

SENATE BILL 738

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2001 Regular Session
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By: **Senators McFadden, Frosh, Hoffman, Mitchell, and Pinsky**
Introduced and read first time: February 2, 2001
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Lead Paint Poisoning - Testing and Prevention**

3 FOR the purpose of adding information that a medical laboratory must report to the
4 Department of the Environment when conducting a blood test for lead paint
5 poisoning on a person under a certain age; adding a member to the Department's
6 Lead Poisoning Prevention Commission; altering the requirements for an owner
7 of property that is considered under this subtitle to be at risk for lead paint and
8 that is to be occupied by a new tenant to satisfy the risk reduction standard for
9 lead paint; altering the requirements for an owner of property at risk for lead
10 paint that is to be occupied by a new tenant to pass the test for
11 lead-contaminated dust; requiring that a certain amount of the fees paid into
12 the Lead Paint Poisoning Prevention Fund be dedicated to the Community
13 Outreach and Education Program; specifying factors to be considered in
14 assessing a certain penalty for an owner who fails to register a property
15 considered to be at risk for lead paint; specifying conditions under which the
16 Department may waive a certain penalty for an owner who fails to register a
17 property considered to be at risk for lead paint; and generally relating to testing
18 for and prevention of lead paint poisoning in the State.

19 BY repealing and reenacting, with amendments,
20 Article - Environment
21 Section 6-303(a), 6-807, 6-815(a), 6-819, 6-843, and 6-849(a)
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 2000 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article - Environment
26 Section 6-811(a), 6-812(b), 6-816, and 6-848
27 Annotated Code of Maryland
28 (1996 Replacement Volume and 2000 Supplement)

29 BY repealing and reenacting, with amendments,
30 Chapter 114 of the Acts of the General Assembly of 1994, as amended by
31 Chapter 555 of the Acts of the General Assembly of 1996

1 Section 5

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

4 **Article - Environment**

5 6-303.

6 (a) (1) Notwithstanding paragraph (2) of this subsection, a medical
7 laboratory shall report to the Department the results of all blood tests for lead
8 poisoning [performed] AND RELATED INFORMATION REQUESTED BY THE
9 DEPARTMENT on any child 18 years and under.

10 (2) (i) A medical laboratory shall report the results of tests under
11 paragraph (1) of this subsection concerning a child who resides in Baltimore City to
12 the Commissioner of the Baltimore City Health Department.

13 (ii) The Commissioner of the Baltimore City Health Department
14 may report the information received under subparagraph (i) of this paragraph to the
15 Baltimore Immunization Registry Program.

16 6-807.

17 (a) There is a Lead Poisoning Prevention Commission in the Department.

18 (b) (1) The Commission consists of [18] 19 members.

19 (2) Of the [18] 19 members:

20 (i) One shall be a member of the Senate of Maryland, appointed by
21 the President of the Senate;

22 (ii) One shall be a member of the Maryland House of Delegates,
23 appointed by the Speaker of the House; and

24 (iii) [16] 17 shall be appointed by the Governor as follows:

25 1. The Secretary or the Secretary's designee;

26 2. The Secretary of Health and Mental Hygiene or the
27 Secretary's designee;

28 3. The Secretary of Housing and Community Development or
29 the Secretary's designee;

30 4. The Maryland Insurance Commissioner or the
31 Commissioner's designee;

32 5. A representative of local government;

- 1 6. A representative from an insurer that offers premises
- 2 liability coverage in the State;
- 3 7. A representative of a financial institution that makes
- 4 loans secured by rental property;
- 5 8. A representative of owners of rental property located in
- 6 Baltimore City built before 1950;
- 7 9. A representative of owners of rental property located
- 8 outside Baltimore City built before 1950;
- 9 10. A representative of owners of rental property built after
- 10 1949;
- 11 11. A representative of a child health or youth advocacy group;
- 12 12. A health care provider;
- 13 13. A child advocate;
- 14 14. A parent of a lead poisoned child;
- 15 15. A lead hazard identification professional; [and]
- 16 16. A representative of child care providers; AND
- 17 17. **THE EXECUTIVE DIRECTOR OF THE CHILD CARE**
- 18 **ADMINISTRATION OF THE DEPARTMENT OF HUMAN RESOURCES, OR THE EXECUTIVE**
- 19 **DIRECTOR'S DESIGNEE.**

20 (3) In appointing members to the Commission, the Governor shall give
21 due consideration to appointing members representing geographically diverse
22 jurisdictions across the State.

