HOUSE BILL 700

By: Delegates Love, Barve, Feldmark, Foley, Lehman, Palakovich Carr, Pena-Melnyk, Ruth, Solomon, Stein, Stewart, and Terrasa

Introduced and read first time: January 31, 2022
Assigned to: Environment and Transportation and Economic Matters

A BILL ENTITLED

AN ACT concerning

Environment – Products and Packaging – Labeling, Marketing, and Advertising for Recycling

FOR the purpose of altering certain plastic resin labeling requirements for rigid plastic containers and plastic bottles; prohibiting the display of a certain symbol on rigid plastic containers and plastic bottles if the containers and bottles do not meet certain requirements; prohibiting a person from making certain environmental marketing claims; prohibiting a person from offering for sale, selling, distributing, or importing into the State any product or packaging labeled with or depicting certain environmental marketing claims; establishing requirements that a product or packaging must meet to be considered recyclable in the State; requiring the Department of the Environment to update its refuse disposal system and resource recovery facility regulations in a certain manner on or before a certain date; and generally relating to labeling, marketing, and advertising requirements for recycling products and packaging in the State.

BY repealing and reenacting, with amendments,

Article – Environment
Section 9–1710
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY adding to

Article – Environment
Section 9–2401 through 9–2406 to be under the new subtitle “Subtitle 24. Labeling, Marketing, and Advertising Products and Packaging for Recycling”
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Environment

9–1710.

(a) (1) In this section the following words have the meanings indicated.

(2) “Container” means any rigid plastic container or plastic bottle.

(3) “Label” means a molded, imprinted, or raised symbol located on or near the bottom of a container.

(4) “Plastic bottle” means a plastic container intended for single use that:

(i) Has a neck that is smaller than the container;

(ii) Accepts a screw–type, snap cap, or other similar closure; and

(iii) Has a capacity of at least 16 fluid ounces but less than 5 gallons.

(5) “Rigid plastic container” means any formed or molded container, other than a bottle that:

(i) Is intended for single use;

(ii) Is predominantly composed of plastic resin;

(iii) Has a relatively inflexible finite shape or form; and

(iv) Has a capacity of at least 8 ounces but less than 5 gallons.

(b) A person may not distribute for sale in the State any container unless the container is labeled indicating the plastic resin used to produce the container.

(c) (1) The label required under subsection (b) of this section shall:

(i) Appear on or near the bottom of the container; AND

(ii) Be clearly visible; and

(iii) Consist of:

1. A number placed within 3 arrows forming a triangle as described in paragraph (2) of this subsection; and
2. Letters placed below the triangle of arrows.

(2) (i) The 3 arrows shall form an equilateral triangle with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius.

(ii) The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow.

(iii) The triangle formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number.

(2) A CONTAINER MAY NOT DISPLAY A NUMBER PLACED WITHIN THREE ARROWS FORMING A TRIANGLE IF THE CONTAINER IS NOT CONSIDERED RECYCLABLE UNDER § 9–2404 OF THIS TITLE.

(3) [The] ANY numbering and lettering USED TO INDICATE THE PLASTIC RESIN USED TO PRODUCE A CONTAINER shall be as follows:

(i) For polyethylene terephthalate, the letters “PETE” and the number 1;

(ii) For high density polyethylene, the letters “HDPE” and the number 2;

(iii) For vinyl, the letter “V” and the number 3;

(iv) For low density polyethylene, the letters “LDPE” and the number 4;

(v) For polypropylene, the letters “PP” and the number 5;

(vi) For polystyrene, the letters “PS” and the number 6; and

(vii) For any other plastic resin, the word “Other” and the number 7.

(d) Any person who knowingly and willfully distributes for sale a container in violation of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 per violation.

(e) The Department shall adopt regulations to administer and enforce the provisions of this section.

SUBTITLE 24. LABELING, MARKETING, AND ADVERTISING PRODUCTS AND PACKAGING FOR RECYCLING.
(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ENVIRONMENTAL MARKETING CLAIM" MEANS A CLAIM SPECIFIED IN THE FEDERAL TRADE COMMISSION'S GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS.

