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FISCAL AND POLICY NOTE
First Reader

House Bill 1190 (Delegate Ruth)
Health and Government Operations

Pesticides - PFAS Chemicals - Prohibitions

This bill prohibits a person, beginning June 1, 2025, from selling a pesticide that has “PFAS chemicals” listed as an active ingredient on the labeling. Beginning December 31, 2025, a person may not use a pesticide that has PFAS chemicals listed as an active ingredient on the labeling.

Fiscal Summary

State Effect: No effect in FY 2025. Maryland Department of Agriculture (MDA) special fund revenues may decrease beginning in FY 2026 due to a decrease in pesticide registration fees collected, as discussed below. State expenditures (multiple funds) for various State agencies may increase beginning in FY 2026. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect State finances.

Local Effect: Local expenditures may increase beginning in FY 2026, as discussed below. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Pursuant to § 5-101 of the Agriculture Article, “active ingredient” means (1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates insects, nematodes, fungi, rodents, weeds, bacteria, or other pests; (2) in the case of a plant regulator, an ingredient which,

through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or their produce; (3) in the case of a defoliant, an ingredient which causes the leaves or foliage to drop from a plant; and (4) in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

“PFAS chemicals” means a class of fluorinated chemicals that contain at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances.

Current Law:

Federal Regulation and Restrictions on PFAS Use in Plastic Containers and Pesticide Products

As part of its comprehensive national strategy to combat PFAS pollution, called the “Strategic Roadmap,” the U.S. Environmental Protection Agency (EPA) reviewed actions taken under the federal Toxic Substances Control Act (TSCA), which regulates the introduction of new or already existing chemicals. Pursuant to these efforts, EPA determined that PFAS present in the walls of certain fluorinated containers can be readily leached into formulated liquid products. The contamination was first noted in mosquito pesticide containers. EPA issued a letter on March 16, 2022 to the manufacturers, processors, distributors, users, and those involved with the disposal of affected containers to (1) remind the industry of the PFAS issue to help prevent unintended PFAS formation and contamination and (2) advise that the presence of PFAS formed as a byproduct in high-density polyethylene (generally referred to as HDPE) containers and similar plastics may be a violation under TSCA. More specifically, under TSCA, the manufacture and processing of certain PFAS substances may be subject to notice and review requirements under EPA’s Significant New Use Rule. EPA also released a new methodology to detect low levels of PFAS in plastic containers in February 2024.

Most pesticide products contain substances in addition to the active ingredient(s) that are referred to as inert ingredients or sometimes as “other ingredients.” An inert ingredient generally is any substance (or group of similar substances) other than an active ingredient that is intentionally included in a pesticide product. Examples of inert ingredients include emulsifiers, solvents, carriers, aerosol propellants, fragrances, and dyes. In December 2022, EPA finalized the removal of 12 PFAS chemicals from the list of nonfood inert ingredients approved for use in pesticide products, effectively prohibiting the use of these ingredients in pesticide products.

State Regulation of Pesticides

The Secretary of Agriculture is required to take various actions to regulate pesticide use, including (1) adopting rules and regulations governing the storage, sale, distribution, exchange, use, and disposal of any pesticide and its container and (2) prescribing, when necessary, the time and conditions under which a pesticide may be sold, distributed, exchanged, or used in different areas of the State. MDA regulations require that a person observe all precautions in the handling, use, storage, and disposal of pesticides, so that nontarget areas or organisms, including humans, do not suffer injury, and unreasonable adverse effects on the environment do not occur or are minimized.

Generally, to be sold, distributed, or used in Maryland, a pesticide must be registered by both MDA and EPA. Specified pesticides that have greater potential for causing harm are designated as “restricted use pesticides” and may only be used by a certified applicator or a person working under the supervision of a certified applicator. Each commercial application of any pesticide must be under the supervision of a certified applicator who is responsible and liable for the application.

An annual fee of \$110 must be paid to the Secretary for each product registered, which is deposited in the State Chemist Fund. The fund is used to administer the Maryland Pesticide Registration and Labeling Law and other laws.

Existing State Restrictions on PFAS in Products

Title 6, Subtitle 16 of the Environment Article governs PFAS chemicals and addresses the use, manufacture, sale, distribution, and disposal of Class B fire-fighting foam that contains intentionally added PFAS chemicals in the State as well as the manufacture, sale, and distribution for sale or use in the State a rug or carpet to which PFAS chemicals have been intentionally added. Manufacturers of rugs or carpets for sale or use in the State must establish a certificate of compliance to attest that the rug or carpet is in compliance and must provide the certificate to the Maryland Department of the Environment (MDE) on request.

Title 9, Subtitle 19 of the Environment Article governs toxics in packaging and, among other things, establishes that a manufacturer or distributor may not manufacture or knowingly sell, offer for sale, or distribute for sale or use in the State a food package or food packaging component designed and intended for direct food contact to which PFAS chemicals were intentionally added.

