STATE OF NEW YORK

1185--B

Cal. No. 240

2021-2022 Regular Sessions

IN SENATE

January 8, 2021

Introduced by Sens. KAMINSKY, HINCHEY, ADDABBO, BIAGGI, BRISPORT, BROUK, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KRUEGER, LIU, MAY, MAYER, MYRIE, RAMOS, REICHLIN-MELNICK, SEPULVEDA, 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 -- 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 the extended producer responsibility act

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

Section 1. Legislative intent. The legislature finds the amount of waste generated in New York is a threat to the environment. The legislature further finds and declares that it is in the public interest of the state of New York for covered material and product producers to undertake the responsibility for the development and implementation of strategies to promote reduction, reuse, recovery, and recycling of covered materials and products through investments in the end-of-product-life management of products, printed paper, and product packaging.

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

TITLE 33

EXTENDED PRODUCER RESPONSIBILITY ACT

Section 27-3301. Definitions.
27-3303. Producer Responsibility advisory board.
27-3305. Producer responsibilities.
27-3307. Funding mechanism.
27-3309. Producer responsibility plan and needs assessment.

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

LBD01205-07-1

27-3311. Producer responsibility plan approval.
27-3313. Collection and convenience.
27-3315. Outreach and education.
27-3317. Reporting requirements and audits.
27-3319. Antitrust protections.
27-3321. Penalties.
27-3323. State preemption.
27-3325. Authority to promulgate rules and regulations.
27-3327. Other assistance programs.
27-3329. Severability.

§ 27-3301. Definitions.

As used in this title:

1. "Covered materials and products" shall mean any part of a package or container, regardless of recyclability, that includes material that is used for the containment, protection, handling, delivery, and presentation of goods that are sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction. Covered materials and products include, but are not limited to, the following classes of materials:

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

(i) is intended to contain, protect, wrap, present, or deliver products from the responsible party to the ultimate user or consumer, including tertiary packaging used for transportation or distribution directly to a consumer;

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

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

(b) Paper products: this class includes:

(i) paper and other cellulosic fibers, whether or not they are used as a medium for text or images and materials in the newspapers class of materials;

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

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

(1) flyers;

(2) brochures;

(3) booklets;

(4) catalogs;

(5) telephone directories;

(6) newspapers;

(7) magazines;

(8) paper fiber; and

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

(c) Plastics: this class includes plastic products as determined by the department that frequent the residential waste stream or are plastic products that have the effect of severely disrupting recycling processes, including, but not limited to, single use plastic items such as straws, utensils, cups, plates, and plastic bags.

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

(i) covered materials or products that could become unsafe or unsanitary to recycle by virtue of their anticipated use;

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

(iii) beverage containers as defined in section 27-1003 of this article on which a deposit is required to be initiated;

(iv) architectural paint containers collected and managed pursuant to title twenty of this article;

(v) medical devices and covered materials and products regulated as a drug, medical device or dietary supplement by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21 U.S. Code of Federal Regulations or the Dietary Supplement Health and Education Act;

(vi) Covered materials used to contain toxic or hazardous materials, or regulated by the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. SEC.136 ET SEQ. or other applicable federal law, rule or regulation.

2. "Curbside recycling" means a recycling program that serves residential units, or schools, state or local agencies, or institutions where such schools, state or local agencies, or institutions were served by a municipality or a private sector hauler as of the effective date of this title, and such recycling program is operated by a municipality or pursuant to a contract with the municipality, private sector hauler, or other public agency or through approved local solid waste management plans.

3. "Post-consumer material" means only those covered products or materials generated by a business or consumer which have served their intended end use as consumer items and which have been separated or diverted from the waste stream for the purposes of collection and recycling as a secondary material feedstock, but shall not include waste material generated during or after the completion of a manufacturing or converting process.

