

# SENATE BILL 660

D3  
HB 1394/06 – JUD

71r2870  
CF 71r2117

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By: **Senator McFadden**

Introduced and read first time: February 2, 2007

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Lead-Based Paint Damages – Reimbursement by Manufacturer – Market**  
3 **Share Liability**

4 FOR the purpose of requiring certain manufacturers of certain lead-based paint to  
5 reimburse certain persons for certain damages caused by lead-based paint;  
6 establishing the types of damages for which certain manufacturers of  
7 lead-based paint are required to pay reimbursement; providing that certain  
8 manufacturers of lead-based paint may be held liable under any legally  
9 recognized theory of liability including a market share theory of liability;  
10 providing that failure to join a certain manufacturer in a certain action does not  
11 constitute failure to join a required party for any purpose; providing that a  
12 person is not required to demonstrate that a manufacturer manufactured the  
13 lead-based paint that caused the damage for a court to hold the manufacturer  
14 liable; requiring the person to prove certain elements in order to recover  
15 damages under a market share theory of liability; providing that the damages  
16 paid by a certain manufacturer who is found to be liable shall equal the  
17 manufacturer's share of the market at a certain time; defining certain terms;  
18 and generally relating to the liability of paint manufacturers for damage caused  
19 by lead-based paint.

20 BY adding to

21 Article – Courts and Judicial Proceedings

22 Section 3–1701 through 3–1703 to be under the new subtitle “Subtitle 17.

23 Reimbursement by Manufacturers of Lead-Based Paint for Damages

24 Caused by Lead-Based Paint”

25 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume)

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

4 **Article – Courts and Judicial Proceedings**

5 **SUBTITLE 17. REIMBURSEMENT BY MANUFACTURERS OF LEAD-BASED PAINT**  
6 **FOR DAMAGES CAUSED BY LEAD-BASED PAINT.**

7 **3-1701.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
9 INDICATED.

10 (B) “ABATEMENT” MEANS A SET OF MEASURES DESIGNED TO  
11 ELIMINATE OR REDUCE LEAD-BASED PAINT HAZARDS IN RESIDENTIAL, PUBLIC,  
12 OR COMMERCIAL BUILDINGS IN ACCORDANCE WITH STANDARDS ESTABLISHED  
13 BY THE DEPARTMENT OF THE ENVIRONMENT THAT MAY INCLUDE:

14 (1) THE REMOVAL OF LEAD-BASED PAINT AND  
15 LEAD-CONTAMINATED DUST, THE CONTAINMENT OR ENCAPSULATION OF  
16 LEAD-BASED PAINT, THE REPLACEMENT OR DEMOLITION OF LEAD-BASED  
17 PAINTED SURFACES OR FIXTURES, AND THE REMOVAL OR COVERING OF  
18 LEAD-CONTAMINATED SOIL; AND

19 (2) ALL PREPARATION, CLEANUP, DISPOSAL, AND  
20 POSTABATEMENT CLEARANCE TESTING ACTIVITIES ASSOCIATED WITH THESE  
21 MEASURES.

22 (C) “LEAD-BASED PAINT” MEANS LEAD-BASED PAINT AS DEFINED BY  
23 THE DEPARTMENT OF THE ENVIRONMENT.

24 (D) (1) “MANUFACTURER OF LEAD-BASED PAINT” MEANS A PERSON  
25 WHO MANUFACTURED LEAD-BASED PAINT FOR SALE AND USE AS PAINT IN  
26 RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDINGS.

27 (2) “MANUFACTURER OF LEAD-BASED PAINT” INCLUDES A  
28 PERSON WHO FORMERLY MANUFACTURED LEAD-BASED PAINT FOR SALE AND  
29 USE AS PAINT IN RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDINGS.

1           **(3) “MANUFACTURER OF LEAD-BASED PAINT” DOES NOT**  
2 **INCLUDE:**

3                   **(I) A PERSON WHO ONLY SOLD LEAD-BASED PAINT AT**  
4 **RETAIL OR WHOLESALE; OR**

5                   **(II) A PERSON WHO APPLIED LEAD-BASED PAINT IN A**  
6 **RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.**

7           **(E) “MARKET” MEANS THE MARKET FOR LEAD-BASED PAINT IN THE**  
8 **STATE ONLY.**

9           **(F) “SHARE OF THE MARKET” MEANS THE PERCENTAGE OF SALES OF**  
10 **LEAD-BASED PAINT IN THE MARKET AT A GIVEN TIME ATTRIBUTABLE TO A**  
11 **MANUFACTURER OF LEAD-BASED PAINT.**

