

# STATE OF NEW YORK

1185

2021-2022 Regular Sessions

## IN SENATE

January 8, 2021

Introduced by Sens. KAMINSKY, HOYLMAN, KRUEGER, MAY, SERRANO -- 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 establishing the extended producer responsibility act

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

1 Section 1. Legislative intent. The legislature finds the weight of  
2 waste generated in New York is a threat to the environment. The legisla-  
3 ture further finds and declares that it is in the public interest of the  
4 state of New York for covered material and product producers to under-  
5 take the responsibility for the development and implementation of strat-  
6 egies to promote recycling, reuse and recovery of covered material and  
7 products through investments in the end-of-product-life management of  
8 products.

9 § 2. Article 27 of the environmental conservation law is amended by  
10 adding a new title 31 to read as follows:

### TITLE 31

#### EXTENDED PRODUCER RESPONSIBILITY ACT

##### Section 27-3101. Definitions.

27-3103. Producer responsibilities.

27-3105. Funding mechanism.

27-3107. Producer responsibility plan.

27-3109. Producer responsibility plan approval.

27-3111. Collection and convenience.

27-3113. Outreach and education.

27-3115. Reporting requirements and audits.

27-3117. Antitrust protections.

27-3119. Penalties.

27-3121. State preemption.

27-3123. Authority to promulgate rules and regulations.

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

LBD01205-01-1

1           27-3125. Severability.

2   § 27-3101. Definitions.

3   1. "Activity-based costs" shall mean a method of distributing the cost  
4 of a process among its component streams according to the share of the  
5 total cost assumed as a result of the processing of that stream.

6   2. "Covered materials and products" shall mean any part of a package  
7 or container, regardless of recyclability or compostability, that  
8 includes material that is used for the containment, protection, handl-  
9 ing, delivery, and presentation of goods that are sold, offered for  
10 sale, or distributed to consumers in the state, including through an  
11 internet transaction. Covered materials and products include, but are  
12 not limited to, the following classes of materials:

13   (a) Containers and packaging: this class includes all flexible or  
14 rigid material, including but not limited to paper, carton, plastic,  
15 glass, or metal, and any combination of such materials that:

16   (i) is used to contain, protect, wrap or present products at any stage  
17 in the movement of the product from the responsible party to the ulti-  
18 mate user or consumer, including tertiary packaging used for transporta-  
19 tion or distribution directly to a consumer;

20   (ii) is intended for a single or short-term use and designed to  
21 contain, protect or wrap products, including secondary packaging  
22 intended for the consumer market; or

23   (iii) does not include packaging used for the long-term protection or  
24 storage of a product or with a life of not less than five years.

25   (b) Paper products: this class includes:

26   (i) paper and other cellulosic fibers, whether or not they are used as  
27 a medium for text or images, except books and materials in the newspa-  
28 pers class of materials;

29   (ii) containers or packaging used to deliver printed matter directly  
30 to the ultimate consumer or recipient;

31   (iii) paper of any description, including but not limited to:

32   (1) flyers;

33   (2) brochures;

34   (3) booklets;

35   (4) catalogs;

36   (5) telephone directories;

37   (6) newspapers;

38   (7) magazines;

39   (8) paper fiber; and

40   (9) paper used for writing or any other purpose.

41   (c) Plastics: this class includes any plastic as determined by the  
42 department including, but not limited to:

43   (i) rigid plastics:

44   (1) polyethylene terephthalate (PET);

45   (2) polyethylene (PE);

46   (3) polyvinyl chloride (PVC);

47   (4) polypropylene (PP);

48   (5) polystyrene (PS);

49   (6) poly coated fiber;

50   (7) multi-layered plastics;

51   (8) other (BPA, Compostable Plastics, Polycarbonate and LEXAN);

52   (ii) flexible plastics:

53   (1) polyethylene (PE);

54   (2) polyvinyl chloride (PVC);

55   (3) polypropylene (PP);

56   (4) poly coated fiber;

1 (5) multi-layered plastics;

2 (6) other (BPA, Compostable Plastics, Polycarbonate and LEXAN).

