

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 988
Economic Matters

(Delegates Waldstreicher and Hucker)

Consumer Protection - Recalls of Consumer Goods - Notice

This bill requires a merchant that issues a “customer loyalty card” to a consumer to notify the consumer of a recall of any consumer goods sold to the consumer in specified situations.

The bill does not confer a private cause of action on any person to enforce its provisions and may not be construed to require a merchant to take any action preempted by or in conflict with federal law.

Fiscal Summary

State Effect: The bill does not directly affect governmental operations and finances.

Local Effect: The bill does not directly affect local governmental operations and finances.

Small Business Effect: Minimal. Expenditures may increase minimally due to notice requirements for a small business which maintains a customer database linked to a “customer loyalty card” program; however, the small business may provide notice in any manner it chooses, including electronic transmission.

Analysis

Bill Summary: The bill defines “customer loyalty card” as a plastic or paper card that is issued by a merchant in connection with a loyalty, rewards, or similar program established by the merchant and identifies the card holder as a member of the program. A customer loyalty card may include a rewards card, a points card, and a club card.

Under the bill, “consumer” means an individual who purchases consumer goods from a merchant; “consumer goods” means goods that are primarily for personal, household, or family purposes; and “merchant” means a person who directly or indirectly offers or makes available to consumers any consumer goods.

The merchant must notify a consumer issued a customer loyalty card if the merchant (1) is notified of the recall by the manufacturer, wholesaler, or distributor of the consumer goods; (2) is able to identify the consumer who purchased the recalled consumer goods; and (3) maintains contact information obtained in connection with the consumer’s application for a customer loyalty card.

The merchant may notify the consumer in any manner selected by the merchant but must do so as soon as practicable after the merchant receives notice of the recall from the manufacturer, wholesaler, or distributor. The merchant must notify the consumer using the contact information provided by the consumer on his or her customer loyalty card application.

The bill does not require a merchant to seek information about manufacturer, wholesaler, or distributor recalls of consumer goods sold by the merchant. Nor does the bill require a merchant to request information from or maintain information about a consumer to whom the merchant has issued a customer loyalty card.

Current Law/Background: There is no State statute that requires a merchant to use a customer database in order to send notice of a manufacturer, wholesaler, or distributor recall. The U.S. Food and Drug Administration’s Food Safety Modernization Act, signed into law in January 2011, requires a grocery store that is part of a chain of 15 or more stores to prominently display specified information regarding possibly contaminated food.

A lawsuit was recently filed against the Safeway supermarket chain. The plaintiffs are seeking punitive damages for the failure of Safeway to use the customer’s contact information to provide notice of a product recall. Safeway had access to the customer’s contact information due to the customer’s participation in Safeway’s Club Card program.

Legislation has been introduced in New Jersey and South Carolina in recent years which would have required a grocery store to use its customer database to notify customers of any recall of a food item. Neither state passed the legislation under consideration. Illinois has a similar statute that requires a retailer that receives notice of a recall of any children’s product to notify customers by using contact information provided through the retailer’s website.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), U.S. Food and Drug Administration, *Product Liability Monitor*, Illinois General Assembly, New Jersey Legislature, South Carolina Legislature, Department of Legislative Services

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mlm/ljm

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