12 **3-1702.**

13           **(A) A MANUFACTURER OF LEAD-BASED PAINT SHALL REIMBURSE A**  
14 **PERSON FOR DAMAGES RESULTING FROM THE PRESENCE OF A LEAD-BASED**  
15 **PAINT IN A RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.**

16           **(B) FOR PURPOSES OF THIS SUBTITLE, DAMAGES INCLUDE:**

17                   **(1) PERSONAL INJURY DAMAGES SUSTAINED BY AN INDIVIDUAL**  
18 **THAT WERE CAUSED BY LEAD-BASED PAINT;**

19                   **(2) DAMAGES SUSTAINED BY THE OWNER OF A RESIDENTIAL,**  
20 **PUBLIC, OR COMMERCIAL BUILDING REQUIRED TO COMPLY WITH:**

21                           **(I) THE REQUIREMENTS OF TITLE 6, SUBTITLE 8 OF THE**  
22 **ENVIRONMENT ARTICLE;**

23                           **(II) AN ABATEMENT ORDER ISSUED BY AN AGENCY OF THE**  
24 **STATE OR A LOCAL GOVERNMENT; OR**

25                           **(III) A REQUIREMENT TO REPAIR LEAD-BASED PAINT**  
26 **DEFECTS UNDER § 8-211 OR § 8-211.1 OF THE REAL PROPERTY ARTICLE; AND**

1           **(3) EXPENSES INCURRED BY THE VOLUNTARY ACTIONS OF AN**  
2 **OWNER OF A RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING TO ABATE**  
3 **LEAD-BASED PAINT.**

4           **(C) (1) A MANUFACTURER OF LEAD-BASED PAINT MAY BE HELD**  
5 **LIABLE UNDER ANY LEGALLY RECOGNIZED THEORY OF LIABILITY, INCLUDING A**  
6 **MARKET SHARE THEORY OF LIABILITY AS PROVIDED UNDER § 3-1703 OF THIS**  
7 **SUBTITLE:**

8                   **(I) BY AN ACTION FOR DAMAGES; AND**

9                   **(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, BY**  
10 **ANY OF THE THIRD PARTY OR CLASS ACTION PLEADING PRACTICES**  
11 **AUTHORIZED UNDER THE MARYLAND RULES.**

12           **(2) FAILURE TO JOIN A MANUFACTURER OF LEAD-BASED PAINT**  
13 **IN AN ACTION INVOLVING DAMAGES CAUSED BY LEAD-BASED PAINT DOES NOT**  
14 **CONSTITUTE FAILURE TO JOIN A REQUIRED PARTY FOR ANY PURPOSE.**

15 **3-1703.**

16           **(A) IN AN ACTION UNDER THIS SUBTITLE, A PERSON IS NOT REQUIRED**  
17 **TO DEMONSTRATE THAT AN INDIVIDUAL MANUFACTURER OF LEAD-BASED**  
18 **PAINT MANUFACTURED THE LEAD-BASED PAINT THAT CAUSED THE DAMAGE IN**  
19 **ORDER FOR A COURT TO HOLD THE MANUFACTURER OF LEAD-BASED PAINT**  
20 **LIABLE FOR THE DAMAGES.**

21           **(B) IN ORDER TO RECOVER DAMAGES UNDER SUBSECTION (A) OF THIS**  
22 **SECTION, A LITIGANT SHALL HAVE THE BURDEN OF PROVING THAT:**

23                   **(1) LEAD-BASED PAINT CAUSED THE DAMAGES ALLEGED;**

24                   **(2) THE MANUFACTURER OF LEAD-BASED PAINT**  
25 **MANUFACTURED LEAD-BASED PAINT AND SOLD LEAD-BASED PAINT IN THE**  
26 **MARKET AT THE TIME THE LEAD-BASED PAINT WAS APPLIED TO THE**  
27 **RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING; AND**

1           **(3) THE MANUFACTURER OF LEAD-BASED PAINT BREACHED A**  
2 **LEGALLY RECOGNIZED DUTY IN MARKETING THE LEAD-BASED PAINT.**

3           **(C) IF THE MANUFACTURER OF LEAD-BASED PAINT IS FOUND TO BE**  
4 **LIABLE FOR DAMAGES UNDER SUBSECTION (B) OF THIS SECTION, THE**  
5 **MANUFACTURER'S LIABILITY SHALL BE THE PERCENTAGE OF THE TOTAL**  
6 **DAMAGES THAT EQUALS THE MANUFACTURER'S SHARE OF THE MARKET AT THE**  
7 **TIME THE MANUFACTURER MANUFACTURED LEAD-BASED PAINT AND SOLD**  
8 **LEAD-BASED PAINT IN THE MARKET.**

9           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2007.