

SENATE, No. 2145

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 7, 2022

Sponsored by:

Senator FRED H. MADDEN, JR.

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

As introduced.



S2145 MADDEN

2

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
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 and is of a material type and form that routinely becomes feedstock
23 used in the 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
45 P.L. ,c. (C.) (pending before the Legislature as this bill), if
46 the product or packaging satisfied or, for a new product or

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 packaging, would have satisfied, the requirements to be considered
2 recyclable in the State before the publication of the updated study;

3 (3) the use of a chasing arrows symbol in combination with a
4 clearly visible line placed at a 45-degree angle over the chasing
5 arrows symbol to convey that an item is not recyclable;

6 (4) any product or packaging that is required by any federal or
7 State law, rule, or regulation to display a chasing arrows symbol,
8 including, but not limited to, Section 103(b)(1) of the federal
9 Mercury-Containing and Rechargeable Battery Management Act
10 (42 U.S.C. Sec. 14322(b)(1));

11 (5) text or symbols that direct a consumer to compost or
12 properly dispose of any product or packaging through an organics
13 recycling program; or

14 (6) the use of a resin identification code placed inside a solid
15 equilateral triangle.

16 d. For the purposes of this section:

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

19 "Chasing arrows symbol" means an equilateral triangle, formed
20 by three arrows curved at their midpoints, depicting a clockwise
21 path, with a short gap separating the apex of each arrow from the
22 base of the adjacent arrow. "Chasing arrows symbol" also includes
23 variants of that symbol that are likely to be interpreted by a
24 consumer as an implication of recyclability, including, but not
25 limited to, one or more arrows arranged in a circular pattern or
26 around a globe.

27

28 2. (New section) a. On or before January 1, 2024, in order to
29 provide information to the public sufficient for evaluating whether a
30 product or packaging is recyclable in the State and is of a material
31 type and form that routinely becomes feedstock used in the
32 production of new products or packaging, the department shall
33 conduct a material characterization study of material types and
34 forms that are collected, sorted, sold, or transferred by recycling
35 centers and solid waste facilities deemed appropriate by the
36 department for inclusion in the study. The study shall identify the
37 products and forms of packaging that are deemed to be recyclable in
38 the State and permitted to display the chasing arrows symbol
39 pursuant to section 1 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 (1) The department shall update the material characterization
42 study required pursuant to this subsection every five years, with the
43 first update being issued by the department no later than January 1,
44 2027.

45 (2) For purposes of studying a representative sample of material
46 types and forms in the State, within 90 days after receiving a
47 request from the department, a recycling center shall allow for
48 periodic sampling conducted by a designated representative of the
49 department on a mutually-agreed upon date and time. The

1 department shall not request a periodic sampling of a recycling
2 center if that center was sampled during the previous 24 months.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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40 4. This act shall take effect immediately.

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STATEMENT

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45 This bill would make the sale, import, or distribution of any
46 product or packaging that makes a deceptive or misleading claim
47 about the recyclability of the product or packaging a violation of
48 P.L.1960, c.39 (C.56:8-1 et seq.), commonly known as the
49 "Consumer Fraud Act."

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

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

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

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