3 (d) For the purpose of this title, the products covered designation  
4 does not include the following:

5 (i) paper products that could become unsafe or unsanitary to recycle  
6 by virtue of their anticipated use;

7 (ii) literary, text, and reference bound books; and

8 (iii) beverage containers as defined in section 27-1003 of this arti-  
9 cle.

10 3. "Curbside recycling" means a recycling program that serves single  
11 and multi-family residential units, schools, state or local agencies, or  
12 institutions that is operated by a municipality pursuant to a contract  
13 with the municipality, private entity, or other public agency or through  
14 approved local solid waste management plans.

15 4. "Post-consumer recycled content" means the content of a product  
16 made of recycled materials derived from post-consumer recycled materials  
17 or feedstock.

18 5. "Producer" means: (a) the person who manufactures the covered mate-  
19 rial or product under such person's own name or brand and who sells or  
20 offers for sale the covered material or product in the state; or

21 (b) the person who imports the covered material or product as the  
22 owner or licensee of a trademark or brand under which the covered mate-  
23 rial or product is sold or distributed in the state; or

24 (c) the person or company that offers for sale, sells, or distributes  
25 the covered material or product in the state.

26 A producer shall not include a municipality or a local government  
27 planning unit.

28 6. "Producer responsibility organization" means a not-for-profit  
29 organization designated by a group of producers to act as an agent on  
30 behalf of each producer to develop and implement a producer responsibil-  
31 ity plan.

32 7. "Readily-recyclable" means packaging that can be sorted by entities  
33 processing recyclables from New York and for which, during the previous  
34 two calendar years, there was a consistent market, meaning recyclers  
35 were willing to pay for fully sorted material at the door of their  
36 facilities in quantities equal to or in excess of material supply. This  
37 does not include material types that recyclers accept in low quantities  
38 or sort out of material during additional processing steps; if material  
39 recyclers do not desire a full bale of a specific material type, that  
40 material type is not readily recyclable.

41 8. "Recycling" means to separate, dismantle or process the materials,  
42 components or commodities contained in covered products for the purpose  
43 of preparing the materials, components or commodities for use or reuse  
44 in new products or components. "Recycling" does not include energy  
45 recovery or energy generation by means of combustion, or landfill  
46 disposal of discarded covered products or discarded product component  
47 materials.

48 9. "Recycling rate" means the percentage of discarded covered products  
49 that is managed through recycling or reuse, as defined by this title,  
50 and is computed by dividing the amount of discarded covered products  
51 collected and recycled or reused by the total amount of discarded  
52 covered products collected over a program year.

53 10. "Reuse" means donating or selling a discarded covered product back  
54 into the market for its original intended use, when the discarded  
55 covered product retains its original performance characteristics and can  
56 be used for its original purpose.

1 11. "Retailer" means a person who sells or offers for sale a product  
2 to a consumer, including sales made through an internet transaction to  
3 be delivered to a consumer in the state.

4 § 27-3103. Producer responsibilities.

5 1. Within three years after the effective date of this title, no  
6 producer shall sell, offer for sale, or distribute covered materials or  
7 products for use in New York unless the producer, or a producer respon-  
8 sibility organization acting as their designated agent, has a producer  
9 responsibility plan approved by the department. Producers may satisfy  
10 participation obligations individually or jointly with other producers  
11 or through a producer responsibility organization.

12 2. Within one year after the department approves a producer responsi-  
13 bility plan, producers shall be required to meet the minimum post-con-  
14 sumer recycled material content rate and minimum recycling rate for a  
15 covered material or product as approved by the department in the produc-  
16 er responsibility plan.

17 3. A producer shall be exempt from the requirements of this title if  
18 the producer:

19 (a) Generates less than one million dollars in annual revenues;

20 (b) Generates less than one ton of covered materials or products  
21 supplied to New York state residents per year; or

22 (c) Operates as a single point of retail sale and is not supplied or  
23 operated as part of a franchise.

24 4. Retailers that are not producers are exempt from the requirements  
25 of this title.

26 5. Producers may comply individually or may form a producer responsi-  
27 bility organization and discharge their responsibilities to such organ-  
28 ization.

29 § 27-3105. Funding mechanism.

30 1. A producer responsibility organization shall establish program  
31 participation charges for producers through the producer responsibility  
32 plan pursuant to section 27-3107 of this title which shall be sufficient  
33 to cover all program costs.

