. The director of the budget shall file copies of such  
25 financial plan with the senate finance committee, the assembly ways and  
26 means committee and the department of audit and control in both paper  
27 and electronic format.

28 § 2. 1. Notwithstanding any provision of law to the contrary, the New  
29 York state urban development corporation shall establish accounts and  
30 subaccounts within the treasury of such corporation which shall reflect  
31 and consist of all funds made available to such corporation, at any  
32 time, from any sources for its corporate purposes. Such account shall  
33 consist of, but not be limited to, the following:

34 (i) general and administrative accounts, which shall consist of all  
35 funds made available for the operational expenses of such corporation;  
36 (ii) general and administrative accounts of certain subsidiary corpo-  
37 rations, which shall consist of all funds made available for the opera-  
38 tional expenses of the mortgage loan enforcement and administration  
39 corporation and the 42nd street development project, incorporated,  
40 provided, however, that such subsidiary shall be established as a sepa-  
41 rate account;  
42 (iii) debt service account, which shall consist of all funds made  
43 available for debt service payments on the outstanding general obli-  
44 gations of the corporation where the original issue of such bonds or  
45 notes was prior to April 1, 1976, and including any refinancing or  
46 renewal of such bonds and notes, provided such account shall not, in any  
47 manner, reduce any debt service reserve fund below a level agreed to  
48 pursuant to a statute, covenant or other contract between the corpo-  
49 ration and such bondholders or noteholders;  
50 (iv) excess debt service account, which shall consist of all funds  
51 made available from the net savings achieved as a result of the refund-  
52 ing of the corporation's general purpose bonds authorized pursuant to  
53 resolution number 96-ud-526 of the public authorities control board. Net  
54 savings shall be determined by the difference between annual debt  
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1 service payments which would have been required pursuant to the refunded  
2 bonds and the annual debt service payments for the corporation's corpo-  
3 rate purpose bonds issued to accomplish such refunding;  
4 (v) housing repair and modernization fund account, which shall consist  
5 of funds made available from the excess debt service account to assist  
6 in maintaining the residential and commercial portfolios of the corpo-  
7 ration as determined by the chairman of the corporation or his designee;  
8 (vi) buildout account, which shall consist of all funds made available  
9 for the payment of expenses associated with final settlements on remain-  
10 ing issues of construction costs and mortgage amounts on residential and  
11 nonresidential projects financed by the corporation;  
12 (vii) project repair account, which shall consist of all funds made  
13 available for the maintenance, servicing or repairing of real property  
14 in the residential, industrial and commercial portfolios of such corpo-  
15 rations;  
16 (viii) economic development income account, which shall consist of all  
17 payments, including payments to compensate for any funds, time or other  
18 costs provided by the corporation in relation to nonresidential projects  
19 and all other reimbursable corporate service income from economic devel-  
20 opment projects and payments which are provided to such corporation for  
21 purposes of repayment of funds in respect to any contract or other  
22 agreements entered into by the corporation which are attributable to any  
23 economic development project of the corporation, provided, however, that  
24 such account shall not include funds representing repayments which are  
25 to be returned to the development of such project pursuant to any  
26 contract or other agreement entered into by the corporation;  
27 (ix) economic development program and project accounts, which shall  
28 consist of all funds made available for specific economic development  
29 programs and projects excluding any program or project authorized by a  
30 resolution or other action of the corporation prior to April 1, 1976,  
31 and excluding any residential project, provided, however, that each  
32 specified program and project shall be established as a separate account  
33 unless otherwise authorized pursuant to an appropriation;  
34 (x) new communities and community support account, which shall consist

35 of all funds made available for, and all income received from the Audu-  
36 bon and Radisson communities;

37 (xi) Roosevelt Island operating corporation account, which shall  
38 consist of all funds made available for, and all income received from  
39 the Roosevelt Island community;

40 (xii) interest income account, which shall consist of all moneys  
41 earned by the corporation from investment of any funds available in the  
42 accounts and subaccounts within the treasury of the corporation; and

43 (xiii) mortgage servicing fee account, which shall consist of all  
44 funds made available to the mortgage loan enforcement and administration  
45 corporation for the payment of fees to the housing special revenue  
46 account of the miscellaneous special revenue fund associated with the  
47 provision of mortgage servicing activities by the division of housing  
48 and community renewal.

