

# HOUSE BILL 1214

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By: ~~Delegate Hubbard~~ Delegates Hubbard, Hammen, Costa, Elliott, Kach, Kipke, McDonough, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Pendergrass, Riley, Tarrant, V. Turner, and Weldon

Introduced and read first time: February 21, 2007

Assigned to: Rules and Executive Nominations

Re-referred to: Health and Government Operations, March 5, 2007

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 28, 2007

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **~~Children's Health~~ – Lead-Containing Products – Prohibition**

3 FOR the purpose of prohibiting the manufacture, sale, ~~or possession~~ offer for sale,  
4 importation, or distribution of certain lead-containing children's products or  
5 lead-adulterated consumable products ~~intended for use or consumption by~~  
6 ~~children; requiring certain authorized agents of the Department of Health and~~  
7 ~~Mental Hygiene or a local health officer to take certain actions against certain~~  
8 ~~persons if the agent or local health officer has probable cause to believe that the~~  
9 ~~person is manufacturing, selling, or in possession of certain lead-containing~~  
10 ~~products; requiring a certain local health officer to report certain actions to the~~  
11 ~~Department; authorizing certain authorized agents and local health officers to~~  
12 ~~remove certain products to a place of safekeeping under certain circumstances;~~  
13 ~~requiring the Department to commence certain condemnation proceedings~~  
14 ~~against certain persons in a certain court; providing that certain provisions of~~  
15 this Act do not apply to certain electronic devices; authorizing an agent of the  
16 Department of Health and Mental Hygiene to enter certain factories,  
17 warehouses, and establishments to inspect certain products at any reasonable

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



time; requiring an agent of the Department to present certain credentials to certain persons under certain circumstances; authorizing an agent of the Department to obtain a sample of any product, package, or labeling during an inspection; requiring an agent of the Department to take certain actions when obtaining a certain sample; requiring the Department to test a certain sample of a product under certain circumstances; requiring the Secretary of Health and Mental Hygiene to make certain declarations if a product is a lead-containing product or a lead-adulterated consumable product; requiring the Department to issue and give certain notices under certain circumstances; requiring a certain person to send certain information to the Department under certain circumstances; requiring a certain person to submit a certain report to the Department under certain circumstances; providing that certain provisions of this Act do not affect the enforcement of certain local laws; requiring the Department to convene a certain workgroup; requiring the workgroup to make a certain report to certain committees of the General Assembly on or before a certain date; establishing certain penalties; defining certain terms; and generally relating to prohibiting lead-containing products ~~intended for use or consumption by children.~~

BY adding to

Article – Health – General

Section 22-601 through ~~22-605~~ 22-608 to be under the new subtitle “Subtitle 6. Lead-Containing Products”

Annotated Code of Maryland

(2005 Replacement Volume and 2006 Supplement)

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

### Article – Health – General

#### SUBTITLE 6. LEAD-CONTAINING PRODUCTS.

#### **22-601.**

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

(B) “CHILD” MEANS AN INDIVIDUAL WHO IS UNDER THE AGE OF 7 YEARS.

(C) “CHILDREN’S PRODUCT” MEANS:

1           **(1) A PRODUCT THAT IS MARKETING FOR USE BY A CHILD; OR**

2           **(2) A PRODUCT THE USE OF WHICH BY A CHILD IS FORESEEABLE.**

3           ~~(B)~~ **(D)**       **“HOMEOPATHIC REMEDY” MEANS A SUBSTANCE OR**  
4 **COMPOUND USED BY AN INDIVIDUAL TO TREAT A DISEASE, AILMENT, OR**  
5 **CONDITION.**

6           **(E) “LEAD-ADULTERATED CONSUMABLE PRODUCT” MEANS ANY**  
7 **CONSUMABLE PRODUCT OR ITEM OR CONSUMABLE HOMEOPATHIC REMEDY**  
8 **THAT CONTAINS LEAD IN AN AMOUNT:**

9           **(1) IN EXCESS OF 0.1 PPM; OR**

10          **(2) SET BY THE SECRETARY IN REGULATION.**

11          ~~(C)~~ **(F)**       **“LEAD-CONTAINING PRODUCT” MEANS A PRODUCT OR**  
12 **COMPONENT OF A PRODUCT CONTAINING OR COATED WITH LEAD IN A**  
13 **CONCENTRATION THAT IS MORE:**

