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SB-343 Environmental advertising: recycling symbol: recyclability: products and packaging. (2021-2022)

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Senate Bill No. 343

CHAPTER 507

An act to amend Sections 17580 and 17580.5 of the Business and Professions Code, and to amend Sections 18015 and 42355.5 of, and to add Section 42355.51 to, the Public Resources Code, relating to environmental advertising.

[Approved by Governor October 05, 2021. Filed with Secretary of State October 05, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 343, Allen. Environmental advertising: recycling symbol: recyclability: products and packaging.

(1) Existing law 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 and that, 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.

This bill would further declare that it is the public policy of the state that claims related to the recyclability of a product or packaging be truthful and that consumers deserve accurate and useful information related to how to properly handle the end of life of a product or packaging.

This bill would require the Department of Resources Recycling and Recovery, on or before January 1, 2024, in order to provide information to the public to evaluate whether a product or packaging is recyclable in the state and is of a material type and form that routinely become feedstock used in the production of new products and packaging, to update specified regulations to require disposal facility operators, among other operations and facilities, to provide information to the department regarding how material collected or processed by the operations and facilities was collected and what material types and forms are actively recovered, and not considered contaminants, by the operation or facility. The bill would require the department to conduct, publish on its internet website, and update as provided, a characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facilities identified by the department for inclusion in the study. The bill would provide that, except as specified, a product or packaging is considered recyclable in the state if, based on the information published by the department, the product or packaging is of a material type and form collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state, among other statewide recyclability criteria.

(2) Under existing law, it is unlawful for any person to make any untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. A violation of this requirement is a misdemeanor.

This bill would prohibit a person from offering for sale, selling, distributing, or importing into the state any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made. The bill would provide that, except as specified, a product or packaging that displays a chasing arrows symbol, among other symbols, statements, or directions, is deemed to be a deceptive or misleading claim unless the product or packaging is considered recyclable pursuant to statewide recyclability criteria and is of a material type and form that routinely becomes feedstock used in the production of new

products or packaging, as provided. The bill would therefore expand the scope of an existing crime and impose a state-mandated local program.

(3) Under existing law, a person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of environmental terms, is required to maintain in its records specified information and documentation supporting the validity of the representation, including, if applicable, whether the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the term "recyclable," among other terms. A violation of this requirement is a misdemeanor.

This bill would apply that recordkeeping requirement to a person who makes those representations through the use of a chasing arrows symbol, as defined, or by otherwise directing a consumer to recycle a consumer good. The bill would add to the required information and documentation for the use of the term "recyclable," the use of a chasing arrows symbol, or other representation that advises consumers to recycle a consumer good, whether the consumer good meets the criteria for statewide recyclability. The bill would provide that a direction to a consumer that accurately instructs the consumer to properly dispose of or otherwise properly handle a consumer good at the end of its useful life shall not be considered "otherwise directing a consumer to recycle a consumer good" if the consumer good is subject to one of several enumerated programs. The bill would provide that directing a consumer to compost or properly dispose of a consumer good through an organics recycling program is also not considered "otherwise directing a consumer to recycle a consumer good." A violation of these provisions would be a misdemeanor. The bill would therefore create a new crime and impose a state-mandated local program.

(4) Existing law requires all rigid plastic bottles and rigid plastic containers sold in the state to be labeled with a code that indicates the resin used to produce the bottles or containers, with specified numbers and letters placed in relation to a triangle.

This bill would prohibit the resin identification code from being placed inside a chasing arrows symbol, unless the rigid plastic bottle or rigid plastic container meets the requirements for statewide recyclability.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17580 of the Business and Professions Code is amended to read:

17580. (a) A person who represents in advertising or on the label or container of a consumer good that the consumer good that it manufactures or distributes is not harmful to, or is beneficial to, the natural environment, through the use of such terms as "environmental choice," "ecologically friendly," "earth friendly," "environmentally friendly," "ecologically sound," "environmentally sound," "environmentally safe," "ecologically safe," "environmentally lite," "green product," or any other like term, or through the use of a chasing arrows symbol or by otherwise directing a consumer to recycle the consumer good, shall maintain in written form in its records all of the following information and documentation supporting the validity of the representation:

(1) The reasons the person believes the representation to be true.

