

STATE OF NEW YORK

6419

2023-2024 Regular Sessions

IN SENATE

April 19, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing a mattress collection program

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

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

3 TITLE 34
4 MATTRESS COLLECTION PROGRAM

5 Section 27-3401. Definitions.
6 27-3403. Producer plan.
7 27-3405. Producer responsibilities.
8 27-3407. Retailer, distributor and wholesaler responsibilities.
9 27-3409. Department responsibilities.
10 27-3411. Mattress collection program advisory board.
11 27-3413. Multi-state cooperation.
12 27-3415. Enforcement and penalties.
13 27-3417. Rules and regulations.
14 § 27-3401. Definitions.
15 As used in this title:
16 1. "Brand" means a name, symbol, word, or mark that attributes the
17 product to the owner or licensee of the brand as the producer.
18 2. "Collection site" means a permanent location in the state at which
19 a consumer may discard covered products.
20 3. "Consumer" means a person located in the state who purchases, owns,
21 leases, or uses covered products, including but not limited to an indi-
22 vidual, a business, corporation, limited partnership, not-for-profit
23 corporation, the state, a public corporation, public school, school

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

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district, private or parochial school or board of cooperative educational services or governmental entity, but does not include a retailer or person that acquires a covered product solely for purposes of recycling.

4. "Covered product" means a mattress.

5. "Discarded covered product" means a covered product that a consumer has used and discarded in the state.

6. "Distributor" or "wholesaler" means a person who buys or otherwise acquires a covered product and sells or offers to sell such product to retailers in this state.

7. "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.

8. "Good faith effort" means all reasonable and economically practical efforts by a mattress recycling organization to implement an approved program.

9. (a) "Mattress" means any resilient material, or combination of materials that is enclosed by ticking, used alone or in combination with other products, and that is intended for or promoted for sleeping upon. Mattress includes any foundation and any used mattress. For the purposes of this title, a "foundation" means a ticking-covered structure used to support a mattress or sleep surface. A foundation may include constructed frames, foam, box springs, or other materials, used alone or in combination.

(b) Mattress shall not include:

(i) an unattached mattress pad or mattress topper that is intended to be used with, or on top of a mattress;

(ii) a crib or bassinet mattress or car bed;

(iii) juvenile products, including: a carriage, basket, dressing table, stroller, playpen, infant carrier, lounge pad, crib bumper, and the pads for those juvenile products;

(iv) a product containing liquid- and gaseous-filled ticking, including a waterbed and air mattress that does not contain upholstery material between the ticking and the mattress core; or

(v) a fold-out sofa bed or futon.

10. "Producer" means any person who manufactures or renovates a covered product that is sold, offered for sale, or distributed to a consumer in this state. "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.

11. "Proprietary information" means information that is a trade secret or is production, commercial or financial information, that if disclosed would impair the competitive position of the submitter and would make available information not otherwise publicly available.

12. "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. "Recycle" does not include energy recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, waste to

1 fuel or any chemical conversion process, or landfill disposal of
2 discarded covered products or discarded product component materials.

3 13. "Recycler" means a person that engages in recycling.

4 14. "Recycling rate" means the percentage of discarded covered
5 products that is managed through recycling or reuse, as defined by
6 subdivisions twelve and seventeen of this section, and is computed by
7 dividing the amount of discarded covered products collected and recycled
8 or reused by the total amount of discarded covered products collected
9 and reported to the department by the landfills and solid waste facili-
10 ties in the state over a program year.

11 15. "Representative organization" means a not-for-profit organization
12 established by a producer or group of producers to implement the
13 mattress collection program.

14 16. "Retailer" means any person who sells or offers for sale a covered
15 product to a consumer in the state.

16 17. "Reuse" means donating or selling a discarded covered product back
17 into the market for its original intended use, when the discarded
18 covered product retains its original performance characteristics and can
19 be used for its original purpose.

20 18. "Sale" or "sell" means a transfer of title to a covered product
21 for consideration, including a remote sale conducted through a sale
22 outlet, catalog, website, by telephone or through similar electronic
23 means. "Sale" or "sell" includes a lease through which a covered product
24 is provided to a consumer in the state by a producer, distributor,
25 wholesaler, or retailer.

