

HOUSE BILL 644

M3

(2lr2629)

ENROLLED BILL

— Environmental Matters/Judicial Proceedings —

Introduced by **Delegates Oaks and Niemann**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment – Reducing the Incidence of Lead Poisoning**

3 FOR the purpose of altering the application of certain provisions of law relating to
4 reducing lead risk in housing to apply to certain property constructed before a
5 certain date; exempting certain properties built between certain dates from
6 certain requirements relating to certain risk reduction standards; authorizing
7 the Department of the Environment or a local health department to order a
8 certain abatement in ~~any residential~~ certain property under certain
9 circumstances; authorizing the Department to enforce the terms of a certain
10 abatement order in a certain manner; establishing a certain rebuttable
11 presumption; providing that the presumption may be rebutted by clear and
12 convincing a preponderance of the evidence; providing for the admissibility of
13 certain evidence in certain actions for damages for alleged injury or loss caused
14 by the ingestion of lead; requiring a court to require a certain party, the party's
15 attorney, or both to pay certain costs under certain circumstances; altering a

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.

Italics indicate opposite chamber/conference committee amendments.



1 certain annual fee for certain rental property; ~~authorizing the Department to~~
 2 ~~administer a certain program consistent with certain federal regulations;~~
 3 ~~requiring a certain vendor of certain property to deliver to a certain purchaser a~~
 4 ~~certain lead-contaminated dust test under certain circumstances; declaring the~~
 5 ~~intent of the General Assembly regarding certain compliance with certain~~
 6 ~~provisions of law relating to reducing lead risk in housing~~ authorizing certain
 7 regulations adopted by the Department to include certain standards and
 8 procedures for certain abatement involving the renovation, repair, and painting
 9 of lead-containing substances; altering a certain definition; and generally
 10 relating to reducing the incidence of lead poisoning.

11 BY repealing and reenacting, without amendments,
 12 Article – Environment
 13 Section 6–801(a) and 6–843(a)(1)
 14 Annotated Code of Maryland
 15 (2007 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Environment
 18 Section 6–801(b), ~~6–817(a)(1) and (b)(1), 6–819(f)~~, 6–822, 6–843(a)(2), ~~6–1001(b),~~
 19 ~~and 6–1003, and 6–1004~~
 20 Annotated Code of Maryland
 21 (2007 Replacement Volume and 2011 Supplement)

22 *BY repealing*
 23 *Article – Environment*
 24 *Section 6–838*
 25 *Annotated Code of Maryland*
 26 *(2007 Replacement Volume and 2011 Supplement)*

27 BY adding to
 28 Article – Environment
 29 Section ~~6–830.1 6–838; and 6–1002.1~~ to be under the amended subtitle “Subtitle
 30 ~~10. Accreditation of Lead Paint Abatement and Renovation Services”~~
 31 Annotated Code of Maryland
 32 (2007 Replacement Volume and 2011 Supplement)

33 ~~BY adding to~~
 34 ~~Article – Real Property~~
 35 ~~Section 10–711~~
 36 ~~Annotated Code of Maryland~~
 37 ~~(2010 Replacement Volume and 2011 Supplement)~~

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

40 **Article – Environment**

1 6-801.

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

3 (b) (1) “Affected property” means:

4 (i) A property constructed before ~~1950~~ ~~1978~~ that contains at
5 least one rental dwelling unit; ~~or~~

6 **(ii) ON AND AFTER JANUARY 1, 2015, A PROPERTY**
7 **CONSTRUCTED BEFORE 1978 THAT CONTAINS AT LEAST ONE RENTAL UNIT; OR**

8 ~~(iii)~~ **(iii)** Any residential rental property for which the owner
9 makes an election under § 6-803(a)(2) of this subtitle.

10 (2) “Affected property” includes an individual rental dwelling unit
11 within a multifamily rental dwelling.

12 (3) “Affected property” does not include property exempted under §
13 6-803(b) of this subtitle.

14 6-817.

15 (a) (1) **[On] EXCEPT FOR PROPERTIES CONSTRUCTED BETWEEN**
16 **JANUARY 1, 1950, AND DECEMBER 31, ~~1997~~ 1977, BOTH INCLUSIVE, ON and**
17 **after February 24, 2001, an owner of affected properties shall ensure that at least 50%**
18 **of the owner’s affected properties have satisfied the risk reduction standard specified in**
19 **§ 6-815(a) of this subtitle, without regard to the number of affected properties in which**
20 **there has been a change in occupancy.**

21 (b) (1) **[On] EXCEPT FOR PROPERTIES CONSTRUCTED BETWEEN**
22 **JANUARY 1, 1950, AND DECEMBER 31, ~~1997~~ 1977, BOTH INCLUSIVE, ON and**
23 **after February 24, 2006, an owner of affected properties shall ensure that 100% of the**
24 **owner’s affected properties in which a person at risk resides, and of whom the owner**
25 **has been notified in writing, have satisfied the risk reduction standard specified in §**
26 **6-815(a) of this subtitle.**

27 6-819.

