STATE OF NEW YORK

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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 -- recommitted to the Committee on Environmental Conservation 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 environmental conservation law and the state finance law, in relation to establishing extended producer responsibility for household appliances and refrigerants

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

EXTENDED PRODUCER RESPONSIBILITY FOR HOUSEHOLD APPLIANCES AND REFRIGERANTS

Section 27-3401. Definitions.
27-3403. Household appliance and refrigerant disposal ban.
27-3405. Producer plan.
27-3407. Producer responsibilities.
27-3409. Retailer requirements.
27-3411. Department responsibilities.
27-3413. Post-consumer requirements.
27-3415. Enforcement and penalties.
27-3417. Preemption.
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.

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

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2. "Bulk refrigerant" means a regulated refrigerant in any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans, as defined under 40 CFR § 84. A regulated refrigerant that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk refrigerant. This definition does not include a regulated refrigerant in an aerosol can, in a foam, or in a manufactured product such as an appliance.

3. "Collection program" or "program" means a program financed and implemented by producers, either individually, or through a representative organization, that provides for, but is not limited to, the collection, transportation, reuse, recycling, proper end-of-life management, or an appropriate combination thereof, or discarded products.

4. "Collection site" means a permanent location in the state at which discarded products may be returned by a consumer. Collection sites shall accept all types of discarded products as defined by this title regardless of brand.

5. "Closed loop recycling" means recycling in which materials that are reclaimed are returned to the original process or processes in which they were generated and they are reused in the production process.

6. "Consumer" means a person located in the state who purchases, owns, leases, or uses covered products, 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.

7. "Covered product" means any product that is a household appliance, pre-charged equipment, or regulated refrigerant, as defined in this section.

8. "Destruction" means the expiration of a regulated refrigerant to the destruction and removal efficiency actually achieved, as defined under 40 CFR § 84.3. Such destruction might result in a commercially useful end product, but such usefulness would be secondary to the act of destruction. Technologies used for destruction of regulated refrigerants should be limited to federally approved destruction methods under 40 CFR § 84.29.

9. "Discarded product" means a covered product that a consumer has used and disposed of in the state and is no longer used for its manufactured purpose.

10. "Distributor" or "wholesaler" means any person or entity engaged in the distribution, wholesale, sale, or other commercial furnishing of refrigerant in the state, except for service technicians transferring refrigerant to end-user consumers as part of a service call.

11. "Energy recovery" means the process by which all or a portion of solid waste materials are processed or combusted in order to utilize the heat content or other forms of energy derived from such solid waste materials.

12. "Household appliance" means any appliance generally intended for household or commercial use including, but not limited to, any refrigerator, dishwasher, range, range hood and ventilation, cooktop, wall oven, microwave, freezer, ice maker, air fryer, deep fryer, toaster, toaster oven, blender, juicer, coffee or espresso machine, microwave, mixer, pressure cooker, washing machine for clothes, clothes dryer, air conditioner, audio or stereo equipment, vacuum, robot vacuum, corded cleaner, air purifier, humidifier, space heater, router, modem, security camera or surveillance equipment, smart device intended as a home appliance,

sewing machine, tape and video recorder, boiler or furnace that provides heat or hot water, and any device that contains refrigerant and can be used for household or commercial purposes including, but not limited to, any room air conditioner, heat pump, refrigerator, water cooler, or freezer.

13. "Producer" means any person who manufactures a covered product that is 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 a covered product is 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 a covered product into the United States that is sold or offered for sale in the state and that is manufactured by a person who does not have a presence in the United States. With respect to regulated refrigerants, "producer" means any person or entity who is the first point of sale for regulated refrigerants or pre-charged equipment that are sold, offered for sale, distributed, or otherwise entered into commerce in the state.

14. "Pre-charged equipment" means any refrigeration, air conditioning, or heat pump equipment or appliance containing a quantity of regulated refrigerant that is pre-charged prior to sale or distribution or offer for sale or distribution in the state.

15. "Reclaimer" means any person undertaking reclamation of regulated refrigerants in compliance with federal requirements, including all requirements of 40 CFR § 84.

