

ASSEMBLY, No. 1554

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman PAUL D. MORIARTY

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.



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1 AN ACT concerning the recyclability of certain products,
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.) and P.L.1987,
3 c.102 (C.13:1E-99.11 et seq.), and amending P.L.1989, c.268.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) a. It shall be an unlawful practice and a
9 violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to offer
10 for sale, sell, distribute, or import into the State any product or
11 packaging for which a deceptive or misleading claim about the
12 recyclability of the product or packaging is made.

13 b. Except as provided in subsection c. of this section, a product
14 or packaging that displays a chasing arrows symbol, a chasing
15 arrows symbol surrounding a resin identification code, or any other
16 symbol or statement indicating the product or packaging is
17 recyclable, or otherwise directing the consumer to recycle the
18 product or packaging, shall be considered a deceptive or misleading
19 claim pursuant to this section, unless the product or packaging is
20 considered recyclable in the State pursuant to section 2 of P.L. , c.
21 (C.) (pending before the Legislature as this bill) and is of a
22 material type and form that routinely becomes feedstock used in the
23 production of new products or packaging.

24 (1) If a product or packaging has multiple material types, a
25 chasing arrows symbol or statement indicating recyclability may be
26 displayed on its external packaging if the external packaging is
27 considered to be recyclable in the State pursuant to section 2 of
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 and if the chasing arrows symbol or statement makes clear, in the
30 same or greater font size or symbol size, which other components of
31 the product or packaging are not recyclable.

32 (2) Displaying a chasing arrows symbol or any other statement
33 indicating recyclability on packaging containing a consumable
34 product shall, for the purposes of this section, be deemed to refer
35 only to the packaging.

36 c. The provisions of this section shall not apply to:

37 (1) any product or packaging that is manufactured up to 18
38 months after the date the Department of Environmental Protection
39 publishes the first material characterization study required pursuant
40 to section 2 of P.L. , c. (C.) (pending before the Legislature
41 as this bill), or before January 1, 2024, whichever is later;

42 (2) any product or packaging manufactured up to 18 months
43 after the date the Department of Environmental Protection updates
44 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.

- 1 c. (C.) (pending before the Legislature as this bill), if the
2 product or packaging satisfied or, for a new product or packaging,
3 would have satisfied, the requirements to be considered recyclable
4 in the State before the publication of the updated study;
- 5 (3) the use of a chasing arrows symbol in combination with a
6 clearly visible line placed at a 45-degree angle over the chasing
7 arrows symbol to convey that an item is not recyclable;
- 8 (4) any product or packaging that is required by any federal or
9 State law, rule, or regulation to display a chasing arrows symbol,
10 including, but not limited to, Section 103(b)(1) of the federal
11 Mercury-Containing and Rechargeable Battery Management Act
12 (42 U.S.C. Sec. 14322(b)(1));
- 13 (5) text or symbols that direct a consumer to compost or
14 properly dispose of any product or packaging through an organics
15 recycling program; or
- 16 (6) the use of a resin identification code placed inside a solid
17 equilateral triangle.
- 18 d. For the purposes of this section:
- 19 "Consumable product" means a commodity that is intended to be
20 used and not disposed of.
- 21 "Chasing arrows symbol" means an equilateral triangle, formed
22 by three arrows curved at their midpoints, depicting a clockwise
23 path, with a short gap separating the apex of each arrow from the
24 base of the adjacent arrow. "Chasing arrows symbol" also includes
25 variants of that symbol that are likely to be interpreted by a
26 consumer as an implication of recyclability, including, but not
27 limited to, one or more arrows arranged in a circular pattern or
28 around a globe.
- 29
- 30 2. (New section) a. On or before January 1, 2024, in order to
31 provide information to the public sufficient for evaluating whether a
32 product or packaging is recyclable in the State and is of a material
33 type and form that routinely becomes feedstock used in the
34 production of new products or packaging, the department shall
35 conduct a material characterization study of material types and
36 forms that are collected, sorted, sold, or transferred by recycling
37 centers and solid waste facilities deemed appropriate by the
38 department for inclusion in the study. The study shall identify the
39 products and forms of packaging that are deemed to be recyclable in
40 the State and permitted to display the chasing arrows symbol
41 pursuant to section 1 of P.L. , c. (C.) (pending before the
42 Legislature as this bill).
- 43 (1) The department shall update the material characterization
44 study required pursuant to this subsection every five years, with the
45 first update being issued by the department no later than January 1,
46 2027.
- 47 (2) For purposes of studying a representative sample of material
48 types and forms in the State, within 90 days after receiving a