(C) (1) "MANUFACTURER AND DISTRIBUTOR" AND "MANUFACTURER OR DISTRIBUTOR" MEAN A PERSON THAT MANUFACTURES OR DISTRIBUTES A PRODUCT:

   (I) ADVERTISED OR LABELED AS NOT HARMFUL TO OR AS BENEFICIAL TO THE ENVIRONMENT, SUCH AS ADVERTISEMENTS OR LABELS USING ANY OF THE FOLLOWING PHRASES:

   1. ENVIRONMENTAL CHOICE;
   2. ECOLOGICALLY FRIENDLY;
   3. EARTH–FRIENDLY;
   4. ENVIRONMENTALLY FRIENDLY;
   5. ECOLOGICALLY SOUND;
   6. ENVIRONMENTALLY SOUND;
   7. ENVIRONMENTALLY SAFE;
   8. ECOLOGICALLY SAFE;
   9. ENVIRONMENTALLY LITE; OR
   10. GREEN; OR

   (II) THAT INCLUDES A DEPICTION OF A RECYCLING SYMBOL OR OTHER SYMBOL OR PHRASE ENCOURAGING THE CONSUMER TO RECYCLE THE PRODUCT.
(2) "Manufacturer and distributor" and "manufacturer or distributor" do not include a wholesaler or retailer that does not itself:

   (I) Advertise or label a product as not harmful to or as beneficial to the environment; or

   (II) Include on a product a depiction of a recycling symbol or other symbol or phrase encouraging the consumer to recycle the product.

   (D) "Refuse disposal system" has the meaning stated in § 9–201 of this title.

   (E) "Resource recovery facility" means a processing facility at which component materials of solid waste are recovered for use as raw materials or energy sources.

9–2402.

It is the public policy of the State that:

(1) Environmental marketing claims, whether explicit or implied, should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of products and packaging;

(2) For consumers to have accurate and useful information about the environmental impact of products and packaging, environmental marketing claims should adhere to uniform and recognized standards, including standard specifications established by ASTM International;

(3) Claims related to the recyclability of products and packaging be accurate and truthful in practice; and

(4) Consumers deserve accurate and useful information related to proper disposal of products and packaging.

9–2403.

(A) (1) A person may not make an explicit or implied untruthful, deceptive, or misleading environmental marketing claim.
(2) (i) Except as provided in subparagraph (ii) of this paragraph, it is a defense to an action under this subsection that the person’s environmental marketing claim conforms to the standards or are consistent with the examples contained in the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims.

(ii) Subparagraph (i) of this paragraph does not apply to a claim made for a violation of subsection (c)(1) of this section or § 9–1710 of this title.

(B) A person may not offer for sale, sell, distribute, or import into the State any product or packaging labeled with or depicting an untruthful, deceptive, or misleading environmental marketing claim regarding the recyclability of the product or packaging.

(C) A product or packaging displaying a recycling symbol, other symbol, or statement indicating the product or packaging is recyclable or directing the consumer to recycle the product or packaging is an untruthful, deceptive, or misleading claim under this section unless the product or packaging is:

(1) (i) Considered recyclable under § 9–2404 of this subtitle; and

(II) Composed of a material that routinely becomes feedstock for the production of new products or packaging; or

(2) Required under federal or State law to display a recycling symbol, other symbol, or statement indicating the product or packaging is recyclable or directing the consumer to recycle the product or packaging.

(D) If a product or packaging includes multiple types of materials, a recycling symbol or statement indicating recyclability may be displayed on external packaging considered recyclable under § 9–2404 of this subtitle if the recycling symbol or statement makes clear in the same or larger font size or symbol size that the other components of the product or packaging are not recyclable.

(E) The following are not untruthful, deceptive, or misleading claims under this section:
(1) Using a recycling symbol in combination with a clearly visible line placed at a 45-degree angle over the recycling symbol to convey that a product or packaging is not recyclable;

(2) Displaying a recycling symbol on a product or packaging if required under state or federal law or regulation;

(3) Directing a consumer to compost or properly dispose of a consumer good through an organics recycling program; and

(4) A resin identification code used in accordance with § 9-1710 of this title.

