STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

April 19, 2023

Introduced by Sens. KAVANAGH, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing extended producer responsibility for mattresses

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

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 34 to read as follows:

TITLE 34

EXTENDED PRODUCER RESPONSIBILITY FOR MATTRESSES

Section 27-3401. Definitions.
27-3403. Producer plan.
27-3405. Producer responsibilities.
27-3407. Retailer, distributor and wholesaler responsibilities.
27-3409. Department responsibilities.
27-3411. Mattress collection program advisory board.
27-3413. Multi-state cooperation.
27-3415. Enforcement and penalties.
27-3417. Rules and regulations.

§ 27-3401. Definitions.

As used in this title:

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

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

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2. "Closed-loop recycling" means recycling in which materials that are reclaimed are returned to the original process or processes in which they were generated and they are reused in the production process.

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

4. "Consumer" means a person located in the state who purchases, owns, leases, or uses covered products, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include a retailer or person that acquires a covered product solely for purposes of recycling.

5. "Covered product" means a mattress.

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

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

8. "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.

9.(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.

10. "Mattress collection program" or "program" means a program financed and implemented by producers, either individually, or through a representative organization, that provides for, but is not limited to, the collection, transportation, reuse, recycling, proper end-of-life management, or an appropriate combination thereof, of discarded covered product.

11. "Producer" means any person who manufactures or renovates a covered product that is 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 covered product is sold, offered for sale, or distributed in this state, whether or not such trademark or brand is registered in the state; and

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

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

13. "Recycle" means to separate, dismantle or process the materials, components or commodities contained in covered products for the purpose of preparing the materials, components or commodities for use or reuse in new products or components. "Recycle" does not include: (a) 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 (b) landfill disposal of discarded covered products or discarded product component materials.

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

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

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

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

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

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

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

21. "Sale" or "sell" means a transfer of title to a covered product 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 covered product is provided to a consumer in the state by a producer, distributor, wholesaler, or retailer.

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

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

24. "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.

25. "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 one year after the effective date of this section, 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:

(a) Provide a list of each participating producer and brands covered by the program;

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

(c) (1) A description of how the program will provide for the collection of covered products, free of cost and in a manner convenient to consumers, including how the program will achieve, at a minimum, a convenience standard that ensures that all counties of the state and all municipalities that have a population of ten thousand or greater have at least one permanent collection site and one additional permanent collection site for every thirty thousand people located in those areas, that accepts covered products from consumers during normal business hours; however, with respect to a city having a population of one million or more, after consultation with the department of sanitation of such city, the department may otherwise establish an alternative convenience standard. The producer, group of producers, or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. Convenience standards shall be evaluated by the department periodically and the department may require additional collection locations to ensure adequate consumer convenience.

(2) To meet these convenience standards, 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 covered products;

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 (if necessary) transport covered products 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 covered products that they own or use, and who have collected at least 100 recyclable covered products for recycling, provide at its expense an appropriate storage container, transportation from a collection point to a recycler, and services to recycle the covered products; and

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

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

(e) A description of how the discarded covered products 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 covered products 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 covered products that cannot be recycled or reused;

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

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

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

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

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

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

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

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

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

§ 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 covered product 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 be responsible for the costs associated with the implementation of the collection program, including but not limited to the cost of collection. Each producer or representative organization shall pay fees established by the department to cover costs incurred by the department in the administration and enforcement of this title. Exclusive of fines and penalties, the department shall only be reimbursed its actual cost of administration and enforcement.

5. 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.

6. Any person who becomes a producer on or after July first, two thousand twenty-five 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 covered product, 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 covered products in the state, including detailing collection methods made available to consumers and an evaluation of the program's collection convenience;

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

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

(f) the total cost of implementing the program;

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

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

8. Each producer, group of producers or representative organization shall submit an annual report to the department as provided for in subdivision seven of this section that assesses compliance with perform-

ance goals and describes any modifications necessary to achieve such goals.

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

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

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

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

§ 27-3409. Department responsibilities.

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

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

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

4. Within ninety days after receipt of a proposed plan or plan amendment, the department shall approve or reject such plan or plan amendment based on whether such proposed plan or plan amendment satisfactorily meets the requirements of subdivision four of section 27-3403 of this title. If the plan or plan amendment is approved, the department shall notify the producer or representative organization in writing. If the department rejects the plan or plan amendment, the department shall notify the producer or representative organization in writing stating the reason for rejecting the plan or plan amendment. A producer or representative organization whose plan is rejected shall submit a revised plan to the department within thirty days of receiving a notice of rejection. If the department rejects the subsequent proposal, the producer or producers at issue shall be out of compliance and subject to enforcement provisions.

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

(a) The stream of covered products in the state;

(b) Disposal, recycling, and reuse rates in the state covered products;

(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 covered products 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. Multi-state cooperation.

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

§ 27-3415. Enforcement and penalties.

Any producer, representative organization, retailer, distributor, or wholesaler who fails to comply with any provision of or 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.

§ 27-3417. 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.