16. "Reclamation" or "reclaim", as defined in 40 CFR § 84.3, means the reprocessing of recovered regulated refrigerant to at least the purity standard in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 700-2016 and verifying this purity using the analytical methodology prescribed in the standard, and meets the reclamation standard for content of virgin material referenced therein.

17. "Recovery" means the process by which a regulated refrigerant is: (a) removed, in any condition, from equipment; and (b) stored in an external container, with or without testing or processing of the regulated refrigerant.

18. "Recovery rate" means the proportion of the total amount of regulated refrigerant that is collected for reclamation or destruction as a fraction of the total amount of regulated refrigerant that is available for recovery from equipment in a given year, as determined by the department.

19. "Recycling" or "recycle" means to separate, dismantle or process the materials, components, or commodities contained in covered products for the purpose of preparing the materials, components or commodities for use or reuse in new products or components. "Recycling" or "recycle" does not include: (a) energy recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, or waste to fuel; (b) any chemical conversion process; or (c) landfill disposal. When referring to regulated refrigerants "recycling" or "recycle" means to extract refrigerant from an appliance and clean the refrigerant for reuse in equipment of the same owner without meeting all of the requirements for reclamation. In general, recycled refrigerant is cleaned using oil separation and single or multiple passes through devices, such as replaceable core filter-driers, which reduce moisture, acidity, and particulate matter.

20. "Recycling rate" means the percentage of discarded product that is managed through recycling or reuse, as defined by this title, and is

computed by dividing the amount of recycled output derived from collected covered product, plus any pounds sent for reuse by the estimated total of discarded product generated during a program year.

21. "Regulated refrigerant" means any fluorinated substance consisting in whole or in part of a class I or class II ozone-depleting substance as defined by 42 USC § 7671a r a hydrofluorocarbon regulated under 42 USC § 7675 and blends thereof, which are used for heat transfer purposes and provide a cooling or heating effect.

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

23. "Retailer" means any person who sells or offers for sale covered products to consumers in the state.

24. "Reuse" means the return of a product into the economic stream for use in the same kind of application as the product was originally intended to be used, without a change in the product's identity.

25. "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.

26. "Service technician" means any person who in the course of maintenance, service, repair, or disposal of an appliance or equipment containing regulated refrigerant could be reasonably expected to violate the integrity of the refrigerant circuit and therefore release refrigerants into the environment. Activities reasonably expected to violate the integrity of a refrigerant circuit include but are not limited to: attaching or detaching hoses and gauges to and from the appliance; adding or removing refrigerant; adding or removing components; and cutting the refrigerant line. Activities such as painting the appliance, rewiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts are not reasonably expected to violate the integrity of the refrigerant circuit.

§ 27-3403. Household appliance and refrigerant disposal ban.

No person shall knowingly dispose of any household appliance or regulated refrigerant as solid waste in the state at any time on or after January first, two thousand twenty-eight.

§ 27-3405. 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 that meets the requirements of the program described in this section.

2. A producer or representative organization shall update the plan, as needed, when there are changes proposed to the current program. A new plan or amendment shall be required to be submitted to the department for approval when:

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

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

3. 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 producer and brands covered by the program;

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

(c) describe how the producer or representative organization will collect, transport, recycle, process covered products, and with respect to regulated refrigerants, describe how the producer or representative organization will safely collect, transport, reclaim or destroy recovered regulated refrigerants, including identifying proposed brokers, transporters, processors, and facilities to be used by the program for the reclamation, destruction, and final disposition of regulated refrigerants;

(d) describe how the program will provide for the collection of covered products in the state, 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 covered products from consumers during normal business hours; however, with respect to a city having a population of one million or more, after consultation with the department of sanitation of such city, the department may otherwise establish an alternative convenience standard. The producer 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 how a producer or representative organization and any person hired by a producer or representative organization is to carry out services related to refrigerant recovery, transport, collection, or reclamation must manage regulated refrigerants in a manner consistent with best practices that minimize the release into the environment and in compliance with all applicable state and federal regulations;

(f) with respect to regulated refrigerants, describe how a producer or representative may suspend or terminate a collection site that does not adhere to the collection site criteria in the approved plan and that poses an immediate health and safety concern. A producer or representative organization shall notify the department upon suspending or terminating a collection site;

