

# HOUSE BILL 119

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EMERGENCY BILL

9lr0959

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By: ~~Delegate Hubbard~~ **Delegates Hubbard and Montgomery**

Introduced and read first time: January 22, 2009

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 20, 2009

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

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; clarifying the manufacturers and importers that are  
7 required to perform certain testing; clarifying the children's products to be  
8 tested to determine whether they are lead-containing products; providing that a  
9 certain certificate is not required for the sale of certain products; making this  
10 Act an emergency measure; and generally relating to children's products  
11 containing lead.

12 BY repealing and reenacting, with amendments,  
13 Article – Environment  
14 Section 6–1301, 6–1302, and 6–1304  
15 Annotated Code of Maryland  
16 (2007 Replacement Volume and 2008 Supplement)

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

### 19 **Article – Environment**

20 6–1301.

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

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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.



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

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

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

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

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

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

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

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

18 (D) **“FEDERAL LAW” MEANS THE CONSUMER PRODUCT SAFETY ACT OF**  
19 **2008 AND REGULATIONS ADOPTED UNDER THE ACT.**

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

23 (1) 0.06% by weight of the total weight of the part, component, or  
24 coating; or

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

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

29 [(f)] (G) “Product” includes:

30 (1) Accessories and jewelry;

- 1 (2) Clothing;
- 2 (3) Decorative objects;
- 3 (4) Furniture;
- 4 (5) Lunch boxes and eating utensils;
- 5 (6) Toys; and
- 6 (7) Any other item specified by the Department in regulation.

7 6–1302.

8 This subtitle does not apply to:

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

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

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

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

19 6–1304.

20 (a) **A UNITED STATES manufacturer, OR IF THE MANUFACTURER IS NOT**  
21 **A UNITED STATES MANUFACTURER, THE IMPORTER OF RECORD,** of a children’s  
22 product **FOR WHICH A CHILDREN’S PRODUCT CERTIFICATION IS REQUIRED**  
23 **UNDER FEDERAL LAW** shall:

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

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

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

1 (2) If the children's product tested under item (1) of this subsection is  
2 not a lead-containing product, issue a certificate that certifies that the children's  
3 product is not a lead-containing product.

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

7 (c) A manufacturer shall:

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

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

11 (d) A retailer shall:

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

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

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

20 (2) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS**  
21 **SUBTITLE, A CERTIFICATE IS NOT REQUIRED FOR THE SALE OF A USED**  
22 **CHILDREN'S PRODUCT AT A THRIFT STORE, CONSIGNMENT STORE, YARD SALE,**  
23 **OR ANY OTHER ~~SECOND-HAND~~ SECONDHAND POINT OF SALE.**

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

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

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.