STATE OF NEW YORK

5027--B

Cal. No. 262

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

Introduced by Sens. KAVANAGH, BIAGGI, MAY -- 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 -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee and committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, in relation to establishing a carpet collection program

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 33 to read as follows:

TITLE 33

CARPET COLLECTION PROGRAM

Section 27-3301. Definitions.
27-3303. Producer plan.
27-3305. Producer responsibilities.
27-3307. Retailer requirements.
27-3309. Department responsibilities.
27-3311. Carpet stewardship advisory board.
27-3313. Labeling and design requirements.
27-3315. Post-consumer content requirements.
27-3317. Penalties.
27-3319. Rules and regulations.

§ 27-3301. Definitions.

1. "Brand" means a name, symbol, word, or mark that attributes the product to the owner or licensee of the brand as the producer.

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

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2. "Carpet" means a manufactured article that is (a) used in commercial buildings or single or multifamily residential buildings, (b) affixed or placed on the floor or building walking surface as a decorative or functional building interior or exterior feature, and (c) primarily constructed of a top surface of synthetic or natural face fibers or yarns or tufts attached to a backing system made of synthetic or natural materials. "Carpet" includes, but is not limited to, a commercial or residential broadloom carpet, modular carpet tiles, artificial turf, a pad or underlayment used in conjunction with a carpet. "Carpet" does not include handmade rugs, area rugs, or mats.

3. "Closed loop recycling" means recycling in which materials that are reclaimed are returned to the original process or processes in which they were generated where they are reused in the production process.

4. "Collection site" means a permanent location in the state at which discarded carpet may be returned by a consumer. Collection sites shall accept all types of carpet as defined by this title regardless of brand.

5. "Consumer" means a person located in the state who purchases, owns, leases, or uses carpet, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school, or board of cooperative educational services or governmental entity.

6. "Discarded carpet" means carpet that a consumer has used and disposed of in the state and is no longer used for its manufactured purpose.

7. "Energy recovery" means the process by which all or a portion of solid waste materials are processed or combusted in order to utilize the heat content or other forms of energy derived from such solid waste materials.

8. "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS substances" means a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

9. "Producer" means any person who manufactures carpet that is sold, offered for sale, or distributed in the state under the manufacturer's own name or brand. "Producer" includes:

(a) the owner of a trademark or brand under which carpet is sold, offered for sale, or distributed in this state, whether or not such trademark or brand is registered in the state; and

(b) any person who imports a carpet into the United States that is sold or offered for sale in the state and that is manufactured by a person who does not have a presence in the United States.

10. "Recycling" means to separate, dismantle or process the materials, components or commodities contained in discarded carpet for the purpose of preparing the materials, components, or commodities for use or reuse in new products or components. "Recycling" does not include energy recovery or energy generation by means of combustion or landfill disposal of discarded carpet or discarded product component materials.

11. "Recycling rate" means the percentage of discarded carpet that is managed through recycling or reuse, as defined by this title, and is computed by dividing the amount of recycled output derived from collected carpet, plus any pounds sent for reuse by the estimated total amount of discarded carpet generated during a program year.

12. "Representative organization" means a not-for-profit organization established by a producer or group of producers to implement the carpet collection program.

13. "Retailer" means any person who sells or offers for sale carpet to a consumer in the state.

14. "Reuse" means the return of a product into the economic stream for use in the same kind of application as the product was originally intended to be used, without a change in the product's identity.

15. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this does not include samples, donations, and reuse.

§ 27-3303. Producer plan.

1. No later than December thirty-first, two thousand twenty-three, a producer, either individually or cooperatively with one or more producers, or a representative organization shall submit to the department for the department's approval a plan for the establishment of a carpet collection program that meets the collection requirements described in this section.

2. A producer may satisfy the carpet collection program requirement of this section by agreeing to participate collectively with other producers. Any such collective carpet collection program shall notify the department.

3. A producer or representative organization shall update the plan, as needed, when there are changes proposed to the current program. A new plan or amendment will be required to be submitted to the department for approval when:

(a) there is a revision of the program's goals; or

(b) every three years from the date of approval of a previous plan.

