

STATE OF NEW YORK

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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 -- 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 extended producer responsibility for mattresses

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:

TITLE 34

EXTENDED PRODUCER RESPONSIBILITY FOR MATTRESSES

Section 27-3401. Definitions.

27-3403. Producer plan.

27-3405. Producer responsibilities.

27-3407. Retailer, distributor and wholesaler responsibilities.

27-3409. Department responsibilities.

27-3411. Mattress collection program advisory board.

27-3413. Multi-state cooperation.

27-3415. Enforcement and penalties.

27-3417. 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. "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.

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

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1 3. "Collection site" means a permanent location in the state at which
2 a consumer may discard covered products.

3 4. "Consumer" means a person located in the state who purchases, owns,
4 leases, or uses covered products, including but not limited to an indi-
5 vidual, a business, corporation, limited partnership, not-for-profit
6 corporation, the state, a public corporation, public school, school
7 district, private or parochial school or board of cooperative educa-
8 tional services or governmental entity, but does not include a retailer
9 or person that acquires a covered product solely for purposes of recycl-
10 ing.

11 5. "Covered product" means a mattress.

12 6. "Discarded covered product" means a covered product that a consumer
13 has used, abandoned, or discarded in the state.

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

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

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

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

32 (b) Mattress shall not include:

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

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

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

39 (iv) a product containing liquid- and gaseous-filled ticking, includ-
40 ing a waterbed and air mattress that does not contain upholstery materi-
41 al between the ticking and the mattress core; or

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

43 11. "Producer" means any person who manufactures or renovates a
44 covered product that is sold, offered for sale, or distributed to a
45 consumer in this state. "Producer" includes:

46 (a) the owner of a trademark or brand under which a covered product is
47 sold, offered for sale, or distributed in this state, whether or not
48 such trademark or brand is registered in the state; and

49 (b) any person who imports a covered product into the United States
50 that is sold or offered for sale in the state and that is manufactured
51 by a person who does not have a presence in the United States.

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

1 13. "Recycle" means to separate, dismantle or process the materials,
2 components or commodities contained in covered products for the purpose
3 of preparing the materials, components or commodities for use or reuse
4 in new products or components. "Recycle" does not include energy recov-
5 ery or energy generation by any means, including but not limited to,
6 combustion, incineration, pyrolysis, gasification, solvolysis, waste to
7 fuel or any chemical conversion process, or landfill disposal of
8 discarded covered products or discarded product component materials.

9 14. "Recycler" means a person that engages in recycling.

10 15. "Recycling rate" means the percentage of discarded covered
11 products that is managed through recycling or reuse, as defined by
12 subdivisions thirteen and twenty of this section, and is computed by
13 dividing the amount of discarded covered products collected and recycled
14 or reused by the total amount of discarded covered products collected
15 and reported to the department by the landfills and solid waste facili-
16 ties in the state over a program year.

17 16. "Renovate" means to alter a discarded mattress for resale through
18 replacing the ticking or filling, adding additional filling or replacing
19 components of the discarded mattress with new or recycled materials.
20 Renovate does not mean: (a) stripping a discarded mattress of the tick-
21 ing or filling without adding new material; or (b) the sanitization or
22 sterilization of a discarded mattress without the alteration to the
23 discarded mattress.

24 17. "Renovator" means a person that renovates discarded mattresses.

25 18. "Representative organization" means a not-for-profit organization
26 established by a producer or group of producers to implement the
27 mattress collection program.

28 19. "Retailer" means any person who sells or offers for sale a covered
29 product to a consumer in the state.

30 20. "Reuse" means donating or selling a discarded covered product back
31 into the market for its original intended use, when the discarded
32 covered product retains its original performance characteristics and can
33 be used for its original purpose.

34 21. "Sale" or "sell" means a transfer of title to a covered product
35 for consideration, including a remote sale conducted through a sale
36 outlet, catalog, website, by telephone or through similar electronic
37 means. "Sale" or "sell" includes a lease through which a covered product
38 is provided to a consumer in the state by a producer, distributor,
39 wholesaler, or retailer.

40 22. "Sanitization" means the direct application of chemicals to a
41 mattress to kill pathogens that cause human disease.

42 23. "Sterilization" means the mitigation of any deleterious substances
43 or organisms, including pathogens that cause human disease, fungi and
44 insects, from a mattress or filling material using a chemical or heat
45 process.

46 24. "Ticking" means the outermost layer of fabric or materials of a
47 mattress. Ticking does not include any layer of fabric or material
48 quilted together with, or otherwise attached to the outermost layer of
49 fabric or material of a mattress.

