

10 AN ACT CONCERNING

20 **Plastic Carryout Bags in Maryland**

30 FOR the purpose of creating provisions to implement a \$.05 fee on disposable carryout bags provided to
 40 consumers by grocery stores, drug stores, liquor stores, restaurants, food vendors, and retail stores in order
 50 to establish a “Maryland Residents Recycle Fund” to fund recycling initiatives including but not limited to
 60 the establishment of curbside collection for Maryland residents living in multi-family dwellings such as
 70 apartments and condominiums.

80 BY adding to
 90 Article – Business Regulation
 100 Title 19 – Miscellaneous State Business Regulation
 110 Subtitle 7 Use of Non-recyclable bags
 120 Section §19–701
 130 Annotated Code of Maryland

140 SECTION 1. BE IT ENACTED BY THE MARYLAND STUDENT LEGISLATURE, that the Laws of
 150 Maryland read as follows:

160 **§19–701. DEFINITIONS.**

170 FOR THE PURPOSES OF THIS ACT, THE TERM:

180 (A) “DISPOSABLE CARRYOUT BAG” MEANS A BAG OF ANY MATERIAL, COMMONLY 130
 190 PLASTIC OR KRAFT PAPER, WHICH IS PROVIDED TO A CONSUMER AT THE POINT OF SALE
 200 TO CARRY PURCHASES. THE TERM “DISPOSABLE CARRYOUT BAG” SHALL NOT INCLUDE
 THE FOLLOWING:

210 (1) BAGS USED BY CONSUMERS INSIDE STORES TO:

220 (I) PACKAGE BULK ITEMS, SUCH AS FRUIT, VEGETABLES, NUTS, GRAINS,
 230 CANDY, OR SMALL HARDWARE ITEMS;

240 (II) CONTAIN OR WRAP FROZEN FOODS, MEAT, OR FISH, WHETHER
 250 PREPACKAGED OR NOT;

260 (III) CONTAIN OR WRAP FLOWERS, POTTED PLANTS, OR OTHER ITEMS 270
 WHERE DAMPNESS MAY BE A PROBLEM; AND

280 (IV) CONTAIN UNWRAPPED PREPARED FOODS OR BAKERY GOODS;

290 (2) BAGS PROVIDED BY PHARMACISTS TO CONTAIN PRESCRIPTION DRUGS;

300 (3) NEWSPAPER BAGS, DOOR-HANGER BAGS, LAUNDRY-DRY CLEANING BAGS, OR
 BAGS SOLD IN PACKAGES CONTAINING MULTIPLE BAGS INTENDED FOR USE AS
 GARBAGE, PET WASTE, OR YARD WASTE BAGS;

310 (4) PAPER CARRYOUT BAGS THAT RESTAURANTS PROVIDE TO CUSTOMERS TO
 320 TAKE FOOD AWAY FROM THE RETAIL ESTABLISHMENT;

330 (5) REUSABLE CARRYOUT BAGS; OR

340 (6) BAGS PROVIDED TO THE CONSUMER FOR THE PURPOSE OF TRANSPORTING A
PARTIALLY CONSUMED BOTTLE OF WINE.

350 (B) "FUND" MEANS THE MARYLAND RESIDENTS RECYCLE FUND ESTABLISHED BY §19-706.

360 (C) "RETAIL ESTABLISHMENT" MEANS AN ESTABLISHMENT THAT SELLS GOODS OR
370 SERVICES TO THE ULTIMATE USER OR CONSUMER FOR PERSONAL USE RATHER THAN
380 BUSINESS USE UNDER THE ECONOMIC DEVELOPMENT ARTICLE § 5-401 OF THE
390 MARYLAND ANNOTATED CODE.

400 (D) "REUSABLE CARRYOUT BAG" MEANS A BAG WITH HANDLES THAT IS SPECIFICALLY
410 DESIGNED AND MANUFACTURED FOR MULTIPLE REUSE AND IS MADE OF CLOTH, FIBER,
420 OTHER MACHINE WASHABLE FABRIC, OR DURABLE PLASTIC THAT IS AT LEAST 2.25 130
MILLIMETERS THICK.