4. The plan submitted by the producer or representative organization to the department under this section shall, at a minimum:

(a) provide a list of each participating provider and brands covered by the program;

(b) provide information on the products covered by the program;

(c) describe how the producer or representative organization will collect, transport, recycle, and process carpet;

(d) describe how the program will provide for collection of carpet in the state, free of cost and in a manner convenient to consumers and carpet installers, including how the program will achieve, at a minimum, a convenience standard which ensures that all counties of the state and all municipalities which have a population of ten thousand or greater have at least one permanent collection site and one additional permanent collection site for every thirty thousand people located in those areas, that accepts carpet from consumers during normal business hours; however, with respect to a city having a population of one million or more, after consultation with the department of sanitation of such city, the department may otherwise establish an alternative convenience standard. The producer or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. Convenience standards shall be evaluated by the department periodically and the department may require additional collection locations to ensure adequate consumer convenience;

(e) describe in detail education and outreach efforts to inform consumers, carpet installers and others engaged in the management of discarded carpet about the program including, at a minimum, an internet website and a toll-free telephone number and written information included at the time of sale of carpet that provides sufficient informa-

tion to allow a consumer to learn how to return such carpet for disposal, recycling or reuse;

(f) describe the methods to be used to reuse or recycle discarded carpet;

(g) describe the methods to be used to manage or dispose of discarded carpet that cannot be recycled or reused;

(h) describe how the program will meet annual performance goals, as determined by the department, provided that at a minimum, the program shall achieve the following recycling rates:

(i) a thirty percent recycling rate for carpets of which ten percent shall be closed-loop recycling by five years after the plan is approved by the department pursuant to section 27-3309 of this title;

(ii) a fifty percent recycling rate for carpets of which twenty percent shall be closed-loop recycling by ten years after the plan is approved by the department pursuant to section 27-3309 of this title; and

(iii) a seventy-five percent recycling rate for carpets, of which forty percent shall be closed-loop recycling by fifteen years after the plan is approved by the department pursuant to section 27-3309 of this title;

(i) describe what, if any, incentives will be used to encourage retailer participation;

(j) describe the outreach and education methods that will be used to encourage municipal landfill and transfer station participation; and

(k) describe the sources of data and methodology for estimating the amount of carpet discarded in the state annually.

§ 27-3305. Producer responsibilities.

1. Beginning not later than July first, two thousand twenty-four, or six months after the plan is approved under subdivision four of section 27-3309 of this title, whichever occurs later, the producer or representative organization shall implement the carpet collection program utilizing collection sites established pursuant to paragraph (d) of subdivision four of section 27-3303 of this title.

2. A producer shall not sell, or offer for sale, carpet to any person in the state unless the producer and the producer's brands are registered with the department pursuant to this section on and after the date of implementation of the carpet collection program.

3. The program shall be free to the consumer, convenient and adequate to serve the needs of consumers in all areas of the state on an ongoing basis.

4. A producer or representative organization shall maintain records demonstrating compliance with the provisions of this title and make them available for audit and inspection by the department for a period of three years. The department shall make such records available to the public upon request in accordance with the provisions of the state freedom of information law and the regulations promulgated thereunder. Record holders shall submit the records required to comply with the request within sixty working days of written notification by the department of receipt of the request.

5. A producer or representative organization shall be responsible for all costs associated with the implementation of the carpet collection program, including but not limited to the cost of collection. A producer, producers or representative organization shall pay costs incurred by the state in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

6. Any person who becomes a producer on or after December thirty-first, two thousand twenty-three shall submit a plan to the department, or notify the department that it has joined an existing plan, prior to selling or offering for sale in the state any carpet, and shall comply with the requirements of this title.

7. On or before July first, two thousand twenty-five, and annually thereafter, a producer or representative organization shall submit a report to the department that includes, for the previous program year, a description of the program, including, but not limited to, the following:

(a) a detailed description of the methods used to collect, transport, and process carpet in the state, including detailing collection methods made available to consumers and an evaluation of the program's collection convenience;

(b) identification of all collection sites in the state;

(c) the weight of all of the producer's carpet collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

(d) an evaluation of whether the performance goals and recycling rates have been achieved;

(e) the total cost of implementing the program;

(f) samples of all educational materials provided to consumers and a detailed list of efforts undertaken and an evaluation of the methods used to disseminate such materials including recommendations, if any, for how the educational component of the program can be improved; and

(g) any other information required by the department.

8. On or before January first of each program year following implementation of the plan pursuant to section 27-3303 of this title, each producer, group of producers or representative organization shall submit a report to the department that assesses compliance with performance goals and describes any modifications necessary to achieve such goals.

§ 27-3307. Retailer requirements.

