

CHAPTER 421

(House Bill 589)

AN ACT concerning

Lead Poisoning Prevention Act of 2008

FOR the purpose of requiring a certain application form for a contractor license to require a certain lead paint abatement accreditation number and accreditation expiration date if the applicant provides certain lead paint abatement services; requiring a certain licensee applying for a license renewal to submit to the Maryland Home Improvement Commission a certain lead paint abatement accreditation number and expiration date if the licensee performs certain lead paint abatement services; prohibiting a certain licensee from violating certain lead paint abatement accreditation requirements; requiring an owner of a certain property who fails to comply with certain standards, on written request of a tenant, under certain circumstances to release a tenant from a certain lease and pay to the tenant certain relocation expenses not to exceed a certain amount; providing that an owner may provide certain information to a tenant in response to a certain request; providing a tenant with a certain action in district court under certain circumstances; providing that certain actions, inaction, or findings may not be construed to have any effect on any civil action or any administrative proceeding brought under certain provision of law; altering certain definitions; and generally relating to eliminating lead risk in housing.

BY repealing and reenacting, without amendments,
Article – Business Regulation
Section 8–301, 8–303(a), and 8–620
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Business Regulation
Section 8–303(b), 8–308, and 8–611
Annotated Code of Maryland
(2004 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 6–801(m)
Annotated Code of Maryland
(2007 Replacement Volume and 2007 Supplement)

BY adding to

Article – Real Property
Section 8–215
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

Preamble

WHEREAS, Childhood lead poisoning is a major public health threat in Maryland, poisoning over 1,300 children in Maryland as of 2005; and

WHEREAS, Lead poisoning severely and irreversibly impacts the cognitive and physical development of young children; and

WHEREAS, The Governor and the State have endorsed plans to meet the federal strategy to eliminate childhood lead poisoning by 2010; and

WHEREAS, Children are exposed to lead through ingesting and inhaling lead dust, eating lead paint chips, or absorbing lead while in utero; and

WHEREAS, Most of the exposures to lead can be eliminated by removing lead hazards and reducing exposure to toxic lead dust in the home; and

WHEREAS, Although the number of cases of childhood lead poisoning in Maryland has decreased significantly over the past few years, lead paint remains a significant health issue; now, therefore,

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

Article – Business Regulation

8–301.

(a) Except as otherwise provided in this title, a person must have a contractor license whenever the person acts as a contractor in the State.

(b) Except as otherwise provided in this title, a person must have a subcontractor license or contractor license whenever the person acts as a subcontractor in the State.

(c) Except as otherwise provided in this title, a person must have a salesperson license or contractor license whenever the person sells a home improvement in the State.

(d) This section does not apply to:

(1) an individual who works for a contractor or subcontractor for a salary or wages but who is not a salesperson for the contractor;

(2) a clerical employee, retail clerk, or other employee of a licensed contractor who is not a salesperson, as to a transaction on the premises of the licensed contractor;

(3) a solicitor for a contractor who calls an owner by telephone only;

(4) an architect, electrician, plumber, heating, ventilation, air-conditioning, or refrigeration contractor, or other person who:

(i) is required by State or local law to meet standards of competency or experience before engaging in an occupation or profession;

(ii) currently is licensed in that occupation or profession under State or local law; and

(iii) is:

1. acting only within the scope of that occupation or profession; or

2. installing a central heating or air-conditioning system;

(5) a security systems technician licensed under Title 18 of the Business Occupations and Professions Article; or

(6) a person who is selling a home improvement to be performed by a person described in item (4) of this subsection.

8-303.

(a) (1) An applicant for a license shall:

(i) submit to the Commission an application on the form that the Commission provides;

(ii) submit to the Commission with the license application proof of compliance with the insurance requirement of § 8-302.1 of this subtitle, if the applicant is applying for a contractor license;

(iii) pay into the Fund the fee required under § 8-404(a) of this title, if the applicant is applying for a contractor license; and

(iv) pay to the Commission an application fee.

(2) The application fee:

(i) for a contractor license is \$225 for each place of business of the contractor;

(ii) for a subcontractor license is \$125; or

(iii) for a salesperson license is \$75.

(3) To cover the cost of processing an application, \$15 of the application fee is nonrefundable.

