

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 69 (Delegate Love)
Economic Matters and Environment and
Transportation

Environment - Single-Use Plastics - Restrictions

This bill generally prohibits, beginning January 1, 2022, a “food service business” from providing specified single-use food or beverage products to customers unless requested. The bill also prohibits, beginning as early as January 1, 2024, an owner, an operator, or a manager of a “lodging establishment” from providing a “personal cleansing product” in a “small plastic bottle,” except under specified circumstances. The bill establishes civil penalties for violations. It also changes a current law definition related to plastic products.

Fiscal Summary

State Effect: Assuming local health departments (LHDs) are primarily responsible for enforcement, the Maryland Department of the Environment (MDE) can implement the bill with existing resources, as discussed below. The bill’s prohibition related to single-use food or beverage products could affect any State-owned or State-operated cafeterias. General fund revenues may increase minimally beginning in FY 2022 due to the bill’s civil penalty provisions, as discussed below.

Local Effect: Expenditures for LHDs may increase beginning in FY 2022 to enforce the bill. The bill’s prohibition related to single-use food or beverage products could affect expenditures for local school systems, as discussed below. Local revenues are not anticipated to be affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Prohibition Against Providing Single-use Food or Beverage Products to Customers

Beginning January 1, 2022, a food service business is generally prohibited from providing any of the following single-use food or beverage products to a customer who is ordering carryout from or dining inside the food service business, unless the customer requests the product: (1) condiments; (2) lids; (3) lid plugs and stoppers; (4) stirrers; (5) straws; or (6) utensils. This prohibition does not apply to (1) beverages provided by a food service business at a drive-through window; (2) prepackaged beverage products available at a food service business; or (3) beverages that customers at a food service business serve themselves, as specified. The bill does not affect the authority of a county, municipality, or other local government to enact or enforce more stringent requirements for the single-use food or beverage products affected by the bill.

Every food service business must maintain a limited stock of the listed single-use food or beverage products to accommodate the physical or medical needs of an individual in compliance with federal, State, and local laws and regulations.

MDE, a unit of local government with inspection authority, or the Attorney General may enforce these provisions. A person who violates these provisions is subject to (1) for a first violation, a warning and (2) for a second or subsequent violation, a civil penalty of up to \$500, but not exceeding \$2,000 per person per year.

A “food service business” means a business in the State that sells or provides food and/or beverages for consumption on and off the premises. The term includes a business or institutional cafeteria, including a cafeteria operated by or on the behalf of the State or a local government.

Prohibition Regarding Providing Personal Cleaning Products at Lodging Establishments

An owner, an operator, or a manager of a lodging establishment is prohibited from providing a personal cleansing product in a small plastic bottle (1) to a guest staying at the establishment; (2) in any part of a room used for lodging or sleeping purposes, including the bathroom; or (3) in a bathroom that is shared by guests staying at the establishment or members of the public. However, such products may be provided if the personal cleansing product is provided upon request of the guest, at no charge to the guest, and in an area other than the areas described above.

Beginning January 1, 2024, the prohibition applies to lodging establishments with 51 or more rooms used for lodging or sleeping purposes. Beginning January 1, 2025, the prohibition applies to all lodging establishments.

MDE, a unit of local government that has the authority to inspect lodging establishments, or the Attorney General has the authority to enforce the prohibition. For a first violation, a violator is subject to a warning. For a second or subsequent violation, a violator is subject to a civil penalty of up to \$500 but not exceeding \$2,000 per person per year.

A “lodging establishment” is an establishment that (1) contains one or more rooms available for a fee and (2) is used by transient guests for lodging or sleeping purposes. The definition includes a motel, a hotel, a resort, a bed and breakfast inn, and a vacation rental unit. It does not include a hospital, a nursing home, a residential retirement community, a prison or jail, a homeless shelter, a boarding school, a long-term rental unit, an employee housing unit, or a residential dwelling unit or a portion of the unit used for limited residential lodging.

A “personal cleansing product” is a product intended to be applied to or used on the human body for purposes of cleaning; it includes mouthwash, shampoo, hair conditioner, and bath soap. A “small plastic bottle” means a plastic bottle or container that has less than a six-ounce capacity and is intended to be nonreusable by the end user.

Changes to Current Law Definition Related to Plastic Products

The bill modifies the definition of “food or beverage product” under current law to include condiment packages, lid plugs and stoppers, and stirrers. The definition relates to existing provisions that govern labeling and performance standards for specified plastic products.

Current Law: State law does not address the provision of the single-use food or beverage products by food service businesses or the provision of personal cleansing products at lodging establishments that are affected by the bill.

