

HOUSE BILL 1088

C2

3lr2018

By: **Delegates Niemann and Vaughn**

Introduced and read first time: February 8, 2013

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 16, 2013

CHAPTER _____

1 AN ACT concerning

2 **Business Regulation – Returnable Containers and Returnable Textiles –**
3 **Revisions**

4 FOR the purpose of authorizing the owner of a returnable container or returnable
5 textile to bring a certain civil action and to recover a certain amount in damages
6 and certain attorney’s fees; increasing certain penalties and fines for certain
7 violations of law relating to returnable containers and returnable textiles;
8 repealing a provision of law relating to the application for an arrest warrant for
9 certain persons under certain circumstances; and generally relating to
10 returnable containers and returnable textiles.

11 BY repealing and reenacting, with amendments,
12 Article – Business Regulation
13 Section 19–302, 19–304, 19–305, and 19–308
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2012 Supplement)

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

18 **Article – Business Regulation**

19 19–302.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) In this subtitle, requiring or accepting a deposit on a registered
2 returnable container, whether optional, conditional, or otherwise, does not constitute a
3 sale of the container.

4 (b) [This subtitle does not prohibit:]

5 (1) [the] **THE** owner of a returnable container or returnable textile
6 [from bringing] **MAY BRING** a civil action, including an action for injunctive relief, to
7 preserve the rights of the owner, to recover damages, or to recover the returnable
8 container or returnable textile, from a person who unlawfully possesses the returnable
9 container or returnable textile of the owner[; or].

10 **(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, THE**
11 **OWNER OF A RETURNABLE CONTAINER OR RETURNABLE TEXTILE MAY**
12 **RECOVER UP TO THREE TIMES THE VALUE OF THE ACTUAL DAMAGES, PLUS**
13 **REASONABLE ATTORNEY'S FEES.**

14 **[(2) (C) THIS SUBTITLE DOES NOT PROHIBIT** a prosecution for
15 theft under § 7–104 of the Criminal Law Article.

16 19–304.

17 (a) (1) After the recordation, a person may not:

18 (i) use a registered returnable container of another with
19 contents of a nature different from that delivered; or

20 (ii) sell, buy, rent, or otherwise traffic in a registered returnable
21 textile of another.

22 (2) A person who violates this subsection:

23 (i) is guilty of a misdemeanor and on conviction is subject to:

24 1. for a first violation, imprisonment not exceeding 1
25 year or a fine not exceeding [\$50] **\$1,000**; and

26 2. for each subsequent violation, imprisonment not
27 exceeding [1 year] **3 YEARS** or a fine not exceeding [\$250] **\$2,500** or both; and

28 (ii) shall forfeit to the rightful owner possession of the property
29 involved in the violation.

30 (b) (1) After the recordation, a person may not willfully deface, remove,
31 conceal, or destroy an identifying name, mark, or device attached, impressed, or
32 imprinted on a returnable container or returnable textile of another.

1 (2) A person who violates this subsection:

2 (i) is guilty of a misdemeanor and on conviction is subject to:

3 1. for a first violation, imprisonment not exceeding 1
4 year or a fine not exceeding ~~[\$50]~~ **\$1,000**; and

5 2. for each subsequent violation, imprisonment not
6 exceeding ~~[1 year]~~ **3 YEARS** or a fine not exceeding ~~[\$250]~~ **\$2,500** or both; and

7 (ii) shall forfeit to the rightful owner possession of the property
8 involved in the violation.

9 (c) (1) After the recordation, a person may not willfully break, destroy, or
10 otherwise injure a returnable container or returnable textile of another.

11 (2) A person who violates this subsection:

12 (i) is guilty of a misdemeanor and on conviction is subject to:

13 1. for a first violation, imprisonment not exceeding 1
14 year or a fine not exceeding ~~[\$50]~~ **\$1,000**; and

15 2. for each subsequent violation, imprisonment not
16 exceeding ~~[1 year]~~ **3 YEARS** or a fine not exceeding ~~[\$250]~~ **\$2,500** or both; and

17 (ii) shall forfeit to the rightful owner possession of the property
18 involved in the violation.

19 (d) (1) After the recordation, a person may not buy, offer for sale, sell, use,
20 give, receive, hire, rent, lend, transport, collect from ash or garbage receptacles,
21 dumps, or premises, keep in stock or store, or dispose of a returnable container or
22 returnable textile of another without an assignment from or the written consent of the
23 registered owner.

