
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021-2022 Regular

Bill No: SB 343

Author: Allen

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Urgency: No

Fiscal: Yes

Consultant: Rylie Ellison

SUBJECT: Environmental advertising: recycling symbol

DIGEST: Prohibits a person from offering for sale, selling, distributing, or importing into the state any product or packaging using a deceptive or misleading claim about its recyclability, including the display of a chasing arrows symbol or any other symbol or statement indicating recyclability, unless the Department of Resources Recycling and Recovery (CalRecycle) has determined the product or packaging is recyclable.

ANALYSIS:

Existing law:

- 1) Under provisions relating to Environmental Representations Law (Business and Professions Code (BPC) §17580 et seq.):
 - a) Requires any person who represents in advertising or on a label that the consumer good it manufactures or distributes is not harmful to, or is beneficial to, the natural environment through the use of certain terms (e.g., “ecologically friendly,” “earth friendly,” “green product,”) or any like term, to maintain in written form certain information and documentation supporting the validity of the representation. This information and documentation must be furnished to the public upon request.
 - b) Prohibits any person from making any untruthful, deceptive, or misleading environmental marketing claim. For purposes of this provision, “environmental marketing claim” includes any claim contained in the “Guides for the Use of Environmental Marketing Claims” published by the Federal Trade Commission (FTC).
 - c) Provides that any violation of these requirements is a misdemeanor punishable by imprisonment in the county jail not to exceed 6 months, or by a fine of no more than \$2,500, or both.

- 2) 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. (Public Resources Code (PRC) §42355.5)
- 3) Requires CalRecycle, on or before January 1, 2021, to adopt regulations to establish a process and develop criteria for determining the types of food service packaging that are reusable, recyclable, or compostable. (PRC §42370.2)
- 4) Requires all rigid plastic bottles and containers sold in the state to be labeled with a code that indicates the resin type of their basic material. The code shall be placed inside a triangle, and letters indicating resin abbreviation shall be placed below the triangle. (PRC §18015 et seq.)
 - a) Requires the Division of Recycling in CalRecycle to maintain a list of abbreviations used on labels pursuant to these requirements and to provide a copy of that list upon request.

This bill:

- 1) Prohibits a person from offering for sale, selling, distributing, or importing into California any product or packaging for which a deceptive or misleading claim about its recyclability is made.
- 2) Requires CalRecycle, on or before January 1, 2023, to develop and publish a list of the types and forms of plastic products and packaging for which a claim of recyclability, including through the use of a chasing arrows symbol, may be made.
 - a) Requires the director, in determining recyclability, to consider specified criteria, including whether the material type and form is eligible to be labeled as “recyclable” in accordance with specified federal standards, as well as whether the type and form is regularly collected, sorted, processed, becomes feedstock, and is recycled enough to maintain a market value.
 - b) Deems, after this list is published, a product or packaging that displays the chasing arrows symbol, a chasing arrows symbol surrounding a resin identification code, or any other symbol or statement indicating the product or packaging is recyclable or directing the consumer to recycle the product

or packaging to be deceptive or misleading unless CalRecycle has determined that it is recyclable.

- c) The department shall regularly, but no less than once every five years, evaluate and amend the list.
 - d) Prohibits a person from offering for sale, selling, distributing, or importing into the state any product or packaging that has been manufactured 90 days after the list is updated if the material type or form no longer meets the criteria, has been removed from the published list, and displays any of the symbols or statements described above.
 - e) Authorizes a producer, or a group of producers, that seeks to have a material type and form that does not meet the specified criteria included on the list to submit a plan to the department detailing how and by what date the product type and form will meet the criteria and requires the department to include that material type and form on the list if the department determines those criteria are met.
- 3) Prohibits the resin identification code, required on all rigid plastic bottles and containers sold in the state, from being placed inside a chasing arrows symbol, unless CalRecycle has determined it is recyclable in the state, as specified by this bill.
 - 4) Applies the recordkeeping requirements imposed on persons who advertise or label products as not harmful to, or is beneficial to, the natural environment to persons who use the chasing arrows symbol or otherwise direct consumers to recycle the product.

