
By: **Delegate Zirkin**

Introduced and read first time: February 7, 2003

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

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CHAPTER _____

1 AN ACT concerning

2

State Police - Facility Security

3 FOR the purpose of requiring owners, lessees, and operators of certain facilities
4 involving certain hazardous materials to study and implement certain safety
5 measures on a periodic basis; requiring those persons to implement certain
6 security measures for certain facilities; requiring certain reporting of certain
7 measures to the Department of State Police and certain other State and local
8 units; ~~providing an alternative method of compliance that the Department may~~
9 ~~approve; requiring the Department to approve a certain code or set of standards;~~
10 providing for the confidentiality of certain documents; establishing certain
11 penalties and sanctions for certain for violations of this Act; defining certain
12 terms; providing that this Act does not affect the availability of other penalties
13 and remedies; requiring the Department of State Police to adopt certain
14 regulations by a certain date in consultation with certain units; ~~authorizing~~
15 ~~local jurisdictions to adopt more stringent standards than~~ providing that this
16 Act does not apply in local jurisdictions that adopt standards that are at least as
17 stringent as certain standards required by this Act and work in consultation
18 with the Department in regard to certain security measures; establishing a Task
19 Force on the Security of Hazardous Materials; providing for the membership of
20 the Task Force; requiring the Governor to appoint a chairman of the Task Force;
21 requiring the Department of State Police to provide staff for the Task Force;
22 providing that a member of the Task Force may not receive compensation, but is
23 entitled to a certain reimbursement; establishing the duties of the Task Force;
24 providing that deliberations and documents of the Task Force are confidential
25 and shall be treated in a certain manner; requiring the Task Force to report to
26 the Governor and the General Assembly on or before a certain date; establishing
27 that this Act is not intended to affect certain abilities of police employees to take
28 certain actions; providing a certain exception for certain local jurisdictions;

1 making the provisions of this Act severable; and generally relating to security of
2 controlled hazardous substance facilities.

3 BY adding to

4 Article - Public Safety

5 Section 2-801 through ~~2-809~~ 2-808, inclusive, to be under the new subtitle

6 "Subtitle 8. Chemical Facility Security"

7 Annotated Code of Maryland

8 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2003)

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

11 **Article - Public Safety**

12 **SUBTITLE 8. CHEMICAL FACILITY SECURITY.**

13 2-801.

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) "FACILITY" MEANS A LOCATION IN WHICH A HAZARDOUS MATERIAL IS
17 STORED, DISPENSED, USED, OR HANDLED.

18 (C) "HAZARDOUS MATERIAL" MEANS:

19 (1) A REGULATED SUBSTANCE AS DEFINED IN 40 C.F.R. 68.130 IN EXCESS
20 OF THE THRESHOLD QUANTITY SPECIFIED IN THAT REGULATION; ~~OR~~

21 (2) ~~ANY OTHER HAZARDOUS MATERIAL THAT THE DEPARTMENT~~
22 ~~INCLUDES IN THE SCOPE OF THIS SUBTITLE BY REGULATION.~~

23 (D) "LOCAL ORGANIZATION FOR EMERGENCY MANAGEMENT" HAS THE
24 MEANING STATED IN § 14-101 OF THIS ARTICLE.

25 (E) "MEMA" HAS THE MEANING STATED IN § 14-101 OF THIS ARTICLE.

26 2-802.

27 (A) THIS SUBTITLE APPLIES TO ANY PERSON WHO OWNS, OPERATES,
28 MAINTAINS, OR CAUSES TO OPERATE OR MAINTAIN A FACILITY IN THIS STATE.

29 (B) THIS SUBTITLE DOES NOT APPLY IN A LOCAL JURISDICTION THAT:

30 (1) ADOPTS STANDARDS THAT ARE AT LEAST AS STRINGENT AS THAN
31 THE STANDARDS REQUIRED UNDER THIS SUBTITLE; AND

32 (2) WORKS IN CONSULTATION WITH THE DEPARTMENT IN REGARD TO
33 SECURITY MEASURES REQUIRED UNDER THIS SUBTITLE.

1 2-803.

