

HOUSE BILL 36

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(PRE-FILED)

By: **Delegates Lierman, Charkoudian, D. Jones, R. Lewis, Love, and Terrasa**

Requested: October 15, 2020

Introduced and read first time: January 13, 2021

Assigned to: Environment and Transportation and Economic Matters

A BILL ENTITLED

AN ACT concerning

Environment – Packaging, Containers, and Paper Products – Producer Responsibility

FOR the purpose of requiring, on or before a certain date, a certain producer of certain packaging, containers, and paper products to individually or as part of a stewardship organization submit a certain covered materials and products stewardship plan to the Department of the Environment for review and approval; prohibiting, on or after a certain date, a producer of certain covered materials and products from selling, offering for sale, distributing, or importing certain covered materials and products unless the producer, individually or as part of a stewardship organization, has an approved stewardship plan on file with the Department; requiring the stewardship plan to include certain information; requiring a stewardship plan to provide a certain method for financing the implementation of the stewardship plan, including establishing a certain fee structure for certain producers; requiring certain methods of financing the stewardship plan to be evaluated by an independent financial auditor, as designated by the Department, for certain purposes; requiring the Department to approve or reject a certain stewardship plan within a certain period of time under certain circumstances; requiring a certain producer or stewardship organization to implement a stewardship plan within a certain amount of time after the Department approves the stewardship plan; specifying that a certain producer or stewardship organization is immune from certain liability under certain circumstances; requiring a certain producer or stewardship organization to submit a certain report, on or before a certain date each year, to the Department in accordance with certain requirements; requiring the Department to review a certain report in accordance with certain requirements; requiring an approved stewardship plan to expire after a certain number of years; authorizing the Department to rescind approval of a stewardship plan at any time; authorizing a local government to request reimbursement from a certain producer that has an approved stewardship plan on file with the Department for certain costs in a certain manner; requiring a certain producer to submit a certain report to the Department on or before a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



date each year and requiring the report to be posted on the website of the producer or the Department; requiring the Department to keep certain data confidential; requiring the Department to adopt certain regulations; establishing certain penalties for certain violations; providing for the application of this Act; defining certain terms; and generally relating to producer responsibility for packaging, containers, and paper products.

BY adding to

Article – Environment

Section 9–2301 through 9–2308 to be under the new subtitle “Subtitle 23. Packaging, Containers, and Paper Products”

Annotated Code of Maryland

(2014 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

SUBTITLE 23. PACKAGING, CONTAINERS, AND PAPER PRODUCTS.

9–2301.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “COVERED MATERIALS AND PRODUCTS” MEANS, REGARDLESS OF RECYCLABILITY:

(I) ANY PART OF A PACKAGE OR CONTAINER, INCLUDING MATERIAL THAT IS USED FOR THE CONTAINMENT, PROTECTION, HANDLING, DELIVERY, AND PRESENTATION OF A PRODUCT THAT IS SOLD, OFFERED FOR SALE, IMPORTED, OR DISTRIBUTED IN THE STATE; AND

(II) PAPER PRODUCTS.

(2) “COVERED MATERIALS AND PRODUCTS” INCLUDES:

(I) PRIMARY, SECONDARY, AND TERTIARY PACKAGING INTENDED FOR THE CONSUMER MARKET;

(II) SERVICE PACKAGING DESIGNED AND INTENDED TO BE FILLED AT THE POINT OF SALE, INCLUDING:

1. CARRY-OUT BAGS;

- 2. BULK GOODS BAGS;
- 3. TAKE-OUT AND HOME DELIVERY FOOD SERVICE PACKAGING; AND
- 4. PRESCRIPTION BOTTLES;
- (III) PAPER SOLD AS A PRODUCT;
- (IV) PRINTED MATERIALS; AND
- (V) BEVERAGE CONTAINERS.

(3) “COVERED MATERIALS AND PRODUCTS” DOES NOT INCLUDE ANY LITERARY, TEXT, OR REFERENCE BOUND BOOK.

(C) (1) “PRODUCER” MEANS A PERSON THAT:

(I) 1. MANUFACTURES A COVERED MATERIAL OR PRODUCT UNDER THE PERSON’S OWN NAME OR BRAND; AND

2. SELLS, OFFERS FOR SALE, OR DISTRIBUTES THE COVERED MATERIAL OR PRODUCT IN THE STATE;

(II) IMPORTS A COVERED MATERIAL OR PRODUCT AS OWNER OR LICENSEE OF A TRADEMARK OR BRAND UNDER WHICH A COVERED MATERIAL OR PRODUCT IS SOLD OR DISTRIBUTED IN THE STATE; OR

(III) SELLS, OFFERS FOR SALE, OR DISTRIBUTES A COVERED MATERIAL OR PRODUCT IN THE STATE.