34 2. A producer responsibility organization shall structure program  
35 charges to provide producers with financial incentives, to reward waste  
36 reduction and recycling compatibility innovations and practices, and to  
37 discourage designs or practices that increase costs of managing the  
38 products. The producer responsibility organization may adjust charges to  
39 be paid by participating producers based on factors that affect system  
40 costs. At a minimum, charges shall be variable based on:

41 (a) Costs to provide curbside collection or other level of consumer  
42 service that is, at minimum, as convenient as curbside collection or as  
43 convenient as the previous waste collection schema in the particular  
44 jurisdiction;

45 (b) Costs to process a producer's covered materials or products for  
46 sale to secondary material markets;

47 (c) Whether the covered material or product would typically be recycl-  
48 able except that as a consequence of the product's design, the product  
49 has the effect of disrupting recycling processes or the product includes  
50 labels, inks, and adhesives containing heavy metals or other hazardous  
51 waste as defined by the department in regulations that would contaminate  
52 the recycling process;

53 (d) Whether the covered materials or product are nonfood contact  
54 containers and other nonfood contact packaging that is specifically  
55 designed to be reusable or refillable and has high reuse or refill rate.

1 3. The charges shall be adjusted based upon the percentage of post-  
2 consumer recycled material content and such percentage of post-consumer  
3 recycled content shall be verified either by the producer responsibility  
4 organization or by an independent party designated by the department to  
5 ensure that such percentage exceeds the minimum requirements in the  
6 covered material, as long as the recycled content does not disrupt the  
7 potential for future recycling.

8 4. A producer responsibility organization shall be responsible for  
9 calculating and dispersing activity-based costs for municipal services  
10 utilized by a producer responsibility organization if the municipality  
11 elects to be compensated by the producer responsibility organization in  
12 the recovery, recycling, and processing of covered materials, whether  
13 such services are provided directly by the municipality or through a  
14 contracted service provider. The activity-based cost mechanism shall be  
15 based on the cost of residential curbside collection, on-site processing  
16 cost for each readily-recyclable material, cost of non-readily recycla-  
17 ble material types, transportation cost of recycling for each material  
18 type, and any other cost factors as determined by the department. To  
19 facilitate the producer responsibility organization's determination of  
20 the cost of recycling, participating municipalities shall report data  
21 related to their costs and the value of materials to the producer  
22 responsibility organization. Cost calculations shall take into consid-  
23 eration revenue generated from recyclable materials.

24 5. The department shall make such rules and regulations which may be  
25 necessary for a producer responsibility organization to develop and  
26 manage a funding mechanism and activity-based costs.

27 § 27-3107. Producer responsibility plan.

28 1. Producers, or a producer responsibility organization acting as  
29 their designated agent, shall develop and submit a producer responsibil-  
30 ity plan to the department no later than one year after the effective  
31 date of this title. Such plan shall be for five years and shall be  
32 reviewed and updated every five years following the approval of the  
33 original plan. The department shall have the discretion to require the  
34 plan to be reviewed or revised prior to the five year period if the  
35 department has cause to believe the minimum post-consumer recycled mate-  
36 rial content rates, minimum recycling rates, or other factors of the  
37 plan are not being met or followed by the producer, or producer respon-  
38 sibility organization, or if there has been a change in circumstances  
39 that warrants revision of the plan. The submitted plan shall include,  
40 but not be limited to:

41 (a) contact information of the producer responsibility organization  
42 and the producer or producers covered under the plan;

43 (b) a description of how comments of stakeholders were considered in  
44 the development of the plan;

45 (c) the covered materials for which the producer or producer responsi-  
46 bility organization is responsible for;

47 (d) a funding mechanism that allocates the costs to the producers to  
48 meet the requirements of this title and is sufficient to cover the cost  
49 of registering, operating and updating the plan, and maintaining a  
50 financial reserve sufficient to operate the program in a fiscally  
51 prudent and responsible manner;

52 (e) a description of the process for municipalities to recoup reason-  
53 able costs from the producer responsibility organization for the activi-  
54 ty-based costs, including, as applicable, any administrative, sorting,  
55 collection, transportation, or processing costs, if the producer respon-  
56 sibility organization uses existing services through a municipality;

