

# STATE OF NEW YORK

9790

## IN ASSEMBLY

February 11, 2020

Introduced by M. of A. ENGLEBRIGHT, GLICK, COLTON, LIFTON, O'DONNELL, JAFFEE, THIELE, ABINANTI, WILLIAMS, D'URSO, CARROLL, EPSTEIN, LENTOL, COOK, MAGNARELLI, L. ROSENTHAL, ORTIZ, SIMOTAS, SIMON, STIRPE, MOSLEY, BLAKE, HYNDMAN, BARRON, GRIFFIN, TAYLOR, DAVILA -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring producers to establish a plan to collect packaging in the state

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 30 to read as follows:

### TITLE 30

#### PRODUCER PACKAGING PROGRAM

##### Section 27-3001. Definitions.

27-3003. Sales prohibition.

27-3005. Producer plan.

27-3007. Program responsibilities.

27-3009. Department responsibilities.

27-3011. Reporting requirements.

27-3013. Postconsumer recycled content.

27-3015. Collective participation.

27-3017. Waste characterization.

##### § 27-3001. Definitions.

When used in this title:

1. "brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

2. "disposable food service container" means all containers, bowls, plates, trays, cartons, cups, lids and other items that are designed or generally recognized by the public as being designed for one-time use to hold, contain, or transport foods, including without limitation, containers for takeout foods and/or leftovers from partially consumed meals prepared by retail food vendors.

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

LBD14944-02-0

1     3. (a) "packaging" means the material used for the containment,  
2 protection, handling, delivery, or presentation of goods by the producer  
3 for the user or consumer, ranging from raw materials to processed goods  
4 and which is capable of being removed and discarded when the product is  
5 put in use without adverse effect on the quality or performance of the  
6 product. Packaging includes, but is not limited to, all of the follow-  
7 ing:

8     (i) sales packaging or primary packaging intended to constitute a  
9 sales unit to the consumer at point of purchase;

10    (ii) grouped packaging or secondary packaging intended to brand or  
11 display the product;

12    (iii) transport packaging or tertiary packaging intended to protect  
13 the product during transport; and

14    (iv) disposable food service containers.

15    (b) Packaging does not include any of the following:

16    (i) packaging containing toxic or hazardous products regulated by the  
17 federal insecticide, fungicide, and rodenticide act (7 U.S.C. section  
18 136 et seq.);

19    (ii) plastic packaging containers that are manufactured for use in the  
20 shipment of hazardous materials and are prohibited from being manufac-  
21 tured with used material by federal packaging material specifications  
22 set forth in sections 178.509 and 178.522 of title 49 of the code of  
23 federal regulations;

24    (iii) packaging containing drugs or medical devices as defined in the  
25 federal food, drug, and cosmetic act (21 U.S.C. section 301 et seq.);

26    (iv) beverage containers subject to title ten of this article; and

27    (v) reusable packaging.

28    4. "postconsumer recycled content" means the content of a product made  
29 from recycled materials derived from material that has been discarded as  
30 solid waste having completed its life cycle as a consumer item.

31    5. (a) "producer" means a person who:

32    (i) has legal ownership of the brand, brand name, or co-brand of a  
33 product to which packaging is applied, that is sold in, into, or  
34 distributed for use in the state;

35    (ii) if subparagraph (i) of this paragraph does not apply, is the  
36 first importer of a product into the state, to which packaging has been  
37 applied, for sale in, into, or distribution for use in the state;

38    (iii) if subparagraph (ii) of this paragraph does not apply, sells at  
39 retail a product, to which packaging has been applied, acquired from an  
40 importer that is the producer; or

41    (iv) elects to assume the responsibility and register in lieu of a  
42 producer as defined under subparagraphs (i) through (iii) of this para-  
43 graph.

44    (b) Producer does not mean a person who generates less than one  
45 million dollars in annual revenues or less than one ton of packaging  
46 supplied within the state per year.

47    (c) Retailers that are not producers are exempt from the requirements  
48 of this title.

