STATE OF NEW YORK

6654

2023-2024 Regular Sessions

IN SENATE

May 3, 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 extended producer responsibility for textiles

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 TEXTILES

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. Labeling requirements.
27-3413. Textile stewardship advisory board.
27-3415. Multi-state cooperation.
27-3417. Enforcement and penalties.
27-3419. Rules and regulations.

§ 27-3401. Definitions.

For the purposes of this title, the following terms shall have the following meanings:

1. "Apparel" means clothing and accessory items intended for regular wear or formal occasions, including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, costumes, vests, dancewear, suits, saris, scarves, tops, leggings, school uniforms, leisurewear, athletic wear, sports uniforms, everyday swimwear, formal wear, onesies, bibs, diapers, footwear, and everyday uniforms for workwear. Clothing items intended for regular wear or formal occasions does not

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

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include personal protective equipment or clothing items for exclusive use by the United States military.

2. "Brand" means a trademark, including both a registered trademark and an unregistered trademark, a logo, a name, a symbol, a word, an identifier, or a traceable mark that identifies a covered textile and identifies the owner or licensee of the brand.

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 the purposes of recycling.

5. "Covered product" means any apparel, textile, or textile article that is unsuitable for reuse by a consumer in its current state or condition.

6. "Discarded covered product" means a covered product that a consumer has used and 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. "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.

10. "Recycling" means separating, dismantling or processing 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. "Recycling" does not include energy recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, waste to fuel, or any chemical conversion process, or landfill disposal of discarded covered products or discarded product component materials.

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

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

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

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

15. "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.

16. "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.

17. "Textile" means any item made in whole or in part from natural, manmade, or synthetic fiber, yarn, or fabric, and includes, but is not limited to, leather, cotton, silk, jute, hemp, wool, viscose, nylon, or polyester. "Textile" does not include disposable hygiene products made from paper, including, but not limited to, toilet paper, paper towels or tissues, or disposable absorbent hygiene products.

18. "Textile articles" means textile goods of a type customarily used in households and businesses, and includes, but is not limited to, apparel, accessories, handbags, backpacks, draperies, shower curtains, furnishings, upholstery, bedding towels, napkins, and tablecloths. "Textile articles" does not include: (a) carpets and rugs as defined in title thirty-three of this article; (b) treatments containing polyfluoroalkyl for use on converted textiles or leathers; (c) component parts from a vehicle, as defined in section one hundred fifty-nine of the vehicle and traffic law, such as seats and carpets or synthetic flooring; (d) component parts from a vessel, as defined in section two of the navigation law, such as seats, synthetic flooring, and boat covers; (e) filtration media and filter products used in industrial applications, including, but not limited to, chemical or pharmaceutical manufacturing and environmental control technologies; (f) textile articles used in or for laboratory analysis and testing; (g) component parts from an aircraft, as defined in section two hundred forty of the general business law; or (h) stadium shades, architectural fabric structures, or any permanent fabric structure that is intrinsic to a building's design or construction.

19. "Textile 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 textiles.

§ 27-3403. Producer plan.

1. No later than December thirty-first, two thousand twenty-four, a producer, either individually or cooperatively in a group with one or more producers or with a representative organization, shall submit to the department for the department's approval a plan for the establishment of a collection program for covered products.

2. A producer may satisfy the textile collection program requirement of this section by agreeing to participate collectively with a group of other producers or with a representative organization. Any such producer participating collectively in a collection program shall notify the department of such participation.

3. A producer, a group of producers or representative organization shall update the plan, as needed, when there are changes proposed to its

collection program. A new plan or amendment shall be required to be submitted to the department for approval when:

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

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

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

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

(b) provide information on the products covered by the program;

(c) describe how the producer, group of producers, or representative organization will safely collect, transport, recycle, and process covered products;

