

## **STATE OF NEW YORK**

1064

## 2023–2024 Regular Sessions

**IN SENATE**

January 9, 2023

Introduced by Sens. MAY, HOYLMAN, JACKSON, KRUEGER, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing an extended producer responsibility program for packaging; and to amend the state finance law, in relation to establishing the packaging responsibility fund

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:

TITLE 34

## **EXTENDED PRODUCER RESPONSIBILITY PROGRAM FOR PACKAGING**

## Section 27-3401. Definitions.

### 27-3403. Responsibilities of producers.

## 27-3405. Producer responsibility program plan.

27-3407. Collection and convenience.

## 27-3409. Responsibilities of the department.

## 27-3411. Funding mechanism.

## 27-3413. Non-reusable packaging reduction requirements.

27-3415. Recycling or post-consumer recycled material requirements.

## 27-3417. Toxic substances in packaging.

**27-3419. Biennial producer responsibility program report.**

## 27-3421. Producer compliance information.

27-3423. Enforcement.

## 27-3425. Labeling.

## 27-3427. Regulation

## 01. Definitions.

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets [ ] is old material retained.

— 2 —

1       1. "Compost" means the biologically stable humus-like material derived  
2 from composting or the aerobic, thermophilic decomposition of organic  
3 matter but shall not mean sewage, septage, or materials derived from  
4 sewage or septage.

5       2. "Compostable" means amenable to the controlled aerobic biological  
6 decomposition of organic matter through active management to produce  
7 compost as certified by a third-party certifier and accepted and proc-  
8 essed into compost by at least eighty percent of commercial compost  
9 facilities within the state.

10      3. "Curbside recycling" means a recycling program that serves residen-  
11 tial units, or schools, state or local agencies, or institutions where  
12 such entities were eligible to be served under a contract with a munici-  
13 pality by a municipality or a private sector hauler as of the effective  
14 date of this title, and such recycling program is operated by a munici-  
15 pality or pursuant to a contract with a municipality, private sector  
16 hauler, or other public agency or through approved solid waste manage-  
17 ment plans.

18      4. "Municipality" means a county, city, town, village, local public  
19 authority or public benefit corporation, or solid waste management  
20 district, that provides waste management services for a specific  
21 geographical area.

22      5. "Non-reusable packaging" means packaging material that does not  
23 meet the definition of "reusable".

24      6. "Packaging material" means any part of a package or container,  
25 regardless of recyclability or compostability, including but not limited  
26 to such material types as paper, plastic, glass or metal, that is used  
27 for the containment, protection, handling, delivery, transport, distrib-  
28 ution, and presentation of a product that is sold, offered for sale, or  
29 distributed in the state. Bags and secondary or transport packaging  
30 shall be included within this definition. Packaging material does not  
31 include:

32       (a) material, or a category of material, intended to be used for long-  
33 term storage or protection of a durable product that can be expected to  
34 be usable for that purpose for a period of at least five years as  
35 defined by the department pursuant to regulations;

36       (b) beverage containers subject to title 10 of this article;

37       (c) packaging that is reusable;

38       (d) medical devices and packaging which are included with products  
39 regulated as a drug, medical device or dietary supplement by the U.S.  
40 Food and Drug Administration under the Federal Food, Drug, and Cosmetic  
41 Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21 U.S. Code of Federal Regu-  
42 lations or the Dietary Supplement Health and Education Act;

43       (e) animal biologics, including vaccines, bacterins, antisera, diag-  
44 nostic kits, and other products of biological origin, and other covered  
45 materials regulated by the United States Department of Agriculture under  
46 the Virus, Serum, Toxin Act, 21 U.S.C. 151-159; and

47       (f) packaging products used to contain substances hazardous to the  
48 environment, regulated pursuant to section 37-0103 of this chapter, or  
49 packaging products regulated by the Federal Insecticide, Fungicide,  
50 and Rodenticide Act, 7 U.S.C. sec. 136 et seq. or other applicable  
51 federal law, rule or regulation.

52      7. "Post-consumer recycled material" means new material produced using  
53 material resulting from the recovery, separation, collection and repro-  
54 cessing of material that would otherwise be disposed of or processed as  
55 waste and that was originally sold for consumption. Post-consumer recy-  
56 cled material does not include post-industrial material or pre-consumer

1 material, or material generated by means of combustion, incineration,  
2 pyrolysis, gasification, solvolysis, chemical recycling and any high-  
3 heat or chemical conversion process.

4 8. "Producer" means a person who:

5 (a) manufactures or uses in a commercial enterprise, sells, offers for  
6 sale, or distributes the packaging material in the state under the brand  
7 of the manufacturer; or

8 (b) if paragraph (a) of this subdivision does not apply, an entity  
9 that is not the manufacturer of the packaging material but is the owner  
10 or licensee of a trademark under which the packaging material is used in  
11 commercial enterprise, sold, offered for sale, or distributed in the  
12 state, whether or not the trademark is registered; or

13 (c) if paragraphs (a) and (b) of this subdivision do not apply, an  
14 entity that sells packaging in the state which is intended to be filled  
15 at the point of sale; or

16 (d) if paragraphs (a), (b) and (c) of this subdivision do not apply,  
17 an entity that imports the packaging material into the United States or  
18 the state for use in a commercial enterprise, sale, offer for sale, or  
19 distribution in the state.

20 "Producer" includes a franchisor of a franchise located in the state  
21 but does not include the franchisee operating that franchise.

22 9. "Readily-recyclable" means that the department has determined that  
23 the packaging material:

24 (a) can be sorted by entities that process recyclable material gener-  
25 ated in the state; and

26 (b) has a consistent market for purchase, as based on data from the  
27 prior two calendar years, meaning that with respect to a type of packag-  
28 ing material, entities processing recyclable material are willing to  
29 purchase full bales of that type of fully sorted packaging material in  
30 quantities equal to or in excess of the supply of that fully sorted  
31 packaging material. "Readily-recyclable" does not include packaging  
32 material that facilities accept in low qualities or sort out of material  
33 during additional processing steps or if facilities cannot sell a full  
34 bale due to a lack of market or inability to feasibly separate those  
35 materials during additional processing steps. Packaging material cate-  
36 gories or types shall not be considered readily-recyclable, generally  
37 recyclable, compostable, or reusable if they contain a toxic substance.