28 (f) **Except as provided in § 6-817(b) of this subtitle AND EXCEPT FOR**
29 **PROPERTIES CONSTRUCTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31,**
30 **~~1997~~ 1977, BOTH INCLUSIVE, on and after February 24, 2006, an owner of affected**
31 **properties shall ensure that 100% of the owner’s affected properties in which a person at**
32 **risk does not reside have satisfied the modified risk reduction standard.**

1 6-822.

2 (a) The provisions of this subtitle do not affect:

3 (1) The duties and obligations of an owner of an affected property to
4 repair or maintain the affected property as required under any applicable State or
5 local law or regulation; or

6 (2) The authority of a State or local agency to enforce applicable
7 housing or livability codes or to order lead abatements in accordance with any
8 applicable State or local law or regulation.

9 (b) (1) Notwithstanding § 6-803 of this subtitle, following an
10 environmental investigation in response to a report of a lead poisoned person at risk,
11 **THE DEPARTMENT OR** a local jurisdiction, **INCLUDING THE LOCAL HEALTH**
12 **DEPARTMENT,** may order an abatement, as defined in § 6-1001 of this title, in any
13 residential property, **CHILD CARE CENTER, FAMILY CHILD CARE HOME, OR**
14 **PRESCHOOL FACILITY.**

15 (2) No provision of this Act may be construed to limit the treatments
16 which may be encompassed by an order to abate lead hazards.

17 (c) **(1)** Whenever there is a conflict between the requirements of an
18 abatement order issued by a State or local agency to an owner of an affected property
19 and the provisions of this subtitle, the more stringent provisions of this subtitle and of
20 the abatement order shall be controlling in determining the owner's obligations
21 regarding the necessary lead hazard reduction treatments that shall be performed in
22 the affected property that is subject to the abatement order.

23 **(2) THE DEPARTMENT MAY ENFORCE THE TERMS OF AN**
24 **ABATEMENT ORDERED BY A LOCAL JURISDICTION OR LOCAL HEALTH**
25 **DEPARTMENT IN A CIVIL OR AN ADMINISTRATIVE ACTION.**

26 ~~**6-830.1.**~~

27 ~~**(A) THERE IS A REBUTTABLE PRESUMPTION THAT A PERSON AT RISK**~~
28 ~~**WITH ELEVATED BLOOD LEAD DID NOT INGEST LEAD IN AN AFFECTED**~~
29 ~~**PROPERTY IF THE OWNER OF AN AFFECTED PROPERTY:**~~

30 ~~**(1) HAS GIVEN TO THE TENANT THE NOTICES REQUIRED BY §§**~~
31 ~~**6-820 AND 6-823 OF THIS SUBTITLE; AND**~~

32 ~~**(2) WAS IN COMPLIANCE WITH:**~~

1 ~~(I) THE REGISTRATION PROVISIONS OF PART III OF THIS~~
2 ~~SUBTITLE; AND~~

3 ~~(H) THE APPLICABLE RISK REDUCTION STANDARD AND~~
4 ~~RESPONSE STANDARD UNDER § 6-815 OR § 6-819 OF THIS SUBTITLE AND THE~~
5 ~~RISK REDUCTION SCHEDULE UNDER § 6-817 OF THIS SUBTITLE.~~

6 ~~(B) THE PRESUMPTION ESTABLISHED UNDER SUBSECTION (A) OF THIS~~
7 ~~SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING A PREPONDERANCE OF~~
8 ~~THE EVIDENCE.~~

9 [6-838.

10 (a) An owner of an affected property that is not in compliance with the
11 provisions of Part IV of this subtitle during the period of residency of the person at risk
12 is presumed to have failed to exercise reasonable care with respect to lead hazards
13 during that period in an action seeking damages for alleged injury or loss caused by the
14 ingestion of lead by a person at risk in the affected property.

15 (b) The owner has the burden of rebutting the presumption established under
16 subsection (a) of this section by a preponderance of the evidence.]

17 6-838.

