

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 8348



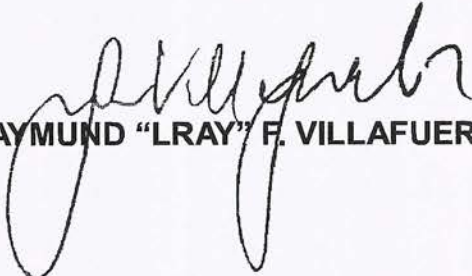
Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

AN ACT
TO ESTABLISH AN ENVIRONMENTAL MARKETING CLAIMS
MONITORING PROGRAM

The Constitution, Article II, Section 16 provides that: The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

The Philippines is facing growing environmental problems, such as global climate change, waste disposal, and air and water pollution. As such, Filipino consumers are willing to pay more for environment-friendly products. Environmental marketing claims convey information about products and influence purchasing decisions. Conveying accurate and reliable environmental information in environmental marketing claims will be of great use to the consumers, willing to change their purchasing patterns. However, environmental marketing claims are largely unregulated and can sometime be deceptive. Such claims exploit genuine consumer concern and may confuse customers, so as to impede the effectiveness of the use of legitimate environmental marketing claims that address environmental problems.

This bills seeks to: (1) prevent the use of fraudulent, deceptive, and misleading environmental marketing claims; (2) empower consumers with reliable and consistent guidance to facilitate value comparisons with respect to environmental marketing claims; (3) establish uniform, accurate standards and definitions that reflect the best available manufacturing practices, products, and packaging; (4) encourage the development of innovative technologies and practices to be adapted by manufacturers in considering the environmental effects when producing products and packages; and (5) encourage both consumers and industry to adopt habits and practices that favor natural resource conservation and environmental protection.


LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. – This Act shall be known as the “Environmental Marketing Claims Act.”

SECTION 2. Definitions. – For the purposes of this Act, the term:

- (A) “Product” means any commodity, goods, or item distributed for promotional use, rent, lease, or sale, through retail or wholesale sales agencies or agencies or instrumentalities, for consumption or use;
- (B) “Package” means the coating, covering, container, or wrapping used during a product life cycle, including any outer container, wrapping or label used in the retail display of any product;
- (C) “Life cycle” includes the extraction; processing and manufacturing; transportation and distribution; use; and management as waste of raw materials used in the manufacture of a product or package, and of the product or package;
- (D) “Environmental marketing claim” means any symbols or terms that are on a label, package, or product or that are used in promotion or advertising to inform consumers about the environmental impact or environmental attributes of a product or package during any part of its life cycle;
- (E) “Label” means any written, printed, or graphic material affixed to or appearing upon a product or package or appearing upon a shelf or display area that refers to a product or package;
- (F) “Secretary” means the Secretary of the Department of Trade and Industry;
- (G) “End product” means only those items that are designed to be used until disposal; items designed to be used in production of a subsequent item are excluded;

- (H) "Post-consumer material" means only those products or packages generated by a business or consumer, as defined by the Secretary, which have served their intended end uses, and which have been separated or diverted from solid waste except that such term shall not include wastes generated during the production of an end product;
- (I) "Pre-consumer material" means waste generated during production which cannot be returned to the same production process, nor used by the same parent company to make a product similar to the original product, nor used by another company to make a product similar to the original product, used by the same parent company to manufacture a different product, and includes all wastes generated during the intermediate steps producing an end product by succeeding companies;
- (J) "Secondary material" means any combination of pre-consumer and post-consumer material.

SECTION 3. Environmental Labeling Regulatory Program. – The Secretary shall establish, by regulation, an environmental marketing claims regulatory program. The purposes of such a program shall be to carry out the provisions of this Act.

SECTION 4. Independent Advisory Board. – The Secretary, by regulation, shall establish not later than 180 days after the date of enactment of this Act, an Independent Advisory Board, hereinafter the "Board", to advise and make recommendations to the Secretary concerning the regulation of environmental marketing claims.

(A) Membership. – The Board shall consist of fifteen (15) members, including four (4) ex officio members, who shall be appointed by the Secretary as follows:

- (1) Three (3) members who are recognized as consumer advocates, one of whom is a recognized expert in marketing or consumer perception;
- (2) Five (5) members representative of the industry and manufacturing, including:
 - (a) One (1) retailer;
 - (b) One (1) manufacturer;
 - (c) One (1) recognized waste management expert in the private sector; and
 - (d) One (1) end user of post-consumer materials;
- (3) Three (3) members representative of environmental organizations, of whom one member is a recognized expert in soil science or environmental toxicology;
- (4) Two (2) members, who shall serve ex officio, who are officers or employees of the government, and of whom:
 - (a) One (1) member is recognized expert in consumer protection; and
 - (b) One (1) member is recognized as a waste management, pollution reduction, or pollution prevention expert.
- (5) Two members, who shall serve ex officio, who are officers or employees of the Department of Environment and Natural Resources and who are involved in pollution prevention and waste management.