Background

- 1) *Statewide Commission on Recycling Markets and Curbside Recycling Report.* The California Recycling Market Development Act (AB 1583, Eggman, Chapter 690, Statutes of 2019) required CalRecycle to convene a Statewide Commission on Recycling Markets and Curbside Recycling to issue policy recommendations for achieving specified market development and waste reduction goals and to provide regular feedback to the department on public messaging designed to encourage proper recycling and to minimize contamination in curbside recycling programs. A preliminary policy report was published on January 1, 2021, proposing 19 different policies. One proposal, #15: “What is Recyclable?”, made recommendations very similar to SB 343 to ensure that “residential and commercial recycling collection programs only

collect material that is capable of being recycled through the collection and processing process.”

- 2) *Current recycling labeling practices.* The FTC broadly prohibits unfair and deceptive acts or practices in advertising. To aid marketers in avoiding making environmental claims that mislead consumers, the FTC issued “Green Guides,” which states that “a product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item,” and “marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.” The FTC has issued numerous warning letters and brought several enforcement actions against marketers over allegedly deceptive environmental claims. However, what can and cannot be recycled is variable and enforcement has been inconsistent. A Greenpeace USA survey of material recovery facilities (MRFs) found that hundreds of plastic products use misleading “recyclable” labels, based on what materials were actually recycled as of 2020.
- 3) *What is recyclable?* It is often unclear to consumers what is and is not recyclable. There are several reasons for this, including:
 - a) *Resin identification codes.* In California, rigid plastic bottles and containers are required to display a resin identification code (RIC) inside of a triangle or a chasing arrows symbol. Consumers often assume this code means a package is automatically recyclable, but that is not the case. According to CalRecycle, only plastics with the code #1 for polyethylene terephthalate (PET), used in water and soda bottles, and #2 high-density polyethylene (HDPE), used in milk jugs and shampoo bottles, are commonly recycled. The rest of the resin types #3-7 are generally not recycled. Most of the products made from these materials end up being sent to landfills or incinerated.
 - b) *Mixed materials and contamination.* Recyclability is further complicated by multi-layered materials such as films, coatings, or labels. For example, while a plastic water bottle can be recycled, the plastic shrink sleeve label on it may not. Contamination from food or product residue is another consideration. Dirty or soiled plastics are worth less due to extra cleaning costs and they can also contaminate paper waste if placed in the same bin.
 - c) *Regional and temporal variability.* The way plastics are recycled are complex and varies by jurisdiction. What can be recycled in one area of the

state, may not be recyclable in another. As of 2015, there were an estimated 161 MRFs statewide. According to a 2020 Recyclability Screening Survey of 76 CA MRFs, plastic items made from resins #3-7 were accepted at a rate of 1-82% depending on the type of item. While all MRFs accepted PET and HDPE bottles and jugs, there was also variability in other #1 and #2 resin items accepted, such as PET clamshells, cups and HDPE rigid containers. Regardless of what items are collected, the survey indicated that most of those materials are not separated into individual bales and ultimately recycled.

What can be recycled within a particular jurisdiction will also vary over time depending on when a waste hauler can sell their collected materials. This has been particularly true throughout 2020 as a result of the Covid-19 crisis, recycling centers minimized hours and enforcement of bottle and can redemption was suspended.

- 4) *A market in flux.* One major driver of California's recycling efforts is the broader market for recyclable materials. In order for material to be recycled and not end up in a landfill, the cost of processing and using the recycled material must be less than that of virgin material. Prices for materials can fluctuate wildly over both the short term and the long term, leading to instability in recycling markets.

This is particularly true in recent years. California historically has exported about a third of its recycling, including about two-thirds of recycling in the blue bins, according to CalRecycle. Most went to China, but their "National Sword" policy significantly reduced the types of materials accepted for recycling from California after 2017. Recyclables that used to generate money now have no market. For example, in the first quarter of 2017, waste haulers could sell plastics made from resins #3-7 for \$20 a ton. One year later, it would cost almost \$11 per ton to get rid of, leading to most of the materials going to the landfill. What can and will be recycled will continue to change as other markets for recyclables are sought both in-state and abroad.

