STATE OF NEW YORK

4246

2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sen. HARCKHAM -- 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 enacting the packaging reduction and recycling infrastructure act; and the state finance law, in relation to creating the waste reduction and reuse infrastructure fund

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

Section 1. Short title. This act shall be known and may be cited as the "packaging reduction and recycling infrastructure act".

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

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.
27-3403. Responsibilities of the packaging reduction and recycling organization.
27-3405. Packaging reduction and recycling organization plan.
27-3407. Packaging reduction and recycling plan approval.
27-3409. Packaging reduction and recycling advisory council.
27-3411. Funding mechanism.
27-3413. Collection and convenience.
27-3415. Producer responsibilities.
27-3417. Department responsibilities.
27-3419. Statewide packaging reduction, reuse, and recycling needs assessment.
27-3421. Education and outreach program.
27-3423. Waste reduction and reuse infrastructure fund.
27-3425. Prohibition on certain toxic substances and materials.
27-3427. Packaging reduction standards.
27-3429. Recycled content standards.

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

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27-3431. Recyclability criteria.
27-3433. Establishment of the office of recycling inspector general.
27-3435. Penalties and enforcement.
27-3437. Rules and regulations.
27-3439. State preemption.
27-3441. Other assistance programs.
27-3443. Severability.

§ 27-3401. Definitions.

As used in this title:

1. "Advisory council" or "council" means the packaging reduction and recycling advisory council established under section 27-3409 of this title.

2. "Beverage container" means a container used to contain all drinks in liquid form and intended for human consumption.

3. "Brand" means any mark, word, name, symbol, design, device, or graphical element or a combination thereof, including a registered or unregistered trademark, that identifies and distinguishes a product from other products.

4. "Curbside recycling" means a recycling program that serves residential units, or schools, state or local agencies, or institutions where such schools, state or local agencies, or institutions were eligible to be served under a contract with a municipality by a municipality or a private sector hauler as of the effective date of this title, and such recycling program is operated by a municipality or pursuant to a contract with the municipality, private sector hauler, or other public agency or through approved local solid waste management plans.

5. "Discarded", "discards", "generated" or "generation" means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.

6. "Disposal" means the landfilling or incineration of material or products. "Disposal" shall also include energy recovery or energy generation by any means, including, but not limited to, combustion, pyrolysis, gasification, or solvolysis. "Disposal" shall also include the use of materials as landfill cover.

7. "Eco-modulation" means program fees that are structured in a way to provide producers with financial incentives to reduce waste at the source, increase recyclability of covered materials, promote reusable packaging products, including those that are contained within a reuse and refill system and that disincentivize designs or practices that increase costs and environmental impacts of managing the packaging materials.

8. "Environmental justice community" means any neighborhood or community which is composed predominantly of persons of color or persons below the poverty line, that is subject to a disproportionate burden of environmental hazards.

9. "Local government" means any municipal corporation, governmental subdivision of the state, local government unit, special district, school, local or regional board, commission, or authority authorized by law to plan or provide for waste management services for a specific geographical area.

10. (a) "Covered packaging material and products" or "covered materials" means the following:

(i) a discrete material or category of material, regardless of recyclability, including but not limited to such material types that are flex-

ible, foam, or rigid material, including paper, plastic, glass, metal, or multi-material, that is used for the primary, secondary, tertiary containment, protection, handling, delivery, transport, distribution, or presentation of another product that is sold, offered for sale, imported, or distributed in the state, including through an internet transaction.

(ii) printed paper of any description, including but not limited to: (1) flyers; (2) brochures; (3) booklets; (4) catalogs; (5) telephone directories; (6) paper fiber; and (7) paper used for writing or any other purpose;

(iii) single-use plastic products that frequent the residential waste stream or are plastic products that have the effect of disrupting recycling processes, including, but not limited to, single-use plastic items such as straws, utensils, cups, plates, and plastic bags.

(b) Covered materials does not include:

(i) Medical devices and packaging which are included with products regulated as a drug, medical device, or dietary supplement by the United States food and drug administration under the federal food, drug, and cosmetic act, 21 U.S.C. 321 et seq., Sec. 3.2(E) of 21 U.S. code of federal regulations, or the dietary supplement health and education act;

(ii) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products or biological origin, and other covered materials regulated by the United States department of agriculture under the virus, serum, toxin act, 21 U.S.C. 151-159;

(iii) Packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq. or other applicable federal law, rule, or regulation;

(iv) Newspapers and magazines; and

(v) Beverage containers subject to a returnable container deposit under title ten of this article.

11. "Packaging reduction and recycling organization" or "organization" means a registered 501(c)(3) non-profit charitable organization, pursuant to 26 U.S.C. 501(c)(3), designated by a group of producers to act as an agent on behalf of each producer to develop and implement a packaging reduction and recycling plan pursuant to section 27-3405 of this title and comply with the organization responsibilities under section 27-3403 of this title.

12. "Packaging reduction and recycling plan" or "plan" means a document in which individual producers or the organization describe the efforts they will undertake to comply with the requirements of this title.

13. "Packaging reduction and recycling program" or "program" means a program by which producers who sell, offer for sale, or distribute covered packaging materials and products shall register with the department, either individually or through a packaging reduction and recycling organization, to comply and implement the provisions of this title. The program is overseen by the department.

14. "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. "Post-consumer recycled material" does not include post-industrial material or pre-consumer material, or material generated by means of advanced recycling, chemical recycling, combustion, gasification, incineration, pyrolysis, solvolysis, waste-to-energy, waste-to-fuel, or any other chemical or molecular conversion process.

