

SENATE BILL 195

M3, J1

(PRE-FILED)

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CF HB 22

By: **Senators Elfreth and Beidle**

Requested: October 13, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Environment – PFAS Chemicals – Prohibitions and Requirements

FOR the purpose of altering certain provisions of law establishing a certain prohibition on certain uses of certain fire-fighting foam that contain intentionally added PFAS chemicals by prohibiting, on or after a certain date, a person from using, manufacturing, or knowingly selling, offering for sale, or distributing for sale or use certain fire-fighting foam in the State, subject to certain exceptions; authorizing a certain person to use, manufacture, sell, offer for sale, or distribute for sale or use certain fire-fighting foam under certain circumstances; prohibiting a certain person from releasing certain foam into the environment in a certain manner and requiring the person to take certain actions and maintain certain documentation; authorizing the Department of the Environment, the Attorney General, the State's Attorney for a county or Baltimore City, a county attorney, or a City Attorney to request certain documentation and compliance certification under certain circumstances; requiring a certain person to provide certain documentation under certain circumstances; providing that a failure to meet certain requirements does not preclude certain use of a certain foam under certain circumstances; requiring a certain person to recall, on or before a certain date, certain foam in accordance with certain requirements; requiring a certain person to establish a certain attestation certificate under certain circumstances; prohibiting a person from disposing of a certain foam in a certain manner; prohibiting a certain person, on or after a certain date, from manufacturing, selling, offering for sale, or distributing for sale or use in the State a certain rug or carpet to which PFAS chemicals have been intentionally added for certain purposes; authorizing the Department of the Environment to adopt certain regulations; prohibiting a certain manufacturer or distributor, on or after a certain date, from manufacturing, selling, offering for sale, or distributing for sale or use in the State a certain food package or product in a food package to which PFAS chemicals have been intentionally added; requiring the Department of the Environment to report to the General Assembly on or before a certain date on certain information; requiring the Department of the Environment and the Maryland Department of Health jointly

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



to prepare, in coordination with certain entities, and submit to the General Assembly a certain PFAS Action Plan; providing for the application of certain provisions of this Act; altering a certain definition; defining certain terms; repealing obsolete language; making conforming changes; and generally relating to PFAS chemicals.

BY repealing and reenacting, with amendments,
Article – Environment
Section 6–1601 and 6–1603
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing
Article – Environment
Section 6–1602 and 6–1604
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY adding to
Article – Environment
Section 6–1602, 6–1604, and 6–1604.1
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – Environment
Section 6–1605
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–1901 through 9–1905
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

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

Article – Environment

6–1601.

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

(b) “Class B fire–fighting foam” **OR** “**FOAM**” means a foam designed for flammable liquid fire.

(c) **“INTENTIONALLY ADDED” MEANS THE ACT OF DELIBERATELY USING A CHEMICAL IN THE FORMATION OF A PRODUCT WHERE ITS CONTINUED PRESENCE IS DESIRED IN THE PRODUCT TO PROVIDE A SPECIFIC CHARACTERISTIC.**

(D) **“PFAS chemicals” means a class of fluorinated organic chemicals that[**

(1) **Contain] CONTAIN** at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances[; and

(2) **Are designed to be fully functional in Class B fire-fighting foam formulations].**

(E) **“RUG OR CARPET” MEANS A THICK FABRIC USED TO COVER A FLOOR FOR RESIDENTIAL PURPOSES.**

[6-1602.

(a) This subtitle does not apply to fire-fighting foams used at the Baltimore-Washington International Thurgood Marshall Airport.

(b) This subtitle does not restrict:

(1) The manufacture, sale, or distribution of Class B fire-fighting foam that contains intentionally added PFAS chemicals; or

(2) The discharge or other use of Class B fire-fighting foam that contains intentionally added PFAS chemicals in emergency fire-fighting or fire prevention operations.]

6-1602.

THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

6-1603.

