

Chapter 146

(House Bill 1088)

AN ACT concerning

Business Regulation – Returnable Containers and Returnable Textiles – Revisions

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

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

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

Article – Business Regulation

19–302.

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

(b) [This subtitle does not prohibit:]

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

(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, THE OWNER OF A RETURNABLE CONTAINER OR RETURNABLE TEXTILE MAY

RECOVER UP TO THREE TIMES THE VALUE OF THE ACTUAL DAMAGES, PLUS REASONABLE ATTORNEY'S FEES.

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

19-304.

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

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

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

(2) A person who violates this subsection:

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

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

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

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

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

(2) A person who violates this subsection:

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

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

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

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

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

(2) A person who violates this subsection:

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

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

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

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

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

(2) A person who violates this subsection:

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

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

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

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

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

(1) has been previously registered by another; or

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

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

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

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

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

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

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

19–305.

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

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

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

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

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

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

19–308.

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

(2) "Plastic secondary packaging" includes milk crates, bakery and soft drink trays, and other commercial plastic secondary packaging.

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

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

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

(i) verify the seller's identity by a driver's license or other government-issued identification; and

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

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

2. the name and address of the purchaser;

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

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

5. the date of the transaction.

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

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

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

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

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

Approved by the Governor, April 9, 2013.