STATE OF NEW YORK

3914--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. BURKE, FALL -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing standards and defining the terms biodegradable, degradable, and decomposable

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 32 to read as follows:

TITLE 32

BIODEGRADABLE, DEGRADABLE, AND DECOMPOSABLE PLASTICS

Section 27-3201. Definitions.
27-3203. ASTM standard revision.
27-3205. Labeling of plastics.
27-3207. Compostable plastic bags.
27-3209. Environmental marketing information.
27-3211. Civil liability.

§ 27-3201. Definitions.

1. "ASTM" shall mean the American society for testing and materials.

2. "ASTM standard" shall mean meeting the standards of the ASTM International standards D6400, D6868 or D7081 for biodegradable and compostable plastics as those standards may be amended but shall not include an ASTM standard guide, a standard practice, or a standard test method.

3. "Manufacturer" shall mean a person, firm, association, partnership, or corporation that produces a plastic product.

4. "OK home compost" shall mean conformity with the existing Vincotte certification "OK Compost HOME certification" which, as of January 1, 2011, uses European Norm 13432 standard adapted to low-temperature

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

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composting in accordance with the Vincotte program "OK 2-Home Compostability of Products."

5. "Plastic product" shall mean a product made of plastic, whether alone or in combination with other material, including, but not limited to, paperboard. A plastic product includes, but is not limited to, any of the following:

(a) A product or part of a product that is used, bought, or leased for use by a person for any purpose;

(b) A package or a packaging component;

(c) A bag, sack, wrap, or other thin plastic sheet film product; or

(d) A food or beverage container or a container component, including, but not limited to, a straw, lid, or utensil.

6. "Supplier" shall mean a person who does one or more of the following:

(a) Sells, offers for sale, or offers for promotional purposes, a plastic product that is used.

(b) Takes title to a plastic product, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

7. "Vincotte certification" shall mean a certification of a European norm standard adopted by the Belgian-accredited inspection and certification organization Vincotte.

8. "Readily and easily identifiable" shall mean labeling that meets both of the following requirements:

(a) Labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification if the bag has been certified as meeting that standard by a recognized third-party independent verification.

(b) Labeled in accordance with one of the following:

(i) The bag is made of a uniform color of green and labeled with the word "compostable" on one side of the bag, and the label shall be at least one inch in height.

(ii) Labeled with the word "compostable" on both sides of the bag and the label shall be one of the following:

(A) Green color lettering at least one inch in height.

(B) Within a contrasting green color band of at least one inch in height on both sides of the bag with color contrasting lettering of at least one-half inch in height.

(c) Notwithstanding the provisions of this subdivision, if the bag is smaller than 14 inches by 14 inches, the lettering and stripe shall be in proportion to the size of the bag.

9. "Plastic food container product" shall mean a product made of plastic that includes a tray, clamshell container, or other receptacle and that is used, or intended to be used, to hold food.

§ 27-3203. ASTM standard revision.

1. If an ASTM standard specification is revised, the department shall review the new ASTM standard specification as follows:

(a) If the department determines that the new standard, when compared to the ASTM standard specification prior to its revision, is more stringent and more protective of public health, public safety, and the environment, and is reflective of and consistent with state policies and programs, the department may adopt the new standard.

(b) If the department determines that the new standard, when compared to the ASTM standard specification prior to its revision, is not as stringent and does not protect public health, public safety, and the environment, and is not reflective of and consistent with state policies and programs, the department shall not adopt the new standard.

2. If the ASTM, or any other entity, develops a new standard specification or other applicable standard for any of the terms prohibited under subdivision one of section 27-3205 of this title, the department may review the new standard and, if the department determines that the new standard for the prohibited term, when compared to the current ASTM standard in effect, is more stringent and more protective of public health, public safety, and the environment, and is reflective of and consistent with state policies and programs, the department may make a recommendation to the legislature.

3. The department may adopt an existing standard different from an adopted ASTM standard specification if all the following conditions are met:

(a) The existing standard is adopted or developed by a standard-setting organization recognized by the department, including, but not limited to, the ASTM or another similar organization.

(b) The existing standard adds qualifications to the adopted ASTM standard specification, including, but not limited to, home compostable.

