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## A BILL FOR AN ACT

RELATING TO THE ENVIRONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that there is no national  
2 legislation or standard for recycling labels. The triangular  
3 "chasing arrows" symbol or the word "recyclable" on plastics and  
4 other products has long been a source of confusion for  
5 consumers. The symbol appears on a wide variety of products,  
6 from those that are easily recycled, to those that are less so,  
7 to those that are not recyclable at all. Items that are not  
8 actually recyclable can display the symbol despite there being  
9 no tangible end-market to recycle those materials. This type of  
10 labeling means that recycling programs often see high rates of  
11 contamination when items that are not generally recyclable are  
12 mixed in with items that can be recycled. Sorting through  
13 contaminated items is costly, and often leads to most items  
14 being sent to the landfill, even though some materials would be  
15 viable for recycling had they been properly sorted.

16           Packaging and serviceware marketed to be compostable and  
17 biodegradable also contribute to this problem. Many items that



1 are labeled compostable are only designed to break down under  
2 industrial-scale conditions and will not break down in an at-  
3 home compost pile. Compostable or biodegradable products often  
4 end up in landfills because they are touted as more  
5 environmentally friendly than other materials. Landfill  
6 conditions are not conducive to composting or biodegradation, so  
7 these materials tend to persist or break down anaerobically,  
8 which can produce greenhouse gas emissions. Some items labeled  
9 as compostable may contain toxic chemicals that would remain in  
10 the soil even after the composting process is completed.

11 The legislature further finds that the United States  
12 plastics industry will surpass coal-fired power plants as a  
13 major leading source of greenhouse gas emissions in less than a  
14 decade. A 2021 study found that plastics emit greenhouse gases  
15 in every stage of their lifecycle. As renewable energy  
16 increases across the country, fossil fuel companies are seeking  
17 to recoup lost profits by increasing plastics production.  
18 Therefore, combatting climate change will require less new  
19 plastic being produced and more plastic being recycled.

20 The purpose of this Act is to:



- 1 (1) Prohibit the sale or distribution of consumer goods
- 2 for which a deceptive claim about the recyclability of
- 3 the product or packaging is made;
- 4 (2) Establish standards for recyclability of products in
- 5 the State;
- 6 (3) Require the department of health to collect data and
- 7 issue a material characterization study on recyclable
- 8 materials collected in the State; and
- 9 (4) Prohibit the sale of any product that is labeled as
- 10 compostable or biodegradable unless the product meets
- 11 specified criteria.

12 SECTION 2. Chapter 342G, Hawaii Revised Statutes, is  
13 amended by adding two new sections to be appropriately  
14 designated and to read as follows:

15 "§342G- Product labeling; recyclability. (a)  
16 Notwithstanding any other law to the contrary, no person may  
17 offer for sale, sell, manufacture, import, or distribute any  
18 product or packaging for which a deceptive or misleading claim  
19 about the recyclability of the product or packaging is made.

20 (b) A product or packaging that displays a chasing arrows  
21 symbol, a chasing arrows symbol surrounding a resin



1 identification code, or any other symbol or statement indicating  
2 the product or packaging is recyclable, or otherwise directing  
3 the consumer to recycle the product or packaging, is deemed to  
4 be a deceptive or misleading claim pursuant to this section  
5 unless the product or packaging is considered recyclable in the  
6 State pursuant to subsections (e), (f), and (g) and is of a  
7 material type and form that routinely becomes feedstock used in  
8 the production of new products or packaging.

9 This subsection shall not apply to:

- 10 (1) Any product or packaging that is manufactured up to  
11 eighteen months after the date the department  
12 publishes the first material characterization study  
13 required pursuant to this section, or before  
14 January 1, 2024, whichever is later; and  
15 (2) Any product or packaging manufactured up to  
16 eighteen months after the date the department updates  
17 the material characterization study pursuant to this  
18 section, if the product or packaging satisfied or, for  
19 a new product or packaging, would have satisfied, the  
20 requirements to be considered recyclable in the State



1           pursuant to subsections (e), (f), and (g) before the  
2           publication of the updated study.

