

STATE OF NEW YORK

1185--A

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

Introduced by Sens. KAMINSKY, HINCHEY, COMRIE, HOYLMAN, JACKSON, KAPLAN, KRUEGER, LIU, MAY, RAMOS, REICHLIN-MELNICK, SERRANO, THOMAS -- read twice and ordered printed, and when printed to be committed 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 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, printed paper, and product packaging.

9 § 2. Article 27 of the environmental conservation law is amended by
10 adding a new title 33 to read as follows:

TITLE 33

EXTENDED PRODUCER RESPONSIBILITY ACT

Section 27-3301. Definitions.

27-3303. Producer responsibilities.

27-3305. Funding mechanism.

27-3307. Producer responsibility plan.

27-3309. Producer responsibility plan approval.

27-3311. Collection and convenience.

27-3313. Outreach and education.

27-3315. Reporting requirements and audits.

27-3317. Antitrust protections.

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

LBD01205-02-1

1 27-3319. Penalties.

2 27-3321. State preemption.

3 27-3323. Authority to promulgate rules and regulations.

4 27-3325. Severability.

5 § 27-3301. Definitions.

6 1. "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 foam 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 2. "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 or pursuant to a
13 contract with the municipality, private entity, or other public agency
14 or through approved local solid waste management plans.

15 3. "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 4. "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, or a registered 501(c)(3) charitable organization or
28 501(c)(4) social welfare organization.

29 5. "Producer responsibility organization" means a not-for-profit
30 organization designated by a group of producers to act as an agent on
31 behalf of each producer to develop and implement a producer responsibil-
32 ity plan, or a registered 501(c)(3) charitable organization or 501(c)(4)
33 social welfare organization

34 6. "Readily-recyclable" means packaging that can be sorted by entities
35 processing recyclables from New York and for which, during the previous
36 two calendar years, there was a consistent market, meaning recyclers
37 were willing to accept sorted material at the door of their facilities.
38 Readily-recyclable does not include material types that recyclers accept
39 in low quantities or sort out of material during additional processing
40 steps; if material recyclers do not desire a full bale of a specific
41 material type, that material type is not readily recyclable. Readily-re-
42 cyclable also does not include materials that contain harmful chemical,
43 physical, biological, or radiological substances that pose a threat to
44 human health or the environment for its intended or like manner of use.

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

52 8. "Recycling rate" means the percentage of discarded covered products
53 that is managed through recycling or reuse, as defined by this title,
54 and is computed by dividing the amount of discarded covered products
55 collected and recycled or reused by the total amount of discarded
56 covered products collected over a program year.

1 9. "Reuse" means donating or selling a discarded covered product back
2 into the market for its original intended use, when the discarded
3 covered product retains its original performance characteristics and can
4 be used for its original purpose.

5 10. "Retailer" means a person who sells or offers for sale a product
6 to a consumer, including sales made through an internet transaction to
7 be delivered to a consumer in the state.

8 § 27-3303. Producer responsibilities.

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

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

21 3. A producer shall be exempt from the requirements of this title if
22 the producer:

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

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

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

28 4. Retailers that are not producers are exempt from the requirements
29 of this title.

30 5. Producers may comply individually or may form a producer responsi-
31 bility organization and discharge their responsibilities to such organ-
32 ization.

33 § 27-3305. Funding mechanism.

34 1. A producer or producer responsibility organization acting as their
35 agent shall establish program participation charges, such as through the
36 use of eco-modulated fees, for producers through the producer responsi-
37 bility plan pursuant to section 27-3307 of this title which shall be
38 sufficient to cover all program costs.

