

STATE OF NEW YORK

6540

2023-2024 Regular Sessions

IN SENATE

April 26, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing an extended producer responsibility program for designated products; and to amend the state finance law, in relation to establishing an extended producer responsibility program fund

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

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

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

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

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

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

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

3 TITLE 16

4 EXTENDED PRODUCER RESPONSIBILITY FOR DESIGNATED PRODUCTS

5 Section 27-1601. Definitions.

6 27-1603. Producer plan.

7 27-1605. Producer responsibilities.

8 27-1607. Retailer, distributor, and wholesaler responsibilities.

9 27-1609. Department responsibilities.

10 27-1611. Rules and regulations.

11 27-1613. Enforcement and penalties.

12 27-1615. Report and designation of additional covered products
13 or product categories.

14 27-1617. Severability.

15 § 27-1601. Definitions.

16 As used in this title:

17 1. "Brand" means a name, symbol, word, or mark that attributes a prod-
18 uct to the owner or licensee of the brand as the producer.

19 2. "Closed-loop recycling" means recycling in which materials that are
20 reclaimed are returned to the original process or processes that gener-
21 ated them, and reused in the production process.

22 3. "Collection program" or "program" means a program financed and
23 implemented by producers, either individually, or through a represen-
24 tative organization, that provides for, but is not limited to, the
25 collection, transportation, reuse, recycling, proper end-of-life manage-
26 ment, or an appropriate combination thereof, of discarded covered
27 products.

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

30 5. "Consumer" means a person located in the state who purchases, owns,
31 leases, or uses covered products, including but not limited to an indi-
32 vidual, a business, corporation, limited partnership, not-for-profit
33 corporation, the state, a public corporation, public school, school
34 district, private or parochial school or board of cooperative educa-
35 tional services or governmental entity.

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

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

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

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

48 10. "Energy recovery" means the process by which all or a portion of
49 solid waste materials are processed or combusted in order to utilize the
50 heat content or other forms of energy derived from such solid waste
51 materials.

52 11. "Producer" means any person who manufactures or renovates a
53 covered product that is sold, offered for sale, or distributed in the
54 state under the manufacturer's own name or brand. "Producer" includes:

1 (a) the owner of a trademark or brand under which a covered product is
2 sold, offered for sale, or distributed in this state, whether or not
3 such trademark or brand is registered in the state; and

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

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

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

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

13 15. "Recycling" means to separate, dismantle or process the materials,
14 components or commodities contained in covered products for the purpose
15 of preparing the materials, components or commodities for use or reuse
16 in new products or components. "Recycling" does not include energy
17 recovery or energy generation by means of combustion, or landfill
18 disposal of discarded covered products or discarded product component
19 materials.

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

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

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

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

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

42 § 27-1603. Producer plan.

43 1. On or before the covered product effective date set by the depart-
44 ment or by joint resolution of the legislature pursuant to section
45 27-1615 of this title, a producer, either individually or jointly with
46 one or more producers, or a representative organization shall submit for
47 the department's approval a plan for the establishment of a collection
48 program that meets the collection requirements described in this
49 section.

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

53 3. A producer or representative organization shall update the plan, as
54 needed, when there are changes proposed to the current program. A new
55 plan or amendment shall be required to be submitted to the department
56 for approval when:

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

2 (b) every three years from the date of approval of a previous plan.

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

5 (a) provide a list of each participating producer and brand covered by
6 the program;

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

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

10 (d) describe how the program will provide for collection of discarded
11 covered products in the state, free of cost and in a manner convenient
12 to consumers in all areas of the state, including how the program will
13 achieve, at a minimum, a convenience standard which ensures that all
14 counties of the state and all municipalities which have a population of
15 ten thousand or greater have at least one permanent collection site and
16 one additional permanent collection site for every thirty thousand
17 people located in those areas, that accepts covered products from
18 consumers during normal business hours; however, with respect to a city
19 having a population of one million or more, after consultation with the
20 department of sanitation of such city, the department may otherwise
21 establish an alternative convenience standard. The producer or repre-
22 sentative organization may coordinate the program with existing munici-
23 pal waste collection infrastructure as is mutually agreeable. Conven-
24 ience standards shall be evaluated by the department periodically and
25 the department may require additional collection locations to ensure
26 adequate consumer convenience;

27 (e) describe in detail education and outreach efforts to inform
28 consumers, and persons engaged in the management of discarded covered
29 products about the program, including, at a minimum, an internet website
30 and a toll-free telephone number and written information included at the
31 time of sale of the covered product that provides sufficient informa-
32 tion to allow a consumer to learn how to return such covered product for
33 disposal, recycling or reuse;

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

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

38 (h) describe how the program will meet annual performance goals, as
39 determined by the department, provided that at a minimum, the program
40 shall achieve the following recycling rates:

41 (i) a thirty percent recycling rate for discarded covered products of
42 which ten percent shall be closed-loop recycling by five years after the
43 plan is approved by the department pursuant to section 27-1609 of this
44 title;

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

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

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

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

1 (k) describe the sources of data and methodology for estimating the
2 amount of discarded covered products in the state annually; and
3 (l) any other information as specified by the department.
4 § 27-1605. Producer responsibilities.