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

5. "Producer" means, in descending order of priority for assigning responsibility to meet the requirements of this title: (a) the person who manufactures the covered material or product under such person's own name or brand and who sells or offers for sale the covered material or product in the state;

(b) if paragraph (a) of this subdivision does not apply, the person or company who imports the covered material or product as the owner or licensee of a trademark or brand under which the covered material or product is sold or distributed in the state;

(c) if paragraphs (a) and (b) of this subdivision do not apply, the person or company that offers for sale, sells, or distributes the covered material or product in the state.

A producer shall not include a municipality or a local government planning unit, or a registered 501(c)(3) charitable organization or 501(c)(4) social welfare organization.

6. "Producer responsibility organization" means a not-for-profit organization designated by a group of producers to act as an agent on behalf of each producer to develop and implement a producer responsibility plan, or a registered 501(c)(3) charitable organization. To the extent applicable, a producer responsibility organization shall have a governing board that represents the diversity of producers and the covered materials and product types and such board shall include non-voting members representing a diversity of material trade associations.

7. "Readily-recyclable" means covered materials or products included in the minimum recyclables list pursuant to subdivision 5 of section

27-3313 of this title. Readily-recyclable does not include materials that contain toxic substances, as defined in this title.

8. "Recovery" means the diversion of covered materials or products that might be disposed of or become waste.

9. "Recovery rate" means the amount of covered materials or products recovered over a program year divided by the amount of product produced, expressed as a percentage.

10. "Recycling" means reprocessing, by means of a manufacturing process, of a used material into a product, a component incorporated into a product, or a secondary (recycled) raw material. "Recycling", for purposes of this title, does not include energy recovery or energy generation by means of combustion, use as a fuel, or landfill disposal of discarded covered materials or products or discarded product component materials or chemical conversion processes, as determined by the department.

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

12. "Reuse" means selling a discarded covered product back into the market for its original intended use, when the discarded covered product retains its original performance characteristics and can be used for its original purpose or covered materials or products that are intended to be refilled for the same or similar purpose by the producer.

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

14. "Toxic substance" means a chemical or chemical class of concern identified by a state agency, federal agency, international intergovernmental agency, accredited research university, or other scientific evidence. The department may reference existing toxic or hazardous substances lists it creates or those created by other state agencies, the Interstate Chemicals Clearinghouse, or chemicals classified by the European Union as carcinogens, mutagens, or reproductive toxicants pursuant to Category 1A or 1B in Annex VI to Regulation (EC) 1272/2008 in the promulgation of a toxic substance list.

§ 27-3303. Producer responsibility advisory board.

1. There is hereby established within the department a producer responsibility advisory board, hereinafter the advisory board, to receive and review the producer responsibility plans required under this title and to make recommendations to the department regarding the plan's approval.

2. (a) The advisory board shall be composed of an odd number of members and the commissioner shall appoint at least one member from each of the following: a municipality association or municipal recycling program, including an additional municipal representative from cities with a population of one million or more residents; a statewide environmental organization; a representative of environmental justice communities or organizations; a statewide waste disposal association; a materials recovery facility located within the state of New York; a recycling collection provider; a manufacturer of packaging materials utilizing post-consumer recycled content; a manufacturer of paper materials utilizing post-consumer recycled content; a consumer advocate; and a retailer.

(b) The member representing the producer or producer responsibility organization shall be a non-voting member.

(c) Appointments to the advisory board shall be made no later than six months after the effective date of this title.

3. The advisory board shall meet at least once a year by the call of the chair or by request of more than half the voting members.

4. (a) Each producer responsibility plan prepared by a producer or producer responsibility organization pursuant to this title shall be submitted to the advisory board, which shall consider whether the plan meets the criteria and objectives of this title.

(b) The advisory board shall, within ninety days of the submission of the producer responsibility plan, either: (i) forward the plan to the commissioner with its recommendation for approval; or (ii) forward the plan to the commissioner with its disapproval and stated reasons therefor, including any recommended changes to the plan necessary for approval.

(c) A producer responsibility organization may resubmit a producer responsibility plan for approval at any time. Upon such resubmission, the advisory board shall, within ninety days, forward the plan to the commissioner with its recommendation for approval or disapproval.

5. The advisory board shall review the submitted annual reports and make such recommendations to the department and the producer responsibility organization for improving the plan.