38 10. "Recycling" means the series of activities by which material is:

39 (a) collected, sorted, and processed; (b) converted into a raw materi-  
40 al with minimal loss of material quality; and (c) used in the production  
41 of a new product to replace the use of virgin materials, including the  
42 original material. "Recycling" does not include energy recovery or ener-  
43 gy generation by any means, including but not limited to combustion,  
44 incineration, pyrolysis, gasification, solvolysis, waste to fuel or any  
45 chemical conversion process, or landfill disposal of discarded material  
46 or discarded product component materials.

47 11. "Reusable" means:

48 (a) designed to be used repeatedly for a number of use cycles that  
49 exceeds the minimum number of times necessary to achieve the same over-  
50 all environmental impact as the non-reusable or disposable product it  
51 replaces, based on a life cycle assessment of the product's impacts from  
52 extraction through production and through disposal or end of life  
53 management;

54 (b) compliant with any statutory or regulatory requirements for toxic  
55 substances;

1       (c) safe for washing and sanitizing according to applicable state food  
2 safety laws; and

3       (d) capable of being recycled at the end of use, with the exception of  
4 ceramic products.

5       12. "Reuse and refill system" means a set of mechanisms designed to  
6 facilitate multiple uses of a reusable container, in order to, at a  
7 minimum, achieve the breakeven point for such reusable container. Mech-  
8 anisms may include, but are not limited to, deposits, incentives, curb-  
9 side collection, collection kiosks, refill stations, dishwashing facili-  
10 ties, and re-distribution networks.

11       13. "Toxic substance" means a chemical substance identified in section  
12 27-3417 of this title, or a chemical substance designated by the depart-  
13 ment on the basis of identification by a government entity and/or iden-  
14 tification on the basis of credible scientific evidence as being:

15       (a) a carcinogen, mutagenic, or reproductive or developmental toxic-  
16 cant;

17       (b) endocrine disruptor;

18       (c) damaging to the nervous system, immune system, or organs or caus-  
19 ing other systemic toxicity;

20       (d) persistent, bioaccumulative and toxic;

21       (e) highly persistent and highly mobile;

22       (f) persistent, mobile and toxic; or

23       (g) persistent and very bioaccumulative.

24       14. "Unit" means each discrete component of a package or container.

25       15. "Universal product code" or "UPC" shall have the same meaning as  
26 subdivision 13 of section 27-1003 of this article.

27       16. "Waste reduction" means any action which causes a net reduction in  
28 the generation of solid waste and includes, but is not limited to,  
29 reducing the use of nonrecyclable materials, replacing disposable mate-  
30 rials and products with reusable materials and products, reducing pack-  
31 aging, and increasing the efficiency of the use of materials. Waste  
32 reduction does not include replacing a recyclable material with a nonre-  
33 cyclable material or a material that is less likely to be recycled, and  
34 does not include a shift from a nonplastic material that currently is  
35 recyclable to a plastic material.

36 **S 27-3403. Responsibilities of producers.**

37       1. There is hereby established a packaging producer responsibility  
38 program by which producers, participating individually or collectively,  
39 shall be required to make changes to their product design to reduce  
40 packaging consumption and increase waste reduction, shall be required to  
41 pay fees based on the amount, by weight and type, of packaging material  
42 sold, offered for sale, or distributed for sale in the state and shall  
43 be responsible for packaging waste disposal.

44       2. The producer or producers shall provide all information necessary  
45 for the determination of the producer's payment obligations and the  
46 determination of the producer's compliance with respect to this title.

47       3. Within six months of the effective date of this title, the depart-  
48 ment, or a third party, shall conduct a statewide reduction, reuse and  
49 recycling needs assessment, hereafter "needs assessment", to identify  
50 barriers and opportunities for reducing, reusing, and recycling packag-  
51 ing. The needs assessment shall at a minimum include an evaluation of  
52 capacity costs, gaps and needs for the following factors:

53       (a) current barriers affecting the creation of reduction, reuse and  
54 refill programs;

55       (b) opportunities for the creation of reduction, reuse and refill  
56 programs;

1       (c) current municipal funding needs, both operational and capital,  
2 impacting recycling access and availability and reuse and refill;  
3       (d) existing state statutory provisions and funding sources for recy-  
4 cling, reuse, reduction, and recovery;  
5       (e) the existing collecting and hauling system for recyclable materi-  
6 als;  
7       (f) opportunities to improve access to recycling;  
8       (g) the capacity, cost, and needs associated with the collection and  
9 transportation of recyclable materials in the state;  
10      (h) the processing capacity, market conditions, and infrastructure for  
11 recyclable materials in the state and regionally;  
12      (i) current state packaging product recovery rates, recycling rates,  
13 and post-consumer recycled content rates, by material type;  
14      (j) accounting of greenhouse gas emissions associated with collection,  
15 processing, and marketing of packaging products;  
16      (k) an evaluation of state and regionally accepted recycling prac-  
17 tices;  
18      (l) current barriers affecting equitable access to recycling and reuse  
19 programs;  
20      (m) barriers to the marketability of recyclable materials generated in  
21 the state, and potential solutions;  
22      (n) the amount, by weight, of material that is recycled by each recy-  
23 cling facility that accepts packaging material;  
24      (o) consumer education needs for reuse and refill systems, recycling,  
25 and reducing contamination in collected recyclable material that reduces  
26 its suitability for recycling;  
27      (p) the net cost of curbside collection, commercial collection, or  
28 transfer station operation, on-site processing cost for each readily-re-  
29 cyclable packaging material types, management cost of non-readily-re-  
30 cyclable packaging, transportation cost for each packaging material, and  
31 any other cost factors determined by the department;  
32      (q) the availability of opportunities in the recycling and reuse  
33 systems for minority- and women-owned business enterprises; and  
34      (r) the location of landfills, incinerators and transfer stations  
35 within the state, the socio-economic conditions where such facilities  
36 are sited and the permitted pollution levels at each facility.

37       3. The department shall be responsible for updating and revising the  
38 needs assessment every three years.

