

# HOUSE BILL 424

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CF SB 447

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By: **Delegates Cullison, Acevero, Charkoudian, Crutchfield, Kelly, Kerr, R. Lewis, and Stewart**

Introduced and read first time: January 23, 2020

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Public Health – Products Containing a Flame–Retardant Chemical**

3 FOR the purpose of prohibiting a person from importing, selling, or offering for sale any  
4 juvenile product, mattress, upholstered furniture, or reupholstered furniture that  
5 contains more than a certain amount of certain chemicals; repealing certain  
6 provisions of law regarding the importing, sale, or offering for sale of any child care  
7 product containing certain chemicals; establishing certain civil penalties; requiring  
8 the Secretary of Health to consider certain factors in determining the amount of a  
9 certain penalty; authorizing a court to enjoin a certain action; requiring the  
10 Maryland Department of Health to adopt certain regulations on or before a certain  
11 date; providing for the application of certain provisions of this Act; making  
12 conforming changes; defining certain terms; providing for a delayed effective date;  
13 and generally relating to products containing flame–retardant chemicals.

14 BY repealing and reenacting, with amendments,

15 Article – Health – General  
16 Section 24–306  
17 Annotated Code of Maryland  
18 (2019 Replacement Volume)

19 BY adding to

20 Article – Health – General  
21 Section 24–306.1  
22 Annotated Code of Maryland

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2019 Replacement Volume)

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

**Article – Health – General**

24–306.

(a) (1) In this section the following words have the meanings indicated.

(2) (I) “Child care product” means a consumer product intended for use  
by a child under the age of 3 years[, including].

(II) “CHILD CARE PRODUCT” INCLUDES a baby product, toy, AND  
car seat[, nursing pillow, crib mattress, and stroller].

(III) “CHILD CARE PRODUCT” DOES NOT INCLUDE A PRODUCT  
REGULATED UNDER § 24–306.1 OF THIS SUBTITLE.

(3) “TCEP” means (tris (2–chloroethyl) phosphate).

(4) “TDCPP” means (tris (1, 3–dichloro–2–propyl) phosphate).

(b) This section does not apply to the sale or distribution of a child care product  
that is resold, offered for resale, or distributed by a consumer for consumer use.

(c) A person may not import, sell, or offer for sale any child care product that:

(1) Contains more than one–tenth of 1% of TCEP or TDCPP by mass; and

(2) Is intended for use by a child under the age of 3 years.

(d) (1) A person that violates this section is subject to:

(i) For a first violation, a civil penalty not exceeding \$1,000; and

(ii) For any subsequent violation, a civil penalty not exceeding  
\$2,500 for each violation.

(2) In addition to the civil penalties provided in paragraph (1) of this  
subsection, a court may enjoin an action prohibited by this section.

(e) The Secretary may suspend implementation of subsection (c) of this section if  
the Secretary determines that the fire safety benefits of TCEP or TDCPP are greater than  
the health risks associated with TCEP or TDCPP.

(f) On or before ~~January~~ JUNE 1, [2015] **2021**, the Department shall adopt regulations to carry out this section.

**24-306.1.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ADULT MATTRESS” MEANS ANY MATTRESS OTHER THAN A TODDLER MATTRESS, A CRIB MATTRESS, OR ANY OTHER INFANT SLEEP PRODUCT.

(3) “FLAME-RETARDANT CHEMICAL” MEANS A CHEMICAL THAT:

(I) IS USED TO RESIST OR INHIBIT THE SPREAD OF FIRE OR ACT AS A SYNERGIST TO CHEMICALS THAT RESIST OR INHIBIT THE SPREAD OF FIRE, INCLUDING ANY CHEMICAL FOR WHICH THE TERM “FLAME RETARDANT” APPEARS ON A SAFETY DATA SHEET DEVELOPED IN ACCORDANCE WITH 29 C.F.R. 1910.1200(G); AND

(II) 1. CONTAINS ONE OR MORE HALOGEN ELEMENTS, INCLUDING FLUORINE, CHLORINE, BROMINE, OR IODINE;

2. CONTAINS ONE OR MORE CARBON ELEMENTS AND ONE OR MORE PHOSPHORUS ELEMENTS;

3. CONTAINS ONE OR MORE CARBON ELEMENTS AND ONE OR MORE NITROGEN ELEMENTS; OR

4. IS A NANOSCALE CHEMICAL.

(4) (I) “JUVENILE PRODUCT” MEANS A CONSUMER PRODUCT INTENDED FOR USE BY A CHILD UNDER THE AGE OF 12 YEARS.

(II) “JUVENILE PRODUCT” INCLUDES A BASSINET, A BOOSTER SEAT, A CHANGING PAD, A CHILDREN’S NAP MAT, A FLOOR PLAYMAT, A HIGH CHAIR, A HIGH CHAIR PAD, AN INFANT BOUNCER, AN INFANT CARRIER, AN INFANT SEAT, AN INFANT SWING, AN INFANT WALKER, A NURSING PAD, A NURSING PILLOW, A PLAYPEN SIDE PAD, A PLAY YARD, A PORTABLE HOOK-ON CHAIR, AND A STROLLER.