(2) “PRODUCER” DOES NOT INCLUDE A LOCAL GOVERNMENT.

(D) “STEWARDSHIP ORGANIZATION” MEANS A NONPROFIT ORGANIZATION CREATED BY A GROUP OF PRODUCERS TO IMPLEMENT A STEWARDSHIP PLAN.

(E) “STEWARDSHIP PLAN” MEANS A COVERED MATERIALS AND PRODUCTS STEWARDSHIP PLAN DEVELOPED BY A PRODUCER OR STEWARDSHIP ORGANIZATION IN ACCORDANCE WITH § 9-2303 OF THIS SUBTITLE.

9-2302.

THIS SUBTITLE DOES NOT APPLY TO A PRODUCER THAT:

(1) (I) GENERATED LESS THAN \$1,000,000 IN GROSS REVENUE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR;

(II) SOLD, OFFERED FOR SALE, OR DISTRIBUTED FOR SALE IN THE STATE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR LESS THAN 1 TON OF COVERED MATERIALS OR PRODUCTS; OR

(III) CONDUCTED ALL OF THE COVERED MATERIALS OR PRODUCTS SALES IN THE STATE DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR AT A SINGLE POINT OF RETAIL SALE THAT WAS NOT SUPPLIED OR OPERATED AS PART OF A FRANCHISE; AND

(2) ON REQUEST BY THE DEPARTMENT, PROVIDES TO THE DEPARTMENT SUFFICIENT INFORMATION TO DEMONSTRATE THAT THE PRODUCER MEETS THE CONDITIONS OF THIS SECTION.

9-2303.

(A) (1) ON OR BEFORE OCTOBER 1, 2022, EACH PRODUCER SHALL, INDIVIDUALLY OR AS PART OF A STEWARDSHIP ORGANIZATION, SUBMIT A STEWARDSHIP PLAN TO THE DEPARTMENT FOR REVIEW AND APPROVAL.

(2) ON OR AFTER OCTOBER 1, 2024, A PRODUCER MAY NOT SELL, OFFER FOR SALE, DISTRIBUTE, OR IMPORT FOR SALE OR DISTRIBUTION COVERED MATERIALS OR PRODUCTS FOR USE IN THE STATE UNLESS THE PRODUCER, INDIVIDUALLY OR AS PART OF A STEWARDSHIP ORGANIZATION, HAS AN APPROVED STEWARDSHIP PLAN ON FILE WITH THE DEPARTMENT.

(B) A STEWARDSHIP PLAN SHALL:

(1) LIST THE PRODUCERS AND BRANDS COVERED BY THE STEWARDSHIP PLAN, INCLUDING:

(I) EACH PARTICIPATING PRODUCER AND THE STEWARDSHIP ORGANIZATION'S CONTACT INFORMATION; AND

(II) EACH BRAND OF COVERED MATERIALS AND PRODUCTS COVERED BY THE STEWARDSHIP PLAN;

(2) INCLUDE PERFORMANCE GOALS FOR A MINIMUM POSTCONSUMER RECYCLED MATERIAL CONTENT RATE AND A MINIMUM RECYCLING RATE FOR

COVERED MATERIALS OR PRODUCTS THAT INCLUDES, AT A MINIMUM, A GOAL FOR:

(I) ALL SINGLE-USE PACKAGING AND PRODUCTS TO BE AT LEAST 75% POSTCONSUMER CONTENT BY OCTOBER 1, 2027;

(II) ALL SINGLE-USE PACKAGING AND PRODUCTS TO BE READILY RECYCLABLE OR COMPOSTABLE BY OCTOBER 1, 2030; AND

(III) ALL SINGLE-USE PLASTIC PACKAGING AND SINGLE-USE PLASTIC FOODWARE TO BE REDUCED, TO THE MAXIMUM EXTENT PRACTICABLE, AND BY NOT LESS THAN 25% BY OCTOBER 1, 2030;

(3) DESCRIBE, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE FINANCING METHOD THAT WILL BE USED TO IMPLEMENT THE STEWARDSHIP PLAN;

(4) DESCRIBE HOW THE PERFORMANCE GOALS UNDER ITEM (2) OF THIS SUBSECTION WILL BE MET OR EXCEEDED;

(5) DESCRIBE HOW STAKEHOLDER COMMENTS WERE CONSIDERED IN THE DEVELOPMENT OF THE STEWARDSHIP PLAN;

(6) DESCRIBE HOW STAFFING AND ADMINISTERING THE IMPLEMENTATION OF THE STEWARDSHIP PLAN WILL BE HANDLED;

(7) DESCRIBE HOW PRODUCERS PARTICIPATING IN A STEWARDSHIP PLAN WILL WORK TOGETHER TO REDUCE PACKAGING THROUGH PRODUCT DESIGN AND PROGRAM INNOVATIONS;

