

JAN 21 2022

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:



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- 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



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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:



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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.



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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.

