STATE OF NEW YORK

7668

2021-2022 Regular Sessions

IN ASSEMBLY

May 19, 2021

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to false claims about recyclability and plastic container labelling

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

Section 1. The Legislature finds and declares that it is the public policy of the state that environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. For consumers to have accurate and useful information about the environmental impact of plastic products, environmental marketing claims should adhere to uniform and recognized standards.

The Legislature further finds and declares that it is the public policy of the state that claims related to the recyclability of a plastic product be truthful in practice and accurate. Consumers deserve accurate and useful information related to how to properly handle the end of life of a plastic product.

§ 2. The environmental conservation law is amended by adding a new section 27-0511 to read as follows:

§ 27-0511. Recycling truth in labeling.

1. It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established mechanical or manual recycling program for reuse or use in manufacturing or assembling another item.

2. No person shall offer for sale, sell or distribute any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.

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

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3. Subdivision two of this section applies to any product or packaging that is manufactured one hundred eighty days or more after the date the list of approved material types and forms is published pursuant to subdivision four of this section.

4. On or before January 1, 2024, the department shall develop regulations to:

(a) include the types and forms of plastic products and packaging for which a claim of recyclability, including through the use of a universal recycling symbol or chasing arrows symbol may be made; and

(b) develop a list of material types and forms that are determined to be recyclable based on the criteria listed in subdivision five and shall publish the list on the department website within ninety days of approving the regulations.

5. For purposes of determining which material types and forms are recyclable, the department shall consider, at a minimum, all of the following criteria:

(a) Whether the material type and form is regularly collected, separated, for mechanical or manual recycling by recyclers;

(b) Whether the material type and form is regularly sorted and aggregated into defined streams for recycling processes;

(c) Whether the material type and form is regularly processed and reclaimed or recycled with commercial recycling processes;

(d) Whether the material type and form regularly becomes feedstock that is used in the production of new products; and

(e) Whether the material type and form is recycled in sufficient quantity, and is of sufficient quality, to maintain a market value.

6. The department shall regularly, but no less than once every three years, evaluate the list described in paragraph (b) of subdivision four of this section and may amend the list to remove or add a material type and form based on whether the material meets the criteria of subdivision five of this section at the time of evaluation. The department shall post any updates to the list on the department's website.

7. If a material type or form no longer meets the criteria in subdivision five of this section and is removed from the published list, a person shall not offer for sale, sell or distribute any product or packaging manufactured one hundred eighty days after the date the updated list is published if the product or packaging displays a chasing arrows symbol or any other symbol or statement indicating the product or packaging is recyclable, or directing the consumer to recycle the product or packaging.

8. (a) A producer, or group of producers, that seeks to have a material type and form that does not meet the criteria in subdivision five of this section included on the list shall submit a plan to the department detailing how and by what date the product type and form will meet the criteria.

(b) The department shall review the plan and determine if the material type and form will meet the criteria in subdivision five by the date prescribed in the plan if the plan is implemented. If the department determines it will, the department shall include the material type and form on the list.

(c) The department may offer revisions to the plan if necessary, including requiring that the material type and form meet the criteria in a more timely manner.

(d) The department may require the producer, or group of producers, who submitted the plan to provide an annual report detailing the progress made toward implementing the plan. If the department determines

the producer, or group of producers, is not implementing the plan or that progress is not sufficient to ensure the product type and form can meet the criteria by the date included in the plan, the department may do either of the following:

(i) Remove the material type and form from the list within one hundred eighty days; or

(ii) Allow the producer, or group of producers, to update and resubmit the plan.

§ 3. The environmental conservation law is amended by adding a new section 27-0513 to read as follows:

§ 27-0513. Plastic container labelling.

1. All rigid plastic bottles and rigid plastic containers sold in New York shall be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. The code shall be visible on the label and consist of a number placed inside a chasing arrows symbol. The numbers used shall be as follows:

1 = PETE (polyethylene terephthalate)

2 = HDPE (high density polyethylene)

3 = V (vinyl)

4 = LDPE (low density polyethylene)

5 = PP (polypropylene)

6 = PS (polystyrene)

7 = OTHER (includes multilayer)

2. A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

3. The department shall maintain a list of abbreviations used on labels pursuant to subdivision one and shall post such information on the department's website.

4. The resin identification code required pursuant to subdivision one of this section shall not be placed inside a chasing arrows symbol unless the product is recyclable in the state pursuant to section 27-0511 of this title.

§ 4. This act shall take effect immediately.