Sponsored by:
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District 4 (Camden and Gloucester)

SYNOPSIS
Prohibits sale, distribution, and import of certain products marketed as recyclable, unless DEP determines that products are widely recycled.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to offer for sale, sell, distribute, or import into the State any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.
   b. Except as provided in subsection c. of this section, a product or packaging that displays a chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating the product or packaging is recyclable, or otherwise directing the consumer to recycle the product or packaging, shall be considered a deceptive or misleading claim pursuant to this section, unless the product or packaging is considered recyclable in the State pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging.
   (1) If a product or packaging has multiple material types, a chasing arrows symbol or statement indicating recyclability may be displayed on its external packaging if the external packaging is considered to be recyclable in the State pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), and if the chasing arrows symbol or statement makes clear, in the same or greater font size or symbol size, which other components of the product or packaging are not recyclable.
   (2) Displaying a chasing arrows symbol or any other statement indicating recyclability on packaging containing a consumable product shall, for the purposes of this section, be deemed to refer only to the packaging.
   c. The provisions of this section shall not apply to:
      (1) any product or packaging that is manufactured up to 18 months after the date the Department of Environmental Protection publishes the first material characterization study required pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), or before January 1, 2024, whichever is later;
      (2) any product or packaging manufactured up to 18 months after the date the Department of Environmental Protection updates the material characterization study pursuant to section 2 of P.L. ,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
c. (C. ) (pending before the Legislature as this bill), if the
product or packaging satisfied or, for a new product or packaging,
would have satisfied, the requirements to be considered recyclable
in the State before the publication of the updated study;
(3) the use of a chasing arrows symbol in combination with a
clearly visible line placed at a 45-degree angle over the chasing
arrows symbol to convey that an item is not recyclable;
(4) any product or packaging that is required by any federal or
State law, rule, or regulation to display a chasing arrows symbol,
including, but not limited to, Section 103(b)(1) of the federal
Mercury-Containing and Rechargeable Battery Management Act
(42 U.S.C. Sec. 14322(b)(1));
(5) text or symbols that direct a consumer to compost or
properly dispose of any product or packaging through an organics
recycling program; or
(6) the use of a resin identification code placed inside a solid
equilateral triangle.

d. For the purposes of this section:
"Consumable product" means a commodity that is intended to be
used and not disposed of.
"Chasing arrows symbol" means an equilateral triangle, formed
by three arrows curved at their midpoints, depicting a clockwise
path, with a short gap separating the apex of each arrow from the
base of the adjacent arrow. "Chasing arrows symbol" also includes
variants of that symbol that are likely to be interpreted by a
consumer as an implication of recyclability, including, but not
limited to, one or more arrows arranged in a circular pattern or
around a globe.

2. (New section) a. On or before January 1, 2024, in order to
provide information to the public sufficient for evaluating whether a
product or packaging is recyclable in the State and is of a material
type and form that routinely becomes feedstock used in the
production of new products or packaging, the department shall
conduct a material characterization study of material types and
forms that are collected, sorted, sold, or transferred by recycling
centers and solid waste facilities deemed appropriate by the
department for inclusion in the study. The study shall identify the
products and forms of packaging that are deemed to be recyclable in
the State and permitted to display the chasing arrows symbol
pursuant to section 1 of P.L. , c. (C. ) (pending before the
Legislature as this bill).
(1) The department shall update the material characterization
study required pursuant to this subsection every five years, with the
first update being issued by the department no later than January 1,
2027.
(2) For purposes of studying a representative sample of material
types and forms in the State, within 90 days after receiving a
request from the department, a recycling center shall allow for periodic sampling conducted by a designated representative of the department on a mutually-agreed upon date and time. The department shall not request a periodic sampling of a recycling center if that center was sampled during the previous 24 months.

(3) For each material characterization study conducted pursuant to this subsection, the department shall publish on its Internet website the preliminary findings of the study and conduct a public hearing to present the preliminary findings and receive public comments. The hearing shall occur at least 30 days after the department publishes the preliminary findings. The department shall provide public notice of the hearing by posting the time, date, and location on its Internet website at least 30 days prior to the hearing. After receiving and considering public comments, and within 60 days after the hearing, the department shall finalize the findings of the study and publish the study on its Internet website.

(4) The department’s activities pursuant to this subsection, including the department’s determination of the appropriate recycling centers to include in the material characterization study, shall be exempt from the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. Except as provided in subsection c. of this section, a product or packaging shall be considered recyclable in the State if, based on information published by the department pursuant to subsection a. of this section, the product or packaging is of a material type and form that meets both of the following requirements:

(1) the material type and form is collected for recycling by curbside recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the State; and

(2) the material type and form is sorted into defined streams for recycling by transfer stations, materials recovery facilities, or recycling centers that collectively serve at least 60 percent of recycling programs Statewide, with the defined streams sent to and utilized at a facility that transforms the materials into usable products or feedstocks.

c. A product or packaging shall not be considered recyclable pursuant to this section, if the product or packaging:

(1) includes any components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design Guide published by the Association of Plastic Recyclers;

(2) contains an intentionally added chemical that has been identified as hazardous pursuant to the "Worker and Community Right to Know Act," P.L.1983, c.315 (C.34:5A-1 et seq.);

(3) is made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances that (a) a manufacturer has intentionally added to the product or packaging and that have a functional or technical effect in the product or packaging, including
subcomponents and intentional breakdown products of other intentionally added chemicals, or (b) are present in a concentration at or above 100 parts per million, as measured in total organic fluorine.

d. Notwithstanding the provisions of section b. and c. of this section to the contrary:

