

STATE OF NEW YORK

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2023-2024 Regular Sessions

IN ASSEMBLY

April 6, 2023

Introduced by M. of A. PAULIN, COLTON, OTIS, L. ROSENTHAL -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- 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 a mattress collection program

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

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 34 to read as follows:

3 TITLE 34
4 MATTRESS COLLECTION PROGRAM

5 Section 27-3401. Definitions.
6 27-3403. Producer plan.
7 27-3405. Producer responsibilities.
8 27-3407. Retailer responsibilities.
9 27-3409. Department responsibilities.
10 27-3411. Mattress collection program advisory board.
11 27-3413. Enforcement and penalties.
12 27-3415. Rules and regulations.
13 § 27-3401. Definitions.
14 As used in this title:
15 1. "Brand" means a name, symbol, word, or mark that attributes the
16 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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1 2. "Collection site" means a permanent location in the state at which
2 a consumer may discard mattresses.

3 3. "Consumer" means a person located in the state who purchases, owns,
4 leases, or uses mattresses, including but not limited to an individual,
5 a business, corporation, limited partnership, not-for-profit corpo-
6 ration, the state, a public corporation, public school, school district,
7 private or parochial school or board of cooperative educational services
8 or governmental entity, but does not include a retailer or person that
9 acquires a mattress solely for purposes of recycling.

10 4. "Discarded mattress" means a mattress that a consumer has used and
11 discarded in the state.

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

16 6. (a) "Mattress" means any resilient material, or combination of
17 materials that is enclosed by ticking, used alone or in combination with
18 other products, and that is intended for or promoted for sleeping upon.
19 Mattress includes any foundation and any used mattress. For the purposes
20 of this title, a "foundation" means a ticking-covered structure used to
21 support a mattress or sleep surface. A foundation may include
22 constructed frames, foam, box springs, or other materials, used alone or
23 in combination.

24 (b) Mattress shall not include:

25 (i) an unattached mattress pad or mattress topper that is intended to
26 be used with, or on top of a mattress;

27 (ii) a crib or bassinet mattress or car bed;

28 (iii) juvenile products, including: a carriage, basket, dressing
29 table, stroller, playpen, infant carrier, lounge pad, crib bumper, and
30 the pads for those juvenile products;

31 (iv) a product containing liquid- and gaseous-filled ticking, includ-
32 ing a waterbed and air mattress that does not contain upholstery materi-
33 al between the ticking and the mattress core; or

34 (v) a fold-out sofa bed or futon.

35 7. "Producer" means any person who manufactures or renovates mattress-
36 es that are sold, offered for sale, or distributed to a consumer in this
37 state. "Producer" includes:

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

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

44 8. "Recycle" means to separate, dismantle or process the materials,
45 components or commodities contained in mattresses for the purpose of
46 preparing the materials, components or commodities for use or reuse in
47 new products or components. "Recycle" does not include:

48 (a) energy recovery or energy generation by any means, including but
49 not limited to, combustion, incineration, pyrolysis, gasification,
50 solvolysis, or waste to fuel;

51 (b) any chemical conversion process; or

52 (c) landfill disposal.

53 9. "Recycler" means a person that engages in recycling.

54 10. "Recycling rate" means the percentage of discarded mattresses that
55 is managed through recycling or reuse, as defined by subdivisions eight
56 and thirteen of this section, and is computed by dividing the amount of

1 discarded mattresses collected and recycled or reused by the estimated
2 total amount of discarded mattresses generated over a program year.

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

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

8 13. "Reuse" means donating or selling a discarded mattress back into
9 the market for its original intended use, when the discarded mattress
10 retains its original performance characteristics and can be used for its
11 original purpose.

12 14. "Sale" or "sell" means a transfer of title to a mattress for
13 consideration, including a remote sale conducted through a sale outlet,
14 catalog, website, by telephone or through similar electronic means.
15 "Sale" or "sell" includes a lease through which a mattress is provided
16 to a consumer in the state by a producer or retailer.

17 15. "Ticking" means the outermost layer of fabric or materials of a
18 mattress. Ticking does not include any layer of fabric or material
19 quilted together with, or otherwise attached to the outermost layer of
20 fabric or material of a mattress.

21 16. "Upholstery material" means all material loose or attached between
22 the ticking and the core of the mattress.