(2) Any significant adverse environmental impacts directly associated with the production, distribution, use, and disposal of the consumer good.

(3) Any measures that are taken by the person to reduce the environmental impacts directly associated with the production, distribution, and disposal of the consumer good.

(4) Violations of any federal, state, or local permits directly associated with the production or distribution of the consumer good.

(5) Whether, if applicable, the consumer good conforms with the uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims for the use of the terms "recycled," "recyclable," "biodegradable," "photodegradable," or "ozone friendly."

(6) If the person uses the term "recyclable," uses a chasing arrows symbol, or otherwise directs a consumer to recycle the consumer good, whether the consumer good meets all of the criteria for statewide recyclability pursuant to subdivision (d) of Section 42355.51 of the Public Resources Code.

(b) Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(c) For purposes of this section, a wholesaler or retailer who does not initiate a representation by advertising or by placing the representation on a package shall not be deemed to have made the representation.

(d) It is the intent of the Legislature that the information and documentation supporting the validity of the representation maintained under this section shall be fully disclosed to the public, within the limits of all applicable laws.

(e) For purposes of this section, displaying a chasing arrows symbol or otherwise directing a consumer to recycle a consumer good shall not be considered misleading pursuant to Section 17580.5 or Section 42355.51 of the Public Resources Code if either of the following apply:

(1) The consumer good is required by any federal or California 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)) and Section 25215.65 of the Health and Safety Code.

(2) The consumer good is a beverage container subject to the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500) of the Public Resources Code).

(f) For purposes of this section, "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 that symbol that are likely to be interpreted by a consumer as an implication of recyclability, including, but not limited to, one or more arrows arranged in a circular pattern or around a globe.

(g) For purposes of this section, a direction to a consumer to properly dispose of or otherwise properly handle a consumer good at the end of its useful life shall not be considered "otherwise directing a consumer to recycle a consumer good" pursuant to subdivision (a) if both of the following requirements are met:

(1) The consumer good is subject to any of the following programs:

(A) Chapter 20 (commencing with Section 42970) of Part 3 of Division 30 of the Public Resources Code relating to product stewardship for carpets.

(B) The Used Mattress Recovery and Recycling Act (Chapter 21 (commencing with Section 42985) of Part 3 of Division 30 of the Public Resources Code).

(C) The California Tire Recycling Act (Chapter 17 (commencing with Section 42860) of Part 3 of Division 30 of the Public Resources Code).

(D) The Electronic Waste Recycling Act of 2003 (Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code).

(E) Article 10.3 (commencing with Section 25214.9) of Chapter 6.5 of Division 20 of the Health and Safety Code relating to electronic waste.

(F) The Rechargeable Battery Recycling Act of 2006 (Chapter 8.4 (commencing with Section 42451) of Part 3 of Division 30 of the Public Resources Code).

(G) The Cell Phone Recycling Act of 2004 (Chapter 8.6 (commencing with Section 42490) of Part 3 of Division 30 of the Public Resources Code).

(H) The architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

(I) The Mercury Thermostat Collection Act of 2008 (Article 10.2.2 (commencing with Section 25214.8.10) of Chapter 6.5 of Division 20 of the Health and Safety Code).

(J) The Lead-Acid Battery Recycling Act of 2016 (Article 10.5 (commencing with Section 25215) of Chapter 6.5 of Division 20 of the Health and Safety Code).

(2) The direction to the consumer accurately instructs the consumer to dispose of the consumer good through participation in, and consistent with, one of the programs identified in paragraph (1) as that program applies to the consumer good.

(h) For purposes of this section, directing a consumer to compost or properly dispose of a consumer good through an organics recycling program shall not be considered "otherwise directing a consumer to recycle a consumer good" pursuant to subdivision

(a).

SEC. 2. Section 17580.5 of the Business and Professions Code is amended to read:

17580.5. (a) It is unlawful for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied. For the purpose of this section, "environmental marketing claim" shall include any claim contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

(b) (1) It shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.