3           (c) Subject to subsection (b) (2), for a product or  
4           packaging that is not considered to be recyclable in the State  
5           pursuant to subsections (e), (f), and (g), all the following  
6           shall apply:

7           (1) Displaying a chasing arrows symbol or any other symbol  
8           or statement indicating the product is recyclable  
9           directly on the product shall be deemed to be  
10           deceptive or misleading pursuant to this section;

11           (2) If a product or packaging has multiple material types,  
12           a chasing arrows symbol or statement indicating  
13           recyclability may be displayed on the external  
14           packaging that is considered to be recyclable in the  
15           State pursuant to subsections (e), (f), and (g) if the  
16           chasing arrows symbol or statement makes clear in the  
17           same or greater font, font size, or symbol size that  
18           the other components of the product or packaging are  
19           not recyclable; and

20           (3) Displaying a chasing arrows symbol or any other symbol  
21           or statement indicating recyclability on packaging



1           containing a consumable product shall, for purposes of  
2           this section, be deemed to refer only to the  
3           packaging. For purposes of this subparagraph,  
4           "consumable product" means a commodity that is  
5           intended to be used and not disposed of.

6           (d) For purposes of this section, none of the following  
7           constitutes a deceptive or misleading claim about the  
8           recyclability of a product or packaging:

9           (1) A person using a chasing arrows symbol in combination  
10           with a clearly visible line placed at a forty-five  
11           degree angle over the chasing arrows symbol to convey  
12           that an item is not recyclable;

13           (2) A consumer good that is required by any federal or  
14           state law or regulation, including but not limited to  
15           Section 103(b)(1) of the federal Mercury-Containing  
16           and Rechargeable Battery Management Act (42 U.S.C.  
17           14322(b)(1)), to display a chasing arrows symbol;

18           (3) Directing a consumer to compost or properly dispose of  
19           a consumer good through an organics recycling program;  
20           and



- 1       (4) A resin identification code placed inside a solid  
2           equilateral triangle.
- 3       (e) On or before January 1, 2024, in order to provide  
4       information to the public sufficient for evaluating whether a  
5       product or packaging is recyclable in the State according to the  
6       criteria set forth in subsections (f) and (g) and are of  
7       material types and forms that routinely becomes feedstock used  
8       in the production of new products or packaging, the department  
9       shall:
- 10       (1) Issue rules pursuant to this chapter and chapter 91 to  
11       require all processing and solid waste disposal  
12       facilities operating in the State to submit the  
13       following information to the department:
- 14       (A) How any recovered material collected or processed  
15       by the operations and facilities was collected;  
16       and
- 17       (B) What material types and forms are actively  
18       recovered, and not considered contaminants, by  
19       the operation or facility;



- 1        (2) Publish the information required pursuant to  
2            paragraph (1) in a form the department deems  
3            appropriate for achieving the purpose of this section;
- 4        (3) Conduct and publish on its internet website a  
5            characterization study of material types and forms  
6            that are collected, sorted, sold, or transferred by  
7            solid waste facilities deemed appropriate by the  
8            department for inclusion in the study; provided that:
- 9            (A) The department shall update the material  
10           characterization study required pursuant to this  
11           paragraph every five years, with the first update  
12           being issued by the department in        ;
- 13           (B) Notwithstanding subparagraph (A), the department  
14           may publish additional information that was not  
15           available at the time of the most recent periodic  
16           material characterization study regarding the  
17           appropriate characterization of material types  
18           and forms;
- 19           (C) For purposes of studying a representative sample  
20           of material types and forms in the State, within  
21           ninety days of a department request, a processing





1 facility shall allow for periodic sampling  
2 conducted by a designated representative of the  
3 department on a mutually agreed upon date and  
4 time; provided that the department shall not  
5 request a periodic sampling of a processing  
6 facility if that facility was sampled during the  
7 previous twenty-four months; and

8 (D) For each material characterization study  
9 conducted pursuant to this paragraph, the  
10 department shall publish on its internet website  
11 the preliminary findings of the study and conduct  
12 a public meeting to present the preliminary  
13 findings and receive public comments. The public  
14 meeting shall occur at least thirty days after  
15 the department publishes the preliminary  
16 findings. After receiving and considering public  
17 comments, and within sixty days of the public  
18 meeting, the department shall finalize and  
19 publish on its internet website the findings of  
20 the study.



1       (f) Subject to subsection (g), a product or packaging is  
2 considered recyclable in the State if, based on information  
3 published by the department pursuant to subsection (e), the  
4 product or packaging is of a material type and form that meets  
5 both of the following requirements:

6       (1) The material type and form are collected for recycling  
7 by recycling programs for jurisdictions that  
8 collectively encompass at least sixty per cent of the  
9 population of the State; and

10       (2) The material type and form are sorted into defined  
11 streams for recycling processes by large volume  
12 transfer or processing facilities, as defined by this  
13 chapter, that process materials and collectively serve  
14 at least sixty per cent of recycling programs  
15 statewide, with the defined streams sent to and  
16 reclaimed at a reclaiming facility consistent with the  
17 requirements of the Basel Convention; provided that  
18 the department may adopt rules modifying this  
19 requirement to encompass transfer or processing  
20 facilities other than large volume transfer or  
21 processing facilities, as the department deems



1           appropriate for achieving the purposes of this  
2           section.

