

Chapter 555

(Senate Bill 447)

AN ACT concerning

Public Health – Products Containing a Flame–Retardant Chemical

FOR the purpose of prohibiting a person from importing, selling, or offering for sale any juvenile product, mattress, upholstered furniture, or reupholstered furniture that contains more than a certain amount of certain chemicals; repealing certain provisions of law regarding the importing, sale, or offering for sale of any child care product containing certain chemicals; establishing certain civil penalties; requiring the Secretary of Health to consider certain factors in determining the amount of a certain penalty; authorizing a court to enjoin a certain action; requiring the Maryland Department of Health to adopt certain regulations on or before a certain date; providing for the application of certain provisions of this Act; making conforming changes; defining certain terms; providing for a delayed effective date; and generally relating to products containing flame–retardant chemicals.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 24–306

Annotated Code of Maryland
(2019 Replacement Volume)

BY adding to

Article – Health – General

Section 24–306.1

Annotated Code of Maryland
(2019 Replacement Volume)

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

Article – Health – General

24–306.

(a) (1) In this section the following words have the meanings indicated.

(2) **(I)** “Child care product” means a consumer product intended for use by a child under the age of 3 years[, including].**(II)** “CHILD CARE PRODUCT” INCLUDES a baby product, toy, AND car seat[, nursing pillow, crib mattress, and stroller].

(III) “CHILD CARE PRODUCT” DOES NOT INCLUDE A PRODUCT REGULATED UNDER § 24–306.1 OF THIS SUBTITLE.

(3) “TCEP” means (tris (2–chloroethyl) phosphate).

(4) “TDCPP” means (tris (1, 3–dichloro–2–propyl) phosphate).

(b) This section does not apply to the sale or distribution of a child care product that is resold, offered for resale, or distributed by a consumer for consumer use.

(c) A person may not import, sell, or offer for sale any child care product that:

(1) Contains more than one–tenth of 1% of TCEP or TDCPP by mass; and

(2) Is intended for use by a child under the age of 3 years.

(d) (1) A person that violates this section is subject to:

(i) For a first violation, a civil penalty not exceeding \$1,000; and

(ii) For any subsequent violation, a civil penalty not exceeding \$2,500 for each violation.

(2) In addition to the civil penalties provided in paragraph (1) of this subsection, a court may enjoin an action prohibited by this section.

(e) The Secretary may suspend implementation of subsection (c) of this section if the Secretary determines that the fire safety benefits of TCEP or TDCPP are greater than the health risks associated with TCEP or TDCPP.

(f) On or before ~~January~~ **JUNE 1, [2015] 2021**, the Department shall adopt regulations to carry out this section.

24–306.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ADULT MATTRESS” MEANS ANY MATTRESS OTHER THAN A TODDLER MATTRESS, A CRIB MATTRESS, OR ANY OTHER INFANT SLEEP PRODUCT.

(3) “FLAME–RETARDANT CHEMICAL” MEANS A CHEMICAL THAT:

(I) IS USED TO RESIST OR INHIBIT THE SPREAD OF FIRE OR ACT AS A SYNERGIST TO CHEMICALS THAT RESIST OR INHIBIT THE SPREAD OF FIRE, INCLUDING ANY CHEMICAL FOR WHICH THE TERM “FLAME RETARDANT” APPEARS ON A SAFETY DATA SHEET DEVELOPED IN ACCORDANCE WITH 29 C.F.R. 1910.1200(G); AND

(II) 1. CONTAINS ONE OR MORE HALOGEN ELEMENTS, INCLUDING FLUORINE, CHLORINE, BROMINE, OR IODINE;

2. CONTAINS ONE OR MORE CARBON ELEMENTS AND ONE OR MORE PHOSPHORUS ELEMENTS;

3. CONTAINS ONE OR MORE CARBON ELEMENTS AND ONE OR MORE NITROGEN ELEMENTS; OR

4. IS A NANOSCALE CHEMICAL.

(4) (I) “JUVENILE PRODUCT” MEANS A CONSUMER PRODUCT INTENDED FOR USE BY A CHILD UNDER THE AGE OF 12 YEARS.

(II) “JUVENILE PRODUCT” INCLUDES A BASSINET, A BOOSTER SEAT, A CHANGING PAD, A CHILDREN’S NAP MAT, A FLOOR PLAYMAT, A HIGH CHAIR, A HIGH CHAIR PAD, AN INFANT BOUNCER, AN INFANT CARRIER, AN INFANT SEAT, AN INFANT SWING, AN INFANT WALKER, A NURSING PAD, A NURSING PILLOW, A PLAYPEN SIDE PAD, A PLAY YARD, A PORTABLE HOOK-ON CHAIR, AND A STROLLER.

