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Introduced by Sens. KAVANAGH, BOTTCHER, FAHY, GOUNARDES, HARCKHAM, MAY, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommit-
ted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, amended on second report, ordered to a third reading, and to be reprinted as amended, retaining its place in the order of third reading -- reported favorably from said committee to third reading, amended and ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote recon- sidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 Assem- bly, do enact as follows:

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

3 TITLE 34
4 EXTENDED PRODUCER RESPONSIBILITY FOR MATTRESSES

5 Section 27-3401. Definitions.
6 27-3403. Producer plan.
7 27-3405. Producer responsibilities.
8 27-3407. Retailer responsibilities.
9 27-3409. Department responsibilities.
10 27-3411. Mattress stewardship advisory board.
11 27-3413. Enforcement and penalties.
12 27-3415. Rules and regulations.
13 § 27-3401. Definitions.

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

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1 As used in this title:

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

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

6 3. "Consumer" means a person located in the state who purchases, owns,
7 leases, or uses mattresses, including but not limited to an individual,
8 a business, corporation, limited partnership, not-for-profit corpo-
9 ration, the state, a public corporation, public school, school district,
10 private or parochial school or board of cooperative educational services
11 or governmental entity, but does not include a retailer or person that
12 acquires a mattress solely for purposes of recycling.

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

15 5. "Energy recovery" means the process by which all or a portion of
16 solid waste materials are processed or combusted in order to utilize the
17 heat content or other forms of energy derived from such solid waste
18 materials.

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

27 (b) Mattress shall not include:

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

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

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

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

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

38 7. "Producer" means any person who manufactures or renovates mattress-
39 es that are sold, offered for sale, or distributed to a consumer in this
40 state. "Producer" includes:

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

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

47 8. "Recycle" means to separate, dismantle or process the materials,
48 components or commodities contained in mattresses for the purpose of
49 preparing the materials, components or commodities for use or reuse in
50 new products or components. "Recycle" does not include:

51 (a) energy recovery or energy generation by any means, including but
52 not limited to, combustion, incineration, pyrolysis, gasification,
53 solvolysis, or waste to fuel;

54 (b) any chemical conversion process; or

55 (c) landfill disposal.

56 9. "Recycler" means a person that engages in recycling.

1 10. "Recycling rate" means the percentage of discarded mattresses that
2 is managed through recycling or reuse, as defined by subdivisions eight
3 and thirteen of this section, and is computed by dividing the amount of
4 discarded mattresses collected and recycled or reused by the estimated
5 total amount of discarded mattresses generated over a program year.

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

9 12. "Retailer" means any person who sells or offers for sale a
10 mattress to a consumer in the state.

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

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

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

24 16. "Upholstery material" means all material loose or attached between
25 the ticking and the core of the mattress.

26 § 27-3403. Producer plan.

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

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

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

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

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

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

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

47 (b) Information on the products covered by the program;

48 (c) A description of how the producer or representative organization
49 will collect, transport, recycle, and process discarded mattresses;

50 (d) The amount of the program assessment to operate the mattress
51 collection program which has been reviewed by an independent financial
52 auditor prior to submitting the plan to ensure that such assessment does
53 not exceed expenses necessary to operate the program over a multiyear
54 period.

55 (e)(1) i. A description of how the producer or representative organ-
56 ization shall provide for a convenient and cost-effective collection of

1 discarded mattresses, which may include, using existing public and
2 private waste collection channels and collection sites in the state
3 pursuant to voluntary agreements. Such description shall also include a
4 description of how the program will achieve within a reasonable period
5 of time a minimum convenience goal which ensures that all counties of
6 the state shall have at least one collection site, and within two years
7 after the program approval, not less than seventy percent of the state's
8 residents will live within a fifteen mile radius of a collection site,
9 and within three years after the program approval, not less than eighty
10 percent of the state's residents will live within a fifteen mile radius
11 of a collection site.

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

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

23 i. Enter into voluntary agreements to establish collection sites at
24 public and private solid waste facilities; transfer stations; landfills;
25 recyclables handling and recovery facilities that are permitted or
26 registered with the department; or other suitable sites for the
27 collection of discarded mattresses;

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

30 iii. Negotiate mutually agreed upon voluntary agreements with partic-
31 ipating collection sites described in clause i of this subparagraph that
32 provide for reasonable compensation for the actual costs these
33 collection sites incur to handle, store, and transport discarded
34 mattresses for recycling;

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

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

46 (f) The names and locations of collection sites, transporters, and
47 recyclers who will manage discarded mattresses delivered to collection
48 sites at the time of plan submission;

49 (g) A description of how the discarded mattresses will be safely and
50 securely transported, tracked, and handled from collection sites through
51 final recycling and processing;

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

55 (i) A description of the methods to be used to manage or dispose of
56 discarded mattresses that cannot be recycled or reused;

1 (j) A detailed description of the outreach and educational materials
2 that must be provided to consumers, retailers, collection sites, and
3 transporters of discarded mattresses, and how such outreach will be
4 evaluated for effectiveness;

5 (k) A description of how the program will meet annual performance
6 goals, including collection, recycling, and reuse rates, as determined
7 by the department through rules and regulations, provided that at a
8 minimum, the program shall achieve the following recycling rates:

9 (i) a forty percent recycling rate of mattresses by three years after
10 the plan is approved by the department pursuant to section 27-3409 of
11 this title;

12 (ii) a fifty-five percent recycling rate of mattresses by seven years
13 after the plan is approved by the department pursuant to section 27-3409
14 of this title;

15 (iii) a seventy percent recycling rate of mattresses by ten years
16 after the plan is approved by the department pursuant to section 27-3409
17 of this title;

18 (l) A description of what, if any, incentives will be used to encour-
19 age retailer participation;

20 (m) A description of the outreach and education methods that will be
21 used to encourage municipal landfill and transfer station participation;
22 and

23 (n) any other information required by the department to implement the
24 program.