26 19. "Ticking" means the outermost layer of fabric or materials of a
27 mattress. Ticking does not include any layer of fabric or material
28 quilted together with, or otherwise attached to the outermost layer of
29 fabric or material of a mattress.

30 20. "Upholstery material" means all material loose or attached between
31 the ticking and the core of the mattress.

32 § 27-3403. Producer plan.

33 1. No later than one year after the effective date of this section, a
34 producer, either individually or cooperatively with one or more produc-
35 ers, or a representative organization shall submit to the department for
36 the department's approval a plan for the establishment of a mattress
37 collection program that meets the collection requirements described in
38 this section.

39 2. A producer may satisfy the mattress collection program requirement
40 of this section by agreeing to participate collectively with other
41 producers. Any such collective mattress collection program shall notify
42 the department.

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

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

48 (b) Every five years from the date of approval of a previous plan.

49 4. The plan submitted by the producer or representative organization
50 to the department under this section shall:

51 (a) Provide a list of each participating provider and brands covered
52 by the program;

53 (b) A description of the methods by which discarded covered products
54 delivered to collection sites will be collected;

55 (c) (1) i. A description of how the producer or responsible organiza-
56 tion shall provide for a convenient and cost-effective collection of

covered products using existing public and private waste collection channels and at collection sites in the state pursuant to voluntary agreements. To minimize its environmental impact, the mattress collection program shall emphasize whenever practical the use of existing municipal waste collection infrastructure and other existing product collection channels. Such description shall also include a description of how the program will achieve within a reasonable period of time a minimum convenience goal which ensures that all counties of the state shall have at least one collection site, and within two years after the program approval, not less than seventy percent of the state's residents will live within a fifteen mile radius of a collection site, and within three years after the program approval, not less than eighty percent of the state's residents will live within a fifteen mile radius of a collection site.

ii. Provided, however, that with respect to a city or county having a population of one million or more, a convenience goal shall be established for that city or county. In the case of a city, the convenience goal shall be proposed after consultation with the department of sanitation of such city. In the case of a county, the convenience goal shall be proposed after consultation with an agency designated by the county executive. Such proposed city and county convenience goals shall be submitted to the department, which may approve, modify, or otherwise establish alternative convenience goals.

iii. The producer or representative organization shall make a good faith effort to comply with these convenience goals.

(2) To meet these convenience goals, the producer or representative organization shall:

i. Enter into voluntary agreements to establish collection sites at public and private solid waste facilities; transfer stations; landfills; recyclables handling and recovery facilities that are permitted or registered with the department; or other suitable sites for the collection of discarded mattresses;

ii. Provide mattress storage containers at no cost to a participating collection site described in clause i of this subparagraph;

iii. Negotiate mutually agreed upon voluntary agreements with participating collection sites described in clause i of this subparagraph that provide for reasonable compensation for the actual costs these collection sites incur to handle, store, and (if necessary) transport covered products for recycling;

iv. For collection sites as described in clause i of this subparagraph, and other entities such as healthcare facilities, educational facilities, military facilities, junk haulers, hotels and motels that provide transient lodging, and other facilities that periodically replace covered products that they own or use, and who have collected at least 100 recyclable covered products for recycling, provide at its expense an appropriate storage container, transportation from a collection point to a recycler, and services to recycle the covered products; and

v. Enter into voluntary agreements with retailers that pick up or accept covered products from consumers upon the purchase of a new mattress for recycling.

(d) The names and locations of collections sites, transporters, and recyclers who will manage discarded covered products delivered to collection sites at the time of plan submission;

1 (e) A description of how the discarded covered products will be safely
2 and securely transported, tracked, and handled from collection sites
3 through final recycling and processing;

4 (f) A description of the methods to be used to reuse or recycle
5 discarded covered products to ensure that the components, to the extent
6 feasible, are transformed or remanufactured into finished products for
7 use;

8 (g) A description of the methods to be used to manage or dispose of
9 discarded covered products that cannot be recycled or reused;

10 (h) A description of the outreach and educational materials that must
11 be provided to consumers, retailers, collection sites, and transporters
12 of discarded covered products, and how such outreach will be evaluated
13 for effectiveness;