(g) describe in detail education and outreach efforts to inform consumers and others engaged in the management of discarded covered products 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 covered products that provides sufficient information to allow a consumer to learn how to return such covered product for disposal, recycling or reuse;

(h) describe the methods to be used to reclaim, reuse or recycle discarded products;

(i) describe the methods to be used to manage or destroy recovered regulated refrigerants that cannot be reclaimed;

(j) describe the methods to be used to manage or dispose of discarded covered products that cannot be recycled or reused;

(k) estimate the amounts of regulated refrigerants that were previously sold, offered for sale, or distributed in the state under each participating producer's name or brand in the state annually and describe the sources of data and methodology for estimating such amount;

(l) (i) 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 for household appliances:

(A) a thirty percent recycling rate for household appliances, of which ten percent shall be closed loop recycling, by five years after the plan is approved by the department pursuant to section 27-3411 of this title;

(B) a fifty percent recycling rate for household appliances, of which twenty percent shall be closed loop recycling by ten years after the plan is approved by the department pursuant to section 27-3411 of this title;

(C) a seventy-five percent recycling rate for household appliances, of which forty percent shall be closed loop recycling, by fifteen years after the plan is approved by the department pursuant to section 27-3411 of this title; and

(ii) provided, further, that at a minimum, the program shall achieve the following recovery rates for regulated refrigerants:

(A) a fifty percent recovery rate for regulated refrigerants by five years after the plan is approved pursuant to section 27-3411 of this title;

(B) a seventy percent recovery rate for regulated refrigerants by ten years after the plan is approved pursuant to section 27-3411 of this title; and

(C) a ninety percent recovery rate for regulated refrigerants by fifteen years after the plan is approved pursuant to section 27-3411 of this title;

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

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

(o) describe the sources of data and methodology for estimating the amount of covered product discarded in the state annually; and

(p) any other information specified by the department.

§ 27-3407. Producer responsibilities.

1. Beginning no later than July first, two thousand twenty-six, the producer or representative organization shall implement the collection program utilizing collection sites established pursuant to paragraph (d) of subdivision three of section 27-3405 of this title.

2. A producer shall not sell, or offer for sale, covered products to any person in the state unless the producer is implementing or participating under an approved plan.

3. The program shall be free to the consumer, convenient, and adequate to serve the needs of such consumers in all areas of the state on an ongoing basis.

4. Any entities that sell, resell, distribute, or otherwise enter into commerce bulk refrigerants after the first point of sale shall register as non-producer participants in a representative organization. The non-producer participants may include, but are not limited to, refrigerant distributors, wholesalers, reclaimers, and service technicians. The non-producer participants shall be subject to reporting and record keeping requirements that help a representative organization fulfill its reporting requirements.

5. A producer 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.

6. A producer or representative organization shall be responsible for all costs associated with the implementation of the collection program, including but not limited to the cost of collection. A producer, producers, or representative organization shall pay costs incurred by the department in the administration and enforcement of this title. Exclusive of fines and penalties, the department shall only be reimbursed its actual cost of administration and enforcement.

7. 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 covered product, and shall comply with the requirements of this title.

8. On or before July first, two thousand twenty-seven, and annually thereafter, a producer or representative organization shall submit a report to the department that includes, for the previous program year, a description of the program, including, but not limited to, the following:

(a) a detailed description of the methods used to collect, transport, and process covered products in the state, including detailing 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 weight of all of the producer's covered product collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

(d) an evaluation of whether the performance goals and recycling rates have been achieved and a description of any modifications necessary to achieve such goals;

(e) the total cost of implementing the program;

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

(g) any other information required by the department.

§ 27-3409. Retailer requirements.

1. Beginning July first, two thousand twenty-six, no retailer may sell or offer for sale covered products in the state unless the producer of such covered product is participating in a collection program. A retailer shall be in compliance with this section if, on the date the covered product was offered for sale, the producer is listed on the department's website as implementing or participating in an approved program or if the covered product 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.

3. Retail establishments, refrigerant service providers, producers, or representative organizations may not charge a point-of-sale to consumers to cover the administrative or operational costs of the program.

