

STATE OF NEW YORK

1935

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sen. AVELLA -- 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 the reduction and recycling of packaging

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "environmentally sound packaging act".

3 § 2. Legislative findings and declaration. The legislature hereby
4 finds and declares that a solid waste crisis exists in New York state,
5 and that the amount of solid waste requiring disposal has continued to
6 increase. The legislature further finds that over thirty percent of
7 municipal solid waste is comprised of packaging, that the production of
8 packaging has more than doubled in the last twenty years, and that this
9 portion of the municipal solid waste stream could be significantly
10 reduced through source reduction and material changes to increase the
11 reusability, recycled content, and recyclability of such packaging. The
12 legislature further finds that the reduction of packaging waste and the
13 success of municipal recycling is dependent on greatly increasing demand
14 for post-consumer materials in the manufacturing sector, that this
15 demand is very limited at present, and attributable to a lack of incen-
16 tives for manufacturers to increase the reusability, recycled content or
17 recyclability of their packaging, with no federal or state standards
18 applied to packaging based on such attributes or the lack of same.
19 Therefore, the legislature finds and determines that there is a need to
20 reduce packaging in the solid waste stream, by requiring that all pack-
21 aging sold in New York state meet certain standards for reduction, reus-
22 ability, recycled content, or recyclability.

23 § 3. The environmental conservation law is amended by adding a new
24 section 27-0721 to read as follows:

25 § 27-0721. Packaging reduction and recycling.

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

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1 1. Definitions. As used in this section: (a) "Concentrate form" shall
2 mean a product sold in a concentrated form that is one-third or less of
3 the volume of the product in its intended use form.

4 (b) "Environmentally sound packaging" shall mean packaging that is
5 reduced or reusable or recycled or recyclable.

6 (c) "Intermediate package" shall mean a wrap, box or bundle that
7 contains two or more unit packages of identical items, and that may be
8 enclosed by a shipping container.

9 (d) "Manufacturer" shall mean a person, firm, association, partnership
10 or corporation engaged in the production of packaging.

11 (e) "Material" shall mean any substance from which packaging is made,
12 including, but not limited to, paper, glass, plastic, and metal or any
13 combination thereof.

14 (f) "Packager" shall mean:

15 (i) for packaging in which products are placed prior to their entry
16 into the state, the packager is the person who receives title to the
17 shipment before or upon entry into the state; provided that if such
18 person is the purchaser in a retail sale involving direct shipment from
19 outside the state, then the packager is the seller;

20 (ii) for packaging in which a product is placed within the state prior
21 to the sale of the product, the packager is the person who places the
22 product in such packaging;

23 (iii) for packaging provided by a retail seller to a purchaser at the
24 point of product delivery, the packager is the retail seller.

25 (g) "Packaging" shall mean any container used to protect, store,
26 contain, transport, display or sell products. Packaging shall not
27 include any detachable closure device such as a cap, clip, cover, lid,
28 tab, or tamper resistant contrivance.

29 (h) "Person" shall mean any individual, trust, firm, joint stock
30 company, corporation, partnership, or association, including the state
31 of New York and any political subdivision of the state of New York.

32 (i) "Product" means any commodity destined for wholesale or retail
33 sale.

34 (j) "Recyclable" shall mean packaging made of a material for which
35 either of the following standards are met, as determined by the depart-
36 ment:

37 (i) access to municipal recyclable recovery programs for that material
38 is available to no less than seventy-five percent of the population of
39 the state;

40 (ii) a statewide recycling rate of fifty percent has been achieved for
41 the packaging material; or

42 (iii) a manufacturer, distributor or retailer achieves a statewide
43 recycling rate of fifty percent for the package sold within the state.

44 Packaging composed of more than one type of material shall not be
45 considered recyclable unless each material in the packaging that repres-
46 ents more than an insubstantial part of the packaging meets one of these
47 standards.

48 (k) "Recycled" shall mean packaging made with secondary materials
49 content, which meets the recycled content standards specified in regu-
50 lations promulgated by the department pursuant to subdivision two of
51 section 27-0717 of this title; provided, however, that within five years
52 of the effective date of this section, recycled shall mean a minimum of
53 forty-five percent by weight of post-consumer recycled content, as
54 defined by the department.