23 § 27-3403. Producer plan.

24 1. No later than December thirty-first, two thousand twenty-six, a
25 producer, either individually or cooperatively with one or more produc-
26 ers, or a representative organization shall submit to the department for
27 the department's approval a plan for the establishment of a mattress
28 collection program that meets the collection requirements described in
29 this section.

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

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

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

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

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

42 (a) A list of each participating provider and brands covered by the
43 program;

44 (b) Information on the products covered by the program;

45 (c) A description of how the producer or representative organization
46 will collect, transport, recycle, and process discarded mattresses;

47 (d) (1) i. A description of how the producer or representative organ-
48 ization shall provide for a convenient and cost-effective collection of
49 discarded mattresses, which may include, using existing public and
50 private waste collection channels and collection sites in the state
51 pursuant to voluntary agreements. Such description shall also include a
52 description of how the program will achieve within a reasonable period
53 of time a minimum convenience goal which ensures that all counties of
54 the state shall have at least one collection site, and within two years
55 after the program approval, not less than seventy percent of the state's
56 residents will live within a fifteen mile radius of a collection site,

1 and within three years after the program approval, not less than eighty
2 percent of the state's residents will live within a fifteen mile radius
3 of a collection site.

4 ii. Provided, however, that with respect to a city or county having a
5 population of one million or more, a convenience goal shall be estab-
6 lished for that city or county. In the case of a city, the convenience
7 goal shall be proposed after consultation with the department of sanita-
8 tion of such city. In the case of a county, the convenience goal shall
9 be proposed after consultation with an agency designated by the county
10 executive. Such proposed city and county convenience goals shall be
11 submitted to the department, which may approve, modify, or otherwise
12 establish alternative convenience goals.

13 (2) To meet these convenience goals, the producer or representative
14 organization shall:

15 i. Enter into voluntary agreements to establish collection sites at
16 public and private solid waste facilities; transfer stations; landfills;
17 recyclables handling and recovery facilities that are permitted or
18 registered with the department; or other suitable sites for the
19 collection of discarded mattresses;

20 ii. Provide mattress storage containers at no cost to a participating
21 collection site described in clause i of this subparagraph;

22 iii. Negotiate mutually agreed upon voluntary agreements with partic-
23 ipating collection sites described in clause i of this subparagraph that
24 provide for reasonable compensation for the actual costs these
25 collection sites incur to handle, store, and transport discarded
26 mattresses for recycling;

27 iv. For collection sites as described in clause i of this subpara-
28 graph, and other entities such as healthcare facilities, educational
29 facilities, military facilities, junk haulers, hotels and motels that
30 provide transient lodging, and other facilities that periodically
31 replace mattresses that they own or use, and who have collected at least
32 one hundred recyclable mattresses for recycling, provide at its expense
33 an appropriate storage container, transportation from a collection point
34 to a recycler, and services to recycle the mattresses; and

35 v. Enter into voluntary agreements with retailers that pick up or
36 accept mattresses from consumers upon the purchase of a new mattress for
37 recycling;

38 (e) The names and locations of collection sites, transporters, and
39 recyclers who will manage discarded mattresses delivered to collection
40 sites at the time of plan submission;

41 (f) A description of how the discarded mattresses will be safely and
42 securely transported, tracked, and handled from collection sites through
43 final recycling and processing;

44 (g) A description of the methods to be used to reuse or recycle
45 discarded mattresses to ensure that the components, to the extent feasi-
46 ble, are transformed or remanufactured into finished products for use;

47 (h) A description of the methods to be used to manage or dispose of
48 discarded mattresses that cannot be recycled or reused;

49 (i) A detailed description of the outreach and educational materials
50 that must be provided to consumers, retailers, collection sites, and
51 transporters of discarded mattresses, and how such outreach will be
52 evaluated for effectiveness;

53 (j) A description of how the program will meet annual performance
54 goals, including collection, recycling, and reuse rates, as determined
55 by the department through rules and regulations, provided that at a
56 minimum, the program shall achieve the following recycling rates:

1 (i) a forty percent recycling rate of mattresses by three years after
2 the plan is approved by the department pursuant to section 27-3409 of
3 this title;

4 (ii) a fifty-five percent recycling rate of mattresses by seven years
5 after the plan is approved by the department pursuant to section 27-3409
6 of this title;

7 (iii) a seventy percent recycling rate of mattresses by ten years
8 after the plan is approved by the department pursuant to section 27-3409
9 of this title;

10 (k) A description of what, if any, incentives will be used to encour-
11 age retailer participation;

12 (l) A description of the outreach and education methods that will be
13 used to encourage municipal landfill and transfer station participation;
14 and

15 (m) any other information required by the department to implement the
16 program.