49    6. "source reduction" means any action which causes a net reduction in  
50 the generation of solid waste and includes, but is not limited to,  
51 reducing the use of nonrecyclable materials, replacing disposable mate-  
52 rials and products with reusable materials and products, reducing pack-  
53 aging, and increasing the efficiency of the use of materials. Source  
54 reduction does not include replacing a recyclable material with a nonre-  
55 cyclable material or a material that is less likely to be recycled, and

1 does not include a shift from a nonplastic material that currently is  
2 recyclable to plastic material.

3 § 27-3003. Sales prohibition.

4 1. Beginning January first, two thousand twenty-three, a producer of  
5 packaging shall not sell, offer for sale, or distribute plastic packag-  
6 ing in the state unless the producer is implementing a plan approved by  
7 the department pursuant to paragraph (a) of subdivision one of section  
8 27-3005 of this title.

9 2. Beginning January first, two thousand twenty-six, a producer of  
10 packaging shall not sell, offer for sale, or distribute packaging of any  
11 material type in the state unless the producer is implementing a plan  
12 approved by the department pursuant to paragraph (b) of subdivision one  
13 of section 27-3005 of this title.

14 § 27-3005. Producer plan.

15 1. (a) No later than July first, two thousand twenty-two, a producer,  
16 either individually or cooperatively, shall submit to the department for  
17 the department's approval a plan for the establishment of a plastic  
18 packaging program.

19 (b) No later than July first, two thousand twenty-five, a producer,  
20 either individually or cooperatively, shall submit to the department for  
21 the department's approval a plan for the establishment of a packaging  
22 program and/or a plan for the expansion of an existing plastic packaging  
23 program to include additional packaging materials.

24 2. A plan submitted by the producer to the department under this  
25 section shall:

26 (a) provide a list of each participating producer and brand covered by  
27 the program;

28 (b) provide information on the packaging covered under the program;

29 (c) provide information on the amount of packaging the producer sells  
30 in or into the state each year, by type;

31 (d) describe how the producer will achieve the collection of eighty  
32 percent of the producer's packaging in the state, including the methods  
33 that will be used for collection;

34 (e) describe the extent to which the program will utilize existing  
35 municipal programs and infrastructure;

36 (f) describe the extent to which the program will be consistent with  
37 the state solid waste management policy identified under section 27-0106  
38 of this article and local solid waste management plans;

39 (g) describe the extent to which the program will achieve the source  
40 reduction of the producer's packaging, including but not limited to  
41 reducing the amount of material used and designing for reuse;

42 (h) describe the anticipated costs to the producer of implementing the  
43 program and any anticipated savings;

44 (i) describe in detail education and outreach efforts that will be  
45 implemented to inform consumers about the program and how to partic-  
46 ipate; and

47 (j) provide any other information the department may require.

48 3. The producer shall update the plan when there are changes proposed  
49 to the current program. A new plan or amendment shall be required to be  
50 submitted to the department for approval when:

51 (a) there is an addition to the packaging covered under the program;

52 (b) there is a material change to the program; or

53 (c) every four years from the date of approval of a previous plan.

54 § 27-3007. Program responsibilities.

55 1. A packaging program shall:

1 (a) achieve the collection of at least eighty percent of the produc-  
2 er's packaging:

3 (i) in each planning unit, as defined in section 27-0107 of this arti-  
4 cle; and

5 (ii) in each municipality that is not part of a planning unit;

6 (b) provide widespread, convenient, and equitable access to collection  
7 opportunities for the producer's packaging in the state, including the  
8 collection of packaging from residential premises. Collection options  
9 may include, but are not limited to:

10 (i) collection facilities and services provided by the producer; and

11 (ii) collection services provided by existing municipal programs,  
12 provided that if municipalities agree to participate in the producer's  
13 program, the program shall provide for payments to municipalities to be  
14 determined in a manner that results in the total amount paid to all  
15 municipalities under the program being equal to the total net costs  
16 incurred by municipalities as a result of the program;

17 (c) source reduce the producer's packaging to the maximum extent  
18 feasible; and

19 (d) provide effective education and outreach efforts to inform consum-  
20 ers about the program, including a website and a toll-free telephone  
21 number, which shall include, at a minimum, information on how consumers  
22 may access and use collection services.

