

# HOUSE BILL 119

J1

EMERGENCY BILL

9lr0959

---

By: **Delegate Hubbard**

Introduced and read first time: January 22, 2009

Assigned to: Health and Government Operations

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Children's Products Containing Lead – Modifications**

3 FOR the purpose of altering the requirements for the testing entity that is to be used  
4 by a manufacturer of a children's product; altering certain definitions; defining  
5 a certain term; altering the electronic devices, products, and materials to which  
6 this Act does not apply; providing that a certain certificate is not required for  
7 the sale of certain products; making this Act an emergency measure; and  
8 generally relating to children's products containing lead.

9 BY repealing and reenacting, with amendments,  
10 Article – Environment  
11 Section 6–1301, 6–1302, and 6–1304  
12 Annotated Code of Maryland  
13 (2007 Replacement Volume and 2008 Supplement)

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

16 **Article – Environment**

17 6–1301.

18 (a) In this subtitle the following words have the meanings indicated.

19 (b) [(1) Subject to paragraph (2) of this subsection, “child”] **“CHILD”**  
20 means an individual who is under the age of [6] **13** years.

21 [(2) If a federal law establishing the permissible level of lead in  
22 children's products is enacted, “child” shall mean an individual who is the age  
23 specified in the federal law.]

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) (1) “Children’s product” means[:

2 (i) A product that is marketed for use by a child; or

3 (ii) A product the use of which by a child is foreseeable] **A**  
4 **PRODUCT DESIGNED OR INTENDED PRIMARILY FOR A CHILD AS SPECIFIED IN**  
5 **FEDERAL LAW.**

6 (2) “Children’s product” does not include:

7 (I) [food] **FOOD** as defined in § 21–101 of the Health – General  
8 Article; **OR**

9 (II) **ANY COMPONENT PART OF A CHILDREN’S PRODUCT**  
10 **THAT IS NOT ACCESSIBLE TO A CHILD THROUGH NORMAL AND REASONABLY**  
11 **FORESEEABLE USE AND ABUSE OF THE PRODUCT AS SPECIFIED IN FEDERAL**  
12 **LAW.**

13 (D) **“FEDERAL LAW” MEANS THE CONSUMER PRODUCT SAFETY ACT OF**  
14 **2008 AND REGULATIONS ADOPTED UNDER THE ACT.**

15 [(d)] (E) “Lead-containing product” means a product in which any part,  
16 component, or coating of the product contains lead or lead compounds greater than the  
17 lesser of:

18 (1) 0.06% by weight of the total weight of the part, component, or  
19 coating; or

20 (2) The standard established under federal law regarding the  
21 permissible level of lead in children’s products.

22 [(e)] (F) “Manufacturer” means a person that is the brand owner of a  
23 product.

24 [(f)] (G) “Product” includes:

25 (1) Accessories and jewelry;

26 (2) Clothing;

27 (3) Decorative objects;

28 (4) Furniture;

29 (5) Lunch boxes and eating utensils;

- 1           (6) Toys; and
- 2           (7) Any other item specified by the Department in regulation.
- 3 6–1302.

4           This subtitle does not apply to:

5           (1) An electronic device that [is a lead–containing product unless the  
6 Secretary determines that during the normal use of the electronic device there is a  
7 significant risk that a child could be exposed to the lead contained in the electronic  
8 device] **IS IN COMPLIANCE WITH FEDERAL LAW;**

9           (2) Any distribution operation or activity performed in a factory,  
10 warehouse, or establishment, or, in the course of surface transportation, at a port  
11 facility as defined in § 6–101 of the Transportation Article; [and]

12           (3) A vehicle as defined in § 11–176 of the Transportation Article, a  
13 product or part for use in a vehicle, or transportation equipment; **AND**

14           (4) **A PRODUCT OR MATERIAL EXCLUDED BY FEDERAL LAW.**

15 6–1304.

16           (a) A manufacturer of a children’s product shall:

17           (1) Test whether the children’s product is a lead–containing product  
18 by using [an independent third party qualified testing entity that:

19                   (i) Is not owned, managed, controlled, or directed by the  
20 manufacturer; and

21                   (ii) Is accredited in accordance with an accreditation process  
22 established or recognized by the Department] **A TESTING ENTITY QUALIFIED OR**  
23 **CERTIFIED UNDER FEDERAL LAW;** and

24           (2) If the children’s product tested under item (1) of this subsection is  
25 not a lead–containing product, issue a certificate that certifies that the children’s  
26 product is not a lead–containing product.

27           (b) A person shall ensure that the certificate issued in accordance with  
28 subsection (a) of this section is transmitted with the children’s product to any  
29 distributor or retailer who receives the children’s product.

30           (c) A manufacturer shall:

1           (1) Maintain a copy of any documents related to lead testing and any  
2 certificate issued in accordance with subsection (a) of this section; and

3           (2) Provide a copy to the Department or any person on request.

4           (d) A retailer shall:

5           (1) Maintain a copy of any certificate issued in accordance with  
6 subsection (a) of this section; and

7           (2) Provide a copy to the Department or any person on request.

8           (e) **(1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
9 **SUBSECTION, A** person may not sell or offer for sale in the State, by any means,  
10 including transactions conducted through a sales outlet, a catalog, or the Internet, a  
11 children's product for which there is no certificate issued in accordance with  
12 subsection (a) of this section.

13           **(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS**  
14 **SUBTITLE, A CERTIFICATE IS NOT REQUIRED FOR THE SALE OF A USED**  
15 **CHILDREN'S PRODUCT AT A THRIFT STORE, CONSIGNMENT STORE, YARD SALE,**  
16 **OR ANY OTHER SECOND HAND POINT OF SALE.**

17           (f) A certificate issued in accordance with subsection (a) of this section shall  
18 be:

19           (1) Based on a test of each children's product or on a testing protocol  
20 that is established or recognized by the Department; and

21           (2) On a form created or approved by the Department.

22           SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
23 measure, is necessary for the immediate preservation of the public health or safety,  
24 has been passed by a yea and nay vote supported by three-fifths of all the members  
25 elected to each of the two Houses of the General Assembly, and shall take effect from  
26 the date it is enacted.