S T A T E O F N E W Y O R K

6574

I N S E N A T E

February 29, 2012

Introduced by Sen. FARLEY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to recycling of ionization smoke detectors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 28 to read as follows:

TITLE 28

RECYCLING OF IONIZATION SMOKE DETECTORS

SECTION 27-2801. DEFINITIONS.
27-2803. SPECIAL PROVISIONS FOR RECYCLING OF IONIZATION SMOKE DETECTORS.
27-2805. WASTE ACCEPTANCE PROGRAM FOR IONIZATION SMOKE DETECTORS.

S 27-2801. DEFINITIONS.

AS USED IN THIS SECTION:

1. "CONSUMER" MEANS A PERSON LOCATED IN THE STATE WHO OWNS OR USES IONIZATION SMOKE DETECTORS, BUT DOES NOT INCLUDE A MANUFACTURER, AN ENTITY THAT SELLS SUCH DETECTORS TO CONSUMERS AT RETAIL, OR AN ENTITY INVOLVED IN A WHOLESALE TRANSACTION BETWEEN A MANUFACTURER AND RETAILER.

2. "IONIZATION SMOKE DETECTOR" SHALL MEAN A SMOKE DETECTING ALARM DEVICE THAT CONTAINS A RADIOACTIVE MATERIAL PURSUANT TO A LICENSE FROM THE UNITED STATES NUCLEAR REGULATORY COMMISSION.

3. "MANUFACTURER" MEANS A PERSON WHO ASSEMBLES OR SUBSTANTIALLY ASSEMBLES IONIZATION SMOKE DETECTORS FOR SALE IN THE STATE UNDER LICENSE FROM THE UNITED STATES NUCLEAR REGULATORY COMMISSION.

4. "RETAILER" MEANS A PERSON WHO SELLS IONIZATION SMOKE DETECTORS TO A PERSON IN THE STATE THROUGH ANY MEANS, INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH RETAIL SALES OUTLETS, MAIL, CATALOGS, THE TELEPHONE OR THE INTERNET, OR ANY ELECTRONIC MEANS.

5. "SELL" OR "SALE" MEANS ANY TRANSFER FOR CONSIDERATION OF TITLE OR THE RIGHT TO USE, FROM A MANUFACTURER OR RETAILER TO A PERSON, INCLUDING, BUT NOT LIMITED TO, TRANSACTIONS CONDUCTED THROUGH RETAIL SALES

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

LBD07315-04-2

OUTLETS, CATALOGS, MAIL, THE TELEPHONE, THE INTERNET, OR ANY ELECTRONIC MEANS, BUT DOES NOT INCLUDE CONSUMER-TO-CONSUMER SECOND-HAND TRANSFER. "SELL OR SALE" ALSO DOES NOT INCLUDE: (A) THE LEASE OF IONIZATION SMOKE DETECTORS; OR (B) WHOLESALE TRANSACTIONS AMONG MANUFACTURERS, WHOLESALERS AND RETAILERS.

S 27-2803. SPECIAL PROVISIONS FOR RECYCLING OF IONIZATION SMOKE DETECTORS.

1. BEGINNING JULY FIRST, TWO THOUSAND THIRTEEN A MANUFACTURER OF IONIZATION SMOKE DETECTORS SHALL NOT SELL OR OFFER FOR SALE ANY IONIZATION SMOKE DETECTOR INTENDED FOR USE BY INDIVIDUAL HOUSEHOLDS, OFFICES OR COMMERCIAL ESTABLISHMENTS UNLESS THE MANUFACTURER HAS REGISTERED WITH THE DEPARTMENT AND MAINTAINS A WASTE ACCEPTANCE PROGRAM CONSISTENT WITH THE PROVISIONS OF SECTION 27-2805 OF THIS TITLE PROVIDING FOR THE COLLECTION, HANDLING AND RECYCLING OR REUSE OF SUCH DETECTOR.

2. A MANUFACTURER SHALL SUBMIT A REGISTRATION ON A FORM PRESCRIBED BY THE DEPARTMENT BY JANUARY FIRST, TWO THOUSAND THIRTEEN, ALONG WITH A REGISTRATION FEE OF ONE THOUSAND DOLLARS. THE REGISTRATION SHALL INCLUDE:

(A) THE MANUFACTURER'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(B) THE NAME AND TITLE OF AN OFFICER, DIRECTOR, OR OTHER INDIVIDUAL DESIGNATED AS THE MANUFACTURER'S CONTACT FOR PURPOSES OF THIS TITLE;

(C) THE LICENSE NUMBER OF THE SPECIFIC LICENSEE AUTHORIZED TO INITIALLY TRANSFER DETECTORS FOR USE BY EXEMPT PERSONS;

(D) A LIST IDENTIFYING THE MANUFACTURER'S BRANDS;

(E) SPECIFIC INFORMATION ON THE MANNER IN WHICH THE MANUFACTURER WILL COMPLY WITH SECTION 27-2805 OF THIS TITLE; AND

(E) ANY OTHER INFORMATION THAT THE DEPARTMENT MAY REQUIRE.

3. A MANUFACTURER'S REGISTRATION IS EFFECTIVE UPON ACCEPTANCE BY THE DEPARTMENT AND MUST BE UPDATED WITHIN THIRTY DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED BY SUBDIVISION TWO OF THIS SECTION.

4. ANY PERSON WHO BECOMES A MANUFACTURER OF IONIZATION SMOKE DETECTORS ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN SHALL REGISTER WITH THE DEPARTMENT PRIOR TO SELLING OR OFFERING FOR SALE SUCH PRODUCTS IN THE STATE, AND MUST COMPLY WITH THE REQUIREMENTS OF THIS TITLE.

