

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:

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. Enforcement and penalties.

12 27-3415. Rules and regulations.

13 § 27-3401. Definitions.

14 As used in this title:

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

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

19 3. "Consumer" means a person located in the state who purchases, owns,
20 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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1 a business, corporation, limited partnership, not-for-profit corpo-
2 ration, the state, a public corporation, public school, school district,
3 private or parochial school or board of cooperative educational services
4 or governmental entity, but does not include a retailer or person that
5 acquires a mattress solely for purposes of recycling.

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

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

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

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

23 (b) Mattress shall not include:

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

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

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

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

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

34 8. "Producer" means any person who manufactures or renovates mattress-
35 es that are sold, offered for sale, or distributed to a consumer in this
36 state. "Producer" includes:

37 (a) the owner of a trademark or brand under which a mattress is sold,
38 offered for sale, or distributed in this state, whether or not such
39 trademark or brand is registered in the state; and

40 (b) any person who imports a mattresses into the United States that is
41 sold or offered for sale in the state and that is manufactured by a
42 person who does not have a presence in the United States.

43 9. "Recycle" means to separate, dismantle or process the materials,
44 components or commodities contained in mattresses for the purpose of
45 preparing the materials, components or commodities for use or reuse in
46 new products or components. "Recycle" does not include energy recovery
47 or energy generation by any means, including but not limited to,
48 combustion, incineration, pyrolysis, gasification, solvolysis, waste to
49 fuel or any chemical conversion process, or landfill disposal of
50 discarded mattresses or discarded product component materials.

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

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

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

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

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

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

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

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

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

24 § 27-3403. Producer plan.

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

31 2. A producer may satisfy the mattress collection program requirement
32 of this section by agreeing to participate collectively with other
33 producers. Any such collective mattress collection program shall notify
34 the department.

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

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

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

41 4. The plan submitted by the producer or representative organization
42 to the department under this section shall, at a minimum, provide:

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

45 (b) A description of the methods by which discarded mattresses deliv-
46 ered to collection sites will be collected;

47 (c) (1) i. A description of how the producer or representative organ-
48 ization shall provide for a convenient and cost-effective collection of
49 mattresses using existing public and private waste collection channels
50 and at collection sites in the state pursuant to voluntary agreements.
51 To minimize its environmental impact, the mattress collection program
52 shall emphasize whenever practical the use of existing municipal waste
53 collection infrastructure and other existing product collection chan-
54 nels. Such description shall also include a description of how the
55 program will achieve within a reasonable period of time a minimum
56 convenience goal which ensures that all counties of the state shall have

1 at least one collection site, and within two years after the program
2 approval, not less than seventy percent of the state's residents will
3 live within a fifteen mile radius of a collection site, and within three
4 years after the program approval, not less than eighty percent of the
5 state's residents will live within a fifteen mile radius of a collection
6 site.

7 ii. Provided, however, that with respect to a city or county having a
8 population of one million or more, a convenience goal shall be estab-
9 lished for that city or county. In the case of a city, the convenience
10 goal shall be proposed after consultation with the department of sanita-
11 tion of such city. In the case of a county, the convenience goal shall
12 be proposed after consultation with an agency designated by the county
13 executive. Such proposed city and county convenience goals shall be
14 submitted to the department, which may approve, modify, or otherwise
15 establish alternative convenience goals.

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

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

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

25 iii. Negotiate mutually agreed upon voluntary agreements with partic-
26 ipating collection sites described in clause i of this subparagraph that
27 provide for reasonable compensation for the actual costs these
28 collection sites incur to handle, store, and transport mattresses for
29 recycling;

30 iv. For collection sites as described in clause i of this subpara-
31 graph, and other entities such as healthcare facilities, educational
32 facilities, military facilities, junk haulers, hotels and motels that
33 provide transient lodging, and other facilities that periodically
34 replace mattresses that they own or use, and who have collected at least
35 one hundred recyclable mattresses for recycling, provide at its expense
36 an appropriate storage container, transportation from a collection point
37 to a recycler, and services to recycle the mattresses; and

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

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

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

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

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

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

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

7 (j) A description of what, if any, incentives will be used to encour-
8 age retailer participation;

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

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

19 § 27-3405. Producer responsibilities.

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

25 2. A producer shall not sell, or offer for sale, a mattress to any
26 person in the state unless the producer is implementing or participating
27 under an approved plan.

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

31 4. A producer or representative organization shall maintain records
32 demonstrating compliance with the provisions of this title and make them
33 available for audit and inspection by the department for a period of
34 three years. The department shall make such audit records available to
35 the public upon request in accordance with the provisions of the state
36 freedom of information law and the regulations promulgated thereunder,
37 provided that confidential or business proprietary records shall be
38 exempt from this provision. Record holders shall submit the records
39 required to comply with the request within sixty working days of written
40 notification by the department of receipt of the request.

