

HOUSE BILL 291

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M3

2002 Regular Session  
2lr0176  
CF 2lr0175

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By: **The Speaker (Administration) and Delegates Bozman, Clagett,  
Hubbard, Love, Morhaim, Nathan-Pulliam, and Rosso**

Introduced and read first time: January 23, 2002

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 28, 2002

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CHAPTER 434

1 AN ACT concerning

2 **Community Right-to-Know Fund**

3 FOR the purpose of requiring the Department of the Environment to serve as the  
4 information repository for the State Emergency Response Commission;  
5 requiring the owner or operator of certain facilities to supply certain information  
6 to the Department; establishing a Community Right-to-Know Fund in the  
7 Department; requiring the Department to establish certain fees; specifying  
8 certain uses of the Fund; authorizing certain persons to inspect certain facilities  
9 and certain records; providing for the payment of certain civil penalties to the  
10 Fund; requiring the Attorney General to represent the State in cases arising  
11 under this Act; authorizing the Department to adopt certain regulations;  
12 providing for the application of this Act; defining certain terms; and generally  
13 relating to the reporting of certain information regarding hazardous materials  
14 and the establishment of a Community Right-to-Know Fund in the Department  
15 of the Environment.

16 BY adding to  
17 Article - Environment  
18 Section 7-601 through 7-605, inclusive, to be under the new subtitle "Subtitle 6.  
19 Community Right-to-Know Fund"  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 2001 Supplement)

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

1 **Article - Environment**

## 2 SUBTITLE 6. COMMUNITY RIGHT-TO-KNOW FUND.

3 7-601.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
5 INDICATED.6 (B) "EXTREMELY HAZARDOUS SUBSTANCE" MEANS A SUBSTANCE THAT IS  
7 DEFINED AS AN EXTREMELY HAZARDOUS SUBSTANCE UNDER § 329(3) OF THE  
8 FEDERAL ACT.

9 (C) "FACILITY" MEANS A FACILITY THAT IS SUBJECT TO THE FEDERAL ACT.

10 (D) "FEDERAL ACT" MEANS THE FEDERAL EMERGENCY PLANNING AND  
11 COMMUNITY RIGHT-TO-KNOW ACT OF 1986.12 (E) "FUND" MEANS THE MARYLAND COMMUNITY RIGHT-TO-KNOW FUND  
13 ESTABLISHED UNDER § 7-604 OF THIS SUBTITLE.14 (F) "HAZARDOUS CHEMICAL" ~~MEANS ANY CHEMICAL THAT IS A PHYSICAL~~  
15 ~~HAZARD OR A HEALTH HAZARD.~~16 ~~(G) "HEALTH HAZARD" HAS THE MEANING STATED IN 29 C.F.R. 1910.1200(C) 42~~  
17 ~~U.S.C. § 11021(E).~~18 ~~(H) (G) "LOCAL EMERGENCY PLANNING COMMITTEE", OR "LEPC", HAS THE~~  
19 ~~MEANING STATED IN 40 C.F.R. 355.20.~~20 ~~(I) "PHYSICAL HAZARD" MEANS A CHEMICAL FOR WHICH THERE IS~~  
21 ~~SCIENTIFICALLY VALID EVIDENCE THAT IT IS A COMBUSTIBLE LIQUID, A~~  
22 ~~COMPRESSED GAS, EXPLOSIVE, FLAMMABLE, AN ORGANIC PEROXIDE, AN OXIDIZER,~~  
23 ~~PYROPHORIC, UNSTABLE, REACTIVE, OR WATER REACTIVE.~~24 ~~(J) (H) "RESPONSIBLE PERSON" HAS THE MEANING STATED IN § 7-201(X) OF~~  
25 ~~THIS TITLE MEANS AN OWNER OR OPERATOR OF A FACILITY THAT IS REQUIRED TO~~  
26 ~~REPORT UNDER THE FEDERAL ACT.~~

27 7-602.

28 (A) THE DEPARTMENT SHALL SERVE AS THE INFORMATION REPOSITORY FOR  
29 THE STATE EMERGENCY RESPONSE COMMISSION.30 (B) EACH OWNER OR OPERATOR OF A FACILITY THAT IS REQUIRED BY THE  
31 FEDERAL ACT, OR ANY REGULATIONS ADOPTED UNDER THE FEDERAL ACT, TO  
32 FURNISH A REPORT, NOTICE, OR ANY OTHER FORM OF INFORMATION TO THE STATE  
33 OR ANY OF ITS OFFICERS OR INSTRUMENTALITIES, INCLUDING THE STATE  
34 EMERGENCY RESPONSE COMMISSION, THE GOVERNOR, OR THE GOVERNOR'S

1 DESIGNEE, SHALL SATISFY THE REQUIREMENT BY PROVIDING THE INFORMATION  
2 TO THE DEPARTMENT.

3 (C) THE DEPARTMENT MAY ADOPT REGULATIONS TO SPECIFY FORMS, FEES,  
4 SET DEADLINES, AND OTHERWISE IMPLEMENT THIS SUBTITLE.

