

HB0062/916286/1

BY: Health and Government Operations Committee

AMENDMENTS TO HOUSE BILL 62
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, at the top of the page, strike “EMERGENCY BILL”; in the sponsor line, strike “Delegate Hubbard” and substitute “Delegates Hubbard, Hammen, Pendergrass, Beitzel, Benson, Bromwell, Costa, Donoghue, Elliott, Kach, Kipke, Kullen, McDonough, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Riley, Tarrant, V. Turner, and Weldon”; in line 2, after “Lead-Containing” insert “Children’s”; strike beginning with “or” in line 4 down through “products” in line 5 and substitute “in a certain manner”; in line 6, after “devices” insert “, certain distribution operations or activities, or certain vehicles, products, parts, or equipment”; strike beginning with “authorizing” in line 6 down through “product;” in line 16; in line 16, after “Department” insert “of the Environment”; in the same line, strike “issue and”; in line 17, after “circumstances;” insert “requiring a manufacturer of a children’s product to conduct a certain testing of the product and issue a certain certificate under certain circumstances; requiring a person to ensure that the certificate is transmitted to certain distributors and retailers in a certain manner; requiring certain manufacturers and retailers to maintain certain documents and to provide certain documents to the Department or any person on request; prohibiting a person from selling or offering for sale a children’s product that is not accompanied by a certain certificate;”; in line 21, after “penalties;” insert “authorizing the Comptroller to assess a certain fine against a certain person; requiring the Comptroller to distribute certain fines to a certain fund; providing that a violation of this Act is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions;”; in line 22, strike “Health and Mental Hygiene” and substitute “the Environment”; in line 23, strike “making this Act an emergency measure;”; in line 24, after “lead-containing” insert “children’s”; after line 24, insert:

“BY repealing and reenacting, with amendments,

(Over)

Article – Commercial Law
Section 13-301(14)
Annotated Code of Maryland
(2005 Replacement Volume and 2007 Supplement)”;

in line 26, strike “Health – General” and substitute “Environment”; in line 27, strike “22-601” and substitute “6-1301”; in the same line, strike “22-609” and substitute “6-1311”; in the same line, strike “6.” and substitute “13.”; and in line 28, after “Lead-Containing” insert “Children’s”.

On page 2, in line 1, strike “2005” and substitute “2007”.

AMENDMENT NO. 2

On page 2, after line 3, insert:

“Article – Commercial Law

13-301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(i) This title;

(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;

(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;

- Door Sales Act;
 - (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-
- Facilities;
 - (v) Title 14, Subtitle 9 of this article, Kosher Products;
 - (vi) Title 14, Subtitle 10 of this article, Automotive Repair
- Act;
 - (vii) Section 14-1302 of this article;
 - (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales
- Enforcement Act;
 - (ix) Section 22-415 of the Transportation Article;
 - (x) Title 14, Subtitle 20 of this article;
 - (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
- Solicitations Act;
 - (xii) Title 14, Subtitle 21 of this article;
 - (xiii) Section 18-107 of the Transportation Article;
 - (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
- Parts Act;
 - (xv) Title 14, Subtitle 23 of this article, the Automotive Crash
 - (xvi) Title 10, Subtitle 6 of the Real Property Article;

(xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

(xviii) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door Solicitations Act;

(xix) Title 14, Subtitle 31 of this article, the Maryland Household Goods Movers Act;

(xx) Title 14, Subtitle 32 of this article, the Maryland Telephone Consumer Protection Act;

(xxi) Title 14, Subtitle 33 of this article, the Social Security Number Privacy Act;

(xxii) Section 14-1319 or § 14-1320 of this article; [or]

(xxiii) Section 7-304 of the Criminal Law Article; or

(XXIV) TITLE 6, SUBTITLE 13 OF THE ENVIRONMENT ARTICLE; OR”.