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

46 (a) Costs to provide curbside collection or other level of consumer
47 service that is, at minimum, as convenient as curbside collection or as
48 convenient as the previous recycling collection schema in the particular
49 jurisdiction or as convenient as the previous refuse collection schema
50 in the particular jurisdiction should recycling collection not be
51 provided;

52 (b) Costs to process a producer's covered materials or products for
53 acceptance by secondary material markets;

54 (c) Whether the covered material or product would typically be readi-
55 ly-recyclable except that as a consequence of the product's design, the
56 product has the effect of disrupting recycling processes or the product

1 includes labels, inks, and adhesives containing heavy metals or other
2 hazardous waste as defined by the department in regulations that would
3 contaminate the recycling process;

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

7 3. The charges shall be adjusted based upon the percentage of post-
8 consumer recycled material content and such percentage of post-consumer
9 recycled content shall be verified either by the producer responsibility
10 organization through an independent third party approved or designated
11 by the department to perform verification services to ensure that such
12 percentage exceeds the minimum requirements in the covered material, as
13 long as the recycled content does not disrupt the potential for future
14 recycling.

15 4. A producer responsibility organization shall be responsible for
16 calculating and dispersing funding for municipal services utilized by a
17 producer responsibility organization if the municipality elects to be
18 compensated by the producer responsibility organization in the recovery,
19 recycling, and processing of covered materials, whether such services
20 are provided directly by the municipality or through a contracted
21 service provider. The program funding mechanism shall be based on the
22 cost of residential curbside collection, including the cost of curbside
23 containers where relevant, as well as processing cost for each readily-
24 recyclable material, cost of handling non-readily recyclable material
25 types collected as part of a recycling operation, transportation cost of
26 recycling for each material type, and any other cost factors as deter-
27 mined by the department. To facilitate the producer responsibility
28 organization's determination of the cost of recycling, participating
29 municipalities shall report data related to their costs and the value of
30 materials to the producer responsibility organization. Cost calcu-
31 lations shall take into consideration revenue generated from recyclable
32 materials.

33 5. No producer may charge a point-of-sale or other fee to consumers to
34 recoup the costs of meeting producer obligations under this title.

35 6. Nothing in this title shall require a municipality to participate
36 in a producer responsibility program.

37 7. The department shall make such rules and regulations which may be
38 necessary for a producer responsibility organization to develop and
39 manage a funding mechanism and activity-based costs.

40 § 27-3307. Producer responsibility plan.

41 1. Producers, or a producer responsibility organization acting as
42 their designated agent, shall develop and submit a producer responsibil-
43 ity plan to the department no later than one year after the effective
44 date of this title. Such plan shall be for five years and shall be
45 reviewed and updated every five years following the approval of the
46 original plan. The department shall have the discretion to require the
47 plan to be reviewed or revised prior to the five year period if the
48 department has cause to believe the minimum post-consumer recycled mate-
49 rial content rates, minimum recycling rates, or other factors of the
50 plan are not being met or followed by the producer, or producer respon-
51 sibility organization, or if there has been a change in circumstances
52 that warrants revision of the plan. The submitted plan shall include,
53 but not be limited to:

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

1 (b) a description of how comments of stakeholders were considered and,
2 if applicable, addressed in the development of the plan;

3 (c) a comprehensive list of the covered materials or products for
4 which the producer or producer responsibility organization is responsi-
5 ble for;

6 (d) a funding mechanism that allocates the costs to the producers to
7 meet the requirements of this title and is sufficient to cover the cost
8 of registering, operating and updating the plan, and maintaining a
9 financial reserve sufficient to operate the program in a fiscally
10 prudent and responsible manner;

11 (e) a description of the process for municipalities to recoup all
12 reasonable costs, both operational and capital, from the producer or
13 producer responsibility organization for the activity-based costs,
14 including, as applicable, any administrative, sorting, collection,
15 transportation, public education, or processing costs, if the producer
16 responsibility organization uses existing services through a munici-
17 pality;

18 (f) a detailed description of how the producer or the producer respon-
19 sibility organization, consulted with stakeholders, including munici-
20 palities, private sector haulers, and material recovery facilities, and
21 processors to seek their input in the development of the plan prior to
22 its submission to the department, and to what extent the producers or
23 the producer responsibility organization specifically incorporated the
24 stakeholders' input into the plan. Producers or the producer responsi-
25 bility organization shall provide such stakeholders with an opportunity
26 to review and comment upon the draft plan prior to its submission to the
27 department. Producers or the producer responsibility organization shall
28 make an assessment of comments received and shall provide a summary and
29 an analysis of the issues raised by stakeholders and significant changes
30 suggested by any such comments, a statement of the reasons why any
31 significant changes were not incorporated into the plan, and a
32 description of any changes made to the plan as a result of such
33 comments.