6. The decisions of the advisory board shall be by vote of the majority of its membership.

§ 27-3305. Producer responsibilities.

1. Within four years after the effective date of this title, no producer shall sell, offer for sale, or distribute covered materials or products for use in New York unless the producer, or a producer responsibility organization acting as their designated agent, has a producer responsibility plan approved by the department, upon the recommendation of the advisory board. Producers may satisfy participation obligations individually or jointly with other producers or through a producer responsibility organization.

2. Producers or a producer responsibility organization shall meet jointly with the advisory board at least annually.

3. The producer, or a producer responsibility organization shall be responsible for producers' compliance with the requirements of this title, including the preparation and implementation of a producer responsibility plan, the preparation and submission of annual audits, and the annual reports to the department.

4. Within the first four years after the department approves a producer responsibility plan, producers shall be required to report, on an annual basis, progress reports describing in detail progress towards meeting or exceeding the recovery, recycling, and post-consumer recycled content rates by material type. Such progress reports shall also include an evaluation of whether they are on target to meet the approved recovery, recycling, and post-consumer recycled content rates by material type. If a producer or producer responsibility organization is not on target to meet the required rates, the department, in consultation with the advisory board, shall either require an approved producer responsibility plan to be amended or require the producer to implement additional measures. Within five years after the department approves the producer responsibility plan, producers shall be required to meet the minimum recovery, recycling and post-consumer recycled material content rate for a covered material or product as approved by the department in

the producer responsibility plan or face penalties pursuant to section 27-3321 of this title.

5. A producer shall be exempt from the requirements of this title if the producer:

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

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

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

6. Retailers that are not producers are exempt from the requirements of this title.

7. Producers may comply individually or may form a producer responsibility organization and discharge their responsibilities to such organization.

8. The department shall establish regulations to allow voluntary agreements to be made between responsible parties to permit a responsible party to convey a different order of responsibility than defined in subdivision 4 of section 27-3301 of this title as long as both parties agree to the change in the hierarchy of responsibility.

§ 27-3307. Funding mechanism.

1. A producer or producer responsibility organization acting as their agent shall establish program participation charges for producers through the producer responsibility plan pursuant to section 27-3309 of this title which shall be sufficient to ensure the obligations of the statewide needs assessment and the producer responsibility plan are met. Provided, however, that covered materials in the newspaper or magazine class may satisfy their obligations hereunder by providing advertisement or publication in their newspapers, magazines, and/or on their websites in lieu of program participation charges so long as the value of the advertisement is equivalent to the financial obligations required under an approved producer responsibility plan.

2. A producer responsibility organization shall structure program charges to provide producers with financial incentives, to reward waste and source reduction and recycling compatibility innovations and practices, and to disincentivize designs or practices that increase costs of managing the products or which contain toxic substances. The producer responsibility organization may adjust charges to be paid by participating producers based on factors that affect system costs. At a minimum, charges shall be variable based on:

(a) Costs to provide curbside collection or other level of residential service that is, at minimum, as convenient as curbside collection or as convenient as the previous recycling collection plan in the particular jurisdiction or as convenient as the previous refuse collection plan in the particular jurisdiction should recycling collection not be provided;

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

(c) Whether the covered material or product would typically be readily-recyclable except that as a consequence of the product's design, the product has the effect of disrupting recycling processes or the product includes labels, inks, and adhesives containing heavy metals or other toxic substances as defined by the department in regulations that would contaminate the recycling process;

(d) Whether the covered materials or product is specifically designed to be reusable or refillable and has high reuse or refill rate;

(e) the commodity value of a covered material or product.

3. The charges shall be adjusted, or the producers may be provided a credit, based upon the percentage of post-consumer recycled material content and such percentage of post-consumer recycled content shall be verified by the producer responsibility organization or through an independent third party approved to perform verification services to ensure that such percentage exceeds the minimum requirements in the covered material, as long as the recycled content does not disrupt the potential for future recycling.