39       4. The department shall post the results of the needs assessment on  
40 its website and issue a report to the legislature.

41 **S 27-3405. Producer responsibility program plan.**

42       1. Within six months of the effective date of this title, each produc-  
43 er shall register with the department.

44       2. Within eighteen months of the effective date of this title, each  
45 producer, either individually or acting collectively, shall submit a  
46 producer responsibility program plan (hereinafter "plan") to the depart-  
47 ment for approval. A producer may satisfy its obligations under this  
48 title individually or collectively.

49       3. Each producer shall begin program implementation within six months  
50 after the date the plan is approved or no later than two years of the  
51 effective date of this title. If no plan is approved by that timeframe,  
52 the producer shall be subject to penalties for noncompliance.

53       4. Any person that becomes a producer after the effective date of this  
54 title shall submit an individual plan, or join with other producers,  
55 within six months and begin program implementation within six months of  
56 plan approval or be subject to penalties for noncompliance.

1       5. The submitted plan shall, at a minimum, address the following:

2       (a) Contact information, including the name, electronic and physical  
3       address, and telephone number of the authorized representative of the  
4       producer or producers.

5       (b) Identify the producer or producers participating in the plan.

6       (c) A description of how the non-reusable packaging reduction require-  
7       ments and recycling or post-consumer recycled material requirements are  
8       addressed.

9       (d) A comprehensive list of the types and brands of packaging products  
10      for which the producer or producers are responsible for, including the  
11      UPCs of the products associated with each type of packaging material.

12      (e) A description of the proposed funding mechanism, identified in  
13      section 27-3411 of this title that meets the requirements of this title  
14      and is sufficient to cover the cost of operating the program, updating  
15      the plan, and maintaining a financial reserve sufficient to operate the  
16      program in a fiscally prudent and responsible manner. At a minimum, the  
17      following funding mechanism details shall be provided in the plan:

18      (i) proposed program fees, listed by producer, which are based on an  
19      objective formula establishing a reimbursement rate, which covers obli-  
20      gations identified in the needs assessment and takes into account vari-  
21      able regional costs, including at a minimum those identified in clause  
22      (A) of subparagraph (iv) of this paragraph, for participating municipi-  
23      ties or private sector haulers, approved by the department.

24      (ii) program fees determined based on eco-modulation. For purposes of  
25      this title, "eco-modulation" shall provide that program charges are  
26      structured to provide producers with financial incentives that reward  
27      reduction of waste at the source and recycling compatibility innovations  
28      and practices, reward producers for reusable packaging products, includ-  
29      ing those that are contained within a reuse and refill system and that  
30      disincentivize designs or practices that increase costs of managing the  
31      packaging products.

32      (iii) the producer or producers may adjust charges to be paid by  
33      participating producers, or may include a credit, based on factors that  
34      affect system costs.

35      (iv) program fees shall also be variable based on:

36      (A) costs to provide recycling collection or other form of consumer  
37      service that is, at minimum, as convenient as the previous waste  
38      collection schema in the particular jurisdiction for all consumers;

39      (B) costs to process a producer's packaging products for sale to  
40      secondary material markets;

41      (C) whether the packaging product would typically be readily-recycla-  
42      ble except that as a consequence of the product's design, the product  
43      has the effect of disrupting recycling processes or the product includes  
44      labels, inks, or adhesives containing heavy metals that would contam-  
45      inate the recycling process;

46      (D) whether the packaging is specifically designed to be reusable or  
47      refillable, is contained within a reuse or refill system, and has a high  
48      reuse or refill rate;

49      (E) the commodity value of packaging products; and

50      (F) contributions to greenhouse gas emissions from the production,  
51      use, collection, processing, and marketing of the packaging product.

52      (f) A description of the process for participating municipalities or  
53      private sector haulers to recoup reasonable costs as established by the  
54      needs assessment from the producer, including, as applicable, any admin-  
55      istrative, sorting, collection, transportation, public education or

1 processing costs if the producer uses services through a municipality or  
2 obtains such services from a private hauler;

3 (g) A description of the characteristics of each type of packaging  
4 material that are relevant to the eco-modulating factors set forth  
5 pursuant to section 27-3411 of this title;

6 (h) A description of the producer's or producers' public outreach  
7 education program for consumers and other stakeholders that will at a  
8 minimum:

9 (i) be designed to achieve the management goals of packaging products  
10 under this title, including the prevention of contamination of products;

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

14 (iii) consult with municipalities and other stakeholders, coordinate  
15 with and assist local municipal programs, municipal contracted programs,  
16 solid waste collection companies, and other entities providing services,  
17 and develop and provide outreach and education to the diverse popu-  
18 lations in the state, including utilizing a variety of outreach and  
19 education tools and ensuring materials are widely accessible and avail-  
20 able in multiple languages;

21 (iv) label or mark packaging information in accordance with the  
22 requirements of section 27-3425 of this title;

23 (v) include details on the following components of the outreach and  
24 education program provided in the plan and make such details available  
25 to consumers and other stakeholders on the producer's or producers'  
26 public education program website:

27 (A) proper end-of-life management of packaging;

28 (B) the location and availability of recycling collection;

29 (C) how to prevent litter of packaging products; and

30 (D) a description of the process for answering stakeholder questions  
31 and resolving any issues.

32 6. A producer implementing an individual extended producer responsi-  
33 bility program or producers acting cooperatively shall undertake  
34 outreach, education, and communications that assist in attaining or  
35 exceeding the minimum post-consumer content, minimum recovery rates, and  
36 minimum recycling rates, as specified by the department in regulation.

37 7. No later than ninety days after the submission of the plan, the  
38 department shall determine whether to approve the plan as submitted;  
39 approve the plan with conditions; or deny the plan.

