STATE OF NEW YORK

3044

2019-2020 Regular Sessions

IN SENATE

February 1, 2019

Introduced by Sen. SANDERS -- 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 plastic bag reduction, reuse and recycling; to amend the state finance law, in relation to the reusable grocery bag fund; and to repeal certain provisions of the environmental conservation law relating thereto

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

Section 1. Section 27-2701 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is REPEALED and a new section 27-2701 is added to read as follows:

§ 27-2701. Definitions.

1. "Department" means the department of environmental conservation.

2. "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

3. "Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(a) (1) Except as provided in subparagraph two of this paragraph, contains a minimum of forty percent postconsumer recycled materials.

(2) An eight pound or smaller recycled paper bag shall contain a minimum of twenty percent postconsumer recycled material.

(b) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(c) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.

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

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4. "Reusable grocery bag" means a bag that is provided by a store to a customer at the point of sale that meets the requirements of section 27-2703 of this title.

5. (a) "Reusable grocery bag producer" means a person or entity that does any of the following:

(1) Manufactures reusable grocery bags for sale or distribution to a store.

(2) Imports reusable grocery bags into this state, for sale or distribution to a store.

(3) Sells or distributes reusable bags to a store.

(b) "Reusable grocery bag producer" does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph one or two of paragraph (a) of this subdivision.

6. (a) "Single-use carryout bag" means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of section 27-2703 of this title.

(b) A single-use carryout bag does not include any of the following:

(1) A bag provided by a pharmacy.

(2) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.

(3) A bag provided to contain an unwrapped food item.

(4) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.

7. "Store" means a retail establishment that meets any of the following requirements:

(a) A full-line, self-service retail store with gross annual sales of two million dollars or more that sells a line of dry groceries, canned goods, or nonfood items, and some perishable items.

(b) Has at least ten thousand square feet of retail space that generates sales or use tax.

(c) Is a convenience food store, deli, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods.

(d) Is a convenience food store, deli, foodmart, or other entity that is engaged in the retail sale of goods intended to be consumed off the premises.

(e) Is not otherwise subject to paragraphs (a), (b), (c), or (d) of this subdivision, if the retail establishment voluntarily agrees to comply with the requirements imposed upon a store pursuant to this title, irrevocably notifies the department of its intent to comply with the requirements imposed upon a store pursuant to this title, and complies with the requirements established pursuant to subdivision five of section 27-2702 of this title.

§ 2. Section 27-2703 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is REPEALED and a new section 27-2703 is added to read as follows:

§ 27-2703. Store operator responsibilities.

1. On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, may sell or distribute a reusable grocery bag to a customer at the point of sale only if the reusable bag is made by a producer certified pursuant to this section to meet all of the following requirements:

(a) Has a handle and is designed for at least one hundred twenty-five uses, as provided in this title.

(b) Has a volume capacity of at least fifteen liters.

(c) Is machine washable or made from a material that can be cleaned and disinfected.

(d) Has printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer, all of the following information:

(1) The name of the manufacturer.

(2) The country where the bag was manufactured.

(3) A statement that the bag is a reusable bag and designed for at least one hundred twenty-five uses.

(4) If the bag is eligible for recycling in the state, instructions to return the bag to the store for recycling or to another appropriate recycling location. If recyclable in the state, the bag shall include the chasing arrows recycling symbol or the term "recyclable", consistent with the Federal Trade Commission guidelines use of that term, as updated.

(e) Does not contain lead, cadmium, or any other toxic material that may pose a threat to public health. A reusable bag manufacturer may demonstrate compliance with this requirement by obtaining a no objection letter from the federal food and drug administration.

(f) Complies with section 260.12 of part two hundred sixty of title sixteen of the code of federal regulations related to recyclable claims if the reusable grocery bag producer makes a claim that the reusable grocery bag is recyclable.

2. (a) In addition to the requirements in subdivision one of this section, a reusable grocery bag made from plastic film shall meet all of the following requirements:

(1) On and after January first, two thousand twenty-one, it shall be made from a minimum of twenty percent postconsumer recycled material.

(2) On and after January first, two thousand twenty-six, it shall be made from a minimum of forty percent postconsumer recycled material.

(3) It shall be recyclable in this state, and accepted for return at stores subject to any at-store recycling program for recycling.