(A) [On or after October 1, 2021,] **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ON OR AFTER JANUARY 1, 2022, A PERSON MAY NOT USE, MANUFACTURE, OR KNOWINGLY SELL, OFFER FOR SALE, OR DISTRIBUTE FOR SALE OR USE** Class B fire-fighting foam that contains intentionally added PFAS chemicals [may not be used for:

(1) Testing purposes, including calibration testing, conformance testing, and fixed-system testing unless:

(i) The use is required by law or by the agency having jurisdiction over the testing facility; and

(ii) The testing facility has implemented appropriate containment, treatment, and disposal measures to prevent releases of foam into the environment; or

(2) Training purposes] IN THE STATE.

(B) (1) A PERSON MAY USE, MANUFACTURE, SELL, OFFER FOR SALE, OR DISTRIBUTE FOR SALE OR USE CLASS B FIRE-FIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS IN THE STATE IF THE ADDITION OF PFAS CHEMICALS IS REQUIRED BY FEDERAL LAW, INCLUDING 14 C.F.R § 139.317.

(2) IF A FEDERAL REQUIREMENT TO ADD PFAS CHEMICALS IN CLASS B FIRE-FIGHTING FOAM IS REVOKED AFTER JANUARY 1, 2021, THE PROHIBITIONS UNDER SUBSECTION (A) OF THIS SECTION SHALL APPLY BEGINNING 1 YEAR AFTER THE REQUIREMENT IS REVOKED.

(C) (1) A PERSON THAT IS AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION TO USE CLASS B FIRE-FIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS:

(I) MAY NOT RELEASE THE FOAM DIRECTLY TO THE ENVIRONMENT, INCLUDING THROUGH UNSEALED GROUND, SOAKAGE PITS, WATERWAYS, OR UNCONTROLLED DRAINS; AND

(II) SHALL:

1. FULLY CONTAIN ALL RELEASES ON SITE;

2. IMPLEMENT CONTAINMENT MEASURES, INCLUDING BUNDS AND PONDS, THAT ARE CONTROLLED, IMPERVIOUS TO PFAS CHEMICALS, AND DO NOT ALLOW FIREWATER, WASTEWATER, RUNOFF, AND OTHER WASTES TO BE RELEASED TO THE ENVIRONMENT, INCLUDING SOILS, GROUNDWATER, WATERWAYS, OR STORMWATER;

3. DISPOSE OF ALL FIREWATER, WASTEWATER, RUNOFF, AND OTHER WASTES IN A WAY THAT PREVENTS RELEASES TO THE ENVIRONMENT;

4. WITHIN 5 DAYS OF A RELEASE IN VIOLATION OF ITEM (I) OF THIS PARAGRAPH, REPORT THE RELEASE TO THE DEPARTMENT, INCLUDING INFORMATION ON THE IDENTITY OF THE FOAM, THE QUANTITY USED, THE TOTAL PFAS CONCENTRATION, AND THE FORM OF ANY WASTE THAT CONTAINS PFAS CHEMICALS; AND

5. MAINTAIN DOCUMENTATION ON ANY MEASURES TAKEN UNDER THIS PARAGRAPH.

(2) (I) IN INVESTIGATING COMPLIANCE WITH THIS SUBSECTION, THE DEPARTMENT, THE ATTORNEY GENERAL, A STATE'S ATTORNEY FOR A COUNTY OR BALTIMORE CITY, A COUNTY ATTORNEY, OR A CITY ATTORNEY MAY REQUEST DOCUMENTATION MAINTAINED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) A PERSON THAT RECEIVES A REQUEST UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL PROVIDE THE DOCUMENTATION ON REQUEST.

(3) A FAILURE TO MEET THE REQUIREMENTS OF PARAGRAPH (1) OR (2) OF THIS SUBSECTION DOES NOT PRECLUDE THE USE OF CLASS B FIRE-FIGHTING FOAM CONTAINING INTENTIONALLY ADDED PFAS CHEMICALS IF THE FAILURE WAS A RESULT OF FACTORS BEYOND THE CONTROL OF THE PERSON.