49 2. The amounts deposited in any such account may be interchanged with  
50 any other account for purposes of investment and may be commingled,  
51 provided, however, that such interchange may not increase or decrease  
52 any account, other than the debt service account, and the interest  
53 income account, by more than five percent in the aggregate in the entire  
54 period of any fiscal year of the corporation. Provided further, that in  
55 addition to any other specific exception provided for in this section,  
56 the following exemptions to the above interchange provision shall apply

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1 for the purposes of the debt service account, the interest income  
2 account, the project repair account, the mortgage servicing fee account,  
3 the general and administrative account of the mortgage loan enforcement  
4 and administration corporation, excess debt service account, housing  
5 repair and modernization fund account, Roosevelt Island operating corpo-  
6 ration account and the economic development income account:

7 (i) Interchange from the debt service account to any other account  
8 shall be unlimited, but all such transfers from the debt service account  
9 shall be repaid quarterly to such account on or before June 30, 2009,  
10 September 30, 2009, December 31, 2009 and March 31, 2010, except for:  
11 (A) \$30,762,000 which shall be transferred to the general and adminis-  
12 trative account from the debt service account during the state fiscal  
13 year commencing April 1, 2009, and such amount of \$30,762,000 shall not  
14 be repaid to the debt service account; (B) \$2,000,000 which shall be  
15 transferred to the general and administrative account of the 42nd street  
16 development project, incorporated and which shall be repaid pursuant to  
17 a repayment agreement as set out in paragraph (vi) of this subdivision.

18 (ii) Interchange from the excess debt service account shall be unlim-  
19 ited, but all such transfers from the excess debt service account shall  
20 be repaid quarterly to such account on or before June 30, 2009, Septem-  
21 ber 30, 2009, December 31, 2009, and March 31, 2010, except for: (A) an  
22 amount sufficient to fund the housing repair and modernization fund  
23 account to assist in maintaining the residential and commercial portfo-  
24 lios of the corporation as determined by the chairman of the corporation  
25 or his designee; (B) an amount necessary to invest in the job develop-  
26 ment authority, as certified by the chairman of the authority or his  
27 designee, to provide funds in order to pay lawful debts of the authority  
28 provided that the corporation shall not make any payment or investment  
29 for the benefit of the authority unless and until it has independently  
30 verified that the authority does not have sufficient funds available to  
31 pay its lawfully incurred debts and obligations, and with any net  
32 savings which remain and are available; (C) all remaining balances of  
33 funds contained in the excess debt service account shall be remitted to

34 the credit of the state of New York general fund not later than March  
35 31, 2009.

36 (iii) Interchange from the interest income account, other than to the  
37 general and administrative account of the mortgage loan enforcement and  
38 administration corporation, may be unlimited.

39 (iv) Interchange to the project repair account from any account may be  
40 unlimited, and the corporation shall transfer up to \$10,000,000 to such  
41 account from any account during the fiscal year commencing April 1,  
42 2009, and such amount up to \$10,000,000 shall not be repaid.

43 (v) Interchange between the general and administrative account of the  
44 mortgage loan enforcement and administration corporation and any other  
45 account shall comply with the provisions specified herein, except that  
46 up to \$1,700,000 shall be transferred to such subsidiary corporation  
47 during the fiscal year commencing April 1, 2009 and any such amount  
48 shall not be repaid.

49 (vi) An advance up to \$2,000,000 may be made from the debt service  
50 account to the general and administrative account of the 42nd street  
51 development project, incorporated, provided, however, that before such  
52 advance is made the New York state urban development corporation shall  
53 enter into an agreement with the director of the budget providing for  
54 repayment of such advance. Subject to the approval of the director of  
55 the budget, and notification of the chairs of the assembly ways and  
56 means and the senate finance committees in both paper and electronic  
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1 format, the corporation is hereby authorized to expend revenues of the  
2 project for services and expenses of the corporation. The total amount  
3 expended by the 42nd street development project, incorporated shall not  
4 exceed \$2,000,000 and any unexpended project revenues shall be used to  
5 reduce the total advance provided to the project from the debt service  
6 account.

7 (vii) Interchange from the debt service account to the mortgage  
8 servicing fee account of the mortgage loan enforcement and adminis-  
9 tration corporation shall comply with the provisions specified herein,  
10 except that up to \$2,838,000 shall be transferred to such mortgage  
11 servicing fee account during the fiscal year commencing April 1, 2009  
12 and such amount shall not be repaid. Prior to the allocation of any  
13 moneys from the debt service account to the 42nd street development  
14 project, incorporated, and the mortgage loan enforcement and adminis-  
15 tration corporation for the fiscal year commencing April 1, 2009, each  
16 corporation shall submit for approval to the director of the budget, a  
17 comprehensive financial plan for each corporation for such fiscal year,  
18 in such detail as the director of the budget shall require in both paper  
19 and electronic format. The financial plan shall be submitted to the  
20 budget director on or before May 15, 2009. A report for each plan and  
21 any plan update, if necessary, shall be submitted to the director of the  
22 budget on or before August 15, 2009, November 15, 2009 and February 15,  
23 2010. Each such report shall provide the actual revenue and expenditures  
24 for the preceding quarters ending June 30, 2009, September 30, 2009 and  
25 December 31, 2009, in such detail as the director of the budget shall  
26 require. Further, any plan update shall revise, where necessary, the  
27 revenue and expenditure plan for each corporation for the remainder of  
28 the fiscal year beginning April 1, 2009. No transfer to the general  
29 administrative account of the corporation shall occur prior to the  
30 approval of the financial plan and unless in compliance with the  
31 approved financial plan.