14 (i) A description of how the program will meet annual performance
15 goals, as determined by the department in conjunction with the producers
16 or representative organization, after the first two years of the program
17 and updated every two years thereafter, including an estimate of
18 discarded covered products that will be collected, reused, and recycled
19 each calendar year;

20 (j) Describe what, if any, incentives will be used to encourage
21 retailer participation;

22 (k) Describe the outreach and education methods that will be used to
23 encourage municipal landfill and transfer station participation; and

24 (l) Include the amount of the program assessment to operate the
25 mattress collection program that shall be included by the retailer in
26 the price charged for all mattresses sold to consumers in the state,
27 which has been reviewed by an independent financial auditor prior to
28 submitting the plan to ensure that such program assessment does not
29 exceed the expenses, including start-up expenses, necessary to operate
30 the program over a multiyear period in a prudent and responsible manner.
31 § 27-3405. Producer responsibilities.

32 1. Beginning six months after the plan is approved under subdivision
33 four of section 27-3409 of this title, the producer or representative
34 organization shall implement the mattress collection program utilizing
35 collection sites pursuant to paragraph (c) of subdivision four of
36 section 27-3403 of this title.

37 2. A producer shall not sell, or offer for sale, a covered product to
38 any person in the state unless the producer is implementing or partic-
39 ipating under an approved plan.

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

43 4. A producer or representative organization shall maintain records
44 demonstrating compliance with the provisions of this title and make them
45 available for audit and inspection by the department for a period of
46 three years. The department shall make such audit records available to
47 the public upon request in accordance with the provisions of the state
48 freedom of information law and the regulations promulgated thereunder,
49 provided that confidential or business proprietary records shall be
50 exempt from this provision. Record holders shall submit the records
51 required to comply with the request within sixty working days of written
52 notification by the department of receipt of the request.

53 5. A representative organization shall use the revenue generated from
54 the program assessments collected from retailers to pay all costs asso-
55 ciated with the implementation of the mattress collection program. A
56 producer, producers or representative organization shall pay costs

1 incurred by the state in the administration and enforcement of this
2 title. Exclusive of fines and penalties, the state shall only recover
3 its actual direct cost of administration and enforcement.

4 6. Any person who becomes a producer on or after July first, two thou-
5 sand twenty-three shall submit a plan to the department, or notify the
6 department that it has joined an existing plan, prior to selling or
7 offering for sale in the state any covered product, and shall comply
8 with the requirements of this title.

9 7. Within eighteen months following approval of the producer plan, and
10 annually thereafter, a producer or representative organization shall
11 submit a report to the department that includes, for the previous
12 program calendar year, a description of the program including, but not
13 limited to the following:

14 (a) a detailed description of the methods used to collect, transport,
15 and process covered products in the state, including detailing
16 collection methods made available to consumers and an evaluation of the
17 program's collection convenience;

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

19 (c) the estimated weight of all discarded covered products collected
20 and reused or recycled pursuant to the mattress collection program;

21 (d) an evaluation of whether the performance goals and recycling rates
22 have been achieved;

23 (e) the estimated weight of discarded covered products and any compo-
24 nent materials that were collected pursuant to the collection program,
25 but not recycled;

26 (f) the total cost of implementing the program;

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

31 (h) any other information required by the department that is relevant
32 to the requirements of this title.

33 8. Each producer, group of producers or representative organization
34 shall submit an annual report to the department as provided for in
35 subdivision seven of this section that assesses compliance with perform-
36 ance goals and describes any modifications necessary to achieve such
37 goals.

38 9. (a) A producer or the representative organization that organizes
39 the collection, transport and processing of mattresses, in an action
40 solely to increase the recycling of mattresses by a producer, represen-
41 tative organization, or retailer that affects the types and quantities
42 being recycled or the cost and structure of any return program shall not
43 be liable for any claim of a violation of antitrust, restraint of trade
44 or unfair trade practice arising from conduct undertaken in accordance
45 with the program pursuant to this section.

46 (b) Notwithstanding any contrary provision herein, paragraph (a) of
47 this subdivision shall not apply to any agreement establishing or
48 affecting the price of mattresses except for the approved program
49 assessment to be included by the retailer in the price charged for all
50 mattresses sold to consumers in the state or the output or production of
51 mattresses or any agreement restricting the geographic area or customers
52 to which mattresses will be sold.