50 25. "Upholstery material" means all material loose or attached between
51 the ticking and the core of the mattress.

52 § 27-3403. Producer plan.

53 1. No later than one year after the effective date of this section, a
54 producer, either individually or cooperatively with one or more produc-
55 ers, or a representative organization shall submit to the department for
56 the department's approval a plan for the establishment of a mattress

1 collection program that meets the collection requirements described in
2 this section.

3 2. A producer may satisfy the mattress collection program requirement
4 of this section by agreeing to participate collectively with other
5 producers. Any such collective mattress collection program shall notify
6 the department.

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

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

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

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

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

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

19 (c) (1) A description of how the program will provide for the
20 collection of covered products, free of cost and in a manner convenient
21 to consumers, including how the program will achieve, at a minimum, a
22 convenience standard that ensures that all counties of the state and all
23 municipalities that have a population of ten thousand or greater have at
24 least one permanent collection site and one additional permanent
25 collection site for every thirty thousand people located in those areas,
26 that accepts covered products from consumers during normal business
27 hours; however, with respect to a city having a population of one
28 million or more, after consultation with the department of sanitation of
29 such city, the department may otherwise establish an alternative conven-
30 ience standard. The producer, group of producers, or representative
31 organization may coordinate the program with existing municipal waste
32 collection infrastructure as is mutually agreeable. Convenience stand-
33 ards shall be evaluated by the department periodically and the depart-
34 ment may require additional collection locations to ensure adequate
35 consumer convenience. To meet such convenience standard, the producer
36 plan may provide that the producer or representative organization shall
37 enter into voluntary agreements to establish collection sites at: (i)
38 public and private solid waste facilities, transfer stations, landfills,
39 recyclables handling and recovery facilities that are permitted or
40 registered with the department; (ii) other suitable sites for the
41 collection of discarded covered products; or (iii) retailers that pick
42 up or accept covered products from consumers upon the purchase of new
43 covered products. Such agreements may provide for reasonable compen-
44 sation for the actual costs these collection sites incur to handle,
45 store, and (if necessary) transport covered products and may supply
46 covered products storage containers at no cost to participating
47 collection sites. The producer or representative organization shall make
48 a good faith effort to comply with these convenience goals.

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

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

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

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

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

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

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

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

26 (f) A description of the methods to be used to reuse or recycle
27 discarded covered products to ensure that the components, to the extent
28 feasible, are transformed or remanufactured into finished products for
29 use;

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

32 (h) A description of how the program will meet annual performance
33 goals, as determined by the department, provided that at a minimum, the
34 program shall achieve the following recycling rates:

35 (1) a thirty percent recycling rate for mattresses of which ten
36 percent shall be closed-loop recycling by five years after the plan is
37 approved by the department pursuant to section 27-3409 of this title;

38 (2) a fifty percent recycling rate for mattresses of which twenty
39 percent shall be closed-loop recycling by ten years after the plan is
40 approved by the department pursuant to section 27-3409 of this title;
41 and

42 (3) a seventy-five percent recycling rate for carpets, of which forty
43 percent shall be closed-loop recycling by fifteen years after the plan
44 is approved by the department pursuant to section 27-3409 of this title;

45 (i) A description of the outreach and educational materials that must
46 be provided to consumers, retailers, collection sites, and transporters
47 of discarded covered products, and how such outreach will be evaluated
48 for effectiveness;

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

51 (k) Describe the sources of data and methodology for estimating the
52 amount of mattresses discarded in the state annually;

53 (l) Describe the outreach and education methods that will be used to
54 encourage municipal landfill and transfer station participation; and

55 (m) Any other information as specified by the department.

56 § 27-3405. Producer responsibilities.

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

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

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

12 4. A producer or representative organization shall be responsible for
13 the costs associated with the implementation of the collection program,
14 including but not limited to the cost of collection. Each producer or
15 representative organization shall pay fees established by the department
16 to cover costs incurred by the state in the administration and enforce-
17 ment of this title. Exclusive of fines and penalties, the state shall
18 only recover its actual cost of administration and enforcement.

19 5. A producer or representative organization shall maintain records
20 demonstrating compliance with the provisions of this title and make them
21 available for audit and inspection by the department for a period of
22 three years. The department shall make such audit records available to
23 the public upon request in accordance with the provisions of the state
24 freedom of information law and the regulations promulgated thereunder,
25 provided that confidential or business proprietary records shall be
26 exempt from this provision. Record holders shall submit the records
27 required to comply with the request within sixty working days of written
28 notification by the department of receipt of the request.

