

STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

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Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to creating climate negligence for dangers to safety and health caused by certain fossil fuel related activities

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

1 Section 1. The legislature finds that the consequences of a changing
2 climate directly impact New York state. Around the world thousands of
3 scientific studies have documented changes in air and water temper-
4 atures, melting glaciers, diminishing snow cover, shrinking sea ice,
5 rising sea levels, ocean acidification, and increasing atmospheric water
6 vapor. Warming trends and incidences of intense heat waves will
7 contribute to greater localized heat stresses; heavy rainfall events
8 that exacerbate localized flooding will continue to impact food
9 production, natural ecosystems, and water resources; and sea-level rise
10 will increasingly threaten sensitive coastal communities and ecosystems.
11 Climate change is adversely affecting New York's economic well-being,
12 public health, natural resources, and environment.

13 To achieve the goals of the Climate Leadership and Community
14 Protection Act (hereinafter the "Climate Act") that include 70% renewa-
15 ble electricity by 2030, 100% zero-emission electricity by 2040, a 40%
16 reduction in statewide GHG emissions from 1990 levels by 2030, an 85%
17 reduction in statewide GHG emissions from 1990 levels by 2050, and net
18 zero emissions statewide by 2050, the New York State Climate Action
19 Council (the "Council") determined in its Scoping Plan for the Climate
20 Act that "[~~i~~]t is imperative that New York take immediate action to
21 aggressively reduce GHG emissions as well as invest in resiliency meas-
22 ures." The cost of not taking immediate and aggressive action, according
23 to the Council, is approximately \$115 billion dollars.

24 The public health impacts of GHG and co-pollutant emissions are simi-
25 larly devastating. Increased heat stress (such as heat edema, heat
26 stroke, heat cramps, heat stress, and dehydration) and other heat-relat-

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

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1 ed morbidity and mortality; exacerbation of respiratory conditions
2 (including pneumonia, asthma, and chronic obstructive pulmonary disease)
3 and cardiovascular disease; increased duration and severity of allergy
4 symptoms due to increased duration and intensity of pollen season;
5 increased risk for vector-borne diseases (such as Lyme disease, West
6 Nile virus, and other pathogens); increased risk of injury and death
7 following extreme precipitation events and flooding (or, conversely,
8 after droughts); rising sea levels that threaten infrastructure; the
9 saltwater intrusion of the State's groundwater resources (which may
10 impact drinking water supplies); and poor indoor air quality (such as
11 mold and moisture) are just some of those impacts. Additionally,
12 climate-driven impacts are magnified in New York's historically margi-
13 nalized communities that have been disproportionately affected by and
14 are on the front lines of climate change.

15 The legislature finds that the New York Constitution grants every New
16 Yorker the right to mitigate these impacts. Article I, Section 19 of
17 the New York State Constitution reads: "Each person shall have a right
18 to clean air and water, and a healthful environment." Overwhelmingly
19 approved by the voters in 2021, this "green amendment" to our constitu-
20 tion placed a right to a healthful environment alongside the freedom of
21 speech, religion, and property in our Bill of Rights. As such, every
22 New Yorker should have the tools to best utilize that right. This bill
23 seeks to provide them with at least one tool.

24 The legislature further finds that the fossil fuel industry has known
25 for decades that their products overwhelmingly contributed to and accel-
26 erated climate change, yet they have - and continue to - lie about this
27 fact to the public. Documents unveiled by litigation and investigative
28 journalists demonstrate that as early as the 1950s, the industry became
29 aware of the potentially catastrophic impact of its products and even in
30 the face of scientific consensus shortly thereafter and research
31 conducted by their own scientists affirming the impacts of their busi-
32 ness, the industry outright denied that climate change was real, spread
33 disinformation to cast doubt on the science, dismissed regulatory action
34 as insufficient (after no longer being able to deny climate change
35 outright), and currently advertise "green" efforts to the public that
36 mask the industry's lack of real investment in resiliency and energy-
37 source transition. A December 2022 report by the Oversight Committee in
38 Congress also revealed internal documents from senior leaders in the
39 industry where, among other things, they explicitly reject taking
40 accountability for the emissions of their products.

41 By conduct and impact, the industry has intentionally obfuscated the
42 truth about climate change and outright deceived the public in order to
43 continue dependence on their products. The legislature finds that this
44 conduct and the subsequent impact on the public is not political speech,
45 but fundamentally commercial activity with incidental political impact.
46 We also find this conduct to be a substantial factor in affecting the
47 public's perception of the threat of climate change, scientific consen-
48 sus notwithstanding.

49 New Yorkers should have the ability to hold those responsible for
50 climate change accountable for their deceptive practices and the cata-
51 clysmic impacts these practices have yielded. This bill seeks to provide
52 them with that opportunity.

53 § 2. The general business law is amended by adding a new article 20-B
54 to read as follows:

55 **ARTICLE 20-B**
56 **FOSSIL FUEL RELATED ACTIVITIES**

1 Section 328. Definitions.

2 328-a. Fossil fuel industry member obligations.

3 328-b. Climate negligence.

4 328-c. Governmental enforcement prohibited.

5 328-d. Private right of action.

6 § 328. Definitions. For purposes of this article, the following terms
7 shall have the following meanings:

8 1. "Fossil fuel industry member" shall mean a person, firm, corpo-
9 ration, company, partnership, society, joint stock company or any other
10 entity or association with total annual revenues in excess of one
11 billion dollars engaged in extracting, storing, transporting, refining,
12 importing, exporting, producing, manufacturing, distributing, compound-
13 ing, marketing, or offering for wholesale or retail sale, a qualified
14 product.

