

RetailLawBCLP

CALIFORNIA LAW RESTRICTS USE OF CHASING ARROWS RECYCLING SYMBOL ON CONSUMER PRODUCTS, PACKAGING

Oct 12, 2021

California signed into law last week a number of measures intended to address environmental concerns in consumer products and packaging, including a ban on use of the chasing arrows recycling symbol unless the product or packaging meets statewide recyclability criteria. The law takes effect January 1, 2024.

[Senate Bill 343](#) also prohibits making other false or misleading environmental marketing claims, and requires documentation, which must be disclosed to the public upon request, of any claims that a consumer good is environmentally friendly or beneficial. Bus. & Prof. Code § 17580(a). Importantly for retailers, they are not responsible under the statute for any representations that they did not initiate in advertising or by placing the representation on a package. *Id.* at § 17580(c).

As to recyclability claims, although plastic bottles and containers must be labeled with a numeric code indicating the type of plastic used, use of the chasing arrows recycling symbol is prohibited unless the products satisfy recyclability regulations to be issued by CalRecycle demonstrating that they are of a material type and form that is:

- collected for recycling by recycling programs encompassing at least 60 percent of the state; and
- routinely used as feedstock in the production of new products or packaging.

Pub. Res. Code § 42355.51(d)(2).

In addition, in order to qualify as recyclable, a product or packaging must meet the following requirements:

- No components, inks, adhesives or labels that prevent recyclability according to the APR Design Guide® published by the Association of Plastic Recyclers.
- No intentionally added chemicals that would act as a contaminant, as identified in Section 42370.2(g)(4).

- No perfluoroalkyl or polyfluoroalkyl substances or PFAs that are intentionally added and have a functional or technical effect, or exceed 100 parts per million.

Id. at § 42355.51(d)(3).

The law provides an exemption from all of the requirements above for a product or packaging that 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.” *Id.* at § 42355.51(d)(4). However, the Senate's legislative analysis indicates that a fairly narrow subset of goods are expected to meet this criteria, and that currently it is met only by PET #1 and DPE #2 plastic bottles and jugs. [Senate Floor Analyses](#) (Sept. 9, 2021).

The law also exempts products that meet the requirements of the California Beverage Container Recycling and Litter Reduction Act. Bus. & Prof. Code § 17580(e). A similar exclusion is provided where consumers are directed to properly handle or otherwise dispose of the good at the end of its useful life in accordance with the guidance in enumerated programs. *Id.* at § 17580(g).

The law provides a sell-through period for any product or packaging that is manufactured up to 18 months after January 1, 2024 or CalRecycle issues the recyclability regulations, whichever is later. Pub. Res. Code § 42355.51(b)(2)(A). The regulations must be updated every 5 years, and a similar 18-month grace period will apply after each update, provided that the product or package met the requirements under the previous version. *Id.* at § 42355.51(b)(2)(B).

California also signed into law last week a number of other environmental laws concerning consumer products and packaging, including:

PFAS in Food Packaging, Cookware - [Assembly Bill 1200](#):

- Prohibits, as of January 1, 2023, any company from distributing or selling food packaging that contains perfluoroalkyl and polyfluoroalkyl substances or PFAs, and to use the least toxic alternatives. “Food packaging” is defined to mean a nondurable package, packaging component, or food service ware that is comprised, in substantial part, of paper, paperboard, or other materials originally derived from plant fibers. Health & Safety Code § 109000.
- Also requires, as of January 1, 2024, a manufacturer of cookware that contains one or more intentionally added chemicals from a designated list, in the handle of the product or in any product surface that comes into contact with food or beverages, to list the presence of those chemicals on the product label, and include a statement on the product label and on the product listing for online sales, in both English and Spanish, regarding how a consumer can obtain more information about the chemicals in the cookware. Health & Safety Code § 109010, *et seq.*

PFAS in Juvenile Products - [Assembly Bill 652](#):

- Prohibits, as of July 1, 2023, selling or distributing “juvenile products” with PFAs that are intentionally added, or in excess of 100 parts per million. Juvenile products are those designed for use by infants and children under 12 years of age. Expressly excluded are children’s electronic products, medical devices, internal components of juvenile products that would not come into direct contact with a child’s skin or mouth during reasonably foreseeable use and abuse of the product, and adult mattresses. Health & Safety Code §§ 108945, *et seq.*

For questions or more information on any of the above, please contact the authors listed.

RELATED PRACTICE AREAS

- Retail & Consumer Products
- PFAS Team
- Environment
- Food & Agribusiness

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)



Jim Dudukovich

Atlanta

jim.dudukovich@bclplaw.com

[+1 404 572 6733](tel:+14045726733)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.