5. A MANUFACTURER SHALL REPORT SUCH INFORMATION AS THE DEPARTMENT SHALL FROM TIME TO TIME REQUIRE.

6. THE DEPARTMENT IS AUTHORIZED TO PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT AND ADMINISTER THIS TITLE.

7. ALL FEES AND CHARGES COLLECTED PURSUANT TO THIS TITLE SHALL BE DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

S 27-2805. WASTE ACCEPTANCE PROGRAM FOR IONIZATION SMOKE DETECTORS.

1. A WASTE ACCEPTANCE PROGRAM SHALL BE SUBJECT TO THE DEPARTMENT'S APPROVAL AND SHALL AT A MINIMUM INCLUDE (A) A MAIL OR SHIP BACK RETURN PROGRAM; (B) A PUBLIC EDUCATION PROGRAM TO INFORM CONSUMERS ABOUT THE WASTE ACCEPTANCE PROGRAM, INCLUDING BUT NOT LIMITED TO AN INTERNET WEBSITE, A TOLL-FREE TELEPHONE NUMBER AND WRITTEN INFORMATION INCLUDED IN THE PRODUCT MANUAL FOR, OR AT THE TIME OF SALE OF, THE IONIZATION SMOKE DETECTOR THAT INFORMS THE CONSUMER OF THE ENVIRONMENTAL BENEFITS OF RECYCLING RADIOACTIVE MATERIAL, BATTERIES AND OTHER COMPONENTS OF THE DETECTOR AND HOW TO RETURN OR OTHERWISE ARRANGE FOR RECYCLING OF THE DETECTOR, INCLUDING INSTRUCTIONS ON SAFE HANDLING AND PREPARATION OF THE DETECTOR FOR RECYCLING; AND (C) ANY ADDITIONAL PROVISIONS DETERMINED BY THE DEPARTMENT TO CONTRIBUTE TO ENSURING CONVENIENT COLLECTION FROM CONSUMERS AND EFFECTIVENESS OF THE WASTE ACCEPTANCE PROGRAM. NOTHING IN THIS SECTION SHALL PRECLUDE THE OPERATION, WITH THE APPROVAL OF THE

DEPARTMENT, OF COOPERATIVE OR COLLECTIVE WASTE ACCEPTANCE PROGRAMS BY MORE THAN ONE MANUFACTURER.

2. A MANUFACTURER SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE WASTE ACCEPTANCE PROGRAM. THE MANUFACTURER SHALL NOT CHARGE CONSUMERS FOR THE COLLECTION, HANDLING AND RECYCLING OF USED OR UNWANTED IONIZATION SMOKE DETECTORS, PROVIDED THAT SUCH PROHIBITION SHALL NOT APPLY TO A CHARGE ON BUSINESS CONSUMERS. FOR PURPOSES OF THIS SUBDIVISION, "BUSINESS CONSUMER" MEANS A FOR-PROFIT ENTITY WHICH HAS FIFTY OR MORE FULL TIME EMPLOYEES OR A NOT-FOR-PROFIT CORPORATION WITH SEVENTY-FIVE OR MORE FULL TIME EMPLOYEES, BUT NOT A NOT-FOR-PROFIT CORPORATION DESIGNATED UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

S 2. The environmental conservation law is amended by adding a new section 71-2730 to read as follows:

S 71-2730. ENFORCEMENT OF TITLE 28 OF ARTICLE 27 OF THIS CHAPTER.

1. ANY MANUFACTURER WHO:

A. FAILS TO SUBMIT ANY REPORT, REGISTRATION OR FEE TO THE DEPARTMENT AS REQUIRED BY TITLE TWENTY-EIGHT OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS FOR EACH DAY SUCH REPORT, REGISTRATION OR FEE IS NOT SUBMITTED; AND

B. VIOLATES ANY OTHER PROVISION OF TITLE TWENTY-EIGHT OF ARTICLE TWENTY-SEVEN OF THIS CHAPTER OR FAILS TO PERFORM ANY DUTY IMPOSED BY SUCH TITLE SHALL BE LIABLE FOR A CIVIL PENALTY FOR EACH VIOLATION NOT TO EXCEED FIVE HUNDRED DOLLARS FOR THE FIRST VIOLATION, ONE THOUSAND DOLLARS FOR THE SECOND VIOLATION AND FIVE THOUSAND DOLLARS FOR THE THIRD AND SUBSEQUENT VIOLATIONS OF THIS TITLE WITHIN A TWELVE-MONTH PERIOD.

2. CIVIL PENALTIES UNDER THIS SECTION SHALL BE ASSESSED BY THE COMMISSIONER AFTER A HEARING OR OPPORTUNITY TO BE HEARD PURSUANT TO THE PROVISIONS OF SECTION 71-1709 OF THIS ARTICLE, OR BY THE COURT IN ANY ACTION OR PROCEEDING PURSUANT TO THIS SECTION, AND, IN ADDITION THERETO, SUCH PERSON MAY BY SIMILAR PROCESS BE ENJOINED FROM CONTINUING SUCH VIOLATION.

3. ALL PENALTIES COLLECTED PURSUANT TO THIS SECTION SHALL BE PAID OVER TO THE COMMISSIONER FOR DEPOSIT TO THE ENVIRONMENTAL PROTECTION FUND ESTABLISHED PURSUANT TO SECTION NINETY-TWO-S OF THE STATE FINANCE LAW.

S 3. This act shall take effect immediately.