

# STATE OF NEW YORK

1400--A

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sens. LIU, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

9 The Legislature further finds and declares that it is the public poli-  
10 cy of the state that claims related to the recyclability of a plastic  
11 product be truthful in practice and accurate. Consumers deserve accurate  
12 and useful information related to how to properly handle the end of life  
13 of a plastic product.

14 § 2. The environmental conservation law is amended by adding two new  
15 sections 27-0111 and 27-0113 to read as follows:

16 § 27-0111. Recycling truth in labeling.

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

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

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1 arrows symbol is deceptive and a misrepresentation if the product does  
2 not satisfy the requirements of the regulations and list contemplated by  
3 subdivision four of this section.

4 2. No person shall offer for sale, sell or distribute any product or  
5 packaging for which a deceptive or misleading claim about the recycla-  
6 bility of the product or packaging is made. For such purposes, the use  
7 of a chasing arrows symbol is deceptive and misleading if the product  
8 does not satisfy the requirements of the regulations and list contem-  
9 plated by subdivision four of this section.

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

14 4. On or before January 1, 2026, the department shall promulgate regu-  
15 lations to:

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

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

23 5. For purposes of determining which material types and forms are  
24 recyclable:

25 (a) The department shall consider, at a minimum, all of the following  
26 criteria:

27 (i) whether the material type and form is regularly collected and  
28 separated for mechanical or manual recycling by recyclers;

29 (ii) whether the material type and form is regularly sorted and aggre-  
30 gated into defined material streams for mechanical or manual recycling  
31 processes;

32 (iii) whether the material type and form is regularly processed and  
33 reclaimed or recycled with commercial mechanical or manual recycling  
34 processes;

35 (iv) whether the material type and form regularly becomes feedstock in  
36 accordance with the other criteria of this subdivision that is used in  
37 the production of new products; and

38 (v) whether the material type and form is mechanically or manually  
39 recycled in sufficient quantity, and is of sufficient quality, to main-  
40 tain a market value; and

41 (b) A product or packaging shall not be considered recyclable in the  
42 state if:

43 (i) for plastic packaging, the plastic packaging includes any compo-  
44 nents, inks, adhesives, or labels that prevent the recyclability of the  
45 packaging according to the APR Design Guide published by the Associ-  
46 ation of Plastic Recyclers;

47 (ii) the product or packaging does not conform to the requirements of  
48 title two of article thirty-seven of this chapter; or

49 (iii) the product contains PFAS (A) as an intentionally added chemical  
50 or (B) after January first, two thousand twenty-eight, at or above a  
51 level that the department shall establish in regulation that is the  
52 lowest level that can feasibly be achieved; provided, however, that the  
53 department shall review such level at least every five years to deter-  
54 mine whether it should be lowered.

55 6. The department shall regularly, but no less than once every three  
56 years, evaluate the list described in paragraph (b) of subdivision four

1 of this section and may amend the list to remove or add a material type  
2 and form based on whether the material meets the criteria of subdivision  
3 five of this section at the time of evaluation. The department shall  
4 post any updates to the list on the department's website.

5 7. If a product or packaging has multiple material types, a chasing  
6 arrows symbol or statement indicating recyclability may be displayed on  
7 the product or packaging components that are considered to be recyclable  
8 in accordance with the regulations and list required by subdivision four  
9 of this section if the chasing arrows symbol or statement makes clear  
10 in the same or greater font, font size, or symbol size which other  
11 components of the product or packaging are not recyclable.

12 8. If a material type or form no longer meets the criteria in subdivi-  
13 sion five of this section and is removed from the published list, a  
14 person shall not offer for sale, sell or distribute any product or pack-  
15 aging manufactured one hundred eighty days after the date the updated  
16 list is published if the product or packaging displays a chasing arrows  
17 symbol or any other symbol or statement indicating the product or pack-  
18 aging is recyclable, or directing the consumer to recycle the product or  
19 packaging.

20 9. Displaying a chasing arrows symbol or any other statement indicat-  
21 ing recyclability on packaging containing a consumable product shall,  
22 for purposes of this section, be deemed to refer only to the packaging.