15. "Producer" means the following entities for compliance with the requirements for covered materials sold, offered for sale, or distributed to consumers in or into this state:

(a) For covered materials sold or served to consumers at a physical retail location in this state:

(i) If the covered materials are sold or served under the manufacturer's own brand or are sold or served in covered materials that lacks identification of a brand, the producer of the covered materials is the person that manufactures the product;

(ii) If subparagraph (i) of this paragraph does not apply, the producer of the covered materials is the person that is the licensee of a brand or trademark under which a product is sold or served to a consumer in or into this state, whether or not the trademark is registered in this state, unless the manufacturer of the covered materials has agreed to accept responsibility; where the producer is a business operated wholly or in part as a franchise, the producer is the franchisor, if such franchisor has franchisees that are resident in the state;

(iii) If there is no person as described in subparagraph (i) or (ii) of this paragraph within the United States, the producer of the covered material is the person who imports the product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product to consumers in this state.

(b) For products sold or distributed to consumers in covered materials in or into this state via remote sale or distribution:

(i) The producer of covered materials used to directly protect or contain the product is the same as the producer defined in paragraph (a) of this subdivision.

(ii) The producer of covered materials used to ship the product to a consumer is the person that manufacturers the shipping material.

16. "Product line" means a group of related products all marketed under a single brand name that is sold by the same producer to distinguish products from each other for better usability for customers.

17. "Recyclable" means a covered material that meets the criteria in section 27-3431 of this title.

18. "Recycled" means the use of discarded packaging materials or products in the production of a new product or packaging in place of virgin materials. "Recycled" material does not include contaminants, residues, and other process losses or use of materials as landfill cover.

19. "Recycling" means the series of activities by which material is: (a) collected, transported, sorted, and processed; or (b) used in industrial feedstocks in place of virgin materials to manufacture new products with minimal loss of material quality and quantity. "Recycling" does not include energy recovery or energy generation by any means, combustion, gasification, incineration, pyrolysis, solvolysis, or any other chemical conversion process or creation of a hazardous substance. It also does not include landfill disposal of discarded material or discarded product component materials, including the use of materials as landfill cover.

20. "Recycling rate" means the percentage of any given packaging type that is ultimately recycled. The recycling rate for any covered material shall be calculated as the total weight of packaging that is recycled in a given year divided by the total weight of covered material generated in that year. Material losses, including contaminants and residues, accruing during collection, processing and manufacturing new products do

not count as recycled and should not be in the numerator of the equation.

21. "Reuse" means the return of packaging back into the economic stream for use in the same kind of application intended for the original packaging, without effectuating a change in the original composition of the package, the identity of the product, or the components thereof.

22. "Reuse and refill system" means a program or set of mechanisms designed to facilitate multiple uses of packaging. Mechanisms may include, but are not limited to, deposits, incentives, curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution networks.

23. "Reusable or refillable packaging and containers" means packaging material and containers that are specifically designed and manufactured to maintain its shape and structure, and be materially durable for repeated sanitizing, washing, and reuse.

24. "Toxic substances" means a chemical or chemical class identified by a state agency, federal agency, international intergovernmental agency, accredited research university, or other scientific entity deemed authoritative by the department on the basis of credible scientific evidence as being one or more of the following:

(a) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant, immunotoxin, neurotoxicant, or endocrine disruptor.

(b) A chemical or chemical class that is persistent or bioaccumulative.

(c) A chemical or chemical class that may harm the normal development of a fetus or child or cause other developmental toxicity in humans or wildlife.

(d) A chemical or chemical class that may harm organs or cause other systemic toxicity.

(e) A chemical or chemical class that may have adverse air quality impacts, adverse ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

(f) A chemical or chemical class that the department has determined has equivalent toxicity to the above criteria.

§ 27-3403. Responsibilities of the packaging reduction and recycling organization.

1. Producers shall either form a packaging reduction and recycling organization individually or collectively to meet the responsibilities of the program pursuant to the provisions of this section.

2. Each packaging reduction and recycling organization, or individual producers as applicable, shall establish consistency among programs so that all materials that can be sorted and sold to market are collected and processed for recovery. If more than one packaging reduction and recycling organization is registered within the state, each organization and producer shall coordinate with all other such organizations and producers to ensure that the collection convenience requirements in section 27-3413 of this title and educational requirements in section 27-3421 of this title are met and are consistent and seamless to residents, that government agencies and service providers are reimbursed for recycling services as required under this chapter, and that covered products are not reported as generated, supplied or managed by more than one organization.

3. Each packaging reduction and recycling organization in administration of the program shall:

(a) Develop a packaging reduction and recycling plan and submit such plan to the advisory council for review and comment, and submit to the commissioner for approval pursuant to section 27-3407 of this title;

(b) Collect and compile data from producers as required by section 27-3415 of this title;

(c) Calculate reasonable reimbursement rates through an objective formula approved by the department for curbside recycling;

(d) Collect fees due from producers as required by section 27-3411 of this title;

(e) Reimburse the department for the costs associated with conducting the statewide needs assessment required by section 27-3411 of this title and the administration and enforcement of the program;

(f) Distribute funds to reimburse local governments and private companies for the costs associated with the implementation of reduction and recycling programs, including collection, transportation and processing as required to meet the collection convenience standards in section 27-3413 and other requirements of this title;

(g) Make recommendations to the department regarding investments toward packaging reduction and reuse and make disbursements into the waste reduction and reuse infrastructure fund pursuant to section 27-3423 of this title;

(h) Undertake an effective statewide education and public outreach program required by section 27-3421 of this title;

(i) Offer technical support to participating producers, with an emphasis on support to small businesses, to assist them with compliance with the requirements of this title, including information about procuring affordable alternatives to non-compliant packaging and reducing packaging.

