

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 815

(Delegate Jacobs, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

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Public Health – Milk – Labeling

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This bill prohibits a person from stating on a label of a food product that the product is “milk” unless the product meets the definition of “milk” as altered by the bill. This prohibition does not apply to human breast milk. The Maryland Department of Health (MDH) must establish and implement a plan to enforce this prohibition, including notice of MDH’s intent to implement a ban on all products that do not meet the bill’s requirements, including plant-based products mislabeled as milk. The bill is contingent on the enactment of similar legislation in any 11 of 14 specified states. MDH must notify the Department of Legislative Services (DLS) within 10 days after 11 of those 14 states have enacted such legislation. **The bill’s provisions generally take effect six months after the contingency is met. The bill terminates if notice is not received by DLS by October 1, 2029.**

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Fiscal Summary

**State Effect:** MDH can monitor legislative activity in other states using existing budgeted resources. To the extent the bill’s contingency is met, MDH general fund expenditures increase minimally, as discussed below. The application of an existing monetary penalty provision to the bill’s prohibition does not materially affect State revenues.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** The bill alters the definition of “milk” to mean the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more of healthy hooved mammals, generally including (1) bovines (cattle, water buffalo, sheep, goats); (2) cervids (deer, reindeer, moose); and (3) equines (horses, donkeys).

The bill is contingent on the enacting of a similar act in any 11 of the following 14 states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

**Current Law:** Section 21-401 of the Health-General Article defines “milk” as the milk of a cow, goat, or other hooved mammal. Section 11-401 of the Agriculture Article defines “milk or other fluid dairy products” as the lacteal secretion obtained from a cow and any fluid component of the secretion, before any processing or manufacturing other than cream separation processing. The U.S. Food and Drug Administration (FDA) defines milk under federal regulations as the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.

Generally, a person who violates any provision of Title 21, Subtitle 4 of the Health-General Article, which governs milk products, is guilty of a misdemeanor and on conviction is subject to a fine up to \$100.

**Background:** There are several plant-based milk alternatives available for consumer purchase. Common alternatives include soy, rice, coconut, oat, nut (almond, cashew, hazelnut, and macadamia), quinoa, and hemp.

In January 2017, the Dairy Pride Act was introduced in the U.S. Congress to require FDA to enforce its definition of milk due to the prevalence of plant-based alternatives being labeled as “milk.” In September 2018, [FDA requested public comments](#) on how the administration should address the issue of plant-based liquids and milk labeling. The comment period closed January 28, 2019. Over the next year, FDA will review submitted comments and issue guidance regarding the labeling of plant-based products.

Similar [legislation](#) recently passed in North Carolina. That legislation is generally contingent on the enactment of a mandatory labeling requirement to prohibit the sale of plant-based products mislabeled as milk by any 11 of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

**State Expenditures:** General fund expenditures for MDH increase minimally to the extent the bill’s contingency is met. MDH likely needs to hire one part-time contractual employee

to perform inspections and investigate complaints related to the enforcement of milk labeling, at an approximate cost of \$22,000 in the first fiscal year the bill is in effect. Costs increase to approximately \$24,000 by the fifth year.

The development of milk labeling regulations and notification to manufacturers and distributors of any ban on products that do not meet the bill's labeling requirements can be absorbed with existing resources.

**Small Business Effect:** To the extent the bill's contingency is met and MDH's plan includes a ban on all products that do not meet the bill's labeling requirements, the impact on small businesses may be meaningful, particularly if the plan does not provide for any phasing out of existing stock.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 922 (Senator Gallion, *et al.*) - Education, Health, and Environmental Affairs.

**Information Source(s):** Maryland Department of Agriculture; Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2019  
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