(8) DESCRIBE THE ACTIONS TAKEN OR THAT WILL BE TAKEN FOR PUBLIC OUTREACH, EDUCATION, AND COMMUNICATION, TAKING INTO ACCOUNT THAT PUBLIC OUTREACH, EDUCATION, AND COMMUNICATION SHALL:

(I) PROMOTE THE PROPER END-OF-LIFE MANAGEMENT OF COVERED MATERIALS AND PRODUCTS, INCLUDING BEVERAGE CONTAINERS;

(II) PROVIDE INFORMATION ON HOW TO PREVENT LITTER OF COVERED MATERIALS AND PRODUCTS, INCLUDING BEVERAGE CONTAINERS;

(III) PROVIDE RECYCLING AND COMPOSTING INSTRUCTIONS THAT ARE, TO THE EXTENT PRACTICABLE:

1. CONSISTENT STATEWIDE, TAKING INTO ACCOUNT

DIFFERENCES AMONG LOCAL LAWS AND PROCESSING CAPABILITIES;

2. EASY TO UNDERSTAND; AND

3. EASILY ACCESSIBLE; AND

(IV) PROVIDE FOR OUTREACH AND EDUCATION THAT ARE:

1. DESIGNED TO ACHIEVE COVERED MATERIALS AND PRODUCTS MANAGEMENT GOALS AND REQUIREMENTS, INCLUDING THE PREVENTION OF CONTAMINATION OF COVERED MATERIALS AND PRODUCTS;

2. COORDINATED ACROSS PROGRAMS TO AVOID CONFUSION FOR CONSUMERS; AND

3. DEVELOPED IN CONSULTATION WITH LOCAL GOVERNMENTS AND OTHER STAKEHOLDERS; AND

(9) INCLUDE ANY OTHER INFORMATION THAT IS REQUIRED BY THE DEPARTMENT.

(C) (1) THE FINANCING METHOD THAT WILL BE USED BY A PRODUCER OR STEWARDSHIP ORGANIZATION TO IMPLEMENT A STEWARDSHIP PLAN SHALL:

(I) PROVIDE THE METHOD FOR REIMBURSING LOCAL GOVERNMENTS FOR COSTS ASSOCIATED WITH COLLECTING, TRANSPORTING, AND PROCESSING COVERED MATERIALS AND PRODUCTS THAT ARE LISTED IN THE STEWARDSHIP PLAN;

(II) ESTABLISH A FEE STRUCTURE FOR PARTICIPATING PRODUCERS THAT IS SET IN A MANNER TO COVER COSTS ASSOCIATED WITH:

1. IMPLEMENTING THE STEWARDSHIP PLAN, INCLUDING THE ADMINISTRATIVE COSTS OF A PRODUCER OR STEWARDSHIP ORGANIZATION;

2. REIMBURSING LOCAL GOVERNMENTS FOR COSTS IN ACCORDANCE WITH PARAGRAPH (1)(I) OF THIS SUBSECTION; AND

3. THE ADMINISTRATION, REVIEW, OVERSIGHT, AND ENFORCEMENT OF THE STEWARDSHIP PLAN BY THE DEPARTMENT;

(III) 1. DESCRIBE THE INCENTIVES TO ENCOURAGE

PARTICIPATING PRODUCERS TO ENGAGE IN WASTE REDUCTION AND RECYCLING ACTIVITIES; AND

2. DESCRIBE THE DISINCENTIVES TO DISCOURAGE DESIGNS OR PRACTICES THAT INCREASE THE COST OF MANAGING COVERED MATERIALS AND PRODUCTS;

(IV) BE EVALUATED BY AN INDEPENDENT FINANCIAL AUDITOR, AS DESIGNATED BY THE DEPARTMENT, TO ENSURE THE COSTS OF IMPLEMENTING THE STEWARDSHIP PLAN ARE COVERED; AND

(V) MEET ANY OTHER REQUIREMENT ESTABLISHED BY THE DEPARTMENT BY REGULATION.

(2) THE FEE STRUCTURE ESTABLISHED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION MAY BE VARIABLE BASED ON:

(I) COSTS ASSOCIATED WITH TRANSPORTING, COLLECTING, AND PROCESSING COVERED MATERIALS AND PRODUCTS; AND

(II) ANY OTHER FACTOR, AS DETERMINED BY THE DEPARTMENT.

(D) THE DEPARTMENT SHALL REVIEW:

(1) THE STEWARDSHIP PLAN REQUIRED UNDER SUBSECTION (A) OF THIS SECTION; AND

(2) THE WORK PRODUCT OF THE INDEPENDENT FINANCIAL AUDITOR DESIGNATED BY THE DEPARTMENT TO EVALUATE THE FINANCING COMPONENT OF THE STEWARDSHIP PLAN UNDER SUBSECTION (C)(1)(IV) OF THIS SECTION.