14           **(1) MORE THAN ~~0.6%~~ 0.06% OF THE PRODUCT’S TOTAL WEIGHT;**  
15 **OR**

16          **(2) THE AMOUNT SET BY THE SECRETARY IN REGULATION.**

17          ~~(D)~~ **(G)**       **“PRODUCT” INCLUDES:**

18           ~~(I)~~ **(1)**       **ACCESSORIES AND JEWELRY;**

19           ~~(II)~~ **(2)**       **CLOTHING;**

20           ~~(III)~~ **(3)**       **CONSUMABLE PRODUCTS OR ITEMS, INCLUDING:**

21                   ~~1.~~ **(I)**       **WATER AND OTHER BEVERAGES;**

22                   ~~2.~~ **(II)**       **CONDIMENTS;**

23                   ~~3.~~ **(III)**       **CANDY AND CONFECTIONARY ITEMS;**

24                   ~~4.~~ **(IV)**       **FOOD; ~~AND~~**

~~5.~~ (V) HERBS AND SPICES;

(VI) DIETARY SUPPLEMENTS; AND

(VII) WRAPPERS;

~~(IV)~~ (4) DECORATIVE OBJECTS;

~~(V)~~ ~~DIETARY SUPPLEMENTS;~~

~~(VI)~~ (5) FURNITURE;

~~(VII)~~ (6) HOMEOPATHIC REMEDIES; AND

~~(VIII)~~ (7) TOYS.

(H) (1) “WRAPPER” MEANS ANY PACKAGING MATERIAL THAT IS IN CONTACT WITH A CONSUMABLE PRODUCT.

(2) “WRAPPER” INCLUDES:

(I) PAPER;

(II) CELLOPHANE;

(III) A PLASTIC CONTAINER;

(IV) A STICK HANDLE;

(V) A SPOON;

(VI) A SQUEEZE TUBE; AND

(VII) ANY OTHER SIMILAR MATERIAL.

**22-602.**

THIS SUBTITLE DOES NOT APPLY TO AN ELECTRONIC DEVICE THAT IS A LEAD-CONTAINING PRODUCT UNLESS THE SECRETARY DETERMINES THAT DURING THE NORMAL USE OF THE ELECTRONIC DEVICE THERE IS A

SIGNIFICANT RISK THAT A CHILD COULD BE EXPOSED TO THE LEAD CONTAINED  
IN THE ELECTRONIC DEVICE.

**22-603.**

**A PERSON MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, ~~POSSESS, OR  
TRANSFER POSSESSION OF A~~ IMPORT, OR DISTRIBUTE:**

**(1) A CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING  
PRODUCT; OR**

**(2) A LEAD-ADULTERATED CONSUMABLE PRODUCT ~~INTENDED  
FOR USE OR CONSUMPTION BY CHILDREN.~~**

**~~22-603.~~**

**~~(A) (1) IF AN AUTHORIZED AGENT OF THE DEPARTMENT OR A LOCAL  
HEALTH OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT A PERSON IS  
MANUFACTURING, SELLING, OFFERING FOR SALE, OR IN POSSESSION OF A  
LEAD-CONTAINING PRODUCT IN VIOLATION OF THIS SUBTITLE, THE  
AUTHORIZED AGENT OR LOCAL HEALTH OFFICER SHALL:~~**

**~~(I) AFFIX A LABEL, TAG, OR OTHER MARKER TO THE  
PRODUCT; AND~~**

**~~(II) GIVE NOTICE TO THE MANUFACTURER, SELLER, OR  
POSSESSOR OF THE PRODUCT THAT:~~**

**~~1. THE PRODUCT IS SUSPECTED OF BEING A  
LEAD-CONTAINING PRODUCT IN VIOLATION OF THIS SUBTITLE; AND~~**

**~~2. THE PRODUCT MAY NOT REMOVED, SOLD, OR  
TRANSFERRED FROM THE ESTABLISHMENT WITHOUT THE AUTHORIZATION OF  
THE DEPARTMENT OR COURT.~~**

