STATE OF NEW YORK

6105--A

2023-2024 Regular Sessions

IN SENATE

March 29, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing a collection program for refrigerants and refrigerant-containing appliances

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

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 34 to read as follows:

TITLE 34

COLLECTION PROGRAM FOR REFRIGERANTS AND REFRIGERANT-CONTAINING APPLIANCES

Section 27-3401. Definitions.
27-3403. Producer plan.
27-3405. Producer responsibilities.
27-3407. Retailer requirements.
27-3409. Department responsibilities.
27-3411. Refrigerant and refrigerant-containing appliances stewardship advisory board.
27-3413. Labeling requirements.
27-3415. Penalties.
27-3417. No preemption of local law.
27-3419. Rules and regulations.

§ 27-3401. Definitions.

As used in this title:

1. "Brand" means a name, symbol, word, or mark that attributes the product to the owner or licensee of the brand as the producer.

2. "Collection program" means a system for the collection, transportation, recycling, and disposal of out-of-service refrigerants and refri-

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

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gerant-containing appliances that is financed and managed or provided by a refrigerant or refrigerant-containing appliance manufacturer individually or collectively with other such manufacturers in accordance with this title.

3. "Collection site" means a permanent location in the state at which discarded refrigerants and refrigerant-containing appliances may be returned by a consumer. Collection sites shall accept all types of refrigerants and refrigerant-containing appliances as defined by this title regardless of brand.

4. "Consumer" means a person located in the state who purchases, owns, leases, or uses refrigerants or refrigerant-containing appliances, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school, or board of cooperative educational services or governmental entity.

5. "Producer" means any person who manufactures refrigerants or refrigerant-containing appliances that are sold, offered for sale, or distributed in the state under the manufacturer's own name or brand. "Producer" includes:

(a) the owner of a trademark or brand under which refrigerants or refrigerant-containing appliances are sold, offered for sale, or distributed in this state, whether or not such trademark or brand is registered in the state; and

(b) any person who imports refrigerants or refrigerant-containing appliances into the United States that are sold or offered for sale in the state and that are manufactured by a person who does not have a presence in the United States.

6. "Refrigerant" means any substances consisting in whole or in part of a class I or class II ozone-depleting substance, which are used for heat transfer purposes and provide a cooling effect, including, but not limited to, chlorofluorocarbons, hydro-chlorofluorocarbons, or any other substitute substance as may be defined by the United States environmental protection agency.

(a) A "class I or class II ozone-depleting substance" shall be those substances as defined by 42 USC § 7671a.

(b) A "substitute substance" shall be any environmental protection agency approved replacement for a class I or II ozone-depleting substance in refrigeration or air-conditioning end-use.

7. "Refrigerant-containing appliance" means any device that contains a refrigerant and can be used for household purposes including, but not limited to, room air conditioners, heat pumps, refrigerators, water coolers, or freezers.

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

9. "Retailer" means any person who sells or offers for sale refrigerants or refrigerant-containing appliances to a consumer in the state.

10. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this does not include donations or reuse.

§ 27-3403. Producer plan.

1. No later than December thirty-first, two thousand twenty-five, a producer, either individually or cooperatively in a group with one or

more producers or with a representative organization, shall submit to the department for the department's approval a plan for the establishment of a collection program for refrigerants and refrigerant-containing appliances that meets the collection requirements described in this section.

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

3. A producer, group of producers, or representative organization shall update the plan, as needed, when there are changes proposed to its collection program. A new plan or amendment will be required to be submitted to the department for approval when:

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

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

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

(a) provide a list of each participating provider and brand covered by the program;

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

(c) describe how the producer, group of producers, or representative organization will safely collect, transport, recycle, and process refrigerants and refrigerant-containing appliances;

(d) describe how the program will provide for the collection of refrigerant-containing appliances, free of cost and in a manner convenient to consumers, including how the program will achieve, at a minimum, a convenience standard that ensures that all counties of the state and all municipalities that have a population of ten thousand or greater have at least one permanent collection site and one additional permanent collection site for every thirty thousand people located in those areas, that accepts refrigerant-containing appliances from consumers during normal business hours. The producer, group of producers, or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. Convenience standards shall be evaluated by the department periodically and the department may require additional collection locations to ensure adequate consumer convenience;

(e) describe in detail education and outreach efforts to inform consumers, refrigerant-containing appliance installers, and others engaged in the management of discarded refrigerant-containing appliances about the program including, at a minimum, an internet website and a toll-free telephone number and written information included at the time of sale of refrigerant-containing appliances that provides sufficient information to allow a consumer to learn how to return such refrigerant-containing appliances for disposal, recycling or reuse;

(f) describe the methods to be used to reuse or recycle discarded refrigerants and refrigerant-containing appliances;

(g) describe the methods to be used to manage or dispose of discarded refrigerants and refrigerant-containing appliances that cannot be recycled or reused;

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

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

(j) estimate the amounts of refrigerants and refrigerant-containing appliances that were previously sold, offered for sale, or distributed in the state under each producer's name or brand that are discarded in the state annually and describe the sources of data and methodology for estimating such amount; and

(k) describe how the program will meet annual performance goals, as determined by the department, provided that at a minimum, the program shall achieve the following recycling rates:

(i) a thirty percent recycling rate for refrigerants and refrigerant-containing appliances by five years after the plan is approved under subdivision four of section 27-3409 of this title;

(ii) a fifty percent recycling rate for refrigerants and refrigerant-containing appliances by ten years after the plan is approved under subdivision four of section 27-3409 of this title; and

(iii) a seventy-five percent recycling rate for refrigerants and refrigerant-containing appliances by fifteen years after the plan is approved under subdivision four of section 27-3409 of this title.