55 (l) "Reduced" shall mean packaging that is either reduced at least
56 fifteen percent by weight when compared with the packaging used for the

1 same product by the same packager five years earlier or packaging that
2 meets a minimum efficiency ratio of ninety percent product to ten
3 percent packaging by weight, when measured as the combined weight of the
4 intermediate package and the unit package if the product is conveyed to
5 the consumer in multiple layers of packaging, provided however, that
6 packaging exempted pursuant to subdivision three of this section shall
7 not be included in such measurement. In no case may packaging reduction
8 be achieved by the substitution of a different material category for a
9 material that constituted a substantial part of the packaging in ques-
10 tion.

11 (m) "Retail sale" shall mean any sale to a purchaser for consumption
12 or use other than resale or further processing or manufacturing.

13 (n) "Reusable" shall mean packaging that is designed for refilling or
14 reuse a minimum of five times in a program established by a manufactur-
15 er, distributor or retailer for refilling or reuse of the packaging.

16 (o) "Shipment" shall mean packaged products conveyed by truck or other
17 means of transport, and accompanied by an invoice.

18 (p) "Shipping container" shall mean packaging that is used in commerce
19 for packing, storing, and shipping products.

20 (q) "Unit package" shall mean a package which contains a single item,
21 a quantity of the same item, a set or an item with all its component
22 parts.

23 2. Environmentally sound packaging. Except as provided in subdivision
24 three of this section, no packager shall use or cause to be used any
25 packaging that is not environmentally sound packaging after January
26 first, two thousand twenty.

27 3. Exemptions. (a) The following types of packaging shall be uncondi-
28 tionally exempt from the provisions of this section:

29 (i) packaging which is in direct contact with food products, and has
30 not received prior authorization from the federal food and drug adminis-
31 tration to incorporate recycled content in such packaging, provided,
32 however, such packaging also does not comply with the standards as
33 defined in this section for reusable or reduced or recyclable;

34 (ii) packaging associated with drugs, drug products, cosmetics,
35 medical food and medical devices, as those terms are defined under the
36 Federal Food, Drug and Cosmetic Act and regulations promulgated there-
37 under;

38 (iii) packaging associated with products offered for sale in a concen-
39 trate form;

40 (iv) packaging for products destined for export from the state if the
41 packaging is not separated from the product before export;

42 (v) those packages or packaging components which have been delivered
43 to a packager prior to January first, two thousand twenty; and those
44 packages or packaging components with a code indicating date of manufac-
45 ture that were manufactured prior to January first, two thousand twenty;

46 (vi) packaging associated with retail sales of used merchandise by
47 individual consumers subsequent to initial retail sale;

48 (vii) packaging associated with sales of food products by or on behalf
49 of a not-for-profit corporation, if such corporation has established a
50 pattern, over a period exceeding twenty years, of relying on such sales
51 for a significant portion of its financial support.

52 (b) Every packager seeking a conditional exemption pursuant to this
53 subdivision shall submit a written application to the department and
54 shall pay an application fee, as determined by the department, suffi-
55 cient to meet only the costs associated with the implementation of this
56 subdivision.

1 (c) Pursuant to rules and regulations promulgated by the department,
2 the commissioner may grant a conditional exemption from any requirement
3 of this section if he or she determines that the requirement, when
4 applied to a particular type of packaging, would impose undue hardship
5 on the general public.

6 A packager applying for a conditional exemption under this paragraph
7 shall bear the burden of proof in establishing undue hardship. Undue
8 hardship shall be established by providing clear and convincing evidence
9 that there is no environmentally sound packaging available for that type
10 of product or the packaging is necessary to comply with health or safety
11 laws and there is no environmentally sound packaging available that
12 complies with those health and safety laws. Exemptions granted pursuant
13 to this paragraph shall be for a period not to exceed five years.

14 (d) Within thirty days after the receipt of an application for a
15 conditional exemption pursuant to paragraph (c) of this subdivision, the
16 department shall publish a notice of opportunity for public comment on
17 the application, and shall accept written comments from the public for
18 sixty days thereafter. Before granting a conditional exemption, the
19 department shall make a written finding of undue hardship. The depart-
20 ment shall mail written notice of its determination to the applicant
21 within one hundred twenty days after the receipt of an application
22 pursuant to paragraph (c) of this subdivision and shall publish a notice
23 of such determination.

24 4. Labeling requirements. (a) On or after January first, two thousand
25 twenty, every packager shall ensure that the words "Complies with New
26 York state packaging law," or abbreviations thereof, are affixed to all
27 environmentally sound packaging. The presence of such statement on pack-
28 aging shall indicate that the manufacturer of such packaging certifies
29 that the packaging is reduced, reusable, recycled, recyclable or exempt
30 from the requirements of this section. Use of this statement on any
31 other packaging shall constitute a violation of this section.