(III) “JUVENILE PRODUCT” DOES NOT INCLUDE:

1. A PRODUCT THAT IS NOT PRIMARILY INTENDED FOR USE IN THE HOME, INCLUDING A PRODUCT THAT IS, OR IS A COMPONENT PART OF, A MOTOR VEHICLE, A WATERCRAFT, AN AIRCRAFT, OR ANY OTHER VEHICLE;

2. A PRODUCT REGULATED UNDER 49 C.F.R. PART 571;

3. A CONSUMER ELECTRONIC PRODUCT; OR

4. A PRODUCT REGULATED UNDER § 24-306 OF THIS SUBTITLE.

(5) “MATTRESS” HAS THE MEANING STATED IN 16 C.F.R. § 1632.1.

(6) “REUPHOLSTERED FURNITURE” MEANS FURNITURE FOR WHICH THE ORIGINAL FABRIC, PADDING, DECKING, BARRIER MATERIAL, FOAM, OR OTHER

RESILIENT FILLING HAS BEEN REPLACED AND THAT HAS NOT BEEN SOLD SINCE THE TIME OF REPLACEMENT.

(7) “UPHOLSTERED FURNITURE” MEANS FURNITURE THAT INCLUDES FILLING MATERIALS, BARRIER MATERIALS, DECKING MATERIALS, OR COVER FABRICS.

(B) THIS SECTION DOES NOT APPLY TO THE SALE OR DISTRIBUTION OF A JUVENILE PRODUCT, MATTRESS, UPHOLSTERED FURNITURE, OR REUPHOLSTERED FURNITURE THAT IS RESOLD, OFFERED FOR RESALE, OR DISTRIBUTED BY A CONSUMER FOR CONSUMER USE.

(C) (1) THIS SUBSECTION DOES NOT APPLY TO:

(I) AN ELECTRONIC COMPONENT, OR THE CASING FOR AN ELECTRONIC COMPONENT, OF A JUVENILE PRODUCT, MATTRESS, UPHOLSTERED FURNITURE, OR REUPHOLSTERED FURNITURE;

(II) A COMPONENT OF UPHOLSTERED OR REUPHOLSTERED FURNITURE OTHER THAN COVER FABRIC, BARRIER MATERIAL, RESILIENT FILLING MATERIAL, AND DECKING MATERIAL;

(III) THREAD OR FIBER WHEN USED FOR STITCHING MATTRESS COMPONENTS TOGETHER; OR

(IV) EXCEPT FOR FOAM, A COMPONENT OF AN ADULT MATTRESS.

(2) A PERSON MAY NOT IMPORT, SELL, OR OFFER FOR SALE ANY JUVENILE PRODUCT, MATTRESS, UPHOLSTERED FURNITURE, OR REUPHOLSTERED FURNITURE THAT CONTAINS MORE THAN 0.1% OF A FLAME-RETARDANT ~~CHEMICAL~~ CHEMICALS BY MASS.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF A PERSON THAT WILLFULLY VIOLATES THIS SECTION IS SUBJECT TO, THE SECRETARY MAY ASSESS A CIVIL PENALTY:

(I) FOR A FIRST VIOLATION, NOT EXCEEDING \$2,500;

(II) FOR A SECOND VIOLATION, NOT EXCEEDING \$5,000;

(III) FOR A THIRD VIOLATION, NOT EXCEEDING \$7,500; AND

(IV) FOR ANY SUBSEQUENT VIOLATION, NOT EXCEEDING \$10,000 FOR EACH VIOLATION.

~~(2) EVERY 5 YEARS, THE SECRETARY SHALL ADJUST THE CIVIL PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION FOR INFLATION, IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.~~

~~(3) IN ADDITION TO THE CIVIL PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, A COURT MAY ENJOIN AN ACTION PROHIBITED BY THIS SECTION IN DETERMINING THE AMOUNT OF A PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL CONSIDER:~~

~~(I) THE NATURE AND SEVERITY OF THE VIOLATION;~~

~~(II) THE GOOD FAITH OF THE PERSON;~~

~~(III) THE HISTORY OF VIOLATIONS BY THE PERSON; AND~~

~~(IV) THE EXTENT TO WHICH THE PERSON COOPERATED WITH ANY INVESTIGATION BY THE DEPARTMENT.~~

(E) ON OR BEFORE ~~JANUARY~~ JUNE 1, 2021, THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2020~~ January 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 8, 2020.