24 (2) A person who violates this subsection:

25 (i) is guilty of a misdemeanor and on conviction is subject to:

26 1. for each first violation, imprisonment not exceeding 1
27 year or a fine not exceeding ~~[\$50]~~ **\$1,000**; and

28 2. for each subsequent violation, imprisonment not
29 exceeding ~~[1 year]~~ **3 YEARS** or a fine not exceeding ~~[\$250]~~ **\$2,500** or both; and

1 (ii) shall forfeit to the rightful owner possession of the property
2 involved in the violation.

3 (e) A person may not adopt and register under this subtitle a returnable
4 container or returnable textiles, or a description, name, mark or device, that:

5 (1) has been previously registered by another; or

6 (2) is in use by another in good faith.

7 (f) (1) A person who receives a registered returnable container or
8 registered returnable textile may not fail on demand to surrender promptly the
9 container or textile to the person from whom the container or textile was received.

10 (2) A person who violates this subsection is guilty of a misdemeanor
11 and on conviction is subject to [a fine of \$1]:

12 (I) FOR EACH FIRST VIOLATION, IMPRISONMENT NOT
13 EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000; AND

14 (II) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT
15 NOT EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

16 (g) (1) A person who receives a registered returnable container that has
17 come into immediate contact with a dairy product shall thoroughly clean the inside of
18 the container immediately after emptying the contents.

19 (2) A person who violates this subsection is guilty of a misdemeanor
20 and on conviction is subject to a fine of [\$1] \$500.

21 19–305.

22 [(a)] A District Court judge shall issue a search warrant, authorizing a search
23 of the premises specified in the warrant, to a sheriff, deputy sheriff, or other law
24 enforcement officer to whom a warrant may be directed, if a person who has registered
25 a returnable container or returnable textile, or the person's agent, makes an affidavit
26 before the judge, stating that:

27 (1) the affiant demonstrates probable cause to believe that a violation
28 of § 19–304(a), (b), (c), or (d) of this subtitle has occurred; and

29 (2) evidence of the violation may be obtained by a search of premises
30 specified by the affiant.

31 [(b)] If all or part of a registered returnable container, or returnable textile is
32 found on or about the premises specified in the warrant:

1 (1) the law enforcement officer executing the search warrant shall
2 report the findings under oath to the judge; and

3 (2) after receiving the report and charging a violation of § 19–304(a),
4 (b), (c), or (d) of this subtitle, the judge shall issue an arrest warrant for the person
5 against whom the charge is made.]

6 19–308.

7 (a) (1) In this section, “plastic secondary packaging” means a plastic crate
8 or shell used for the bulk transportation, storage, or carrying of retail items.

9 (2) “Plastic secondary packaging” includes milk crates, bakery and soft
10 drink trays, and other commercial plastic secondary packaging.

11 (b) Other than a manufacturer of plastic secondary packaging, a person may
12 not purchase four or more items of plastic secondary packaging for the purpose of
13 recycling, shredding, or destroying the items.

14 (c) (1) Each person that purchases an item of plastic secondary
15 packaging, including a person that is in the business of recycling, shredding, or
16 destroying plastic secondary packaging, shall make a written record of each
17 transaction in which a person sells four or more items of plastic secondary packaging,
18 that shows that the person selling the plastic secondary packaging has lawful
19 possession or ownership of the plastic secondary packaging.

20 (2) For each transaction subject to paragraph (1) of this subsection,
21 the purchaser shall:

22 (i) verify the seller’s identity by a driver’s license or other
23 government–issued identification; and

24 (ii) make a record of each transaction that includes:

25 1. the name, address, telephone number, and signature
26 of the seller or the seller’s authorized representative;

27 2. the name and address of the purchaser;

28 3. the registration number and license tag number of
29 any vehicle used in the delivery of the plastic secondary packaging;

30 4. a description of the items sold, including the number
31 of units; and

32 5. the date of the transaction.

1 (d) The purchaser shall keep the records required by this section for at least
2 1 year after the date of purchase.

3 (e) A person that violates this section is guilty of a misdemeanor and on
4 conviction is subject to [a fine of \$100]:

5 (1) FOR EACH FIRST VIOLATION, IMPRISONMENT NOT EXCEEDING
6 1 YEAR OR A FINE NOT EXCEEDING \$1,000; AND

7 (2) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT
8 EXCEEDING 3 YEARS OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.