53 § 27-3407. Retailer, distributor and wholesaler responsibilities.

54 1. Beginning after approval of the plan by the department no retailer,
55 distributor, or wholesaler may sell or offer for sale covered products
56 in the state unless the producer of such products is participating in a

1 mattress collection program. A retailer, distributor, or wholesaler
2 shall be in compliance with this section if, on the date the covered
3 products were ordered from the producer or its agent, the producer was
4 listed on the department's website as implementing or participating in
5 an approved program.

6 2. Any retailer, distributor, or wholesaler may participate, on a
7 voluntary basis, as a designated collection site pursuant to a mattress
8 collection program and in accordance with all applicable laws and regu-
9 lations.

10 3. Upon implementation of the program, each retailer shall include in
11 the price of any mattress sold to a consumer in the state the program
12 assessment in the approved program plan. A retailer shall not deduct
13 this assessment from the purchase price.

14 4. Retailers and other sellers shall regularly remit the program
15 assessments they collect to the producer or representative organization,
16 as appropriate.

17 § 27-3409. Department responsibilities.

18 1. The department shall maintain a list of producers, retailers,
19 distributors, and wholesalers who are in compliance with this title and
20 post such list on the department's website.

21 2. The department shall post on its website the location of all
22 collection sites identified to the department by the producer in its
23 annual reports.

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

26 4. Within ninety days after receipt of a proposed plan or plan amend-
27 ment, the department shall approve or reject such plan or plan amendment
28 based on whether such proposed plan or plan amendment satisfactorily
29 meets the requirements of subdivision four of section 27-3403 of this
30 title. If the plan or plan amendment is approved, the department shall
31 notify the producer or representative organization in writing. If the
32 department rejects the plan or plan amendment, the department shall
33 notify the producer or representative organization in writing stating
34 the reason for rejecting the plan or plan amendment. A producer or
35 representative organization whose plan is rejected shall submit a
36 revised plan to the department within thirty days of receiving a notice
37 of rejection. If the producer or representative organization fails to
38 submit a plan that is acceptable to the department because it does not
39 meet the requirements of subdivision four of section 27-3403 of this
40 title, the department shall modify a submitted plan to make it conform
41 to the requirements of such subdivision and approve it.

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

46 (a) The stream of covered products in the state;

47 (b) Disposal, recycling, and reuse rates in the state covered
48 products;

49 (c) A discussion of compliance and enforcement related to the require-
50 ments of this title; and

51 (d) Recommendations for any changes to this title.

52 § 27-3411. Mattress collection program advisory board.

53 1. There is hereby established within the department a mattress
54 collection program advisory board to make recommendations to the commis-
55 sioner regarding producer plans required by this title.

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

- (a) One representative of mattress producers;
- (b) Two representatives of mattress retailers;
- (c) One representative of mattress recyclers;
- (d) Two representatives of mattress collectors;
- (e) One representative of a company that utilizes discarded covered products to manufacture a new product;
- (f) One representative from a statewide environmental organization;
- (g) One representative from a statewide waste disposal association;
- (h) One representative from the New York product stewardship council;
- (i) One representative from a consumer organization; and
- (j) 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) Six members to be appointed by the governor.

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 annually by call of the chair.

§ 27-3413. Multi-state cooperation.

In the event that another state implements a mattress recycling program, the producers or representative organization may collaborate with such state to conserve efforts and resources used in carrying out the mattress collection program, provided such collaboration is consistent with the requirements of this title.

§ 27-3415. Enforcement and penalties.

Any producer who is found to not have made a good faith effort to comply with 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 under this section 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. Rules and regulations.

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

§ 2. 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.

§ 3. 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.

1 This title shall be applicable to the enforcement of titles 1 through
2 11 and titles 15 through 19 of article 17; article 19; and titles 1
3 [~~and~~], 33 and 34 of article 27 of this chapter.
4 § 4. This act shall take effect immediately; provided, however, the
5 amendments to section 71-1701 of the environmental conservation law made
6 by section three of this act shall take effect on the same date and in
7 the same manner as section 2 of chapter 795 of the laws of 2022, takes
8 effect.