
By: **Delegates Franchot and Zirkin**

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Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Chemical Terrorism Protection Act of 2002**

3 FOR the purpose of requiring the Secretary of the Environment to adopt certain
4 regulations, in accordance with a certain schedule, that require owners and
5 operators of certain chemical sources to use certain technology or certify that,
6 for certain reasons, they cannot use certain technology; establishing certain
7 requirements for certification; requiring certain owners and operators of
8 chemical sources to take certain protective actions against a criminal release of
9 certain substances; authorizing the Secretary or Attorney General to take
10 certain actions under certain circumstances; authorizing the Secretary or
11 Attorney General to require certain information or records; authorizing the
12 Secretary or Attorney General to have the right of entry under certain
13 circumstances; defining certain terms; establishing certain penalties for certain
14 violations; and generally relating to protection from chemical terrorism.

15 BY adding to

16 Article - Environment

17 Section 7-601 through 7-607, inclusive, to be under the new subtitle "Subtitle 6.

18 Chemical Terrorism Protection"

19 Annotated Code of Maryland

20 (1996 Replacement Volume and 2001 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Environment**

24 **SUBTITLE 6. CHEMICAL TERRORISM PROTECTION.**

25 7-601.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

27 INDICATED.

1 (B) "CHEMICAL SOURCE" MEANS A SUBSTANCE OF CONCERN THAT IS
2 CONTAINED IN:

3 (1) A STATIONARY SOURCE, AS DEFINED UNDER THE FEDERAL CLEAN
4 AIR ACT;

5 (2) A VESSEL;

6 (3) A MOTOR VEHICLE;

7 (4) ROLLING STOCK; AND

8 (5) A CONTAINER.

9 (C) "CRIMINAL RELEASE" MEANS:

10 (1) A RELEASE FROM A CHEMICAL SOURCE INTO THE ENVIRONMENT OF
11 A SUBSTANCE OF CONCERN THAT IS CAUSED, IN WHOLE OR IN PART, BY A CRIMINAL
12 ACT;

13 (2) A RELEASE INTO THE ENVIRONMENT OF A SUBSTANCE OF CONCERN
14 THAT HAS BEEN REMOVED FROM A CHEMICAL SOURCE, IN WHOLE OR IN PART, BY A
15 CRIMINAL ACT; AND

16 (3) THE UNAUTHORIZED REMOVAL FROM A CHEMICAL SOURCE OF A
17 SUBSTANCE OF CONCERN.

18 (D) (1) "INHERENTLY SAFER TECHNOLOGY" MEANS A TECHNOLOGY,
19 PRODUCT, RAW MATERIAL, OR PRACTICE THAT, COMPARED WITH THOSE CURRENTLY
20 IN USE:

21 (I) REDUCES OR ELIMINATES THE POSSIBILITY OF A RELEASE OF A
22 SUBSTANCE OF CONCERN FROM THE CHEMICAL SOURCE PRIOR TO SECONDARY
23 CONTAINMENT, CONTROL, OR MITIGATION; AND

24 (II) REDUCES OR ELIMINATES THE THREATS TO PUBLIC HEALTH
25 AND THE ENVIRONMENT ASSOCIATED WITH A RELEASE OR POTENTIAL RELEASE OF
26 A SUBSTANCE OF CONCERN FROM THE CHEMICAL SOURCE.

27 (2) "INHERENTLY SAFER TECHNOLOGY" INCLUDES INPUT
28 SUBSTITUTION, CATALYST OR CARRIER SUBSTITUTION, PROCESS REDESIGN,
29 INCLUDING REUSE OR RECYCLING OF A SUBSTANCE OF CONCERN, PRODUCT
30 REFORMULATION, PROCEDURE SIMPLIFICATION, AND TECHNOLOGY MODIFICATION
31 THAT:

32 (I) USES BENIGN SUBSTANCES OR LESS HAZARDOUS
33 SUBSTANCES;

34 (II) USES A SMALLER QUANTITY OF COVERED SUBSTANCES OF
35 CONCERN;

1 (III) REDUCES HAZARDOUS PRESSURES OR TEMPERATURES;

2 (IV) REDUCES THE POSSIBILITY AND POTENTIAL CONSEQUENCES
3 OF EQUIPMENT FAILURE AND HUMAN ERROR;

4 (V) IMPROVES INVENTORY CONTROL AND CHEMICAL USE
5 EFFICIENCY; AND

6 (VI) REDUCES OR ELIMINATES STORAGE, TRANSPORTATION,
7 HANDLING, DISPOSAL, AND DISCHARGE OF SUBSTANCES OF CONCERN.

8 (E) "SUBSTANCE OF CONCERN" MEANS A SUBSTANCE DESIGNATED BY THE
9 ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN
10 ACCORDANCE WITH § 112(R) OF THE CLEAN AIR ACT.

11 7-602.