4. Annually, each packaging reduction and recycling organization shall submit a report to the department that, at a minimum, must include the following information:

(a) Contact information for the organization;

(b) A list of all participating producers, brands, and products;

(c) The total amount, by both weight and number of units, of each type of packaging material used to contain, protect, handle, deliver, transport, distribute, or present products sold, offered for sale, or distributed into the state by each individual producer during the prior calendar year;

(d) The total amount, by weight, of each material category recycled in the state, and out of state, as a result of activities undertaken by the organization, either directly or through reimbursement or contractual arrangement;

(e) A calculation of the recycling rate of each material category which is derived by dividing the amount of each material category recycled, as reported in paragraph (d) of this subdivision by the amount of each material category generated, as reported in paragraph (c) of this subdivision;

(f) A complete accounting of all payments made to and by the organization during the prior calendar year;

(g) A list of producers believed to be out of compliance with the requirements of this title, and the reason the organization believes the producer to be out of compliance. Information on non-compliant producers shall be provided to the attorney general's office in a timely fashion;

(h) A description of the educational and outreach efforts made by the organization in the prior calendar year, and how those efforts were

designed to reduce packaging waste, and increase reuse and recycling of packaging materials;

(i) An assessment of whether the fee structure pursuant to section 27-3411 of this title has been effective in incentivizing improvements to the design of packaging material, including actual reduction of packaging, increases in reusable and refillable packaging, recycling rates for packaging materials, and decreases in the amount of packaging;

(j) A description of the reimbursements and expenditures made pursuant to section 27-3411 of this title;

(k) A recommendation to the department to add or remove covered products from the list of recyclable materials, based on information gathered from end markets, including commodity brokers and manufacturers who purchase post-consumer materials for use in manufacturing new products;

(l) Audited financial statements; and

(m) Any additional information required by the department.

5. The packaging reduction and recycling organization shall operate a program that provides for collection convenience as described in section 27-3413 of this title.

6. The packaging reduction and recycling organization shall not spend funds on lobbying federal, state, or local governments or campaign contributions to any candidates running for office.

§ 27-3405. Packaging reduction and recycling organization plan.

1. Within eighteen months of the effective date of this title, each packaging reduction and recycling organization, shall develop and submit a packaging reduction and recycling plan to the department for approval. The plan shall be submitted to the advisory board for review pursuant to section 27-3409 of this title prior to the department's approval.

2. The plan shall cover five years and be updated every five years following the approval of the original plan. The department shall have the discretion to require the plan to be reviewed or revised prior to the five-year period pursuant to section 27-3417 of this title.

3. Each producer shall begin program implementation within six months after the date the plan is approved or no later than two years of the effective date of this title. If no plan is approved by that timeframe, the producer shall be subject to penalties for noncompliance.

4. Any person that becomes a producer after the effective date of this title shall submit an individual plan, or join a packaging reduction and recycling organization, within six months and begin program implementation within six months of plan approval or be subject to penalties for noncompliance.

5. The submitted plan shall include, but not be limited to:

(a) contact information, including the name, electronic and physical address, and telephone number of the authorized representative of the producer or producers;

(b) the identity of the producer or producers participating in the plan;

(c) a comprehensive list of the types and brands of covered materials for which the producer or producers are responsible for;

(d) a description of the proposed funding mechanism, identified in section 27-3411 of this title, that meets the requirements of this title and is sufficient to cover the cost of operating the program, updating the plan, and maintaining a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner;

(e) an objective formula establishing a reimbursement rate, which covers obligations identified in the needs assessment and takes into

account variable regional costs, for participating municipalities or private sector service providers;

(f) a description of the process for participating municipalities or private sector service providers to recoup reasonable costs as established by the objective formula, from the producer or organization, including, as applicable, any administrative, sorting, collection, transportation, public education, or processing costs, if the organization uses existing services through a municipality or obtains such services from a private sector service provider;

(g) at a minimum, the following funding mechanism details shall be provided in the plan:

(i) proposed program fees, provided as a table listing the rate paid for each material category, which in sum, will generate sufficient funding to cover obligations identified in the needs assessment and the requirements of this title; and

(ii) proposed program fee adjustments to incorporate eco-modulation factors;

(h) a description of the characteristics of each type of packaging material that are relevant to the eco-modulating factors set forth pursuant to section 27-3411 of this title;

(i) a description of the process used for the contracting with a private sector entity to provide such services to recoup reasonable costs if the municipality does not elect to provide service;

(j) how the producers or organization will work with existing waste haulers, material recovery facilities, recyclers, and municipalities to operate or expand current collection programs to address material collection methods;

(k) a description of how the producers or organization will use open, competitive, and fair procurement practices should they directly enter into contractual agreements with service providers, including municipalities and private entities;

(l) a description of how a municipality will participate, on a voluntary basis, with collection and how existing municipal recycling processing and collection infrastructure will be used;

(m) a description of how the producers or organization plans to meet the convenience requirements set forth in this title;

(n) a description of the process for end-of-life management, including recycling and disposal of residuals collected for recycling, using environmentally sound management practices;

(o) a description of how the organization shall provide the option to purchase recycled materials from processors;

(p) a description of how producers are complying with and exceeding the waste reduction, toxics, and post-consumer content requirements of the title;

(q) a description of how the organization will strategically invest in existing and future reuse and recycling infrastructure and market development in the state, including, but not limited to, installing or upgrading equipment to improve sorting of covered materials or mitigating the impacts of covered materials to other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities;

(r) a process to address concerns and questions from customers and residents;

(s) a description of the producer or organization's public outreach education program for consumers and other stakeholders;

(t) a description of how comments of stakeholders were considered and addressed in the development of the plan; and

(u) a detailed description of how the producers or organization consulted with the advisory board, the public, and other stakeholders in the development of the plan prior to its submission to the department, and to what extent the producers or organization specifically incorporated the advisory board's input into the plan.