(b) In addition to any other information required on an application form, the form shall require:

(1) for an individual applicant, the name and address of the applicant;

(2) for a corporate applicant, the name and address of each officer;

(3) for a partnership applicant, the name and address of each partner;

(4) for a joint venture applicant, the name and address of each party to the joint venture;

(5) if the applicant acts as a contractor or subcontractor through a corporation or limited partnership, the name and address of the resident agent of the corporation or limited partnership in the State;

(6) if the applicant is applying for a contractor license or subcontractor license, a complete description of the nature of the contracting business of the applicant;

(7) if the applicant is applying for a salesperson license, a complete description of the duties of the applicant;

(8) a record of the applicant's experience in the field of home improvement or other construction work, including dates when and addresses where the applicant has resided and done business;

(9) IF THE APPLICANT PROVIDES LEAD PAINT ABATEMENT SERVICES, THE DEPARTMENT OF THE ENVIRONMENT LEAD PAINT ABATEMENT ACCREDITATION NUMBER AND ACCREDITATION EXPIRATION DATE;

~~[(9)] (10)~~ whether the applicant has ever held a professional or vocational license in this or any other state; and

~~[(10)] (11)~~ whether the applicant has had a professional or vocational license denied, suspended, or revoked.

8-308.

(a) The Secretary may stagger the terms of licenses.

(b) Unless a license is renewed for a 2-year term as provided in this section, the license expires:

(1) if the Secretary staggers the terms of licenses, on the date that the Secretary sets; or

(2) if the Secretary does not stagger the terms of licenses, on the first June 30 that comes after the effective date of the license in an odd-numbered year.

(c) At least 1 month before a license expires, the Commission shall mail to the licensee, at the last known address of the licensee:

(1) a renewal application form; and

(2) a notice that states:

(i) the date on which the current license expires;

(ii) the date by which the Commission must receive the renewal application for the renewal to be issued and mailed before the license expires; and

(iii) the amount of the renewal fee.

(d) (1) Before a license expires, the licensee periodically may renew it for an additional 2-year term, if the licensee:

(i) otherwise is entitled to be licensed;

(ii) submits to the Commission a renewal application on the form that the Commission provides;

(iii) submits to the Commission proof of compliance with the insurance requirement of § 8-302.1 of this subtitle, if the licensee is renewing a contractor license; [and]

(IV) SUBMITS TO THE COMMISSION THE DEPARTMENT OF THE ENVIRONMENT LEAD PAINT ABATEMENT ACCREDITATION NUMBER AND ACCREDITATION EXPIRATION DATE, IF THE LICENSEE PROVIDES LEAD PAINT ABATEMENT SERVICES; AND

[(iv)] (V) pays to the Commission a renewal fee.

(2) The renewal fee:

(i) for a contractor license is \$225 for each place of business of the contractor;

(ii) for a subcontractor license is \$125; or

(iii) for a salesperson license is \$75.

(3) Notwithstanding paragraph (2) of this subsection, a licensee that is incorporated or has its principal office in another state shall pay to the Commission the fee imposed in that state on a similar nonresident business if that fee is higher than the renewal fee under paragraph (2) of this subsection.

(e) For renewal of a contractor license, the licensee shall:

(1) submit to the Commission, by a credit reporting agency approved by the Commission, a credit report that contains the information required by the Commission; or

(2) pay to the Commission or the Commission's designee a credit report fee in an amount not to exceed the cost charged by a credit reporting agency approved by the Commission to obtain a credit report that contains the information required by the Commission for renewal of a contractor license.

(f) (1) The Commission shall renew the license of each licensee who meets the requirements of this section.

(2) The Commission may not renew a contractor license unless the contractor submits proof of compliance with the insurance requirement of § 8-302.1 of this subtitle.

(g) A licensed contractor shall give the Commission notice of the cancellation of insurance required under § 8-302.1 of this subtitle at least 10 days before the effective date of the cancellation.

8-611.

A licensee may not violate:

- (1) a building law of the State or a political subdivision of the State;
- (2) a safety or labor law of the State; [or]
- (3) the Maryland Workers' Compensation Act; **OR**

(4) THE LEAD PAINT ABATEMENT ACCREDITATION REQUIREMENT UNDER § 6-1002 OF THE ENVIRONMENT ARTICLE OR ANY REGULATION ADOPTED UNDER THAT SECTION.

8-620.

(a) The Commission may impose on a person who violates this title, including § 8-607(4) of this subtitle, a civil penalty not exceeding \$5,000 for each violation, whether or not the person is licensed under this title.

(b) In setting the amount of a civil penalty, the Commission shall consider:

- (1) the seriousness of the violation;
- (2) the good faith of the violator;
- (3) any previous violations;
- (4) the harmful effect of the violation on the complainant, the public, and the business of home improvement;
- (5) the assets of the violator; and
- (6) any other relevant factors.

Article - Environment

6-801.

(m) "Lead-safe housing" means a rental dwelling unit that:

- (1) Is certified to be lead-free in accordance with § 6-804 of this subtitle;
- (2) Was constructed after 1978;
- (3) Is deemed to be lead-safe by the Department in accordance with criteria established by the Department by regulation; or

(4) Is certified to be in compliance with § 6-815(a) of this subtitle and:

(i) In which all windows are either lead-free or have been treated so that all friction surfaces are lead-free;

(ii) In which lead [particulate] **CONTAMINATED DUST** levels are determined to be within abatement clearance levels established by the Department by regulation, [within 15 days prior to the relocation of a person at risk to the rental dwelling unit in accordance with a qualified offer made under Part V of this subtitle] **WITHIN A TIME FRAME ESTABLISHED BY THE DEPARTMENT BY REGULATION**; and

(iii) Which is subject to ongoing maintenance and testing as specified by the Department by regulation.