Title 9, Subtitle 21 of the Environment Article establishes labeling and performance standards for plastic products labeled as biodegradable, degradable, decomposable, or any other term that implies that the product will break down, fragment, biodegrade, or decompose in a landfill or any other environment. A “plastic product” means a product made of plastic, whether alone or in combination with another material including paperboard; it includes a package or packaging component, a film plastic product, a “food or beverage product,” and any other plastic product or part of a plastic product. However, the term does not include specified personal care products. A “food or beverage product” means a product that is used for food and drink and is made of plastic or paper with a plastic coating. A food or beverage product includes containers, food service ware and utensils,

and straws and lids. The definition does not explicitly include condiment packages, nor does it include lid plugs and stoppers or stirrers.

A person who violates the labeling and performance standards for specified plastic products is subject to a civil penalty of \$500 for a first violation, a civil penalty of \$1,000 for a second violation, and a civil penalty of \$2,000 for a third and subsequent violation. Local governments enforce these provisions, and any penalties collected pursuant to these provisions are paid to the county, municipality, or other local government that brought the enforcement action.

State Revenues: General fund revenues may increase minimally due to the bill's civil penalty provisions for any cases heard in the District Court. The bill is silent on where any such penalties must be deposited. However, civil cases are typically heard in the District Court, and civil penalties assessed in cases heard in the District Court are generally deposited into the general fund.

State Expenditures: This analysis assumes that LHD's are primarily responsible for enforcing the bill. Thus, any impact on MDE related to enforcement is minimal and absorbable within existing budgeted resources.

The bill's prohibition related to single-use food or beverage products could affect any State-owned or State-operated cafeterias, including at institutions of higher education. Any impact is expected to be primarily operational, but ultimately depends on the types of products that a cafeteria uses and how they are provided to customers. There could be costs for affected cafeterias to identify and provide alternative products or to modify the distribution of affected products to customers. On the other hand, affected cafeterias may realize cost savings from needing to purchase smaller quantities of affected products.

The bill's prohibition related to personal cleansing products is not expected to affect State-owned or State-operated lodging establishments or campgrounds.

Local Expenditures: Local governments have the authority to enforce the bill's provisions, and this analysis assumes that LHDs are primarily responsible for doing so. Although LHDs already inspect food service facilities, LHDs do not routinely oversee lodging inspections. Nevertheless, it is assumed that LHDs are able to respond to complaints for violations of the bill related to lodging establishments as necessary. While enforcement activities may result in an increase in local expenditures, assuming enforcement is complaint based, any impact is likely minimal.

Similar to the State impact described above, the bill's prohibition related to single-use food or beverage products could affect local school cafeterias. Again, the primary impact is

expected to be operational, but the bill could affect local expenditures depending on the types of products currently used and how such products are distributed.

For example, Frederick County Public Schools anticipates that local schools realize a savings of approximately \$2,500 annually from having to purchase fewer single-use food or beverage products (in particular, utensils) and advises that its schools already ration the distribution of condiments and plastic utensils on an as-needed basis. On the other hand, St. Mary's County Public Schools anticipates a significant impact and notes that, among other effects, local schools need to purchase durable containers and utensils to replace single-use products and invest in equipment to store and wash reusable products. St. Mary's County Public Schools also notes that it currently provides meals to students off campus due to the COVID-19 pandemic and that the bill could have a meaningful effect on that activity.

Small Business Effect: Small businesses that own and/or operate affected lodging establishments and food service businesses, as well as any small businesses that manufacture or sell affected products, may be affected by the bill.

Any small business that owns an affected lodging establishment may incur additional costs to identify and provide alternative personal cleansing products. Specifically, affected lodging establishments may incur additional costs to install bulk personal cleansing product dispensers or provide products in larger containers. Because the bill's prohibition does not take effect until January 1, 2024, at the earliest, it is assumed that any existing stock of personal cleansing products in small plastic bottles can be used before the bill's prohibition takes effect. In addition, once bulk dispensers are installed, the purchase of personal cleansing products in bulk may end up being less costly.

Similarly, a small food service businesses may incur additional costs to purchase durable alternatives to single-use food or beverage products or to change how these products are delivered to customers. However, since single-use food or beverage products can still be provided to customers upon request, it is anticipated that the primary impact from the bill is operational. Further, some food service businesses could realize cost savings from needing to purchase smaller quantities of single-use food or beverage products.

Any small businesses that manufacture or sell affected products to lodging establishments or food service businesses may be negatively affected to the extent the bill results in a decrease in sales of those products. On the other hand, any small businesses that manufacture or sell such products in larger containers, or that sell alternatives to those products, may benefit.

Additional Comments: Nonpublic schools are also affected in the same ways that local public school systems are, as described above.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Calvert, Caroline, Montgomery, and Prince George's counties; City of Bowie; Maryland Association of County Health Officers; Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Baltimore City Community College; University System of Maryland; Morgan State University; Maryland Department of the Environment; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Anne Arundel County Public Schools; Charles County Public Schools; Frederick County Public Schools; St. Mary's County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2021
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