

STATE OF NEW YORK

8078

2023-2024 Regular Sessions

IN ASSEMBLY

September 27, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing extended producer responsibility for textiles

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 34 to read as follows:

TITLE 34

EXTENDED PRODUCER RESPONSIBILITY FOR TEXTILES

Section 27-3401. Definitions.

27-3403. Producer plan.

27-3405. Producer responsibilities.

27-3407. Retailer, distributor and wholesaler responsibilities.

27-3409. Department responsibilities.

27-3411. Labeling requirements.

27-3413. Textile stewardship advisory board.

27-3415. Multi-state cooperation.

27-3417. Enforcement and penalties.

27-3419. Rules and regulations.

§ 27-3401. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Apparel" means clothing and accessory items intended for regular wear or formal occasions, including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onesies, bibs, diapers, footwear, and everyday uniforms for workwear. Clothing items intended for regular wear or formal occasions does not

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

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1 include personal protective equipment or clothing items for exclusive
2 use by the United States military.

3 2. "Brand" means a trademark, including both a registered trademark
4 and an unregistered trademark, a logo, a name, a symbol, a word, an
5 identifier, or a traceable mark that identifies a covered textile and
6 identifies the owner or licensee of the brand.

7 3. "Collection site" means a permanent location in the state at which
8 a consumer may discard covered products.

9 4. "Consumer" means a person located in the state who purchases, owns,
10 leases, or uses covered products, including but not limited to an indi-
11 vidual, a business, corporation, limited partnership, not-for-profit
12 corporation, the state, a public corporation, public school, school
13 district, private or parochial school or board of cooperative educa-
14 tional services or governmental entity, but does not include a retailer
15 or person that acquires a covered product solely for the purposes of
16 recycling.

17 5. "Covered product" means any apparel, textile, or textile article
18 that is unsuitable for reuse by a consumer in its current state or
19 condition.

20 6. "Discarded covered product" means a covered product that a consumer
21 has used and discarded in the state.

22 7. "Distributor" or "wholesaler" means a person who buys or otherwise
23 acquires a covered product and sells or offers to sell such product to
24 retailers in this state.

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

29 9. "Producer" means any person who manufactures or renovates a covered
30 product that is sold, offered for sale, or distributed to a consumer in
31 this state. "Producer" includes:

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

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

38 10. "Recycling" means separating, dismantling or processing the mate-
39 rials, components or commodities contained in covered products for the
40 purpose of preparing the materials, components or commodities for use or
41 reuse in new products or components. "Recycling" does not include energy
42 recovery or energy generation by any means, including but not limited
43 to, combustion, incineration, pyrolysis, gasification, solvolysis, waste
44 to fuel, or any chemical conversion process, or landfill disposal of
45 discarded covered products or discarded product component materials.

46 11. "Recycler" means a person that engages in recycling.

47 12. "Recycling rate" means the percentage of discarded covered
48 products that is managed through recycling or reuse, as defined by
49 subdivisions ten and fifteen of this section, and is computed by divid-
50 ing the weight of discarded covered products collected and recycled or
51 reused by the total weight of discarded covered products collected and
52 reported to the department by the landfills and solid waste facilities
53 in the state over a program year.

54 13. "Representative organization" means a not-for-profit organization
55 established by a producer or a group of producers to implement a
56 collection program.

1 14. "Retailer" means any person who sells or offers for sale a covered
2 product to a consumer in the state.

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

7 16. "Sale" or "sell" means a transfer of title to a covered product
8 for consideration, including a remote sale conducted through a sale
9 outlet, catalog, website, by telephone or through similar electronic
10 means. "Sale" or "sell" includes a lease through which a covered product
11 is provided to a consumer in the state by a producer, distributor,
12 wholesaler, or retailer.

13 17. "Textile" means any item made in whole or in part from natural,
14 manmade, or synthetic fiber, yarn, or fabric, and includes, but is not
15 limited to, leather, cotton, silk, jute, hemp, wool, viscose, nylon, or
16 polyester. "Textile" does not include disposable hygiene products made
17 from paper, including, but not limited to, toilet paper, paper towels or
18 tissues, or disposable absorbent hygiene products.

19 18. "Textile articles" means textile goods of a type customarily used
20 in households and businesses, and includes, but is not limited to,
21 apparel, accessories, handbags, backpacks, draperies, shower curtains,
22 furnishings, upholstery, bedding towels, napkins, and tablecloths.
23 "Textile articles" does not include: (a) carpets and rugs as defined in
24 title thirty-three of this article; (b) treatments containing polyfluoro-
25 alkyl for use on converted textiles or leathers; (c) component parts
26 from a vehicle, as defined in section one hundred fifty-nine of the
27 vehicle and traffic law, such as seats and carpets or synthetic floor-
28 ing; (d) component parts from a vessel, as defined in section two of the
29 navigation law, such as seats, synthetic flooring, and boat covers; (e)
30 filtration media and filter products used in industrial applications,
31 including, but not limited to, chemical or pharmaceutical manufacturing
32 and environmental control technologies; (f) textile articles used in or
33 for laboratory analysis and testing; (g) component parts from an
34 aircraft, as defined in section two hundred forty of the general busi-
35 ness law; or (h) stadium shades, architectural fabric structures, or any
36 permanent fabric structure that is intrinsic to a building's design or
37 construction.