2 (A) A PERSON WHO IS SUBJECT TO THIS SUBTITLE SHALL MAINTAIN, STORE,
3 AND HANDLE ALL HAZARDOUS MATERIAL IN A REASONABLY SECURE AND PRUDENT
4 MANNER IN ORDER TO PREVENT EXPOSURE OR OTHER DANGER.

5 (B) ON OR BEFORE JANUARY 1, 2005, AND AT LEAST EVERY 3 YEARS
6 THEREAFTER, IN CONSULTATION WITH THE DEPARTMENT, MEMA, AND WITH THE
7 APPROPRIATE LOCAL ORGANIZATIONS FOR EMERGENCY MANAGEMENT, THE
8 PERSON SUBJECT TO THIS SUBTITLE SHALL ANALYZE THE SECURITY OF THE
9 FACILITY AND SHALL IMPLEMENT IMPROVEMENTS, INCLUDING ANY CHANGES THAT
10 ARE NECESSARY TO SATISFY THE REQUIREMENTS OF THIS SUBTITLE.

11 (C) THE PERSON SUBJECT TO THIS SUBTITLE SHALL INFORM THE
12 DEPARTMENT, THE LOCAL GOVERNMENT, AND APPROPRIATE STATE AND LOCAL
13 EMERGENCY RESPONSE UNITS OF ANY MEASURES TAKEN OR PLANNED TO
14 IMPLEMENT THIS SUBTITLE AT THE FACILITY.

15 (D) THE ANALYSES PREPARED UNDER SUBSECTION (B) OF THIS SECTION, THE
16 NOTIFICATIONS UNDER SUBSECTION (C) OF THIS SECTION, OR DOCUMENTS
17 PREPARED UNDER § 2-805 OF THIS SUBTITLE TO COMPLY WITH THOSE SUBSECTIONS,
18 AND THEIR SUPPORTING DOCUMENTS ARE CONFIDENTIAL AND ARE NOT PUBLIC
19 DOCUMENTS THAT MAY BE DISCLOSED WITHOUT PRIOR WRITTEN PERMISSION OF
20 THE PERSON SUBJECT TO THIS SUBTITLE IN ACCORDANCE WITH TITLE 10, SUBTITLE
21 6 OF THE STATE GOVERNMENT ARTICLE.

22 2-804.

23 A PERSON WHO IS SUBJECT TO THIS SUBTITLE SHALL:

24 (1) PROHIBIT UNAUTHORIZED ACCESS TO THE PROPERTY ON WHICH
25 THE FACILITY IS LOCATED; ~~AND~~

26 (2) MONITOR THE PROPERTY, THE FACILITY, AND THE MEANS OF
27 ACCESS; AND

28 (3) SAFEGUARD THE PROPERTY WITH PROTECTIVE MEASURES IN
29 ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.

30 2-805.

31 (A) THE DEPARTMENT ~~MAY SHALL~~ APPROVE A NATIONAL INDUSTRY
32 SECURITY CODE OR SET OF STANDARDS FOR COMPLIANCE THIS SUBTITLE IF THE
33 CODE OR SET OF STANDARDS REQUIRES:

34 (1) PRIORITIZATION AND PERIODIC ANALYSIS, USING ACCEPTED
35 METHODOLOGIES, OF POTENTIAL SECURITY THREATS, VULNERABILITIES, AND
36 CONSEQUENCES;

1 (2) DEVELOPMENT AND IMPLEMENTATION OF SECURITY MEASURES
2 COMMENSURATE WITH RISKS;

3 (3) DOCUMENTATION OF SECURITY MANAGEMENT PROGRAMS,
4 PROCESSES, AND PROCEDURES;

5 (4) TRAINING, DRILLS, AND GUIDANCE FOR EMPLOYEES, CONTRACTORS,
6 SERVICE PROVIDERS, AND OTHERS, AS APPROPRIATE, TO ENHANCE AWARENESS AND
7 CAPABILITY;

8 (5) COMMUNICATIONS, DIALOGUE, AND EXCHANGE OF INFORMATION
9 WITH EMPLOYEES, COMMUNITIES, AND GOVERNMENT AGENCIES AND OFFICIALS;