1. Beginning July first, two thousand twenty-four, no retailer may sell or offer for sale carpet in the state unless the producer of such carpet is participating in a carpet collection program. A retailer shall be in compliance with this section if, on the date the carpet was offered for sale, the producer is listed on the department's website as implementing or participating in an approved program or if the carpet brand is listed on the department's website as being included in the program.

2. Any retailer may participate, on a voluntary basis, as a designated collection site pursuant to a carpet collection program and in accordance with all applicable laws and regulations.

§ 27-3309. Department responsibilities.

1. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-3303 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

2. Beginning July first, two thousand twenty-four, the department shall post on its website the location of all collection sites identified to the department by the producer in its plans and annual reports.

3. The department shall post on its website each producer plan approved by the department.

4. Within ninety days after receipt of a proposed plan or plan amendment, the department shall approve or reject the plan or the plan amendment. If the plan or plan amendment is approved, the department shall

notify the producer or representative organization in writing. If the department rejects the plan or plan amendment, the department shall notify the producer or representative organization in writing stating the reason for rejecting the plan or plan amendment. A producer or representative organization whose plan is rejected shall submit a revised plan to the department within thirty days of receiving a notice of rejection. If the department rejects the subsequent proposal, the producer or producers at issue shall be out of compliance and subject to enforcement provisions.

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

(a) the stream of carpet in the state;

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

(c) a discussion of compliance and enforcement related to the requirements of this title; and

(d) recommendations for any changes to this title.

6. Starting four years after the plan is approved by the department pursuant to this section, the department shall impose a penalty of twenty-five cents per pound to be assessed on the producer or representative organization for the number of additional pounds of carpet that would have needed to be recycled through the program to achieve the performance goals specified in the approved stewardship plan. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 27-3311. Carpet stewardship advisory board.

1. There is hereby established within the department the carpet stewardship advisory board to make recommendations to the commissioner regarding producer plans required by this title.

2. The board shall be composed of thirteen voting members. Such members shall include:

(a) one representative of carpet producers;

(b) two representatives of carpet retailers;

(c) one representative of carpet recyclers;

(d) two representatives of carpet collectors;

(e) one representative of a company that utilizes discarded carpet to manufacture a new product;

(f) one representative of a carpet installer association;

(g) one representative from a statewide environmental organization;

(h) one representative from a statewide waste disposal association;

(i) one representative from the New York product stewardship council;

(j) one representative from a consumer organization; and

(k) one representative from a statewide recycling organization.

3. The members shall be appointed as follows:

(a) two members to be appointed by the temporary president of the senate;

(b) two members to be appointed by the speaker of the assembly;

(c) one member to be appointed by the minority leader of the senate;

(d) one member to be appointed by the minority leader of the assembly; and

(e) seven members to be appointed by the executive.

4. Such appointments shall be made no later than the first day of January following the date on which this title takes effect. The members shall designate a chair from among the members by majority vote. Board

members shall receive no compensation but shall be entitled to their necessary and actual expenses incurred in the performance of their board duties.

5. The board shall meet at least quarterly by call of the chair.

§ 27-3313. Labeling and design requirements.

1. On and after one year after the plan is approved by the department pursuant to section 27-3309 of this title, carpet sold or offered for sale in the state shall be accompanied by the following identifying information:

(a) Name of the producer and contact information; and

(b) Carpet material, composition, and type of construction.

2. On and after December thirty-first, two thousand twenty-four, no carpet sold or offered for sale in the state shall contain or be treated with PFAS substances for any purpose.

§ 27-3315. Post-consumer content requirements.

All carpet sold in the state shall be manufactured with the following minimum amounts from post-consumer sources:

1. within one year after the plan is approved by the department pursuant to section 27-3309 of this title, a minimum of ten percent post-consumer content;

2. within four years thereafter, a minimum of twenty percent post-consumer content; and

3. five years thereafter, a minimum of thirty percent post-consumer content.

§ 27-3317. Penalties.

Any producer who violates any provision of or fails to perform any duty imposed pursuant to this title shall be liable for a civil penalty not to exceed five hundred dollars for each violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues. Civil penalties shall be assessed by the department after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter.

§ 27-3319. Rules and regulations.

The department is authorized to promulgate any rules and regulations necessary to implement this title.

§ 2. Section 71-1701 of the environmental conservation law is amended to read as follows:

§ 71-1701. Applicability of this title.

This title shall be applicable to the enforcement of titles 1 through 11 and titles 15 through 19 of article 17; article 19; and [~~title~~] titles 1 and 33 of article 27.

§ 3. This act shall take effect immediately.