12 (A) (1) IN ACCORDANCE WITH THE SCHEDULE SET FORTH IN SUBSECTION
13 (B) OF THIS SECTION, THE SECRETARY SHALL ADOPT REGULATIONS THAT REQUIRE
14 THE OWNERS AND OPERATORS OF CHEMICAL SOURCES TO:

15 (I) USE AN INHERENTLY SAFER TECHNOLOGY TO ELIMINATE OR
16 REDUCE THE HAZARDS POSED BY A RELEASE CAUSED BY A CRIMINAL ATTACK OR
17 SIMILAR CONDUCT; OR

18 (II) CERTIFY, IN ACCORDANCE WITH THE REQUIREMENT SET
19 FORTH IN PARAGRAPH (2) OF THIS SUBSECTION, THAT THE OWNER OR OPERATOR
20 CANNOT USE AN INHERENTLY SAFER TECHNOLOGY BECAUSE:

21 1. NONE EXISTS;

22 2. USE OF THE TECHNOLOGY WOULD CREATE AN EQUAL OR
23 GREATER HAZARD; OR

24 3. USE OF THE TECHNOLOGY WOULD BE PROHIBITIVELY
25 EXPENSIVE IN COMPARISON TO THE POTENTIAL DAMAGES OF A CRIMINAL RELEASE.

26 (2) AN OWNER OR OPERATOR OF A CHEMICAL SOURCE THAT CANNOT
27 USE AN INHERENTLY SAFER TECHNOLOGY BECAUSE OF THE REASONS SET FORTH IN
28 PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL:

29 (I) SUBMIT A CERTIFICATION TO THE SECRETARY WITHIN 30 DAYS
30 AFTER THE CERTIFICATION IS PREPARED; AND

31 (II) USE BEST AVAILABLE TECHNOLOGIES AND PRACTICES TO
32 MITIGATE THE CONSEQUENCES OF RELEASES CAUSED BY CRIMINAL OR SIMILAR
33 CONDUCT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE SECRETARY.

34 (B) (1) ON OR BEFORE OCTOBER 1, 2002, THE SECRETARY SHALL ADOPT
35 REGULATIONS THAT:

1 (I) MEET THE REQUIREMENTS OF SUBSECTION (A) OF THIS
2 SECTION; AND

3 (II) APPLY TO CHEMICAL SOURCES IN THE STATE THAT ARE
4 REQUIRED TO PREPARE RISK MANAGEMENT PLANS IN ACCORDANCE WITH § 112(R)
5 OF THE FEDERAL CLEAN AIR ACT.

6 (2) ON OR BEFORE OCTOBER 1, 2003, THE SECRETARY SHALL ADOPT
7 REGULATIONS THAT:

8 (I) MEET THE REQUIREMENTS OF SUBSECTION (A) OF THIS
9 SECTION; AND

10 (II) APPLY TO CHEMICAL SOURCES IN THE STATE THAT USE,
11 STORE, OR PRODUCE A SUBSTANCE OF CONCERN IN AMOUNTS THAT MAY CAUSE
12 OFF-SITE THREAT TO PUBLIC HEALTH OR THE ENVIRONMENT IN THE EVENT OF A
13 CRIMINAL RELEASE.

14 7-603.

15 EACH OWNER AND OPERATOR OF A CHEMICAL SOURCE THAT IS SUBJECT TO
16 THE REGULATIONS ADOPTED IN ACCORDANCE WITH § 7-602 OF THIS SUBTITLE HAS A
17 GENERAL DUTY, WITH RESPECT TO COVERED SUBSTANCES OF CONCERN, TO:

18 (1) IDENTIFY HAZARDS THAT MAY RESULT FROM AN ACCIDENTAL
19 RELEASE OR A CRIMINAL RELEASE USING APPROPRIATE HAZARD ASSESSMENT
20 TECHNIQUES;

21 (2) ENSURE SAFER DESIGN AND MAINTENANCE OF THE CHEMICAL
22 SOURCE BY TAKING SUCH ACTIONS THAT ARE NECESSARY TO PREVENT ACCIDENTAL
23 RELEASES AND CRIMINAL RELEASES; AND

24 (3) MINIMIZE THE CONSEQUENCES OF ANY ACCIDENTAL RELEASE OR
25 CRIMINAL RELEASE THAT DOES OCCUR.

26 7-604.

