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:

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 two new sections 27-0111 and 27-0113 to read as follows:

§ 27-0111. 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. For such purposes, the use of a chasing

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

LBD02916-02-4

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

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. For such purposes, the use of a chasing arrows symbol is deceptive and misleading if the product does not satisfy the requirements of the regulations and list contemplated by subdivision four of this section.

3. Subdivisions one and two of this section apply 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, 2026, the department shall promulgate 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:

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

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

(ii) whether the material type and form is regularly sorted and aggregated into defined material streams for mechanical or manual recycling processes;

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

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

(v) whether the material type and form is mechanically or manually recycled in sufficient quantity, and is of sufficient quality, to maintain a market value; and

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

(i) for plastic packaging, the plastic packaging 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;

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

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

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

8. 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.

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

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

(a) using 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;

(b) a consumer good that is required by any federal or state law 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)); or

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

11. (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 the plan will contain such criteria by such date, the department may include the material type and form on the list at such time as the department has determined that sufficient progress has been made by the producer in implementing the plan that such inclusion is warranted.

(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; or

(ii) Allow the producer, or group of producers, to update and resubmit the plan for consideration in accordance with this subdivision.

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

13. For purposes of this section:

(a) "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 the chasing arrows symbol, and other symbols that resemble the chasing arrows symbol that are likely to be interpreted by a consumer as an implication of recyclability, including, but not limited to, (i) any form of triangle with a number inside of it or (ii) one or more arrows arranged in a circular pattern or around a globe.

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

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

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

§ 27-0113. Plastic container labeling.

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 and letters placed above the number. The numbers and letters 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 of this section and shall post such information on the department's website.

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

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