



**House
Legislative
Analysis
Section**

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DEFINE "RECYCLED PRODUCT"

AS ENROLLED

**House Bill 4115 (Substitute H-4)
First Analysis (5-26-93)**

**Sponsor: Rep. Jessie Dalman
Committee: Conservation, Environment
and Great Lakes Affairs**

THE APPARENT PROBLEM:

In spite of the fact that people are recycling more every year, government statistics show that more waste is being deposited in the state's landfills. The problem, in part, reflects consumer confusion over what is recyclable and what is not. For example, many companies package their products in containers and packages that are labelled "recycled," "compostable," or "degradable." Consumers are therefore led to believe that they are purchasing products wrapped in post-consumer waste. In fact, the acts regulating degradable packaging products contain no definition of "post-consumer waste." Companies are therefore free to define products as "recycled" or "degradable" without stating what percentage of the product is made from pre-consumer waste, what percentage of the product is made from post-consumer waste, and what percentage is made from virgin stock. This particular problem is outlined in the August 13, 1992, guidelines issued by the Federal Trade Commission (FTC) regarding environmental marketing claims, and also is contained in a recent "Task Force Report on Recycling and Waste Reduction" issued by the House Republican Policy Committee. It is recommended that the state's policy regarding recycling and waste reduction be clarified regarding products and packages that claim to contain "recycled or degradable", materials.

THE CONTENT OF THE BILL:

The Michigan Consumer Protection Act defines certain trade practices as deceptive, unfair and unconscionable. Included under a list of 29 unlawful trade practices outlined in the act are: false advertising, misrepresentation of goods or credit terms, the use of coercion and duress in a sales presentation, gross discrepancies between the oral and the written agreement for /goods, and taking advantage of a consumer's inability to understand an agreement. House Bill 4115 would amend the act to include in the list a representation

made by a manufacturer that a product or package was 1) "recycled, recyclable, degradable, or was of a certain recycled content," in violation of the August 13, 1992, guidelines issued by the Federal Trade Commission (FTC) regarding environmental marketing claims; or 2) that a container holding device was "degradable," contrary to the definition provided for container holding devices under the degradable packaging act of 1988. (Under that act, "degradable" is defined to mean capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements). In addition, the bill would add that rules would not be promulgated to implement its provisions, in order to assure national uniformity.

MCL 445.903(dd)

FISCAL IMPLICATIONS:

According to the Department of Attorney General, the provisions of the bill could incur some additional staffing costs, depending on how strictly the provisions were enforced. (5-26-93)

ARGUMENTS:

For:

The bill would adopt one of the recommendations regarding environmental marketing claims contained in the Federal Trade Commission's (FTC) "Guides for the Use of Environmental Marketing Claims." The guide outlines various claims by manufacturers that should be avoided because they are likely to be misleading, and illustrates the types of qualifying statements that may have to be added to avoid consumer deception. For example, one commonly used environmental marketing claim overstates the environmental attribute or benefit of a product by labeling its package "50 percent more recycled content than before." The manufacturer may have

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increased the recycled content of its package from two percent to a mere three percent, but the claim conveys the impression that the use of recycled material has increased significantly. Moreover, a summary of the FTC guidelines points out that "environmental claims should not overstate" an environmental attribute or benefit, and that "marketers should avoid implying a significant environmental benefit where the benefit is, in fact, negligible." The FTC guides specify that the environmental claims of marketers, whether explicit or implied, must be substantiated by competent and reliable evidence (in addition, competent and reliable scientific evidence may often be required). According to the FTC guidelines, then, the manufacturer of the above package should clarify its claim, so that the basis for the comparison is made clear, or else be prepared to substantiate whatever comparison is conveyed.

The degradable packaging act of 1988 defines "degradable" to mean a package capable of being broken down by biodegradation, photodegradation, or chemical degradation into component parts within 360 days under exposure to the elements. House Bill 4115 would incorporate that definition of "degradable" when referring to containers or packaging. The bill's definition of "degradable," then, would be compatible with -- but less stringent than -- the FTC Guide's recommendation, which specifies that an unqualified degradability claim should be substantiated by evidence that the product will break down completely and return to nature. That is, that it will decompose into elements found in nature within a reasonably short period of time after it is disposed of. An example cited in the summary is that of a trash bag marketed as "degradable." The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. However, the trash bags are customarily disposed of in sanitary landfills which inhibit degradation by minimizing moisture and oxygen. The marketer does not adequately substantiate its claim that the bags will degrade in a reasonably short period of time in a landfill. Again, according to the FTC guide, the marketer would be required to substantiate the claim by scientific evidence that all the materials would break down into, or otherwise become part of, usable compost, in a safe and timely manner.

Against:

A recent "Task Force Report on Recycling and Waste Reduction" issued by the House Republican

Policy Committee concluded that the state faces "a crisis situation" with regard to its landfills." According to the report, the problem lies in the fact that Michigan does not yet have a comprehensive policy regarding recycling and waste reduction. Michigan must therefore set the direction for creating incentives to promote recycling by promoting definite policies. Among other suggestions, the task force recommended that products claiming to contain recycled materials should state what percentage of the product actually contains post-consumer waste. The bill should follow the advice of the task force and provide language that would accomplish this recommendation.

Response:

The provisions of the bill follow the guidelines outlined in the Federal Trade Commission's (FTC) "Guides for the Use of Environmental Marketing Claims," issued in July, 1992. The guidelines are administrative interpretations of laws administered by the FTC, and, as they explain, are not in themselves legally enforceable, and do not preempt state or local laws or regulations. However, according to the July 19, 1991, issue of the "Environmental Reporter" (Vol. 22, #12), officials from the Environmental Protection Agency (EPA), states, and industry have urged the FTC to issue national guidelines for companies that make environmental claims on their products. Reportedly, many manufacturers believe that having federal guidelines will serve as a benchmark to help them clarify their marketing claims.

POSITIONS:

The Michigan Retailers Association supports the bill. (5-25-93)

Scott Paper Company supports the bill. (5-26-93)

The Michigan United Conservation Clubs supports the bill, but believes an amendment should be added to require the attorney general to promulgate rules to implement the bill's provisions. (5-25-93)

The Michigan Environmental Council has no position on the bill. (5-25-93)

The Department of Attorney General has no position on the bill. (5-26-93)

The Michigan Chemical Council does not oppose the bill. (5-26-93)