38 19. "Textile collection program" or "program" means a program financed
39 and implemented by producers, either individually, or through a repre-
40 sentative organization, that provides for, but is not limited to, the
41 collection, transportation, reuse, recycling, proper end-of-life manage-
42 ment, or an appropriate combination thereof, of discarded textiles.

43 § 27-3403. Producer plan.

44 1. No later than December thirty-first, two thousand twenty-four, a
45 producer, either individually or cooperatively in a group with one or
46 more producers or with a representative organization, shall submit to
47 the department for the department's approval a plan for the establish-
48 ment of a collection program for covered products.

49 2. A producer may satisfy the textile collection program requirement
50 of this section by agreeing to participate collectively with a group of
51 other producers or with a representative organization. Any such producer
52 participating collectively in a collection program shall notify the
53 department of such participation.

54 3. A producer, a group of producers or representative organization
55 shall update the plan, as needed, when there are changes proposed to its

1 collection program. A new plan or amendment shall be required to be
2 submitted to the department for approval when:

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

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

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

7 (a) provide a list of each participating producer and brand covered by
8 the program;

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

10 (c) describe how the producer, group of producers, or representative
11 organization will safely collect, transport, recycle, and process
12 covered products;

13 (d) describe how the program will provide for the collection of
14 covered products, free of cost and in a manner convenient to consumers,
15 including how the program will achieve, at a minimum, a convenience
16 standard that ensures that all counties of the state and all municipi-
17 palities that have a population of ten thousand or greater have at least
18 one permanent collection site and one additional permanent collection
19 site for every thirty thousand people located in those areas, that
20 accepts covered products from consumers during normal business hours.
21 The producer, group of producers, or representative organization may
22 coordinate the program with existing municipal waste collection infras-
23 tructure as is mutually agreeable. Convenience standards shall be evalu-
24 ated by the department periodically and the department may require addi-
25 tional collection locations to ensure adequate consumer convenience. To
26 meet such convenience standard, the producer plan may provide that the
27 producer or representative organization shall enter into voluntary
28 agreements to establish collection sites at: (i) public and private
29 solid waste facilities, transfer stations, landfills, recyclables handl-
30 ing and recovery facilities that are permitted or registered with the
31 department; (ii) other suitable sites for the collection of discarded
32 covered products; or (iii) retailers that pick up or accept covered
33 products from consumers upon the purchase of new covered products. Such
34 agreements may provide for reasonable compensation for the actual costs
35 these collection sites incur to handle, store, and (if necessary) trans-
36 port covered products and may supply covered products storage containers
37 at no cost to participating collection sites;

38 (e) describe how the discarded covered products will be safely and
39 securely transported, tracked, and handled from collection sites through
40 final recycling and processing;

41 (f) describe the methods to be used to reuse or recycle discarded
42 covered products to ensure that the components, to the extent feasible,
43 are transformed or remanufactured into finished products for use;

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

46 (h) describe in detail education and outreach efforts to inform
47 consumers and others engaged in the management of discarded covered
48 products about the program, including, at a minimum, an internet website
49 and a toll-free telephone number and written information included at the
50 time of sale of covered products that provides sufficient information to
51 allow a consumer to learn how to return such covered products for
52 disposal, recycling or reuse;

53 (i) describe how the program will meet annual performance goals, as
54 determined by the department in conjunction with the producers or repre-
55 sentative organization, after the first two years of the program and
56 updated every two years thereafter, including an estimate of discarded

1 covered products that will be collected, reused, and recycled each
2 calendar year;

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

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

7 (l) describe the methods to be used to reuse or recycle discarded
8 covered products;

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

11 (n) estimate the amounts of covered products that were previously
12 sold, offered for sale, or distributed in the state under each produc-
13 er's name or brand that are discarded in the state annually and describe
14 the sources of data and methodology for estimating such amount; and

15 (o) any other information as specified by the department.

16 § 27-3405. Producer responsibilities.

17 1. Beginning no later than July first, two thousand twenty-five, the
18 producer or representative organization shall implement a collection
19 program utilizing collection sites established pursuant to paragraph (d)
20 of subdivision four of section 27-3403 of this title.

21 2. A producer shall not sell, or offer for sale, covered products to
22 any person in the state on or after the required date of implementation
23 of the collection program under subdivision one of this section unless
24 the producer is implementing or participating under an approved plan.

25 3. The collection program shall be free to consumers returning covered
26 products for disposal, recycling or reuse, convenient, and adequate to
27 serve the needs of such consumers in all areas of the state on an ongo-
28 ing basis.

