

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 31 (Delegate Love)

Environment and Transportation and
Economic Matters

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

This bill alters labeling requirements for plastic containers and bottles, and more broadly, for claims of recyclability of products and packaging. The bill establishes (1) standards for “environmental marketing claims” made with respect to products and packaging and (2) requirements that a product or packaging must meet to be considered recyclable. The bill also establishes prohibitions relating to (1) making an untruthful, deceptive, or misleading environmental marketing claim and (2) the sale, distribution, or importation of any product or packaging labeled with or depicting an untruthful, deceptive, or misleading environmental marketing claim regarding recyclability. The Maryland Department of the Environment (MDE) must adopt implementing regulations. Finally, the bill establishes provisions regarding enforcement; new and existing penalty provisions apply.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$371,800 in FY 2024; future years reflect annualization, inflation, and ongoing costs. The applicable penalty provisions are not anticipated to materially affect State revenues.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	371,800	395,000	412,300	430,600	453,100
Net Effect	(\$371,800)	(\$395,000)	(\$412,300)	(\$430,600)	(\$453,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local finances may be affected as early as FY 2024, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Altered Labeling Standards

The bill modifies existing provisions requiring plastic resin identification codes (RICs) on container labels to be placed within three arrows forming a triangle (commonly referred to as the chasing arrows). The bill establishes a new definition for “chasing arrows symbol,” and explicitly requires any container that is distributed for sale in the State to be labeled with a chasing arrows symbol indicating the plastic resin used to produce the container using RICs. However, a container may not display a chasing arrows symbol unless the container is considered recyclable under provisions established by the bill. The bill alters several other related definitions, including “container” and “plastic bottle.”

An existing penalty provision applies to these provisions, as altered by the bill. Specifically, any person who knowingly and willfully distributes for sale a container in violation of these provisions is guilty of a misdemeanor and subject to a fine of up to \$50 per violation. Pursuant to current law, MDE is required to adopt regulations to administer and enforce these provisions.

Labeling, Marketing, and Advertising Products and Packaging for Recycling

Statement of Policy: The bill establishes that 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 impacts 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) environmental marketing claims related to the recyclability of products and packaging should be accurate and truthful in practice; and (4) consumers deserve accurate and useful information related to proper disposal of products and packaging.

Relevant Definitions: “Environmental marketing claim” means a claim specified in the Federal Trade Commission’s (FTC) Guides for the Use of Environmental Marketing Claims. “Manufacturer or distributor” means a person that manufactures or distributes a product that (1) is advertised or labeled as not harmful to or as beneficial to the environment, such as advertisements or labels using any of several specified phrases or (2) includes a depiction of a chasing arrows symbol or other symbol or phrase encouraging the consumer to recycle the product.

Prohibitions and Standards Regarding Environmental Marketing Claims: The bill prohibits a person from making an explicit or implied untruthful, deceptive, or misleading environmental marketing claim. Except as specified, it is a defense to an action under this provision that the person's environmental marketing claim conforms to the standards or are consistent with the examples contained in the FTC guides referenced above.

Further, 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.

Displaying a chasing arrow symbol, other symbol, or statement indicating that the product or packaging is recyclable or directing the consumer to recycle the product or packaging is an untruthful, deceptive, or misleading environmental marketing claim under the bill unless the product or packaging is (1) considered recyclable under provisions established by the bill (described below) or (2) required under federal or State law to display a chasing arrows symbol, other symbol, or statement indicating the product or packaging is recyclable or directing the consumer to recycle the product or packaging. The bill also identifies specific labeling activities that are *not* untruthful, deceptive, or misleading claims under the bill.

For a product or packaging that includes multiple types of materials, the bill authorizes the use of a chasing arrow symbol or statement regarding recyclability on external packaging considered recyclable if the symbol/statement meets specified requirements.

Recyclability Standards: The bill establishes standards that a product or packaging must meet to be considered recyclable in the State. Generally, the standards relate to, among other things, (1) the material type and form of the product/packaging (and the prevalence of related collection/recycling activities); (2) the design and content of the product/packaging (*e.g.*, the product/packaging generally may not be made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances, also known as PFAS, as specified); and (3) beginning January 1, 2024, if the product/packaging is part of and in compliance with a specified recycling/disposal program and whether the product/packaging will contaminate curbside recycling or deceive customers as to the recyclability of the product or packaging, as specified.

The standards may not be construed to prevent a refuse disposal system or materials recovery facility from accepting a product or packaging for recycling, even if the product or packaging is not considered recyclable under the bill's standards.

Enforcement and Penalties: The bill's provisions relating to labeling, marketing, and advertising products and packaging for recycling may be enforced by MDE, a unit of local government with the authority to inspect retail establishments, or the Attorney General. However, this does not affect the authority of a county, a municipality, or any other local

government to enact or enforce legislation, regulations, or requirements for products or packaging.

A manufacturer or distributor who violates these provisions is guilty of a misdemeanor and subject to a fine of up to \$50 per violation. Each day a violation occurs is a separate violation.

Regulations: MDE must (1) adopt regulations to carry out the bill's provisions relating to labeling, marketing, and advertising products and packaging for recycling and (2) publish the regulations on its website.

