

S.420 (Liu) / A.6671 (Glick)

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BILL S.420 (Liu) / A.6671 (Glick)
SUBJECT State-specific standards for product labels with regard to recycling
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OPPOSE

The Business Council opposes adoption of S.420/A.6671, which would establish new, state-specific standards for product labels with regard to recycling. State-specific labeling requirements are inherently burdensome, as few products in interstate commerce are specifically packaged or labeled for single-state distribution.

However, our most significant concern is that this legislation is a back-door effort to ban, limit and/or discredit non-mechanical recycling, such as depolymerization, pyrolysis, solvolysis and biological recycling. These technologies are widely used in other jurisdictions for plastic products not amenable to mechanical recycling.

Basically, this legislation is unnecessary, as New York State already imposes standards for the use of labels regarding a product or package's environmental attributes.

Existing DEC regulations, at 6 NYCRR Part 368-1.3 provide that an entity cannot offer a product for sale in New York labeled with the terms recycled or recyclable or reusable, unless the term is used in conformance with the Federal Trade Commission's "Guides for the Use of Environmental Marketing Claims" established in federal regulations (16 CFR Part 260). The FTA's rules were adopted in 1992 under the Clinton administration and revised in 2012 (under the Obama administration).

Specific to recyclability claims, the federal rule (§260.12) states that:

- It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.

This federal standard is also reflected in proposed S.420/A.6671.

The federal standard goes on to provide that:

- Marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.
- When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims. The term “substantial majority,” as used in this context, means at least 60 percent.

In other words, New York already applies to a well-known, well-recognized national standard that is consistent with the proposed requirements of S.420/A.6671.

However, this bill goes on to further specify that use of the so-called “chasing arrow” symbol is “deceptive” if a labeled product “does not satisfy the requirements of the regulations and list” to be developed by the DEC, based on additional factors.

Most significant, the recyclability factors specified in S.420/A.6671 are limited to the use of mechanical or manual recycling. As mentioned above, this definition would unnecessarily exclude products and packaging that are recyclable through existing and emerging non-mechanical recycling.

The bill would also prohibit any product (but apparently not packaging) from being labeled as recyclable if it contains any intentionally added PFAS or, after January 1, 2029, PFAS above “the lowest level that can be feasibly achieved,” as determined by the DEC in regulation. While perfluoroalkyl and polyfluoroalkyl substances are being phased-out in many applications, we do not support adoption of a state-specific “lowest achievable level” standard. We note that a similar “lowest level feasibly achieved” mandate was removed by chapter amendment in another recently passed chemical restriction bill (see S.8816/A.9503).

(Note, existing state law already bans the sale of food packaging containing perfluoroalkyl and polyfluoroalkyl (PFAS) substances as intentionally added chemicals, see ECL §37-0209.)

As a final point, it is unclear how this new mandate and sales prohibition would be enforced. The bill provides that, first, it is “deceptive” to misrepresent the environmental attributes of a product or packaging, and second, it is illegal to offer for sale, sell or distribute products in New York for which deceptive claims are made. If a product manufacturer sells its products to a distributor who in

turn sells to a retailer, to whom within that supply chain would this prohibition apply? It is typically the case that a manufacturer has no control over the destination of its products once sold to a distributor.

In summary, we see this legislation as unnecessary given existing state labeling standards and overreaching as it imposes unwarranted restrictions on effective recycling technologies.

For these reasons, The Business Council opposes adoption of S.420/A.6671.