



# **American Tort Reform Association**

1101 Connecticut Ave, NW ■ Suite 400 ■ Washington, DC 20036  
(202) 682-1163 ■ Fax: (202) 682-1022 ■ [www.atra.org](http://www.atra.org)

March 6, 2024

Senator William C. Smith, Jr.  
Chair, Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

Re: Opposition to S.B. 1031, "Maryland Lead Poisoning Compensation Act"  
March 7, 2024 Hearing Before Senate Judicial Proceedings Committee

Dear Chairman Smith and Members of the Committee:

On behalf of the American Tort Reform Association (ATRA), a national association of large and small businesses, nonprofits, and trade and professional associations with the mission promoting a predictable and fair civil justice system, we would like to express our opposition to S.B. 1031.

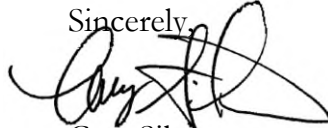
In past sessions, ATRA has opposed legislation proposing that Maryland adopt novel theories of tort law to address concerns regarding the potential hazards of deteriorated lead paint in older homes, such as bills that abandon the need to show that a manufacturer's product caused a person's injury and simply require paying damages based on widely-rejected "market share" liability (such as S.B. 488 in 2019). As you will recall, ATRA has also opposed legislation that eliminates civil statutes of limitations and revives time-barred claims, cautioning that a finite period for filing a lawsuit is essential if courts are to accurately evaluate liability when records and witnesses are available. We have also alerted the Committee to the likelihood that Maryland courts will find that legislation reviving time-barred claims is contrary to due process and will be found unconstitutional (an interpretation of Maryland law that is consistent with that of past state attorneys general). Most recently, ATRA urged this Committee not to advance legislation that would repeal the state's statutory limit on noneconomic damages, opening the door to the type of excessive awards we have seen elsewhere (S.B. 538, hearing Feb. 16, 2024).

Unfortunately, S.B. 1031 attempts to address what is an important issue for Maryland residents through combining all three of these problematic, extreme approaches. First, the bill subjects the owner or manager of a property to strict liability for medical conditions allegedly caused by exposure to lead-based paint on their property. As such, it eliminates the requirement, present in all negligence-based premise liability claims, that a defendant knew or should have known of the hazard. Second, the bill creates an exemption from the reasonable statutory limit on noneconomic damage that applies in other personal injury cases. This bill also excludes these lawsuits from liability limits applicable to public entities, which will place a fiscal strain on state and local governments, and be felt by Maryland taxpayers. Finally, the bill permits a claim alleging injuries from lead paint exposure to be filed at any time and revives

any action previously barred by the applicable statute of limitations. It was only one year ago, in hearings before your Committee, where proponents of S.B. 686 indicated that such an unprecedented approach was limited to the special circumstances faced by childhood sexual abuse victims addressed by that bill. Yet, as we predicted, that approach is now proposed in a far different context.

ATRA fully appreciates the desire to create a revenue source for solving the problem of lead poisoning, but this should not occur at the expense of having a fair civil justice system. There should be no special strict liability law, unlimited damages, infinite statute of limitations, and revival of time-barred claims for lawsuits involving lead paint. ATRA respectfully asks the Committee to return an unfavorable report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Silverman', with a large, stylized flourish extending from the end of the signature.

Cary Silverman

*Counsel to the American Tort Reform Association*

Cc: Members of the Senate Judicial Proceedings Committee