430 §19-702. REQUIREMENTS FOR DISPOSABLE CARRYOUT BAGS MADE AVAILABLE TO 440
CUSTOMERS BY RETAIL ESTABLISHMENTS.

450 (A) DISPOSABLE CARRYOUT BAGS MADE OF PLASTIC THAT CANNOT BE RECYCLED
460 SHALL NOT BE SOLD OR DISTRIBUTED, RETAIL OR WHOLESALE, IN THE STATE OF
470 MARYLAND.

480 (B) DISPOSABLE CARRYOUT BAGS MADE OF PAPER SHALL:

490 (1) BE 100% RECYCLABLE;

500 (2) CONTAIN A MINIMUM OF 40% POST-CONSUMER RECYCLED CONTENT; AND

510 (3) DISPLAY THE PHRASE "PLEASE RECYCLE THIS BAG", OR A SUBSTANTIALLY
520 SIMILAR PHRASE, IN A HIGHLY VISIBLE MANNER ON THE BAG EXTERIOR.

530 (C) DISPOSABLE CARRYOUT BAGS MADE OF PLASTIC SHALL:

540 (1) BE 100% RECYCLABLE;

550 (2) BE MADE OF HIGH-DENSITY POLYETHYLENE FILM MARKED WITH THE SPI
560 RESIN IDENTIFICATION CODE 2 OR LOW-DENSITY POLYETHYLENE FILM MARKED
570 WITH THE SPI RESIN IDENTIFICATION CODE 4; AND

580 (3) DISPLAY THE PHRASE "PLEASE RECYCLE THIS BAG", OR A SUBSTANTIALLY
590 SIMILAR PHRASE, IN A HIGHLY VISIBLE MANNER ON THE BAG EXTERIOR.

600 (D) VIOLATION OF THE REQUIREMENTS SET FORTH IN THIS SECTION SHALL SUBJECT THE
610 RETAIL ESTABLISHMENT TO THE PENALTIES SET FORTH IN §19-705.

620 **§19-703. ESTABLISHMENT OF CARRYOUT BAG FEE.**

630 (A)(1) A CONSUMER MAKING A PURCHASE FROM A RETAIL ESTABLISHMENT SHALL PAY
640 AT THE TIME OF PURCHASE A FEE OF \$.05 FOR EACH DISPOSABLE CARRYOUT BAG.

650 (2) A RETAIL ESTABLISHMENT SHALL NOT ADVERTISE OR HOLD OUT OR STATE TO THE
660 PUBLIC OR TO A CUSTOMER DIRECTLY OR INDIRECTLY THAT THE REIMBURSEMENT OF
670 THE FEE OR ANY PART THEREOF TO BE COLLECTED BY THE RETAIL ESTABLISHMENT
680 WILL BE ASSUMED OR ABSORBED BY THE RETAIL ESTABLISHMENT OR OTHERWISE
690 REFUNDED TO THE CUSTOMER.

700 (3) ALL RETAIL ESTABLISHMENTS SHALL INDICATE ON THE CONSUMER TRANSACTION
710 RECEIPT THE NUMBER OF DISPOSABLE CARRYOUT BAGS PROVIDED AND THE TOTAL
720 AMOUNT OF FEE CHARGED.

730 §19-704. RETAIL ESTABLISHMENT PROCEEDS.

740 (A) EACH RETAIL ESTABLISHMENT SHALL RETAIN \$.01 OF EACH \$.05 FEE COLLECTED;
750 PROVIDED, THAT AN ESTABLISHMENT THAT CHOOSES TO OFFER A CARRYOUT BAG
760 CREDIT PROGRAM TO ITS CUSTOMERS, AS SET FORTH IN SUBPARAGRAPH (B) OF THIS
770 PARAGRAPH, SHALL RETAIN AN ADDITIONAL \$.01 FROM EACH FEE COLLECTED, FOR A
780 TOTAL OF \$.02 FOR EACH \$.05 FEE COLLECTED.

