

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 1088  
Economic Matters

(Delegates Niemann and Vaughn)

Finance

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**Business Regulation - Returnable Containers and Returnable Textiles - Revisions**

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This bill increases *existing* penalties for violations of provisions related to returnable containers and textiles. In an action brought under the bill, an owner of a returnable container or returnable textile may recover up to three times the value of the actual damages, plus reasonable attorney's fees.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

**Local Effect:** Minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** Misdemeanor penalties are increased for:

- the improper use, damage, and improper transfer of a registered returnable container as well as defacing the identifying marks on a registered container;
- the failure to return a registered returnable container promptly upon request; and
- the violation of plastic secondary packaging provisions.

A first offense is punishable with imprisonment for up to one year and/or a fine of up to \$1,000; subsequent violations may be punished with imprisonment for up to three years and/or a fine of up to \$2,500.

Failure to promptly clean the inside of a registered returnable container that has come into contact with a dairy product is a misdemeanor and is subject to a \$500 fine.

**Current Law:** A person may register a class of returnable containers if the person deals in goods delivered in returnable containers that have an identifying name, mark, or device. To register the containers, a person has to clearly describe the containers, including identifying marks, and sign the description before an officer qualified to take an acknowledgement to deeds. The signed and acknowledged description must be published in a newspaper serving the jurisdiction in which the person's principal place of business is located. The description and certificate of publication must be filed with the Secretary of State.

Improper use, damage, or improper transfer of a registered returnable container as well as defacing the identifying marks on a registered container are subject to misdemeanor penalties. A first offense is punishable with imprisonment for up to one year and/or a fine of up to \$50; subsequent violations may be punished with imprisonment for up to one year and/or a fine of up to \$250.

Failure to return a registered returnable container promptly upon request, or failure to promptly clean the inside of a container that has come into contact with a dairy product, is a misdemeanor and is subject to a \$1 fine.

“Plastic secondary packaging” means a plastic crate or shell used for bulk transportation, storage, or carrying of retail items, including milk crates and bakery or soft drink trays. A purchaser of four or more units of plastic secondary packaging must verify the seller's identity and lawful possession as well as record a description of the units purchased and the date of the transaction. The records must be retained for one year and must include the name and address of the purchaser and the registration number and license tag number of any vehicle used in the delivery of the plastic secondary packaging. A violation of plastic secondary packaging provisions is a misdemeanor and subject to a \$100 fine.

**Background:** Units of plastic secondary packaging are typically constructed of high-density polyethylene, which yields approximately 8 cents per pound from recyclers. According to the International Dairy Foods Association (IDFA), distributors pay about \$4 for each new milk crate they purchase. IDFA estimates that about 20 million milk crates are stolen annually in the United States; replacing the stolen milk crates costs dairy producers roughly \$80 million to \$100 million per year.

In November 2009, five people in Prince George's County were arrested and charged with stealing large amounts of plastic pallets and crates used to transport bottled soft drinks, baked goods, and dairy products. According to *The Washington Post*, the alleged thefts cost local businesses nearly \$10 million.

**State Revenues:** General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted under the bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Carroll, Harford, Queen Anne's, and St. Mary's counties; International Dairy Foods Association; *The Washington Post*; Department of Legislative Services

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