5 (D) THIS SECTION DOES NOT RELIEVE ANY FACILITY FROM ANY  
6 REQUIREMENT UNDER THE FEDERAL ACT OR UNDER ANY LOCAL ORDINANCE TO  
7 REPORT TO INSTRUMENTALITIES OF FEDERAL OR LOCAL GOVERNMENT.

8 7-603.

9 A RESPONSIBLE PERSON MAY NOT KNOWINGLY OR RECKLESSLY SUBMIT FALSE  
10 INFORMATION UNDER THIS SUBTITLE.

11 7-604.

12 (A) NOTWITHSTANDING § 7-219 OF THIS TITLE, THERE IS A COMMUNITY  
13 RIGHT-TO-KNOW FUND.

14 (B) THE DEPARTMENT SHALL USE THE COMMUNITY RIGHT-TO-KNOW FUND  
15 FOR:

16 (1) THE COLLECTION, MANAGEMENT, AND ANALYSIS OF DATA  
17 RECEIVED BY THE DEPARTMENT FROM AN OWNER OR OPERATOR OF A FACILITY  
18 THAT IS REQUIRED BY THE FEDERAL ACT OR ANY REGULATIONS ADOPTED UNDER  
19 THE FEDERAL ACT TO PROVIDE INFORMATION TO THE STATE UNDER § 7-602(B) OF  
20 THIS SUBTITLE;

21 (2) ENFORCEMENT BY THE STATE OF THIS SUBTITLE OR THE FEDERAL  
22 ACT; AND

23 (3) PLANNING AND TRAINING FUNCTIONS PERFORMED BY THE STATE  
24 OR LOCAL INSTRUMENTALITIES AS MAY BE REQUIRED BY THE FEDERAL ACT  
25 INCLUDING:

26 (I) CONDUCTING;

27 1. INCIDENT RESPONSE ACTIVITIES;

28 2. SHELTER IN PLACE AND EVACUATION PLANNING;

29 3. RAILROAD, MARITIME, AND TRANSPORTATION  
30 EXERCISES; AND

31 4. EMERGENCY RESPONSE ACTIVITIES;

32 (II) THE COLLECTION OF HAZARDOUS MATERIAL COMMODITY  
33 FLOW INFORMATION;

1 (III) THE ACQUISITION AND MAINTENANCE OF CHEMICAL  
2 REFERENCE MATERIALS; AND

3 (IV) PUBLIC OUTREACH ACTIVITIES INCLUDING CASE STUDIES,  
4 SCHOOL SAFETY, AND EMERGENCY PLANNING FOR CITIZENS; AND

5 (V) PARTICIPATION BY EMERGENCY RESPONSE PERSONNEL IN  
6 RELATED TRAINING CONFERENCES ON LOCAL, STATE, AND FEDERAL REGULATORY  
7 AND COMPLIANCE UPDATES, INCIDENT COMMAND, AND CRISIS CONTROL.

8 (C) THE DEPARTMENT SHALL:

9 (1) ESTABLISH AN ANNUAL FEE FOR FACILITIES REQUIRED TO REPORT  
10 TO THE STATE OR ITS INSTRUMENTALITIES UNDER THE FEDERAL ACT; AND

11 (2) BASE THE ANNUAL FEE ON:

12 ~~(H) THE COST TO THE DEPARTMENT FOR PROCESSING THE~~  
13 ~~INFORMATION SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (B) OF THIS~~  
14 ~~SECTION 7-602 OF THIS SUBTITLE; AND~~

15 ~~(H) THE POTENTIAL RISKS TO THE ENVIRONMENT, AS MEASURED~~  
16 ~~BY THE QUANTITIES AND TOXICITIES OF EXTREMELY HAZARDOUS SUBSTANCES OR~~  
17 ~~HAZARDOUS CHEMICALS STORED OR HELD BY THE FACILITY.~~

18 ~~(D) THE ANNUAL FEE SHALL BE THE SUM OF A FIXED APPLICATION FEE AND~~  
19 ~~A CHEMICAL FEE.~~

20 ~~(E)~~ (D) EXCEPT AS PROVIDED IN SUBSECTION ~~(G)~~ (F) OF THIS SECTION,  
21 BEGINNING MARCH 1, 2003 AND EACH YEAR THEREAFTER:

22 (1) THE ANNUAL FEE SHALL BE PAID TO THE DEPARTMENT NO LATER  
23 THAN MARCH 1 OF EACH YEAR FOR REPORTS REQUIRED UNDER § 312 OF THE  
24 FEDERAL ACT; AND

25 (2) THE ANNUAL FEE SHALL BE PAID TO THE DEPARTMENT NO LATER  
26 THAN JULY 1 OF EACH YEAR FOR REPORTS REQUIRED UNDER § 313 OF THE FEDERAL  
27 ACT.