790 (B) A RETAIL ESTABLISHMENT SHALL RETAIN AN ADDITIONAL \$.01 OF EACH \$.05 FEE FOR
800 A CARRYOUT PROGRAM WHICH:

810 (1) CREDITS THE CONSUMER NO LESS THAN \$.05 FOR EACH CARRYOUT BAG
820 PROVIDED BY THE CONSUMER FOR PACKAGING THEIR PURCHASES, REGARDLESS
830 OF WHETHER THAT BAG IS PAPER, PLASTIC, OR REUSABLE;

840 (2) IS PROMINENTLY ADVERTISED AT EACH CHECKOUT REGISTER; AND

850 (3) REFLECTS THE TOTAL CREDIT AMOUNT ON THE CONSUMER TRANSACTION
860 RECEIPT.

870 (4) THE FEES RETAINED BY THE RETAIL ESTABLISHMENT UNDER THIS
880 PARAGRAPH SHALL NOT BE CLASSIFIED AS REVENUE AND SHALL BE TAX-
890 EXEMPT.

900 (C) THE REMAINING AMOUNT OF EACH FEE COLLECTED SHALL BE PAID TO THE
910 MARYLAND RESIDENTS RECYCLE FUND ESTABLISHED BY §19-705.

920 (D) THE OFFICE OF THE COMPTROLLER SHALL DEVELOP RULES FOR FREQUENCY AND
930 METHOD FOR REPORTING AND TRANSMITTING THE FEES, AS SET FORTH IN SUBSECTION
940 (A) OF THIS SECTION, TO THE STATE OF MARYLAND.

950 **§19-705. RULES; ENFORCEMENT AND PENALTIES FOR VIOLATION.**

960 (A) THE GOVERNOR SHALL ISSUE RULES TO IMPLEMENT THE PROVISIONS OF THIS ACT
970 WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS ACT.

980 (B) IF THE GOVERNOR DETERMINES THAT A VIOLATION HAS OCCURRED, THE RETAIL
990 ESTABLISHMENT SHALL BE LIABLE FOR THE FEES UNDER SECTION §19-704(A) AND:

1000 (1) UPON THE FIRST VIOLATION, WRITTEN WARNING NOTICE THAT A VIOLATION
1010 HAS OCCURRED SHALL BE ISSUED TO THE RETAIL ESTABLISHMENT. NO PENALTY
1020 SHALL BE IMPOSED FOR THE FIRST VIOLATION.

1030 (2) UPON SUBSEQUENT VIOLATIONS, THE GOVERNOR SHALL IMPOSE A PENALTY
1040 ON THE RETAIL ESTABLISHMENT. THE PENALTY SHALL NOT EXCEED:

1050 (I) \$100 FOR THE FIRST VIOLATION AFTER THE WRITTEN WARNING IN A
1060 CALENDAR YEAR;

1070 (II) \$200 FOR THE SECOND VIOLATION IN THE SAME CALENDAR YEAR; OR

1080 (III) \$500 FOR THE THIRD AND EACH SUBSEQUENT VIOLATION IN THE
1090 SAME CALENDAR YEAR.

1100 (3) NO MORE THAN ONE PENALTY SHALL BE IMPOSED UPON A RETAIL
1110 ESTABLISHMENT WITHIN A 7-DAY PERIOD.

1120 (C) IF PAYMENT OF ANY AMOUNTS DUE UNDER THIS SECTION IS NOT RECEIVED ON OR
1130 BEFORE THE DUE DATE, A PENALTY SHALL BE ADDED AS THE GOVERNOR PROVIDES BY
1140 RULE.

1150 (D) REVENUES COLLECTED THROUGH CITATIONS FOR VIOLATION OF THIS ACT SHALL BE
1160 USED ONLY FOR ENFORCEMENT COSTS, INCLUDING HIRING INSPECTORS AND OTHER
1170 STAFF, AND ADMINISTRATIVE COSTS ASSOCIATED WITH ENFORCEMENT OF THIS ACT.