27 IN ADDITION TO ANY OTHER ACTION TAKEN BY A STATE OR LOCAL
28 GOVERNMENT, IF THE SECRETARY OR THE ATTORNEY GENERAL DETERMINES THAT
29 THERE MAY BE AN IMMINENT AND SUBSTANTIAL ENDANGERMENT TO THE PUBLIC
30 HEALTH OR WELFARE OR THE ENVIRONMENT, BECAUSE OF A POTENTIAL
31 ACCIDENTAL RELEASE OR CRIMINAL RELEASE FROM A CHEMICAL SOURCE, OR A
32 FAILURE TO PROVIDE INFORMATION OR ACCESS REQUESTED UNDER § 7-605 OF THIS
33 SUBTITLE, THE SECRETARY OR THE ATTORNEY GENERAL MAY:

34 (1) SUE FOR AN IMMEDIATE INJUNCTION TO STOP THE ACTIVITY THAT
35 IS CAUSING THE DANGER; OR

1 (2) TAKE OTHER ACTION UNDER THIS SUBSECTION, INCLUDING
2 ISSUING ORDERS AS ARE NECESSARY TO PROTECT PUBLIC HEALTH OR WELFARE OR
3 THE ENVIRONMENT.

4 7-605.

5 (A) IN CARRYING OUT THIS SUBTITLE:

6 (1) THE SECRETARY OR THE ATTORNEY GENERAL MAY REQUIRE, ON A
7 ONE-TIME, PERIODIC, OR CONTINUING BASIS, ANY PERSON THAT THE SECRETARY
8 OR THE ATTORNEY GENERAL BELIEVES MAY HAVE INFORMATION RELATING TO A
9 POTENTIAL ACCIDENTAL RELEASE OR CRIMINAL RELEASE FROM A CHEMICAL
10 SOURCE, OR ANY PERSON THAT IS SUBJECT TO ANY REQUIREMENT OF THIS
11 SUBTITLE TO:

12 (I) ESTABLISH AND MAINTAIN RECORDS;

13 (II) MAKE REPORTS; OR

14 (III) PROVIDE OTHER INFORMATION; AND

15 (2) THE SECRETARY OR THE ATTORNEY GENERAL, OR AN AUTHORIZED
16 REPRESENTATIVE OF THE SECRETARY OR THE ATTORNEY GENERAL:

17 (I) SHALL HAVE A RIGHT OF ENTRY TO, ON, OR THROUGH ANY
18 PREMISES OF AN OWNER OR OPERATOR OF A CHEMICAL SOURCE DESIGNATED AS A
19 HIGH PRIORITY CATEGORY UNDER § 7-602 OF THIS SUBTITLE OR ANY PREMISES IN
20 WHICH ANY RECORDS REQUIRED TO BE MAINTAINED UNDER SUBSECTION (A)(1) OF
21 THIS SECTION ARE LOCATED; AND

22 (II) MAY AT REASONABLE TIMES HAVE ACCESS TO, AND MAY COPY,
23 ANY RECORDS, REPORTS, OR OTHER INFORMATION REQUIRED UNDER SUBSECTION
24 (A)(1) OF THIS SECTION.

25 (B) IF A PERSON DOES NOT CONSENT TO A REQUEST MADE BY THE
26 SECRETARY OR THE ATTORNEY GENERAL, OR AN AUTHORIZED REPRESENTATIVE OF
27 THE SECRETARY OR THE ATTORNEY GENERAL, UNDER SUBSECTION (A) OF THIS
28 SECTION, THE SECRETARY OR THE ATTORNEY GENERAL MAY ISSUE AN ORDER
29 DIRECTING COMPLIANCE WITH THE REQUEST.

30 7-606.

31 (A) IN ADDITION TO BEING SUBJECT TO ANY INJUNCTIVE ACTION UNDER
32 THIS SUBTITLE, AN OWNER OR OPERATOR OF A CHEMICAL SOURCE WHO VIOLATES,
33 OR FAILS TO COMPLY WITH, ANY ORDER ISSUED, ANY REGULATION ADOPTED UNDER
34 THIS SUBTITLE, OR THE GENERAL DUTY ESTABLISHED UNDER § 7-603 OF THIS
35 SUBTITLE IS LIABLE TO A CIVIL PENALTY NOT EXCEEDING \$25,000 TO BE COLLECTED
36 IN A CIVIL ACTION. EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION
37 UNDER THIS SUBSECTION.

1 (B) ANY OWNER OR OPERATOR OF A CHEMICAL SOURCE THAT KNOWINGLY
2 VIOLATES, OR FAILS TO COMPLY WITH, ANY ORDER ISSUED OR ANY REGULATION
3 ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON
4 CONVICTION IS SUBJECT TO:

5 (1) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$25,000 FOR EACH
6 DAY OF VIOLATION OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR

7 (2) IF THE CONVICTION IS FOR A VIOLATION COMMITTED AFTER A FIRST
8 CONVICTION UNDER THIS SUBSECTION, A FINE NOT EXCEEDING \$50,000 FOR EACH
9 DAY OF VIOLATION OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.

10 7-607.

11 THIS SUBTITLE MAY NOT BE INTERPRETED TO AFFECT ANY DUTY OR OTHER
12 REQUIREMENT IMPOSED UNDER ANY OTHER FEDERAL OR STATE LAW.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2002.