1 (f) a proposed minimum post-consumer recycled material content rate  
2 requirement and minimum recycling rate for materials. The minimum recy-  
3 cling rate shall be varied for each recycled material and shall include  
4 paper products, glass, metal, and plastic;

5 (g) a description of a public education program pursuant to section  
6 27-3113 of this title;

7 (h) how the producers, or the producer responsibility organization,  
8 will work with existing waste haulers, material recovery facilities,  
9 recyclers, and municipalities to operate or expand current collection  
10 programs to address material collection methods;

11 (i) a description of how a municipality will participate, on a volun-  
12 tary basis, with collection and how existing municipal waste collection  
13 infrastructure will be used;

14 (j) a description of how the producer, or producer responsibility  
15 organization, plans to meet the convenience requirements set forth in  
16 this title;

17 (k) a description of how the producer, or producer responsibility  
18 organization, will meet or exceed the minimum recycling rate for a prod-  
19 uct;

20 (l) a description of the process for end-of-life management, including  
21 recycling and disposal, using environmentally sound management prac-  
22 tices;

23 (m) a description of how a producer responsibility organization will  
24 work with producers to reduce packaging through product design and  
25 program innovations;

26 (n) a process to address concerns and questions from customers and  
27 consumers; and

28 (o) any other information as specified by the department through regu-  
29 lations.

30 2. The department shall promulgate a registration fee schedule to  
31 cover administrative costs, including a schedule for re-evaluating the  
32 fee structure on an annual basis.

33 § 27-3109. Producer responsibility plan approval.

34 1. No later than ninety days after the submission of the producer  
35 responsibility plan, the department shall make a determination to  
36 approve the plan as submitted; approve the plan with conditions; or deny  
37 the plan. The department shall consider the following in whether to  
38 approve a plan:

39 (a) the plan adequately addresses all elements described in section  
40 27-3107 of this title with sufficient detail to demonstrate that the  
41 objective of the plan will be met;

42 (b) the producer has undertaken satisfactory consultation with stake-  
43 holders and has provided an opportunity for stakeholder input in the  
44 implementation and operation of the plan prior to submission of the  
45 plan;

46 (c) the plan adequately provides for: (i) the producer collecting and  
47 funding the costs of collecting and processing products covered by the  
48 plan or reimbursing a municipality; (ii) the funding mechanism to cover  
49 the entire cost of the program; (iii) convenient and free consumer  
50 access to collection facilities or collection services; and (iv) an  
51 evaluation system for the fee structure, which shall be evaluated on an  
52 annual basis by the producer responsibility organization and re-submit-  
53 ted to the department annually;

54 (d) the plan takes into consideration a post-consumer content rate and  
55 recycling rate that will create or enhance markets for recycled materi-  
56 als and there is a plan to adjust the minimum rates on an annual basis.

1 Such rates shall take into consideration current state and federal  
2 rates;

3 (e) the plan creates a convenient system for consumers to recycle that  
4 is, at minimum, as convenient as curbside collection or as convenient as  
5 the previous waste collection schema in the particular jurisdiction.

6 2. No later than six months after the date the plan is approved, the  
7 producer, or producer responsibility organization, shall implement the  
8 approved plan. The department may rescind the approval of an approved  
9 plan at any time.

10 § 27-3111. Collection and convenience.

11 A producer or producer responsibility organization shall provide for  
12 widespread, convenient, and equitable access to collection opportunities  
13 for the covered products identified under the producer or producer  
14 responsibility organization's plan. A producer responsibility organiza-  
15 tion shall ensure services continue for all single and multi-family  
16 residential units that a municipality serves as of the effective date of  
17 this article, either directly or through a contract to provide services,  
18 and that such services are continued through the plan. A producer  
19 responsibility organization may rely on a range of means to collect  
20 various categories of covered materials or products including, but not  
21 limited to, curbside collection, depot drop-off, and retailer take-back  
22 so long as covered materials and products collection options include  
23 curbside or multi-family recycling collection services provided by  
24 municipal programs, municipal contracted programs, solid waste  
25 collection companies, or other approved entities as identified by the  
26 department if:

27 1. The category of covered materials and products is suitable for  
28 residential curbside recycling collection and can be effectively sorted  
29 by the facilities receiving the curbside collected material;

30 2. The category of paper is suitable for residential curbside recycl-  
31 ing collection and can be effectively sorted by the facilities receiving  
32 the curbside collected material;

33 3. The provider of the residential curbside recycling service agrees  
34 to include the category of covered materials and products as an accepted  
35 material;

36 4. The covered materials and products category is not handled through  
37 a deposit and return scheme or buy back system that relies on a  
38 collection system other than curbside or multi-family collection; and

39 5. The provider of the residential curbside recycling service agrees  
40 to the producer responsibility organization activity-based costs  
41 arrangement.

