

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 285

(Senator Kittleman)

Finance

**Consumer Protection - Loose-Fill Insulation for Buildings - Required Statement
on Packaging**

This bill requires manufacturers of loose-fill insulation for buildings to include a specific statement of guarantee on each package of such insulation that is sold in the State. Violation of the bill's provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, subject to MCPA's civil and criminal penalties.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to the bill's imposition of existing penalty provisions. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

Local Effect: Potential increase in revenues and expenditures due to the bill's imposition of existing penalty provisions.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Packages must be labeled with a specific statement guaranteeing that when the insulation is installed by a professional to at least the minimum thickness for a specified R-value, as indicated on the package, the weight of the installed insulation will equal or exceed the minimum weight per square foot for that R-value.

Current Law: The State does not currently mandate guarantees by manufacturers of loose-fill insulation. The Federal Trade Commission regulates the labeling of noncellulose loose-fill insulation through 16 C.F.R. § 460.12, which states that each package must include a label that contains a chart showing the minimum thickness, maximum net coverage area, and minimum weight per square foot at R-values of 13, 19, 22, 30, 38, and 49. These FTC insulation regulations also expressly state that any state or local laws and regulations that are either inconsistent with or frustrate the purpose of the federal regulation are preempted. State or local governments may petition the FTC for good cause to permit the enforcement of an otherwise preempted law or regulation. Under the Supremacy Clause of the U.S. Constitution, federal law preempts state and local law.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of MCPA are subject to • civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

Background: Loose-fill insulation, also known as Air-Blown Insulation, consists of small particles of foam, fiberglass, cellulose, or other materials. Installation of this insulation is typically performed by using special equipment to blow the particles into enclosed cavities or open areas of a structure in order to form an insulating layer of a desired R-value. “R-value” is a building industry term that refers to the ability of an insulation material to retard heat flow; a higher R-value indicates a more insulating material.

In 2005, FTC issued the “R-value Rule” in order to protect consumers from misleading or deceptive advertising claims regarding loose-fill insulation. This federal regulation provides pre-purchase information to the consumer by mandating that specific R-value information be present in advertisements and at the point of sale. The regulation also generally prohibits manufacturers from describing R-value in terms of thickness, because scientific evidence has shown that R-values are not linear with respect to thickness and such descriptions tend to mislead consumers into believing that simple multiplication of depth will achieve a desired R-value.

Manufacturers of loose-fill insulation do not have complete control over the final R-values that are achieved by installation of their product. Over time, loose-fill insulation can lose its initial R-value due to “settling” that occurs after improper installation. Another problem that can arise during installation is known as “fluffing” or “overblowing,” which occurs when insulation is either accidentally or intentionally blown in to achieve minimum *thickness* but not minimum *weight* requirements. Essentially, the insulation is installed to the minimum thickness, but spread out over a larger than optimal area, resulting in under-insulation. Unscrupulous contractors have been known to take advantage of this technique in order to bilk consumers, and the Insulation Contractors Association of America reports that overblows of 25% are common in the industry. For these reasons, unless a manufacturer of loose-fill insulation also has complete control over all installations of its product, it would not be able to completely control the insulation’s final installed weight per square foot.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Federal Trade Commission, Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2008
mll/ljm

Analysis by: Alexander M. Rzasa

Direct Inquiries to:
(410) 946-5510
(301) 970-5510