17 § 27-3405. Producer responsibilities.

18 1. Beginning six months after the plan is approved under subdivision
19 four of section 27-3409 of this title, the producer or representative
20 organization shall implement the mattress collection program utilizing
21 collection sites pursuant to paragraph (d) of subdivision four of
22 section 27-3403 of this title.

23 2. A producer shall not sell, or offer for sale, a mattress to any
24 person in the state unless the producer is implementing or participating
25 under an approved plan.

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

29 4. A producer or representative organization shall maintain records
30 demonstrating compliance with the provisions of this title and make them
31 available for audit and inspection by the department for a period of
32 three years. The department shall make such audit records available to
33 the public upon request in accordance with the provisions of the state
34 freedom of information law and the regulations promulgated thereunder,
35 provided that confidential or business proprietary records shall be
36 exempt from this provision. Record holders shall submit the records
37 required to comply with the request within sixty working days of written
38 notification by the department of receipt of the request.

39 5. A producer or representative organization shall be responsible for
40 all costs associated with the implementation of the mattress collection
41 program. A producer or representative organization shall pay costs
42 incurred by the state in the administration and enforcement of this
43 title. Exclusive of fines and penalties, the state shall only recover
44 its actual direct cost of administration and enforcement.

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

50 7. Within eighteen months following approval of the producer plan, and
51 annually thereafter, a producer or representative organization shall
52 submit a report to the department that includes, for the previous
53 program calendar year, a description of the program including, but not
54 limited to the following:

55 (a) a detailed description of the methods used to collect, transport,
56 and process discarded mattresses in the state, including detailing

1 collection methods made available to consumers and an evaluation of the
2 program's collection convenience;

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

4 (c) the estimated weight of all discarded mattresses collected, recy-
5 clered, or reused pursuant to the mattress collection program;

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

8 (e) the estimated weight of discarded mattresses and any component
9 materials that were collected pursuant to the collection program, but
10 not recycled;

11 (f) the total cost of implementing the program;

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

16 (h) any other information required by the department that is relevant
17 to the requirements of this title.

18 8. Each producer or representative organization shall submit an annual
19 report to the department as provided for in subdivision seven of this
20 section that assesses compliance with performance goals and describes
21 any modifications necessary to achieve such goals.

22 9. (a) A producer or representative organization shall not be liable
23 for any claim of a violation of antitrust, restraint of trade, or unfair
24 trade practice arising from an action undertaken, in accordance with a
25 mattress collection program approved by the department, solely to
26 increase the collection and recycling of mattresses, which affects the
27 types and quantities being collected and recycled or the cost and struc-
28 ture of such collection program that the producer or representative
29 organization is participating in pursuant to this title.

30 (b) Provided, however, paragraph (a) of this subdivision shall not
31 apply to any agreement establishing or affecting the price or output of
32 mattresses or restricting the geographic area or customers to which
33 mattresses will be sold.

34 § 27-3407. Retailer responsibilities.

35 1. Beginning December thirty-first, two thousand twenty-seven, no
36 retailer may sell or offer for sale mattresses in this state unless the
37 producer of such mattresses is participating in a mattress collection
38 program. A retailer shall be in compliance with this section if, on the
39 date the mattresses were ordered from the producer or its agent, the
40 producer was listed on the department's website as implementing or
41 participating in an approved program.

42 2. Any retailer may participate, on a voluntary basis, as a designated
43 collection site pursuant to a mattress collection program and in accord-
44 ance with all applicable laws and regulations.

45 § 27-3409. Department responsibilities.

46 1. The department shall maintain a list of producers, including a list
47 of such producers' brands, who are participating under a department
48 approved plan and post such list on the department's website.

49 2. The department shall post on its website the location of all
50 collection sites identified to the department by the producer in its
51 annual reports.