23 2. A producer shall maintain records demonstrating compliance with the  
24 provisions of this title and make them available for audit and  
25 inspection by the department for a period of three years. The depart-  
26 ment shall make such records available to the public upon request in  
27 accordance with the provisions of the state freedom of information law  
28 and the regulations promulgated thereunder. Record holders shall submit  
29 the records required to comply with the request within sixty working  
30 days of written notification by the department of receipt of the  
31 request.

32 3. A producer shall be responsible for all costs associated with the  
33 implementation of the packaging program and shall not impose a fee on  
34 consumers for the collection of packaging. A producer shall pay costs  
35 incurred by the state in the administration and enforcement of this  
36 title. Exclusive of fines and penalties, the state shall only recover  
37 its actual cost of administration and enforcement. A producer shall also  
38 reimburse planning units and municipalities for the cost of the waste  
39 characterization study requirement pursuant to section 27-3017 of this  
40 title.

41 § 27-3009. Department responsibilities.

42 1. The department shall promulgate all rules and regulations necessary  
43 for the implementation of this title.

44 2. The department shall (a) maintain a list of producers who are  
45 implementing or participating in a plan pursuant to section 27-3005 of  
46 this title, (b) maintain a list of each such producer's brands, and (c)  
47 post such lists on the department's website.

48 § 27-3011. Reporting requirements.

49 1. Beginning March first, two thousand twenty-four, for the previous  
50 calendar year and annually thereafter, a producer that sells, offers for  
51 sale, or distributes packaging in this state and is implementing a pack-  
52 aging program pursuant to this title shall submit a report to the  
53 department on a form prescribed by the department that includes the  
54 following:

55 (a) the amount of packaging collected for disposing, recycling or  
56 reuse in this state during the preceding calendar year and the methods

1 used to accept such packaging and the approximate weight and volume of  
2 the packaging accepted by each method used to the extent known;

3 (b) information detailing the costs of collection to the producer;

4 (c) information detailing the collection methods made available to  
5 consumers;

6 (d) a description of the public education and outreach conducted by  
7 the producer and samples of any materials, the number of visits to the  
8 website and calls to the toll-free telephone number provided by the  
9 producer as required by section 27-3007 of this title;

10 (e) any other information as required by the department; and

11 (f) a signature by an officer, director, or other individual affirming  
12 the accuracy of the report.

13 2. The department shall submit a report regarding the implementation  
14 of this title in the state to the governor and legislature by April  
15 first, two thousand twenty-four and every two years thereafter. The  
16 report shall include, at a minimum, an evaluation of:

17 (a) the packaging stream in the state;

18 (b) disposal, recycling and reuse rates in the state for packaging;

19 (c) a discussion of compliance and enforcement related to the require-  
20 ments of this title; and

21 (d) recommendations for any changes to this title.

22 § 27-3013. Postconsumer recycled content.

23 Beginning January first, two thousand twenty-five, only packaging  
24 containing at least twenty-five percent postconsumer recycled content  
25 may be sold, offered for sale, or distributed in the state.

26 § 27-3015. Collective participation.

27 A producer may satisfy the requirements of this title by agreeing to  
28 participate in a collective packaging program with any other producer or  
29 producers. Any such collective packaging program shall meet the same  
30 requirements as an individual producer. Any collective packaging program  
31 shall include a list of producers that are participating in such program  
32 along with other identifying information as may be required by the  
33 department.

34 § 27-3017. Waste characterization.

35 No later than December thirty-first, two thousand twenty-one, each  
36 planning unit, as defined in section 27-0107 of this article, and each  
37 municipality that is not part of a planning unit, shall submit to the  
38 department a study of the planning unit's waste streams for the purpose  
39 of determining the composition of the waste stream characterized by type  
40 of material.

41 § 2. This act shall take effect immediately.