40 8. The department shall consider the following in determining whether  
41 to approve a plan:

42 (a) whether the plan adequately addresses all elements described in  
43 this section;

44 (b) whether the producer or producers have undertaken satisfactory  
45 consultation with the public and municipalities and have provided an  
46 opportunity for input in the development of the plan prior to submission  
47 of the plan;

48 (c) whether the plan adequately provides for:

49 (i) the producer or producers collecting and funding the costs of  
50 collecting and processing packaging materials covered by the plan and  
51 reimbursing municipalities or private haulers providing such services;

52 (ii) the funding mechanism to cover the entire cost of the producer or  
53 producers' program and whether such mechanism provides for an equitable  
54 distribution of funding;

1       (iii) an evaluation system for the program charge structure, which  
2 shall be evaluated on an annual basis and resubmitted to the department  
3 annually;

4       (iv) effective consumer outreach and education;

5       (v) whether the plan satisfactorily provides for how the producer or  
6 producers implementing an individual extended producer responsibility  
7 program will meet the minimum post-consumer content rates, recovery  
8 rates, and recycling rates, which will create or enhance markets for  
9 recycled materials; and

10      (vi) whether the plan creates a convenient system for consumers to  
11 recycle packaging products that meets or exceeds the convenience crite-  
12 ria set forth in section 27-3407 of this title.

13      9. The department may deny a plan. (a) If a plan is denied, the  
14 department shall inform the producer or producers implementing an indi-  
15 vidual extended producer responsibility program in writing as to any  
16 deficiencies in such plan. The producer or producers implementing the  
17 plan shall amend and resubmit any denied plans for reconsideration with-  
18 in sixty days of notification of the denial of such plan. The department  
19 shall approve or deny such plan within thirty days of resubmission.

20      (b) If a plan is denied a second time, the department shall provide  
21 the producer or producers with direction for meeting any additional  
22 required elements of the plan it deems necessary. If such requirements  
23 are not met within thirty days, the producer or producers shall be  
24 subject to penalties for each day such plan is delayed.

25      10. The department may rescind the approval of an approved plan at any  
26 time for just cause. If a plan is rescinded, the department shall inform  
27 the producer or producers in writing as to any and all reasons why the  
28 plan was rescinded. The producer or producers implementing the plan  
29 shall amend and resubmit any rescinded plans for reconsideration within  
30 sixty days of such notification. The department shall approve or reject  
31 any such amended plan within thirty days of resubmission.

32      11. The producer or producers shall notify the department of any  
33 proposed modification to the program. If the department determines that  
34 the plan has been substantially modified, the producer or producers  
35 shall submit a proposed plan amendment describing the changes to the  
36 department within ninety days of the determination. Within ninety days  
37 of receipt of a proposed amended plan, the department shall determine  
38 whether the amended plan complies with this title. The department shall  
39 send a letter notifying the producer or producers of: (a) approval; or  
40 (b) disapproval, including the reasons for rejecting the plan. The  
41 producer or producers shall submit a revised plan within sixty days  
42 after receipt of the letter of disapproval.

43      12. The producer or producers shall reimburse the department annually  
44 at the time of annual reporting for all administrative costs associated  
45 with implementation and oversight of the program.

46      13. Beginning two calendar years following the effective date of this  
47 title, a producer shall not:

48        (a) sell, offer for sale, or distribute, in the state, a product  
49 contained, protected, delivered, presented or distributed in or using  
50 packaging material for which the producer has not complied with all  
51 applicable requirements of this title; or

52        (b) sell, offer for sale, or distribute packaging for use in New York  
53 unless such packaging products are in compliance with all applicable  
54 requirements of this title.

1       14. No person may charge a consumer point-of-sale or point of  
2       collection fee to recoup the costs associated with meeting the obli-  
3       gations under this title.

4       15. A producer or producers shall annually report to the department:

5           (a) the total amount of packaging material, by weight, sold, offered  
6           for sale, or distributed into the state by the producer or producers in  
7           the prior calendar year;

8           (b) the total amount of packaging material, by unit, sold, offered for  
9           sale, or distributed into the state by the producer or producers in the  
10          prior calendar year;

11          (c) the percentage of all packaging material the producer or producers  
12          sold, offered for sale, or distributed for sale in the state through  
13          internet transactions; and

14          (d) the following financial information:

15           (i) the total costs of implementing the program, as determined by an  
16          independent financial audit;

17           (ii) a copy of the independent audit; and

18           (iii) a detailed description of whether the program compensates muni-  
19          cipalities, solid waste collection, sorting and processing facilities  
20          and other approved entities for their recycling efforts and other  
21          related services provided and any amount of reimbursement provided.

22       16. In accordance with the regulations adopted by the department, a  
23       producer or producers shall annually report to the department informa-  
24       tion necessary for the department to make a determination of the produc-  
25       er's or producers' compliance with:

26           (a) the non-reusable packaging reduction requirements of section  
27          27-3413 of this title;

28           (b) the reuse and refill system requirements of section 27-3413 of  
29          this title;

30           (c) the recycling or post-consumer recycled material requirements of  
31          section 27-3415 of this title;

32           (d) the toxic substances in packaging requirements of section 27-3417  
33          of this title; and

34           (e) the labeling requirements of section 27-3425 of this title.

35       17. Each producer shall pay fees, associated with the cost of the  
36       needs assessment required by section 27-3411 of this title.

37       18. Notwithstanding any provision of this title to the contrary, a  
38       producer shall be exempt from the requirements and prohibitions of this  
39       title:

40           (a) in any calendar year in which the producer realized less than two  
41          million dollars in total gross revenue during the prior calendar year;  
42          or

43           (b) in any calendar year in which the producer sold, offered for sale,  
44          or distributed for sale in the state during the prior calendar year  
45          packaging materials/products contained, protected, delivered, presented,  
46          or distributed in or using less than one ton of packaging material in  
47          total; or

48           (c) if the producer is a municipality.

49       19. A producer claiming an exemption under this section shall provide  
50       to the department sufficient information to demonstrate that the claim-  
51       ant meets the requirements for an exemption under this section within  
52       thirty days of receiving a request from the department.