18 (A) (1) IN AN ACTION SEEKING DAMAGES FOR ALLEGED INJURY OR
19 LOSS CAUSED BY THE INGESTION OF LEAD BY A PERSON AT RISK IN AN
20 AFFECTED PROPERTY, EVIDENCE THAT THE OWNER OF THE AFFECTED
21 PROPERTY WAS IN COMPLIANCE WITH THE PROVISIONS OF PART IV OF THIS
22 SUBTITLE DURING THE PERIOD OF RESIDENCY OF THE PERSON AT RISK IS
23 ADMISSIBLE AS EVIDENCE THAT THE OWNER EXERCISED REASONABLE CARE
24 WITH RESPECT TO LEAD HAZARDS DURING THAT PERIOD.

25 (2) IN AN ACTION SEEKING DAMAGES FOR ALLEGED INJURY OR
26 LOSS CAUSED BY THE INGESTION OF LEAD BY A PERSON AT RISK IN AN
27 AFFECTED PROPERTY, EVIDENCE THAT THE OWNER OF THE AFFECTED
28 PROPERTY WAS NOT IN COMPLIANCE WITH THE PROVISIONS OF PART IV OF THIS
29 SUBTITLE DURING THE PERIOD OF RESIDENCY OF THE PERSON AT RISK IS
30 ADMISSIBLE AS EVIDENCE THAT THE OWNER FAILED TO EXERCISE REASONABLE
31 CARE WITH RESPECT TO LEAD HAZARDS DURING THAT PERIOD.

32 (B) IF A PARTY TO AN ACTION FOR DAMAGES ARISING FROM INGESTION
33 OF LEAD BY A PERSON AT RISK IN AN AFFECTED PROPERTY ALLEGES OR DENIES
34 THE TIME AND PLACE OF RESIDENCE OF, OR VISITATION BY, THE PERSON AT
35 RISK WITHOUT A GOOD FAITH BASIS FOR THE ALLEGATION OR DENIAL, THE

1 COURT SHALL REQUIRE THE OFFENDING PARTY, THE PARTY'S ATTORNEY, OR
 2 BOTH TO PAY THE REASONABLE COSTS, INCLUDING ATTORNEY'S FEES,
 3 INCURRED BY THE ADVERSE PARTY IN OPPOSING THE ALLEGATION OR DENIAL.

4 6-843.

5 (a) (1) Except as provided in this subsection and subsection (b) of this
 6 section, and in cooperation with the Department of Housing and Community
 7 Development, the State Department of Assessments and Taxation, and other
 8 appropriate governmental units, the Department shall provide for the collection of an
 9 annual fee for every rental dwelling unit in the State.

10 (2) The annual fee for an affected property is [~~\$15~~] **\$30**.

11 ~~Subtitle 10. Accreditation of Lead Paint Abatement AND RENOVATION Services.~~

12 ~~6-1001.~~

13 (b) "Abatement" means a set of measures [designed to] THAT eliminate or
 14 reduce lead-based paint hazards in residential, public, or commercial buildings,
 15 bridges, or other structures or superstructures in accordance with standards
 16 established by the Department which may include:

17 (1) The removal of lead-based paint and lead-contaminated dust, the
 18 containment or encapsulation of lead-based paint, the replacement or demolition of
 19 lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated
 20 soil; [and]

21 (2) All preparation, cleanup, disposal, and postabatement clearance
 22 testing activities associated with these measures; AND

23 (3) THE RENOVATION, REPAIR, AND PAINTING OF A
 24 LEAD-CONTAINING SUBSTANCE IN A RESIDENTIAL, PUBLIC, OR COMMERCIAL
 25 BUILDING BUILT BEFORE 1978.

26 ~~6-1002.1.~~

27 ~~THE DEPARTMENT MAY ADMINISTER A RENOVATION, REPAIR, AND~~
 28 ~~PAINTING PROGRAM CONSISTENT WITH THE ENVIRONMENTAL PROTECTION~~
 29 ~~AGENCY'S RENOVATION, REPAIR AND PAINTING RULE, 40 C.F.R. 745,~~
 30 ~~SUBPART E.~~

31 6-1003.

1 (a) ~~{The} EXCEPT AS OTHERWISE PROVIDED IN § 6-1002.1 OF THIS~~
 2 ~~SUBTITLE, THE~~ Department shall adopt regulations to carry out the provisions of this
 3 subtitle.