23 (c) (1) (i) The term of a member appointed by the Governor is 4 years.

24 (ii) A member appointed by the President and Speaker serves at the
25 pleasure of the appointing officer.

26 (2) The terms of members are staggered as required by the terms
27 provided for the members of the Commission on October 1, 1994.

28 (3) At the end of a term, a member continues to serve until a successor is
29 appointed and qualifies.

30 (4) A member who is appointed after a term has begun serves only for
31 the remainder of the term and until a successor is appointed and qualifies.

1 6-811.

2 (a) (1) On or before December 31, 1995, the owner of an affected property
3 shall register the affected property with the Department.

4 (2) Notwithstanding paragraph (1) of this subsection, an owner of
5 affected property for which an election is made under § 6-803(a)(2) of this subtitle
6 shall register at the time of the election.

7 6-812.

8 (b) An owner who first acquires affected property after December 1, 1995 shall
9 register the affected property under § 6-811 of this subtitle within 30 days after the
10 acquisition.

11 6-815.

12 (a) No later than the first change in occupancy in an affected property that
13 occurs on or after February 24, 1996, before the next tenant occupies the property, an
14 owner of an affected property shall initially satisfy the risk reduction standard
15 established under this subtitle by:

16 (1) Passing the test for lead-contaminated dust under § 6-816 of this
17 subtitle PROVIDED THAT ALL CHIPPING, PEELING, AND FLAKING PAINT ON
18 EXTERIOR AND INTERIOR PAINTED SURFACES HAS BEEN REMOVED AND REPAINTED;
19 or

20 (2) Performing the following lead hazard reduction treatments:

21 (i) A visual review of all exterior and interior painted surfaces;

22 (ii) The removal and repainting of chipping, peeling, or flaking
23 paint on exterior and interior painted surfaces;

24 (iii) The repair of any structural defect that is causing the paint to
25 chip, peel, or flake that the owner of the affected property has knowledge of or, with
26 the exercise of reasonable care, should have knowledge of;

27 (iv) Stripping and repainting, replacing, or encapsulating all
28 interior windowsills with vinyl, metal, or any other material in a manner and under
29 conditions approved by the Department;

30 (v) Ensure that caps of vinyl, aluminum, or any other material in a
31 manner and under conditions approved by the Department, are installed in all
32 window wells in order to make the window wells smooth and cleanable;

33 (vi) Except for a treated or replacement window that is free of
34 lead-based paint on its friction surfaces, fixing the top sash of all windows in place in
35 order to eliminate the friction caused by movement of the top sash;

- 1 (vii) Rehanging all doors necessary in order to prevent the rubbing
2 together of a lead-painted surface with another surface;
- 3 (viii) Making all bare floors smooth and cleanable;
- 4 (ix) Ensure that all kitchen and bathroom floors are overlaid with a
5 smooth, water-resistant covering; and
- 6 (x) HEPA-vacuumping and washing of the interior of the affected
7 property with high phosphate detergent or its equivalent, as determined by the
8 Department.

9 6-816.

10 The Department shall establish procedures and standards for the optional
11 lead-contaminated dust testing by regulation.

12 6-819.

13 (a) The modified risk reduction standard shall consist of performing the
14 following lead hazard reduction treatments:

- 15 (1) A visual review of all exterior and interior painted surfaces;
- 16 (2) The removal and repainting of chipping, peeling, or flaking paint on
17 exterior and interior painted surfaces;
- 18 (3) The repair of any structural defect that is causing the paint to chip,
19 peel, or flake, that the owner of the affected property has knowledge of or, with the
20 exercise of reasonable care, should have knowledge of;
- 21 (4) Stripping and repainting, replacing, or encapsulating all interior
22 windowsills with vinyl, metal, or any other material in a manner and under
23 conditions approved by the Department;
- 24 (5) Ensure that caps of vinyl, aluminum, or any other material in a
25 manner and under conditions approved by the Department, are installed in all
26 window wells in order to make the window wells smooth and cleanable;
- 27 (6) Except for a treated or replacement window that is free of lead-based
28 paint on its friction surfaces, fixing the top sash of all windows in place in order to
29 eliminate the friction caused by the movement of the top sash;
- 30 (7) Rehanging all doors in order to prevent the rubbing together of a
31 lead-painted surface with another surface;
- 32 (8) Ensure that all kitchen and bathroom floors are overlaid with a
33 smooth, water-resistant covering; and

1 (9) HEPA-vacuuuming and washing with high phosphate detergent or its
2 equivalent, as determined by the Department, any area of the affected property where
3 repairs were made.