(D) (1) THIS SUBSECTION DOES NOT APPLY TO A PERSON THAT IS AUTHORIZED UNDER SUBSECTION (B) OF THIS SECTION TO MANUFACTURE, SELL, OR DISTRIBUTE CLASS B FIRE-FIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS.

(2) A PERSON THAT MANUFACTURES, SELLS, OR DISTRIBUTES CLASS B FIRE-FIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS AFTER JANUARY 1, 2021, SHALL RECALL THE FOAM ON OR BEFORE MARCH 1, 2022.

(3) A PERSON THAT RECALLS FOAM UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL:

(I) REIMBURSE THE RETAILER OR PURCHASER FOR THE FOAM;

(II) SAFELY TRANSPORT AND STORE THE FOAM; AND

(III) MAINTAIN DOCUMENTATION ON THE AMOUNT AND STORAGE LOCATION OF THE FOAM UNTIL THE DEPARTMENT FORMALLY IDENTIFIES A SAFE DISPOSAL TECHNOLOGY.

(4) (I) THE DEPARTMENT, THE ATTORNEY GENERAL, A STATE'S ATTORNEY FOR A COUNTY OR BALTIMORE CITY, A COUNTY ATTORNEY, OR A CITY ATTORNEY MAY REQUEST THE DOCUMENTATION MAINTAINED UNDER PARAGRAPH (3)(III) OF THIS SUBSECTION.

(II) A PERSON THAT RECEIVES A REQUEST UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL PROVIDE THE DOCUMENTATION ON REQUEST.

(E) (1) A PERSON THAT MANUFACTURES, SELLS, OFFERS FOR SALE, DISTRIBUTES FOR SALE, OR DISTRIBUTES FOR USE IN THE STATE CLASS B FIRE-FIGHTING FOAM SHALL ESTABLISH A CERTIFICATE OF COMPLIANCE TO ATTEST THAT THE FOAM IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

(2) (I) THE DEPARTMENT, THE ATTORNEY GENERAL, A STATE'S ATTORNEY FOR A COUNTY OR BALTIMORE CITY, A COUNTY ATTORNEY, OR A CITY ATTORNEY MAY REQUEST A CERTIFICATE OF COMPLIANCE ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) WITHIN 30 DAYS AFTER A REQUEST UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS MADE, A PERSON SHALL PROVIDE THE CERTIFICATE OF COMPLIANCE.

[6-1604.

Nonfluorinated training foam shall be used for purposes of fire-fighting training.]

6-1604.

A PERSON MAY NOT DISPOSE OF A CLASS B FIRE-FIGHTING FOAM THAT CONTAINS INTENTIONALLY ADDED PFAS CHEMICALS:

(1) USING INCINERATION, INCLUDING BY BURNING, COMBUSTION, PYROLYSIS, GASIFICATION, THERMAL OXIDATION, ACID RECOVERY FURNACE OR OXIDIZER, ORE ROASTER, CEMENT KILN, LIGHTWEIGHT AGGREGATE KILN, INDUSTRIAL FURNACE, BOILER, AND PROCESS HEATER; OR

(2) IN A LANDFILL.

6-1604.1.

(A) THIS SECTION DOES NOT APPLY TO THE SALE OR RESALE OF A USED RUG OR CARPET.

(B) ON OR AFTER JANUARY 1, 2022, A PERSON MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, OR DISTRIBUTE FOR SALE OR USE IN THE STATE A RUG OR

CARPET TO WHICH PFAS CHEMICALS HAVE BEEN INTENTIONALLY ADDED TO SERVE AN INTENDED FUNCTION IN THE RUG OR CARPET.

(C) (1) A PERSON THAT MANUFACTURES, SELLS, OFFERS FOR SALE, OR DISTRIBUTES FOR SALE OR USE IN THE STATE A RUG OR CARPET SHALL ESTABLISH A CERTIFICATE OF COMPLIANCE TO ATTEST THAT THE RUG OR CARPET IS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION.

(2) WITHIN 30 DAYS AFTER A REQUEST BY THE DEPARTMENT, A PERSON SHALL PROVIDE THE CERTIFICATE OF COMPLIANCE ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE DEPARTMENT.