28 ~~(F)~~ (E) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE ANNUAL FEE  
29 ASSESSED BY THE DEPARTMENT UNDER THIS SECTION MAY NOT EXCEED:

30 ~~(1) FOR A RESPONSIBLE PERSON THAT OWNS OR OPERATES ONLY ONE~~  
31 ~~FACILITY IN MARYLAND, \$10,000 IN ANY CALENDAR YEAR; OR~~

32 ~~(2) FOR A RESPONSIBLE PERSON THAT OWNS OR OPERATES MORE THAN~~  
33 ~~ONE FACILITY IN MARYLAND, \$20,000 IN ANY CALENDAR YEAR~~ \$1,000 IN ANY  
34 CALENDAR YEAR FOR A RESPONSIBLE PERSON WHO OWNS OR OPERATES ONE OR  
35 MORE FACILITIES IN MARYLAND.

1 ~~(G)~~ (F) (1) THE FOLLOWING PERSONS AND ENTITIES ARE EXEMPT FROM  
2 PAYING ANY FEES UNDER THIS SECTION:

3 (I) GOVERNMENTAL AGENCIES;

4 (II) FARMERS WHOSE PRINCIPAL RESIDENCE IS LOCATED ON  
5 THEIR FARM;

6 (III) CHARITABLE ORGANIZATIONS AS DEFINED UNDER § 6-101(D)  
7 OF THE BUSINESS REGULATION ARTICLE;~~AND~~

8 (IV) PETROLEUM ~~DISTRIBUTORS~~ RETAIL FACILITIES WITH LESS  
9 THAN 75,000 GALLONS OF GASOLINE AND LESS THAN 100,000 GALLONS OF DIESEL OR  
10 SIMILAR FUEL;AND

11 (V) ENTITIES THAT ARE EXEMPT FROM REPORTING UNDER THE  
12 FEDERAL ACT.

13 (2) THE SECRETARY MAY ADOPT REGULATIONS THAT EXEMPT  
14 ADDITIONAL ENTITIES FROM THE REQUIREMENT TO PAY THE FEES TO THE  
15 DEPARTMENT REQUIRED BY THIS SECTION.

16 ~~(H)~~ (G) ANY FEE OR PENALTY COLLECTED OR IMPOSED UNDER THIS  
17 SUBTITLE SHALL BE PAID BY THE DEPARTMENT TO THE FUND.

18 ~~(I)~~ A FACILITY THAT PAYS A FEE FOR THE STORAGE OR USE OF AN  
19 EXTREMELY HAZARDOUS SUBSTANCE OR A HAZARDOUS CHEMICAL TO A LOCAL  
20 JURISDICTION WITH AN ESTABLISHED FEE PROGRAM SHALL REMIT 50% OF EACH  
21 ANNUAL FEE ESTABLISHED BY THE DEPARTMENT UNDER THIS SECTION TO THE  
22 FUND.

23 ~~(J)~~ (H) AT THE END OF EACH FISCAL YEAR, THE DEPARTMENT MAY SHALL  
24 USE 50% OF THE MONEYS IN THE FUND TO PROVIDE FUNDING ASSISTANCE GRANTS  
25 TO A LOCAL EMERGENCY PLANNING COMMITTEE COMMITTEES.

26 ~~(K)~~ (I) (1) A LOCAL EMERGENCY PLANNING COMMITTEE THAT RECEIVES  
27 MONEYS UNDER SUBSECTION ~~(J)~~ (H) OF THIS SECTION SHALL PROVIDE AN ANNUAL  
28 REPORT TO THE DEPARTMENT DOCUMENTING THE MANNER IN WHICH THE MONEYS  
29 WERE EXPENDED BY THE LOCAL EMERGENCY PLANNING COMMITTEE.