Members of the Board serving ex officio shall have no vote. The Chairman of the Board shall be designated by the Secretary. The Board shall meet at the call of the Secretary or the Chairman.

(B) Administrative Matters. – The Board shall conduct its business in open meetings, subject to any requirement for privacy in personal matters and review of confidential

information under any provision of law, and may hold hearings to seek public comment and participation in formulating recommendations for the definitions and standards described in Section 5(A).

Members of the Board who are not otherwise employed by the Government may be allowed travel expenses, including per diem in lieu of subsistence, as determined by the Secretary and subject to the applicable laws.

(C) Annual Report. – Not more than 180 days after the initial meeting of the Board, and annually thereafter, the Chairman of the Board shall submit to the Secretary a report that outlines the activities and recommendations of the Board relating to the items described in Section 5. The initial report shall include the recommendations described in Section 5(A).

SECTION 5. Regulation of Environmental Marketing Claims. –

(A) Recommendations by the Board. – Recommendations by the Board to the Secretary, shall include definitions and standards to be used in regulating environmental marketing claims on a national basis. In making such recommendations, the Board shall consider available studies, standards, and other information that the Chairman of the Board determines to be appropriate.

(B) Final Recommendations. – The Secretary, after considering the recommendation of the Board described in paragraph (A), shall, not later than 18 months after the date of the enactment of this Act, promulgate final regulations governing the use of environmental marketing claims, including statements to the effect that a product or package is:

- (1) Source reduced;
- (2) Refillable;
- (3) Reusable;
- (4) Recyclable;
- (5) Has recycled content;
- (6) Compostable;
- (7) Ozone neutral;
- (8) Nontoxic; or
- (9) Otherwise related to an environmental impact or attribute, as determined by the Secretary.

In promulgating the regulations described above, the Secretary shall ensure that an environmental marketing claim shall be related to a specific environmental impact or attribute, as determined and defined by the Secretary, in such manner as to ensure that such environmental marketing claim is not false, misleading, or deceptive except that this shall not preclude the use of general environmental seals of approval awarded according to objective criteria that promote environmentally preferable products and packages, as determined by the Secretary.

In promulgating such regulations pursuant to paragraph (B), the Secretary shall likewise ensure that with respect to an environmental marketing claim, such claim has been substantiated on the basis of the best available scientific information.

In promulgating regulations pursuant to paragraph (B), the Secretary shall also assign a

product to a category or subcategory for the purpose of such regulations according to the the composition of the product; and the packaging of the product.

In establishing product categories for the purposes of the regulations, as described in paragraph (B), the Secretary may establish a category on the basis of the function of the product.

In promulgating the regulations described in paragraph (B), the Secretary shall ensure that environmental marketing claims shall make a clear distinction between the product and any accompanying packaging unless the claim applies to both.

(C) Requirements of Final Regulations. – The Secretary shall include the following requirements in the final regulations described in paragraph (B):

- (1) An environmental marketing claim relating to recycled content shall be used only in connection with a product or package containing post-consumer materials and, except as provided in subparagraph (2), the post-consumer materials shall equal a minimum rate of 25 percent prior to the year 2005, and a minimum rate of 50 percent (by weight on or after the year 2005 of the product content or package composition;
- (2) Notwithstanding the above, an environmental marketing claim relating to recycled content may be used in connection with a product or package that contains a percentage of post-consumer or secondary materials that is less than the percentage specified in subparagraph (1); if a manufacturer, retailer, or distributor, or other person responsible for the use of such environmental marketing claim, as determined by the Secretary, includes in such claim a sentence in which the terms described in the regulation promulgated under Section 5 are displayed no more prominently than other words in the sentence that states the percentage by weight and by volume of post-consumer and secondary materials used in such product or package;
- (3) An environmental marketing claim relating to the recyclable nature of a product or package shall be used only in connection with a product or package for which a manufacturer, retailer, distributor, or other person responsible for the use of such environmental marketing claim, as determined by the Secretary, is able to demonstrate, to the satisfaction of the Secretary, that such product or package shall be recycled, at a minimum rate of 25 percent prior to the year 2005;
- (4) An environmental marketing claim relating to the reusable or refillable nature of a product or package shall be used only in connection with a product or package that is reused for the original purpose of the product or package, an average of five times or more, as determined by the Secretary;
- (5) An environmental marketing claim relating to the compostable nature of a product or package shall be used only in connection with a product or package for which a manufacturer, retailer, distributor, or other person responsible for the use of such environmental marketing claim, as determined by the Secretary, that such product or package shall be composted, at a minimum rate of 25 percent prior to the year 2005 and at a minimum rate of 50 percent on or after the year 2005 of all such products or packages, in a solid waste disposal system, including a composting solid waste disposal system, in which the compostable nature of the product is a desirable and environmentally significant characteristic (as defined by the Secretary; and such

product or package will not release toxic materials or any other materials that may otherwise be harmful to humans, other organisms or natural ecological processes, as defined by the Secretary.

