STATE OF NEW YORK

6540

2023-2024 Regular Sessions

IN SENATE

April 26, 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 an extended producer responsibility program for designated products; and to amend the state finance law, in relation to establishing an extended producer responsibility program fund

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

Section 1. The article heading of article 27 of the environmental conservation law is amended to read as follows:

REDUCTION, COLLECTION, **REUSE, RECYCLING,**
TREATMENT AND DISPOSAL OF [~~**REFUSE AND OTHER**~~] SOLID WASTE **AND EXTENDED PRODUCER RESPONSIBILITY**

§ 2. Section 27-0101 of the environmental conservation law is amended by adding a new subdivision 3 to read as follows:

3. It is furthermore the purpose of the legislature of the state of New York to promote extended producer responsibility for certain products. Extended producer responsibility is a statutory requirement that extends the responsibility borne by producers of products used in the state of New York for the post-consumer management of such products, through programs approved by the department. Such a requirement: (a) shifts financial responsibility away from taxpayers and municipalities; (b) incentivizes producers to incorporate environmental considerations into the creation of their products, such as designing products for durability, reuse, remanufacturing, and recycling; (c) promotes higher rates of resource recovery, reuse, and recycling and environmentally responsible disposal; and (d) encourages collaboration, efficiency, and equitable application of the logistical and financial obligations of addressing environmental consideration among various producers who may be competitors in the marketplace.

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

LBD10904-02-3

§ 3. Article 27 of the environmental conservation law is amended by adding a new title 16 to read as follows:

TITLE 16

EXTENDED PRODUCER RESPONSIBILITY FOR DESIGNATED PRODUCTS

Section 27-1601. Definitions.
27-1603. Producer plan.
27-1605. Producer responsibilities.
27-1607. Retailer, distributor, and wholesaler responsibilities.
27-1609. Department responsibilities.
27-1611. Rules and regulations.
27-1613. Enforcement and penalties.
27-1615. Report and designation of additional covered products or product categories.
27-1617. Severability.

§ 27-1601. Definitions.

As used in this title:

1. "Brand" means a name, symbol, word, or mark that attributes a 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 that generated them, and reused in the production process.

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, of discarded covered products.

4. "Collection site" means a permanent location in the state at which discarded covered products may be returned by a consumer.

5. "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.

6. "Covered product" means a product designated as such pursuant to section 27-1615 of this title.

7. "Covered product effective date" means the date specified by the department pursuant to subdivision two of section 27-1615 of this title as the date on which a product shall be designated a covered product, or any alternative date adopted by resolution of the legislature pursuant to subdivision four of section 27-1615 of this title.

8. "Discarded covered product" means a covered product that is no longer used for its manufactured purpose.

9. "Distributor" or "wholesaler" means a person who buys or otherwise acquires covered products from another source and sells or offers to sell a covered product to retailers in this state.

10. "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.

11. "Producer" means any person who manufactures or renovates 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.

12. "Product" means an item sold within the state.

13. "Product category" means a group of similar products.

14. "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 a producer and would make available information not otherwise publicly available.

15. "Recycling" 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" does not include energy recovery or energy generation by means of combustion, or landfill disposal of discarded covered products or discarded product component materials.

16. "Recycling rate" means the percentage of discarded covered products that is managed through recycling or reuse, as defined by this title, and is computed by dividing the amount of discarded covered products collected and recycled or reused by the total amount of discarded covered products collected over a program year. The recycling rate may be computed based on the number of items discarded, recycled, and managed or based on the weight or volume of such items, as determined by the department pursuant to section 27-1615 of this title.

17. "Representative organization" means a not-for-profit organization established by a producer or group of producers to implement a collection program required pursuant to this title.

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

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

20. "Sale" or "sell" means a transfer of title to a covered product for consideration, including a remote sale conducted through a sales outlet, catalog, website, or similar electronic means. "Sale" or "sell" includes a lease through which a covered product is provided to a consumer by a producer, distributor, or retailer.

§ 27-1603. Producer plan.

1. On or before the covered product effective date set by the department or by joint resolution of the legislature pursuant to section 27-1615 of this title, a producer, either individually or jointly with one or more producers, or a representative organization shall submit for the department's approval a plan for the establishment of a collection program that meets the collection requirements described in this section.