4. In addition to the annual schedule of fees approved in the producer responsibility plan, the producer responsibility organization fee schedule may include a special assessment on specific categories of covered materials or products at the request of responsible entities representing and approved by the advisory board if the nature of the covered material or product imposes unusual costs in collection or processing or requires special actions to address effective access to recycling or successful processing in municipal recycling facilities. The revenue from the special assessment shall be used to make system improvements for the specific covered materials or products on which the special assessment was applied.

5. A producer responsibility organization shall be responsible for calculating and dispersing funding at a reasonable recycling program funding rate, as approved by the department, and such reasonable rate may be varied based on population density rates, for municipal services utilized by a producer responsibility organization if the municipality elects to be compensated by the producer responsibility organization in the recovery, recycling, and processing of covered materials and products, whether such services are provided directly by the municipality or through a contracted service provider. If a municipality does not elect to provide service, the producer responsibility organization shall be responsible for contracting with a private entity for services and shall be responsible for calculating and disbursing funding at a reasonable recycling program rate for collection, recycling, recovery, and processing services provided by the private sector entity contracted to provide such services. The program funding mechanism shall be based on the cost of residential curbside collection, including the cost of curbside containers where relevant, as well as processing cost for each readily-recyclable material, cost of handling non-readily recyclable material types collected as part of a recycling operation, transportation cost of recycling for each material type, and any other cost factors as determined by the department. To facilitate the producer responsibility organization's determination of the cost of recycling, participating municipalities and private sector haulers contracting with producer responsibility organizations shall report data related to their costs and the value of materials to the producer responsibility organization. Cost calculations shall take into consideration revenue generated from recyclable materials.

6. Any funds directly collected pursuant to this title shall not be used to carry out lobbying activities on behalf of the producer responsibility organization.

7. No retailer may charge a point-of-sale or other fee to consumers to facilitate a producer to recoup the costs associated with meeting the obligations under this title.

8. Nothing in this title shall require a municipality to participate in a producer responsibility program.

9. The department shall make such rules and regulations which may be necessary for a producer responsibility organization to develop and manage a funding mechanism.

§ 27-3309. Producer responsibility plan and needs assessment.

1. A statewide needs assessment shall be conducted prior to the approval of a producer responsibility plan. The statewide needs assessment shall be funded by the producers or producer responsibility organization, and shall be conducted by an independent third party approved by the department and shall include an evaluation of the capacity, costs, gaps, and needs for the following factors:

(a) Current funding needs impacting recycling access and availability;

(b) Existing state statutory provisions and funding sources for recycling, reuse, reduction, and recovery;

(c) The collection and hauling system for recyclable materials in the state;

(d) The processing capacity and infrastructure for recyclable materials in the state and regionally and identifying necessary capital investments to existing and future reuse and recycling infrastructure;

(e) The market conditions and opportunities for recyclable materials in the state and regionally;

(f) Consumer education needs for recycling, reuse, and reduction of covered materials and products.

2. Producers, or a producer responsibility organization acting as their designated agent, shall develop and submit a producer responsibility plan to the advisory board. Such plan shall cover five years and shall be reviewed by the advisory board and updated every five years following the approval of the original plan. The department shall have the discretion to require the plan to be reviewed or revised prior to the five year period if the department has cause to believe the minimum post-consumer recycled material content rates, minimum recovery or recycling rates, or other factors of the plan are not being met or followed by the producer, or producer responsibility organization, or if there has been a change in circumstances that warrants revision of the plan. The advisory board shall also have the discretion to recommend revision of the plan to the department. The submitted plan shall include, but not be limited to:

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

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

(c) a comprehensive list of the covered materials or products for which the producer or producer responsibility organization is responsible for, which shall be included in the minimum recyclable lists pursuant to section 27-3313 of this title;

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

(e) a strategic capital investment plan and a mechanism to disperse funds for existing and future infrastructure;

(f) a description of the process for participating municipalities to recoup reasonable costs, both operational and capital, from the producer or producer responsibility organization, including, as applicable, any administrative, sorting, collection, transportation, public education, or processing costs, if the producer responsibility organization uses

existing services through a municipality or obtains such services from a private sector hauler;

