

# STATE OF NEW YORK

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212--A

2023-2024 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2023

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Introduced by Sens. MYRIE, BAILEY, CLEARE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, SALAZAR, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to creating climate liability 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~~]" it is imperative that New York take immediate action to  
21 aggressively reduce GHG emissions as well as invest in resiliency meas-

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

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1 ures." Although the plan is not authoritative on the full scope of  
2 damage, the cost of not taking immediate and aggressive action, accord-  
3 ing to the Council, is approximately \$115 billion dollars.

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

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

30 The legislature also finds that there has been a scientific consensus  
31 for several decades that climate change is occurring exemplified by the  
32 testimony of Dr. James Hansen of the National Aeronautics and Space  
33 Administration in June 1988 to the U.S. Senate and the formation later  
34 that year of the United Nations Intergovernmental Panel on Climate  
35 Change.

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

53 By conduct and impact, the industry has intentionally obfuscated the  
54 truth about climate change and outright deceived the public in order to  
55 continue dependence on their products. The legislature finds that this  
56 conduct and the subsequent impact on the public is not political speech,

1 but fundamentally commercial activity with incidental political impact.  
2 We also find this conduct to be a substantial factor in affecting the  
3 public's perception of the threat of climate change, scientific consen-  
4 sus notwithstanding.

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

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

11 ARTICLE 20-B

12 FOSSIL FUEL RELATED ACTIVITIES

13 Section 328. Definitions.

14 328-a. Fossil fuel industry member climate liability.

15 328-b. Defense to liability.

16 328-c. Right of action.

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

19 1. "Covered period" shall mean the period from January first, nineteen  
20 eighty-nine to the effective date of this article.

21 2. "Fossil fuel industry member" shall mean a firm, corporation,  
22 company, partnership, society, joint stock company or any other entity  
23 or association that emitted or caused to be emitted through the extract-  
24 ing, storing, transporting, refining, importing, exporting, producing,  
25 manufacturing, distributing, compounding, marketing, or offering for  
26 wholesale or retail sale, a qualified product with total greenhouse gas  
27 emissions of at least one billion metric tons of carbon dioxide equiv-  
28 alent during the covered period. It shall not include any public utili-  
29 ty, public authority, or the state of New York or its political subdivi-  
30 sions.

31 3. "Qualified product" shall mean a fossil fuel product including, but  
32 not limited to:

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

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

37 (c) refined crude oil, crude tops, topped crude, processed crude,  
38 processed crude petroleum, residue from crude petroleum, cracking stock,  
39 uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil,  
40 casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil,  
41 waste oil, blended gasoline, lubricating oil, and blends or mixtures of  
42 oil with one or more liquid products or byproducts derived from oil or  
43 gas.

44 (d) any physical waste generated in the extracting, storing, trans-  
45 porting, refining, importing, producing, manufacturing, distributing, or  
46 compounding a qualified product defined in paragraphs (a), (b), and/or  
47 (c) of this subdivision which contains or is contaminated by any quali-  
48 fied product defined in paragraphs (a), (b), and/or (c) of this subdivi-  
49 sion or any substance appearing on a list within regulations promulgated  
50 by the department of environmental conservation pursuant to section  
51 37-0101 of the environmental conservation law.

52 4. "Reasonable controls and procedures" shall mean policies that  
53 include, but are not limited to: (a) instituting business practices to  
54 prevent pollution, including but not limited to the release of green-  
55 house gases which contribute to climate change and emissions which  
56 contribute to adverse health impacts; and (b) preventing deceptive acts

1 and practices and false advertising and otherwise ensuring compliance  
2 with all provisions of article twenty-two-A of this chapter. Acts or  
3 practices related to environmental commitment, performance, or sustaina-  
4 bility shall also be subject to this subdivision and shall be clear,  
5 objective, and verifiable. The net impression of such acts and practices  
6 shall not mislead a reasonable person about the fossil fuel industry  
7 member's environmental commitment, performance, or sustainability. This  
8 subdivision may not be construed to impose liability on any speech or  
9 conduct protected by the first amendment of the United States Constitu-  
10 tion, as made applicable to the states through the United States Supreme  
11 Court's interpretation of the fourteenth amendment of the United States  
12 Constitution.

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

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

17 § 328-a. Fossil fuel industry member climate liability. Any fossil  
18 fuel industry member whose conduct has caused or contributed to climate  
19 change in New York state, whether directly or indirectly, shall be  
20 liable for damages under this article.

21 § 328-b. Defense to liability. Any fossil fuel industry member that  
22 establishes and implements reasonable controls and procedures may offer  
23 evidence of those controls and procedures to limit the liability imposed  
24 under section three hundred twenty-eight-a of this article; provided,  
25 however, such evidence shall not be a complete defense to liability.  
26 When determining the impact of such controls and procedures as a defense  
27 to liability, a court may consider the duration that such controls and  
28 procedures are in place in relation to the duration of the conduct in  
29 violation of section three hundred twenty-eight-a of this article or any  
30 other means of measuring the mitigating effects of any controls and  
31 procedures relative to the complete impact of the underlying conduct.

32 § 328-c. Right of action. Any person, government entity, firm, corpo-  
33 ration or association that has been damaged as a result of a fossil fuel  
34 industry member's conduct as described in section three hundred twenty-  
35 eight-a of this article shall be entitled to bring an action for recov-  
36 ery of damages in:

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

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

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

43 4. the county of residence for any plaintiff if the plaintiff is a  
44 natural person residing in this state.

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

54 § 4. This act shall take effect immediately.