(III) “JUVENILE PRODUCT” DOES NOT INCLUDE:

1                   1.     A PRODUCT THAT IS NOT PRIMARILY INTENDED FOR  
2     USE IN THE HOME, INCLUDING A PRODUCT THAT IS, OR IS A COMPONENT PART OF, A  
3     MOTOR VEHICLE, A WATERCRAFT, AN AIRCRAFT, OR ANY OTHER VEHICLE;

4                   2.     A PRODUCT REGULATED UNDER 49 C.F.R. PART 571;

5                   3.     A CONSUMER ELECTRONIC PRODUCT; OR

6                   4.     A PRODUCT REGULATED UNDER § 24-306 OF THIS  
7     SUBTITLE.

8                   (5)    “MATTRESS” HAS THE MEANING STATED IN 16 C.F.R. § 1632.1.

9                   (6)    “REUPHOLSTERED FURNITURE” MEANS FURNITURE FOR WHICH  
10    THE ORIGINAL FABRIC, PADDING, DECKING, BARRIER MATERIAL, FOAM, OR OTHER  
11    RESILIENT FILLING HAS BEEN REPLACED AND THAT HAS NOT BEEN SOLD SINCE THE  
12    TIME OF REPLACEMENT.

13                  (7)    “UPHOLSTERED FURNITURE” MEANS FURNITURE THAT  
14    INCLUDES FILLING MATERIALS, BARRIER MATERIALS, DECKING MATERIALS, OR  
15    COVER FABRICS.

16                  (B)    THIS SECTION DOES NOT APPLY TO THE SALE OR DISTRIBUTION OF A  
17    JUVENILE PRODUCT, MATTRESS, UPHOLSTERED FURNITURE, OR REUPHOLSTERED  
18    FURNITURE THAT IS RESOLD, OFFERED FOR RESALE, OR DISTRIBUTED BY A  
19    CONSUMER FOR CONSUMER USE.

20                  (C)    (1)   THIS SUBSECTION DOES NOT APPLY TO:

21                          (I)    AN ELECTRONIC COMPONENT, OR THE CASING FOR AN  
22    ELECTRONIC COMPONENT, OF A JUVENILE PRODUCT, MATTRESS, UPHOLSTERED  
23    FURNITURE, OR REUPHOLSTERED FURNITURE;

24                          (II)   A COMPONENT OF UPHOLSTERED OR REUPHOLSTERED  
25    FURNITURE OTHER THAN COVER FABRIC, BARRIER MATERIAL, RESILIENT FILLING  
26    MATERIAL, AND DECKING MATERIAL;

27                          (III)   THREAD OR FIBER WHEN USED FOR STITCHING MATTRESS  
28    COMPONENTS TOGETHER; OR

29                          (IV)   EXCEPT FOR FOAM, A COMPONENT OF AN ADULT  
30    MATTRESS.

(2) A PERSON MAY NOT IMPORT, SELL, OR OFFER FOR SALE ANY JUVENILE PRODUCT, MATTRESS, UPHOLSTERED FURNITURE, OR REUPHOLSTERED FURNITURE THAT CONTAINS MORE THAN 0.1% OF A FLAME-RETARDANT ~~CHEMICAL~~ CHEMICALS BY MASS.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF A PERSON THAT WILLFULLY VIOLATES THIS SECTION IS SUBJECT TO, THE SECRETARY MAY ASSESS A CIVIL PENALTY:

(I) FOR A FIRST VIOLATION, NOT EXCEEDING \$2,500;

(II) FOR A SECOND VIOLATION, NOT EXCEEDING \$5,000;

(III) FOR A THIRD VIOLATION, NOT EXCEEDING \$7,500; AND

(IV) FOR ANY SUBSEQUENT VIOLATION, NOT EXCEEDING \$10,000 FOR EACH VIOLATION.

~~(2) EVERY 5 YEARS, THE SECRETARY SHALL ADJUST THE CIVIL PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION FOR INFLATION, IN ACCORDANCE WITH THE CONSUMER PRICE INDEX.~~

~~(3) IN ADDITION TO THE CIVIL PENALTIES PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION, A COURT MAY ENJOIN AN ACTION PROHIBITED BY THIS SECTION IN DETERMINING THE AMOUNT OF A PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SECRETARY SHALL CONSIDER:~~

~~(I) THE NATURE AND SEVERITY OF THE VIOLATION;~~

~~(II) THE GOOD FAITH OF THE PERSON;~~

~~(III) THE HISTORY OF VIOLATIONS BY THE PERSON; AND~~

~~(IV) THE EXTENT TO WHICH THE PERSON COOPERATED WITH ANY INVESTIGATION BY THE DEPARTMENT.~~

(E) ON OR BEFORE ~~JANUARY~~ JUNE 1, 2021, THE DEPARTMENT SHALL ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2020~~ January 1, 2021.