(4) It shall have, in addition to the information required to be printed on the bag or on a tag, pursuant to subparagraph four of paragraph (d) of subdivision one of this section, a statement that the bag is made partly or wholly from postconsumer recycled material and stating the postconsumer recycled material content percentage, as applicable.

(5) It shall be capable of carrying twenty-two pounds over a distance of one hundred seventy-five feet for a minimum of one hundred twenty-five uses and be at least 2.25 millimeters thick, measured according to the American Society of Testing and Materials standard D6988-13.

(b) A reusable grocery bag made from plastic film that meets the specifications of the American Society of Testing and Materials International Standard Specification for compostable plastics D6400, as updated, is not required to meet the requirements of subparagraph one or two of paragraph (a) of subdivision three of section 27-2701 of this title.

3. In addition to the requirements of subdivision one of this section, a reusable grocery bag that is not made of plastic film and that is made from any other natural or synthetic fabric, including, but not limited to, woven or nonwoven nylon, polypropylene, polyethylene-terephthalate, or Tyvek, shall satisfy all of the following:

(a) It shall be sewn.

(b) It shall be capable of carrying twenty-two pounds over a distance of one hundred seventy-five feet for a minimum of one hundred twenty-five uses.

(c) It shall have a minimum fabric weight of at least eighty grams per square meter.

4. On and after July first, two thousand twenty, a store as defined in paragraph (c), (d) or (e) of subdivision seven of section 27-2701 of this title, shall comply with the requirements of this section.

§ 3. Section 27-2707 of the environmental conservation law is REPEALED and a new section 27-2707 is added to read as follows:

§ 27-2707. Manufacturer responsibilities.

On and after July first, two thousand twenty, a producer of reusable grocery bags made from plastic film shall not sell or distribute a reusable grocery bag in this state unless the producer is certified by a third-party certification entity pursuant to section 27-2709 of this title. A producer shall provide proof of certification to the department demonstrating that the reusable grocery bags produced by the producer comply with the provisions of this title. The proof of certification shall include all of the following:

1. Names, locations, and contact information of all sources of postconsumer recycled material and suppliers of postconsumer recycled material.

2. Quantity and dates of postconsumer recycled material purchases by the reusable grocery bag producer.

3. How the postconsumer recycled material is obtained.

4. Information demonstrating that the postconsumer recycled material is cleaned using appropriate washing equipment.

§ 4. Section 27-2709 of the environmental conservation law is REPEALED and a new section 27-2709 is added to read as follows:

§ 27-2709. Department responsibilities.

1. (a) Commencing on or before July first, two thousand twenty, the certification conducted by a third-party certification entity, submitted under penalty of perjury, for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution, at the point of sale, that meets all the applicable requirements of this title. The proof of certification shall be accompanied by a certification fee, established pursuant to subdivision two of this section.

(b) A reusable grocery bag producer shall resubmit to the department proof of certification as described in paragraph (a) of this subdivision on biennial basis. A reusable grocery bag producer shall provide the department with an updated proof of certification conducted by a third-party certification entity if any modification that is not solely aesthetic is made to a previously certified reusable bag. Failure to comply with this subdivision shall result in removal of the relevant information posted on the department's web site pursuant to subparagraphs (1) and (2) of paragraph (e) of this subdivision for each reusable bag that lacks an updated proof of certification conducted by a third-party certification entity.

(c) A third-party certification entity shall be an independent, accredited ISO/IEC 17025 laboratory. A third-party certification entity shall certify that the producer's reusable grocery bags meet the requirements of this section.

(d) The department shall provide a system to receive proofs of certification online.

(e) On and after July first, two thousand twenty, the department shall publish a list on its web site that includes all of the following:

(1) The name, location, and appropriate contact information of certified reusable grocery bag producers.

(2) The reusable grocery bags of producers that have provided the required certification.

(f) A reusable grocery bag producer shall submit applicable certified test results to the department confirming that the reusable grocery bag meets the requirements of this title for each type of reusable grocery bag that is manufactured, imported, sold, or distributed in the state and provided to a store for sale or distribution.

(1) A person may object to the certification of a reusable grocery bag producer pursuant to this section by filing an action for review of that certification in the superior court of a county that has jurisdiction over the reusable grocery bag producer. The court shall determine if the reusable grocery bag producer is in compliance with the requirements of this title.