Article - Real Property

8-215.

(A) **IN THIS SECTION, "AFFECTED PROPERTY" AND "OWNER" HAVE THE MEANINGS STATED IN § 6-801 OF THE ENVIRONMENT ARTICLE.**

(B) (1) **IF AN OWNER OF AN AFFECTED PROPERTY FAILS TO COMPLY WITH THE APPLICABLE RISK REDUCTION ~~STANDARDS UNDER §§ 6-815 AND 6-819~~ STANDARD UNDER § 6-815 OR § 6-819 OF THE ENVIRONMENT ARTICLE, THE OWNER, ON THE WRITTEN REQUEST OF THE TENANT, SHALL:**

(I) **IMMEDIATELY RELEASE THE TENANT FROM THE TERMS OF THE LEASE OR RENTAL AGREEMENT FOR THAT PROPERTY; AND**

(II) **PAY TO THE TENANT ALL REASONABLE RELOCATION EXPENSES, NOT TO EXCEED \$2,500, DIRECTLY RELATED TO THE PERMANENT RELOCATION OF THE TENANT TO A LEAD-FREE DWELLING UNIT OR ANOTHER DWELLING UNIT THAT HAS SATISFIED THE RISK REDUCTION STANDARD IN ACCORDANCE WITH § 6-815 OF THE ENVIRONMENT ARTICLE.**

(2) **A TENANT'S WRITTEN REQUEST TO THE LANDLORD UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE ANY RISK REDUCTION CERTIFICATION INFORMATION PROVIDED BY THE DEPARTMENT OF THE ENVIRONMENT.**

(3) **WITHIN 3 BUSINESS DAYS OF RECEIPT OF A TENANT'S WRITTEN REQUEST UNDER PARAGRAPH (1) OF THIS SUBSECTION, AN OWNER MAY PROVIDE TO THE TENANT:**

(I) A CURRENT AND VALID RISK REDUCTION CERTIFICATE;

(II) A LEAD-FREE CERTIFICATE;

(III) A STATEMENT OF VERIFICATION BY THE OWNER AND TENANT OF WORK PERFORMED IN ACCORDANCE WITH § 6-819(F)(1) OF THE ENVIRONMENT ARTICLE FOR THE AFFECTED PROPERTY; OR

(IV) THE FINAL REPORT OF AN INSPECTOR VERIFYING THAT WORK WAS PERFORMED ON THE AFFECTED PROPERTY IN ACCORDANCE WITH § 6-819(F)(2) OF THE ENVIRONMENT ARTICLE.

(C) (1) IF AN OWNER FAILS TO PROVIDE INFORMATION IN ACCORDANCE WITH SUBSECTION (B)(3) OF THIS SECTION OR TO COMPLY WITH THE TENANT'S WRITTEN REQUEST UNDER SUBSECTION (B)(1) OF THIS SECTION WITHIN 3 BUSINESS DAYS OF RECEIPT OF THE REQUEST, THE TENANT MAY BRING AN ACTION IN DISTRICT COURT FOR THE:

(I) LEASE TERMINATION;

(II) REIMBURSEMENT OF REASONABLE RELOCATION EXPENSES; AND

(III) REASONABLE ATTORNEY'S FEES.

(2) A TENANT DOES NOT HAVE A CAUSE OF ACTION UNDER THIS SUBSECTION IF THE OWNER OF AN AFFECTED PROPERTY PROVIDES INFORMATION IN ACCORDANCE WITH SUBSECTION(B)(3) OF THIS SECTION.

(D) THE RIGHT OF A TENANT TO REQUEST RELEASE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION DOES NOT PRECLUDE THE TENANT FROM PURSUING ANY OTHER RIGHT OR REMEDY AVAILABLE TO THE TENANT AT LAW OR EQUITY AND IS IN ADDITION TO THEM.

(E) ANY ACTION OR INACTION OF THE OWNER OF AN AFFECTED PROPERTY OR TENANT UNDER THIS SECTION OR ANY FINDING IN A PROCEEDING UNDER THIS SECTION MAY NOT BE CONSTRUED TO HAVE ANY EFFECT ON:

(1) ANY CIVIL ACTION; OR

(2) ANY ADMINISTRATIVE PROCEEDING BROUGHT UNDER THIS TITLE OR TITLE 6 OF THE ENVIRONMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, May 13, 2008.