4 (b) (1) A tenant of an affected property may notify the owner of the affected
5 property of a defect in the affected property under this section in accordance with this
6 subsection.

7 (2) Notice of a defect under this section shall consist of:

8 (i) If the modified risk reduction standard has not been satisfied
9 for the affected property, the presence of chipping, peeling, or flaking paint on the
10 interior or exterior surfaces of the affected property or of a structural defect causing
11 chipping, peeling, or flaking paint in the affected property; or

12 (ii) If the modified risk reduction standard has been satisfied for
13 the affected property, a defect relating to the modified risk reduction standard.

14 (c) (1) After February 23, 1996, an owner of an affected property shall
15 satisfy the modified risk reduction standard:

16 (i) Within 30 days after receipt of written notice that a person at
17 risk who resides in the property has an elevated blood lead level greater than or equal
18 to 15 ug/dl; or

19 (ii) Except as provided in paragraph (2) of this subsection, within
20 30 days after receipt of written notice from the tenant, or from any other source, of:

21 1. A defect; and

22 2. The existence of a person at risk in the affected property.

23 (2) After February 23, 1996, and before May 23, 1997, an owner of a
24 number of affected properties shall satisfy the modified risk reduction standard
25 within the specified period after receipt of written notice from the tenant, or from any
26 other source, of a defect in accordance with the following schedule:

27 (i) For an owner of 300 or fewer affected properties, within 30 days;
28 and

29 (ii) For an owner of more than 300 affected properties:

30 1. If the owner has received notice from the tenant, or from
31 any other source, of the existence of a person at risk in the affected property, within
32 60 days; or

33 2. If the owner has not received notice from the tenant, or
34 from any other source, of the existence of a person at risk in the affected property,
35 within 90 days.

1 (d) After May 23, 1997, an owner of an affected property shall satisfy the
2 modified risk reduction standard within 30 days after receipt of written notice from
3 the tenant, or from any other source, of a defect.

4 (e) Except as provided in § 6-817(b) of this subtitle, on and after February 24,
5 2006, an owner of affected properties shall ensure that 100% of the owner's affected
6 properties in which a person at risk does not reside have satisfied the modified risk
7 reduction standard.

8 (f) (1) An owner of an affected property shall verify satisfaction of the
9 modified risk reduction standard by submitting a statement of the work performed on
10 the property, verified by the tenant and an accredited supervisor or contractor, to the
11 Department on or before the tenth day of the month following the month in which the
12 work was completed.

13 (2) (i) If the tenant fails or refuses to verify the statement of work
14 performed on the affected property, the owner shall within 5 business days of the
15 failure or refusal, contact an inspector accredited under § 6-818(a) of this subtitle to
16 inspect the affected property.

17 (ii) The inspector's report shall either certify that the work required
18 to be performed under this section was satisfactorily completed or specify precisely
19 what additional work is required.

20 (iii) If additional work is required:

21 1. The owner shall have 20 days after receipt of the
22 inspector's report in which to perform the work, subject to a weather delay under the
23 provisions of subsection (j) of this section; and

24 2. The inspector shall reinspect the affected property after
25 the additional work is completed and:

26 A. Issue a report certifying that the work is complete; and

27 B. Mail a copy of the report to the tenant, the owner, and the
28 Department within 10 days after the inspection or reinspection.

29 (g) In lieu of satisfying the modified risk reduction standard, the owner of an
30 affected property may elect to pass the test for lead-contaminated dust under § 6-816
31 of this subtitle **PROVIDED THAT ALL CHIPPING, PEELING, AND FLAKING PAINT ON**
32 **EXTERIOR AND INTERIOR PAINTED SURFACES HAS BEEN REMOVED AND REPAINTED.**

33 (h) Notice given under this section shall be written, and shall be sent by:

34 (1) Certified mail, return receipt requested; or

35 (2) A verifiable method approved by the Department.

1 (i) The Department may, by regulation, eliminate any treatment from the
2 modified risk reduction standard if the Department finds that performing the
3 treatment in an occupied property is harmful to public health.