The economics of collecting, sorting and reprocessing plastic products are also likely to worsen as expansion of plastic production lowers the cost of plastic resin made from virgin material. In 2020, virgin plastic prices fell by 14-43% depending on type, due to the drop in the price of crude oil.

Comments

- 1) *Purpose of Bill.* According to the author, “In California, less than 15 percent of single-use plastic is recycled. Despite robust curbside recycling programs and decades of public education efforts, the vast majority of single-use items are used once and then landfilled, incinerated, or dumped into the environment. This dismal recycling rate is due to many factors, most notably a severe drop in the market for recycled material and the low cost of virgin petroleum.

“Consumers dutifully fill their blue bins with items they believe are recyclable, which contaminate the recycling stream and make it more costly to sort and clean the truly recyclable material. The plastic resin identification coding (RIC) system, which classifies plastic types by numbers one through seven often displayed in the chasing-arrows symbol, further confuses consumers. The RIC system was designed as a method for waste facilities to properly sort plastics. Most consumers simply see the chasing arrows and assume a product can be recycled. Manufacturers have used this confusion to their advantage by greenwashing unrecyclable products. Consumers need to know what is truly recyclable.

“SB 343 will end consumer confusion about which material is suitable for the blue bin, reduce contamination, lower waste volume, and improve recycling rates. The measure expands the existing “Truth in Environmental Advertising” law that prohibits the use of the word “recyclable” on unrecyclable products to include the use of the chasing-arrows symbol or any other suggestion that a material is recyclable, unless the material is actually recyclable in most California communities.”

- 2) *Changes to labeling.* Based on current trends, the only plastics that would likely be allowed to be labeled as recyclable under the considerations of this bill would be PET #1 and HDPE #2 plastic bottles and jugs. That would be a significant change to how products are currently labeled, particularly for RICs required on all rigid plastic bottles and containers. Potentially, hundreds of companies would be required to change their labeling practices on their products, especially those made from resins #3-7. This would affect plastic products of all types, from single-use food packaging to shipping materials, toys, bags, and more. SB 343 would set a precedent for the expansion of truth in labeling, since products are often distributed nationally and/or internationally.
- 3) *Greenwashing.* A growing number of consumers are looking to buy environmentally friendly, “green” products, including products that can and

will be fully recycled. Companies have responded with “green” marketing touting the environmental benefits of what they’re selling. Deceptive, exaggerated, or misleading labeling on products to make it appear more eco-friendly is called “greenwashing.” California has instituted several laws to crack down on this practice, both generally by prohibiting “any untruthful, deceptive, or misleading environmental marketing claim” (BPC §17580 (b)) and more specifically by establishing requirements for use of terms such as “compostable” and “biodegradable” (PRC §42357).

This bill would expand these regulations on greenwashing, by explicitly adding the symbols and language associated with recycling, which are often associated with being eco-friendly, to the list of labels that are specifically regulated.

- 4) *Accounting for market value.* Beyond the FTC green guides, this bill asks the director of CalRecycle to consider what is regularly recycled to sufficiently maintain a market value in the creation of the list of recyclable materials and forms. This is an important consideration, particularly now when the global market for recyclable material is in decline. If there is no market, recyclable materials will not be used and will likely end up in a landfill.

SB 343 would allow producers to appeal to have a material added to the list of recyclable products by submitting a plan to CalRecycle detailing how and by what date a product type and form will meet the criteria. This could encourage innovation to develop new technologies and facilities for recycling more types of plastics. A more robust processing and manufacturing infrastructure domestically could help to reduce some of the volatility for California recyclables by providing a more stable market.

