



February 18, 2022

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
Annapolis, MD 21401

Re: House Bill 700 – Environment – Products and Packaging – Labeling, Marketing, and Advertising for Recycling

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 700, entitled *Environment – Products and Packaging – Labeling, Marketing, and Advertising for Recycling*, and would like to provide additional information regarding this bill.

Under HB 700, a person in the state may only distribute products and packaging that display the recycling symbol or other environmental marketing claims if the product or packaging is considered “recyclable” or composed of material that routinely becomes feedstock for the production of new products or packaging. Under the bill, a product or packaging may be considered recyclable if it meets one of the following criteria:

1. The product or packaging is collected by local recycling programs serving at least 60% of the state’s population and accepted for recycling by facilities serving at least 60% of recycling programs statewide, does not contain PFAS that was intentionally added or at a concentration greater than 100 parts per million, and does not contain components that prevent the material from being recyclable;
2. 75% of the product or packaging that is sorted and aggregated in Maryland is recycled into new products or packaging;
3. The product or packaging is collected through a means other than curbside collection that recovers at least 60% of the material from the waste stream (increased to 75% in 2031), has sufficient commercial value to be marketed and transported for recycling, and is sorted and aggregated into defined material-specific recycling streams; and
4. Beginning January 1, 2023, the product or packaging is part of a recycling program established in accordance with state and federal law, and MDE determines the product or packaging will not contaminate curbside recycling or mislead consumers as to its recyclability.

HB 700 authorizes MDE to adopt regulations. By January 1, 2025, the Department must update its regulations to require refuse disposal systems and resource recovery facilities to report to MDE on how they collect materials for processing and the types and forms of materials they

actively recover and do not consider contaminants. The bill does not affect how local governments and public and private solid waste acceptance and recycling facilities collect and recycle products and packaging, regardless of whether or not they meet the bill's recyclability criteria. The bill provides that violations are a misdemeanor punishable by a fine not to exceed \$50 per violation, with each day a violation occurs as a separate violation. HB 700 would become effective on October 1, 2022. Note, the bill does not provide MDE flexibility to take administrative or civil enforcement action, nor identify a Department-administered special fund where fines would be deposited.

MDE is supportive of initiatives that better inform consumers of products' recyclability and reduce contamination in the recycling stream. The Federal Trade Commission (FTC) Green Guides advises marketers on the kinds of advertising practices that the FTC considers deceptive under the Section 5 of the FTC Act, which broadly prohibits a person from making "unfair or deceptive acts or practices in or affecting commerce" (15 U.S.C §45). The FTC Green Guides state that "a product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item" and "marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers" (16 CFR § 260.12). Consumer confusion regarding which products and packaging are actually recyclable under their local recycling program results in contamination of the recycling stream, which in turn increases local government costs related to sorting out and cleaning the recyclable materials.

To implement HB 700, MDE would need to establish a new program at the Department, but the bill does not provide funding for MDE's expenses. The Department currently has adequate and sufficient staff and resources to conduct its mission effectively and efficiently. Any additional legislatively-mandated program or regulation, such as this, may hamper our efficiency, force us to divert resources away from current core competencies and could disrupt customer service and/or diminish services. Additionally, the bill's effective date of October 1, 2022 does not provide MDE sufficient time to establish a new program within the Department.

The ban against a person in the state from marketing or distributing products and packaging with certain environmental claims that do not meet the bill's recyclability criteria would go into effect on October 1, 2022. This does not provide the Department enough time to conduct the background research necessary to determine whether products and packaging comply with the bill's criteria. Additionally, MDE anticipates the number of product and packaging brands subject to this bill to be significant, which would require the Department to conduct extensive research and outreach to identify the regulated community and all public and private entities involved in the collection, processing, and recycling of these materials.

HB 700 may also raise due process concerns. Due process requires that a statute "afford individuals a reasonable opportunity to know what is prohibited or required so that they may govern their behavior accordingly" (*Condon v. State of Maryland-Univ. of Maryland*, 332 Md. 481, 499 (1993)). The information needed to determine if a product meets the recyclability criteria under this bill may not be reasonably available to the public. In order for a manufacturer,

distributor, importer, or retailer to ascertain if a product meets the recyclability criteria, they would need to collect data from public and private entities in Maryland regarding the types of materials collected in each county for recycling, each county's population, the facilities accepting those materials for recycling, and the percentage of the collected materials that are ultimately recycled. The availability of this data is further complicated because obtaining this information from private entities may require them to divulge trade secrets regarding their processes and markets for their products, as well as the issue of the recyclability of a product at any given time is subject to market forces. Even if MDE attempted to identify recyclable materials through regulation, it would not address the inherent variability in the bill caused by its reliance on market factors since the regulatory process cannot keep pace with market changes.

Thank you for your consideration. We will continue to monitor HB 700 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Sara Love
Kaley Laleker, Director, Land and Materials Administration