32 The director of the budget shall file copies of such financial plans,



33 quarterly reports and any plan updates with the department of audit and  
34 control and the senate finance committee and the assembly ways and means  
35 committee in both paper and electronic format. Interchange made to the  
36 debt service account shall not be repaid if such payment would reduce  
37 any debt service or debt service reserve requirements below any amount  
38 required pursuant to a covenant, contract or other agreements with the  
39 bondholders and noteholders. No payments or deposits shall be made from  
40 any debt service reserve fund established pursuant to the provisions of  
41 section 20 of the New York state urban development corporation act to  
42 any account of the corporation other than the debt service account; and  
43 such payment or deposit shall only occur if deemed necessary to meet the  
44 payments specified in the debt service account described herein.

45 Provided further, (a) that such investment shall be made pursuant to  
46 the provisions of subdivision 22 of section 5 of the New York state  
47 urban development corporation act; (b) that such investment shall be  
48 made in a fashion which shall enable the corporation to timely meet its  
49 obligations; (c) that such investment shall be specified in each account  
50 in respect to the amount contributed, and that upon termination of such  
51 investment each account shall be reimbursed. Such account and subaccount  
52 shall be included in detailed quarterly reports of the corporation  
53 commencing with the quarterly report for the period immediately preced-  
54 ing April 1, 2009 which set forth the status of all such accounts,  
55 including for each account and subaccount the amount in such accounts at  
56 the beginning of such quarter (from and including the entire period of  
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1 the first day of the operative calendar year), the payments of such  
2 accounts, the payments from such accounts and the amount in such  
3 accounts at the close of such quarter (to and including the entire peri-  
4 od of the last day of the operative calendar year). Such detailed quar-  
5 terly report shall be prepared and submitted within 30 days of the close  
6 of each fiscal quarter of the corporation to the director of the budget,  
7 and the chair of the senate finance committee and the chair of the  
8 assembly ways and means committee in both paper and electronic format.  
9 Such accounts and subaccounts shall be detailed in the annual report of  
10 the corporation.

11 No disbursements or payments shall be made from the economic develop-  
12 ment income account or the interest income account except upon a request  
13 for the transfer of such funds to the director of the budget who shall  
14 file such request and approval thereof with the department of audit and  
15 control and copies thereof with the senate finance committee and the  
16 assembly ways and means committee in both paper and electronic format,  
17 except that such prior approval shall not be required in respect to  
18 repayments to the state. Any amounts in any debt service reserve funds,  
19 any inconsistent provisions of law notwithstanding, established by the  
20 corporation pursuant to the provisions of section 20 of the New York  
21 state urban development corporation act, which would not reduce the  
22 amount of such fund or funds to less than (1) the maximum amount of  
23 principal and interest maturing and becoming due in 2009 or (2) any  
24 amount required pursuant to a covenant, contract or other agreement with  
25 bondholders and noteholders shall be paid by the corporation to the  
26 state comptroller for deposit to the credit of the general fund of the  
27 state on or before March 1, 2010. In the event that the corporation  
28 shall fail to make such payment, the comptroller shall withhold from any  
29 appropriations otherwise available to the corporation, the amount suffi-  
30 cient to pay to the general fund the amounts required to be paid by the  
31 corporation pursuant to the foregoing provisions. The state comptroller

32 shall create accounts for each item of appropriation.

33 § 3. This act shall take effect April 1, 2009; provided, however, if  
34 this act shall become a law after such date it shall take effect imme-  
35 diately and shall be deemed to have been in full force and effect on and  
36 after April 1, 2009; and provided further that sections one and two of  
37 this act shall expire and be deemed repealed March 31, 2010.

38 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
39 sion, section or part of this act shall be adjudged by any court of  
40 competent jurisdiction to be invalid, such judgment shall not affect,  
41 impair, or invalidate the remainder thereof, but shall be confined in  
42 its operation to the clause, sentence, paragraph, subdivision, section  
43 or part thereof directly involved in the controversy in which such judg-  
44 ment shall have been rendered. It is hereby declared to be the intent of  
45 the legislature that this act would have been enacted even if such  
46 invalid provisions had not been included herein.

47 § 3. This act shall take effect immediately provided, however, that  
48 the applicable effective date of Parts A through EEE of this act shall  
49 be as specifically set forth in the last section of such Parts.