34 (g) a proposed minimum post-consumer recycled material content rate
35 requirement and minimum recycling rate for covered materials. The mini-
36 imum recycling rate shall be varied for each covered recycled material
37 and shall include paper products, glass, metal, and plastic;

38 (h) a description of a public education program pursuant to section
39 27-3313 of this title;

40 (i) how the producers, or the producer responsibility organization,
41 will work with existing waste haulers, material recovery facilities,
42 recyclers, and municipalities to operate or expand current collection
43 programs to address material collection methods;

44 (j) a description of how producers or the producer responsibility
45 organization will use open, competitive, and fair procurement practices
46 should they directly enter into contractual agreements with service
47 providers, including municipalities and private entities;

48 (k) a description of how a municipality will participate, on a volun-
49 tary basis, with collection and how existing municipal waste collection
50 infrastructure will be used;

51 (l) a description of how the producer, or producer responsibility
52 organization, plans to meet the convenience requirements set forth in
53 this title;

54 (m) a description of how the producer, or producer responsibility
55 organization, will meet or exceed the minimum recycling rate for a prod-
56 uct;

1 (n) a description of the process for end-of-life management, including
2 recycling and disposal, using environmentally sound management prac-
3 tices;

4 (o) a description of how a producer responsibility organization will
5 work with producers to reduce packaging through product design and
6 program innovations;

7 (p) a description of how a producer responsibility organization will
8 invest in reuse and recycling infrastructure and market development in
9 the state, including, but not limited to, installing or upgrading equip-
10 ment to improve sorting of covered products or mitigating the impacts of
11 covered products to other commodities at existing sorting and processing
12 facilities, and capital expenditures for new technology, equipment, and
13 facilities.

14 (q) a process to address concerns and questions from customers and
15 consumers; and

16 (r) any other information as specified by the department through regu-
17 lations.

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

21 § 27-3309. Producer responsibility plan approval.

22 1. No later than ninety days after the submission of the producer
23 responsibility plan, the department shall make a determination to
24 approve the plan as submitted; approve the plan with conditions; or deny
25 the plan. The department shall consider the following in whether to
26 approve a plan:

27 (a) the plan adequately addresses all elements described in section
28 27-3307 of this title with sufficient detail to demonstrate that the
29 objective of the plan will be met;

30 (b) the producer has undertaken satisfactory consultation with stake-
31 holders, has provided an opportunity for stakeholder input in the imple-
32 mentation and operation of the plan prior to submission of the plan, and
33 has thoroughly described how the stakeholders' input will be addressed
34 by and incorporated into the plan pursuant to paragraph (f) of subdivi-
35 sion one of section 27-3307 of this title;

36 (c) the plan adequately provides for: (i) the producer collecting and
37 funding the costs of collecting and processing products covered by the
38 plan or reimbursing a municipality; (ii) the funding mechanism to cover
39 the entire cost of the program; (iii) convenient and free consumer
40 access to collection facilities or collection services; (iv) a formulaic
41 system for equitable distribution of funds; and (v) an evaluation system
42 for the fee structure, which shall be evaluated on an annual basis by
43 the producer responsibility organization and re-submitted to the depart-
44 ment annually;

45 (d) the plan takes into consideration a post-consumer content rate and
46 recycling rate that will create or enhance markets for recycled materi-
47 als and there is a plan to adjust the minimum rates on an annual basis.
48 Such rates shall take into consideration current state and federal
49 rates;

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

53 (f) The department may establish additional plan requirements in addi-
54 tion to those identified herein to fulfill the intent of this title.

55 2. No later than six months after the date the plan is approved, the
56 producer, or producer responsibility organization, shall implement the

1 approved plan. The department may rescind the approval of an approved
2 plan at any time.

3 § 27-3311. Collection and convenience.

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

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

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

26 3. The recycling facility providing processing and sorting service
27 agrees to include the category of covered materials and products as an
28 accepted material;

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

32 5. The provider of the residential curbside recycling service agrees
33 to the producer responsibility organization service provider costs
34 arrangement.

