STATE OF NEW YORK

6436--A

2023-2024 Regular Sessions

IN ASSEMBLY

April 6, 2023

Introduced by M. of A. PAULIN, COLTON -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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
MATTRESS COLLECTION PROGRAM

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. Enforcement and penalties.
27-3415. Rules and regulations.

§ 27-3401. Definitions.

As used in this title:

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

2. "Collection site" means a permanent location in the state at which a consumer may discard mattresses.

3. "Consumer" means a person located in the state who purchases, owns, leases, or uses mattresses, including but not limited to an individual,

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

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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, but does not include a retailer or person that acquires a mattress solely for purposes of recycling.

4. "Discarded mattress" means a mattress that a consumer has used and discarded in the state.

5. "Distributor" or "wholesaler" means a person who buys or otherwise acquires a mattress and sells or offers to sell a mattress to retailers in this state.

6. "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.

7. (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.

8. "Producer" means any person who manufactures or renovates mattresses that are 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 mattress 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 mattresses 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.

9. "Recycle" means to separate, dismantle or process the materials, components or commodities contained in mattresses 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 fuel or any chemical conversion process, or landfill disposal of discarded mattresses or discarded product component materials.

10. "Recycler" means a person that engages in recycling.

11. "Recycling rate" means the percentage of discarded mattresses that is managed through recycling or reuse, as defined by subdivisions nine and fourteen of this section, and is computed by dividing the amount of discarded mattresses collected and recycled or reused by the total amount of discarded mattresses collected and reported to the department

by the landfills and solid waste facilities in the state over a program year.

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

13. "Retailer" means any person who sells or offers for sale a mattress to a consumer in the state.

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

15. "Sale" or "sell" means a transfer of title to a mattress for consideration, including a remote sale conducted through a sale outlet, catalog, website, by telephone or through similar electronic means. "Sale" or "sell" includes a lease through which a mattress is provided to a consumer in the state by a producer, distributor, wholesaler, or retailer.

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

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

§ 27-3403. Producer plan.

1. No later than December thirty-first, two thousand twenty-six, a producer, either individually or cooperatively with one or more producers, or a representative organization shall submit to the department for the department's approval a plan for the establishment of a mattress collection program that meets the collection requirements described in this section.

2. A producer may satisfy the mattress collection program requirement of this section by agreeing to participate collectively with other producers. Any such collective mattress 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 will be required to be submitted to the department for approval when:

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

(b) every five 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, provide:

(a) A list of each participating provider and brands covered by the program;

(b) A description of the methods by which discarded mattresses delivered to collection sites will be collected;

(c) (1) i. A description of how the producer or representative organization shall provide for a convenient and cost-effective collection of mattresses 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.

(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 transport mattresses 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 mattresses that they own or use, and who have collected at least one hundred recyclable mattresses for recycling, provide at its expense an appropriate storage container, transportation from a collection point to a recycler, and services to recycle the mattresses; and

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

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

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

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

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

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

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

(j) A description of what, if any, incentives will be used to encourage retailer participation;

(k) A description of the outreach and education methods that will be used to encourage municipal landfill and transfer station participation; and

(l) The amount of the program assessment to operate the mattress collection program that shall be included by the retailer in the price charged for all mattresses sold to consumers in the state, which has been reviewed by an independent financial auditor prior to submitting the plan to ensure that such program assessment does not exceed the expenses, including start-up expenses, necessary to operate the program over a multi-year period in a prudent and responsible manner.

§ 27-3405. Producer responsibilities.

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

2. A producer shall not sell, or offer for sale, a mattress 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 consumers in all areas of the state on an ongoing basis.

4. 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 audit records available to the public upon request in accordance with the provisions of the state freedom of information law and the regulations promulgated thereunder, provided that confidential or business proprietary records shall be exempt from this provision. 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.

5. A producer or representative organization shall be responsible for all costs associated with the implementation of the mattress collection program. A producer or representative organization shall pay costs incurred by the state in the administration and enforcement of this title. Exclusive of fines and penalties, the state shall only recover its actual direct cost of administration and enforcement.

6. Any person who becomes a producer on or after December thirty-first, two thousand twenty-six 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 mattress, and shall comply with the requirements of this title.

7. Within eighteen months following approval of the producer plan, and annually thereafter, a producer or representative organization shall submit a report to the department that includes, for the previous program calendar 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 mattresses 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 estimated weight of all discarded mattresses collected and reused or recycled pursuant to the mattress collection program;

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

(e) the estimated weight of discarded mattresses 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.

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

9. (a) 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.

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

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

1. Beginning December thirty-first, two thousand twenty-seven, no retailer, distributor, or wholesaler may sell or offer for sale mattresses in this state unless the producer of such mattresses is participating in a mattress collection program. A retailer, distributor, or wholesaler shall be in compliance with this section if, on the date the mattresses 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 of rejection. If the producer or representative organization fails to submit a plan that is acceptable to the department because it does not meet the requirements of subdivision four of section 27-3403 of this title, the department shall modify a submitted plan to make it conform to the requirements of such subdivision and approve it.

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-eight and every two years thereafter. The report shall include, at a minimum, an evaluation of:

(a) The stream of mattresses in the state;

(b) Disposal, recycling, and reuse rates in the state of mattresses;

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

(d) Recommendations for any changes to this title.

§ 27-3411. Mattress collection program advisory board.

1. There is hereby established within the department a mattress collection program advisory board to make recommendations to the commissioner 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 mattresses 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. Enforcement and penalties.

Any producer who 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.

§ 27-3415. 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.

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.

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