6. The producers or organization shall also provide the advisory board a reasonable period of time to review and comment upon the draft plan prior to its submission to the department. The producers or organization shall make an assessment of comments received and shall provide a summary and an analysis of the issues raised by the advisory board and significant changes suggested by any such comments, a statement of the reasons why any significant changes were not incorporated into the plan, and a description of any changes made to the plan as a result of such comments.

§ 27-3407. Packaging reduction and recycling plan approval.

1. Before approval or denial of a packaging reduction and recycling plan can be made in accordance with this title, the producer or organization shall submit the plan to the packaging reduction and recycling advisory council.

2. Within sixty days of the advisory council making a recommendation to the department, the department shall make a determination to approve the plan as submitted; approve the plan with conditions; or deny the plan, with reasons for the denial.

3. The advisory council in recommending, and the department in approving or denying a plan, shall consider that:

(a) the plan adequately addresses all elements described in section 27-3405 of this title with sufficient detail to demonstrate that the plan will be met;

(b) the producer has undertaken satisfactory consultation with the advisory council, the public, and other stakeholders on the draft plan pursuant to subdivision six of section 27-3405 of this title and has provided an opportunity for the advisory council's input in the implementation and operation of the plan prior to submission of the plan, and has thoroughly described how the advisory council's input will be addressed by and incorporated into the plan;

(c) the plan also adequately provides for:

(i) the producer collecting and funding the costs of collecting and processing covered materials by contracting with private sector service providers or reimbursing municipalities;

(ii) the funding mechanism to cover the cost of the program, including administration, enforcement, the statewide needs assessment, and disbursements into the waste reduction and recycling infrastructure fund;

(iii) convenient and free consumer access to collection facilities or collection services;

(iv) a formulaic system for equitable distribution of funds;

(v) comprehensive public education and outreach;

(vi) an evaluation system for the fee structure, which shall be evaluated on an annual basis by the organization and resubmitted and approved by the department annually;

(vii) a convenient system for consumers to recycle that is, at minimum, as convenient as curbside collection or as convenient as the previous waste collection system in the particular jurisdiction; and

(viii) adequate consideration of the state's solid waste management policy set forth in section 27-0106 of this article.

4. The department may establish additional plan requirements in addition to those identified herein to fulfill the intent of this title; provided, however, that any additional requirements shall be established one year prior to a required submission of a plan unless such additional requirements are in relation to the power granted to the department section 27-3417 of this title.

5. No later than six months after the date the plan is approved, the organization shall implement the approved plan. The department may rescind the approval of an approved plan at any time with cause and documented justification.

§ 27-3409. Packaging reduction and recycling advisory council.

1. There is hereby established within the department a packaging reduction and recycling advisory council to receive and review the packaging reduction and recycling plans required under section 27-3405 of this title, to make recommendations to the department regarding approval of the plans, and to review the annual reports produced by organizations.

2. No later than one year after the effective date of this section, the commissioner shall appoint the members of the advisory council. The advisory council shall be composed of thirteen members, and the commissioner shall appoint at least one member from each of the following:

(a) a municipality association or municipal recycling program, including an additional municipal representative from cities with a population of one million or more residents;

(b) a statewide environmental organization;

(c) a representative of an environmental justice community affected by solid waste infrastructure;

(d) an environmental justice organization;

(e) a statewide waste disposal or recycling association;

(f) a materials recovery facility located within the state;

(g) a recycling collection provider;

(h) a manufacturer of packaging materials utilizing post-consumer recycled content;

(i) a consumer advocate;

(j) a retailer;

(k) a public health specialist; and

(l) a producer or producer responsibility organization established under this title as non-voting members.

4. Appointments to the advisory council are term-limited to five consecutive years of service; the chair shall be chosen through a majority vote of its members and shall serve no longer than one consecutive year;

5. Any member of the advisory council who represents a registered 501(c)(3) non-profit charitable organization, pursuant to 26 U.S.C. 501(c)(3), shall be provided a stipend for their work as an advisory council member at an amount equal to two hundred forty hours, multiplied by double the prevailing minimum wage;

6. All decisions made by the advisory council shall be decided by voting and votes shall only be valid when a quorum is present. A quorum shall exist when greater than fifty percent of voting members are present. The advisory council shall meet at least once a year by the call of the chair or by request of more than half the members. The decisions of the advisory council shall be by vote of the majority of its membership;

7. The council shall determine whether the plan submitted under section 27-3407 of this title meets the criteria and objectives under this section in making its recommendation.

8. The advisory council shall, within ninety days of the submission of a packaging reduction and recycling plan, either:

(a) forward the plan to the commissioner with its recommendation for approval; or

(b) forward the plan to the commissioner with its disapproval and stated reasons therefor, including any recommended changes to the plan necessary for approval.

9. An organization may resubmit a packaging reduction and recycling plan for approval at any time. Upon such resubmission, the advisory council shall, within ninety days, forward the plan to the commissioner with its recommendation for approval or disapproval.

10. The advisory council shall review the submitted annual reports and make such recommendations to the department and the organization for improving future plans.

§ 27-3411. Funding mechanism.

1. A packaging reduction and recycling organization shall establish program participation fees for producers through the plan pursuant to section 27-3405 of this title, which shall be sufficient to cover all costs of the program, including administration, enforcement, the state-wide needs assessment, and disbursements into the waste reduction and reuse infrastructure fund established pursuant to section ninety-seven-bbbbb of the state finance law.