30 (2) A LOCAL EMERGENCY PLANNING COMMITTEE SHALL SPEND THE  
31 MONEYS PROVIDED UNDER SUBSECTION ~~(J)~~ (H) OF THIS SECTION FOR ACTIVITIES  
32 IDENTIFIED UNDER SUBSECTION (B) OF THIS SECTION OR FOR ANY OTHER ACTIVITY  
33 WHICH THE DEPARTMENT DETERMINES IS CONSISTENT WITH THE PURPOSES OF  
34 THIS SUBTITLE.

35 ~~(L)~~ (J) MONEYS ALLOCATED TO A LOCAL EMERGENCY PLANNING  
36 COMMITTEE UNDER SUBSECTION ~~(J)~~ (H) OF THIS SECTION THAT ARE NOT UTILIZED  
37 BY THE LOCAL EMERGENCY PLANNING COMMITTEE WITHIN 1 YEAR AFTER RECEIPT

1 OF THE ALLOCATION SHALL BE REMITTED TO THE DEPARTMENT AND MAY BE  
2 REALLOCATED BY THE DEPARTMENT.

3 ~~(M)~~ (K) (1) AFTER PROVIDING REASONABLE NOTICE, THE SECRETARY MAY  
4 REQUIRE A LOCAL EMERGENCY PLANNING COMMITTEE TO PROVIDE THE  
5 DEPARTMENT WITH INFORMATION OR DOCUMENTATION RELATING TO THE  
6 UTILIZATION OF MONEYS ALLOCATED UNDER SUBSECTION ~~(J)~~ (H) OF THIS SECTION.

7 (2) THE SECRETARY MAY REQUIRE AN INDEPENDENT AUDIT OF ANY  
8 LOCAL EMERGENCY PLANNING COMMITTEE NOT FOUND TO BE IN COMPLIANCE  
9 WITH PARAGRAPH (1) OF THIS SUBSECTION.

10 ~~(N)~~ (L) (1) THE SECRETARY MAY RECOVER ANY INAPPROPRIATE  
11 EXPENDITURE MADE BY A LOCAL EMERGENCY PLANNING COMMITTEE FROM THE  
12 FUND.

13 (2) ANY EXPENDITURE MADE BY A LOCAL EMERGENCY PLANNING  
14 COMMITTEE THAT IS INCONSISTENT WITH SUBSECTION ~~(K)~~ (L) OF THIS SECTION OR  
15 THE PURPOSE OF THIS SUBTITLE SHALL BE:

16 (I) REIMBURSED BY THE LOCAL EMERGENCY PLANNING  
17 COMMITTEE TO THE DEPARTMENT; AND

18 (II) REMITTED TO THE FUND WITHIN 90 DAYS ~~OF~~ AFTER RECEIPT  
19 BY THE LOCAL EMERGENCY PLANNING COMMITTEE OF A NOTICE FROM THE  
20 DEPARTMENT INDICATING THAT THE EXPENDITURE IS INAPPROPRIATE.

21 7-605.

22 (A) EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS AND PROCEDURES  
23 OF ~~§§ 7-256 THROUGH 7-268~~ §§ 7-266(A) AND 7-268 OF THIS ARTICLE SHALL BE USED  
24 AND APPLIED TO ENFORCE VIOLATIONS OF:

25 (1) THIS SUBTITLE;

26 (2) ANY REGULATIONS ADOPTED UNDER THIS SUBTITLE; AND

27 (3) ANY CONDITION OF ACCREDITATION ISSUED UNDER THIS SUBTITLE.

28 (B) A PENALTY IMPOSED UNDER THIS SECTION IS PAYABLE TO THE  
29 COMMUNITY RIGHT-TO-KNOW FUND AND COLLECTIBLE IN ANY MANNER PROVIDED  
30 BY LAW FOR THE COLLECTION OF DEBTS.

31 ~~(C) IF A RESPONSIBLE PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED~~  
32 ~~UNDER THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT OF THE~~  
33 ~~PENALTY, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL~~  
34 ~~BE:~~

35 ~~(1) A LIEN IN FAVOR OF THE STATE ON ANY REAL OR PERSONAL~~  
36 ~~PROPERTY OF THE RESPONSIBLE PERSON; AND~~

1           (2)     ~~RECORDED IN THE OFFICE OF THE CLERK OF THE COURT FOR THE~~  
2 ~~COUNTY IN WHICH THE PROPERTY IS LOCATED.~~

3     ~~(D)     UNLESS THE RESPONSIBLE PERSON SERVED WITH NOTICE OF A PENALTY~~  
4 ~~UNDER THIS SUBSECTION MAKES A WRITTEN REQUEST FOR A HEARING WITHIN 10~~  
5 ~~DAYS OF RECEIPT OF NOTICE, THE PENALTY IS CONSIDERED FINAL.~~

6     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
7 effect July 1, 2002.