32 (b) For purposes of intermediate or unit packaging containing one or
33 more layers, only one compliance label is required, which shall appear
34 on that portion of the packaged product visible to the consumer at
35 retail sale.

36 5. Regulations. On or before September first, two thousand eighteen,
37 the department shall adopt rules and regulations necessary to carry out
38 the provisions of this section. Such rules and regulations shall
39 include, but need not be limited to:

40 (a) requirements for packagers to demonstrate compliance with the
41 environmentally sound packaging standards established pursuant to subdivi-
42 vision two of this section, and procedures to ensure effective oversight
43 of packager compliance with those standards by the department;

44 (b) a methodology for the calculation of recycling rates for material
45 used in recyclable packaging, including the conditions and criteria to
46 be met by a packager seeking to qualify a package as recyclable by
47 composting such material; and

48 (c) procedures for department review of exemptions under subdivision
49 three of this section.

50 6. Reports on recycling rates. By April first of each year, the
51 department of economic development, shall submit a report to the gover-
52 nor and the legislature stating the recycling rates for the previous
53 calendar year for the types of materials used in packaging, assessing
54 the levels of post-consumer recycled content in a representative sample
55 of packaging, and reviewing the status of reusable packaging in the
56 state. For recyclable packaging, the report shall specify those materi-

als which qualify as recyclable pursuant to each criterion set forth in paragraph (j) of subdivision one of this section.

7. Enforcement and violations. (a) The department of agriculture and markets or the department or, in a city with a population of one million or more, the city's department of consumer affairs, may inspect packaging to determine whether it is environmentally sound. If, on the basis of such inspection, a determination is made that any packager is in violation of the provisions of this section or any rule or regulation promulgated thereunder, the department of agriculture and markets or the department, or, in a city with a population of one million or more, the department of consumer affairs, may issue an order requiring compliance or issue notice of an administrative enforcement hearing, or both. Only one such agency shall issue such order, notice, or hold a hearing on any one violation. The packager shall be given an opportunity to be heard during any such hearing.

(b) As determined by a civil or administrative hearing, any person who violates any of the provisions of, or who fails to perform any duty imposed by this section or any rule or regulation promulgated thereunder, or any final determination or order of the commissioner of the department of agriculture and markets or the commissioner of the department, or in a city with a population of one million or more, the city's department of consumer affairs, shall be liable for a civil penalty not to exceed fifty dollars for each unit package which is not in compliance with the provisions of this chapter, or five hundred dollars for each intermediate package or shipping container which is not in compliance with the provisions of this chapter, provided that no person shall pay a penalty in excess of twenty thousand dollars for any one shipment of packaging. In considering the amount of the penalty to be imposed for each violation, the commissioner of the department or the commissioner of the department of agriculture and markets or the commissioner of the department of consumer affairs shall consider any evidence presented regarding the following factors: cost, size, weight of the product and package, compliance history of the violator, and any other factors which justice requires.

(c) Any person may commence a civil action in supreme court against any packager who is alleged to be in violation of any provision of this section or any regulation promulgated pursuant to this section. No such action may be commenced:

(i) prior to sixty days after the plaintiff or plaintiffs have given notice of the violation to the alleged violator, the attorney general, the department of agriculture and markets and, in a city with a population of one million or more, the city's department of consumer affairs; or

(ii) if the attorney general, the department of agriculture and markets, or, in a city with a population of one million or more, the city's department of consumer affairs has commenced a civil or administrative action to require compliance with the provision or regulation; or

(iii) if an alleged violator has a pending application for an exemption filed with the department.

The court, in issuing any final order in an action commenced or maintained pursuant to this subdivision, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing complainant.

(d) No packager of a product will be held in violation of this section who can show that, in the purchase of a package or packaging component,

1 he or she relied in good faith on the label of the manufacturer on such
2 packaging or packaging component that such packaging or packaging compo-
3 nent either complied with or was exempt from the requirements of this
4 section.

5 (e) No packager who is engaged in retail sale of food products on
6 behalf of a not-for-profit corporation will be held in violation of this
7 section unless such packager is an employee of such corporation or
8 unless such packager acts knowingly and in bad faith.

9 § 4. Severability. The provisions of this act shall be severable, and
10 if any part of this act shall be held invalid, the remainder of this act
11 and the application thereof shall not be affected thereby.

12 § 5. This act shall take effect immediately.