- 5) *Reduced burden to material recovery facilities.* SB 343 would reduce the burden on waste haulers and MRFs from collecting, sorting, and disposing of materials from blue bins that ultimately will not be recycled. Some materials can cause additional problems as well, like soft flexible plastic bags and films which can jam up sorting machines. Proper labels indicating what can and will be recycled would help to mitigate some of these burdens and could reduce the cost of operation for MRFs that can be passed on to rate-payers.
- 6) *Complexity of recycling statewide.* How and what materials are recycled varies across the state and over time. Different jurisdictions have different standards for recyclability, yet packaging and labeling are generally consistent across the state. Under SB 343, it will be up to CalRecycle to develop criteria for determining which materials that are not uniformly recycled across the state will go on the list of recyclable material types. The department is already in the

process of making similar determinations for which types of food service packaging are recyclable as directed by the Sustainable Packaging for the State of California Act (SB 1335, Allen, Chapter 610, Statutes of 2018). A list of approved recyclable packaging for SB 1335 will be published later this year.

- 7) *Enforcement.* Currently, the bill does not give specific authority to or mandate a state agency to oversee these labeling requirements. However, they could be enforced by the same law enforcement agencies that enforce other truth-in-advertising laws: the offices of some city attorneys, district attorneys, and the State attorney general.
- 8) *Timeline.* If passed, the prohibition on a person from selling, distributing, or importing a product or packaging that has a deceptive or misleading claim about the recyclability would take effect January 1, 2022. However, the bill states that CalRecycle has until January 1, 2023 to publish the list of materials for which recyclability claims may be made.

The committee may wish to amend the bill to clarify that the prohibition applies to products manufactured after CalRecycle publishes the list of materials for which recyclability claims may be made and takes effect 90 days after such date.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Judiciary Committee.

Related/Prior Legislation

AB 1201 (Ting, 2021) would prohibit a person from selling a plastic product labeled with the term “compostable,” “home compostable,” or “soil biodegradable” unless the product meets specified standards and satisfies specified criteria and would authorize CalRecycle to adopt regulations for plastic product labeling. SB 1201 has been referred to the Assembly Natural Resources Committee.

SB 54 (Allen, 2019) would have enacted the California Circular Economy and Plastic Pollution Reduction Act to achieve a 75% reduction in single-use packaging and priority single-use products, as defined, by 2032 by imposing a comprehensive regulatory scheme on producers, retailers, and wholesalers of single-use packaging and priority single-use products, to be administered by CalRecycle. SB 54 failed passage on the Assembly Floor.

SB 567 (DeSaulnier, Chapter 594, Statutes of 2011) created the Plastic Products Law under the California Integrated Waste Management Act of 1989, to prohibit a plastic product from being sold that is labeled “compostable,” “home compostable,” or “marine biodegradable” unless the plastic meets certain standards that is subject to CalRecycle requirements.

AB 1049 (Koretz, 2005) would have required the California Integrated Waste Management Board to make available for licensure a voluntary California Curbside label for printing, molding, or embossing onto product packaging or other items that are accepted in a substantial majority of California curbside recycling programs. SB 1049 died in the Assembly Appropriations Committee.

SOURCE: Californians Against Waste (sponsor)
National Stewardship Action Council (sponsor)

SUPPORT:

California League of Conservation Voters
Californians Against Waste
Calpirg
Center for Oceanic Awareness, Research, and Education, the
Colorado Medical Waste, INC.
Ecology Center
Friends Committee on Legislation of California
Full Circle Environmental
Heal the Bay
Linkco INC.
Marin Sanitary Service
Merced County Regional Waste Management Authority
National Stewardship Action Council
Northern California Recycling Association
Nrdc
Plastic Pollution Coalition
Prezero Us, INC.
Recology
Republic Services INC.
Rethinkwaste
Save Our Shores
Save the Albatross Coalition
Seventh Generation Advisors
Sierra Club California
Surfrider Foundation

The 5 Gyres Institute
The Last Beach Cleanup
Upstream
Zanker Recycling

OPPOSITION:

AMERIPEN
Consumer Brands Association
EPS Industry Alliance
Flexible Packaging Association
Household and Commercial Products Association
Pet Food Institute
Plastics Industry Association

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