42 § 27-3113. Outreach and education.

43 1. The producer, or producer responsibility organization, shall  
44 provide effective outreach, education, and communications to consumers  
45 throughout New York state regarding:

46 (a) proper end-of-life management of covered products and beverage  
47 containers;

48 (b) the location and availability of curbside and drop-off collection  
49 opportunities;

50 (c) how to prevent litter of covered products and beverage containers;  
51 and

52 (d) recycling and composting instructions that are: consistent state-  
53 wide, except as necessary to take into account differences among local  
54 laws and processing capabilities; easy to understand; and easily acces-  
55 sible.

1 2. The outreach and education required pursuant to subdivision one of  
2 this section shall:

3 (a) be designed to achieve the management goals of covered products  
4 under this title, including the prevention of contamination of covered  
5 products;

6 (b) be coordinated across programs to avoid confusion for consumers;

7 (c) include, at a minimum: consulting on education, outreach, and  
8 communications with local governments and other stakeholders; coordinat-  
9 ing with and assisting local municipal programs, municipal contracted  
10 programs, solid waste collection companies, and other entities providing  
11 services; and developing and providing outreach and education to the  
12 diverse ethnic populations in the state; and

13 (d) a plan to work with participating producers to label covered  
14 products with information to assist consumers in responsibly managing  
15 and recycling covered products.

16 3. The department shall determine the effectiveness of outreach and  
17 education efforts under this section to determine whether changes are  
18 necessary to improve those outreach and education efforts and develop  
19 information that may be used to improve outreach and education efforts  
20 under this section.

21 4. The producer responsibility organization shall undertake outreach,  
22 education, and communications that assist in attaining or exceeding the  
23 minimum post-consumer content and recovery rates.

24 § 27-3115. Reporting requirements and audits.

25 1. On or before one year after a producer or producer responsibility  
26 organization's first plan is approved, and annually thereafter, each  
27 producer, or producer responsibility organization acting as their desig-  
28 nated agent, shall submit a report to the commissioner that details the  
29 program for the prior year's program. The report shall be posted on the  
30 department's website and on the website of the producer, or producer  
31 responsibility organization acting as their designated agent. Such annu-  
32 al report shall include:

33 (a) a detailed description of the methods used to collect, transport  
34 and process covered materials and products including detailing  
35 collection methods made available to consumers and an evaluation of the  
36 program's collection convenience;

37 (b) the overall weight of covered materials and products collected in  
38 the state;

39 (c) the weight and type of covered materials and products collected in  
40 the state by the method of disposition;

41 (d) the total cost of implementing the program, as determined by an  
42 independent financial audit, as performed by an independent auditor;

43 (e) information regarding the independently audited financial state-  
44 ments detailing all deposits received and refunds paid by the producers  
45 covered by the approved plan, and revenues and expenditures for any fees  
46 associated with the approved plan that may be charged separately and  
47 identified on the consumer receipt of sale;

48 (f) a copy of the independent audit;

49 (g) a detailed description of whether the program compensates munici-  
50 palities, solid waste collection, sorting, and reprocessing companies,  
51 and other approved entities for their recycling efforts and other  
52 related services provided by the above entities;

53 (h) samples of all educational materials provided to consumers or  
54 other entities; and



1 (i) a detailed list of efforts undertaken and an evaluation of the  
2 methods used to disseminate such materials including recommendations, if  
3 any, for how the educational component of the program can be improved.