2. A packaging reduction and recycling organization shall structure program charges to provide producers with financial incentives through eco-modulation, to reward waste and source reduction and recycling compatibility innovations and practices, and to disincentivize designs or practices that increase costs of managing the products or which contain toxic substances.

3. A packaging reduction and recycling organization may adjust fees to be paid by participating producers based on factors that affect system costs. At a minimum, fees shall be variable based on:

(a) costs to provide curbside collection or another form of residential service that is, at minimum, as convenient as curbside collection or as convenient as the previous recycling collection plan in the particular jurisdiction or as convenient as the previous refuse collection plan in the particular jurisdiction should recycling collection not be provided;

(b) costs to process covered materials for acceptance by secondary material markets;

(c) whether the covered material would typically be readily-recyclable except that as a consequence of the packaging design, the packaging product has the effect of disrupting recycling processes or the product includes labels, inks, and adhesives containing heavy metals or other toxic substances that would contaminate the recycling process;

(d) whether the packaging material is specifically designed to be reusable or refillable and has high reuse or refill rate; and

(e) the commodity value of a packaging material.

4. The fees shall be adjusted, or the producers may be provided a credit, based upon the percentage of post-consumer recycled material content and such percentage of post-consumer recycled content shall be verified by the organization or through an independent third party approved to perform verification services to ensure that such percentage

exceeds the minimum requirements in the packaging, as long as the recycled content does not disrupt the potential for future recycling.

5. In addition to the annual schedule of fees approved in the plan, the organization fee schedule may include a special assessment on specific categories of packaging materials at the request of responsible entities representing and approved by the advisory council if the nature of the packaging material imposes unusual costs in collection or processing or requires special actions to address effective access to recycling or successful processing in municipal recycling facilities.

6. The revenue from any special assessment shall be used to make system improvements for the specific packaging materials or products on which the special assessment was applied.

7. A packaging reduction and recycling organization shall be responsible for calculating and dispersing funding at a reasonable recycling program funding rate through an objective formula approved by the department, and such reasonable rate may be varied based on population density rates, for municipal services utilized by a packaging reduction and recycling organization if the municipality elects to be compensated by the packaging reduction and recycling organization in the collection, recovery, recycling, and processing of covered materials and products, whether such services are provided directly by the municipality or through a contracted service provider.

8. If a municipality does not elect to provide service, and has given notice to the department of its intent, the packaging reduction and recycling organization shall be responsible for contracting with a private entity for services and shall be responsible for calculating and disbursing funding at a reasonable recycling program rate for collection, recycling, recovery, and processing services provided by the private sector entity contracted to provide such services.

9. The program funding mechanism shall be based on the cost of providing recycling services, including the cost of curbside containers where relevant, as well as the processing cost for each recyclable material, cost of handling non-recyclable material types collected as part of a recycling operation, transportation cost of recycling for each material type, and any other cost factors as determined by the department.

10. To facilitate a packaging reduction and recycling organization's determination of the reasonable cost of recycling, participating municipalities and private sector haulers contracting with the packaging reduction and recycling organization shall report data related to their costs and the value of materials to the packaging reduction and recycling organization. Cost calculations shall take into consideration the amount received from the sale of source separated materials.

11. Any funds directly collected pursuant to this title shall not be used to carry out lobbying activities on behalf of a packaging reduction and recycling organization.

12. No retailer may charge a point-of-sale or other fee to consumers to facilitate a producer to recoup the costs associated with meeting the obligations under this title.

13. Nothing in this title shall require a municipality to participate in the packaging reduction and recycling program.

§ 27-3413. Collection and convenience.

1. A producer or organization shall provide for widespread, convenient, and equitable access to collection opportunities for recyclable covered materials at no additional cost. Such opportunities shall be provided to all residents of the state in a manner that is as convenient as the collection of municipal solid waste. A producer or organization

shall ensure services continue for curbside recycling programs that a municipality serves as of the effective date of this title, either directly or through a contract to provide services, and that such services are continued through such producer or organization's plan pursuant to section 27-3405 of this title.

2. A plan shall not restrict a jurisdiction's resident's ability to contract directly with third parties to obtain recycling collection services if residents have the option to enter into such contracts as of the effective date of this title, as long as the resident still voluntarily chooses to contract directly with the third party.

3. An organization may rely on a range of means to collect various categories of covered materials so long as covered materials collection options include curbside recycling collection services provided by municipal programs, municipal contracted programs, solid waste collection companies, or other approved entities as identified by the department if:

(a) The category of covered materials is defined by the department as recyclable, and is suitable for residential curbside recycling collection and can be effectively sorted by the facilities receiving the curbside collected material;

(b) The recycling facility providing processing and sorting service agrees to include the category of covered materials as an accepted material;

(c) The covered materials category is not handled through a deposit and return scheme or buy back system that relies on a collection system other than curbside or multi-family collection; and

(d) The provider of the residential curbside recycling service agrees to the organization's service provider costs arrangement.

4. The producer or organization shall include, at a minimum, those materials designated by the department as recyclable materials, and may add covered products based on available collection and processing infrastructure and recycling markets for covered materials.

5. The producer or organization shall update and adopt the list on an annual basis, in consultation with the advisory board and the department, in response to collection and processing improvements and changes in recycling end markets. If there are multiple lists, the department shall compile the lists and shall publish a compiled list to the public. Such lists may vary by geographic region depending on regional markets and regional collection and processing infrastructure.

6. All municipalities or private recycling service providers shall provide for the collection and recycling of all covered materials contained on the list of minimum recyclables, based on geographic regions, in order to be eligible for reimbursement; provided, however, nothing shall penalize a municipality or private recycling service for recovering and recycling materials that are generated in the municipality or geographic region that are not included on the list of minimum types of recyclable covered materials or products as long as it can be demonstrated that such materials have a market as determined by the department in consultation with the producer or organization.