(g) a detailed description of how the producer or the producer responsibility organization, consulted with the advisory board in the development of the plan prior to its submission to the department, and to what extent the producers or the producer responsibility organization specifically incorporated the advisory board's input into the plan. Producers or the producer responsibility organization shall also provide the advisory board an opportunity to review and comment upon the draft plan prior to its submission to the department. Producers or the producer responsibility organization shall make an assessment of comments received and shall provide a summary and an analysis of the issues raised by the advisory board and significant changes suggested by any such comments, a statement of the reasons why any significant changes were not incorporated into the plan, and a description of any changes made to the plan as a result of such comments;

(h) a proposed minimum post-consumer recycled material content rate requirement, minimum recovery, and minimum recycling rate for covered materials and products. The minimum rates shall be varied for each covered recycled material and shall include paper products, glass, metal, and plastic;

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

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

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

(l) a description of how a municipality will participate, on a voluntary basis, with collection and how existing municipal recycling processing and collection infrastructure will be used;

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

(n) a description of how the producer, or producer responsibility organization, will meet or exceed the minimum rates required under this title for covered materials or product;

(o) a description of the process for end-of-life management, including recycling and disposal of residuals collected for recycling, using environmentally sound management practices;

(p) a description of how the producer responsibility organization shall provide the option to purchase recycled materials from processors on behalf of producer members interested in obtaining recycled feedstock in order to achieve post-consumer recycled content objectives;

(q) a description of how a producer responsibility organization will work with producers to reduce packaging through product design, systems for reusable packaging, and program innovations;

(r) a description of how a producer responsibility organization will invest in existing and future reuse and recycling infrastructure and market development in the state, including, but not limited to, installing or upgrading equipment to improve sorting of covered materials and products or mitigating the impacts of covered materials and products to

other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities;

(s) a process to address concerns and questions from customers and residents; and

(t) any other information as specified by the department through regulations.

3. The department shall promulgate a registration fee schedule to cover administrative costs, including a schedule for re-evaluating the fee structure on an annual basis and shall consider if fees should be adjusted to incentivize performance. Such fees collected by the department shall only be used for the implementation, operation, and enforcement of this title, including approved costs associated with the advisory board.

§ 27-3311. Producer responsibility plan approval.

1. Before rejection or approval of a producer responsibility plan can be made in accordance with this title, the producer or producer responsibility organization shall submit the plan to the producer responsibility advisory board.

2. Within sixty days of the advisory board making a recommendation to the department, the department shall make a determination to approve the plan as submitted; approve the plan with conditions; or deny the plan, with reasons for the denial. The advisory board in recommending, and the department in approving a plan, shall consider the following in whether to approve a plan:

(a) the plan adequately addresses all elements described in section 27-3309 of this title with sufficient detail to demonstrate that the objective of the plan will be met;

(b) the producer has undertaken satisfactory consultation with the advisory board, has provided an opportunity for the advisory board's input in the implementation and operation of the plan prior to submission of the plan, and has thoroughly described how the the advisory board's input will be addressed by and incorporated into the plan pursuant to paragraph (g) of subdivision 2 of section 27-3309 of this title;

(c) the plan adequately provides for: (i) the producer collecting and funding the costs of collecting and processing products covered by the plan or reimbursing a municipality; (ii) the funding mechanism to cover the entire cost of the program; (iii) convenient and free consumer access to collection facilities or collection services; (iv) a formulaic system for equitable distribution of funds; (v) comprehensive public education and outreach; and (vi) an evaluation system for the fee structure, which shall be evaluated on an annual basis by the producer responsibility organization and re-submitted to the department annually;