**~~(2) IF A LOCAL HEALTH OFFICER TAKES ACTION UNDER  
PARAGRAPH (1) OF THIS SUBSECTION, THE LOCAL HEALTH OFFICER SHALL  
NOTIFY THE DEPARTMENT WITHIN 48 HOURS OF TAKING THE ACTION.~~**

~~(B) IF AN AUTHORIZED AGENT OR A LOCAL HEALTH OFFICER FINDS OR HAS REASONABLE CAUSE TO BELIEVE THAT A MANUFACTURER, SELLER, OR POSSESSOR THAT HAS RECEIVED NOTICE UNDER SUBSECTION (A) OF THIS SECTION HAS ATTEMPTED TO REMOVE, SELL, OR TRANSFER A SUSPECTED LEAD-CONTAINING PRODUCT, THE AGENT OR LOCAL HEALTH OFFICER MAY REMOVE THE PRODUCT FROM THE PERSON TO A PLACE OF SAFEKEEPING.~~

~~22-604.~~

~~THE DEPARTMENT SHALL COMMENCE CONDEMNATION PROCEEDINGS AGAINST THE MANUFACTURER, SELLER, OR POSSESSOR THAT IS IN VIOLATION OF THE PROVISIONS OF THIS SUBTITLE IN THE CIRCUIT COURT OF THE COUNTY IN WHICH THE SUSPECTED LEAD-CONTAINING PRODUCT IS FOUND.~~

~~22-605.~~

22-604.

(A) AT ANY REASONABLE TIME, AN AGENT OF THE DEPARTMENT MAY ENTER A FACTORY, WAREHOUSE, OR ESTABLISHMENT IN WHICH A PRODUCT IS MANUFACTURED, PROCESSED, PACKAGED, STORED, SOLD, OR OFFERED FOR SALE TO INSPECT ANY FINISHED OR UNFINISHED PRODUCT.

(B) WHEN CONDUCTING AN INSPECTION UNDER THIS SECTION, AN AGENT OF THE DEPARTMENT IMMEDIATELY SHALL PRESENT APPROPRIATE CREDENTIALS TO THE OWNER, OPERATOR, OR AGENT IN CHARGE OF THE FACTORY, WAREHOUSE, OR ESTABLISHMENT.

(C) (1) DURING AN INSPECTION CONDUCTED UNDER THIS SECTION, AN AGENT OF THE DEPARTMENT MAY OBTAIN A SAMPLE OF ANY PRODUCT, PACKAGE, OR LABELING.

(2) AN AGENT OF THE DEPARTMENT WHO OBTAINS A SAMPLE SHALL:

(I) PAY OR OFFER TO PAY FOR THE SAMPLE; AND

(II) GIVE TO THE OWNER, OPERATOR, OR AGENT IN CHARGE OF THE FACTORY, WAREHOUSE, OR ESTABLISHMENT A RECEIPT THAT DESCRIBES THE SAMPLE.

1        (D) THE DEPARTMENT SHALL TEST A SAMPLE OF A PRODUCT  
2 OBTAINED BY AN AGENT TO DETERMINE WHETHER THE PRODUCT IS A  
3 LEAD-CONTAINING PRODUCT OR A LEAD-ADULTERATED CONSUMABLE  
4 PRODUCT.

5        (E) IF THE PRODUCT IS A LEAD-CONTAINING PRODUCT OR A  
6 LEAD-ADULTERATED CONSUMABLE PRODUCT, THE SECRETARY SHALL:

7            (1) DECLARE THE PRODUCT HAZARDOUS AND REQUIRE THE  
8 REMOVAL OF THE PRODUCT FROM THE STREAM OF COMMERCE; AND

9            (2) DECLARE ALL PRODUCTS OF THE SAME STYLE PRODUCED BY  
10 THE SAME MANUFACTURER TO BE HAZARDOUS AND REQUIRE THE REMOVAL OF  
11 THE PRODUCTS FROM THE STREAM OF COMMERCE.

12 22-605.

