

HOUSE BILL 746

D3
HB 1394/06 – JUD

71r2117

By: **Delegates Carter, Anderson, and Rosenberg**
Introduced and read first time: February 8, 2007
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 to be under the new subtitle “Subtitle 17.
23 Reimbursement by Manufacturers of Lead-Based Paint for Damages
24 Caused by Lead-Based Paint”
25 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume)

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

4 **Article – Courts and Judicial Proceedings**

5 **SUBTITLE 17. REIMBURSEMENT BY MANUFACTURERS OF LEAD-BASED PAINT**
6 **FOR DAMAGES CAUSED BY LEAD-BASED PAINT.**

7 **3-1701.**

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

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

14 (1) THE REMOVAL OF LEAD-BASED PAINT AND
15 LEAD-CONTAMINATED DUST, THE CONTAINMENT OR ENCAPSULATION OF
16 LEAD-BASED PAINT, THE REPLACEMENT OR DEMOLITION OF LEAD-BASED
17 PAINTED SURFACES OR FIXTURES, AND THE REMOVAL OR COVERING OF
18 LEAD-CONTAMINATED SOIL; AND

19 (2) ALL PREPARATION, CLEANUP, DISPOSAL, AND
20 POSTABATEMENT CLEARANCE TESTING ACTIVITIES ASSOCIATED WITH THESE
21 MEASURES.

22 (C) “LEAD-BASED PAINT” MEANS LEAD-BASED PAINT AS DEFINED BY
23 THE DEPARTMENT OF THE ENVIRONMENT.

24 (D) (1) “MANUFACTURER OF LEAD-BASED PAINT” MEANS A PERSON
25 WHO MANUFACTURED LEAD-BASED PAINT FOR SALE AND USE AS PAINT IN
26 RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDINGS.

27 (2) “MANUFACTURER OF LEAD-BASED PAINT” INCLUDES A
28 PERSON WHO FORMERLY MANUFACTURED LEAD-BASED PAINT FOR SALE AND
29 USE AS PAINT IN RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDINGS.

1 **(3) “MANUFACTURER OF LEAD-BASED PAINT” DOES NOT**
2 **INCLUDE:**

3 **(I) A PERSON WHO ONLY SOLD LEAD-BASED PAINT AT**
4 **RETAIL OR WHOLESALE; OR**

5 **(II) A PERSON WHO APPLIED LEAD-BASED PAINT IN A**
6 **RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.**

7 **(E) “MARKET” MEANS THE MARKET FOR LEAD-BASED PAINT IN THE**
8 **STATE ONLY.**

9 **(F) “SHARE OF THE MARKET” MEANS THE PERCENTAGE OF SALES OF**
10 **LEAD-BASED PAINT IN THE MARKET AT A GIVEN TIME ATTRIBUTABLE TO A**
11 **MANUFACTURER OF LEAD-BASED PAINT.**

12 **3-1702.**

13 **(A) A MANUFACTURER OF LEAD-BASED PAINT SHALL REIMBURSE A**
14 **PERSON FOR DAMAGES RESULTING FROM THE PRESENCE OF A LEAD-BASED**
15 **PAINT IN A RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING.**

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

17 **(1) PERSONAL INJURY DAMAGES SUSTAINED BY AN INDIVIDUAL**
18 **THAT WERE CAUSED BY LEAD-BASED PAINT;**

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

21 **(I) THE REQUIREMENTS OF TITLE 6, SUBTITLE 8 OF THE**
22 **ENVIRONMENT ARTICLE;**

23 **(II) AN ABATEMENT ORDER ISSUED BY AN AGENCY OF THE**
24 **STATE OR A LOCAL GOVERNMENT; OR**

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

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

4 **(c) (1) A MANUFACTURER OF LEAD-BASED PAINT MAY BE HELD**
5 **LIABLE UNDER ANY LEGALLY RECOGNIZED THEORY OF LIABILITY, INCLUDING A**
6 **MARKET SHARE THEORY OF LIABILITY AS PROVIDED UNDER § 3-1703 OF THIS**
7 **SUBTITLE:**

8 **(i) BY AN ACTION FOR DAMAGES; AND**

9 **(ii) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, BY**
10 **ANY OF THE THIRD PARTY OR CLASS ACTION PLEADING PRACTICES**
11 **AUTHORIZED UNDER THE MARYLAND RULES.**

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

15 **3-1703.**

16 **(A) IN AN ACTION UNDER THIS SUBTITLE, A PERSON IS NOT REQUIRED**
17 **TO DEMONSTRATE THAT AN INDIVIDUAL MANUFACTURER OF LEAD-BASED**
18 **PAINT MANUFACTURED THE LEAD-BASED PAINT THAT CAUSED THE DAMAGE IN**
19 **ORDER FOR A COURT TO HOLD THE MANUFACTURER OF LEAD-BASED PAINT**
20 **LIABLE FOR THE DAMAGES.**

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

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

24 **(2) THE MANUFACTURER OF LEAD-BASED PAINT**
25 **MANUFACTURED LEAD-BASED PAINT AND SOLD LEAD-BASED PAINT IN THE**
26 **MARKET AT THE TIME THE LEAD-BASED PAINT WAS APPLIED TO THE**
27 **RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING; AND**

1 **(3) THE MANUFACTURER OF LEAD-BASED PAINT BREACHED A**
2 **LEGALLY RECOGNIZED DUTY IN MARKETING THE LEAD-BASED PAINT.**

3 **(C) IF THE MANUFACTURER OF LEAD-BASED PAINT IS FOUND TO BE**
4 **LIABLE FOR DAMAGES UNDER SUBSECTION (B) OF THIS SECTION, THE**
5 **MANUFACTURER'S LIABILITY SHALL BE THE PERCENTAGE OF THE TOTAL**
6 **DAMAGES THAT EQUALS THE MANUFACTURER'S SHARE OF THE MARKET AT THE**
7 **TIME THE MANUFACTURER MANUFACTURED LEAD-BASED PAINT AND SOLD**
8 **LEAD-BASED PAINT IN THE MARKET.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2007.