3           (g) A product or packaging shall not be considered  
4 recyclable in the State unless the product or packaging meets  
5 all the following criteria, as applicable:

6           (1) For plastic packaging, the plastic packaging is  
7           designed to not include any components, inks,  
8           adhesives, or labels that prevent the recyclability of  
9           the packaging according to the APR Design Guide  
10           published by the Association of Plastic Recyclers;

11           (2) For plastic products and non-plastic products and  
12           packaging, the product or packaging is designed to  
13           ensure recyclability and does not include any  
14           components, inks, adhesives, or labels that prevent  
15           the recyclability of the product or packaging; and

16           (3) The product or packaging is not made from plastic or  
17           fiber that contains PFAS substances that meets either  
18           of the following criteria:

19           (A) PFAS substances that a manufacturer has  
20           intentionally added to a product or packaging and  
21           that have a functional or technical effect in the



1 product or packaging, including the PFAS  
2 substance components of intentionally added  
3 chemicals and PFAS substances that are  
4 intentional breakdown products of an added  
5 chemical that also have a functional or technical  
6 effect in the product; or

7 (B) The presence of PFAS substances in a product or  
8 product component or packaging or packaging  
9 component at or above one hundred parts per  
10 million, as measured in total organic fluorine.

11 (h) Notwithstanding subsections (f) and (g), a product or  
12 packaging is recyclable in the State if the product or packaging  
13 has a demonstrated recycling rate of at least seventy-five  
14 per cent, meaning that not less than seventy-five per cent of  
15 the product or packaging sorted and aggregated in the State is  
16 reprocessed into new products or packaging.

17 (i) Notwithstanding subsections (f) and (g), a product or  
18 packaging not collected pursuant to a curbside collection  
19 program is recyclable in the State if:

20 (1) Before January 1, 2030, the non-curbside collection  
21 program recovers at least sixty per cent of the



1 product or packaging in the program and the material  
2 has sufficient commercial value to be marketed for  
3 recycling and be transported at the end of its useful  
4 life to a transfer, processing, or recycling facility  
5 to be sorted and aggregated into defined streams by  
6 material type and form;

7 (2) On or after January 1, 2030, the non-curbside  
8 collection program recovers at least seventy-five  
9 per cent of the product or packaging in the program  
10 and the material has sufficient commercial value to be  
11 marketed for recycling and be transported at the end  
12 of its useful life to a transfer, processing, or  
13 recycling facility to be sorted and aggregated into  
14 defined streams by material type and form; or

15 (3) The product or packaging is part of, and in compliance  
16 with, a program established pursuant to state or  
17 federal law on or after January 1, \_\_\_\_\_, governing the  
18 recyclability or disposal of that product or packaging  
19 if the department determines that the product or  
20 packaging will not increase contamination of curbside



1           recycling or deceive consumers as to the recyclability  
2           of the product or packaging.

3           (j) The information published by the department pursuant  
4 to subsection (e) shall not limit the discretion of a county  
5 agency under existing law to decide whether, and to what extent,  
6 a material type or form shall be accepted by a county recycling  
7 program.

8           (k) For the purposes of this section, "chasing arrows  
9 symbol" means an equilateral triangle, formed by three arrows  
10 curved at their midpoints, depicting a clockwise path, with a  
11 short gap separating the apex of each arrow from the base of the  
12 adjacent arrow. "Chasing arrows symbol" also includes variants  
13 of that symbol that are likely to be interpreted by a consumer  
14 as an implication of recyclability, including, but not limited  
15 to, one or more arrows arranged in a circular pattern or around  
16 a globe.