§ 27-3411. Department responsibilities.

1. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-3405 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 covered products in the state;

(b) reclamation and destruction rates in the state for regulated refrigerants;

(c) disposal, recycling and reuse rates in the state for covered products;

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

(e) recommendations for any changes to this title.

6. Starting four years after the plan is approved by the department pursuant to this section, the department shall impose a penalty of twenty-five cents per pound to be assessed on the producer or representative organization for the number of additional pounds of covered product that would have been needed to be recycled through the program to achieve the performance goals specified in the approved stewardship plan. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the dedicated household appliances and regulated refrigerants fund established pursuant to section ninety-seven-uuuu of the state finance law.

§ 27-3413. Post-consumer requirements.

All covered products sold in the state shall be manufactured with the following minimum amounts from post-consumer sources:

1. Within one year after the plan is approved by the department pursuant to section 27-3411 of this title, a minimum of ten percent post-consumer content;

2. Within four years thereafter, a minimum of twenty percent post-consumer content; and

3. Five years thereafter, a minimum of thirty percent post-consumer content.

§ 27-3415. Enforcement and penalties.

1. Any producer, representative organization or retailer who violates any provisions 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 violations continue. 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.

2. In a city with a population of one million or more, such city shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce, by an agency or agencies designated for such purpose by the mayor of such city, the provisions of sections 27-3403 and 27-3409 of this title. Any notice of violation issued by an agency designated by the mayor of such city charging a violation of section 27-3403 or 27-3409 of this title shall be returnable to the environmental control board of such city. Such environmental control board shall have the power to impose the civil penalties set forth in subdivision one of this section. All civil penalties collected for any violation of this title that have been imposed by the environmental control board of such city shall be paid into the general fund of such city.

§ 27-3417. Preemption.

Nothing in this title shall be deemed to preempt chapter four-E of title sixteen of the administrative code of the city of New York.

§ 27-3419. Rules and regulations.

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

§ 2. The state finance law is amended by adding a new section 97-uuuu to read as follows:

§ 97-uuuu. Household appliances and regulated refrigerant extended producer responsibility fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of environmental conservation a special fund to be known as the "household appliances and regulated refrigerant extended producer responsibility fund".

2. Such fund shall consist of all revenues received by the comptroller, pursuant to the provisions of section 27-3411 of the environmental conservation law and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts, or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys of the household appliances and regulated refrigerant extended producer responsibility fund, following appropriation by the legislature, shall be allocated for the direct costs associated with extended producer responsibility for household appliances and regulated refrigerants pursuant to title thirty-four of article twenty-seven of the environmental conservation law.

4. The state comptroller may invest any moneys in the household appliances and regulated refrigerant extended producer responsibility fund not expended for the purpose of this section as provided by law. The state comptroller shall credit any interest and income derived from the deposit and investment of moneys in the household appliances and regulated refrigerant extended producer responsibility fund to the household appliances and regulated refrigerant extended producer responsibility fund.

5. Any unexpected and unencumbered moneys remaining in the household appliances and regulated refrigerant extended producer responsibility fund at the end of a fiscal year shall remain in the household appliances and regulated refrigerant extended producer responsibility fund and shall not be credited to any other fund.

§ 3. Section 71-1701 of the environmental conservation law, is amended to read as follows:

§ 71-1701. Applicability of this title.

This title shall be applicable to the enforcement of titles 1 through 11 and titles 15 through 19 of article 17; article 19; and [~~title~~] **titles** 1 **and 34** of article 27 **of this chapter**.

§ 4. Section 71-1701 of the environmental conservation law, as amended by chapter 795 of the laws of 2022, is amended to read as follows:

§ 71-1701. Applicability of this title.

This title shall be applicable to the enforcement of titles 1 through 11 and titles 15 through 19 of article 17; article 19; and titles 1 [~~and~~]**,** 33 **and 34** of article 27 **of this chapter**.

§ 5. This act shall take effect immediately; provided, however, the amendments to section 71-1701 of the environmental conservation law made by section four of this act shall take effect on the same date and in the same manner as section 2 of chapter 795 of the laws of 2022, takes effect.