4 2. The department shall not require public reporting of any confiden-  
5 tial information that the department finds to be protected proprietary  
6 information. For purposes of this title, protected proprietary informa-  
7 tion shall mean information that, if made public, would divulge compet-  
8 itive business information, methods or processes entitled to protection  
9 as trade secrets of such producer or producer responsibility organiza-  
10 tion or information that would reasonably hinder the producer or produc-  
11 er responsibility organization's competitive advantage in the market-  
12 place.

13 § 27-3117. Antitrust protections.

14 A producer responsibility organization, including officers, members,  
15 employees and agents thereof, shall be immune from liability for conduct  
16 under state laws relating to antitrust, restraint of trade, unfair trade  
17 practices, and other regulation of trade or commerce only to the extent  
18 necessary to plan and implement compliance with this section.

19 § 27-3119. Penalties.

20 1. Except as otherwise provided in this section, any person or entity  
21 that violates any provision of or fails to perform any duty imposed  
22 pursuant to this title or any rule or regulation promulgated pursuant  
23 thereto, or any term or condition of any registration or permit issued  
24 pursuant thereto, or any final determination or order of the commis-  
25 sioner made pursuant to this article or article seventy-one of this chapter  
26 shall be liable for a civil penalty not to exceed five hundred dollars  
27 for each violation and an additional penalty of not more than five  
28 hundred dollars for each day during which such violation continues.

29 2. (a) Any producer or producer responsibility organization who  
30 violates any provision of or fails to perform any duty imposed pursuant  
31 to this title or any rule or regulation promulgated pursuant thereto, or  
32 any term or condition of any registration or permit issued pursuant  
33 thereto, or any final determination or order of the commissioner made  
34 pursuant to this article or article seventy-one of this chapter shall be  
35 liable for a civil penalty not to exceed five thousand dollars for each  
36 violation and an additional penalty of not more than one thousand five  
37 hundred dollars for each day during which such violation continues. For  
38 a second violation committed within twelve months of a prior violation,  
39 the producer or producer responsibility organization shall be liable for  
40 a civil penalty not to exceed ten thousand dollars and an additional  
41 penalty of not more than three thousand dollars for each day during  
42 which such violation continues. For a third or subsequent violation  
43 committed within twelve months of any prior violation, the producer or  
44 producer responsibility organization shall be liable for a civil penalty  
45 not to exceed twenty thousand dollars and an additional penalty of six  
46 thousand dollars for each day during which such violation continues.

47 (b) All producers participating in a producer responsibility organiza-  
48 tion shall be jointly and severally liable for any penalties assessed  
49 against the producer responsibility organization pursuant to this title  
50 and article seventy-one of this chapter.

51 3. Civil penalties under this section shall be assessed by the depart-  
52 ment after an opportunity to be heard pursuant to the provisions of  
53 section 71-1709 of this chapter, or by the court in any action or  
54 proceeding pursuant to section 71-2727 of this chapter, and in addition  
55 thereto, such person or entity may by similar process be enjoined from  
56 continuing such violation and any permit, registration or other approval

1 issued by the department may be revoked or suspended or a pending  
2 renewal denied.

3 4. The department and the attorney general are hereby authorized to  
4 enforce the provisions of this title and all monies collected shall be  
5 deposited to the credit of the environmental protection fund established  
6 pursuant to section ninety-two-s of the state finance law.

7 § 27-3121. State preemption.

8 Jurisdiction in all matters pertaining to activity-based costs and  
9 funding mechanisms of producer responsibility organizations relating to  
10 the recovery of covered materials by this title, vested exclusively in  
11 the state. Any provision of any local law or ordinance, or any rule or  
12 regulation promulgated thereto, governing covered materials and products  
13 recycling shall, upon the effective date of this title, be preempted;  
14 provided however, that nothing in this section shall preclude a person  
15 from coordinating, for recycling or reuse, the collection of covered  
16 materials and products.

17 § 27-3123. Authority to promulgate rules and regulations.

18 The commissioner shall have the power to promulgate rules and regu-  
19 lations necessary and appropriate for the administration of this title.

20 § 27-3125. Severability.

21 The provisions of this title shall be severable and if any phrase,  
22 clause, sentence or provision of this title or the applicability thereof  
23 to any person or circumstance shall be held invalid, the remainder of  
24 this title and the application thereof shall not be affected thereby.

25 § 3. This act shall take effect on the one hundred eightieth day after  
26 it shall have become a law.