(A) A product or packaging is considered recyclable in the state if:

(1) (i) The product or packaging is of a material type and form that is:

1. Collected for recycling in jurisdictions that collectively encompass at least 60% of the state population; and

2. Sorted into defined streams for recycling by large volume transfer or processing facilities that process materials and collectively serve at least 60% of recycling programs statewide;

(ii) The product or packaging is not made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances, also known as PFAS, that:

1. A manufacturer or distributor has intentionally added to the product or packaging; and

2. Have a functional or technical effect on the product or packaging; or

2. Is at or above 100 parts per million, as measured in total organic fluorine;

(iii) For plastic products and nonplastic products and packaging, the product or packaging is designed to ensure
RECYCLABILITY AND DOES NOT INCLUDE ANY COMPONENTS, INKS, ADHESIVES, OR LABELS THAT PREVENT THE PRODUCT OR PACKAGING FROM BEING RECYCLED; AND

(IV) FOR PLASTIC PACKAGING, THE PLASTIC PACKAGING DOES NOT INCLUDE ANY COMPONENTS, INKS, ADHESIVES, OR LABELS THAT, UNDER THE ASSOCIATION OF PLASTIC RECYCLERS’ APR DESIGN GUIDE, WOULD PREVENT THE PACKAGING FROM BEING RECYCLED;

(2) AT LEAST 75% OF THE PRODUCT OR PACKAGING BEING SORTED AND AGGREGATED IN THE STATE IS RECYCLED INTO NEW PRODUCTS OR PACKAGING;

(3) (I) BEFORE JANUARY 1, 2031, THE PRODUCT OR PACKAGING:

1. IS COLLECTED UNDER A RECYCLING PROGRAM OTHER THAN CURBSIDE COLLECTION THAT RECOVERS AT LEAST 60% OF THE PRODUCT OR PACKAGING FROM THE WASTE STREAM; AND

2. HAS SUFFICIENT COMMERCIAL VALUE TO BE MARKETED FOR RECYCLING AND TRANSPORTED AT THE END OF ITS USEFUL LIFE TO A REFUSE DISPOSAL SYSTEM OR RESOURCE RECOVERY FACILITY TO BE SORTED AND AGGREGATED INTO DEFINED STREAMS BY MATERIAL TYPE AND FORM; AND

(II) ON AND AFTER JANUARY 1, 2031, THE PRODUCT OR PACKAGING:

1. IS COLLECTED UNDER A RECYCLING PROGRAM OTHER THAN CURBSIDE COLLECTION THAT RECOVERS AT LEAST 75% OF THE PRODUCT OR PACKAGING FROM THE WASTE STREAM; AND

2. HAS SUFFICIENT COMMERCIAL VALUE TO BE MARKETED FOR RECYCLING AND TRANSPORTED AT THE END OF ITS USEFUL LIFE TO A REFUSE DISPOSAL SYSTEM OR RESOURCE RECOVERY FACILITY TO BE SORTED AND AGGREGATED INTO DEFINED STREAMS BY MATERIAL TYPE AND FORM; OR

(4) ON AND AFTER JANUARY 1, 2023:

(I) THE PRODUCT OR PACKAGING IS PART OF AND IN COMPLIANCE WITH A PROGRAM ESTABLISHED IN ACCORDANCE WITH STATE OR FEDERAL LAW GOVERNING THE RECYCLABILITY OR DISPOSAL OF THE PRODUCT OR PACKAGING; AND
(II) The Secretary determines that the product or packaging will not increase contamination of curbside recycling or deceive consumers as to the recyclability of the product or packaging.

(B) Nothing in this section may be construed to prevent a refuse disposal system or resource recovery facility from accepting for recycling a product or packaging that is not considered recyclable under subsection (A) of this section.

9–2405.

(A) The Department may adopt regulations to carry out this subtitle, including regulations expanding the types of facilities specified under § 9–2404(A)(1)(I)2 of this subtitle.

(B) (1) On or before January 1, 2025, the Department shall update its refuse disposal system and resource recovery facility regulations to require that the following information be submitted to the Department:

(i) how the material collected or processed by the system or facility was collected; and

(ii) the types and forms of materials actively recovered and not considered contaminants by the system or facility.

(2) The Department shall publish the updated regulations required under paragraph (1) of this subsection on the Department’s website.

9–2406.

(A) A person who violates this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 per violation.

(B) Each day a violation occurs is a separate violation under this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.