4 (b) Regulations adopted under this subtitle may include:

5 (1) Initial and continuing standards and procedures for accreditation,
 6 including education, training, examination, and job performance standards;

7 (2) Standards and procedures for renewal of accreditation;

8 (3) Standards and procedures for modification, suspension, or
 9 revocation of accreditation;

10 (4) Different standards and procedures for different lead paint
 11 abatement services;

12 **(5) STANDARDS AND PROCEDURES FOR ABATEMENT INVOLVING**
 13 **THE RENOVATION, REPAIR, AND PAINTING OF LEAD-CONTAINING SUBSTANCES,**
 14 **INCLUDING A REQUIREMENT FOR LEAD-DUST TESTING;**

15 ~~(5) (6)~~ Recognition of accreditation or similar approvals of persons by
 16 other governmental entities; and

17 ~~(6) (7)~~ Such other provisions as may be necessary to effectuate the
 18 purposes of this subtitle.

19 (c) The Department shall review and revise its certification and other
 20 regulations under this subtitle as necessary to ensure continued eligibility for federal
 21 funding of lead-hazard activities in the State.

22 (d) The Department shall set reasonable fees for the accreditation of persons
 23 who provide lead paint abatement, ~~RENOVATION, OR RENOVATION TRAINING~~
 24 services sufficient to cover the Department's direct and indirect costs of administering
 25 this subtitle.

26 ~~6-1004.~~

27 ~~(a) There is a Lead Accreditation Fund.~~

28 ~~(b) (1) All fees collected under § 6-1003(d) and fines and penalties~~
 29 ~~imposed under § 6-1005 of this subtitle shall be deposited in the Lead Accreditation~~
 30 ~~Fund.~~

31 ~~(2) The Department may apply for and accept any funds or grants~~
 32 ~~from any federal, State, local, or private source for credit to the Fund that might assist~~

1 ~~with development, establishment, administration, and education and enforcement~~
 2 ~~activities of the lead paint abatement AND RENOVATION services accreditation~~
 3 ~~[program] PROGRAMS under this subtitle.~~

4 ~~(e) The Department shall use the Lead Accreditation Fund for activities by~~
 5 ~~the Department that are related to processing, monitoring and regulating the~~
 6 ~~accreditation of lead paint abatement services, and for program development of these~~
 7 ~~activities.~~

8 ~~(d) (1) The Lead Accreditation Fund shall be a continuing, nonlapsing~~
 9 ~~special fund, and is not subject to § 7-302 of the State Finance and Procurement~~
 10 ~~Article.~~

11 ~~(2) The State Treasurer shall hold and the State Comptroller shall~~
 12 ~~account for the Accreditation Fund.~~

13 ~~(3) The Accreditation Fund shall be invested and reinvested. Any~~
 14 ~~investment earnings shall be paid into the Accreditation Fund.~~

15 ~~Article — Real Property~~

16 ~~10-711.~~

17 ~~(A) THIS SECTION APPLIES TO THE SALE OF PROPERTY ON WHICH A~~
 18 ~~DWELLING BUILT BEFORE 1978 IS LOCATED.~~

19 ~~(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AT LEAST 7 DAYS~~
 20 ~~BEFORE SETTLEMENT OF A CONTRACT FOR THE SALE OF PROPERTY, A VENDOR~~
 21 ~~SHALL DELIVER TO EACH PURCHASER THE RESULTS OF A~~
 22 ~~LEAD-CONTAMINATED DUST TEST PERFORMED FOR THE PROPERTY IN~~
 23 ~~ACCORDANCE WITH THE PROCEDURES AND STANDARDS ADOPTED UNDER §~~
 24 ~~6-816 OF THE ENVIRONMENT ARTICLE.~~

25 ~~(C) A PURCHASER MAY WAIVE IN WRITING THE RIGHT TO RECEIVE THE~~
 26 ~~RESULTS OF A LEAD-CONTAMINATED DUST TEST.~~

27 ~~SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the~~
 28 ~~General Assembly that on or before January 1, 2013, an owner of affected property~~
 29 ~~that was built between 1950 and 1978 shall be in compliance with:~~

30 ~~(a) the notice requirements under §§ 6-820 and 6-823 of the Environment~~
 31 ~~Article;~~

32 ~~(b) the registration provisions of Title 6, Subtitle 8, Part III of the~~
 33 ~~Environment Article;~~

1 ~~(e) the risk reduction standard under § 6-815(a) of the Environment Article;~~
2 and

3 ~~(d) any other requirement under Title 6, Subtitle 8 of the Environment~~
4 ~~Article, applicable to affected properties.~~

5 SECTION ~~3.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect ~~October~~ June 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.