10 (6) INTERNAL AUDITS TO ASSESS SECURITY PROGRAMS AND
11 PROCESSES AND THE IMPLEMENTATION OF CORRECTIVE MEASURES; AND

12 (7) THIRD-PARTY VERIFICATION THAT OWNERS AND OPERATORS HAVE
13 IMPLEMENTED THE PHYSICAL SECURITY MEASURES THAT HAVE BEEN IDENTIFIED
14 UNDER THE REQUIRED PERIODIC ANALYSIS OF POTENTIAL SECURITY THREATS,
15 VULNERABILITIES, AND CONSEQUENCES;

16 (B) A PERSON WHO IS SUBJECT TO THIS SUBTITLE IS DEEMED TO BE IN
17 COMPLIANCE WITH THIS SUBTITLE AND THE REGULATIONS ADOPTED UNDER THIS
18 SUBTITLE IF:

19 (1) THE PERSON IMPLEMENTS A NATIONAL INDUSTRY SECURITY CODE
20 OR SET OF STANDARDS THAT IS APPROVED BY THE DEPARTMENT;

21 (2) CONSULTS WITH THE DEPARTMENT, MEMA, AND WITH THE
22 APPROPRIATE LOCAL ORGANIZATIONS FOR EMERGENCY MANAGEMENT IN
23 IMPLEMENTING AND REVIEWING THE IMPLEMENTATION OF THE CODE OR SET OF
24 STANDARDS ~~IN ACCORDANCE WITH § 2-803(B) OF THIS SUBTITLE; AND;~~

25 (3) INFORMS THE DEPARTMENT, THE LOCAL GOVERNMENT, AND
26 APPROPRIATE STATE AND LOCAL EMERGENCY RESPONSE UNITS OF MEASURES
27 TAKEN OR PLANNED IN ACCORDANCE WITH § 2-803(C) OF THIS SUBTITLE; AND

28 (4) THE PERSON MEETS THE REQUIREMENTS UNDER § 2-804 OF THIS
29 SUBTITLE.

30 2-806.

31 (A) ~~A PERSON WHO KNOWINGLY VIOLATES § 2-803(A) OF THIS SUBTITLE, OR A~~
32 ~~MATERIAL STORAGE REGULATION ADOPTED BY THE DEPARTMENT UNDER §~~
33 ~~2-809(B)(1) OF THIS SUBTITLE, IS GUILTY OF A MISDEMEANOR AND ON CONVICTION~~
34 VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE IS
35 SUBJECT TO:

36 (1) FOR A FIRST VIOLATION, A ~~FINE~~ CIVIL PENALTY NOT EXCEEDING
37 ~~\$10,000~~ \$5,000; OR

1 (2) FOR A SUBSEQUENT VIOLATION, A ~~FINE~~ CIVIL PENALTY NOT
2 EXCEEDING \$~~25,000~~ \$10,000.

3 (B) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE VIOLATION.
4 2-807.

5 ~~IN ADDITION TO THE PENALTIES UNDER THIS SUBTITLE, A CONVICTION OF A~~
6 ~~VIOLATION OF THIS SUBTITLE CONSTITUTES GROUNDS TO SUSPEND, REVOKE, OR~~
7 ~~DENY ANY PERMIT THAT THE DEPARTMENT OF THE ENVIRONMENT HAS GRANTED~~
8 ~~OR MAY GRANT TO THE PERSON FOR A FACILITY UNDER TITLE 7 OF THE~~
9 ~~ENVIRONMENT ARTICLE.~~

10 ~~2-808.~~

11 NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO LIMIT THE AVAILABILITY
12 OF ANY OTHER PENALTY OR REMEDY CONCERNING A FACILITY.

13 ~~2-809~~ 2-808.

14 (A) ON OR BEFORE JANUARY 1, 2004, THE DEPARTMENT SHALL ADOPT
15 REGULATIONS TO IMPLEMENT THIS SUBTITLE.