15 2. "Qualified product" shall mean a fossil fuel product including, but
16 not limited to:

17 (a) crude petroleum oil and all other hydrocarbons, regardless of
18 gravity, that are produced at the wellhead in liquid form by ordinary
19 production methods.

20 (b) natural, manufactured, mixed, and byproduct hydrocarbon gas.

21 (c) refined crude oil, crude tops, topped crude, processed crude,
22 processed crude petroleum, residue from crude petroleum, cracking stock,
23 uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil,
24 casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil,
25 waste oil, blended gasoline, lubricating oil, and blends or mixtures of
26 oil with one or more liquid products or byproducts derived from oil or
27 gas.

28 (d) any physical waste generated in the extracting, storing, trans-
29 porting, refining, importing, producing, manufacturing, distributing, or
30 compounding a qualified product defined in paragraphs (a), (b), and/or
31 (c) of this subdivision which contains or is contaminated by any quali-
32 fied product defined in paragraphs (a), (b), and/or (c) of this subdivi-
33 sion or any substance appearing on a list within regulations promulgated
34 by the department of environmental conservation pursuant to section
35 37-0101 of the environmental conservation law.

36 3. "Reasonable controls and procedures" shall mean policies that
37 include, but are not limited to: (a) instituting business practices to
38 prevent pollution in New York state, including but not limited to the
39 release of greenhouse gases which contribute to climate change and emis-
40 sions which contribute to adverse health impacts; and (b) preventing
41 deceptive acts and practices and false advertising and otherwise ensur-
42 ing compliance with all provisions of article twenty-two-A of this chap-
43 ter. Acts or practices related to environmental commitment, performance,
44 or sustainability shall also be subject to this subdivision and shall be
45 clear, objective, and verifiable. The net impression of such acts and
46 practices shall not mislead a reasonable person about the fossil fuel
47 industry member's environmental commitment, performance, or sustainabil-
48 ity. This subdivision may not be construed to impose liability on any
49 speech or conduct protected by the first amendment of the United States
50 Constitution, as made applicable to the states through the United States
51 Supreme Court's interpretation of the fourteenth amendment of the United
52 States Constitution.

53 4. The terms "knowingly" and "recklessly" shall have the same meaning
54 as defined in section 15.05 of the penal law.

55 5. "Deceptive acts or practices" shall mean those acts and practices
56 which are unlawful pursuant to article twenty-two-A of this chapter.

1 6. "False advertising" shall have the same meaning as defined in arti-
2 cle twenty-two-A of this chapter.

3 § 328-a. Fossil fuel industry member obligations. 1. No fossil fuel
4 industry member shall knowingly or recklessly create, maintain or
5 contribute to a condition in New York state that endangers the safety or
6 health of the public, whether directly or indirectly, through extract-
7 ing, storing, transporting, refining, importing, exporting, producing,
8 manufacturing, distributing, compounding, marketing, or offering for
9 wholesale or retail sale, a qualified product.

10 2. Each fossil fuel industry member in New York state shall establish
11 and utilize reasonable controls and procedures to prevent its qualified
12 products from creating, maintaining or contributing, whether directly or
13 indirectly, to a condition in New York state that endangers the safety
14 or health of the public including, but not limited to, climate change.

15 § 328-b. Climate negligence. 1. A violation of section three hundred
16 twenty-eight-a of this article is hereby declared to be a climate negli-
17 gence.

18 2. Any harm caused by an action taken by a fossil fuel industry member
19 shall be deemed climate negligence regardless of when the underlying
20 conduct creating the nuisance occurred.

21 § 328-c. Governmental enforcement prohibited. Whenever there shall be
22 a violation of this article, no person or entity acting on behalf of the
23 state or any political subdivision thereof may bring, or intervene in,
24 an action in any court to enjoin and/or restrain such violation or to
25 obtain restitution or damages under this article. This section shall not
26 prohibit any person or entity, including a person or entity acting on
27 behalf of the state or any political subdivision thereof, from bringing
28 an action under any other provision of law nor shall it prohibit any
29 person or entity acting on behalf of the state or any political subdivi-
30 sion thereof from filing an amicus curiae brief in an action involving
31 an alleged violation of this article.

32 § 328-d. Private right of action. Except as described in section three
33 hundred twenty-eight-c of this article, any person, firm, corporation or
34 association that has been damaged as a result of a fossil fuel industry
35 member's acts or omissions in violation of this article shall be enti-
36 tled to bring an action for recovery of damages or to enforce this arti-
37 cle in:

38 1. the county in which all or a substantial part of the events or
39 omissions giving rise to the claim occurred;

40 2. the county of residence for any one of the natural person defend-
41 ants at the time the cause of action accrued;

42 3. the county of the principal office in this state of any one of the
43 defendants that is not a natural person; or

44 4. the county of residence for the claimant if the claimant is a
45 natural person residing in this state.

46 § 3. Severability. If any clause, sentence, paragraph, subdivision,
47 section or part of this act shall be adjudged by any court of competent
48 jurisdiction to be invalid, such judgment shall not affect, impair, or
49 invalidate the remainder thereof, but shall be confined in its operation
50 to the clause, sentence, paragraph, subdivision, section or part thereof
51 directly involved in the controversy in which such judgment shall have
52 been rendered. It is hereby declared to be the intent of the legislature
53 that this act would have been enacted even if such invalid provisions
54 had not been included herein.

55 § 4. This act shall take effect immediately.