AMENDMENT NO. 3

On page 2, in line 4, strike “Health – General” and substitute “Environment”; in line 5, strike “**6.**” and substitute “**13.**”; in the same line, after “**LEAD-CONTAINING**” insert “**CHILDREN’S**”; in line 6, strike “**22-601.**” and substitute “**6-1301.**”; in line 9, after “(B)” insert “**(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**”; in the same line, strike “**CHILD**” and substitute “CHILD”; in the same line, strike “**7**” and substitute “**6**”; after line 10, insert:

“(2) IF A FEDERAL LAW ESTABLISHING THE PERMISSIBLE LEVEL OF LEAD IN CHILDREN’S PRODUCTS IS ENACTED, “CHILD” SHALL MEAN AN INDIVIDUAL WHO IS THE AGE SPECIFIED IN THE FEDERAL LAW.”;

in line 11, after “(C)” insert “(1)”; in line 12, strike “(1)” and substitute “(I)”; in line 13, strike “(2)” and substitute “(II)”; after line 13, insert:

“(2) “CHILDREN’S PRODUCT” DOES NOT INCLUDE FOOD AS DEFINED IN § 21-101 OF THE HEALTH – GENERAL ARTICLE.”;

strike in their entirety lines 14 through 24, inclusive; and in line 25, strike “(G)” and substitute “(D)”.

AMENDMENT NO. 4

On page 2, in line 27, strike the colon.

On page 3, in line 1, strike “(1) **GREATER**” and substitute “GREATER”; in the same line, strike “**0.02%**” and substitute “THE LESSER OF:

(1) 0.06%;

strike line 3 in its entirety and substitute:

“(2) THE STANDARD ESTABLISHED UNDER FEDERAL LAW REGARDING THE PERMISSIBLE LEVEL OF LEAD IN CHILDREN’S PRODUCTS.”;

after line 3, insert:

“(E) “MANUFACTURER” MEANS A PERSON THAT IS THE BRAND OWNER OF A PRODUCT.”;

in line 4, strike “(H)” and substitute “(F)”; in line 9, strike “HOMEOPATHIC REMEDIES” and substitute “LUNCH BOXES AND EATING UTENSILS”; in line 11, strike “WRAPPERS” and substitute “ANY OTHER ITEM SPECIFIED BY THE DEPARTMENT IN REGULATION”; strike in their entirety lines 12 through 21, inclusive; and in line 22, strike “22-602.” and substitute “6-1302.”.

AMENDMENT NO. 5

On page 4, in line 5, strike “AND”; strike beginning with “FACTORY” in line 6 down through “TERMINAL” in line 7 and substitute “DISTRIBUTION OPERATION OR ACTIVITY PERFORMED IN A FACTORY, WAREHOUSE, OR ESTABLISHMENT, OR, IN THE COURSE OF SURFACE TRANSPORTATION, AT A PORT FACILITY AS DEFINED IN § 6-101 OF THE TRANSPORTATION ARTICLE; AND

(3) A VEHICLE AS DEFINED IN § 11-176 OF THE TRANSPORTATION ARTICLE, A PRODUCT OR PART FOR USE IN A VEHICLE, OR TRANSPORTATION EQUIPMENT”;

in line 8, strike “22-603.” and substitute “6-1303.”; in line 9, strike “MANUFACTURE,” and substitute “:

(1) MANUFACTURE A CHILDREN’S PRODUCT THAT IS A LEAD-CONTAINING PRODUCT; OR”;

in the same line, strike “SELL,” and substitute:

“(2) SELL,”;

strike beginning with the colon in line 10 down through “A” in line 11 and substitute “BY ANY MEANS, INCLUDING THROUGH A SALES OUTLET, A CATALOG, OR THE

INTERNET, A”; and strike beginning with the semicolon in line 12 down through “PRODUCT” in line 13.

AMENDMENT NO. 6

On pages 4 and 5, strike in their entirety the lines beginning with line 14 on page 4 through line 11 on page 5, inclusive, and substitute:

“6-1304.

(A) A MANUFACTURER OF A CHILDREN’S PRODUCT SHALL:

(1) TEST WHETHER THE CHILDREN’S PRODUCT IS A LEAD-CONTAINING PRODUCT BY USING AN INDEPENDENT THIRD PARTY QUALIFIED TESTING ENTITY THAT:

(I) IS NOT OWNED, MANAGED, CONTROLLED, OR DIRECTED BY THE MANUFACTURER; AND

(II) IS ACCREDITED IN ACCORDANCE WITH AN ACCREDITATION PROCESS ESTABLISHED OR RECOGNIZED BY THE DEPARTMENT; AND

(2) IF THE CHILDREN’S PRODUCT TESTED UNDER ITEM (1) OF THIS SUBSECTION IS NOT A LEAD-CONTAINING PRODUCT, ISSUE A CERTIFICATE THAT CERTIFIES THAT THE CHILDREN’S PRODUCT IS NOT A LEAD-CONTAINING PRODUCT.