4 (j) (1) Exterior work required to satisfy the modified risk reduction
5 standard may be delayed, pursuant to a waiver approved by the appropriate person
6 under paragraph (2) of this subsection, during any time period in which exterior work
7 is not required to be performed under an applicable local housing code or, if no such
8 time period is specified, during the period from November 1 through April 1,
9 inclusive.

10 (2) A waiver under paragraph (1) of this subsection may be approved by
11 the code official for enforcement of the housing code or minimum livability code of the
12 local jurisdiction, or, if there is no such official, the Department of Housing and
13 Community Development.

14 (3) Notwithstanding the terms of the waiver, all work delayed in
15 accordance with paragraph (1) of this subsection shall be completed within 30 days
16 after the end of the applicable time period.

17 (4) Any delay allowed under paragraph (1) of this subsection may not
18 affect the obligation of the owner to complete all other components of the risk
19 reduction standard and to have those components inspected and verified.

20 (k) (1) The statement verified by the owner and the tenant of work
21 performed on the affected property in accordance with subsection (f)(1) of this section
22 or the final report of the inspector verifying that work was performed on the affected
23 property in accordance with subsection (f)(2) of this section shall create a rebuttable
24 presumption, that may be overcome by clear and convincing evidence, that the owner
25 is in compliance with the modified risk reduction standard for the affected property
26 unless there is:

27 (i) Proof of actual fraud as to that affected property; or

28 (ii) Proof that the work performed on the affected property was not
29 performed by or under the supervision of personnel accredited under § 6-1002 of this
30 title.

31 (2) The statement verified by the owner and the tenant of work
32 performed on the affected property in accordance with subsection (f)(1) of this section
33 shall contain a statement:

34 (i) Describing the modified risk reduction standard required under
35 this subtitle;

36 (ii) That execution of this statement by the tenant can affect the
37 tenant's legal rights; and

38 (iii) That if the tenant is not satisfied that the modified risk
39 reduction standard has been met, the tenant should not execute the statement and

1 should inform the owner and that the owner will have the affected property inspected
2 by a certified inspector at the owner's expense.

3 6-843.

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

9 (2) The annual fee for an affected property is \$10.

10 (3) (i) Subject to the provisions of subparagraphs (ii) and (iii) of this
11 paragraph, on or before December 31, 2000, the annual fee for a rental dwelling unit
12 built after 1949 that is not an affected property is \$5. After December 31, 2000, there
13 is no annual fee for a rental dwelling unit built after 1949 that is not an affected
14 property.

15 (ii) The owner of a rental dwelling unit built after 1949 that is not
16 an affected property may not be required to pay the fee provided under this
17 paragraph if the owner certifies to the Department that the rental dwelling unit is
18 lead free pursuant to § 6-804 of this subtitle.

19 (iii) An owner of a rental dwelling unit who submits a report to the
20 Department that the rental dwelling unit is lead free pursuant to § 6-804 of this
21 subtitle shall include a \$5 processing fee with the report.

22 (b) The fees imposed under this section do not apply to any rental dwelling
23 unit:

24 (1) Built after 1978; or

25 (2) Owned and operated by a unit of federal, State, or local government,
26 or any public, quasi-public, or municipal corporation.

27 (c) The fee imposed under this section shall be paid on or before December 31,
28 1995, or the date of registration of the affected property under Part III of this subtitle
29 and on or before December 31 of each year thereafter.

30 (d) An owner who fails to pay the fee imposed under this section is liable for a
31 civil penalty of up to triple the amount of each registration fee unpaid that, together
32 with all costs of collection, including reasonable attorney's fees, shall be collected in a
33 civil action in any court of competent jurisdiction.

34 (E) OF THE FEES GENERATED AND PAID INTO THE LEAD PAINT POISONING
35 PREVENTION FUND UNDER THIS SECTION, AT LEAST \$250,000 PER FISCAL YEAR
36 SHALL BE DEDICATED TO THE COMMUNITY OUTREACH AND EDUCATION PROGRAMS
37 ESTABLISHED UNDER § 6-848 OF THIS SUBTITLE BEGINNING IN FISCAL YEAR 2004.

1 6-848.

2 The Department shall:

3 (1) Develop and establish community outreach programs to high lead
4 risk areas, which may be implemented by the Department, local governments, or
5 community groups; and

6 (2) Assist local governments to provide case management services if
7 necessary to persons at risk with elevated blood lead.