(d) the plan takes into consideration a post-consumer content rate and recovery and recycling rates that will create or enhance markets for recycled materials, there is a plan to adjust the minimum rates on an annual basis, and the plan incentives waste prevention and reduction. Such post-consumer content rates, and such adjustments to the rates, shall take into consideration: (i) changes in market conditions, including supply and demand for post-consumer recycled plastics, recovery rates, and bale availability both domestically and globally; (ii) recycling rates; (iii) the availability of recycled materials suitable to meet the minimum recycled content goals, including the availability of high-quality recycled materials, and food-grade recycled materials; (iv) the capacity of recycling or processing infrastructure; (v) utili-

zation rates of the material; and (vi) the progress made by producers in meeting the post-consumer recycled targets by material type;

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

(f) the plan adequately considers the state's solid waste management policy set forth in section 27-0106 of this article;

(g) The department may establish additional plan requirements in addition to those identified herein to fulfill the intent of this title; provided, however, that any additional requirements shall be established one year prior to a required submission of a plan unless such additional requirements are in relation to the power granted to the department in subdivision 4 of section 27-3305 of this title.

3. No later than six months after the date the plan is approved, the producer, or producer responsibility organization, shall implement the approved plan. The department may rescind the approval of an approved plan at any time with cause and documented justification.

§ 27-3313. Collection and convenience.

A producer or producer responsibility organization shall provide for widespread, convenient, and equitable access to collection opportunities for the covered materials and products identified under the producer or producer responsibility organization's plan at no additional cost to residents. Such opportunities shall be provided to all residents of New York in a manner that is as convenient as the collection of municipal solid waste. A producer responsibility organization shall ensure services continue for curbside recycling programs that a municipality serves as of the effective date of this article, either directly or through a contract to provide services, and that such services are continued through the plan. A producer responsibility plan may not restrict a jurisdiction's resident's ability to contract directly with third parties to obtain recycling collection services if residents have the option to enter into such contracts as of the effective date of this title, as long as the resident still voluntarily chooses to contract directly with the third party. A producer responsibility organization may rely on a range of means to collect various categories of covered materials or products including, but not limited to, curbside collection, depot drop-off, and retailer take-back so long as covered materials and products collection options include curbside recycling collection services provided by municipal programs, municipal contracted programs, solid waste collection companies, or other approved entities as identified by the department if:

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

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

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

4. The provider of the residential curbside recycling service agrees to the producer responsibility organization service provider costs arrangement.

5. (a) The producer or producer responsibility organization shall adopt a list of minimum types of readily recyclable materials and products based on available collection and processing infrastructure and

recycling markets for covered materials and products. The producer or producer responsibility organization shall update and adopt the list on an annual basis, in consultation with the advisory board, in response to collection and processing improvements and changes in recycling end markets. If there are multiple lists, the department shall compile the lists and shall publish a compiled list to the public. Such lists may vary by geographic region depending on regional markets and regional collection and processing infrastructure.

(b) All municipalities or private recycling service providers shall provide for the collection and recycling of all identified materials and products contained on the list of minimum recyclables, based on geographic regions, in order to be eligible for reimbursement; provided, however, nothing shall penalize a municipality or private recycling service for recovering and recycling materials that are generated in the municipality or geographic region that are not included on the list of minimum types of recyclable covered materials or products as long as it can be demonstrated that such materials have a market. Reimbursement shall cover recycling of all covered materials and products so long as the program includes at least the minimum recyclable list.

(c) The department may grant an exception of the requirements in paragraph (b) of this subdivision upon a written showing by the municipality or private recycling service that compliance with the requirement is not practicable for a specific identified product or material and if the department finds it is in the best interest of the intent of this title to grant them an extension; provided, however, that the extension granted by the department shall not exceed twelve months.

§ 27-3315. Outreach and education.

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

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

(b) the location and availability of curbside recycling and additional drop-off collection opportunities;

(c) how to prevent litter of covered materials and products in the process of collection; and

(d) recycling instructions that are: consistent statewide, except as necessary to take into account differences among local laws and processing capabilities; easy to understand; and easily accessible.

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

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

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

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

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

(e) a plan to work with participating producers to label covered products, in accordance with reasonable labeling standards, with infor-

mation to assist consumers in responsibly managing and recycling covered materials and products.

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

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

5. The producer responsibility organization shall undertake outreach, education, and communications that assist in attaining or exceeding the recovery and recycling rates.