23 10. For purposes of this section, none of the following constitutes a  
24 deceptive or misleading claim about the recyclability of the product or  
25 packaging pursuant to this section:

26 (a) using a chasing arrows symbol in combination with a clearly visi-  
27 ble line placed at a 45-degree angle over the chasing arrows symbol to  
28 convey that an item is not recyclable;

29 (b) a consumer good that is required by any federal or state law or  
30 regulation to display a chasing arrows symbol, including, but not limit-  
31 ed to, Section 103(b)(1) of the federal Mercury-Containing and Recharge-  
32 able Battery Management Act (42 U.S.C. Sec. 14322(b)(1)); or

33 (c) directing a consumer to compost or properly dispose of a consumer  
34 good through an organics recycling program.

35 11. (a) A producer, or group of producers, that seeks to have a mate-  
36 rial type and form that does not meet the criteria in subdivision five  
37 of this section included on the list shall submit a plan to the depart-  
38 ment detailing how and by what date the product type and form will meet  
39 the criteria.

40 (b) The department shall review the plan and determine if the material  
41 type and form will meet the criteria in subdivision five by the date  
42 prescribed in the plan if the plan is implemented. If the department  
43 determines the plan will contain such criteria by such date, the depart-  
44 ment may include the material type and form on the list at such time as  
45 the department has determined that sufficient progress has been made by  
46 the producer in implementing the plan that such inclusion is warranted.

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

50 (d) The department may require the producer, or group of producers,  
51 who submitted the plan to provide an annual report detailing the  
52 progress made toward implementing the plan. If the department determines  
53 the producer, or group of producers, is not implementing the plan or  
54 that progress is not sufficient to ensure the product type and form can  
55 meet the criteria by the date included in the plan, the department may  
56 do either of the following:

1 (i) Remove the material type and form from the list; or  
2 (ii) Allow the producer, or group of producers, to update and resubmit  
3 the plan for consideration in accordance with this subdivision.

4 12. The department shall update its website, outreach, and educational  
5 programs and materials as applicable to inform the public regarding the  
6 requirements of this section and section 27-0113 of this article.

7 13. For purposes of this section:

8 (a) "Chasing arrows symbol" means an equilateral triangle, formed by  
9 three arrows curved at their midpoints, depicting a clockwise path, with  
10 a short gap separating the apex of each arrow from the base of the adja-  
11 cent arrow. "Chasing arrows symbol" also includes variants of the chas-  
12 ing arrows symbol, and other symbols that resemble the chasing arrows  
13 symbol that are likely to be interpreted by a consumer as an implication  
14 of recyclability, including, but not limited to, (i) any form of trian-  
15 gle with a number inside of it or (ii) one or more arrows arranged in a  
16 circular pattern or around a globe.

17 (b) "Consumable product" means a commodity that is intended to be used  
18 and not disposed of.

19 (c) "Intentionally added chemical" means a chemical in a product that  
20 serves an intended function or technical effect in the product or prod-  
21 uct component, including the PFAS within intentionally added chemicals  
22 and PFAS that are intentional breakdown products of an added chemical  
23 that also have a functional or technical effect in the product or prod-  
24 uct component.

25 (d) "PFAS" shall have the meaning given to such term in subdivision  
26 seven of section 37-0101 of this chapter.

27 § 27-0113. Plastic container labeling.

28 1. All rigid plastic bottles and rigid plastic containers sold in New  
29 York shall be labeled with a code that indicates the resin used to  
30 produce the rigid plastic bottle or rigid plastic container. Rigid plas-  
31 tic bottles or rigid plastic containers with labels and basecups of a  
32 different material shall be coded by their basic material. The code  
33 shall be visible on the label and consist of a number and letters placed  
34 above the number. The numbers and letters used shall be as follows:

35 1 = PETE (polyethylene terephthalate)

36 2 = HDPE (high density polyethylene)

37 3 = V (vinyl)

38 4 = LDPE (low density polyethylene)

39 5 = PP (polypropylene)

40 6 = PS (polystyrene)

41 7 = OTHER (includes multilayer)

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

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

47 4. The resin identification code required pursuant to subdivision one  
48 of this section may not be placed inside a chasing arrows symbol unless  
49 the product is on the list of recyclable materials pursuant to paragraph  
50 (b) of subdivision four of section 27-0111 of this title.

51 § 3. This act shall take effect one year after it shall have become a  
52 law.