17           §342G-     **Sale of products; compostable or biodegradable;**  
18 **labeling.** (a) Except as provided in paragraph (2), no person  
19 shall sell or offer for sale a product in the State that is  
20 labeled with the term "compostable" or "home compostable"  
21 unless:



- 1        (1) At the time of sale or offering for sale, the product  
2        meets the applicable ASTM standard specification or,  
3        if applicable, the product has OK compost HOME  
4        certification; provided that compliance with only a  
5        section or a portion of a section of an applicable  
6        ASTM standard specification does not constitute  
7        compliance with this section;
- 8        (2) Notwithstanding paragraph (1), a person may sell or  
9        offer for sale a product in the State that is labeled  
10       with a qualified claim for a term specified in  
11       paragraph (1) if the product meets the relevant  
12       standard adopted by the department pursuant to this  
13       section; or
- 14       (3) For a product labeled with the term "home  
15       compostable":
- 16       (A) The manufacturer of that product holds OK compost  
17       HOME certification with regard to that product;
- 18       (B) Notwithstanding subparagraph (A), if the ASTM  
19       adopts a standard specification for the term  
20       "home compostable" on or before January 1, ,  
21       and the department determines that the ASTM



1           standard specification is at least equal to, or  
2           more stringent than, the OK compost HOME  
3           certification, the product meets that ASTM  
4           standard specification; or

5           (C) If the department adopts a standard pursuant to  
6           this section, the product meets the standard  
7           adopted by the department and not the standard  
8           specified in subparagraphs (A) and (B).

9           (b) Except as provided in subsection (a) or (f), no person  
10          shall sell or offer for sale a product in the State that is  
11          labeled with the term "biodegradable", "degradable", or  
12          "decomposable", or any form of those terms, or in any way imply  
13          that the product will break down, fragment, biodegrade, or  
14          decompose in a landfill or other environment.

15          (c) The department may issue guidelines, consistent with  
16          this chapter, for determining whether a product is not compliant  
17          with the labeling requirements of this section and whether a  
18          product is designed, pigmented, or advertised in a manner that  
19          is misleading to consumers.

20          (d) A manufacturer or supplier, upon the request of a  
21          member of the public, shall submit to that member, within





1 ninety days of the request, information and documentation  
2 demonstrating compliance with this chapter in a format that is  
3 easy to understand and scientifically accurate.

4 (e) A product that is in compliance with this chapter  
5 shall not, solely as a result of that compliance, be deemed to  
6 be in compliance with any other applicable marketing requirement  
7 or guideline established under state law or by the Federal Trade  
8 Commission.

9 (f) The department may adopt the European Committee for  
10 Standardization's standard specification EN 17033:2018 entitled  
11 "Plastics-Biodegradable mulch films for use in agriculture and  
12 horticulture-Requirements and test methods" or may adopt a  
13 standard that is equivalent to or more stringent than that  
14 standard as it read on January 1, 2020.

15 (g) A person may sell or offer for sale commercial  
16 agricultural mulch film labeled with the term "soil  
17 biodegradable" only if the department has adopted the standard  
18 specification, or an equivalent or more stringent standard,  
19 pursuant to subsection (f) and the commercial agricultural mulch  
20 film is certified to meet both that specification and the ASTM  
21 standard specification for compostability.



1        (h) No person shall sell or offer for sale a product in  
2 the State that is labeled with the term "compostable" or "home  
3 compostable" unless the product satisfies all the following:

4        (1) If any standard specification is applicable to the  
5 product pursuant to this chapter and the department  
6 has approved a third-party certification entity to  
7 certify products according to that standard  
8 specification, the product shall have certification  
9 that it meets at least one such standard from an  
10 approved third-party certification entity for the  
11 standard; provided that this requirement shall only  
12 apply on or after January 1, 2024, and it shall not  
13 apply unless there is, and has been for at least one  
14 year immediately prior to the product being sold or  
15 offered for sale, a third-party certification entity  
16 approved by the department to provide the applicable  
17 certification;

18        (2) On or after January 1, 2026, the product is an  
19 allowable agricultural organic input under the  
20 requirements of the United States Department of  
21 Agriculture national organic program; provided that:



- 1           (A) By January 1, 2024, the department, through a  
2           public stakeholder process, shall determine  
3           whether, for purposes of this section, it would  
4           be feasible to separate the collection of  
5           products in order to recover organic waste that  
6           is suitable for use in organic agricultural  
7           applications from the collection of products not  
8           suitable for use in organic agricultural  
9           applications; and
- 10          (B) If the department determines that such  
11          bifurcation is feasible and would enable  
12          efficient processing by solid waste processing  
13          facilities, the department shall adopt rules on  
14          or before January 1, 2026, to establish a  
15          bifurcated approach, and products that are not  
16          collected for the purpose of recovering organic  
17          waste that is suitable for use in organic  
18          agricultural applications shall comply with the  
19          department's rules and shall not be subject to  
20          the requirements of this subparagraph;



