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By: **Delegates Carter, Anderson, Branch, V. Clagett, C. Davis, D. Davis, Doory, Goodwin, Hammen, Haynes, Hubbard, Kaiser, Kelley, Kirk, Krysiak, Lee, Marriott, McHale, McIntosh, Murray, Oaks, Paige, Quinter, Rosenberg, Simmons, Smigiel, Taylor, F. Turner, and Vaughn**

Introduced and read first time: February 11, 2005

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Lead-Contaminated Dust Testing and Inspections - Related**  
 3 **Party to the Owner**

4 FOR the purpose of prohibiting a certain owner from employing or engaging a related  
 5 party to the owner to perform certain lead-contaminated dust testing or conduct  
 6 certain inspections; requiring the Department of the Environment to impose an  
 7 administrative penalty, not to exceed a certain amount, on an owner who  
 8 employs or engages a related party to the owner to perform certain  
 9 lead-contaminated dust testing or conduct certain inspections; and generally  
 10 relating to lead-contaminated dust testing and inspections.

11 BY repealing and reenacting, with amendments,  
 12 Article - Environment  
 13 Section 6-818 and 6-849  
 14 Annotated Code of Maryland  
 15 (1996 Replacement Volume and 2004 Supplement)

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

18 **Article - Environment**

19 6-818.

20 (a) (1) Any person performing lead-contaminated dust testing or conducting  
 21 inspections required by this subtitle:

22 [(1)] (I) Shall be accredited by the Department;

23 [(2)] (II) May not be a related party to the owner; and

1            [(3)]    (III)    Shall submit a verified report of the result of the  
2 lead-contaminated dust testing or visual inspection to the Department, the owner,  
3 and the tenant, if any, of the affected property.

4            (2)        AN OWNER MAY NOT EMPLOY OR ENGAGE A RELATED PARTY TO THE  
5 OWNER TO PERFORM LEAD-CONTAMINATED DUST TESTING OR CONDUCT  
6 INSPECTIONS REQUIRED BY THIS SUBTITLE.

7            (b)        A report submitted to the Department under subsection (a) of this section  
8 that certifies compliance for an affected property with the risk reduction standard  
9 shall be conclusive proof that the owner is in compliance with the risk reduction  
10 standard for the affected property during the period for which the certification is  
11 effective, unless there is:

12            (1)        Proof of actual fraud as to that affected property;

13            (2)        Proof that the work performed in the affected property was not  
14 performed by or under the supervision of personnel accredited under § 6-1002 of this  
15 title; or

16            (3)        Proof that the owner failed to respond to a complaint regarding the  
17 affected property as required by § 6-819 of this subtitle.

18 6-849.

19            (a)        (1)        The Department shall impose an administrative penalty on an owner  
20 who fails to register an affected property by December 31, 1995 or within the time  
21 period specified in § 6-811(a)(2) or § 6-812(b) of this subtitle or fails to renew or  
22 update a registration as provided under § 6-812(a) of this subtitle. The  
23 administrative penalty imposed shall be up to \$10 per day, calculated from the date  
24 compliance is required, for each affected property which is not registered or for which  
25 registration is not renewed or updated.

26            (2)        The penalty shall be assessed with consideration given to:

27                    (i)        The willfulness of the violation, the extent to which the  
28 existence of the violation was known to the violator but uncorrected by the violator,  
29 and the extent to which the violator exercised reasonable care;

30                    (ii)       The extent to which the violation resulted in actual harm to the  
31 environment or to human health or safety;

32                    (iii)       The nature and degree of injury to or interference with general  
33 welfare, health, and property;

34                    (iv)       The extent to which the current violation is part of a recurrent  
35 pattern of the same or similar type of violation committed by the violator; and

36                    (v)        The extent to which the violation creates the potential for harm  
37 to the environment or to human health or safety.

1           (3)       On or before March 31, 2002, the Department may waive an  
2 administrative penalty under this subsection upon a showing of hardship or provided  
3 that:

4                   (i)       The affected property is registered, the registration is renewed,  
5 or the registration is updated;

6                   (ii)       The Department has not initiated an enforcement action for  
7 violation of this subtitle before the date upon which the property is registered or the  
8 registration is renewed or updated; and

9                   (iii)       All of the owner's affected properties have been brought into  
10 compliance with this subtitle and 65% of the owner's affected properties have been  
11 certified in compliance with the full risk reduction standards in accordance with §§  
12 6-815 and 6-817(b) of this subtitle.

13       (b)       THE DEPARTMENT SHALL IMPOSE AN ADMINISTRATIVE PENALTY, NOT TO  
14 EXCEED \$5,000, ON A OWNER WHO VIOLATES § 6-818(A)(2) OF THIS SUBTITLE.

15       (C)       An owner who fails to renew or update a registration as required under §  
16 6-812 of this subtitle within 90 days after the date specified shall be deemed to be out  
17 of compliance with the provisions of this subtitle, with respect to each affected  
18 property to which that renewal or update relates, for purposes of § 6-836 of this  
19 subtitle on the 91st day after the date the renewal or update was required.

20       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2005.