7. Reimbursement shall cover recycling of all covered materials so long as the program includes at least the minimum recyclables list. The department may grant an exception of the requirements in this subdivision upon a written showing by the municipality or private recycling service that compliance with the requirements is not practicable for a specific identified product or material and if the department finds it is in the best interest of the intent of this title to grant them an

extension; provided, however, that the extension granted by the department shall not exceed twelve months.

§ 27-3415. Producer responsibilities.

1. Beginning one year after the effective date of this title, a producer shall not sell, offer for sale, or distribute into the state a product contained, protected, delivered, presented, or distributed in packaging unless the producer is registered with a packaging reduction and recycling organization and in full compliance with all requirements of this title.

2. Producers are responsible for payment of fees, through an organization, based on the quantity, type of packaging used in the state, and other factors.

3. Producers are responsible for meeting the toxic substances, packaging reduction, and post-consumer content standards under this title.

4. A producer shall annually report to the packaging reduction and recycling organization:

(a) The total amount, in units and by weight, of each type of covered material sold, offered for sale, or distributed for sale into the state by the producer in the prior calendar year; and

(b) All information necessary for the producer and organization to meet their obligations required under this title.

5. A producer shall submit all fees assessed on the producer by the packaging reduction and recycling organization.

6. A producer shall electronically submit annually, to both the department and the packaging reduction and recycling organization, a written declaration signed by its chief executive officer, verifying the producer's compliance with:

(a) The covered product reduction requirements of this title;

(b) The covered product recycled content requirements of this title; and

(c) The toxic substance reduction requirements of this title.

7. A producer is exempt from the requirements and prohibitions of this title in a calendar year in which:

(a) The producer realized less than one million dollars in total gross revenue during the prior calendar year; or

(b) The producer sold, offered for sale, or distributed for sale products contained, protected, delivered, presented, or distributed in or using less than one ton of packaging material in total during the prior calendar year.

8. A producer claiming an exemption pursuant to subdivision seven of this section shall provide the department with sufficient information to demonstrate that the claimant is eligible for an exemption.

§ 27-3417. Department responsibilities.

1. The department shall determine the effectiveness of outreach and education efforts pursuant to section 27-3421 of this title to determine whether changes are necessary to improve such outreach and education efforts and develop information that may be used by organizations to improve future outreach and education efforts.

2. The department shall maintain a list of materials and covered products that meet the standard to be considered recyclable pursuant to section 27-3431 of this title to be used as the minimum recyclables list.

3. In the event that the department determines that a packaging reduction and recycling organization no longer meets the requirements of this title, or fails to implement and administer the requirements of this title in a manner that effectuates the purposes of this title, the

department shall revoke its approval of such organization's packaging reduction and recycling organization plan, and may elect to operate the program itself.

§ 27-3419. Statewide packaging reduction, reuse, and recycling needs assessment.

1. No later than one year after the effective date of this section, the department shall complete or cause to be completed a statewide packaging reduction, reuse, and recycling needs assessment to determine the current state of packaging reuse, recycling, and disposal, and identify barriers and opportunities to reduce the amount of packaging discarded and disposed of, and increase the reusability and recyclability of packaging.

2. The needs assessment, at a minimum, shall cover the following:

(a) The current recycling rate for each type of covered product material;

(b) The amount, by weight and material type, of covered product recycled at each recycling facility that accepts discarded packaging generated in the state;

(c) The processing capacity, market conditions, and opportunities in the state and regionally for recyclable materials generally, and covered product material categories specifically;

(d) The net cost of end-of-life management of discarded covered products in the state, including the cost associated with the collection, transportation, sortation, recycling, littering, landfilling, or incineration of discarded packaging;

(e) The availability of opportunities in the recycling and reuse system for minority- and women-owned businesses;

(f) Current barriers affecting recycling access and availability in the state;

(g) Current barriers to the marketability of recyclable materials generated in the state;

(h) Opportunities for the creation of covered product reuse and refill programs in the state;

(i) Opportunities for the improvement of covered product recycling in the state, including the development of end markets for recycled covered materials.

(j) Current barriers affecting the creation and implementation of covered product reuse and refill programs;

(k) Consumer education needs in the state with respect to covered product waste reduction, recycling, and reducing contamination in recycling, and reuse and refill systems for covered products; and

(l) Any other information the department considers necessary.

3. The cost incurred by the department associated with conducting the needs assessment shall be paid for by the organization.

4. The department shall report the results of the needs assessment to the public, the state legislature, the governor, the comptroller and the attorney general.

§ 27-3421. Education and outreach program.

1. Each packaging reduction and recycling organization shall develop and implement an educational outreach program designed to educate the public about waste reduction and improve the effectiveness of municipal recycling and, at a minimum, include:

(a) Educational and informational materials for consumers related to reducing the amount of packaging discarded, recycled, and disposed of in the state;

(b) A description of the environmental, social, economic, and environmental justice impacts associated with improper disposal of covered products and failure to reuse or recycle packaging materials;

(c) Information on the proper end-of-life management of covered products, including reuse, recycling, composting, and disposal;

(d) The location and availability of curbside recycling and additional drop-off collection opportunities for covered products, including deposit and take-back programs;

(e) How to prevent litter of covered products in the process of collection;

(f) Recycling instructions that are consistent statewide, except as necessary to take into account differences among local laws and processing capabilities, easy to understand, and easily accessible; and

(g) Any other information required by the department.

2. Educational outreach programs shall incorporate, at a minimum, electronic, print, web-based and social media elements that municipalities can utilize at their discretion, as well as including a variety of outreach and education tools and ensuring materials are widely accessible and available in multiple languages.