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

54 4. Within ninety days after receipt of a proposed plan or plan amend-
55 ment, the department shall approve or reject such plan or plan amend-
56 ment based on whether such proposed plan or plan amendment satisfactorily

1 meets the requirements of subdivision four of section 27-3403 of this
2 title. If the plan or plan amendment is approved, the department shall
3 notify the producer or representative organization in writing. If the
4 department rejects the plan or plan amendment, the department shall
5 notify the producer or representative organization in writing stating
6 the reason for rejecting the plan or plan amendment. A producer or
7 representative organization whose plan is rejected shall submit a
8 revised plan to the department within thirty days of receiving a notice
9 of rejection. If the producer or representative organization fails to
10 submit a plan that is acceptable to the department because it does not
11 meet the requirements of subdivision four of section 27-3403 of this
12 title, the department shall modify a submitted plan to make it conform
13 to the requirements of such subdivision and approve it.

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

- 18 (a) The stream of mattresses in the state;
- 19 (b) Disposal, recycling, and reuse rates in the state of mattresses;
- 20 (c) A discussion of compliance and enforcement related to the require-
21 ments of this title; and
- 22 (d) Recommendations for any changes to this title.

23 § 27-3411. Mattress collection program advisory board.

24 1. There is hereby established within the department a mattress
25 collection program advisory board to make recommendations to the commis-
26 sioner regarding producer plans required by this title.

27 2. The board shall be composed of twelve voting members. Such members
28 shall include:

- 29 (a) One representative of mattress producers;
- 30 (b) Two representatives of mattress retailers;
- 31 (c) One representative of mattress recyclers;
- 32 (d) Two representatives of mattress collectors;
- 33 (e) One representative of a company that utilizes discarded mattresses
34 to manufacture a new product;
- 35 (f) One representative from a statewide environmental organization;
- 36 (g) One representative from a statewide waste disposal association;
- 37 (h) One representative from the New York product stewardship council;
- 38 (i) One representative from a consumer organization; and
- 39 (j) One representative from a statewide recycling organization.

40 3. The members shall be appointed as follows:

- 41 (a) Two members to be appointed by the temporary president of the
42 senate;
- 43 (b) Two members to be appointed by the speaker of the assembly;
- 44 (c) One member to be appointed by the minority leader of the senate;
- 45 (d) One member to be appointed by the minority leader of the assembly;
46 and
- 47 (e) Six members to be appointed by the governor.

48 4. Such appointments shall be made no later than sixty days following
49 the date on which this title takes effect. The members shall designate a
50 chair from among the members by majority vote. Board members shall
51 receive no compensation but shall be entitled to their necessary and
52 actual expenses incurred in the performance of their board duties.

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

54 § 27-3413. Enforcement and penalties.

55 Any producer, representative organization, or retailer who violates
56 any provision of or who fails to perform any duty imposed pursuant to

1 this title shall be liable for a civil penalty not to exceed five
 2 hundred dollars for each violation and an additional penalty of not more
 3 than five hundred dollars for each day during which such violation
 4 continues. Civil penalties under this section shall be assessed by the
 5 department after a hearing or opportunity to be heard pursuant to the
 6 provisions of section 71-1709 of this chapter.

7 § 27-3415. Rules and regulations.

8 The department is hereby authorized to promulgate any rules and regu-
 9 lations necessary to implement this title.

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

12 § 71-1701. Applicability of this title.

13 This title shall be applicable to the enforcement of titles 1 through
 14 11 and titles 15 through 19 of article 17; article 19; and [~~title~~]
 15 titles 1 and 34 of article 27 of this chapter.

16 § 3. Section 71-1701 of the environmental conservation law, as amended
 17 by chapter 795 of the laws of 2022, is amended to read as follows:

18 § 71-1701. Applicability of this title.

19 This title shall be applicable to the enforcement of titles 1 through
 20 11 and titles 15 through 19 of article 17; article 19; and titles 1
 21 [~~and~~], 33 and 34 of article 27 of this chapter.

22 § 4. This act shall take effect immediately; provided, however, the
 23 amendments to section 71-1701 of the environmental conservation law made
 24 by section three of this act shall take effect on the same date and in
 25 the same manner as section 2 of chapter 795 of the laws of 2022, takes
 26 effect.