(d) describe 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. 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. To meet such convenience standard, the producer plan may provide that the producer or representative organization shall enter into voluntary agreements to establish collection sites at: (i) public and private solid waste facilities, transfer stations, landfills, recyclables handling and recovery facilities that are permitted or registered with the department; (ii) other suitable sites for the collection of discarded covered products; or (iii) retailers that pick up or accept covered products from consumers upon the purchase of new covered products. Such agreements may provide for reasonable compensation for the actual costs these collection sites incur to handle, store, and (if necessary) transport covered products and may supply covered products storage containers at no cost to participating collection sites;

(e) describe how the discarded covered products will be safely and securely transported, tracked, and handled from collection sites through final recycling and processing;

(f) describe 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) describe the methods to be used to manage or dispose of discarded products that cannot be recycled or reused;

(h) describe in detail education and outreach efforts to inform consumers and others engaged in the management of discarded covered products about the program, including, at a minimum, an internet website and a toll-free telephone number and written information included at the time of sale of covered products that provides sufficient information to allow a consumer to learn how to return such covered products for disposal, recycling or reuse;

(i) describe how the program will meet annual performance goals, as determined by the department in conjunction with the producers or representative organization, after the first two years of the program and updated every two years thereafter, including an estimate of discarded

covered products that will be collected, reused, and recycled each calendar year;

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

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

(l) describe the methods to be used to reuse or recycle discarded covered products;

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

(n) estimate the amounts of covered products that were previously sold, offered for sale, or distributed in the state under each producer's name or brand that are discarded in the state annually and describe the sources of data and methodology for estimating such amount; and

(o) any other information as specified by the department.

§ 27-3405. Producer responsibilities.

1. Beginning no later than July first, two thousand twenty-five, the producer or representative organization shall implement a collection program utilizing collection sites established pursuant to paragraph (d) of subdivision four of section 27-3403 of this title.

2. A producer shall not sell, or offer for sale, covered products to any person in the state on or after the required date of implementation of the collection program under subdivision one of this section unless the producer is implementing or participating under an approved plan.

3. The collection program shall be free to consumers returning covered products for disposal, recycling or reuse, convenient, and adequate to serve the needs of such consumers in all areas of the state on an ongoing basis.

4. A producer, a group of producers, 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 records available to the public upon request in accordance with the provisions of the state freedom of information law and the regulations promulgated thereunder. Record holders shall submit the records required to comply with such request within sixty working days of written notification by the department of receipt of the request.

5. Producers, group of producers, and representative organizations 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, group of producers, 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.

6. Any person who becomes a producer on or after December thirty-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 products 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 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 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 textile collection program;

(d) an evaluation of whether the performance goals and recycling rates have been achieved and a description of any modifications necessary to achieve such goals and rates;

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

(b) Notwithstanding any contrary provision of this section, paragraph (a) of this subdivision shall not apply to any agreement establishing or affecting the price of covered products sold to consumers in the state or the output or production of covered products or any agreement restricting the geographic area or customers to which covered products will be sold.

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

1. Beginning July first, two thousand twenty-five, no retailer, distributor, or wholesaler may sell or offer for sale covered products in the state unless the producer of such covered product is participating in a collection program. A retailer shall be in compliance with this section if, on the date the covered products are offered for sale, the producer is listed on the department's website as implementing or participating in an approved collection program or if the covered products brand is listed on the department's website as being included in the program.

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

§ 27-3409. Department responsibilities.

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

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

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

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

5. The department shall submit a report regarding the implementation of this title to the governor and legislature by April first, two thousand twenty-five and every year thereafter. The report shall include, at 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. Labeling requirements.

One year after the plan is approved by the department pursuant to section 27-3409 of this title, covered products sold or offered for sale in the state shall be accompanied by the name of the producer and the producer's contact information.

§ 27-3413. Textile stewardship advisory board.

1. There is hereby established within the department a textile collection program advisory board to make recommendations to the commissioner regarding program operator plans required by this title.

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

(a) one representative of textile producers;

(b) two representatives of textile retailers;

(c) one representative of textile recyclers;

(d) two representatives of textile 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 biannually by call of the chair.

§ 27-3415. Multi-state cooperation.

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

§ 27-3417. Enforcement and penalties.

Any producer, representative organization, or retailer who is found to not have made a good faith effort 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.

§ 27-3419. 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.