(2) A reusable grocery bag producer whose certification is being objected to pursuant to subparagraph one of this paragraph shall be deemed in compliance with this title pending a determination by the court.

(3) Based on its determination, the court shall direct the department to remove the reusable grocery bag producer from, or retain the reusable grocery bag producer on, its list published pursuant to paragraph (e) of this subdivision.

(4) If the court directs the department to remove a reusable grocery bag producer from its published list, the reusable grocery bag producer shall remain off of the published list for a period of one year from the date of the court's determination.

2. (a) A reusable grocery bag producer shall submit the fee established pursuant to paragraph (b) of this subdivision to the department when providing proof of certification or recertification pursuant to this subdivision and section 27-2707 of this title.

(b) The department shall establish an administrative certification fee schedule that will generate fee revenues sufficient to cover, but not exceed, the department's reasonable costs to implement this title. The department shall deposit all moneys submitted pursuant to this section into the reusable grocery bag fund established pursuant to section ninety-seven-yyyy of the state finance law. Moneys in the fund shall be continuously appropriated, without regard to fiscal year, to the department for the purpose of implementing this title.

§ 5. Title 27 of article 27 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is amended by adding a new section 27-2702 to read as follows:

§ 27-2702. Single use carryout bags.

1. (a) Except as provided in paragraph (e) of this subdivision, on and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, shall not provide a single-use carryout bag to a customer at the point of sale.

(b) (1) On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, shall not sell or distribute a reusable grocery bag at the point of sale except as provided in this subdivision.

(2) On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this

title, may make available for purchase at the point of sale a reusable grocery bag that meets the requirements of section 27-2703 of this title.

(3) On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, that makes reusable grocery bags available for purchase pursuant to subparagraph two of paragraph (b) of this subdivision shall not sell the reusable grocery bag for less than ten cents in order to ensure that the cost of providing a reusable grocery bag is not subsidized by a customer who does not require that bag.

(c) (1) On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, shall not sell or distribute a recycled paper bag except as provided in this subdivision.

(2) A store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, may make available for purchase a recycled paper bag. On and after July first, two thousand twenty, the store shall not sell a recycled paper bag for less than ten cents in order to ensure that the cost of providing a recycled paper bag is not subsidized by a consumer who does not require that bag.

(d) Notwithstanding any other law, on and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, that makes reusable grocery bags or recycled paper bags available for purchase at the point of sale shall provide a reusable grocery bag or a recycled paper bag at no cost at the point of sale to a customer using a payment card or voucher issued by the New York supplemental nutrition program for women, infants, and children pursuant to section twenty-five hundred seven of the public health law or an electronic benefit transfer card issued pursuant to section ninety-five of the social services law.

(e) On and after July first, two thousand twenty, a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, may distribute a compostable bag at the point of sale, if the compostable bag is provided to the consumer at the cost specified pursuant to subparagraph two of paragraph (c) of this subdivision, the compostable bag, at a minimum, meets the American Society of Testing and Materials International Standard Specification for compostable plastics D6400, as updated, and in the jurisdiction where the compostable bag is sold and in the jurisdiction where the store is located, both of the following requirements are met:

(1) A majority of the residential households in the jurisdiction have access to curbside collection of food waste for composting.

(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to consumers at the point of sale a compostable bag at a cost not less than the actual cost of the bag, which the legislature hereby finds to be not less than ten cents per bag.

(f) A store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title, shall not require a customer to use, purchase, or accept a single-use carryout bag, recycled paper bag, compostable bag, or reusable grocery bag as a condition of sale of any product.

2. On and after July first, two thousand twenty-one, a store, as defined in paragraph (c), (d) or (e) of subdivision seven of section 27-2701 of this title, shall comply with the same requirements of this

section that are imposed upon a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title.

3. (a) The operator of a store, as defined in paragraph (a) or (b) of subdivision seven of section 27-2701 of this title that makes recycled paper or reusable grocery bags available at the point of sale, shall be subject to the provisions of the at-store recycling program established pursuant to section 27-2705 of this title.

(b) A store that voluntarily agrees to comply with the provisions of this title pursuant to subdivision seven of section 27-2701 of this title, shall also comply with the provisions of the at-store recycling program established pursuant to section 27-2705 of this title.

4. All moneys collected pursuant to this title shall be retained by the store and may be used only for the following purposes:

(a) Costs associated with complying with the requirements of this title.

