

# STATE OF NEW YORK

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4850

2019-2020 Regular Sessions

## IN ASSEMBLY

February 5, 2019

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Introduced by M. of A. COLTON, ENGLEBRIGHT, JAFFEE, ABINANTI, BLAKE --  
Multi-Sponsored by -- M. of A. RIVERA -- read once and referred 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 Assem-  
bly, 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:

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

LBD04111-01-9

§ 27-0721. Packaging reduction and recycling.

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

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

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

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

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

(f) "Packager" shall mean:

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

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

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

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

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

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

(j) "Recyclable" shall mean packaging made of a material for which either of the following standards are met, as determined by the department:

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

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

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

Packaging composed of more than one type of material shall not be considered recyclable unless each material in the packaging that represents more than an insubstantial part of the packaging meets one of these standards.

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

(l) "Reduced" shall mean packaging that is either reduced at least fifteen percent by weight when compared with the packaging used for the same product by the same packager five years earlier or packaging that meets a minimum efficiency ratio of ninety percent product to ten percent packaging by weight, when measured as the combined weight of the intermediate package and the unit package if the product is conveyed to the consumer in multiple layers of packaging, provided however, that packaging exempted pursuant to subdivision three of this section shall not be included in such measurement. In no case may packaging reduction be achieved by the substitution of a different material category for a material that constituted a substantial part of the packaging in question.

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

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

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

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

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

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

3. Exemptions. (a) The following types of packaging shall be unconditionally exempt from the provisions of this section:

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

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

(iii) packaging associated with products offered for sale in a concentrate form;

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

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

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

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

(b) Every packager seeking a conditional exemption pursuant to this subdivision shall submit a written application to the department and

1 shall pay an application fee, as determined by the department, suffi-  
2 cient to meet only the costs associated with the implementation of this  
3 subdivision.

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

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

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

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

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

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

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

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

51 (c) procedures for department review of exemptions under subdivision  
52 three of this section.

53 6. Reports on recycling rates. By April first of each year, the  
54 department of economic development, shall submit a report to the gover-  
55 nor and the legislature stating the recycling rates for the previous  
56 calendar year for the types of materials used in packaging, assessing

1 the levels of post-consumer recycled content in a representative sample  
2 of packaging, and reviewing the status of reusable packaging in the  
3 state. For recyclable packaging, the report shall specify those materi-  
4 als which qualify as recyclable pursuant to each criterion set forth in  
5 paragraph (j) of subdivision one of this section.

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

19 (b) As determined by a civil or administrative hearing, any person who  
20 violates any of the provisions of, or who fails to perform any duty  
21 imposed by this section or any rule or regulation promulgated there-  
22 under, or any final determination or order of the commissioner of the  
23 department of agriculture and markets or the commissioner of the depart-  
24 ment, or in a city with a population of one million or more, the city's  
25 department of consumer affairs, shall be liable for a civil penalty not  
26 to exceed fifty dollars for each unit package which is not in compliance  
27 with the provisions of this chapter, or five hundred dollars for each  
28 intermediate package or shipping container which is not in compliance  
29 with the provisions of this chapter, provided that no person shall pay a  
30 penalty in excess of twenty thousand dollars for any one shipment of  
31 packaging. In considering the amount of the penalty to be imposed for  
32 each violation, the commissioner of the department or the commissioner  
33 of the department of agriculture and markets or the commissioner of the  
34 department of consumer affairs shall consider any evidence presented  
35 regarding the following factors: cost, size, weight of the product and  
36 package, compliance history of the violator, and any other factors which  
37 justice requires.

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

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

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

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

54 The court, in issuing any final order in an action commenced or main-  
55 tained pursuant to this subdivision, may award costs of litigation,

1 including reasonable attorney and expert witness fees, to any prevailing  
2 complainant.

3 (d) No packager of a product will be held in violation of this section  
4 who can show that, in the purchase of a package or packaging component,  
5 he or she relied in good faith on the label of the manufacturer on such  
6 packaging or packaging component that such packaging or packaging compo-  
7 nent either complied with or was exempt from the requirements of this  
8 section.

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

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

16 § 5. This act shall take effect immediately.