25 § 27-3405. Producer responsibilities.

26 1. Beginning six months after the plan is approved under subdivision
27 four of section 27-3409 of this title, the producer or representative
28 organization shall implement the mattress collection program utilizing
29 collection sites pursuant to paragraph (e) of subdivision four of
30 section 27-3403 of this title.

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

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

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

47 5. A producer or representative organization shall use the revenue
48 generated from the program assessments collected from retailers to pay
49 all costs associated with the implementation of the mattress collection
50 program. A producer or representative organization shall pay costs
51 incurred by the state in the administration and enforcement of this
52 title. Exclusive of fines and penalties, the state shall only recover
53 its actual direct cost of administration and enforcement.

54 6. Any person who becomes a producer on or after December thirty-
55 first, two thousand twenty-eight shall submit a plan to the department,
56 or notify the department that it has joined an existing plan, prior to

1 selling or offering for sale in the state any mattress, and shall comply
2 with the requirements of this title.

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

8 (a) a detailed description of the methods used to collect, transport,
9 and process discarded mattresses in the state, including detailing
10 collection methods made available to consumers and an evaluation of the
11 program's collection convenience;

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

13 (c) the estimated weight of all discarded mattresses collected, recy-
14 cled, or reused pursuant to the mattress collection program;

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

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

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

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

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

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

31 9. (a) A producer or representative organization shall not be liable
32 for any claim of a violation of antitrust, restraint of trade, or unfair
33 trade practice arising from an action undertaken, in accordance with a
34 mattress collection program approved by the department, solely to
35 increase the collection and recycling of mattresses, which affects the
36 types and quantities being collected and recycled or the cost and struc-
37 ture of such collection program that the producer or representative
38 organization is participating in pursuant to this title.

39 (b) Provided, however, paragraph (a) of this subdivision shall not
40 apply to any agreement establishing or affecting the price or output of
41 mattresses or restricting the geographic area or customers to which
42 mattresses will be sold.

43 § 27-3407. Retailer responsibilities.

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

51 2. Any retailer may participate, on a voluntary basis, as a designated
52 collection site pursuant to a mattress collection program and in accord-
53 ance with all applicable laws and regulations.

54 3. Upon implementation of the program, each retailer shall include in
55 the price of any mattress sold to a consumer in the state the program
56 assessment pursuant to the approved program plan. A retailer shall not

1 deduct this assessment from the purchase price. A retailer shall identi-
2 fy the program assessment as a separate line item on the receipt and
3 such assessment shall be described on the receipt as a "stewardship
4 assessment fee".

5 4. Retailers and other sellers shall regularly remit the program
6 assessments they collect to the producer or representative organization,
7 as appropriate.

8 § 27-3409. Department responsibilities.

9 1. The department shall maintain a list of producers, including a list
10 of such producers' brands, who are participating under a department
11 approved plan and post such list on the department's website.

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

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

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

33 5. The department shall submit a report regarding the implementation
34 of this title in this state to the governor and legislature by April
35 first, two thousand thirty and every two years thereafter. The report
36 shall include, at a minimum, an evaluation of:

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

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

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

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

42 § 27-3411. Mattress stewardship advisory board.

43 1. There is hereby established within the department a mattress
44 stewardship advisory board to make recommendations to the commissioner
45 regarding producer plans required by this title.

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

48 (a) One representative of mattress producers;

49 (b) Two representatives of mattress retailers;

50 (c) One representative of mattress recyclers;

51 (d) Two representatives of mattress collectors;

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

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

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

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

- 1 (i) One representative from a consumer organization; and
- 2 (j) One representative from a statewide recycling organization.

3 3. The members shall be appointed as follows:

4 (a) Two members to be appointed by the temporary president of the
5 senate;

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

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

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

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

11 4. Such appointments shall be made no later than sixty days following
12 the date on which this title takes effect. The members shall designate a
13 chair from among the members by majority vote. Board members shall
14 receive no compensation but shall be entitled to their necessary and
15 actual expenses incurred in the performance of their board duties.

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

17 § 27-3413. Enforcement and penalties.

18 Any producer, representative organization, or retailer who violates
19 any provision of or who fails to perform any duty imposed pursuant to
20 this title shall be liable for a civil penalty not to exceed five
21 hundred dollars for each violation and an additional penalty of not more
22 than five hundred dollars for each day during which such violation
23 continues. Civil penalties under this section shall be assessed by the
24 department after a hearing or opportunity to be heard pursuant to the
25 provisions of section 71-1709 of this chapter.

26 § 27-3415. Rules and regulations.

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

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

31 § 71-1701. Applicability of this title.

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

35 § 3. This act shall take effect immediately.