§ 27-3317. Reporting requirements and audits.

1. One year after a producer or producer responsibility organization's first plan is approved, and annually thereafter, each producer, or producer responsibility organization acting as their designated agent, shall submit a report to the department that details the performance for the prior year's program. The report shall be posted on the department's website and on the website of the producer, or producer responsibility organization acting as their designated agent. Such annual report shall include:

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

(b) a description of the status of achieving the recovery and recycling rates as set forth in the plan pursuant to this title and what efforts are proposed in the event of failing to achieve such rates;

(c) a description on the status of achieving the post-consumer recycled content rates as set forth in the plan pursuant to this title, and what efforts are proposed in the event of failing to achieve such rates;

(d) the amount of covered materials and products collected in the state by material type;

(e) the amount and type of covered materials and products collected in the state by the method of disposition by material type;

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

(g) information regarding the independently audited financial statements detailing all payments received and issued by the producers covered by the approved plan;

(h) a copy of the independent audit;

(i) a detailed description of whether the program compensates municipalities, solid waste collection, sorting and processing facilities, and other approved entities for their recycling efforts and other related services provided by the above entities;

(j) samples of all educational materials provided to consumers or other entities;

(k) 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

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

2. The department shall not require public reporting of any confidential information that the department finds to be protected proprietary

information. For purposes of this title, protected proprietary information shall mean information that, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such producer or producer responsibility organization or information that would reasonably hinder the producer or producer responsibility organization's competitive advantage in the marketplace.

§ 27-3319. Antitrust protections.

A producer or producer responsibility organization that organizes the collection, transportation, and procession of covered materials and products, in accordance with a producer responsibility plan approved under this title, shall not be liable for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct undertaken in accordance with the program pursuant to this title; provided, however, this section shall not apply to any agreement establishing or affecting the price of a covered material, product, or the output or production of any agreement restricting the geographic area or customers to which a covered material or product will be sold.

§ 27-3321. Penalties.

1. Except as otherwise provided in this section, any person or entity that violates any provision of or fails to perform any duty imposed pursuant to this title or any rule or regulation promulgated pursuant thereto, or any term or condition of any registration or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this article or article 71 of this chapter 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.

2. (a) Any producer or producer responsibility organization who violates any provision of or fails to perform any duty imposed pursuant to this title or any rule or regulation promulgated pursuant thereto, including compliance with requirements related to the producer responsibility plan, or any term or condition of any registration or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this article or article 71 of this chapter shall be liable for a civil penalty not to exceed five thousand dollars for each violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues. For a second violation committed within twelve months of a prior violation, the producer or producer responsibility organization shall be liable for a civil penalty not to exceed ten thousand dollars and an additional penalty of not more than three thousand dollars for each day during which such violation continues. For a third or subsequent violation committed within twelve months of any prior violation, the producer or producer responsibility organization shall be liable for a civil penalty not to exceed twenty thousand dollars and an additional penalty of six thousand dollars for each day during which such violation continues.

(b) All producers participating in a producer responsibility organization shall be jointly and severally liable for any penalties assessed against the producer responsibility organization pursuant to this title and article 71 of this chapter.

3. Civil penalties under this section shall be assessed by the department after an opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, or by the court in any action or proceeding pursuant to section 71-2727 of this chapter, and in addition

thereto, such person or entity may by similar process be enjoined from continuing such violation and any permit, registration or other approval issued by the department may be revoked or suspended or a pending renewal denied.

4. The department and the attorney general are hereby authorized to enforce the provisions of this title and all monies collected shall be deposited to the credit of the environmental protection fund established pursuant to section 92-s of the state finance law.

§ 27-3323. State preemption.

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

§ 27-3325. Authority to promulgate rules and regulations.

The commissioner shall have the power to promulgate rules and regulations necessary and appropriate for the administration of this title.

§ 27-3327. Other assistance programs.

Nothing in this title shall impact an entity's eligibility for any state or local incentive or assistance program to which they are otherwise eligible.

§ 27-3329. Severability.

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

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