53       S 27-3407. Collection and convenience.

54       A producer or producers shall provide for widespread, convenient, and  
55       equitable access to collection opportunities for the packaging materials  
56       identified under the producer or producers' plan at no additional cost

1 to residents. Such opportunities shall be provided to all residents of  
2 New York in a manner that is as convenient as the collection of municip-  
3 ipal solid waste. A producer or producers shall ensure services continue  
4 for curbside recycling programs that a municipality serves as of the  
5 effective date of this title, either directly or through a contract to  
6 provide services, and that such services are continued through the  
7 plan. A plan may not restrict a resident's ability to contract directly  
8 with third parties to obtain recycling collection services if residents  
9 have the option to enter into such contracts as of the effective date of  
10 this title, as long as the resident still voluntarily chooses to  
11 contract directly with the third party. A producer or producers may  
12 rely on a range of means to collect various categories of packaging so  
13 long as options for packaging material include curbside recycling  
14 collection services provided by municipal programs, municipal contracted  
15 programs, solid waste collection companies, or other approved entities  
16 as identified by the department if:

17 1. The category of packaging materials is suitable for residential  
18 curbside recycling collection and can be effectively sorted by the  
19 facilities receiving the curbside collected material.

20 2. The recycling facility providing processing and sorting service  
21 agrees to include the category of packaging materials as an accepted  
22 material.

23 3. The packaging material is not handled through a deposit and return  
24 scheme or buy back system that relies on a collection system other than  
25 curbside or multi-family collection.

26 4. The provider of the residential curbside recycling service agrees  
27 to participate.

28 5. (a) The producer or producers shall adopt a list of minimum types  
29 of readily recyclable materials and products based on the department's  
30 identification of available collection and processing infrastructure and  
31 recycling markets for packaging materials. The producer or producers  
32 shall update and adopt the list on an annual basis, in consultation with  
33 the department, in response to collection and processing improvements  
34 and changes in recycling end markets. If there are multiple lists, the  
35 department shall compile the lists and shall publish a compiled list  
36 to the public. Such lists may vary by geographic region depending on  
37 regional markets and regional collection and processing infrastructure.

38 (b) All municipalities or private recycling service providers shall  
39 provide for the collection and recycling of all identified materials and  
40 products contained on the list of minimum recyclables, based on  
41 geographic regions, in order to be eligible for reimbursement; provided,  
42 however, nothing shall penalize a municipality or private recycling  
43 service for packaging materials that are generated in the municipality  
44 or geographic region that are not included on the list of minimum types  
45 of recyclable packaging materials or products as long as it can be  
46 demonstrated that such materials have a market as determined by the  
47 department in consultation with the producer or producers. Reimbursement  
48 shall cover recycling of all packaging materials so long as the program  
49 includes at least the minimum recyclable list.

50 **S 27-3409. Responsibilities of the department.**

51 1. Within one year of the effective date of this title, the department  
52 shall promulgate regulations setting recommended program fees for  
53 producers to pay after consulting with multiple stakeholders, including  
54 municipalities, businesses, institutions, and other extended producer  
55 responsibility programs. Program fees shall be set at a rate that will  
56 drive reductions in overall packaging, incentivize adoption of reuse

1 systems, increase post-consumer recycled material, and promote the use  
2 of recyclable packaging.

3 2. The department shall revise recommended program fees every three  
4 years, beginning three years after the first set of program fees is  
5 established to reflect new data received about material use and manage-  
6 ment, or whenever the targets set in sections 27-3413 and 27-3415 of  
7 this title are not met to drive compliance with such targets.

8 3. The department shall annually compile a list of any producer  
9 noncompliance, and the steps being taken to bring noncompliant producers  
10 into compliance.

11 4. The department shall annually provide a description of the infras-  
12 tructure and education investments made by producers in prior calendar  
13 years and an evaluation of how those investments were designed to  
14 increase access to recycling and refill or reuse systems in the state.

15 5. The department shall provide an annual assessment of the progress  
16 made toward the achievement of any program goals, including but not  
17 limited to the requirements under sections 27-3413 and 27-3415 of this  
18 title.

19 6. The department shall provide an annual assessment of the payment  
20 schedule adopted by producers pursuant to section 27-3411 of this title.

21 7. The department shall provide an annual assessment of whether the  
22 plan has been successful in increasing the amount of packaging material  
23 that is readily-recyclable, increasing the transition from non-reusable  
24 to reusable packaging, and incentivizing improvements to the design of  
25 packaging material.

26 8. The department shall consider any proposals for changes to the  
27 program or investments in education and infrastructure designed to  
28 reduce the amount of packaging material used, increase access to recycl-  
29 ing, increase the recycling of or recyclability of packaging material,  
30 reduce program costs, or otherwise increase program efficiency, which  
31 may include an analysis of best practices for municipal recycling  
32 programs and material recovery facilities.

33 9. The department shall consider the results of representative inbound  
34 and outbound audits of recyclable material processed and sold by materi-  
35 als recycling facilities in the state and waste characterization of  
36 municipal solid waste.

37 10. The department shall review the results of a producers' third  
38 party financial audits.

39 **S 27-3411. Funding mechanism.**

40 1. The department shall promulgate regulations setting forth the  
41 manner in which recommended producer program fees on packaging materials  
42 shall be calculated. Payments shall be calculated based on:

43 (a) the packaging material type; and

44 (b) the quantity of each packaging material type, by weight, that the  
45 producer sells, offers for sale, or distributes in the state.

46 2. The list of packaging material types shall include, at a minimum,  
47 the following materials:

48 (a) paper;

49 (b) cardboard;

50 (c) corrugated cardboard;

51 (d) generic paper/cardboard;

52 (e) wood;

53 (f) glass;

54 (g) polyethylene terephthalate (PET);

55 (h) high density polyethylene (HDPE);

56 (i) expanded polystyrene (EPS);

1       (j) polystyrene;  
 2       (k) bio-plastics;  
 3       (l) generic plastics;  
 4       (m) plastic film;  
 5       (n) other plastics;  
 6       (o) steel or ferrous;  
 7       (p) aluminum;  
 8       (q) tinplate; and  
 9       (r) generic metals.