Current Law: A person must follow certain RIC labeling standards in order to distribute containers for sale in the State. A "container" is any rigid plastic container or plastic bottle. The label must (1) appear on or near the bottom of the container; (2) be clearly visible; and (3) consist of a number placed within chasing arrows with lettering below the chasing arrows. The numbering and lettering must follow a defined format depending on the type of plastic the container is made of. A person who violates these labeling standards is guilty of a misdemeanor and subject to a fine of up to \$50 per violation. MDE is required to adopt regulations to administer and enforce these provisions.

The solid waste infrastructure in Maryland consists of both permitted and nonpermitted facilities, and solid waste is managed through a combination of recycling, composting, landfilling, energy recovery, and exporting for disposal or recycling. There are several examples of regional waste management partnerships in the State.

Maryland's recycling policy is guided by the Maryland Recycling Act, which sets mandatory recycling rates for State government and local jurisdictions, as well as a voluntary statewide waste diversion goal of 60% and a voluntary statewide recycling goal of 55% by 2020. Each county (including Baltimore City), must recycle at least 20% or 35% of the county's solid waste stream, depending on the county's population. Each county (including Baltimore City) must also prepare a recycling plan that addresses how the jurisdiction will achieve its mandatory recycling rate. The plan must be submitted to MDE's Office of Recycling for approval when the jurisdiction submits its water and sewerage plan at least every 10 years. At least every 2 years, each county must also submit a progress report to MDE, which must include any revision of or amendment to the county plan that has been adopted.

The county recycling plan must address a variety of topics, including methods to reduce the solid waste stream; the feasibility of source separation of the solid waste stream generated within the county; and the strategy for the collection, processing, marketing, and disposition of recyclable materials.

MDE's Office of Recycling submits annual reports, in coordination with the Maryland Environmental Service, to the Governor and the General Assembly on specified information related to recycling in Maryland. Beginning in 2009, MDE has combined the *Maryland Waste Diversion Activities Report* and the *Solid Waste Managed in Maryland Report* into one report, the *Maryland Solid Waste Management and Diversion Report*.

FTC publishes [Green Guides](#), which are designed to help marketers avoid making environmental claims that mislead consumers.

State Expenditures: General fund expenditures increase by at least \$371,816 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring five employees (two natural resources planners and three environmental compliance specialists) within MDE to (1) conduct necessary research and outreach; (2) investigate violations and generally enforce the bill; (3) contract with laboratories to analyze products and packaging suspected of containing PFAS; (4) develop and update regulations; and (5) generally implement the bill. It includes salaries, fringe benefits, one-time start-up costs (including the purchase of a vehicle), and ongoing operating expenses (including travel and outreach). The information and assumptions used in calculating the estimate are stated below:

- a large number of products and packaging that are currently labeled as recyclable or otherwise advertised as beneficial to the environment are not able to use such designations under the bill;
- MDE needs to conduct extensive research to identify affected brands, products, and packaging, identify what products are currently accepted, sorted and processed, and otherwise recycled under current recycling practices in the State;
- MDE needs to coordinate with local governments as well as private solid waste acceptance and recycling facilities to determine the types of materials collected and recycled through curbside recycling programs;
- based on information provided by MDE, there are nearly 5,000 different PFAS compounds;
- most of the research and outreach that MDE must undertake in response to the bill is ongoing in nature;
- MDE enforces the new provisions, even though the bill also authorizes specified local government units to do so; and
- existing staff are fully subscribed.

Positions	5.0
Salaries and Fringe Benefits	\$293,269
Vehicle Purchase	32,000
Other Operating Expenses	46,547
Minimum FY 2024 State Expenditures	\$371,816

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any costs to conduct laboratory testing on materials suspected of containing PFAS, as those costs are unknown at this time. Accordingly, costs are likely higher.

Local Fiscal Effect: The bill likely affects recycling streams and potentially affects the amount of material that is ultimately disposed of in landfills as solid waste (instead of being recycled). This means local revenues and expenditures are likely affected, although the overall impact depends on how consumer behavior related to waste disposal changes as a result of the bill. For example, to the extent that the bill results in less contamination in the recycling stream, local revenues may increase from being able to sell recyclable materials for a higher value and/or being able to sell more of these materials. However, it is unknown how a potential reduction in participation in curbside recycling may ultimately affect local finances. To the extent that more materials are disposed as solid waste, tipping fees for locally owned landfills may increase. Although any changes could theoretically occur as early as fiscal 2024, more meaningful changes in consumer behavior likely occur after labels begin to change, MDE conducts outreach, and the public becomes aware of the new labeling standards. The exact timing of any shift in consumer behavior, as well as specific estimates of how local finances may be affected, is unknown.

As noted above, even though the bill authorizes local government units with the authority to inspect retail establishments to enforce the new provisions, this analysis assumes that MDE does so.

Small Business Effect: The bill has a potentially meaningful impact on small businesses that must change product packaging to meet the bill's requirements or are prohibited from offering, selling, distributing, or importing products with packaging that does not meet the bill's standards. Affected businesses may incur additional costs to develop new labels, and revenues may decrease due to the bill's prohibitions. The Department of Legislative Services notes that the State of California recently passed similar legislation. This may mean that some companies may already be making the types of labeling and marketing changes required under the bill.

Any recycling or solid waste disposal facilities that are owned by small businesses are affected similarly to the impact described above for local governments.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 700 of 2022.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland Environmental Service; Northeast Maryland Waste Disposal Authority; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Legislative Services

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