Under the Health-General Article, effective January 1, 2025, a person may not knowingly manufacture, sell, deliver, hold, or offer for sale in the State a cosmetic product that contains specified PFAS chemicals (and their salts) if intentionally added.

2023 State Study on the Use of PFAS in Pesticides

Chapters 485 and 486 of 2023 required MDA – in consultation with MDE, the Maryland Department of Health, and EPA – to study the use of PFAS in pesticides in the State and report its findings and recommendations to the Governor and specified legislative committees by November 1, 2023. Specifically, the Acts required the study to include:

- an analysis of the health and environmental impacts of PFAS in pesticides in the State;
- the identification of testing methods capable of testing for PFAS in pesticides;
- an examination of characteristics that distinguish testing methods for PFAS that are validated for drinking water from testing methods that are validated for pesticides;
- a status update on federal efforts to certify a method for testing for PFAS in pesticides; and
- a status update on state and federal efforts to regulate or ban the use of pesticides containing PFAS.

MDA submitted the required [report](#) in October 2023.

Relevant State Enforcement Provisions

In addition to being subject to an injunction, civil and criminal penalty and liability provisions apply to violations of Subtitle 2 (“Pesticide Applicator’s Law”), Title 5 of the Agriculture Article, to which the bill’s prohibitions are added.

Specifically, a person who violates any provision of the subtitle is subject to a civil penalty of up to \$2,500 for a first violation and up to \$5,000 for each subsequent violation. Several considerations must be taken into account in assessing a penalty, including the willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care. In addition, a person who violates any provision of the subtitle is guilty of a misdemeanor and on conviction is subject to maximum penalties of a \$1,000 fine and/or imprisonment for up to 60 days.

State Fiscal Effect:

Maryland Department of Agriculture

Special fund revenues from pesticide registration fees collected by MDA’s State Chemist Section may decrease beginning in fiscal 2026 due to a decrease in the number of pesticides registered in the State resulting from the bill’s prohibition. As noted above, the annual

pesticide registration fee is \$110 for each product registered. Based on information provided in the 2023 report discussed above, in 2023, there were approximately 13,575 pesticide products registered in the State. A reliable estimate of the decrease in special fund revenues cannot be made at this time, as the following are unknown: (1) how many pesticide products are affected by the bill's prohibition; (2) the extent to which alternative products may be registered as a result of the bill's prohibition; and (3) the extent to which similar bans may occur at the federal level even in the absence of the bill. However, MDA expects the decrease in special fund revenues to be a relatively small fraction of the total special fund revenues generated from annual pesticide registration fees.

MDA advises that it can implement and enforce the bill's changes using existing resources.

In addition to the potential effect on MDA's special fund revenues, MDA advises that the bill also has an operational effect on its Spotted Lantern Fly Program in the Office of Plant Industries and Pest Management. Specifically, MDA notes that PFAS chemicals are extremely effective against the spotted lantern fly, a destructive invasive species that has negatively impacted agricultural operations throughout the mid-Atlantic region.

Other State Agencies as Pesticide Users

State expenditures (multiple fund types) may increase beginning in fiscal 2026 for affected State agencies to purchase alternative pesticide products due to the bill's prohibition. Additionally, because pesticides containing PFAS chemicals are effective in the control of weeds and certain pests, there may also be an operational impact on certain State agencies depending on the effectiveness of alternative products. The extent to which State agencies use affected products, however, is unknown. Also, the extent to which similar bans may occur at the federal level even in the absence of the bill is unknown.

Local Fiscal Effect: Similar to the effect on State agencies as users of affected products, local government expenditures may increase for at least some jurisdictions to purchase alternative pesticide products. Additionally, there may be an operational impact depending on the effectiveness of alternative products.

According to a limited survey of local entities, some local jurisdictions do not anticipate any fiscal effect resulting from the bill. However, the Maryland-National Capital Park and Planning Commission (M-NCPPC) advises that pesticides are often used in its parks to control noxious and invasive pests and to prevent harm from stinging pests; M-NCPPC further advises that the fiscal impact of the bill's prohibition cannot be estimated at this time because the extent to which the pesticides it currently uses are affected by the bill's prohibition is unknown.

As noted above, the extent to which similar bans may occur at the federal level even in the absence of the bill is unknown.

Small Business Effect: Any small businesses that manufacture and sell affected pesticides that contain PFAS chemicals are potentially significantly affected. However, the number of affected businesses in the State is unknown. Additionally, the bill allows for a phasing out of existing stock.

Any small business that uses affected products (which could include agricultural operations, pesticide applicators/pest control businesses, landscaping businesses, golf courses, etc.) may incur additional costs to purchase alternative products and may see an operational impact depending on the effectiveness of alternative products.

As noted above, however, the extent to which similar bans may occur at the federal level even in the absence of the bill is unknown.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Frederick, and Montgomery counties; Maryland-National Capital Park and Planning Commission; City of Havre de Grace; Baltimore City Community College; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; Department of General Services; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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