(2) Paragraph (1) does not apply to either of the following:

(A) Claims for violations of subdivision (d) of Section 18015 of the Public Resources Code.

(B) Claims for violations of paragraph (1) of subdivision (b) of Section 42355.51 of the Public Resources Code.

SEC. 3. Section 18015 of the Public Resources Code is amended to read:

18015. (a) All rigid plastic bottles and rigid plastic containers sold in the state 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 consist of a number placed inside a triangle, and letters placed below the triangle. 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)

(b) A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

(c) The Division of Recycling in the Department of Resources Recycling and Recovery shall maintain a list of abbreviations used on labels pursuant to subdivision (a) and shall provide a copy of that list to a person upon request.

(d) The resin identification code required pursuant to subdivision (a) shall not be placed inside a chasing arrows symbol, as defined in subdivision (f) of Section 17580 of the Business and Professions Code, unless the rigid plastic bottle or rigid plastic container meets the statewide recyclability criteria provided in subdivision (d) of Section 42355.51.

SEC. 4. Section 42355.5 of the Public Resources Code is amended to read:

42355.5. (a) 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, including those standard specifications established by the American Society for Testing and Materials.

(b) The Legislature further finds and declares that it is the public policy of the state that claims related to the recyclability of a product or packaging be truthful in practice and accurate. Consumers deserve accurate and useful information related to how to properly handle the end of life of a product or packaging.

SEC. 5. Section 42355.51 is added to the Public Resources Code, to read:

42355.51. (a) A person shall not offer for sale, sell, distribute, or import into the state any product or packaging for which a deceptive or misleading claim about the recyclability of the product or packaging is made.

(b) (1) Subject to paragraph (2), a product or packaging that displays a 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 otherwise directing the consumer to recycle the product or packaging, is deemed to be a deceptive or misleading claim pursuant to this section and Section 17580.5 of the Business and Professions Code unless the product or packaging is considered recyclable in the state pursuant to subdivision (d) and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging.

(2) Paragraph (1) does not apply to either of the following:

(A) Any product or packaging that is manufactured up to 18 months after the date the department publishes the first material characterization study required pursuant to subparagraph (B) of paragraph (1) of subdivision (d), or before January 1, 2024, whichever is later.

(B) Any product or packaging manufactured up to 18 months after the date the department updates the material characterization study pursuant to subparagraph (B) of paragraph (1) of subdivision (d), if the product or packaging satisfied or, for a new product or packaging, would have satisfied, the requirements to be considered recyclable in the state pursuant to subdivision (d) before the publication of the updated study.

(3) Subject to paragraph (2), for a product or packaging that is not considered to be recyclable in the state pursuant to subdivision (d), all of the following apply:

(A) Displaying a chasing arrows symbol or any other statement indicating the product is recyclable directly on the product shall be deemed to be deceptive or misleading pursuant to this section and Section 17580.5 of the Business and Professions Code.

(B) If a product or packaging has multiple material types, a chasing arrows symbol or statement indicating recyclability may be displayed on the external packaging that is considered to be recyclable in the state pursuant to subdivision (d) 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.

(C) 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. For purposes of this subparagraph, "consumable product" means a commodity that is intended to be used and not disposed of.

(c) 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 or Section 17580.5 of the Business and Professions Code:

(1) A person 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.

(2) A consumer good that is required by any federal or California 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)) and Section 25215.65 of the Health and Safety Code.

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

(4) A resin identification code placed inside a solid equilateral triangle.

(d) (1) On or before January 1, 2024, in order to provide information to the public sufficient for evaluating whether a product or packaging is recyclable in the state according to the criteria set forth in paragraph (2) and are of material types and forms that routinely becomes feedstock used in the production of new products or packaging, the department shall do both of the following:

(A) (i) Update the regulations promulgated pursuant to Section 41821.5 to include both of the following in the information to be submitted to the department pursuant to that section:

(I) How the material collected or processed by the operations and facilities was collected.

(II) What material types and forms are actively recovered, and not considered contaminants, by the operation or facility.

(ii) The department shall publish the information required pursuant to clause (i) in a form the department deems appropriate for achieving the purpose of this section consistent with the requirements of paragraph (3) of subdivision (b) of Section 41821.5.