29 6. A representative organization shall use the revenue generated from
30 the program assessments collected from retailers to pay all costs asso-
31 ciated with the implementation of the mattress collection program. A
32 producer, producers or representative organization shall pay costs
33 incurred by the state in the administration and enforcement of this
34 title. Exclusive of fines and penalties, the state shall only recover
35 its actual direct cost of administration and enforcement.

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

41 8. Within eighteen months following approval of the producer plan, and
42 annually thereafter, a producer or representative organization shall
43 submit a report to the department that includes, for the previous
44 program calendar year, a description of the program including, but not
45 limited to the following:

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

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

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

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

(e) the estimated weight of discarded covered products and any component materials that were collected pursuant to the collection program, but not recycled;

(f) the total cost of implementing the program;

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

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

9. Each producer, group of producers or representative organization shall submit an annual report to the department as provided for in subdivision eight of this section that assesses compliance with performance goals and describes any modifications necessary to achieve such goals.

10. A producer or the representative organization that organizes the collection, transport and processing of mattresses, in an action solely to increase the recycling of mattresses by a producer, representative organization, or retailer that affects the types and quantities being recycled or the cost and structure of any return program shall not be liable for any claim of a violation of antitrust, restraint of trade or unfair trade practice arising from conduct undertaken in accordance with the program pursuant to this section.

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

1. Beginning after approval of the plan by the department no retailer, distributor, or wholesaler may sell or offer for sale covered products in the state unless the producer of such products is participating in a mattress collection program. A retailer, distributor, or wholesaler shall be in compliance with this section if, on the date the covered products were ordered from the producer or its agent, the producer was listed on the department's website as implementing or participating in an approved program.

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

§ 27-3409. Department responsibilities.

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

2. The department shall post on its website the location of all collection sites identified to the department by the producer in its 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 such plan or plan amendment based on whether such proposed plan or plan amendment satisfactorily meets the requirements of subdivision four of section 27-3403 of this title. 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

1 of rejection. If the producer or representative organization fails to
2 submit a plan that is acceptable to the department because it does not
3 meet the requirements of subdivision four of section 27-3403 of this
4 title, the department shall modify a submitted plan to make it conform
5 to the requirements of such subdivision and approve it.

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

- 10 (a) The stream of covered products in the state;
11 (b) Disposal, recycling, and reuse rates in the state covered
12 products;
13 (c) A discussion of compliance and enforcement related to the require-
14 ments of this title; and
15 (d) Recommendations for any changes to this title.

16 § 27-3411. Mattress collection program advisory board.

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

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

- 22 (a) One representative of mattress producers;
23 (b) Two representatives of mattress retailers;
24 (c) One representative of mattress recyclers;
25 (d) Two representatives of mattress collectors;
26 (e) One representative of a company that utilizes discarded covered
27 products to manufacture a new product;
28 (f) One representative from a statewide environmental organization;
29 (g) One representative from a statewide waste disposal association;
30 (h) One representative from the New York product stewardship council;
31 (i) One representative from a consumer organization; and
32 (j) One representative from a statewide recycling organization.

33 3. The members shall be appointed as follows:

- 34 (a) Two members to be appointed by the temporary president of the
35 senate;
36 (b) Two members to be appointed by the speaker of the assembly;
37 (c) One member to be appointed by the minority leader of the senate;
38 (d) One member to be appointed by the minority leader of the assembly;
39 and
40 (e) Six members to be appointed by the governor.

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

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

48 § 27-3413. Multi-state cooperation.

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

54 § 27-3415. Enforcement and penalties.

55 Any producer who is found to not have made a good faith effort to
56 comply with any provision of or fails to perform any duty imposed pursu-

1 ant to this title shall be liable for a civil penalty not to exceed five
2 hundred dollars for each violation and an additional penalty of not more
3 than five hundred dollars for each day during which such violation
4 continues. Civil penalties under this section shall be assessed by the
5 department after a hearing or opportunity to be heard pursuant to the
6 provisions of section 71-1709 of this chapter.

7 § 27-3417. Rules and regulations.

8 The department is hereby authorized to promulgate any rules and regu-
9 lations necessary to implement this title.

10 § 2. Section 71-1701 of the environmental conservation law is amended
11 to read as follows:

12 § 71-1701. Applicability of this title.

13 This title shall be applicable to the enforcement of titles 1 through
14 11 and titles 15 through 19 of article 17; article 19; and [~~title~~]
15 titles 1 and 34 of article 27 of this chapter.

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

18 § 71-1701. Applicability of this title.

19 This title shall be applicable to the enforcement of titles 1 through
20 11 and titles 15 through 19 of article 17; article 19; and titles 1
21 [~~and~~], 33 and 34 of article 27 of this chapter.

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