(E) (1) WITHIN 90 DAYS AFTER RECEIVING A PROPOSED STEWARDSHIP PLAN, THE DEPARTMENT SHALL APPROVE, APPROVE WITH CONDITIONS, OR REJECT THE STEWARDSHIP PLAN.

(2) IN MAKING A DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT SHALL CONSIDER WHETHER:

(I) THE STEWARDSHIP PLAN COMPLIES WITH THE REQUIREMENTS OF THIS SECTION, INCLUDING WHETHER THE FINANCING METHOD WILL COVER THE COSTS OF IMPLEMENTING THE STEWARDSHIP PLAN; AND

(II) THE PRODUCER, INDIVIDUALLY OR AS PART OF A STEWARDSHIP ORGANIZATION, ENGAGED SUFFICIENTLY WITH STAKEHOLDERS, INCLUDING LOCAL GOVERNMENTS, IN DEVELOPING THE STEWARDSHIP PLAN;

(F) WITHIN 6 MONTHS AFTER THE DATE A STEWARDSHIP PLAN IS APPROVED UNDER THIS SECTION, A PRODUCER OR STEWARDSHIP ORGANIZATION SHALL IMPLEMENT THE STEWARDSHIP PLAN.

(G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN APPROVED STEWARDSHIP PLAN SHALL EXPIRE AFTER 5 YEARS.

(2) THE DEPARTMENT MAY RESCIND APPROVAL OF A STEWARDSHIP PLAN AT ANY TIME.

9-2304.

A LOCAL GOVERNMENT MAY REQUEST REIMBURSEMENT FROM A PRODUCER OR STEWARDSHIP ORGANIZATION THAT HAS AN APPROVED STEWARDSHIP PLAN ON FILE WITH THE DEPARTMENT FOR COSTS ASSOCIATED WITH COLLECTING, TRANSPORTING, AND PROCESSING COVERED MATERIALS AND PRODUCTS THAT ARE LISTED UNDER THE STEWARDSHIP PLAN, IN ACCORDANCE WITH:

(1) THE REQUIREMENTS OF THE PRODUCER, AS ESTABLISHED UNDER THE STEWARDSHIP PLAN; AND

(2) ANY OTHER REQUIREMENT ADOPTED BY THE DEPARTMENT BY REGULATION.

9-2305.

(A) ON OR BEFORE OCTOBER 1, 2023, AND EACH OCTOBER 1 THEREAFTER, A PRODUCER SHALL SUBMIT A REPORT TO THE DEPARTMENT, IN A MANNER REQUIRED BY THE DEPARTMENT, EVALUATING PROGRESS TOWARD MEETING STEWARDSHIP PLAN REQUIREMENTS AND GOALS FOR THE IMMEDIATELY PRECEDING YEAR.

(B) FINANCIAL, PRODUCTION, OR SALES DATA REPORTED TO THE DEPARTMENT BY A PRODUCER, INDIVIDUALLY OR AS PART OF A STEWARDSHIP ORGANIZATION, SHALL BE KEPT CONFIDENTIAL BY THE DEPARTMENT AND MAY NOT BE SUBJECT TO PUBLIC INSPECTION.

(C) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE REPORT SHALL BE POSTED ON THE WEBSITE OF THE DEPARTMENT AND THE PRODUCER OR

STEWARDSHIP ORGANIZATION.

9-2306.

ANY PERSON PARTICIPATING IN A STEWARDSHIP PLAN IN COMPLIANCE WITH THIS SUBTITLE IS IMMUNE FROM LIABILITY UNDER STATE LAW RELATING TO ANTITRUST AND RESTRAINT OF TRADE FOR ANY COOPERATED ACTIVITIES ARISING OUT OF THE RECYCLING, REUSE, AND DISPOSAL OF COVERED MATERIALS AND PRODUCTS.

9-2307.

THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

9-2308.

(A) A PRODUCER OR STEWARDSHIP ORGANIZATION THAT VIOLATES THIS SUBTITLE IS SUBJECT TO:

- (1) FOR A FIRST VIOLATION, A CIVIL PENALTY OF \$5,000;**
- (2) FOR A SECOND VIOLATION, A CIVIL PENALTY OF \$10,000; AND**
- (3) FOR A THIRD AND SUBSEQUENT VIOLATION, A CIVIL PENALTY OF \$20,000.**

(B) IF A PENALTY IS IMPOSED ON A STEWARDSHIP ORGANIZATION UNDER THIS SECTION, EACH PRODUCER PARTICIPATING IN THE STEWARDSHIP ORGANIZATION IS JOINTLY AND SEVERALLY LIABLE FOR THE PAYMENT OF THE PENALTY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.