
By: **Delegates Carter, Oaks, C. Davis, Gutierrez, McIntosh, and Pugh**

Introduced and read first time: February 10, 2006

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Lead-Based Paint Damages - Reimbursement by Manufacturer - Market**
3 **Share Liability**

4 FOR the purpose of requiring certain manufacturers of certain lead-based paint to
5 reimburse certain persons for certain damages caused by lead-based paint;
6 establishing the types of damages for which certain manufacturers of
7 lead-based paint are required to pay reimbursement; providing that certain
8 manufacturers of lead-based paint may be held liable under any legally
9 recognized theory of liability including a market share theory of liability;
10 providing that failure to join a certain manufacturer in a certain action does not
11 constitute failure to join a required party for any purpose; providing that a
12 person is not required to demonstrate that a manufacturer manufactured the
13 lead-based paint that caused the damage for a court to hold the manufacturer
14 liable; requiring the person to prove certain elements in order to recover
15 damages under a market share theory of liability; providing that the damages
16 paid by a certain manufacturer who is found to be liable shall equal the
17 manufacturer's share of the market at a certain time; defining certain terms;
18 and generally relating to the liability of paint manufacturers for damage caused
19 by lead-based paint.

20 BY adding to

21 Article - Courts and Judicial Proceedings
22 Section 3-1701 through 3-1703, inclusive, to be under the new subtitle "Subtitle
23 17. Reimbursement by Manufacturers of Lead-Based Paint for Damages
24 Caused by Lead-Based Paint"
25 Annotated Code of Maryland
26 (2002 Replacement Volume and 2005 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 SUBTITLE 17. REIMBURSEMENT BY MANUFACTURERS OF LEAD-BASED PAINT FOR
3 DAMAGES CAUSED BY LEAD-BASED PAINT.

4 3-1701.

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) "ABATEMENT" MEANS A SET OF MEASURES DESIGNED TO ELIMINATE OR
8 REDUCE LEAD-BASED PAINT HAZARDS IN RESIDENTIAL, PUBLIC, OR COMMERCIAL
9 BUILDINGS IN ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT
10 OF THE ENVIRONMENT THAT MAY INCLUDE:

11 (1) THE REMOVAL OF LEAD-BASED PAINT AND LEAD-CONTAMINATED
12 DUST, THE CONTAINMENT OR ENCAPSULATION OF LEAD-BASED PAINT, THE
13 REPLACEMENT OR DEMOLITION OF LEAD-BASED PAINTED SURFACES OR FIXTURES,
14 AND THE REMOVAL OR COVERING OF LEAD-CONTAMINATED SOIL; AND

15 (2) ALL PREPARATION, CLEANUP, DISPOSAL, AND POSTABATEMENT
16 CLEARANCE TESTING ACTIVITIES ASSOCIATED WITH THESE MEASURES.

17 (C) "LEAD-BASED PAINT" MEANS LEAD-BASED PAINT AS DEFINED BY THE
18 DEPARTMENT OF THE ENVIRONMENT.

19 (D) (1) "MANUFACTURER OF LEAD-BASED PAINT" MEANS A PERSON WHO
20 MANUFACTURED LEAD-BASED PAINT FOR SALE AND USE AS PAINT IN RESIDENTIAL,
21 PUBLIC, OR COMMERCIAL BUILDINGS.

22 (2) "MANUFACTURER OF LEAD-BASED PAINT" INCLUDES A PERSON WHO
23 FORMERLY MANUFACTURED LEAD-BASED PAINT FOR SALE AND USE AS PAINT IN
24 RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDINGS.

25 (3) "MANUFACTURER OF LEAD-BASED PAINT" DOES NOT INCLUDE:

26 (I) A PERSON WHO ONLY SOLD LEAD-BASED PAINT AT RETAIL OR
27 WHOLESALE; OR

28 (II) A PERSON WHO APPLIED LEAD-BASED PAINT IN A
29 RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.

30 (E) "MARKET" MEANS THE MARKET FOR LEAD-BASED PAINT IN THE STATE
31 ONLY.

32 (F) "SHARE OF THE MARKET" MEANS THE PERCENTAGE OF SALES OF
33 LEAD-BASED PAINT IN THE MARKET AT A GIVEN TIME ATTRIBUTABLE TO A
34 MANUFACTURER OF LEAD-BASED PAINT.

1 3-1702.