16 (B) ~~THE REGULATIONS SHALL INCLUDE:~~

17 (1) ~~DESIGNATION OF HAZARDOUS MATERIALS THAT MAY NOT BE~~
18 ~~STORED ON A RAIL LINE, INCLUDING QUANTITIES AND TYPES OF HAZARDOUS~~
19 ~~MATERIALS LISTED IN DIVISIONS 2.3 AND 6.1 UNDER THE UNITED STATES~~
20 ~~DEPARTMENT OF TRANSPORTATION REGULATIONS, 49 C.F.R. 173.116(A) AND 173.133(A);~~

21 (2) ~~TRANSFER PROCEDURES AND STORAGE TIME LIMITS FOR~~
22 ~~HAZARDOUS MATERIALS THAT ARE DELIVERED BY RAIL;~~

23 (3) ~~ANY ADDITIONAL HAZARDOUS MATERIALS THAT THE DEPARTMENT~~
24 ~~INCLUDES IN THE SCOPE OF THIS SUBTITLE UNDER § 2-801(C) OF THIS SUBTITLE;~~
25 ~~AND~~

26 (4) ~~REPORTING PROCEDURES FOR PERSONS SUBJECT TO THIS~~
27 ~~SUBTITLE.~~

28 (C) (B) IN DEVELOPING THE REGULATIONS UNDER THIS SECTION, THE
29 DEPARTMENT SHALL CONSULT WITH MEMA, THE SECRETARY OF THE
30 ENVIRONMENT, THE PRESIDENT OF THE MARYLAND STATE FIREMEN'S
31 ASSOCIATION, AND WITH THE ASSISTANT COMMISSIONER FOR OCCUPATIONAL
32 SAFETY AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING,
33 AND REGULATION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That:

35 (a) There is a Task Force on the Security of Hazardous Materials.

- 1 (b) The Task Force consists of the following members:
- 2 (1) two members of the Senate of Maryland, appointed by the President
3 of the Senate;
- 4 (2) two members of the House of Delegates, appointed by the Speaker of
5 the House;
- 6 (3) the Secretary of State Police, or the Secretary's designee;
- 7 (4) the Mayor of Baltimore City, or the Mayor's designee;
- 8 (5) the Police Commissioner of Baltimore City, or the Commissioner's
9 designee;
- 10 (6) the President of the Maryland State Firemen's Association, or the
11 President's designee;
- 12 (7) the Executive Director of the Maryland Port Administration, or the
13 Executive Director's designee;
- 14 (8) the Director of the Maryland Emergency Management Agency, or the
15 Director's designee; and
- 16 (9) the Secretary of Transportation; and
- 17 ~~(9)~~ (10) the following members appointed by the Governor:
- 18 (i) a designee to represent homeland security interests in the
19 State;
- 20 (ii) two representatives of industries operating railroads or other
21 common carriers in the State;
- 22 (iii) one representative of volunteer firefighters;
- 23 (iv) two representatives from local emergency management;
- 24 (v) one representative from the Association of Maryland Hospitals
25 and Health Systems;
- 26 (vi) one representative from an environmental group;
- 27 (vii) one representative of the chemical industry; and
- 28 (viii) three members of the general public.
- 29 (c) The Governor shall designate the chairman of the Task Force.
- 30 (d) The Department of State Police shall provide staff for the Task Force.

1 (e) A member of the Task Force:

2 (1) may not receive compensation; but

3 (2) is entitled to reimbursement for expenses under the Standard State
4 Travel Regulations, as provided in the State budget.

5 (f) The Task Force shall make recommendations regarding hazardous
6 materials security at rail lines, rail yards, and other storage facilities and
7 transportation routes.

8 (g) The deliberations and documents of the Task Force are confidential and
9 shall be treated in the same manner as analyses and documents under § 2-803(d) of
10 the Public Safety Article.

11 ~~(g)~~ (h) The Task Force shall report its recommendations to the Governor
12 and, subject to § 2-1246 of the State Government Article, the General Assembly on or
13 before December 15, 2003.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is not intended to
15 affect the ability of police employees to take any necessary actions to protect the
16 citizens of the State from a situation involving hazardous materials.

17 ~~SECTION 2. 4.~~ AND BE IT FURTHER ENACTED, That if any provision of
18 this Act or the application thereof to any person or circumstance is held invalid for
19 any reason in a court of competent jurisdiction, the invalidity does not affect other
20 provisions or any other application of this Act which can be given effect without the
21 invalid provision or application, and for this purpose the provisions of this Act are
22 declared severable.

23 ~~SECTION 3. 5.~~ AND BE IT FURTHER ENACTED, That this Act shall take
24 effect October 1, 2003.