(D) Additional Regulations. – The Secretary may, at any time after the date of the promulgation of the regulations required under paragraph (B), promulgate such additional regulations as the Secretary determines, to be necessary to carry out the purposes of this Act.

In reviewing the regulations described in paragraph (B) or in any additional regulations promulgated under this subsection, the Secretary shall determine whether it is appropriate to promulgate additional regulations to:

- (1) Reflect the best available use and the best available technology that will encourage higher performance levels in products and packaging in meeting the objective of reducing negative environmental impacts and improving environmental attributes; and
- (2) Reflect the most recent scientific and practical knowledge of technological advances and improvements (as determined by the Secretary) in manufacturing techniques and waste management.

Not later than three (3) years after the date of the promulgations of the final regulations or any additional regulations promulgated under this subsection, and every three (3) years thereafter, the Secretary shall review such regulations.

An interested individual, including a representative of industry, and interested citizen, or a representative of an environmental organization, may petition the Secretary to initiate rulemaking procedures with respect to promulgating additional regulations under this Section.

Not later than sixty (60) days after receiving a petition described above, the Secretary shall determine whether to accept or deny the petition and shall publish the petition in at least two newspapers of general circulation, along with an explanation of the reasons for such determination.

SECTION 6. Certification. –

(A) Filing of a Certification. – Not later than six (6) months after the date of the promulgation of any regulation under Section 5, any manufacturer or any other person who intends to use an environmental marketing claim for which the Secretary has promulgated a regulation shall first submit a certification to the Secretary that the environmental marketing claim intended to be used meets the requirements of this Act. Such certification shall be in such form as the Secretary shall prescribe by regulation and shall contain such information as the Secretary determines to be appropriate.

(B) Disapproval Of Certification. – The Secretary may, at any time, disapprove the certification provided under paragraph (A) if the Secretary determines that the environmental marketing claim that the manufacturer or other person intends to use does not meet the requirements of the regulations promulgated under Section 5 of this Act.

(C) Recertification. – Any person using an environmental marketing claim shall resubmit

a certification to the Secretary that the environmental marketing claim used meets the requirements of the Act if:

- (1) Changes have been made in the product or package that would affect its ability to meet the regulatory requirements of the environmental marketing claim previously used for such a product or package; or
- (2) New regulations have been promulgated under this Act relating to the environmental claim being used.

Such recertification shall be submitted to the Secretary within six (6) months of the occurrence of either event described in subparagraphs (1) and (2) above.

SECTION 7. Prohibition. – It shall be unlawful for any person to fail or refuse to comply with any regulation promulgated under Section 5(b) of this Act; or any order issued by the Secretary to carry out any regulation. It shall likewise be unlawful for any person to use an environmental marketing claim for which the Secretary has issued a regulation under Section 5 if the person has failed to file a certification as required by Section 6; or the Secretary has disapproved a certification under Section 6.

SECTION 8. Penalties. –

(A) Civil. – Any person who violates a provision of Section 7 of this Act shall be liable to the Philippine Government for a civil penalty in an amount not to exceed One Hundred Thousand Pesos (P100,000.00) for each such violation. Each day such a violation continues shall, for the purpose of this subsection, constitute a separate violation of Section 7 of this Act.

A civil penalty for a violation of Section 7 of this Act shall be assessed by the Secretary by an order made on the record after opportunity for a hearing in accordance with regulations as determined by the Secretary. Before such an order, the Secretary shall give written notice to the person to be assessed a civil penalty under such order, of the Secretary's proposal to issue such order and provide such person an opportunity to request, within fifteen (15) days from the date of notice is received by such person, such as a hearing on the order.

In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstances, extent, and the gravity of the violation, and with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior related violations, the degree of culpability, and such other matters as the Secretary determines to be appropriate.

Any person who has requested a hearing with respect to the assessment of a civil penalty, may file a petition for judicial review of such order with the Regional Trial Court in the place where such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

If a person fails to pay an assessment of a civil penalty after the order making the assessment has become a final order and if such person does not file a petition for

judicial review of the order; or after a court in an action has entered a final judgment in favor of the Secretary; the Solicitor General shall recover the amount assessed, including interest at currently prevailing rates from the date of the expiration of the 30-day period or the date of such final judgment, as the case may be, in an action brought in any appropriate Regional Trial Court. In such action, the validity, amount and appropriateness of such penalty shall not be subject to review.