(B) A PERSON SHALL ENSURE THAT THE CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION IS TRANSMITTED WITH

(Over)

THE CHILDREN'S PRODUCT TO ANY DISTRIBUTOR OR RETAILER WHO RECEIVES THE CHILDREN'S PRODUCT.

(C) A MANUFACTURER SHALL:

(1) MAINTAIN A COPY OF ANY DOCUMENTS RELATED TO LEAD TESTING AND ANY CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION; AND

(2) PROVIDE A COPY TO THE DEPARTMENT OR ANY PERSON ON REQUEST.

(D) A RETAILER SHALL:

(1) MAINTAIN A COPY OF ANY CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION; AND

(2) PROVIDE A COPY TO THE DEPARTMENT OR ANY PERSON ON REQUEST.

(E) A PERSON MAY NOT SELL OR OFFER FOR SALE IN THE STATE, BY ANY MEANS, INCLUDING TRANSACTIONS CONDUCTED THROUGH A SALES OUTLET, A CATALOG, OR THE INTERNET, A CHILDREN'S PRODUCT FOR WHICH THERE IS NO CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.

(F) A CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL BE:

(1) BASED ON A TEST OF EACH CHILDREN’S PRODUCT OR ON A TESTING PROTOCOL THAT IS ESTABLISHED OR RECOGNIZED BY THE DEPARTMENT; AND

(2) ON A FORM CREATED OR APPROVED BY THE DEPARTMENT.”.

AMENDMENT NO. 7

On page 5, in line 12, strike “**22-605.**” and substitute “**6-1305.**”; in line 14, strike “**22-603**” and substitute “**6-1303**”; strike beginning with the colon in line 14 down through “**GIVE**” in line 17 and substitute “**GIVE**”; in line 18, strike “**22-603**” and substitute “**6-1303**”; strike beginning with “**OR**” in line 19 down through “**HAZARD**” in line 20; in line 22, strike “**(A)(2)**” and substitute “**(A)**”; in line 24, after “**ALL**” insert “**CHILDREN’S**”; strike beginning with “**AS**” in line 25 down through “**SUBTITLE**” in line 26; strike beginning with “**OR**” in line 29 down through “**PRODUCT**” in line 30; and in line 31, strike “**PERSON**” and substitute “**DISTRIBUTOR OR RETAILER**”.

AMENDMENT NO. 8

On page 6, in line 1, strike “**OR THE LEAD-ADULTERATED CONSUMABLE PRODUCT**”; in line 3, strike “**22-606.**” and substitute “**6-1306.**”; in line 5, after “**A**” insert “**CHILDREN’S**”; in line 6, strike “**22-603**” and substitute “**6-1303**”; in line 9, strike “**22-607.**” and substitute “**6-1307.**”; and in line 17, strike “**\$1,000**” and substitute “**\$10,000**”.

AMENDMENT NO. 9

On page 6, after line 18, insert:

“6-1308.

(A) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE COMPTROLLER MAY ASSESS AGAINST A PERSON WHO VIOLATES § 6-1304(E) OF

THIS SUBTITLE A FINE NOT EXCEEDING \$1,000 FOR EACH VIOLATION, UP TO A MAXIMUM OF \$50,000.

(B) A FINE ASSESSED UNDER SUBSECTION (A) OF THIS SECTION MAY NOT BE ASSESSED UNTIL THE PERSON WHO COMMITTED THE VIOLATION HAS BEEN ISSUED THREE WARNINGS REGARDING THE VIOLATION.

(C) EACH DAY ON WHICH A VIOLATION OCCURS OR CONTINUES IS A SEPARATE VIOLATION UNDER THIS SECTION.

(D) AT THE END OF EACH QUARTER, THE COMPTROLLER SHALL DISTRIBUTE ALL FINES ASSESSED UNDER THIS SECTION TO THE LEAD POISONING PREVENTION FUND IN A MANNER DETERMINED BY THE DEPARTMENT AND THE COMPTROLLER.

6-1309.

IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A VIOLATION OF THIS SUBTITLE IS:

(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.”.

AMENDMENT NO. 10

On page 6, in line 19, strike “**22-608.**” and substitute “**6-1310.**”; in line 20, strike “(A)”; strike beginning with “THAT” in line 20 down through

“**ADMINISTRATION**” in line 25 and substitute “**TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE**”; and in line 26, strike “**22-609.**” and substitute “**6-1311.**”.

AMENDMENT NO. 11

On pages 6 and 7, strike beginning with “is” in line 31 on page 6 down through “enacted” in line 3 on page 7 and substitute “shall take effect July 1, 2008”.