1 request from the department, a recycling center shall allow for
2 periodic sampling conducted by a designated representative of the
3 department on a mutually-agreed upon date and time. The
4 department shall not request a periodic sampling of a recycling
5 center if that center was sampled during the previous 24 months.

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

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

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

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

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

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

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

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

44 (3) is made from plastic or fiber that contains perfluoroalkyl or
45 polyfluoroalkyl substances that (a) a manufacturer has intentionally
46 added to the product or packaging and that have a functional or
47 technical effect in the product or packaging, including

1 subcomponents and intentional breakdown products of other
2 intentionally added chemicals, or (b) are present in a concentration
3 at or above 100 parts per million, as measured in total organic
4 fluorine.

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

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

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

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

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

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

46 f. Nothing in this section shall be construed to limit the
47 discretion of a solid waste management district under existing law

1 to decide whether, and to what extent, a material type or form shall
2 be accepted under a district recycling plan.

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

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

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

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

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

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

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

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

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46 4. This act shall take effect immediately.

STATEMENT

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

8 Specifically, the bill would prohibit the sale, offering for sale,
9 import, and distribution of products that use the "chasing arrows"
10 recycling symbol (the well-known symbol that depicts a triangle
11 composed of three arrows), unless the product is determined by the
12 Department of Environmental Protection (DEP) to be recyclable in
13 the State through material characterization study carried out and
14 updated pursuant to the bill. The bill would establish certain
15 exceptions for this prohibition, as enumerated in subsection c. of
16 section 1 of the bill, including for products that are manufactured up
17 to 18 months after the DEP carries out or updates the material
18 characterization study. As provided by section 1 of P.L.1966, c.39
19 (C.56:8-13), an unlawful practice under the Consumer Fraud Act is
20 punishable by a monetary penalty of not more than \$10,000 for a
21 first offense and not more than \$20,000 for any subsequent offense.
22 In addition, a violation can result in cease and desist orders issued
23 by the Attorney General, the assessment of punitive damages and
24 the awarding of treble damages and costs to the injured.

25 The bill would direct the DEP to conduct a material
26 characterization study of material types and forms that are
27 collected, sorted, sold, or transferred by recycling centers and solid
28 waste facilities in the State. The study would be required to
29 identify the products and forms of packaging that are deemed to be
30 recyclable in the State and therefore permitted to display the
31 chasing arrows symbol pursuant to section 1 of the bill. The first
32 study would be required to be conducted by January 1, 2024, the
33 second study by January 1, 2027, and subsequent studies every five
34 years after 2027. The bill would also require the DEP to hold a
35 public meeting on its findings prior the final publication of each
36 study. The bill would establish certain requirements regarding the
37 DEP's identification of recyclable products, as enumerated in
38 subsections b. through d. of section 2 of the bill. In particular, the
39 bill would require that products and packaging that are (1) collected
40 by curbside recycling programs that collectively account for 60
41 percent of the State's population, and (2) sorted into defined streams
42 for recycling processes by transfer stations, materials recovery
43 facilities, or recycling centers that collectively serve at least 60
44 percent of recycling programs Statewide would be deemed
45 recyclable by the DEP. The bill would also explicitly exclude
46 certain products – such as those that contain hazardous chemicals or
47 perfluoroalkyl or polyfluoroalkyl substances (PFAS) – from being
48 deemed recyclable by the DEP. In addition, the bill would direct

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1 the DEP to deem certain other products recyclable, as described in
2 subsection d. of section 2 of the bill, including certain products that
3 are widely recycled through non-curbside collection programs.

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

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