

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 700 (Delegate Love, *et al.*)

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. In addition, the bill 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) may adopt implementing regulations and must update specified regulations. New and existing penalty provisions apply to violations of various provisions.

Fiscal Summary

**State Effect:** General fund expenditures increase by at least \$349,400 in FY 2023; future years reflect annualization, inflation, and ongoing costs. The applicable penalty provisions are not anticipated to materially affect State revenues.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	349,400	364,300	374,500	384,200	394,600
Net Effect	(\$349,400)	(\$364,300)	(\$374,500)	(\$384,200)	(\$394,600)

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 2023, as discussed below.

**Small Business Effect:** Potential meaningful.

## Analysis

### **Bill Summary:**

#### *Altered Labeling Standards*

The bill repeals 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”). Instead, a container may not display a number placed within the chasing arrows if the container is not considered recyclable under provisions established by the bill.

Existing penalty provisions – which are unchanged by the bill – apply to the labeling standards (as altered by the bill). Any person who knowingly and willfully distributes a container for sale in violation of these provisions is guilty of a misdemeanor and subject to a fine of up to \$50 per violation.

#### *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) 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.

*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 and 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 recycling 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. A product or packaging displaying a recycling 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 claim under the bill unless the product or packaging is (1) considered recyclable under provisions established by the bill (described below) and 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. 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 recycling 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 (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); (3) the collection of the product/packaging under a recycling program that recovers a specified percentage of the product/packaging from the waste stream, as specified; (4) the percentage of the product/packaging being sorted and aggregated in the State that is recycled into new products/packaging; (5) whether the material 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 (6) whether the product/packaging will contaminate curbside recycling or deceive customers as to the recyclability of the product or packaging, as specified. Some of the standards change over time, as specified.

The standards may not be construed to prevent a refuse disposal system or resource 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.

*Regulations:* MDE is authorized to adopt regulations to carry out new Title 9, Subtitle 24 of the Environment Article. By January 1, 2025, MDE must update its refuse disposal system and resource recovery facility regulations to require that specified information be submitted to MDE. The updated regulations must be published on MDE's website.

*Penalties:* A person who violates new Title 9, Subtitle 24 of the Environment Article 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.

**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.

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 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 \$349,448 in fiscal 2023, which accounts for the bill’s October 1, 2022 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; and
- existing staff are fully subscribed.

Positions	5.0
Salaries and Fringe Benefits	\$267,535
Vehicle Purchase	32,000
Other Operating Expenses	<u>49,913</u>
<b>Minimum FY 2023 State Expenditures</b>	<b>\$349,448</b>

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 2023, 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.

It is anticipated that local governments that own or operate refuse disposal and resource recovery facilities can comply with the required changes to annual reporting requirements with existing budgeted staff and resources.

**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 will 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. The bill's changes to reporting requirements for refuse disposal and resource recovery facilities are not anticipated to have a significant impact on small businesses.

**Additional Comments:** According to MDE, RICs were developed by the Society of the Plastics Industry in 1988 to identify the resin used in plastic products; they originally consisted of a resin number inside a triangle formed by chasing arrows. In 2010, the Society of the Plastics Industry, in collaboration with the American Society for Testing and Materials, released ASTM D7611 "Standard Practice for Coding Plastic Manufactured Articles for Resin Identification." While there are no federal laws or regulations requiring the use of ASTM D7611 or RICs on plastic products, the majority of states have enacted legislation on the use of RICs. The standard was revised in 2013 and included a change from the chasing arrows symbol to a solid equilateral triangle around the numbers, made

in order to eliminate confusion between RICs and the universal recycling symbol of chasing arrows. However, this change has not been incorporated into Maryland law.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore, Charles, Frederick, and Somerset counties; Maryland Environmental Service; Northeast Maryland Waste Disposal Authority; cities of Frederick and Havre de Grace; Maryland Department of the Environment; Federal Trade Commission; California Legislative Information; Department of Legislative Services

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