- 1       (3) The product does not have a total organic fluorine  
2       concentration of greater than one hundred parts per  
3       million, unless the department adopts a different  
4       standard that it determines would more effectively  
5       limit the presence of PFAS substances;
- 6       (4) The product is labeled in a manner that distinguishes  
7       the product from a non compostable product upon  
8       reasonable inspection by consumers and to help enable  
9       efficient processing by solid waste processing  
10       facilities; and
- 11       (5) The product is designed to be associated with the  
12       recovery of desirable organic wastes, such as food  
13       scraps and yard trimmings, that are collected for  
14       composting, unless the product complies with the  
15       department's rules pursuant to paragraph (2), to the  
16       extent the department elects to adopt those rules.
- 17       (i) The department may grant a five-year extension for  
18       complying with the requirements of subsection (h) (2) if either  
19       of the following apply:
- 20       (1) The product or substance has or will soon be, as  
21       determined by the department, included as allowed on



1           the National List of Allowed and Prohibited  
2           Substances, title 7 Code of Federal Regulations  
3           sections 205.600 to 205.607; or  
4           (2) The product or substance has or will soon be, as  
5           determined by the director, included as an allowable  
6           organic input for compost under federal law.  
7           (j) The department may adopt rules for determining whether  
8           products comply with the requirements of subsection (h) (4). The  
9           department, in adopting rules pursuant to this section, may  
10           consider whether the rules are consistent with the product  
11           labeling requirements of other states, stakeholder input, and  
12           industry-standard guidelines. The rules may include  
13           requirements that products are not designed, pigmented, or  
14           advertised in a manner that is misleading to consumers.  
15           (k) For purposes of this section:  
16           "ASTM" means the ASTM International.  
17           "ASTM standard specification" means either:  
18           (1) The ASTM Standard Specification for Labeling of  
19           Plastics Designed to be Aerobically Composted in  
20           Municipal or Industrial Facilities D6400, as published  
21           in 2019; provided that if the ASTM standard



1 specification is revised and the department determines  
2 that the new standard is more stringent and more  
3 protective of public health, public safety, and the  
4 environment, and is reflective of and consistent with  
5 state policies and programs, the department may adopt  
6 the new standard; or

7 (2) The ASTM Standard Specification for Labeling of End  
8 Items that Incorporate Plastics and Polymers as  
9 Coatings or Additives with Paper and Other Substrates  
10 Designed to be Aerobically Composted in Municipal or  
11 Industrial Facilities D6868, as published in 2019;  
12 provided that if the ASTM standard specification is  
13 revised and the department determines that the new  
14 standard is more stringent and more protective of  
15 public health, public safety, and the environment, and  
16 is reflective of and consistent with state policies  
17 and programs, the department may adopt the new  
18 standard.

19 "Commercial agricultural mulch film" means film plastic  
20 that is used only as a technical tool in commercial farming  
21 applications.



1       "OK compost HOME certification" means certification of  
2 conformity with the existing TUV Austria certification "OK  
3 compost HOME certification", which as of January 1, 2011, uses  
4 European Norm 13432 standard adapted to low-temperature  
5 composting in accordance with the TUV Austria program "OK 2-Home  
6 Compostability of Products."

7       "Product" includes but is not limited to:

- 8       (1) A consumer product;  
9       (2) A package or a packaging component;  
10       (3) A bag, sack, wrap, or other thin plastic sheet film  
11       product; and  
12       (4) A food or beverage container or a container component,  
13       including but not limited to a straw, lid, or  
14       utensil."

15       SECTION 3. Section 342G-1, Hawaii Revised Statutes, is  
16 amended by adding two new definitions to be appropriately  
17 inserted and to read as follows:

18       "Consumer product" means a product or part of a product  
19 that is used, bought, or leased for use by a person for any  
20 purpose.



# H.B. NO. 1646

1        "Perfluoroalkyl or polyfluoroalkyl substances" or "PFAS  
2 substances" means all members of the class of fluorinated  
3 organic chemicals containing at least one fully fluorinated  
4 carbon atom."

5        SECTION 4. New statutory material is underscored.

6        SECTION 5. This Act shall take effect on July 1, 2022.

7

INTRODUCED BY: *Michelle E. Lowen*

JAN 20 2022





# H.B. NO. 1646

**Report Title:**

Department of Health; Consumer Goods; Packaging; Recyclability; Compostability; Biodegradability; Labeling; Deceptive Claim; Ban

**Description:**

Prohibits the sale or distribution of consumer goods for which a deceptive claim about the recyclability of the product or packaging is made. Requires the department of health to collect data and issue a material characterization study on recyclable materials collected in the State. Establishes standards for recyclability of products in the State. Prohibits the sale of any product that is labeled as compostable or biodegradable unless the product meets specified criteria.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