2. A producer may satisfy the collection program requirements of this section by agreeing to participate jointly with other producers. Any such joint collection program shall notify the department.

3. 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; and

(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 producer and brand covered by the program;

(b) provide information on the products included in the program;

(c) describe how the producer or representative organization will collect, transport, recycle, and process discarded covered products;

(d) describe how the program will provide for collection of discarded covered products in the state, free of cost and in a manner convenient to consumers in all areas of the state, including how the program will achieve, at a minimum, a convenience standard which ensures that all counties of the state and all municipalities which 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 in detail education and outreach efforts to inform consumers, and persons 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 the covered product that provides sufficient information to allow a consumer to learn how to return such covered product for disposal, recycling or reuse;

(f) describe the methods to be used to reuse or recycle discarded covered products;

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

(h) 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 discarded covered products of which ten percent shall be closed-loop recycling by five years after the plan is approved by the department pursuant to section 27-1609 of this title;

(ii) a fifty percent recycling rate for discarded covered products of which twenty percent shall be closed-loop recycling by ten years after the plan is approved by the department pursuant to section 27-1609 of this title; and

(iii) a seventy-five percent recycling rate for discarded covered products, of which forty percent shall be closed-loop recycling by fifteen years after the plan is approved by the department pursuant to section 27-1609 of this title;

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

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

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

(l) any other information as specified by the department.

§ 27-1605. Producer responsibilities.

1. Beginning on the later of the date six months after the covered product effective date or three months after the date the department approves a plan submitted for a given covered product pursuant to subdivision one of section 27-1603 of this title, the producer or representative organization shall implement the collection program described in the plan approved by the department, and a producer shall not sell, or offer for sale, a covered product to any person in the state unless the producer is implementing or participating in an approved plan.

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

3. 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 the request within sixty working days of written notification by the department of receipt of the request.

4. 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 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.

5. Any person who becomes a producer on or after the covered product effective date shall submit a plan to the department pursuant to subdivision one of section 27-1603 of this title or notify the department that it has joined an existing plan approved by the department, prior to selling or offering for sale in the state any covered product, and shall comply with the requirements of this title.

6. On or before February first of each year succeeding a year in which a producer or representative organization's collection program was required to be in effect for a covered product, such producer or representative organization shall submit a report to the department that includes, for such year, a description of the program, including, but not limited to:

(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 or number of items, whichever is required by the department, of all of the producer's covered products collected in the state by method of disposition, including reuse, recycling, closed-loop recycling, and other methods of processing or disposal;

(d) an assessment of the extent to which 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 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

(g) any other information required by the department.

§ 27-1607. Retailer, distributor, and wholesaler responsibilities.

1. No retailer, distributor, or wholesaler may sell or offer for sale covered products in the state after the covered product effective date set pursuant to section 27-1615 of this title unless the producer of such covered product is in compliance with the requirements of this title. A retailer shall be in compliance with this section if, on the date the covered product is offered for sale, the producer or brand of the covered product is listed on the department's website as having met its requirements under this title to submit and implement an approved plan for a collection program.

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

§ 27-1609. Department responsibilities.

1. The department shall (a) maintain a list of producers of covered products who have submitted plans that are pending approval and a list of producers of covered products who are implementing or participating in an approved plan pursuant to sections 27-1603 and 27-1605 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

2. The department shall post on its website the location of all collection sites identified to the department by a producer in such producer's approved 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 department approves a plan or plan amendment, the department shall notify the producer or representative organization in writing. If the department rejects a 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. On or before April first of each year succeeding a year in which a collection program was in effect for any covered product, the department shall submit a report regarding the implementation of this title to the governor and legislature. The report shall include, at a minimum, an evaluation of:

(a) the stream of each covered product in the state;

(b) disposal, recycling and reuse rates in the state for each covered product;

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

(d) recommendations for any changes to this title.

6. Starting four years after the covered product effective date for a product, the department shall impose a penalty of twenty-five cents per

pound, a comparable amount per item as determined by the department for products for which the recycle rate is calculated on a per item basis, or a comparable amount per unit of volume as determined by the department for which the recycling rate is calculated based on volume, to be assessed on the producer or representative organization for the number of additional pounds, the number of additional items, or the number of additional units of volume of covered products that would have needed to be recycled through the program to achieve the performance goals specified in the approved producer plan. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the extended producer responsibility program fund established pursuant to section ninety-two-kk of the state finance law.