13        (A) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS VIOLATED  
14 § 22-603 OF THIS SUBTITLE, THE DEPARTMENT SHALL:

15            (1) ISSUE A HEALTH ADVISORY NOTICE TO LOCAL HEALTH  
16 OFFICERS; AND

17            (2) GIVE WRITTEN NOTICE TO THE PERSON DETERMINED TO  
18 HAVE VIOLATED § 22-603 OF THIS SUBTITLE THAT IDENTIFIES THE CHILDREN'S  
19 PRODUCT THAT IS A LEAD-CONTAINING PRODUCT OR THE LEAD-ADULTERATED  
20 CONSUMABLE PRODUCT AND THE ASSOCIATED HEALTH HAZARD.

21        (B) WITHIN 15 DAYS AFTER RECEIVING THE WRITTEN NOTICE  
22 REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION, THE PERSON SHALL  
23 SEND TO THE DEPARTMENT THE FOLLOWING INFORMATION:

24            (1) A LIST OF ALL PRODUCTS OF THE SAME STYLE PRODUCED BY  
25 THE SAME MANUFACTURER AS THE SAMPLE OBTAINED BY THE AGENT OF THE  
26 DEPARTMENT UNDER § 22-604 OF THIS SUBTITLE;

27            (2) THE NAME OF THE MANUFACTURER OR SELLER FROM WHOM  
28 THE PERSON OBTAINED THE CHILDREN'S PRODUCT THAT IS A

1 LEAD-CONTAINING PRODUCT OR THE LEAD-ADULTERATED CONSUMABLE  
2 PRODUCT; AND

3 (3) THE NAME OF EACH PERSON TO WHOM THE PERSON  
4 TRANSFERRED THE CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING  
5 PRODUCT OR THE LEAD-ADULTERATED CONSUMABLE PRODUCT OF THE SAME  
6 STYLE PRODUCED BY THE SAME MANUFACTURER.

7 22-606.

8 WITHIN 24 HOURS AFTER A PERSON DETERMINES THAT THE PERSON HAS  
9 MANUFACTURED, SOLD, OFFERED FOR SALE, IMPORTED, OR DISTRIBUTED A  
10 PRODUCT IN VIOLATION OF § 22-603 OF THIS SUBTITLE, THE PERSON SHALL  
11 SUBMIT A REPORT TO THE DEPARTMENT IN A FORM REQUIRED BY THE  
12 DEPARTMENT.

13 22-607.

14 (A) (1) A PERSON WHO VIOLATES THIS SUBTITLE IS SUBJECT TO A  
15 CIVIL PENALTY NOT EXCEEDING \$1,000 PER DAY FOR EACH VIOLATION.

16 (2) THE CIVIL PENALTY UNDER PARAGRAPH (1) OF THIS  
17 SUBSECTION MAY BE ASSESSED AND RECOVERED IN ANY COURT OF COMPETENT  
18 JURISDICTION.

19 (B) A PERSON WHO WILLFULLY VIOLATES ANY PROVISION OF THIS  
20 SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A  
21 FINE NOT EXCEEDING \$1,000 FOR EACH VIOLATION OR IMPRISONMENT NOT  
22 EXCEEDING 1 YEAR OR BOTH.

23 22-608.

24 THE PROVISIONS OF THIS SUBTITLE DO NOT AFFECT THE AUTHORITY OF  
25 A LOCAL AGENCY TO ENFORCE A LOCAL LAW GOVERNING THE AMOUNT OF LEAD  
26 CONTAINED IN A PRODUCT IF THE LOCAL LAW IS AT LEAST AS RESTRICTIVE AS  
27 THE PROVISIONS OF THIS SUBTITLE.

28 SECTION 2. AND BE IT FURTHER ENACTED, That:



1       (a)    The Department of Health and Mental Hygiene shall convene a  
2 workgroup consisting of the Maryland Department of the Environment, the Maryland  
3 Retailers Association, advocates, and other interested stakeholders to examine the  
4 issue of labeling lead-containing products.

5       (b)    The workgroup shall determine appropriate requirements for labeling  
6 lead-containing products including the size and placement of the label, the entity that  
7 should be responsible for labeling the product, and whether any lead-containing  
8 products should be exempted from the labeling requirement.

9       (c)    On or before December 1, 2007, the workgroup shall report its findings  
10 and recommendations, including legislative recommendations, in accordance with  
11 § 2-1246 of the State Government Article, to the House Health and Government  
12 Operations Committee and the Senate Finance Committee.

13       SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
14 effect October 1, 2007.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.