Department of Legislative Services

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FISCAL AND POLICY NOTE
First Reader

Senate Bill 345 (Senator Brooks)
Education, Energy, and the Environment

Pesticides - PFAS Chemicals - Prohibitions

This bill establishes provisions relating to the use and registration of pesticides that contain PFAS chemicals. Specifically, the bill requires the Maryland Department of Agriculture (MDA) to develop and maintain a list of each "PFAS pesticide" that is registered with the Secretary of Agriculture under Title 5, Subtitle 1 of the Agriculture Article (Maryland Pesticide Registration and Labeling Law). By January 1, 2026, MDA must post the list on its website and distribute it to all certified applicators. Beginning June 1, 2026, a person may not use a PFAS pesticide that is on that list at specified locations or for specified activities, and MDA must notify certified applicators of the prohibition, as specified. Beginning June 1, 2027, MDA may not register a PFAS pesticide for sale in the State. Finally, beginning June 1, 2028, a person may not use a PFAS pesticide in the State.

Fiscal Summary

State Effect: Special fund revenues for MDA decrease beginning as early as FY 2026 due to a decrease in pesticide registration fees collected, as discussed below. MDA's special fund expenditures increase minimally beginning in FY 2026. State expenditures (multiple funds) for various State agencies may increase beginning as early as 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 as early as 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 pesticide" means a pesticide that has PFAS chemicals listed as an active ingredient on the labeling. "PFAS chemicals" means a class of fluorinated chemicals that contain at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances.

Beginning June 1, 2026, a person may not use a PFAS pesticide listed by MDA pursuant to the bill:

- at a health care facility;
- at a school;
- at a day care operation;
- for residential lawn care; or
- for commercial mosquito spraying operations.

Current Law:

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 the U.S. Environmental Protection Agency (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.

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," EPA has been taking steps to restrict, remediate, and research PFAS contamination and impacts. To that end, EPA has taken several steps under numerous federal laws designed to protect human health and the environment including under the federal Toxic Substances Control Act (TSCA), which regulates the introduction of new or already existing chemicals; the Safe Drinking Water Act; and the Comprehensive Environmental Response, Compensation, and Liability Act (more commonly known as Superfund).

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. In response, in February 2024, EPA released a new method for detecting low levels of PFAS in the walls of plastic containers, allowing companies to test their containers before use and prevent further contamination. In July 2024, EPA announced its intention to commence appropriate proceedings under TSCA Section 6 and since then has issued a request for additional data on the prevalence of certain PFAS during the fluorination of certain plastic containers, as well as on the prevalence of fluorinated containers in the U.S., alternative processes, and risk management measures, to inform EPA's path forward with respect to regulation under TSCA section 6.

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 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 6, Subtitle 6A of the Environment Article governs playground surfacing materials and, among other things, prohibits a person from installing, supplying, selling, soliciting, or offering for sale in the State playground surfacing materials that contain a component product, material, or substance to which PFAS chemicals were previously intentionally added in the formation of that component where the continued presence of the PFAS chemicals was desired in the component to provide a specific characteristic.

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, 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. Each day is a separate violation. The total penalties imposed on a person for violations of the subtitle that result from the same set of facts and circumstances may not exceed $25,000. 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 decrease due to the bill's provision that prohibits – beginning June 1, 2027 – MDA from registering a PFAS pesticide for sale in the State. Although a reliable estimate of any such decrease cannot be made at this time, special fund revenues decrease by up to $113,190 annually beginning as early as fiscal 2026. This estimate is based on the annual pesticide registration fee ($110) and assumes that:

- the special fund revenue decrease is not more than the amount of revenues currently collected for the 1,029 products MDA has identified as containing PFAS chemicals; however, the decrease in revenues may be less to the extent that alternative products are registered in their place; and

- based on information provided by MDA, registrants will likely choose not to register their affected products beginning in fiscal 2026, even though the prohibition on the registration of PFAS pesticides does not take effect until June 1, 2027.

MDA's special fund expenditures increase minimally in fiscal 2026 to (1) distribute the list of registered PFAS pesticides to certified applicators and (2) notify them of the bill's prohibition that takes effect June 1, 2026. MDA advises that it plans to send an updated list to certified applicators annually.

In addition to the effects described above, 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

Based on a limited survey of other State agencies, PFAS pesticides do not appear to be widely used. As a result, the impact on other State agencies is anticipated to be minimal. However, to the extent that any State agencies use affected pesticide products, State expenditures (multiple fund types) may increase to purchase alternative pesticide products once PFAS pesticides are no longer available as a result of the bill. 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.

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 pesticide 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, however, several local jurisdictions do not anticipate any material fiscal effect resulting from the bill. For example, Baltimore City Public Schools indicates that even though it sometimes uses pesticides that would likely be banned under the bill, it has alternative options that can be used.

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 PFAS pesticides 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 been introduced within the last three years. See HB 1190 of 2024.

Designated Cross File: HB 386 (Delegate Ruth, *et al.*) - Health and Government Operations.

Information Source(s): Harford and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; 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 Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Baltimore City Public Schools; Baltimore County Public Schools; Department of Legislative Services

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