**HB 1376-FN - AS INTRODUCED**

2024 SESSION

24-2351
12/05

HOUSE BILL ***1376-FN***

AN ACT relative to prohibiting certain packaging from carrying the recycling logo.

SPONSORS: Rep. Caplan, Merr. 8; Sen. Watters, Dist 4

COMMITTEE: Environment and Agriculture

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ANALYSIS

This bill prohibits false and misleading "recyclable" labeling on plastic products.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24-2351
12/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Four*

AN ACT relative to prohibiting certain packaging from carrying the recycling logo.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Subdivision; Recycling Logos. Amend RSA 149-M by inserting after section 64 the following new subdivision:

Recycling Logos

149-M:65 Definitions. In this subdivision:

I. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

II. "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.

III. "Label" means a molded, imprinted or raised symbol on a rigid plastic container or plastic bottle.

IV. "Person" means any individual, trust, firm, joint stock company, partnership, corporation government corporation, association, state, municipality, commission, political subdivision of a state or any interstate body.

V. "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container; accepts a screw-type cap, snap cap or other closure; and has a capacity of 16 fluid ounces or more, but less than 5 gallons.

VI. "Plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin and having a relatively inflexible finite shape or form with a capacity of 8 ounces or more but less than 5 gallons.

149-M:66 Plastic Marketing Requirements. It is unlawful for a person to make an untruthful, deceptive, or misleading claim that a plastic consumer good is recyclable. A person shall not manufacture or distribute a plastic container or plastic bottle with a chasing arrows symbol or label stating that the plastic consumer good is recyclable unless the recycling rate for that consumer good and its packaging is 75 percent, as determined by the department of environmental services.

149-M:67 Record Keeping.

I. Any person that claims that a plastic consumer good that they manufacture or distribute is recyclable shall maintain in written form in its records all of the following information and documentation supporting the validity of the representation:

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

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

(c) 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.

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

(e) 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."

II. For purposes of this subdivision, 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.

149-M:67 Enforcement; Rulemaking.

I. In addition to other appropriate penalties, any violation of the provisions of this chapter shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A. Any right, remedy, or power set forth in RSA 358-A may be used to enforce the provisions of this chapter.

II. The commissioner of the department of environmental services shall adopt rules, pursuant to RSA 541-A, relative to compliance and enforcement of this chapter.

2 Effective Date. This act shall take effect January 1, 2025.

LBA
24-2351
11/15/23

**HB 1376-FN- FISCAL NOTE**
**AS INTRODUCED**

AN ACT relative to prohibiting certain packaging from carrying the recycling logo.

**FISCAL IMPACT:** [ X ] State [ X ] County [ X ] Local [ ] None

| Estimated State Impact - Increase / (Decrease) | | | | |
|---|---|---|---|---|
| | **FY 2024** | **FY 2025** | **FY 2026** | **FY 2027** |
| **Revenue** | $0 | Indeterminable Increase | Indeterminable Increase | Indeterminable Increase |
| *Revenue Fund* | None | | | |
| **Expenditures** | Indeterminable Increase | | | |
| *Funding Source* | General Fund | | | |
| **Appropriations** | $0 | $0 | $0 | $0 |
| *Funding Source* | None | | | |

| Estimated Political Subdivision Impact - Increase / (Decrease) | | | | |
|---|---|---|---|---|
| | **FY 2024** | **FY 2025** | **FY 2026** | **FY 2027** |
| **County Revenue** | $0 | $0 | $0 | $0 |
| **County Expenditures** | Indeterminable | | | |
| **Local Revenue** | $0 | $0 | $0 | $0 |
| **Local Expenditures** | Indeterminable | | | |

**METHODOLOGY:**

This bill adds, deletes, or modifies a criminal penalty, or changes statute to which there is a penalty for violation. Therefore, this bill may have an impact on the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at: https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

The Department of Justice states violations of the Consumer Protection Act, RSA 358-A, are enforced by the Consumer Protection and Antitrust Bureau of the Attorney General's Office. The Department states violations of the Consumer Protection Act may increase the number of investigations and enforcement actions taken by the Bureau; including issuing administrative subpoenas, entering Assurances of Discontinuance, and civil or criminal enforcement actions.

Based on the number of increased investigations and enforcement actions, the Department may need additional resources.

The Department of Environmental Services states this bill would prohibit the manufacture and distribution of plastic containers and plastic bottles which display a recycling label unless the actual recycling rate for such containers and bottles meets a specified threshold. The bill would amend RSA 149-M and place new responsibilities on the Department for rulemaking, determining recycling rates for the various plastic containers and bottles in the marketplace, assessing compliance by manufacturers/distributors, and conducting enforcement actions as necessary. Enforcement of this bill would be shared between the Department (under RSA 149-M:15) and the Department of Justice under the Consumer Protection Act (RSA 358-A:4). The Department states it would not be able to absorb these new responsibilities with existing resources and an additional Waste Management Specialist III position would need to be created. Assuming this position would be filled by January 1, 2025, the Department estimates the cost for salary, benefits in other expenses would be $60,000 in FY 2025, $104,000 in FY 2026 and $108,000 in FY 2027.

The Department does not have expertise in regulating the consumer marketplace or assessing recyclability of specific consumer products or product categories. There are myriad of consumer products that would be subject to the provisions of this bill (likely to be thousands of products). The Department assumes it would need to hire the services of a consulting firm to assist in gathering and analyzing data necessary to implement the provisions of this bill. The Department assumes the consulting firm would conduct a market analysis to determine:

1. What plastic products currently exist in the New Hampshire marketplace that would be subject to this bill,
2. Recycling rates for each such product or product category, and
3. Whether any products exist in the marketplace that are out of compliance with the provisions of this bill.

The Department states the consumer marketplace can change over time, as a result the market analysis would need to be repeated at periodic intervals to assure administration of the law stays current with the marketplace. For the purposes of this fiscal note, the Department assumes these market analyses would be repeated every 5 years. Given the complexity of such an analysis, but without precise information concerning the cost, the Department assumes the cost would between $500,000 and $1,000,000 per instance.

The bill does not appropriate any funds or identify a source of funds to cover the costs associated with this bill, therefore the Department assumes an appropriation from the general fund would

be necessary. There would be no impact to county or local revenues or expenditures. The Department notes it is possible that revenues may be generated through enforcement penalties. However, such revenues would be contingent on circumstances requiring enforcement, which are impossible to predict with any confidence.

In addition, this bill does not establish any new positions.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council, Department of Justice, Departments of Corrections and Environmental Services, New Hampshire Association of Counties, and New Hampshire Municipal Association