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

47 6. Any person who becomes a producer on or after December thirty-
48 first, two thousand twenty-six shall submit a plan to the department, or
49 notify the department that it has joined an existing plan, prior to
50 selling or offering for sale in the state any mattress, and shall comply
51 with the requirements of this title.

52 7. Within eighteen months following approval of the producer plan, and
53 annually thereafter, a producer or representative organization shall
54 submit a report to the department that includes, for the previous
55 program calendar year, a description of the program including, but not
56 limited to the following:

1 (a) a detailed description of the methods used to collect, transport,
2 and process mattresses in the state, including detailing collection
3 methods made available to consumers and an evaluation of the program's
4 collection convenience;

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

6 (c) the estimated weight of all discarded mattresses collected and
7 reused or recycled pursuant to the mattress collection program;

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

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

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

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

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

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

24 9. (a) A producer or the representative organization that organizes
25 the collection, transport and processing of mattresses, in an action
26 solely to increase the recycling of mattresses by a producer, represen-
27 tative organization, or retailer that affects the types and quantities
28 being recycled or the cost and structure of any return program shall not
29 be liable for any claim of a violation of antitrust, restraint of trade
30 or unfair trade practice arising from conduct undertaken in accordance
31 with the program pursuant to this section.

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

39 § 27-3407. Retailer, distributor and wholesaler responsibilities.

40 1. Beginning December thirty-first, two thousand twenty-seven, no
41 retailer, distributor, or wholesaler may sell or offer for sale
42 mattresses in this state unless the producer of such mattresses is
43 participating in a mattress collection program. A retailer, distributor,
44 or wholesaler shall be in compliance with this section if, on the date
45 the mattresses were ordered from the producer or its agent, the producer
46 was listed on the department's website as implementing or participating
47 in an approved program.

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

52 § 27-3409. Department responsibilities.

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

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

4 3. The department shall post on its website each producer plan
5 approved by the department.

6 4. Within ninety days after receipt of a proposed plan or plan amend-
7 ment, the department shall approve or reject such plan or plan amend-
8 ment based on whether such proposed plan or plan amendment satisfactorily
9 meets the requirements of subdivision four of section 27-3403 of this
10 title. If the plan or plan amendment is approved, the department shall
11 notify the producer or representative organization in writing. If the
12 department rejects the plan or plan amendment, the department shall
13 notify the producer or representative organization in writing stating
14 the reason for rejecting the plan or plan amendment. A producer or
15 representative organization whose plan is rejected shall submit a
16 revised plan to the department within thirty days of receiving a notice
17 of rejection. If the producer or representative organization fails to
18 submit a plan that is acceptable to the department because it does not
19 meet the requirements of subdivision four of section 27-3403 of this
20 title, the department shall modify a submitted plan to make it conform
21 to the requirements of such subdivision and approve it.

22 5. The department shall submit a report regarding the implementation
23 of this title in this state to the governor and legislature by April
24 first, two thousand twenty-eight and every two years thereafter. The
25 report shall include, at a minimum, an evaluation of:

26 (a) The stream of mattresses in the state;

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

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

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

31 § 27-3411. Mattress collection program advisory board.

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

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

37 (a) One representative of mattress producers;

38 (b) Two representatives of mattress retailers;

39 (c) One representative of mattress recyclers;

40 (d) Two representatives of mattress collectors;

41 (e) One representative of a company that utilizes discarded mattresses
42 to manufacture a new product;

43 (f) One representative from a statewide environmental organization;

44 (g) One representative from a statewide waste disposal association;

45 (h) One representative from the New York product stewardship council;

46 (i) One representative from a consumer organization; and

47 (j) One representative from a statewide recycling organization.

48 3. The members shall be appointed as follows:

49 (a) Two members to be appointed by the temporary president of the
50 senate;

51 (b) Two members to be appointed by the speaker of the assembly;

52 (c) One member to be appointed by the minority leader of the senate;

53 (d) One member to be appointed by the minority leader of the assembly;
54 and

55 (e) Six members to be appointed by the governor.

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

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

8 § 27-3413. Enforcement and penalties.

9 Any producer who fails to perform any duty imposed pursuant to this
10 title shall be liable for a civil penalty not to exceed five hundred
11 dollars for each violation and an additional penalty of not more than
12 five hundred dollars for each day during which such violation continues.
13 Civil penalties under this section shall be assessed by the department
14 after a hearing or opportunity to be heard pursuant to the provisions of
15 section 71-1709 of this chapter.

16 § 27-3415. Rules and regulations.

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

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

21 § 71-1701. Applicability of this title.

22 This title shall be applicable to the enforcement of titles 1 through
23 11 and titles 15 through 19 of article 17; article 19; and [~~title~~]
24 titles 1 and 34 of article 27 of this chapter.

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

27 § 71-1701. Applicability of this title.

28 This title shall be applicable to the enforcement of titles 1 through
29 11 and titles 15 through 19 of article 17; article 19; and titles 1
30 [~~and~~], 33 and 34 of article 27 of this chapter.

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