§ 27-1611. Rules and regulations.

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

§ 27-1613. Enforcement and penalties.

1. Any producer, representative organization, distributor, or retailer who violates any provision of or fails to perform any duty imposed pursuant to this title or any rule or regulation promulgated pursuant to this title or any final determination or order of the commissioner made pursuant to this title or article seventy-one of this chapter 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.

2. Civil penalties under this section shall be assessed by the department after an opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, or by the court in any action or proceeding pursuant to section 71-2727 of this chapter, and in addition thereto, such person or entity may by similar process be enjoined from continuing such violation and any permit, registration or other approval issued by the department may be revoked or suspended or a pending renewal denied.

3. The department and the attorney general are hereby authorized to enforce the provisions of this title and all monies collected shall be deposited to the credit of the extended producer responsibilities program fund established pursuant to section ninety-two-kk of the state finance law.

§ 27-1615. Report and designation of additional covered products or product categories.

1. The department shall by March fifteenth of each year succeeding the effective date of this title, publish:

(a) a review and evaluation of the performance of existing extended producer responsibility programs in the state;

(b) legislative recommendations the department would propose to improve existing extended producer responsibility programs; and

(c) proposals to establish new extended producer responsibility programs, including any product or product category the department proposes to designate as a covered product for purposes of this title. For any product or product category the department proposes to designate as a covered product, the report shall include an evaluation of the extent to which such designation would be beneficial due to one or more of the following factors:

(i) an extended producer responsibility program for the product or product category would increase the recovery of materials for reuse and recycling and reduce the need for use of virgin materials;

(ii) an extended producer responsibility program for the product or product category would reduce the costs of waste management to local governments and taxpayers;

(iii) an extended producer responsibility program for the product or product category would enhance energy conservation or mitigate climate change impacts;

(iv) an extended producer responsibility program for the product or product category would be beneficial for existing and new businesses and infrastructure to manage the products and lead to the development of new markets for the recovered materials;

(v) there exists public demand for an extended producer responsibility program for the product or product category;

(vi) there is success in collecting and processing similar types of products in extended producer responsibility programs in other jurisdictions; or

(vii) existing voluntary collection, reuse, or recycling programs for the product or product category in the state are not effective in achieving the objectives of this article.

2. For any product or product category the department proposes to designate as a covered product, the department shall specify a date no sooner than one year from the date of the report published pursuant to subdivision one of this section as the covered product effective date.

3. At least thirty days prior to publishing the report pursuant to subdivision one of this section the department shall post a draft of the portion of such report that relates to any product or product category the department proposes to designate as a covered product on its publicly accessible website. Within that period, a person may submit to the department written comments regarding the draft proposed designation, which the department shall consider before publishing the report.

4. The proposed designation of a product or product category as a covered product pursuant to this section shall take effect on the date proposed by the department unless the legislature modifies the date or rejects the proposed designation by joint resolution approved on or before the next succeeding June fifteenth that occurs no less than sixty days after the department publishes the report proposing such designation.

§ 27-1617. Severability.

The provisions of this title shall be severable and if any phrase, clause, sentence or provision of this title, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

§ 4. 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 16 of article 27 of this chapter.

§ 5. 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, 16, and 33 of article 27 of this chapter.

§ 6. The state finance law is amended by adding a new section 92-kk to read as follows:

§ 92-kk. Extended producer responsibility program fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of the department of taxation and finance a special fund to be known as the "extended producer responsibility program fund".

2. The extended producer responsibility program fund shall consist of all revenue collected from fees and penalties pursuant to title sixteen of article twenty-seven of the environmental conservation law and any cost recoveries or other revenues collected pursuant to title sixteen of article twenty-seven of the environmental conservation law, and any other monies deposited into the fund pursuant to law.

3. Moneys of the fund, following appropriation by the legislature, shall be used by the department of environmental conservation for execution of the provisions of title sixteen of article twenty-seven of the environmental conservation law, and expended for the purposes as set forth in title sixteen of article twenty-seven of the environmental conservation law.

§ 7. This act shall take effect immediately; provided, however, that the amendments to section 71-1701 of the environmental conservation law made by section five 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.