STATE OF NEW YORK

212--A

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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:

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

To achieve the goals of the Climate Leadership and Community Protection Act (hereinafter the "Climate Act") that include 70% renewable electricity by 2030, 100% zero-emission electricity by 2040, a 40% reduction in statewide GHG emissions from 1990 levels by 2030, an 85% reduction in statewide GHG emissions from 1990 levels by 2050, and net zero emissions statewide by 2050, the New York State Climate Action Council (the "Council") determined in its Scoping Plan for the Climate Act that "[~~i~~]t is imperative that New York take immediate action to 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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ures." Although the plan is not authoritative on the full scope of damage, the cost of not taking immediate and aggressive action, according to the Council, is approximately $115 billion dollars.

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

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

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

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

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

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

New Yorkers should have the ability to hold those responsible for climate change accountable for their deceptive practices and the cataclysmic impacts these practices have yielded. This bill seeks to provide them with that opportunity.

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

ARTICLE 20-B

FOSSIL FUEL RELATED ACTIVITIES

Section 328. Definitions.

328-a. Fossil fuel industry member climate liability.

328-b. Defense to liability.

328-c. Right of action.

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

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

2. "Fossil fuel industry member" shall mean a firm, corporation, company, partnership, society, joint stock company or any other entity or association that emitted or caused to be emitted through the extracting, storing, transporting, refining, importing, exporting, producing, manufacturing, distributing, compounding, marketing, or offering for wholesale or retail sale, a qualified product with total greenhouse gas emissions of at least one billion metric tons of carbon dioxide equivalent during the covered period. It shall not include any public utility, public authority, or the state of New York or its political subdivisions.

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

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

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

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

(d) any physical waste generated in the extracting, storing, transporting, refining, importing, producing, manufacturing, distributing, or compounding a qualified product defined in paragraphs (a), (b), and/or (c) of this subdivision which contains or is contaminated by any qualified product defined in paragraphs (a), (b), and/or (c) of this subdivision or any substance appearing on a list within regulations promulgated by the department of environmental conservation pursuant to section 37-0101 of the environmental conservation law.

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

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

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

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

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

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

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

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

2. the county of residence for any one of the natural person defendants at the time the cause of action accrued;

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

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

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

§ 4. This act shall take effect immediately.