(b) Actual costs of providing recycled paper bags or reusable grocery bags.

(c) Costs associated with a store's educational materials or educational campaign encouraging the use of reusable grocery bags.

5. (a) A retail establishment not specifically required to comply with the requirements of this title is encouraged to reduce its distribution of single-use plastic carryout bags.

(b) Pursuant to the provisions of subdivision seven of section 27-2701 of this title, any retail establishment that is not a "store", that provides the department with the irrevocable written notice as specified in paragraph (c) of this subdivision shall be regulated as a "store" for the purposes of this title.

(c) The irrevocable written notice shall be dated and signed by an authorized representative of the retail establishment, and shall include the name and physical address of all retail locations covered by the notice. The department shall acknowledge receipt of the notice in writing and shall specify the date the retail establishment will be regulated as a "store", which shall not be less than thirty days after the date of the department's acknowledgment. The department shall post on its web site, organized by county, the name and physical location or locations of each retail establishment that has elected to be regulated as a "store".

§ 6. Title 27 of article 27 of the environmental conservation law, as added by chapter 641 of the laws of 2008, is amended by adding a new section 27-2712 to read as follows:

§ 27-2712. Enforcement.

1. A city, a county, a city and county, or the state may impose a civil liability on a person or entity that knowingly violated this title, or reasonably should have known that it violated this title, in the amount of one thousand dollars per day for the first violation of this title, two thousand dollars per day for the second violation, and five thousand dollars per day for the third and subsequent violations.

2. Any civil penalties collected pursuant to subdivision one of this section shall be paid to the office of the city attorney, city prosecutor, district attorney, or attorney general, whichever office brought the action. The penalties collected pursuant to this section by the attorney general may be expended by the attorney general, upon appropriation by the legislature, to enforce this title.

§ 7. Section 27-2713 of the environmental conservation law is REPEALED and a new section 27-2713 is added to read as follows:

§ 27-2713. Preemption.

1. Except as provided in subdivision three of this section, this title is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this title occupies the whole field of regulation of reusable grocery bags, single-use carryout bags, and recycled paper bags, as defined in this title, provided by a store, as defined in this title.

2. On and after January first, two thousand twenty, a city, county, or other local public agency shall not enforce, or otherwise implement, an ordinance, resolution, regulation, or rule, or any amendment thereto, adopted on or after the effective date of this section, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags, against a store, as defined in this title, unless expressly authorized by this title.

3. (a) A city, county, or other local public agency that has adopted, before the effective date of this section, an ordinance, resolution, regulation, or rule relating to reusable grocery bags, single-use carryout bags, or recycled paper bags may continue to enforce and implement that ordinance, resolution, regulation, or rule that was in effect before that date. Any amendments to that ordinance, resolution, regulation, or rule on or after January first, two thousand twenty, shall be subject to subdivision two of this section, except the city, county, or other local public agency may adopt or amend an ordinance, resolution, regulation, or rule to increase the amount that a store shall charge with regard to a recycled paper bag, compostable bag, or reusable grocery bag to no less than the amount specified in section 27-2702 of this title.

(b) A city, county, or other local public agency not covered by paragraph (a) of this subdivision that, before the effective date of this section, has passed a first reading of an ordinance or resolution expressing the intent to restrict single-use carryout bags and, before January first, two thousand twenty, adopts an ordinance to restrict single-use carryout bags, may continue to enforce and implement the ordinance that was in effect before January first, two thousand twenty.

§ 8. The state finance law is amended by adding a new section 97-yyyy to read as follows:

§ 97-yyyy. Reusable grocery bag fund. 1. There is hereby established in the joint custody of the commissioner of the department of environmental conservation and the comptroller a fund to be known as the "reusable grocery bag fund".

2. The fund shall consist of all monies appropriated for its purpose, all monies required by this section or any other provision of law to be paid into or credited to such fund. Whenever a lawsuit results in a civil judgment for expenses already paid for by the fund, that portion of the civil judgment shall be paid into the fund. Nothing contained herein shall prevent the department of environmental conservation from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Monies of the fund, when allocated, shall be available pursuant to section 27-2709 of the environmental conservation law.

4. Monies shall be payable from the fund on the audit and warrant of the state comptroller on vouchers approved and certified by the commissioner of the department of environmental conservation.

§ 9. This act shall take effect immediately.