3. The educational outreach program shall be coordinated with and assist local municipal programs, municipal contracted programs, solid waste collection companies, and other entities providing services.

4. The educational outreach program shall be developed to ensure environmental justice communities receive targeted outreach and support.

5. The educational outreach program shall include a plan to work with participating producers to label or mark packaging material, in accordance with reasonable labeling standards, with information to assist consumers in responsibly managing and recycling covered products.

6. Each packaging reduction and recycling organization shall consult with municipalities on the development of educational materials and may coordinate with municipalities on outreach and communication.

7. A packaging reduction and recycling organization shall be authorized to provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded covered products. The educational and informational materials provided to the retailer under this subdivision may include, but need not be limited to, printed materials, signage, templates of materials that can be reproduced by retailers and provided thereby to consumers at the time of a product's purchase, and advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of covered products.

§ 27-3423. Waste reduction and reuse infrastructure fund.

1. The department shall oversee the waste reduction and reuse infrastructure fund established pursuant to section ninety-seven-bbbbb of the state finance law, which is to pay for investments in reuse and refill and waste reduction infrastructure.

2. Each packaging reduction and recycling organization shall deposit into the fund no less than five percent of the total payments received from producers pursuant to the provisions of this title.

3. Funds shall be used for investment in collection systems, transportation systems, reuse systems, washing systems, redistribution systems, technology for tracking and data collection, capital expenditures on new and emerging technology that is focused on reusable and refillable packaging, as well as equipment, and facilities, and other projects determined by the department to facilitate the goals and objectives of this title.

4. Funds may also be used for investment in public outreach and education in ways that increase public participation in recycling programs, and access and participation in packaging reduction, reuse, and refill systems throughout the state.

5. The packaging reduction and recycling organizations shall prioritize investments for projects and programs that will directly benefit environmental justice communities, including, but not limited to, communities that are home to a landfill, incinerator, transfer station, or waste-to-energy facility.

6. Any investments made pursuant to this section must be approved by the department. The department shall approve or deny proposed investments within ninety days of receipt of a proposal from a packaging reduction and recycling organization. Such investments may be approved, at the discretion of the department, so long as the proposed investment shall, at a minimum:

(a) Increase the transition of packaging from non-reusable to reduced, reusable or refillable packaging;

(b) Increase access to reuse and refill infrastructure in the state;

(c) Increase the capacity of reuse and refill infrastructure in the state;

(d) Provide reuse and refill instructions that are, to the extent practicable, consistent statewide, easy to understand, translated into various commonly-used languages, and easily accessible; and

(e) Provide for outreach and education that are coordinated across programs or regions to avoid confusion for residents, and developed in consultation with local government and the public.

§ 27-3425. Prohibition on certain toxic substances and materials.

1. Beginning two years after the promulgation of rules and regulations pursuant to this title, no person or entity shall sell, offer for sale, or distribute into the state any packaging containing any of the following toxic substances:

(a) Ortho-phthalates;

(b) Bisphenols;

(c) Per- and polyfluoroalkyl substances (PFAS);

(d) Heavy metals and compounds, including lead, hexavalent chromium, cadmium, and mercury;

(e) Benzophenone and its derivatives;

(f) Halogenated flame retardants;

(g) Perchlorate;

(h) Formaldehyde;

(i) Toluene;

(j) Antimony and compounds;

(k) Carbon black; and

(l) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).

2. Beginning two years after the promulgation of rules and regulations pursuant to this title, no person or entity shall sell, offer for sale, or distribute for use in this state any packaging containing:

(a) Polyvinyl chloride;

(b) Polystyrene; or

(c) Polycarbonate.

3. Beginning three years after the promulgation of rules and regulations pursuant to this title, and every three years thereafter, the department shall designate at least ten additional toxic substances or classes of toxic substances that may no longer be sold, offered for sale, distributed for sale, or distributed for use in packaging in this state unless it determines there are not ten chemicals that meet the

definition of toxic substances. If the department determines there are not ten toxic substances that meet such a definition, it shall publish a detailed statement of its findings and conclusions supporting such determination.

4. Within one hundred eighty days of designating a toxic substance, the department shall adopt rules and regulations to prohibit the newly designated toxic substance in packaging, with an effective date no later than two years after such designation.

5. Any producer that violates this section shall be subject to a fine for each violation not to exceed fifty thousand dollars per violation. For the purposes of this section, each product line that is sold, offered for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction shall be considered a separate violation.

§ 27-3427. Packaging reduction standards.

1. Each individual producer is required to meet the following packaging reduction requirements:

(a) Beginning three years after a producer first registers with a packaging reduction and recycling organization, such producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by ten percent by weight.

(b) Beginning five years after a producer first registers with a packaging reduction and recycling organization, such producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by twenty percent by weight.

(c) Beginning eight years after a producer first registers with a packaging reduction and recycling organization, such producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by thirty percent by weight.

(d) Beginning ten years after a producer first registers with a packaging reduction and recycling organization, such producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by forty percent by weight.

(e) Beginning twelve years after a producer first registers with a packaging reduction and recycling organization, such producer shall reduce the amount of packaging used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by fifty percent by weight.

2. The reductions required by this section shall be measured against the total amount of packaging the producer used to contain, protect, deliver, present, or distribute the products they sold, offered for sale, or distributed for sale, during the first year such producer registered with the packaging reduction and recycling organization.

3. These reductions shall be achieved by eliminating single-use packaging, including secondary or tertiary packaging, elimination of packaging components, reduction of packaging components, or by transitioning to reusable or refillable packaging systems.