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

38 5. Producers, group of producers, and representative organizations
39 shall be responsible for the costs associated with the implementation of
40 the collection program, including but not limited to the cost of
41 collection. Each producer, group of producers, or representative organ-
42 ization shall pay fees established by the department to cover costs
43 incurred by the department in the administration and enforcement of this
44 title. Exclusive of fines and penalties, the department shall only be
45 reimbursed its actual cost of administration and enforcement.

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

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

1 (a) a detailed description of the methods used to collect, transport,
2 and process covered products in the state, including collection methods
3 made available to consumers and an evaluation of the program's
4 collection convenience;

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

6 (c) the estimated weight of all discarded covered products collected
7 and reused or recycled pursuant to the textile collection program;

8 (d) an evaluation of whether the performance goals and recycling rates
9 have been achieved and a description of any modifications necessary to
10 achieve such goals and rates;

11 (e) the estimated weight of discarded covered products and any compo-
12 nent materials that were collected pursuant to the collection program,
13 but not recycled;

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

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

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

21 8. (a) A producer or the representative organization that organizes
22 the collection, transport and processing of covered products, in an
23 action solely to increase the recycling of covered products by a produc-
24 er, representative organization, or tailor that affects the types and
25 quantities being recycled or the cost and structure of any return
26 program shall not be liable for any claim of a violation of antitrust,
27 restraint of trade or unfair trade practice arising from conduct under-
28 taken in accordance with the program pursuant to this section.

29 (b) Notwithstanding any contrary provision of this section, paragraph
30 (a) of this subdivision shall not apply to any agreement establishing or
31 affecting the price of covered products sold to consumers in the state
32 or the output or production of covered products or any agreement
33 restricting the geographic area or customers to which covered products
34 will be sold.

35 § 27-3407. Retailer, distributor and wholesaler responsibilities.

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

45 2. Any retailer, distributor, or wholesaler may participate, on a
46 voluntary basis, as a designated collections site pursuant to a
47 collection program and in accordance with all applicable laws and regu-
48 lations.

49 § 27-3409. Department responsibilities.

50 1. The department shall maintain a list of producers, retailers,
51 distributors, and wholesalers who are in compliance with this title and
52 post such list on the department's website.

53 2. The department shall post on its website the location of all
54 collection sites identified to the department by the producer in its
55 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 such plan or plan amendment
5 based on whether such proposed plan or plan amendment satisfactorily
6 meets the requirements of subdivision four of section 27-3403 of this
7 title. If the plan or plan amendment is approved, the department shall
8 notify the producer or representative organization in writing. If the
9 department rejects the plan or plan amendment, the department shall
10 notify the producer or representative organization in writing stating
11 the reason for rejecting the plan or plan amendment. A producer or
12 representative organization whose plan is rejected shall submit a
13 revised plan to the department within thirty days of receiving a notice
14 of rejection. If the producer or representative organization fails to
15 submit a plan that is acceptable to the department because it does not
16 meet the requirements of subdivision four of section 27-3403 of this
17 title, the department shall modify a submitted plan to make it conform
18 to the requirements of such subdivision and approve it.

19 5. The department shall submit a report regarding the implementation
20 of this title to the governor and legislature by April first, two thou-
21 sand twenty-five and every year thereafter. The report shall include, at
22 minimum, an evaluation of:

23 (a) the stream of covered products in the state;
24 (b) disposal, recycling, and reuse rates in the state covered
25 products;

26 (c) a discussion of compliance and enforcement related to the require-
27 ments of this title; and

28 (d) recommendations for any changes to this title.

29 § 27-3411. Labeling requirements.

30 One year after the plan is approved by the department pursuant to
31 section 27-3409 of this title, covered products sold or offered for sale
32 in the state shall be accompanied by the name of the producer and the
33 producer's contact information.

34 § 27-3413. Textile stewardship advisory board.

35 1. There is hereby established within the department a textile
36 collection program advisory board to make recommendations to the commis-
37 sioner regarding program operator plans required by this title.

38 2. The board shall be composed of twelve voting members. Such members
39 shall include:

40 (a) one representative of textile producers;
41 (b) two representatives of textile retailers;
42 (c) one representative of textile recyclers;
43 (d) two representatives of textile collectors;
44 (e) one representative of a company that utilizes discarded covered
45 products to manufacture a new product;

46 (f) one representative from a statewide environmental organization;

47 (g) one representative from a statewide waste disposal association;

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

49 (i) one representative from a consumer organization; and

50 (j) 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;

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

(e) six members to be appointed by the governor.

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

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

§ 27-3415. Multi-state cooperation.

In the event that another state implements a textile recycling program, the program operators may collaborate with such state to conserve efforts and resources used in carrying out the textile collection program, provided such collaboration is consistent with the requirements of this title.

§ 27-3417. Enforcement and penalties.

Any producer, representative organization, or retailer who is found to not have made a good faith effort to comply with any provision of or fails to perform any duty imposed pursuant to this title shall be liable for a civil penalty not to exceed five hundred dollars for each violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues. Civil penalties under this section shall be assessed by the department after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter.

§ 27-3419. Rules and regulations.

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

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

§ 71-1701. Applicability of this title.

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

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

§ 71-1701. Applicability of this title.

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

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