2 (A) A MANUFACTURER OF LEAD-BASED PAINT SHALL REIMBURSE A PERSON
3 FOR DAMAGES RESULTING FROM THE PRESENCE OF A LEAD-BASED PAINT IN A
4 RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.

5 (B) FOR PURPOSES OF THIS SUBTITLE, DAMAGES INCLUDE:

6 (1) PERSONAL INJURY DAMAGES SUSTAINED BY AN INDIVIDUAL THAT
7 WERE CAUSED BY LEAD-BASED PAINT;

8 (2) DAMAGES SUSTAINED BY THE OWNER OF A RESIDENTIAL, PUBLIC,
9 OR COMMERCIAL BUILDING REQUIRED TO COMPLY WITH:

10 (I) THE REQUIREMENTS OF TITLE 6, SUBTITLE 8 OF THE
11 ENVIRONMENT ARTICLE;

12 (II) AN ABATEMENT ORDER ISSUED BY AN AGENCY OF THE STATE
13 OR A LOCAL GOVERNMENT; OR

14 (III) A REQUIREMENT TO REPAIR LEAD-BASED PAINT DEFECTS
15 UNDER § 8-211 OR § 8-211.1 OF THE REAL PROPERTY ARTICLE; AND

16 (3) EXPENSES INCURRED BY THE VOLUNTARY ACTIONS OF AN OWNER
17 OF A RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING TO ABATE LEAD-BASED
18 PAINT.

19 (C) (1) A MANUFACTURER OF LEAD-BASED PAINT MAY BE HELD LIABLE
20 UNDER ANY LEGALLY RECOGNIZED THEORY OF LIABILITY, INCLUDING A MARKET
21 SHARE THEORY OF LIABILITY AS PROVIDED UNDER § 3-1703 OF THIS SUBTITLE:

22 (I) BY AN ACTION FOR DAMAGES; AND

23 (II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, BY ANY OF
24 THE THIRD PARTY OR CLASS ACTION PLEADING PRACTICES AUTHORIZED UNDER
25 THE MARYLAND RULES.

26 (2) FAILURE TO JOIN A MANUFACTURER OF LEAD-BASED PAINT IN AN
27 ACTION INVOLVING DAMAGES CAUSED BY LEAD-BASED PAINT DOES NOT
28 CONSTITUTE FAILURE TO JOIN A REQUIRED PARTY FOR ANY PURPOSE.

29 3-1703.

30 (A) IN AN ACTION UNDER THIS SUBTITLE, A PERSON IS NOT REQUIRED TO
31 DEMONSTRATE THAT AN INDIVIDUAL MANUFACTURER OF LEAD-BASED PAINT
32 MANUFACTURED THE LEAD-BASED PAINT THAT CAUSED THE DAMAGE IN ORDER
33 FOR A COURT TO HOLD THE MANUFACTURER OF LEAD-BASED PAINT LIABLE FOR
34 THE DAMAGES.

35 (B) IN ORDER TO RECOVER DAMAGES UNDER SUBSECTION (A) OF THIS
36 SECTION, A LITIGANT SHALL HAVE THE BURDEN OF PROVING THAT:

1 (1) LEAD-BASED PAINT CAUSED THE DAMAGES ALLEGED;

2 (2) THE MANUFACTURER OF LEAD-BASED PAINT MANUFACTURED
3 LEAD-BASED PAINT AND SOLD LEAD-BASED PAINT IN THE MARKET AT THE TIME
4 THE LEAD-BASED PAINT WAS APPLIED TO THE RESIDENTIAL, PUBLIC, OR
5 COMMERCIAL BUILDING; AND

6 (3) THE MANUFACTURER OF LEAD-BASED PAINT BREACHED A LEGALLY
7 RECOGNIZED DUTY IN MARKETING THE LEAD-BASED PAINT.

8 (C) IF THE MANUFACTURER OF LEAD-BASED PAINT IS FOUND TO BE LIABLE
9 FOR DAMAGES UNDER SUBSECTION (B) OF THIS SECTION, THE MANUFACTURER'S
10 LIABILITY SHALL BE THE PERCENTAGE OF THE TOTAL DAMAGES THAT EQUALS THE
11 MANUFACTURER'S SHARE OF THE MARKET AT THE TIME THE MANUFACTURER
12 MANUFACTURED LEAD-BASED PAINT AND SOLD LEAD-BASED PAINT IN THE
13 MARKET.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2006.