10      3. (a) Program fees shall at a minimum include:

- 11       (i) costs to provide curbside collection or other form of residential  
 12 service that is, at minimum, as convenient as curbside collection or as  
 13 convenient as the previous recycling collection plan in the particular  
 14 jurisdiction or as convenient as the previous refuse collection plan in  
 15 the particular jurisdiction should recycling collection not be provided;  
 16       (ii) costs to process packaging materials for acceptance by secondary  
 17 material markets;  
 18       (iii) whether the packaging materials would typically be readily-re-  
 19 recyclable except that as a consequence of the product's design, the prod-  
 20 uct has the effect of disrupting recycling processes or the product  
 21 includes labels, inks, and adhesives containing heavy metals or other  
 22 toxic substances that would contaminate the recycling process;  
 23       (iv) whether the packaging materials or product is specifically  
 24 designed to be reusable or refillable and has high reuse or refill rate;  
 25       (v) the commodity value of a packaging material or product.

26      The charges shall be adjusted, or the producers may be provided a  
 27 credit, based upon the percentage of post-consumer recycled material  
 28 content and such percentage of post-consumer recycled content shall be  
 29 verified by an independent third party approved to perform verification  
 30 services to ensure that such percentage exceeds the minimum require-  
 31 ments in the packaging material, as long as the recycled content does  
 32 not disrupt the potential for future recycling.

33      (b) Fees shall be higher for packaging material that is not readily-  
 34 recyclable.

35      (c) The fees for each type of packaging material shall be eco-modulat-  
 36 ed and structured to promote the environmental beneficial packaging  
 37 design in accordance with the following:

38           Fees	Type of packaging
39 <u>Fees are increased</u>	<u>Packaging is not readily-recyclable</u>
40 <u>Fees are lowered</u>	<u>Packaging is readily-recyclable</u>
41 <u>No fee</u>	<u>Packing is compostable</u> <u>Packing incorporates post-consumer</u> <u>recycled material</u> <u>Reusable or refillable packaging contained</u> <u>within a reuse/refill system</u>

46      § 27-3413. Non-reusable packaging reduction requirements.

47      1. A producer shall reduce the total amount by unit, on average and in  
 48 the aggregate, of non-reusable packaging across its brand in accordance  
 49 with the following schedule:

50      (a) by ten percent two years after the implementation of the producer  
 51 plan pursuant to section 27-3405 of this title;

52      (b) by at least twenty percent four years after plan implementation;

53      (c) by at least thirty percent six years after plan implementation;

1       (d) by at least forty percent eight years after plan implementation;  
2 and  
3       (e) by at least fifty percent ten years after plan implementation.  
4       2. The reductions required by subdivision one of this section shall be  
5 measured against the total amount of packaging the producer sold,  
6 offered for sale, or distributed for sale in the state during the  
7 respective calendar year. For producers who did not sell, offer for  
8 sale, or distribute for sale any packaging during the calendar year, the  
9 reductions required by subdivision one of this section shall be measured  
10 against the first calendar year for which there is data regarding the  
11 amount of packaging the producer sold, offered for sale, or distributed  
12 for sale in the state.

13       3. These reductions may be achieved by eliminating non-reusable pack-  
14 aging, including secondary packaging, or by transitioning away from  
15 non-reusable packaging to a reuse and refill system.

16       4. The department shall promulgate regulations that address the manner  
17 in which each producer will report its compliance with the requirements  
18 of this section.

19 **s 27-3415. Recycling or post-consumer recycled material requirements.**

20       1. Each producer shall ensure that all non-reusable packaging in the  
21 aggregate, across its entire brand, either:

22           (a) is recycled at a rate consistent with the following schedule:  
23              (i) fifty percent five years after implementation of the producer plan  
24 pursuant to section 27-3405 of this title;

25              (ii) eighty percent eight years after plan implementation;  
26              (iii) ninety percent twelve years after plan implementation; or  
27           (b) incorporates, on average and in the aggregate, the following  
28 amount by weight of post-consumer recycled material:

29              (i) fifty percent five years after plan implementation;  
30              (ii) eighty percent eight years after plan implementation; or  
31              (iii) ninety percent twelve years after plan implementation.

32       2. Any producer that enters the market after the effective date of  
33 this title shall meet the recycling requirements required by subdivision  
34 one of this section as measured against the first calendar year for  
35 which there is data regarding the amount of packaging the producer sold,  
36 offered for sale, or distributed for sale in the state.

37       3. (a) For the purpose of determining a producer's compliance with the  
38 post-consumer recycled material requirements of this section, a producer  
39 shall rely on New York data regarding packaging sales and material use,  
40 if available, or may alternatively rely on the same type of data appli-  
41 cable to a region or territory of the United States that includes the  
42 state of New York.

43           (b) If a producer elects to rely on data regarding packaging sales and  
44 materials derived from data applicable to a region or territory of the  
45 United States that includes the state of New York, the producer shall:

46              (i) pro-rate the regional or territorial data to determine New York  
47 specific figures based on market share or population in a manner that  
48 ensures that the percentage of post-consumer recycled material calcu-  
49 lated for packaging material sold in New York is the same percentage as  
50 calculated for that larger region or territory; and

51              (ii) document the methodology used to determine such New York specific  
52 figures calculated under subparagraph (i) of this paragraph.

53       4. If a producer elects to comply with the provisions of this section  
54 by meeting the post-consumer recycled material requirements, the depart-  
55 ment may assess against a producer that fails to comply with those  
56 requirements an administrative penalty calculated as follows:

1       (a) The department shall add the total amount by weight in pounds of  
2 post-consumer recycled material and the total amount by weight in pounds  
3 of material that is not post-consumer recycled material used by the  
4 producer in all the packaging it sold, offered for sale, or distributed  
5 for sale in the state during the prior calendar year. Unless otherwise  
6 determined by the department, the figure calculated under this paragraph  
7 shall be calculated using the information reported by the manufacturer.

8       (b) The department shall multiply the figure calculated under para-  
9 graph (a) of this subdivision by the minimum post-consumer recycled  
10 material percentage required under paragraph (b) of subdivision one of  
11 this section during the prior calendar year.

12       (c) The department shall subtract from that figure calculated under  
13 paragraph (b) of this subdivision the total amount by weight in pounds  
14 of post-consumer recycled material used by the producer in all products  
15 it sold, offered for sale, or distributed for sale in packaging in the  
16 state during the prior calendar years.

17       (d) The department shall multiply that figure calculated under para-  
18 graph (c) of this subdivision by twenty cents. If the figure calculated  
19 under this paragraph is less than or equal to zero, the department may  
20 not assess an administrative penalty.