§ 27-3405. Producer responsibilities.

1. Beginning no later than July first, two thousand twenty-six, or six months after the plan is approved under subdivision four of section 27-3409 of this title, whichever occurs later, the producer or representative organization shall implement a collection program utilizing collection sites established pursuant to paragraph (d) of subdivision four of section 27-3403 of this title.

2. A producer shall not sell, or offer for sale, refrigerants or refrigerant-containing appliances to any person in the state unless the producer is implementing or participating under an approved plan.

3. The collection program shall be free to consumers returning refrigerant-containing appliances for disposal, recycling or reuse, convenient, and adequate to serve the needs of such consumers in all areas of the state on an ongoing basis.

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

5. Producers, groups of producers, and representative organizations shall be responsible for the costs associated with the implementation of the collection program, including but not limited to the cost of collection. Each producer, group of producers, or representative organization shall pay fees established by the department to cover costs incurred by the state in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual cost of administration and enforcement.

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

7. On or before July first, two thousand twenty-seven, and annually thereafter, each producer, group of producers, or representative organ-

ization shall submit a report to the department that includes, for the previous program year, a description of the program, an assessment of compliance with the program's performance goals, and a description of any modifications necessary to achieve such goals. Such report shall include the following:

(a) a detailed description of the methods used to collect, transport, and process refrigerants and refrigerant-containing appliances in the state, including collection methods made available to consumers and an evaluation of the program's collection convenience;

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

(c) the total volume of refrigerants and refrigerant-containing appliances collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

(d) the total cost of implementing the program;

(e) samples of all educational materials provided to consumers, a detailed description of efforts undertaken to disseminate such materials, and an evaluation of such efforts, including recommendations, if any, for how the educational component of the program can be improved;

(f) any modifications necessary to achieve increased participation in the program; and

(g) any other information required by the department.

§ 27-3407. Retailer requirements.

1. Beginning July first, two thousand twenty-six, no retailer may sell or offer for sale refrigerants or refrigerant-containing appliances in the state unless the producer of such refrigerants or refrigerant-containing appliances is participating in a collection program. A retailer shall be in compliance with this section if, on the date the refrigerants or refrigerant-containing appliances are offered for sale, the producer is listed on the department's website as implementing or participating in an approved collection program or if the refrigerant-containing appliance brand is listed on the department's website as being included in the program.

2. Any retailer may participate, on a voluntary basis, as a designated collection site pursuant to a collection program and in accordance with all applicable laws and regulations.

§ 27-3409. Department responsibilities.

1. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-3403 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

2. Beginning July first, two thousand twenty-six, the department shall post on its website the location of all collection sites identified to the department by the producer in its plans and annual reports.

3. The department shall post on its website each producer plan approved by the department.

4. Within ninety days after receipt of a proposed plan or plan amendment, the department shall approve or reject the plan or the plan amendment. If the plan or plan amendment is approved, the department shall notify the producer or representative organization in writing. If the department rejects the plan or plan amendment, the department shall notify the producer or representative organization in writing stating the reason for rejecting the plan or plan amendment. A producer or representative organization whose plan is rejected shall submit a revised plan to the department within thirty days of receiving a notice of rejection. If the department rejects the subsequent proposal, the

producer or producers at issue shall be out of compliance and subject to enforcement provisions.

5. The department shall submit a report regarding the implementation of this title in this state to the governor and legislature by April first, two thousand twenty-seven and every two years thereafter. The report shall include, at a minimum, an evaluation of:

(a) the stream of refrigerants and refrigerant-containing appliances in the state;

(b) disposal, recycling and reuse rates in the state for refrigerants and refrigerant-containing appliances;

(c) a discussion of compliance and enforcement related to the requirements of this title; and

(d) recommendations for any changes to this title.

§ 27-3411. Refrigerant and refrigerant-containing appliances stewardship advisory board.

1. There is hereby established within the department the refrigerant and refrigerant-containing appliances stewardship advisory board to make recommendations to the commissioner regarding producer plans required by this title.

2. The board shall be composed of thirteen voting members. Such members shall include:

(a) one representative of refrigerant producers;

(b) two representatives of refrigerant retailers;

(c) one representative of refrigerant recyclers;

(d) two representatives of refrigerant collectors;

(e) one representative of a company that utilizes discarded refrigerant or refrigerant-containing appliances to manufacture a new product;

(f) one representative of a refrigerant-containing appliance installer;

(g) one representative from a statewide environmental organization;

(h) one representative from a statewide waste disposal association;

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

(j) one representative from a consumer organization; and

(k) one representative from a statewide recycling organization.

3. The members shall be appointed as follows:

(a) two members to be appointed by the temporary president of the senate;

(b) two members to be appointed by the speaker of the assembly;

(c) one member to be appointed by the minority leader of the senate;

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

(e) seven members to be appointed by the executive.

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

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

§ 27-3413. Labeling requirements.

One year after the plan is approved by the department pursuant to section 27-3409 of this title, refrigerants and refrigerant-containing appliances sold or offered for sale in the state shall be accompanied by the name of the producer and the producer's contact information.

§ 27-3415. Penalties.

Any producer who violates any provision of or fails to perform any duty imposed pursuant to this title shall be liable for a civil penalty not to exceed five hundred dollars for each violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues. Civil penalties shall be assessed by the department after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter.

§ 27-3417. No preemption of local law.

Nothing in this section shall be deemed to preempt any provision of local law, including, but not limited to chapter four-e of title sixteen of the administrative code of the city of New York, provided that the provisions of such local law are at least as stringent as the provisions of this section.

§ 27-3419. Rules and regulations.

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

§ 2. This act shall take effect immediately.