(c) The department determines that the existing standard is more stringent than the adopted ASTM standard specification for which that existing standard qualifies.

4. Compliance with a standard adopted pursuant to this section shall be deemed to be in compliance with this title.

§ 27-3205. Labeling of plastics.

1. (a) Except as provided in paragraph (c) of this subdivision, a person shall not sell a plastic product that is labeled with the term "compostable," "home compostable," or "marine degradable" unless, at the time of sale, the plastic product meets the applicable ASTM standard specification or the Vincotte OK Compost HOME certification, as provided in paragraph (d) of this subdivision.

(b) Compliance with only a section or a portion of a section of an applicable ASTM standard specification does not constitute compliance with paragraph (a) of this subdivision.

(c) Notwithstanding paragraph (a) of this subdivision, a person may sell a plastic product that is labeled with a qualified claim for a term specified in paragraph (a) of this subdivision, if the plastic product meets the relevant standard adopted by the department.

(d) A plastic product shall not be labeled with the term "home compostable" unless the manufacturer of that plastic product holds a Vincotte OK Compost HOME certificate of conformity with regard to that product, except:

(i) Notwithstanding paragraph (a) of this subdivision, if the ASTM adopts a standard specification for the term "home compostable" and the department determines that the ASTM standard specification is at least equal to, or more stringent than, the OK Compost HOME certification, a plastic product labeled with the term "home compostable" shall meet that ASTM standard specification. The department may also take the actions specified in subdivision three of section 27-3203 of this title with regard to an ASTM standard for home compostability.

(ii) If the department adopts a standard pursuant to subdivision three of section 27-3203 of this title, a plastic product labeled with the term "home compostable" shall meet that standard.

2. Except as provided in subdivision one, a person shall not sell a plastic product that is labeled with the term "biodegradable," "degradable," or "decomposable," or any form of those terms, or in any way imply that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

3. A manufacturer or supplier, upon the request of a member of the public, shall submit to that member, within ninety days of the request, information and documentation demonstrating compliance with this title, in a format that is easy to understand and scientifically accurate.

4. A product that is in compliance with this title shall not, solely as a result of that compliance, be deemed to be in compliance with any other applicable marketing requirement or guideline established under state law or by the Federal Trade Commission.

§ 27-3207. Compostable plastic bags.

1. A manufacturer of a compostable plastic bag meeting the adopted ASTM standard specification shall ensure that the compostable plastic bag is readily and easily identifiable from other plastic bags in a manner that is consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).

2. A compostable plastic bag sold or distributed shall not display a chasing arrow resin identification code or recycling type of symbol in any form.

3. A manufacturer is required to comply with this section only to the extent that the labeling requirements do not conflict with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (Part 260 (commencing with Section 260.1) of Subchapter B of Chapter I of Title 16 of the Code of Federal Regulations).

§ 27-3209. Environmental marketing information.

1. A manufacturer or supplier making an environmental marketing claim relating to the recycled content of a plastic food container product shall maintain information and documentation, which shall be in written form in its records, of both of the following in support of that claim:

(a) The recycled content for materials has been recovered or otherwise diverted from the solid waste stream either during the manufacturing process or after consumer use.

(b) The recycled content claim conforms to the uniform standards for recycled content contained in the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (16 C.F.R. Part 260).

2. A manufacturer or supplier shall furnish the information and documentation that it is required to maintain pursuant to this section to any member of the public upon request or provide the information and documentation by furnishing a link to a document on its website containing the information and documentation.

3. This section does not limit the requirements of this title or any other provision of law.

§ 27-3211. Civil liability.

1. Any municipality or the state may impose civil liability in the amount of five hundred dollars for the first violation of this title, one thousand dollars for the second violation, and two thousand dollars for the third and any subsequent violation.

2. Any civil penalties collected pursuant to subdivision one of this section shall be paid to the town, village, city, 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.

3. The remedies provided by this section shall not be exclusive and are in addition to the remedies that may be available pursuant to Chap-

ter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

4. The costs incurred in carrying out this title shall be recoverable by the attorney general, upon the request of the department, from the liable person or persons.

§ 2. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.