21 S 27-3417. Toxic substances in packaging.

22       1. Beginning December thirty-first, two thousand twenty-five, in addi-  
23 tion to the requirements of title two of article thirty-seven of this  
24 chapter, no person may sell, offer for sale, distribute for sale, or  
25 distribute for use in this state, any packaging material containing the  
26 following toxic substances above the practical quantification limit, as  
27 such term is defined in section 37-0901 of this chapter:

- 28       (a) ortho-phthalates;
- 29       (b) bisphenols;
- 30       (c) per- and polyfluoroalkyl substances (PFAS);
- 31       (d) lead and lead compounds;
- 32       (e) hexavalent chromium and compounds;
- 33       (f) cadmium and cadmium compounds;
- 34       (g) mercury and mercury compounds;
- 35       (h) benzophenone and its derivatives;
- 36       (i) halogenated flame retardants;
- 37       (j) perchlorate;
- 38       (k) formaldehyde; and
- 39       (l) toluene.

40       2. Beginning one year after the effective date of this title, no  
41 person may sell, offer for sale, distribute for sale, or distribute for  
42 use in this state, any packaging products containing the following toxic  
43 substances above the practical quantification limit, as such term is  
44 defined in section 37-0901 of this chapter:

- 45       (a) polyvinyl chloride;
- 46       (b) polystyrene; or
- 47       (c) polycarbonate.

48       3. Beginning three years after the effective date of this title, and  
49 every three years thereafter, the department shall designate at least  
50 ten additional toxic substances, unless it determines there are not ten  
51 chemicals that meet the definition of toxic substances. If the depart-  
52 ment determines there are not ten toxic substances that meet such defi-  
53 nition, it shall publish a detailed statement of findings and conclu-  
54 sions supporting such determination.

55       4. Within one hundred eighty days of designating a toxic substance,  
56 the department shall adopt regulations to prohibit the newly designated

1 toxic substance in packaging, with an effective date no later than two  
2 years after such regulations are finalized.

3 5. Any producer that violates this section shall be subject to a fine  
4 for each violation not to exceed twenty-five thousand dollars for each  
5 violation.

6 S 27-3419. Biennial producer responsibility program report.

7 1. Beginning one year after the implementation of the producer plan  
8 pursuant to section 27-3405 of this title, and every two years thereaft-  
9 er, the department shall generate a producer responsibility program  
10 report.

11 2. The report shall include, at a minimum, the following information:  
12 (a) a list of all participating producers and the brands of products  
13 associated with those producers;

14 (b) a baseline report of the number of units of packaging and type of  
15 packaging products, both non-reusable and reusable, that were sold,  
16 offered for sale, or distributed into the state;

17 (c) a list of all materials that are readily-recyclable in the state;  
18 (d) results of an audit of inbound and outbound recyclable material  
19 processed and sold within the state;

20 (e) a waste characterization study that specifies the quantity in tons  
21 of packaging material in the waste stream according to types of uses;

22 (f) a statewide litter survey that identifies the quantity of packag-  
23 ing material in litter according to types of packaging material and the  
24 brands which produce the material;

25 (g) a list of the amount of packaging material and packaging material  
26 type sold or offered for sale within the state that year;

27 (h) a description of all funding issued pursuant to the plan; and  
28 (i) the compliance of producers with the toxic substances prohibition  
29 provided in section 27-3417 of this title.

30 S 27-3421. Producer compliance information.

31 1. The department shall make available on its publicly accessible  
32 website a regularly updated list of UPCs of products for which the  
33 department has determined the producer has complied with all applicable  
34 requirements of this title and a list of producers and, where applica-  
35 ble, specific products and the UPCs of those products, for which the  
36 department has determined the producer has not complied with all appli-  
37 cable requirements of this title.

38 2. Each producer shall annually provide to the department a certif-  
39 icate of compliance signed by an authorized official stating that all  
40 packaging materials meet the requirements of this title provided howev-  
41 er, where compliance is achieved under an exemption provided in section  
42 27-3405 of this title, the certificate shall state the specific basis  
43 upon which the exemption is claimed.

44 S 27-3423. Enforcement.

45 1. The department may bring an administrative enforcement action  
46 against any producer or other entity to enjoin activity in violation of  
47 any provision of this title, and to assess and recover penalties as  
48 provided in this title.

49 2. The office of the attorney general may bring an action in any court  
50 of competent jurisdiction to enjoin any violation of the requirements of  
51 this title, and to recover penalties as provided in this title.

52 3. All penalties recovered pursuant to this section shall be deposited  
53 in the packaging responsibility fund.

54 S 27-3425. Labeling.

55 1. Producers shall indicate on all packaging material sold, offered  
56 for sale, or distributed for sale in or into the state either:

1       (a) the percentage of post-consumer recycled material;  
2       (b) whether the packaging material is readily-recyclable and how to  
3       recycle such unit; or  
4       (c) whether the unit is compostable.

5       2. Such labels shall be in a form deemed appropriate by the department  
6       pursuant to regulations.

7       3. All packaging material sold in the state shall conform with the  
8       labeling requirements in this section within two years of the effective  
9       date of this title. Packaging that does not meet the requirements of  
10      this section may not be sold, offered for sale, or distributed for sale  
11      into the state.

12      S 27-3427. Regulations.

13      1. The department shall promulgate regulations as necessary to imple-  
14      ment and administer this title.

15      2. The department shall solicit input from interested parties in the  
16      development of any draft regulations to implement this title, solicit  
17      public comment on such draft regulations for a period of at least sixty  
18      days, and hold at least one public hearing on such draft regulations.

19      3. The regulations adopted by the department pursuant to this title  
20      shall include, at a minimum:

21       (a) a process for annually determining a schedule of producer  
22       payments, which shall include, but not be limited to, provisions regard-  
23       ing the timing of producer payments.

24       (i) The payment schedule adopted under this paragraph shall delineate  
25       criteria to be used to adjust producer payments in a manner that  
26       complies with section 27-3411 of this title; and

27       (ii) Shall include a description of the methods to be used to deter-  
28       mine the amount reported for each type of packaging material associated  
29       with its products.