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

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

16 3. A producer or representative organization shall maintain records
17 demonstrating compliance with the provisions of this title and make them
18 available for audit and inspection by the department for a period of
19 three years. The department shall make such records available to the
20 public upon request in accordance with the provisions of the state
21 freedom of information law and the regulations promulgated thereunder.
22 Record holders shall submit the records required to comply with the
23 request within sixty working days of written notification by the depart-
24 ment of receipt of the request.

25 4. A producer or representative organization shall be responsible for
26 all costs associated with the implementation of the collection program,
27 including but not limited to the cost of collection. A producer or
28 representative organization shall pay costs incurred by the department
29 in the administration and enforcement of this title. Exclusive of fines
30 and penalties, the department shall only be reimbursed its actual cost
31 of administration and enforcement.

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

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

44 (a) a detailed description of the methods used to collect, transport,
45 and process covered products in the state, including detailing
46 collection methods made available to consumers and an evaluation of the
47 program's collection convenience;

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

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

53 (d) an assessment of the extent to which the performance goals and
54 recycling rates have been achieved and a description of any modifica-
55 tions necessary to achieve such goals;

56 (e) the total cost of implementing the program;

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

5 (g) any other information required by the department.

6 § 27-1607. Retailer, distributor, and wholesaler responsibilities.

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

16 2. Any retailer, distributor, or wholesaler may participate, on a
17 voluntary basis, as a designated collection site pursuant to a
18 collection program and in accordance with applicable laws and regu-
19 lations.

20 § 27-1609. Department responsibilities.

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

27 2. The department shall post on its website the location of all
28 collection sites identified to the department by a producer in such
29 producer's approved plans and annual reports.

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

32 4. Within ninety days after receipt of a proposed plan or plan amend-
33 ment, the department shall approve or reject the plan or the plan amend-
34 ment. If the department approves a plan or plan amendment, the depart-
35 ment shall notify the producer or representative organization in
36 writing. If the department rejects a plan or plan amendment, the depart-
37 ment shall notify the producer or representative organization in writ-
38 ing, stating the reason for rejecting the plan or plan amendment. A
39 producer or representative organization whose plan is rejected shall
40 submit a revised plan to the department within thirty days of receiving
41 a notice of rejection. If the department rejects the subsequent
42 proposal, the producer or producers at issue shall be out of compliance
43 and subject to enforcement provisions.

44 5. On or before April first of each year succeeding a year in which a
45 collection program was in effect for any covered product, the department
46 shall submit a report regarding the implementation of this title to the
47 governor and legislature. The report shall include, at a minimum, an
48 evaluation of:

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

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

52 (c) a discussion of compliance and enforcement related to the require-
53 ments of this title; and

54 (d) recommendations for any changes to this title.

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

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

13 § 27-1611. Rules and regulations.

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

16 § 27-1613. Enforcement and penalties.

17 1. Any producer, representative organization, distributor, or retailer
18 who violates any provision of or fails to perform any duty imposed
19 pursuant to this title or any rule or regulation promulgated pursuant to
20 this title or any final determination or order of the commissioner made
21 pursuant to this title or article seventy-one of this chapter shall be
22 liable for a civil penalty not to exceed five hundred dollars for each
23 violation and an additional penalty of not more than five hundred
24 dollars for each day during which such violation continues.

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

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

38 § 27-1615. Report and designation of additional covered products or
39 product categories.

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

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

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

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

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

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

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

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

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

13 (vi) there is success in collecting and processing similar types of
14 products in extended producer responsibility programs in other jurisdic-
15 tions; or

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

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

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

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

37 § 27-1617. Severability.

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

42 § 4. Section 71-1701 of the environmental conservation law is amended
43 to read as follows:

44 § 71-1701. Applicability of this title.

45 This title shall be applicable to the enforcement of titles 1 through
46 11 and titles 15 through 19 of article 17; article 19; and [~~title~~]
47 titles 1 and 16 of article 27 of this chapter.

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

50 § 71-1701. Applicability of this title.

51 This title shall be applicable to the enforcement of titles 1 through
52 11 and titles 15 through 19 of article 17; article 19; and titles 1, 16,
53 and 33 of article 27 of this chapter.

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

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

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

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

17 § 7. This act shall take effect immediately; provided, however, that
18 the amendments to section 71-1701 of the environmental conservation law
19 made by section five of this act shall take effect on the same date and
20 in the same manner as section 2 of chapter 795 of the laws of 2022,
21 takes effect.