

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1080 (Delegates Kramer and Fraser-Hidalgo)
Economic Matters

Consumer Protection - Cleaning Product Right-to-Know Act

This bill requires a manufacturer of a “designated product” sold or offered for sale in the State, beginning January 1, 2021, to disclose specified information related to chemicals contained in the designated product, among other things, on the product label and the manufacturer’s website. A manufacturer is not required to disclose specified confidential business information. A violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The application of existing civil and criminal penalties does not materially affect State finances. The Office of the Attorney General (OAG) can handle the bill’s requirements with existing budgeted resources. The bill does not materially affect the Maryland Department of the Environment.

Local Effect: The application of existing penalties does not materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill states that it is the intent of the General Assembly to provide individuals in Maryland with ingredient information about designated products that encourages informed purchasing decisions and reduces public health impacts from

exposure to potentially harmful chemicals in designated products by requiring product manufacturers to provide a specific list of the chemicals used in their products.

Requirements for Manufacturers of Designated Products

Beginning January 1, 2021, a manufacturer of a designated product that is sold or offered for sale in the State must:

- disclose on the product label (1) a list of each “intentionally added ingredient” that is included on a “designated list” or is identified by Maryland as causing cancer or reproductive toxicity, as specified; (2) specified fragrance allergens and ingredients; and (3) the manufacturer’s toll-free telephone number and website address, as specified;
- update required information on product labels within 18 months, as specified;
- post specified information, in an electronically readable format, on the manufacturer’s website relating to the designated product, including (1) except for confidential business information, a list of each intentionally added ingredient in the designated product, and the functional purpose and chemical abstract service number of the ingredient, as specified; (2) a list of all “nonfunctional constituents,” as specified, and the chemical abstract service number for ingredients that are in the designated product at a specified concentration; and (3) specified information relating to fragrance ingredients or allergens contained in the designated product and the concentration of each fragrance;
- update specified information on the manufacturer’s website within 6 months of specified revisions; and
- follow specified chemical naming protocols when listing intentionally added ingredients, fragrance ingredients, or nonfunctional constituents on a product label or the manufacturer’s website.

Confidentiality Provisions

The bill may not be construed to require a manufacturer to disclose (1) the weight or amount of an intentionally added ingredient (including a fragrance or nonfunctional constituent) or (2) how a product is manufactured. The bill may also not be construed to require the ingredients found in a designated product at a concentration below 1% to be listed in any particular order. Additionally, a manufacturer is authorized to protect any intentionally added ingredient, including a fragrance, that is confidential business information. However, the manufacturer must list the generic name for the confidential ingredient, as specified.

Definitions

- “Designated list” means any of the authoritative lists identified in the bill that identify chemicals as causing cancer or other human health or environmental harm, including any subsequent revisions of those lists.
- “Designated product” means a finished product that is an air care, automotive, general cleaning, or floor maintenance product or a polish used primarily for commercial janitorial, domestic, or institutional cleaning purposes.
- “Intentionally added ingredient” means a chemical that a manufacturer has intentionally added to a designated product and that has a functional or technical effect in the finished product.
- “Nonfunctional constituent” means one of 34 listed substances that is an incidental component of an intentionally added ingredient, a breakdown of a product of an intentionally added ingredient, or a byproduct of the manufacturing process that has no functional or technical effect on the designated product.

Current Law/Background:

Protecting Human Health and the Environment from Chemical Exposure

Federal laws such as the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act, many of which are enforced at the State level, aim to reduce chemicals in the environment. Under the federal Toxic Substances Control Act (TSCA) of 1976, the U.S. Environmental Protection Agency (EPA) ensures that chemicals manufactured, imported, processed, or distributed in commerce, or used or disposed of in the United States, do not pose any unreasonable risks to human health or the environment. Section 8(b) of TSCA requires EPA to compile, keep current, and publish a list of each chemical that is manufactured or processed, including imports, in the United States for uses under TSCA. This list, which is called the TSCA Inventory, contains roughly 85,000 chemicals.

There is no State or federal requirement for manufacturers of cleaning products to disclose ingredient information. However, on January 1, 2018, California enacted a law that is substantively similar to this bill that requires manufacturers of designated products to disclose certain information related to chemicals that are contained in a designated product on the product label and on the manufacturer’s website.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other

representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

OAG's Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: Any small business manufacturer of a designated product that is affected by the bill could be meaningfully impacted by the bill's requirements. Although the exact number of affected manufacturers in the State is unknown, census data indicates that in calendar 2015, there were seven soap and cleaning compound manufacturing establishments in Maryland that were considered small businesses. The impact of the bill on small businesses may be less because of the recent changes in the State of California's laws, as described above. Additionally, the bill's requirements do not go into effect until January 1, 2021, which provides time for manufacturers to use existing labeled products and to implement the bill's changes.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): California State Legislature; U.S. Environmental Protection Agency; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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mm/lgc

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