(B) (i) To get a representative sample of recycling programs in the state, the department shall conduct and publish on its internet website a characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facilities deemed appropriate by the department for inclusion in the study. The department's activities pursuant to this subparagraph, including the department's determination of the appropriate facilities to include in the study, are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(ii) The department shall update the material characterization study required pursuant to this subparagraph every five years, with the first update being issued by the department in 2027.

(iii) Notwithstanding clauses (i) and (ii), the department may publish additional information that was not available at the time of the most recent periodic material characterization study regarding the appropriate characterization of material types and forms.

(iv) For purposes of studying a representative sample of material types and forms in the state, within 90 days of a department request, a facility shall allow for periodic sampling conducted by a designated representative of the department on a mutually-agreed upon date and time. The department shall not request a periodic sampling of a facility if that facility was sampled during the previous 24 months.

(v) For each material characterization study conducted pursuant to this subparagraph, the department shall publish on its internet website the preliminary findings of the study and conduct a public meeting to present the preliminary findings and receive public comments. The public meeting shall occur at least 30 days after the department publishes the preliminary findings. After receiving and considering public comments, and within 60 days of the public meeting, the department shall finalize and publish on its internet website the findings of the study.

(2) Subject to paragraph (3), a product or packaging is considered recyclable in the state if, based on information published by the department pursuant to subparagraph (B) of paragraph (1), the product or packaging is of a material type and form that meets both of the following requirements:

(A) The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state.

(B) (i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

(ii) The department may adopt regulations modifying this requirement to encompass transfer or processing facilities other than large volume transfer or processing facilities, as the department deems appropriate for achieving the purposes of this section.

(3) A product or packaging shall not be considered recyclable in the state unless the product or packaging meets all of the following criteria, as applicable:

(A) For plastic packaging, the plastic packaging is designed to not include 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.

(B) For plastic products and non-plastic products and packaging, the product or packaging is designed to ensure recyclability and does not include any components, inks, adhesives, or labels that prevent the recyclability of the product or packaging.

(C) The product or packaging does not contain an intentionally added chemical identified pursuant to the regulations implementing subparagraph (4) of subdivision (g) of Section 42370.2.

(D) The product or packaging is not made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances or PFAS that meets either of the following criteria:

(i) PFAS that a manufacturer has intentionally added to a product or packaging and that have a functional or technical effect in the product or packaging, including the PFAS components of 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.

(ii) The presence of PFAS in a product or product component or packaging or packaging component at or above 100 parts per million, as measured in total organic flourine.

(4) Notwithstanding paragraphs (2) and (3), a product or packaging is recyclable in the state if the product or packaging has a demonstrated recycling rate of at least 75 percent, meaning that not less than 75 percent of the product or packaging sorted and aggregated in the state is reprocessed into new products or packaging.

(5) (A) Before January 1, 2030, notwithstanding paragraphs (2) and (3), a product or packaging not collected pursuant to a curbside collection program is recyclable in the state if the non-curbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.

(B) After January 1, 2030, notwithstanding paragraphs (2) and (3), a product or packaging not collected pursuant to a curbside collection program is recyclable in the state if the non-curbside collection program recovers at least 75 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.

(6) Notwithstanding paragraphs (2) and (3), a product or packaging is recyclable in the state if the product or packaging is part of, and in compliance with, a program established pursuant to state or federal law on or after January 1, 2022, governing the recyclability or disposal of that product or packaging if the director determines that the product or packaging will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging.

(7) The information published by the department pursuant to paragraph (1) shall not limit the discretion of a local agency under existing law to decide whether, and to what extent, a material type or form shall be accepted by a local recycling program.

(e) For purposes of this section, "chasing arrows symbol" has the meaning set forth in subdivision (f) of Section 17580 of the Business and Professions Code.

(f) Consistent with the waste hierarchy established pursuant to Section 40051, and pursuant to Section 40180, for purposes of this section, "recycling," "recyclable," and "recyclability" do not include transformation, as defined in Section 40201, EMSW conversion, or production of fuels.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.