6–1605.

A person who violates this subtitle is subject to:

- (1) For a first violation, a civil penalty not exceeding \$500; and
- (2) For a second or subsequent violation, a civil penalty not exceeding \$1,000.

9–1901.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Distributor” means any person that:
 - (1) Sells a packaged product to a retailer; or
 - (2) Receives a shipment or consignment of, or in any other manner acquires, packaged products for distribution to a retailer for:
 - (i) Sale to a consumer; or
 - (ii) Promotional purposes.

(C) “FOOD PACKAGE” MEANS A PACKAGE OR PACKAGING COMPONENT THAT IS DESIGNED FOR DIRECT FOOD CONTACT, INCLUDING:

(1) A FOOD OR BEVERAGE PRODUCT THAT IS CONTAINED IN A FOOD PACKAGE OR TO WHICH A FOOD PACKAGE IS APPLIED;

(2) A PACKAGING COMPONENT OF A FOOD PACKAGE; AND

(3) PLASTIC DISPOSABLE GLOVES USED IN COMMERCIAL OR INSTITUTIONAL FOOD SERVICE.

(D) “INTENTIONALLY ADDED” MEANS THE ACT OF DELIBERATELY USING A CHEMICAL IN THE FORMATION OF A PACKAGE OR PACKAGING COMPONENT WHEN ITS CONTINUED PRESENCE IS DESIRED IN THE FINAL PACKAGE OR PACKAGING COMPONENT TO PROVIDE A SPECIFIC CHARACTERISTIC.

[(c)] (E) (1) “Manufacturer” means any person that manufactures a package or packaging component.

(2) “Manufacturer” includes any person that sells a package or packaging component to a distributor.

[(d)] (F) (1) “Package” means a container used to market, protect, or handle a product.

(2) “Package” includes:

(i) A unit package, an intermediate package, and a shipping container as defined by the American Society for Testing and Materials; and

(ii) An unsealed receptacle such as a carrying case, crate, cup, pail, rigid foil or other tray, wrap, wrapping film, bag, and tub.

[(e)] (G) (1) “Packaging component” means any individual assembled part of a package.

(2) “Packaging component” includes any interior or exterior blocking, bracing, cushioning, weatherproofing, coating, closure, label, ink, dye, pigment, adhesive, or any other additive.

(3) “Packaging component” does not include any package or packaging component that contains cadmium and is intended for reuse more than 5 times.

(H) “PFAS CHEMICALS” MEANS A CLASS OF FLUORINATED ORGANIC CHEMICALS THAT CONTAIN AT LEAST ONE FULLY FLUORINATED CARBON ATOM, INCLUDING PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES.

9–1902.

(a) Except as provided in §§ 9–1903 and 9–1904 of this subtitle, on or after July 1, 1993, a manufacturer or distributor may not sell or offer for sale or for promotional purposes any package or packaging component or any product in a package or packaging component to which any of the following was intentionally added during manufacture or distribution:

- (1) Lead;
- (2) Cadmium;
- (3) Mercury; or
- (4) Hexavalent chromium.

(b) The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium incidentally present in a package or packaging component may not exceed:

- (1) By July 1, 1993, 600 parts per million by weight or 0.06%;
- (2) By July 1, 1994, 250 parts per million by weight or 0.025%; and
- (3) By July 1, 1995, 100 parts per million by weight or 0.01%.

(c) Tin plated steel that meets the American Society for Testing and Materials Specification A-623 shall be considered a single packaging component.

(D) ON OR AFTER JANUARY 1, 2022, A MANUFACTURER OR DISTRIBUTOR MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, OR DISTRIBUTE FOR SALE OR USE IN THE STATE A FOOD PACKAGE OR ANY PRODUCT IN A FOOD PACKAGE TO WHICH PFAS CHEMICALS WERE INTENTIONALLY ADDED.

9-1903.

