

STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

February 22, 2021

Introduced by Sens. KAVANAGH, BIAGGI, KRUEGER, 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 -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to 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.

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

LBD09864-04-2

1 § 27-3301. Definitions.

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

4 2. "Carpet" means a manufactured article that is (a) used in commer-
5 cial buildings or single or multifamily residential buildings, (b)
6 affixed or placed on the floor or building walking surface as a decora-
7 tive or functional building interior or exterior feature, and (c) prima-
8 rially constructed of a top surface of synthetic or natural face fibers or
9 yarns or tufts attached to a backing system made of synthetic or natural
10 materials. "Carpet" includes, but is not limited to, a commercial or
11 residential broadloom carpet, modular carpet tiles, artificial turf, a
12 pad or underlayment used in conjunction with a carpet. "Carpet" does not
13 include handmade rugs, area rugs, or mats.

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

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

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

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

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

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

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

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

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

45 10. "Recycling" means to separate, dismantle or process the materials,
46 components or commodities contained in discarded carpet 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 any means, including but not limited
50 to, combustion, incineration, pyrolysis, gasification, solvolysis, waste
51 to fuel or any chemical conversion process, or landfill disposal of
52 discarded carpet or discarded product component materials.

53 11. "Recycling rate" means the percentage of discarded carpet that is
54 managed through recycling or reuse, as defined by this title, and is
55 computed by dividing the amount of recycled output derived from

1 collected carpet, plus any pounds sent for reuse by the estimated total
2 amount of discarded carpet generated during a program year.

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

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

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

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

16 § 27-3303. Producer plan.

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

23 2. A producer may satisfy the carpet collection program requirement of
24 this section by agreeing to participate collectively with other produc-
25 ers. Any such collective carpet collection program shall notify the
26 department.

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

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

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

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

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

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

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

40 (d) describe how the program will provide for collection of carpet in
41 the state, free of cost and in a manner convenient to consumers and
42 carpet installers, including how the program will achieve, at a minimum,
43 a convenience standard which ensures that all counties of the state and
44 all municipalities which have a population of ten thousand or greater
45 have at least one permanent collection site and one additional permanent
46 collection site for every thirty thousand people located in those areas,
47 that accepts carpet from consumers during normal business hours; howev-
48 er, with respect to a city having a population of one million or more,
49 after consultation with the department of sanitation of such city, the
50 department may otherwise establish an alternative convenience standard.
51 The producer or representative organization may coordinate the program
52 with existing municipal waste collection infrastructure as is mutually
53 agreeable. Convenience standards shall be evaluated by the department
54 periodically and the department may require additional collection
55 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 information 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

1 program, including but not limited to the cost of collection. A produc-
2 er, producers or representative organization shall pay costs incurred by
3 the state in the administration and enforcement of this title. Exclusive
4 of fines and penalties, the state shall only recover its actual cost of
5 administration and enforcement.

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

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

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

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

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

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

26 (e) the total cost of implementing the program;

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

31 (g) any other information required by the department.

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

37 § 27-3307. Retailer requirements.

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

46 2. Any retailer may participate, on a voluntary basis, as a designated
47 collection site pursuant to a carpet collection program and in accord-
48 ance with all applicable laws and regulations.

49 § 27-3309. Department responsibilities.

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

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

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

3 4. Within ninety days after receipt of a proposed plan or plan amend-
4 ment, the department shall approve or reject the plan or the plan amend-
5 ment. If the plan or plan amendment is approved, the department shall
6 notify the producer or representative organization in writing. If the
7 department rejects the plan or plan amendment, the department shall
8 notify the producer or representative organization in writing stating
9 the reason for rejecting the plan or plan amendment. A producer or
10 representative organization whose plan is rejected shall submit a
11 revised plan to the department within thirty days of receiving a notice
12 of rejection. If the department rejects the subsequent proposal, the
13 producer or producers at issue shall be out of compliance and subject to
14 enforcement provisions.

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

- 19 (a) the stream of carpet in the state;
20 (b) disposal, recycling and reuse rates in the state for carpet;
21 (c) a discussion of compliance and enforcement related to the require-
22 ments of this title; and
23 (d) recommendations for any changes to this title.

24 6. Starting four years after the plan is approved by the department
25 pursuant to this section, the department shall impose a penalty of twen-
26 ty-five cents per pound to be assessed on the producer or representative
27 organization for the number of additional pounds of carpet that would
28 have needed to be recycled through the program to achieve the perform-
29 ance goals specified in the approved stewardship plan. All penalties
30 collected pursuant to this section shall be paid over to the commission-
31 er for deposit to the environmental protection fund established pursuant
32 to section ninety-two-s of the state finance law.
33 § 27-3311. Carpet stewardship advisory board.

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

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

- 39 (a) one representative of carpet producers;
40 (b) two representatives of carpet retailers;
41 (c) one representative of carpet recyclers;
42 (d) two representatives of carpet collectors;
43 (e) one representative of a company that utilizes discarded carpet to
44 manufacture a new product;
45 (f) one representative of a carpet installer association;
46 (g) one representative from a statewide environmental organization;
47 (h) one representative from a statewide waste disposal association;
48 (i) one representative from the New York product stewardship council;
49 (j) one representative from a consumer organization; and
50 (k) one representative from a statewide recycling organization.

51 3. The members shall be appointed as follows:

- 52 (a) two members to be appointed by the temporary president of the
53 senate;
54 (b) two members to be appointed by the speaker of the assembly;
55 (c) one member to be appointed by the minority leader of the senate;

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

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

4 4. Such appointments shall be made no later than the first day of
5 January following the date on which this title takes effect. The members
6 shall designate a chair from among the members by majority vote. Board
7 members shall receive no compensation but shall be entitled to their
8 necessary and actual expenses incurred in the performance of their board
9 duties.

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

11 § 27-3313. Labeling and design requirements.

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

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

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

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

21 § 27-3315. Post-consumer content requirements.

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

24 1. within one year after the plan is approved by the department pursu-
25 ant to section 27-3309 of this title, a minimum of ten percent post-con-
26 sumer content;

27 2. within four years thereafter, a minimum of twenty percent post-con-
28 sumer content; and

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

31 § 27-3317. Penalties.

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

39 § 27-3319. Rules and regulations.

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

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

44 § 71-1701. Applicability of this title.

45 This title shall be applicable to the enforcement of titles 1 through
46 11 and titles 15 through 19 of article 17; article 19; and [title]
47 titles 1 and 33 of article 27.

48 § 3. This act shall take effect immediately.