1180 **§19-706. ESTABLISHMENT OF THE MARYLAND RESIDENTS RECYCLE FUND.**

1190 (A) THERE IS ESTABLISHED AS A NONLAPSING FUND CALLED THE MARYLAND RESIDENTS
1200 RECYCLE FUND. THE FEES ESTABLISHED BY THIS ACT FOR DISPOSABLE CARRYOUT BAGS
1210 SHALL BE DEPOSITED INTO THE FUND. THE FUND SHALL BE USED SOLELY FOR THE
1220 PURPOSES SET FORTH IN SUBSECTION (B) OF THIS SECTION AND SHALL BE
1230 ADMINISTERED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT.

1240 (B) THE FUND SHALL BE USED FOR THE FOLLOWING PROJECTS IN THE FOLLOWING
1250 ORDER OF PRIORITY, INCLUDING BUT NOT LIMITED TO:

1260 (1) PURCHASING AND INSTALLING EQUIPMENT DESIGNED TO MINIMIZE TRASH
1270 POLLUTION, INCLUDING, RECYCLING CONTAINERS, AND COVERED TRASH
1280 RECEPTACLES;

1290 (2) A PUBLIC EDUCATION CAMPAIGN TO EDUCATE RESIDENTS, BUSINESSES, AND
1300 TOURISTS ABOUT THE IMPACT OF TRASH ON ENVIRONMENTAL HEALTH;

1310 (3) PROVIDING REUSABLE CARRYOUT BAGS TO MARYLAND RESIDENTS, WITH
1320 PRIORITY DISTRIBUTION TO SENIORS AND LOW-INCOME RESIDENTS;

1330 (4) CREATING YOUTH-ORIENTED POLLUTION EDUCATIONAL CAMPAIGNS FOR
1340 STUDENTS AT PUBLIC SCHOOLS;

1350 (5) MONITORING AND RECORDING POLLUTION INDICES;

1360 (6) PRESERVING OR ENHANCING WATER QUALITY AND FISHERY OR WILDLIFE
1370 HABITAT;

1380 (7) PROMOTING CONSERVATION PROGRAMS, INCLUDING PROGRAMS FOR

1390 WILDLIFE AND ENDANGERED SPECIES;

1400 (8) FUNDING COMMUNITY CLEANUP EVENTS AND OTHER ACTIVITIES THAT
1410 REDUCE TRASH, SUCH AS INCREASED LITTER COLLECTION;

1420 (9) PAYING FOR THE ADMINISTRATION OF THIS PROGRAM.

1430 (C) THE FUND SHALL NOT BE USED TO SUPPLANT FUNDS APPROPRIATED AS PART OF AN
1440 APPROVED ANNUAL BUDGET.

1450 (D) ALL FUNDS DEPOSITED INTO THE FUND, AND ANY INTEREST EARNED ON THOSE
1460 FUNDS, SHALL NOT REVERT TO THE UNRESTRICTED FUND BALANCE OF THE GENERAL
1470 FUND OF THE STATE OF MARYLAND AT THE END OF THE FISCAL YEAR, OR AT ANY
1480 OTHER TIME, BUT SHALL BE CONTINUALLY AVAILABLE FOR THE USES AND PURPOSES
1490 SET FORTH IN SUBSECTION (B) OF THIS SECTION WITHOUT REGARD TO FISCAL YEAR
1500 LIMITATION, SUBJECT TO AUTHORIZATION FROM THE GENERAL ASSEMBLY.

1510 **SECTION 2.** AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2011.

1520 **MANDATES:**

1530 Martin O'Malley, Governor of Maryland

1540 Shari T. Wilson, Secretary, Maryland Department of the Environment

1550 Kathy Kinsey Senior Policy Advisor, Maryland Department of the Environment

1560 Peter Franchot, Comptroller of Maryland

1570 Thomas V. Mike Miller, President of the Maryland Senate

1680 Michael E. Busch, Speaker of the House of Delegates

SPONSOR:

Jamie L. Shopland, Hood College of Maryland