The provisions of **§ 9-1902(A) THROUGH (C)** OF this subtitle do not apply to:

- (1) If it contains a code indicating the date of manufacture, a package or packaging component that was manufactured prior to July 1, 1993;
- (2) Until July 1, 1997, a package and packaging component that would not exceed the concentration levels set forth in § 9-1902 of this subtitle but for the addition of recycled materials;
- (3) A package or packaging component conditionally exempt under § 9-1904 of this subtitle; and
- (4) Any alcoholic beverage bottled before October 1, 1992.

9-1904.

(a) A manufacturer or distributor of a package or packaging component may submit to the Department an application for a conditional exemption from the provisions of **§ 9–1902(A) THROUGH (C) OF** this subtitle.

(b) On the written application of a manufacturer or distributor, the Department may grant a conditional exemption if the Department finds that:

(1) In order to comply with a health or safety requirement of federal law, lead, cadmium, mercury, or hexavalent chromium have been added to the package or packaging component in the manufacturing, forming, printing, or distribution process; or

(2) The regulated substance is essential to the protection, safe handling, or function of the package contents.

(c) A conditional exemption granted under this section:

(1) Expires 2 years after the date the Department grants the exemption; and

(2) If the manufacturer or distributor meets the criteria under subsection (b) of this section, may be renewed for additional periods of 2 years.

9–1905.

(a) To enforce the provisions of this subtitle, the Department may:

(1) Notify a manufacturer that there are grounds for suspecting that a package or packaging component produced by the manufacturer may not be in compliance with the provisions of this subtitle; and

(2) Request the manufacturer to certify that the package or packaging component is in compliance, **INCLUDING BY REQUESTING THE MANUFACTURER’S CERTIFICATE OF COMPLIANCE ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION.**

(b) If the manufacturer certifies that the package or packaging component is exempt under § 9–1903 of this subtitle, the manufacturer shall identify the specific basis on which the exemption is claimed.

(C) (1) A MANUFACTURER OR DISTRIBUTOR THAT MANUFACTURES, SELLS, OFFERS FOR SALE, OR DISTRIBUTES FOR USE IN THE STATE A FOOD PACKAGE OR ANY PRODUCT IN A FOOD PACKAGE SHALL ESTABLISH A CERTIFICATE OF COMPLIANCE TO ATTEST THAT PRODUCT IS IN COMPLIANCE WITH THE REQUIREMENTS OF § 9–1902(D) OF THIS SUBTITLE.

(2) WITHIN 30 DAYS AFTER A REQUEST BY THE DEPARTMENT, A MANUFACTURER SHALL PROVIDE THE CERTIFICATE OF COMPLIANCE ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO THE DEPARTMENT.

[(c)] (D) If the manufacturer fails to certify that the package or packaging component is in compliance or is exempt, the Department may seek an injunction under § 9–1906 of this subtitle to require the manufacturer to withdraw the package or packaging component in question from sale or promotional use within the State.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before December 31, 2021, the Department of the Environment shall report to the General Assembly, in accordance with § 2–1257 of the State Government Article, on:

(1) the location and results of any testing for PFAS chemicals, as defined in § 6–1601 of the Environment Article, that the Department has conducted on waters of the State;

(2) any plan the Department has for further testing for PFAS chemicals in waters of the State; and

(3) any plan the Department has for remediation and public education in areas where the water has been found to be contaminated by PFAS chemicals.

(b) On or before December 31, 2022, the Department of the Environment and Maryland Department of Health jointly shall prepare, in coordination with other relevant State agencies, the federal government, local governments, and the public, and submit to the General Assembly, in accordance with § 2–1257 of the State Government Article, a PFAS Action Plan to identify strategies, actions, and funding alternatives to:

(1) minimize environmental exposure to PFAS chemicals for Maryland residents, in addition to regulating its use in fire-fighting foam, food packaging, and textiles;

(2) minimize future releases of PFAS chemicals to the environment;

(3) identify, assess, and clean up historical releases of PFAS chemicals in Maryland;

(4) assess any concerns related to environmental justice, health equity, and PFAS chemical contamination; and

(5) educate and communicate to Maryland residents the risks associated with PFAS chemicals.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.