(B) Criminal. – Any person who knowingly or willfully violates any provision of Section 7 of this Act, shall, in addition to or in lieu of any civil penalty which may be imposed under paragraph (A) of this Section for such violation, be subject, upon conviction, to a fine of not more than One Hundred Thousand Pesos (P100,000.00) for each day of violation, or to imprisonment for not more than 1 year, or both.

Not later than December 1 of the year in which this Act is promulgated, and December 1 of each fifth calendar year thereafter, the Secretary shall prescribe and publish in at least two (2) newspapers of general circulation, a schedule of maximum authorized fines that shall apply for violations that occur after January 1 of the year immediately following such publication.

SECTION 9. Citizens Suits. –

(A) In General. – Except as provided in paragraph (B), any person may commence a civil action against:

- (1) Any person who is alleged to be in violation, including the Government of the Philippines, to the extent allowable by law; or
- (2) The Secretary, to compel him to carry out ministerial duties assigned to the him under this Act.

Any civil action under this subsection shall be brought in the Regional Trial court of the district in which the alleged violation occurred, or where the defendant resides or where the defendant's principal place of business is located. The Regional Trial Court shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. The Court shall have jurisdiction to order all necessary injunctive relief and to impose any civil penalty.

(B) Limitations. – No civil action may be commenced to restrain any violation of Section 7 of this Act before the expiration of sixty (60) days after the plaintiff has given notice of such violation to the Secretary and the person who is alleged to have committed such violation if:

- (1) The Secretary has commenced a proceeding a proceeding for the issuance of an order to require compliance with the regulation or requirement and is diligently pursuing such proceeding or has issued an order to carry out the regulation or requirement described in Section 7 and is diligently pursuing the enforcement of such order; or
- (2) The Solicitor General has commenced a civil action in a court of the Republic of the Philippines to require compliance with the regulation requirement and is diligently prosecuting such civil action.

No civil action may be recommended against the Secretary under paragraph (A) before the expiration of a 60-day period after the plaintiff has given notice to the secretary of the

alleged failure of the Secretary to perform an act or duty which is the basis for such action.

(C) Intervention. – If a proceeding or civil action is commenced by the Secretary or the Solicitor general after the giving of notice by a person other than the Secretary or Solicitor General, such person may intervene as a matter of right in such proceeding or action.

In any action under this section, the Secretary or the Solicitor General, if not a party, may intervene as a matter of right.

(D) Notice. – Notice under this section shall be given in such manner as the Secretary shall prescribe by regulation.

(E) Attorney Fees and Court Costs. – The court, in issuing any final order in any action brought under this Act, may award costs of suit and reasonable fees for attorneys and expert witnesses, if the court determines that such award is appropriate.

(F) Consolidation. – When two or more civil actions brought under involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions may be consolidated and tried as provided for in the Rules of Court.

SECTION 10. Public Information Campaign. – The Secretary shall conduct a public information and education campaign, including public service advertising, in order to enable consumers to:

- (A) Recognize environmental marketing claims regulated under this /act and be able to distinguish them from other environmental marketing claims;
- (B) Have information about the criteria used by the Secretary in establishing standards and definitions for environmental marketing claims, and
- (C) Have a better understanding about the effects that products and packages can have on the environment.

SECTION 11. Statutory Construction. –

(A) Right to Seek Enforcement. – Nothing in Section 9 shall restrict any right which any person or class of persons may have under any other statute to seek enforcement of any regulation promulgated under Section 5 of this Act.

(B) Actions against Advertisers. – Nothing in this Act shall be construed so as to alter the right under any other provision of law of a person or government to commence an action against an advertiser related to the use of false or misleading environmental marketing claims.

(C) Standards. – Nothing in this Act shall be construed so as to prohibit the government from enacting and enforcing a standard or requirement with respect to the use of an environmental marketing claim that is more stringent than a standard or requirement relating to an environmental marketing claim established or promulgated under this Act.

SECTION 12. Appropriations. – To carry out the provisions of this Act, such sum as may be necessary is hereby authorized to be appropriated from the National Treasury. Thereafter, the sum necessary for the continuous operation of the program shall be included in the annual appropriation of the Department of Trade and Industry.

SECTION 13. Separability Clause. – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision shall remain valid and subsisting.

SECTION 14. Repealing Clause. – Any law, presidential decree, issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 15. Effectivity Clause. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,