30       (b) a process for a producer or producers that are unable to fully  
31       satisfy the reporting requirements due to a failure to obtain sufficient  
32       information regarding the characteristics of the packaging of the  
33       producer's products that are sold, offered for sale, or distributed for  
34       sale in or into the state to, alternatively, report to the department an  
35       estimate of the total amount of such packaging based on unit quantities,  
36       as long as such alternative reporting includes a description of methods  
37       used by the producer to calculate the estimate;

38       (c) a process for determining on an annual basis those types of pack-  
39       aging materials that are readily-recyclable which shall at a minimum  
40       involve consultation with the municipalities and recycling establish-  
41       ments and shall include a transitional period between the time that the  
42       type of packaging material is determined to be recyclable or to not be  
43       recyclable and the time that such determination shall be in effect for  
44       the purposes of calculating producer payments;

45       (d) requirements for the assessment of program performance, including:  
46       (i) the non-reusable packaging reduction requirements set forth in

47       section 27-3413 of this title;

48       (ii) standards for reuse and refill systems to ensure they achieve the  
49       break-even point for reusable packaging;

50       (iii) the recycling or post-consumer recycled material requirements  
51       set forth in section 27-3415 of this title;

52       (iv) the toxic substances in packaging requirements set forth in  
53       section 27-3417 of this title;

54       (v) the labeling requirements set forth in section 27-3425 of this  
55       title; and

1       (vi) material-specific recycling rates for each type of packaging  
2 material for which a fee has been set pursuant to section 27-3411 of  
3 this title. The material specific recycling rate goals shall reflect the  
4 following recycling standards:

5       (A) sorted glass shall be considered recycled if it does not require  
6 further processing before entering a glass furnace or before use in the  
7 production of filtration media, abrasive materials, glass fiber insu-  
8 lation or construction;

9       (B) sorted metal shall be considered recycled if it does not require  
10 further processing before entering a smelter or furnace;

11       (C) sorted paper shall be considered recycled if it does not require  
12 further processing before entering a pulping operation; and

13       (D) plastic separated by polymer shall be considered recycled if it  
14 does not require further processing before entering a pelletization,  
15 extrusion or molding operation, or in the case of plastic flakes, does  
16 not require further processing before use in a final product;

17       (e) requirements for the producer to conduct representative audits of  
18 recyclable material processed and sold by facilities that process  
19 recyclable material generated in the state, of municipal solid waste  
20 disposed of in the state, and waste littered in the state, which shall  
21 include, at minimum:

22       (i) provisions regarding the sampling techniques to be used in those  
23 audits, which must include random sampling; and

24       (ii) for audits of recyclable materials, provisions regarding:

25       (A) how such audits shall be designed to collect information regarding  
26 the extent to which recycled material processed and sold by those facil-  
27 ities reflects the tons of each type of packaging material collected in  
28 the state for recycling and the amount of each type of packaging materi-  
29 al recycled in the state, as well as the ultimate destination of and  
30 intended use for such recycled material;

31       (B) how such audits shall be designed so that information collected  
32 through the audit of one facility shall not be used to infer information  
33 about a different facility that uses different processing equipment,  
34 different sorting processes, or different staffing levels to conduct  
35 processing;

36       (C) for audits of municipal solid waste, provisions regarding how such  
37 audits will be designed to collect information regarding the types and  
38 amount, by weight, of packaging in the waste stream and the percentage  
39 by weight of the waste stream that is composed of packaging; and

40       (D) for audits of waste littered in the state, provisions regarding  
41 how such audits will be designed to collect information regarding the  
42 packaging material type by amount, weight, in sampled litter, identifi-  
43 cation of the producer or producers of the packaging in sampled litter,  
44 if identifiable, and an evaluation based on those audits regarding the  
45 areas of the state in which litter accumulation is greatest;

46       (f) a process by which the producer or producers shall develop and  
47 submit for department review and a process by which the department shall  
48 review and approve or deny: (i) a proposed investment in recycling  
49 infrastructure and education and (ii) a proposed investment in reusable  
50 or refillable infrastructure and education. The process shall set forth  
51 the manner in which the producer or producers are required to solicit  
52 and incorporate input in the development of proposed investments from  
53 producers, recycling establishments, and municipalities;

54       (g) a process for soliciting information necessary for, and a process  
55 for rendering a determination regarding:

1       (i) a producer's compliance with the non-reusable packaging reduction  
2 requirements of section 27-3413 of this title;  
3       (ii) a producer's compliance with the reuse and refill system require-  
4 ments of section 27-3413 of this title;  
5       (iii) a producer's compliance with the recycling or post-consumer  
6 recycled material requirements of section 27-3415 of this title;  
7       (iv) a producer's compliance with the toxic substances in packaging  
8 requirements of section 27-3417 of this title; and  
9       (v) a producer's compliance with the labeling requirements of section  
10 27-3425 of this title;

11     (h) a process for determining how the producer or producers will  
12 distribute funds to municipalities; and  
13     (i) a process for determining the minimum number of reuse or refill  
14 cycles required for each type of packaging material to be considered  
15 reusable or refillable, pursuant to section 27-3413 of this title.

16     § 2. The state finance law is amended by adding a new section 92-kk to  
17 read as follows:

18     § 92-kk. Packaging responsibility fund. 1. There is hereby established  
19 in the joint custody of the comptroller and the commissioner of the  
20 department of taxation and finance a special fund to be known as the  
21 packaging responsibility fund.

22     2. Such fund shall consist of all penalties collected pursuant to  
23 title thirty-four of article twenty-seven of the environmental conserva-  
24 tion law, and any other monies deposited into the fund pursuant to law.

25     3. Moneys of the fund shall be made available to fund third-party,  
26 independent audits of both inbound and outbound recyclable material  
27 generated in the state, disposal of both inbound and outbound materials,  
28 and litter audits. Such audits shall be conducted at least every two  
29 years and shall be posted on the department of environmental conserva-  
30 tion's website.

31     § 3. The department of health shall, within one year of the effective  
32 date of this act, examine its rules and regulations to identify any  
33 barriers to the implementation of refill systems, including in food  
34 production and wineries.

35     § 4. This act shall take effect immediately.