8 6-849.

9 (a) (1) The Department shall impose an administrative penalty on an owner
10 who fails to register an affected property by December 31, 1995 or within the time
11 period specified in § 6-811(a)(2) or § 6-812(b) of this subtitle or fails to renew or
12 update a registration as provided under § 6-812(a) of this subtitle. The
13 administrative penalty imposed shall be UP TO \$10 per day, calculated from the date
14 compliance is required, for each affected property which is not registered or for which
15 registration is not renewed or updated. THE PENALTY SHALL BE ASSESSED WITH
16 CONSIDERATION GIVEN TO:

17 (I) THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO WHICH
18 THE EXISTENCE OF THE VIOLATION WAS KNOWN TO THE VIOLATOR BUT
19 UNCORRECTED BY THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR
20 EXERCISED REASONABLE CARE;

21 (II) THE EXTENT TO WHICH THE VIOLATION RESULTED IN ACTUAL
22 HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH AND SAFETY;

23 (III) THE NATURE AND DEGREE OF INJURY TO OR INTERFERENCE
24 WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

25 (IV) THE EXTENT TO WHICH THE CURRENT VIOLATION IS PART OF A
26 RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION COMMITTED
27 BY THE VIOLATOR; AND

28 (V) THE EXTENT TO WHICH THE VIOLATION CREATES THE
29 POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO HUMAN HEALTH OR SAFETY.

30 (2) [The] UNTIL MARCH 31, 2002, THE Department may waive an
31 administrative penalty under this subsection upon a showing of hardship OR
32 PROVIDED THAT:

33 (I) THE AFFECTED PROPERTY IS REGISTERED, THE REGISTRATION
34 IS RENEWED, OR THE REGISTRATION IS UPDATED ON OR BEFORE MARCH 31, 2002;

35 (II) THE DEPARTMENT HAS NOT INITIATED AN ENFORCEMENT
36 ACTION FOR VIOLATION OF THE REGISTRATION REQUIREMENTS PRIOR TO THE DATE

1 UPON WHICH THE PROPERTY IS REGISTERED OR THE REGISTRATION IS RENEWED OR
2 UPDATED; AND

3 (III) ALL OF THE OWNER'S AFFECTED PROPERTIES ARE IN
4 COMPLIANCE WITH THIS SUBTITLE OR THE OWNER EXECUTES A CONSENT ORDER
5 WITH THE DEPARTMENT AGREEING TO BRING ALL OF THE OWNER'S AFFECTED
6 PROPERTIES INTO COMPLIANCE WITH THIS SUBTITLE UNDER THE TERMS AND
7 CONDITIONS PRESCRIBED BY THE DEPARTMENT.

8 **Chapter 114 of the Acts of 1994, as amended by Chapter 555 of the Acts of**
9 **1996**

10 SECTION 5. AND BE IT FURTHER ENACTED, That[:

11 (a) Of the fees generated and paid into the Lead Poisoning Prevention Fund
12 under § 6-843 of the Environment Article, as enacted by this Act, for fiscal years 1996
13 and 1997 only, 50% of those fees, up to a maximum of \$750,000 per fiscal year, shall
14 be dedicated to the Community Outreach and Education Program established under §
15 6-848 of the Environment Article, as enacted by this Act; and starting in fiscal year
16 1998, at least \$750,000 per fiscal year shall be dedicated to the Community Outreach
17 and Education Program.

18 (b) During fiscal years 1998, 1999, and 2000, in addition to the \$750,000
19 dedicated annually to the Community Outreach and Education Program from the
20 Lead Poisoning Prevention Fund, the Department shall dedicate an aggregate
21 additional amount of fees to the Program from the Fund equal to the difference
22 between \$1,500,000 and the amount of fees dedicated to the Program from the Fund
23 in fiscal years 1996 and 1997. One-third of the aggregate additional amount shall be
24 dedicated to the Program from the Fund in each of fiscal years 1998, 1999, and 2000.

25 (c) The] THE Department of the Environment shall establish priorities for
26 allocation of funding to local governments and to not-for-profit organizations for the
27 Community Outreach and Education Program. Criteria for priorities of not-for-profit
28 organizations shall include prior experience of the organizations in lead poisoning
29 issues, outreach and education, child health issues, and relationships with tenants of
30 low-income housing and with health care providers for childhood lead poisoning.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2001.