

STATE OF NEW YORK

9612

IN SENATE

December 9, 2022

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to creating climate negligence for dangers to safety and health caused by certain fossil fuel related activities

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

Section 1. The general business law is amended by adding a new article 20-B to read as follows:

ARTICLE 20-B

FOSSIL FUEL RELATED ACTIVITIES

Section 328. Definitions.

328-a. Fossil fuel industry member obligations.

328-b. Climate negligence.

328-c. Governmental enforcement prohibited.

328-d. Private right of action.

§ 328. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Fossil fuel industry member" shall mean a person, firm, corporation, company, partnership, society, joint stock company or any other entity or association with total annual revenues in excess of one billion dollars engaged in extracting, storing, transporting, refining, importing, exporting, producing, manufacturing, distributing, compounding, marketing, or offering for wholesale or retail sale, a qualified product.

2. "Qualified product" shall mean a fossil fuel product including, but not limited to:

(a) crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods.

(b) natural, manufactured, mixed, and byproduct hydrocarbon gas.

(c) refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil,

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

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1 casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil,
2 waste oil, blended gasoline, lubricating oil, and blends or mixtures of
3 oil with one or more liquid products or byproducts derived from oil or
4 gas.

5 (d) any physical waste generated in the extracting, storing, trans-
6 porting, refining, importing, producing, manufacturing, distributing, or
7 compounding a qualified product defined in paragraphs (a), (b), and/or
8 (c) of this subdivision which contains or is contaminated by any quali-
9 fied product defined in paragraphs (a), (b), and/or (c) of this subdivi-
10 sion or any substance appearing on a list within regulations promulgated
11 by the department of environmental conservation pursuant to section
12 37-0101 of the environmental conservation law.

13 3. "Reasonable controls and procedures" shall mean policies that
14 include, but are not limited to: (a) instituting business practices to
15 prevent pollution in New York state, including but not limited to the
16 release of greenhouse gases which contribute to climate change and emis-
17 sions which contribute to adverse health impacts; and (b) preventing
18 deceptive acts and practices and false advertising and otherwise ensur-
19 ing compliance with all provisions of article twenty-two-A of this chap-
20 ter. Acts or practices related to environmental commitment, performance,
21 or sustainability shall also be subject to this subdivision and shall be
22 clear, objective, and verifiable. The net impression of such acts and
23 practices shall not mislead a reasonable person about the fossil fuel
24 industry member's environmental commitment, performance, or sustainabil-
25 ity. This subdivision may not be construed to impose liability on any
26 speech or conduct protected by the first amendment of the United States
27 Constitution, as made applicable to the states through the United States
28 Supreme Court's interpretation of the fourteenth amendment of the United
29 States Constitution.

30 4. The terms "knowingly" and "recklessly" shall have the same meaning
31 as defined in section 15.05 of the penal law.

32 5. "Deceptive acts or practices" shall mean those acts and practices
33 which are unlawful pursuant to article twenty-two-A of this chapter.

34 6. "False advertising" shall have the same meaning as defined in arti-
35 cle twenty-two-A of this chapter.

36 § 328-a. Fossil fuel industry member obligations. 1. No fossil fuel
37 industry member shall knowingly or recklessly create, maintain or
38 contribute to a condition in New York state that endangers the safety or
39 health of the public, whether directly or indirectly, through extract-
40 ing, storing, transporting, refining, importing, exporting, producing,
41 manufacturing, distributing, compounding, marketing, or offering for
42 wholesale or retail sale, a qualified product.

43 2. Each fossil fuel industry member in New York state shall establish
44 and utilize reasonable controls and procedures to prevent its qualified
45 products from creating, maintaining or contributing, whether directly or
46 indirectly, to a condition in New York state that endangers the safety
47 or health of the public including, but not limited to, climate change.

48 § 328-b. Climate negligence. 1. A violation of section three hundred
49 twenty-eight-a of this article is hereby declared to be a climate negli-
50 gence.

51 2. Any harm caused by an action taken by a fossil fuel industry member
52 shall be deemed climate negligence regardless of when the underlying
53 conduct creating the nuisance occurred.

54 § 328-c. Governmental enforcement prohibited. Whenever there shall be
55 a violation of this article, no person or entity acting on behalf of the
56 state or any political subdivision thereof may bring, or intervene in,

1 an action in any court to enjoin and/or restrain such violation or to
2 obtain restitution or damages under this article. This section shall not
3 prohibit any person or entity, including a person or entity acting on
4 behalf of the state or any political subdivision thereof, from bringing
5 an action under any other provision of law nor shall it prohibit any
6 person or entity acting on behalf of the state or any political subdivi-
7 sion thereof from filing an amicus curiae brief in an action involving
8 an alleged violation of this article.

9 § 328-d. Private right of action. Except as described in section three
10 hundred twenty-eight-c of this article, any person, firm, corporation or
11 association that has been damaged as a result of a fossil fuel industry
12 member's acts or omissions in violation of this article shall be enti-
13 tled to bring an action for recovery of damages or to enforce this arti-
14 cle in:

15 1. the county in which all or a substantial part of the events or
16 omissions giving rise to the claim occurred;

17 2. the county of residence for any one of the natural person defend-
18 ants at the time the cause of action accrued;

19 3. the county of the principal office in this state of any one of the
20 defendants that is not a natural person; or

21 4. the county of residence for the claimant if the claimant is a
22 natural person residing in this state.

23 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
24 sion, section or part of this act shall be adjudged by any court of
25 competent jurisdiction to be invalid, such judgment shall not affect,
26 impair, or invalidate the remainder thereof, but shall be confined in
27 its operation to the clause, sentence, paragraph, subdivision, section
28 or part thereof directly involved in the controversy in which such judg-
29 ment shall have been rendered. It is hereby declared to be the intent of
30 the legislature that this act would have been enacted even if such
31 invalid provisions had not been included herein.

32 § 3. This act shall take effect immediately.