4. The reductions required by this section shall not be achieved by substituting plastic for other materials or substituting a non-recyclable material for a recyclable material.

5. In the case of a producer that enters the market with fifty percent or more by weight of its packaging being reusable and contained within a

reuse and refill system, such producer may apply to the department for a waiver from the packaging reduction requirements.

6. Nothing in this section shall preclude a producer from going beyond the reduction standards in subdivision one of this section.

§ 27-3429. Recycled content standards.

1. Each individual producer shall meet the recycling content targets contained in this section.

2. Beginning two years after the effective date of this section:

(a) all glass containers manufactured in the state shall contain, on average, at least thirty-five percent post-consumer recycled content;

(b) all paper carryout bags sold, offered for sale, or given away free in the state by a manufacturer shall contain, on average, at least forty percent post-consumer recycled content; except that a paper carryout bag that holds eight pounds or less shall only be required to contain, on average, at least twenty percent post-consumer recycled content; and

(c) all plastic trash bags sold or offered for sale in the state by a manufacturer shall contain, on average, at least twenty percent post-consumer recycled content.

3. The requirements of this section shall not apply to reusable or refillable packaging or containers.

§ 27-3431. Recyclability criteria.

1. Beginning two years after the effective date of this section, covered materials used by a producer shall meet the following recyclability criteria:

(a) be capable of being sorted by entities that process recyclable material generated in the state;

(b) has a consistent regional market for purchase, by end users in the production of new products;

(c) does not contain the following:

(i) non-detectable pigments, including but not limited to carbon black;

(ii) toxic substances as defined in this title or rules and regulations promulgated thereto;

(iii) opaque or pigmented polyethylene terephthalate;

(iv) oxo-degradable additives, including oxo-biodegradable additives;

(v) polyethylene terephthalate glycol in rigid packaging;

(vi) label constructions, including adhesives, inks, materials and formats, or features that render a package detrimental or non-recyclable;

(vii) DoPS - polystyrene, including EPS (expanded polystyrene); and

(viii) polyvinyl chloride, including polyvinylidene chloride;

(d) meets the post-consumer content requirements of this title; and

(e) any other criteria determined by the department.

2. The department shall maintain a list of covered products that meet this criteria and are deemed to be recyclable. The department shall update this list annually.

§ 27-3433. Establishment of the office of recycling inspector general.

1. The commissioner shall establish an independent office of recycling inspector general within the department. The recycling inspector general shall evaluate the programs created pursuant to this title on an annual basis to ensure such programs are functioning properly, and all producers are in compliance with the requirements of this title.

2. The recycling inspector general shall have the authority to investigate the compliance of producers with all provisions of this title and to bring enforcement actions for violations of this title pursuant to the provisions of section 27-3435 of this title.

§ 27-3435. Penalties and enforcement.

1. Failure to comply with the requirements of this title shall subject the organization or an individual producer to penalties for violations. The department, recycling inspector general, or attorney general, may conduct investigations, including inspecting operations, facilities, and records of producers and organizations, and performing audits of producers and organizations, to determine whether such producers and organizations are complying with the requirements of this title.

2. The department, the recycling inspector general, or the attorney general, shall notify an organization or producer of any conduct or practice that does not comply with the requirements of this title and of any inconsistencies identified in an audit.

3. The department, the recycling inspector general, and the attorney general, may issue a notice of violation to, and impose an administrative civil penalty not to exceed one hundred thousand dollars per day per violation on any entity not in compliance with this title or any of the regulations the department adopts to implement this title. For the purposes of this section, each product line that is sold, offered for sale, or distributed to consumers via retail commerce in the state, including through an internet transaction, shall be considered a separate violation.

4. All producers registered in a packaging reduction and recycling organization shall be jointly and severally liable for any penalties assessed against the packaging reduction and recycling organization pursuant to this title.

5. 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.

6. All monies collected pursuant to the provisions of this section shall be deposited into the waste reduction and reuse infrastructure fund established pursuant to section ninety-seven-bbbbb of the state finance law.

§ 27-3437. Rules and regulations.

1. Within eighteen months after the effective date of this section, the department shall promulgate all rules and regulations necessary to implement, administer, and enforce the provisions of this title.

2. When promulgating rules pursuant to the provisions of this section, the department shall solicit input from the public of any draft rule or regulation to implement this section, including at a minimum a ninety-day comment period and one public hearing on such draft rules.

§ 27-3439. State preemption.

Jurisdiction in all matters pertaining to costs and funding mechanisms of packaging reduction and recycling organizations relating to the recovery of covered materials shall, by this title, be vested exclusively in the state; provided, however, that nothing in this section shall preclude any city, town, village or other local planning units from determining what materials shall be included for recycling in a municipal recycling collection program or shall preclude any person from coordinating, for recycling or reuse, the collection of covered materials and products.

§ 27-3441. Other assistance programs.

Nothing in this title shall impact any producer eligibility for any state or local incentive or assistance program to which they are otherwise eligible.

§ 27-3443. 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.

§ 3. The state finance law is amended by adding a new section 97-bbbbb to read as follows:

§ 97-bbbbb. Waste reduction and reuse infrastructure fund. 1. There is hereby created in the joint custody of the state comptroller and the commissioner of taxation and finance a fund to be known as the "waste reduction and reuse infrastructure fund".

2. Such fund shall consist of all moneys required to be deposited into the fund pursuant to the provisions of title thirty-four of article twenty-seven of the environmental conservation law. Nothing contained herein shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. Moneys of the fund shall be made available pursuant to the provisions of section 27-3423 of the environmental conservation law, subject to the approval of the commissioner of environmental conservation, and on the audit and warrant of the comptroller.

§ 4. This act shall take effect immediately.