
THIRD READING

Bill No: SB 343
Author: Allen (D), et al.
Amended: 5/20/21
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 3/15/21
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE JUDICIARY COMMITTEE: 9-0, 4/6/21
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Environmental advertising: recycling symbol

SOURCE: Californians Against Waste
National Stewardship Action Council

DIGEST: This bill tightens the requirements around the permissible use of the “chasing arrows” recycling symbol and when claims regarding recyclability can be made and provides for the creation of a statewide list of the types and forms of plastic products and packaging that can be represented as recyclable.

ANALYSIS:

Existing law:

- 1) Provides for the following, 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 six 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 the Department of Resources Recycling and Recovery (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.)

This bill:

- 1) Extends the Environmental Representations Law to cover persons that represent a consumer good as not harmful to, or as beneficial to, the environment, through use of a chasing arrows symbol or by otherwise directing a consumer to recycle it, excluding consumer goods that are required by federal or California law to display a chasing arrows symbol.

- 2) Defines the “chasing arrows symbol” to mean 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; or variants likely to be interpreted by consumers as an implication of recyclability.
- 3) Requires CalRecycle, on or before January 1, 2023, to develop and publish a list, considering specified criteria, 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, and update the list every five years.
- 4) 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 that is manufactured 90 days or more after the date the list of approved material types and forms is published or updated. This excludes consumer goods that are required by federal or state law to display a chasing arrows symbol or that have a slash through the symbol to convey that an item is not recyclable along with clear guidance not to recycle the product.
- 5) 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.
- 6) Prohibits the resin identification code from being placed inside a chasing arrows symbol, unless CalRecycle has determined it is recyclable in the state, as specified by this bill.

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.” 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. 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.

- 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 recyclable materials can fluctuate wildly over both the short term and the long term, leading to instability in recycling markets. 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. What can and will be recycled will continue to change as other markets for recyclables are sought both in-state and abroad. Furthermore, 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 ... Most consumers simply see the chasing arrows and assume a product can be recycled ... SB 343 will end consumer confusion about which material is suitable for the blue bin, reduce contamination, lower waste volume, and improve recycling rates."
- 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.

- 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” and more specifically by establishing requirements for use of terms such as “compostable” and “biodegradable.” This bill expands 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. If there is no market, recyclable materials will not be used and will likely end up in a landfill. SB 343 allows producers to appeal to have a material added to the list of recyclable products by submitting a plan to CalRecycle detailing how a product type and form will meet the criteria.
- 5) *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. CalRecycle is currently in the process of developing criteria for determining which materials that are not uniformly recycled across the state will be considered “recyclable” for food service packaging, 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. SB 343 expands upon that work for other types of forms of plastic products and packaging for which claims of recyclability may be made.

Related/Prior Legislation

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee,

- Unknown costs, likely in the upper hundreds of thousands of dollars annually (special fund), for CalRecycle to promulgate regulations, develop and update a list to determine the material types and forms that are deemed recyclable, and to determine if a product or packaging is of a material type and form that is recyclable if the product or packaging is manufactured 90 days or more after the date the list is published or updated.
- To the extent that this bill results in improved quality of the plastic recycling stream or more robust markets for recycled plastic, unknown potential cost savings to the Beverage Container Recycling Fund due to lower program payments to subsidize plastic recyclers.

SUPPORT: (Verified 5/21/21)

Californians Against Waste (co-source)
National Stewardship Action Council (co-source)
California Alliance of Nurses for Healthy Environments
California League of Conservation Voters
California Product Stewardship Council
California Resource Recovery Association
California Teamsters Public Affairs Council
CALPIRG
Center for Oceanic Awareness, Research, and Education

City of Thousand Oaks
Colorado Medical Waste, INC.
County of San Diego
Ecology Center
EDCO
Facts:Families Advocating for Chemical & Toxins Safety
Friends Committee on Legislation of California
Full Circle Environmental
Full Spectrum Strategy
Heal the Bay
Linkco INC.
Los Angeles County Solid Waste Management Committee/integrated Waste
Management Task Force
Marin Sanitary Service
Mendo Recycle
Merced County Regional Waste Management Authority
Ming's Recycling
Northern California Recycling Association
NRDC
Ocean Conservancy
Plastic Pollution Coalition
PreZero Us, INC.
Recology
RecycleSmart
Republic Services INC.
Rethinkwaste
Robin's Restaurant
Save Our Shores
Save the Albatross Coalition
Sea Hugger
Seventh Generation Advisors
Sierra Club California
Silicon Valley Democratic Club
Surfrider Foundation
The 5 Gyres Institute
The Last Beach Cleanup
The Last Plastic Straw
The Nectary
Tri-CED Community Recycling
Upstream

Waste Management
Zanker Recycling
Zero Waste Sonoma

OPPOSITION: (Verified 5/21/21)

American Beverage Association
EPS Industry Alliance
National Aerosol Association
Personal Care Products Council
Plastics Industry Association
Western Aerosol Information Bureau

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