(1) any product or packaging shall be deemed by the department to be recyclable in the State if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the State is reprocessed into new products or packaging;

(2) prior to January 1, 2030, a product or packaging that is not collected through a curbside collection program shall be deemed by the department to be recyclable, if the non-curbside collection methods in the State recover at least 60 percent of the product or packaging used in the State and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer station, materials recovery facility, or recycling center to be sorted and aggregated into defined streams by material type and form;

(3) after January 1, 2030, a product or packaging that is not collected through a curbside collection program shall be deemed by the department to be recyclable, if the non-curbside collection methods in the State recover at least 75 percent of the product or packaging used in the State and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer station, materials recovery facility, or recycling center to be sorted and aggregated into defined streams by material type and form; and

(4) a product or packaging shall be deemed by the department to be recyclable, if the product or packaging is part of, and in compliance with, a program established pursuant to State or federal law on or after January 1, 2022, governing the recyclability or disposal of that product or packaging, and if the department determines that the product or packaging will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging.

e. The department may adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to require the operator of any recycling center in the State to annually submit to the department each year (a) information about how the material collected or processed by the center was collected, and (b) what material types and forms are actively recycled, and not considered contaminants, by the center.

f. Nothing in this section shall be construed to limit the discretion of a solid waste management district under existing law.
to decide whether, and to what extent, a material type or form shall be accepted under a district recycling plan.

g. As used in this section, "chasing arrows symbol" means the same as the term is defined in section 1 of P.L. ___, c. ___ (pending before the Legislature as this bill).

3. Section 2 of P.L.1989, c.268 (C.13:1E-99.41) is amended to read as follows:

2. a. On or after January 1, 1991, no person shall sell, offer for sale, or distribute any plastic bottle or plastic container in this State unless the bottle or container is labeled with a material code indicating the plastic resin used to produce the bottle or container. Any plastic bottle or plastic container with a label or basecup affixed thereto, the composition of which consists of a different material than the bottle or container itself, shall be coded by its basic material.

   b. The material code shall consist of a uniform symbol and identification number, and an acronym comprising no more than five letters. The symbol shall consist of a [triangular-shaped configuration of three arrows with a specific number placed within the center of the symbol to indicate the composition of the material used to produce the bottle or container. The acronym shall be placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number] a solid equilateral triangle.

   c. The material code shall consist of an identification number and acronym as follows:

      (1) Polyethylene terephthalate: "1" and "PETE";
      (2) High density polyethylene: "2" and "HDPE";
      (3) Vinyl: "3" and "V";
      (4) Low density polyethylene: "4" and "LDPE";
      (5) Polypropylene: "5" and "PP";
      (6) Polystyrene: "6" and "PS"; and
      (7) All other plastic resins and laminates: "7" and "OTHER".

d. The commissioner shall maintain on file in the department for public inspection copies of the material code provided in subsection c. of this section. The department shall provide a copy to any person upon request.

(cf: P.L.1989, c.268, s.2)

4. This act shall take effect immediately.
This bill would make the sale, import, or distribution of any product or packaging that makes a deceptive or misleading claim about the recyclability of the product or packaging a violation of P.L.1960, c.39 (C.56:8-1 et seq.), commonly known as the “Consumer Fraud Act.”

Specifically, the bill would prohibit the sale, offering for sale, import, and distribution of products that use the "chasing arrows" recycling symbol (the well-known symbol that depicts a triangle composed of three arrows), unless the product is determined by the Department of Environmental Protection (DEP) to be recyclable in the State through material characterization study carried out and updated pursuant to the bill. The bill would establish certain exceptions for this prohibition, as enumerated in subsection c. of section 1 of the bill, including for products that are manufactured up to 18 months after the DEP carries out or updates the material characterization study. As provided by section 1 of P.L.1966, c.39 (C.56:8-13), an unlawful practice under the Consumer Fraud Act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense.

In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages and the awarding of treble damages and costs to the injured.

The bill would direct the DEP to conduct a material characterization study of material types and forms that are collected, sorted, sold, or transferred by recycling centers and solid waste facilities in the State. The study would be required to identify the products and forms of packaging that are deemed to be recyclable in the State and therefore permitted to display the chasing arrows symbol pursuant to section 1 of the bill. The first study would be required to be conducted by January 1, 2024, the second study by January 1, 2027, and subsequent studies every five years after 2027. The bill would also require the DEP to hold a public meeting on its findings prior the final publication of each study. The bill would establish certain requirements regarding the DEP's identification of recyclable products, as enumerated in subsections b. through d. of section 2 of the bill. In particular, the bill would require that products and packaging that are (1) collected by curbside recycling programs that collectively account for 60 percent of the State's population, and (2) sorted into defined streams for recycling processes by transfer stations, materials recovery facilities, or recycling centers that collectively serve at least 60 percent of recycling programs Statewide would be deemed recyclable by the DEP. The bill would also explicitly exclude certain products – such as those that contain hazardous chemicals or perfluoroalkyl or polyfluoroalkyl substances (PFAS) – from being deemed recyclable by the DEP. In addition, the bill would direct...
the DEP to deem certain other products recyclable, as described in subsection d. of section 2 of the bill, including certain products that are widely recycled through non-curbside collection programs.

The bill would also authorize the DEP to adopt rules and regulations that would require the operators of recycling centers in the State to provide certain information each year to the DEP, in order to assist with its material characterization study.

Finally, the bill would amend existing law, which requires the using of the chasing arrows symbol on certain plastic bottles and containers sold in the State, in order to make it consistent with the bill's provisions.