35 § 27-3313. Outreach and education.

36 1. The producer, or producer responsibility organization, shall
37 provide effective outreach, education, and communications to consumers
38 throughout New York state regarding:

39 (a) proper end-of-life management of covered products and materials;

40 (b) the location and availability of curbside and drop-off collection
41 opportunities;

42 (c) how to prevent litter of covered products materials; and

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

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

49 (a) be designed to achieve the management goals of covered products
50 under this title, including the prevention of contamination of covered
51 products;

52 (b) incorporate, at a minimum, electronic, print, web-based, and
53 social media elements that municipalities could utilize at their
54 discretion;

55 (c) be coordinated across programs to avoid confusion for consumers;

1 (d) include, at a minimum: consulting on education, outreach, and
2 communications with local governments and other stakeholders; coordinat-
3 ing with and assisting local municipal programs, municipal contracted
4 programs, solid waste collection companies, and other entities providing
5 services; and developing and providing outreach and education to the
6 diverse ethnic populations in the state; and

7 (e) a plan to work with participating producers to label covered
8 products with information to assist consumers in responsibly managing
9 and recycling covered products.

10 3. The producer or producer responsibility organization shall consult
11 with municipalities on the development of educational materials and may
12 coordinate with municipalities on outreach and communication.

13 4. The department shall determine the effectiveness of outreach and
14 education efforts under this section to determine whether changes are
15 necessary to improve those outreach and education efforts and develop
16 information that may be used to improve outreach and education efforts
17 under this section.

18 5. The producer responsibility organization shall undertake outreach,
19 education, and communications that assist in attaining or exceeding the
20 minimum post-consumer content and recovery rates.

21 § 27-3315. Reporting requirements and audits.

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

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

34 (b) a description on the status of achieving the post-consumer recy-
35 clered content requirements as set forth in the plan pursuant to this
36 title, and what efforts are proposed in the event of failing to achieve
37 such goals;

38 (c) the overall weight of covered materials and products collected in
39 the state by material type;

40 (d) the weight and type of covered materials and products collected in
41 the state by the method of disposition by material type;

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

44 (f) information regarding the independently audited financial state-
45 ments detailing all payments received and issued by the producers
46 covered by the approved plan;

47 (g) a copy of the independent audit;

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

52 (i) samples of all educational materials provided to consumers or
53 other entities;

54 (j) a detailed list of efforts undertaken and an evaluation of the
55 methods used to disseminate such materials including recommendations, if

1 any, for how the educational component of the program can be improved;
2 and

3 (k) A detailed description of investments made in reuse and recycling
4 infrastructure and market development.

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

14 § 27-3317. Antitrust protections.

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

20 § 27-3319. Penalties.

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

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

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

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

1 continuing such violation and any permit, registration or other approval
2 issued by the department may be revoked or suspended or a pending
3 renewal denied.

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

8 § 27-3321. State preemption.

9 Jurisdiction in all matters pertaining to costs and funding mechanisms
10 of producer responsibility organizations relating to the recovery of
11 covered materials by this title, vested exclusively in the state;
12 provided, however, that (i) nothing in this section shall preclude any
13 city, town, village or other local planning units, which already has in
14 place on the effective date of this title any local law, ordinance or
15 regulation governing a municipally-operated recycling program or
16 collection program operated on behalf of such municipality, from deter-
17 mining what materials shall be included for recycling in such municipal
18 recycling collection program, or shall preclude any such local law,
19 ordinance or regulation which provides environmental protection equal to
20 or greater than the provisions of this title or rules promulgated here-
21 under, and (ii) that nothing in this section shall preclude a person
22 from coordinating, for recycling or reuse, the collection of covered
23 materials and products.

24 § 27-3323. Authority to promulgate rules and regulations.

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

27 § 27-3325. Severability.

28 The provisions of this title shall be severable and if any phrase,
29 clause, sentence or provision of this title or the applicability thereof
30 to any person or circumstance shall be held invalid, the remainder of
31 this title and the application thereof shall not be affected thereby.

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