

# SENATE BILL 97

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EMERGENCY BILL

8lr1125  
CF HB 62

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By: **Senators Pugh, Conway, Della, Exum, Gladden, Jones, Kelley, Lenett, Madaleno, McFadden, Raskin, and Stone**

Introduced and read first time: January 16, 2008

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Lead-Containing Products - Prohibition**

3 FOR the purpose of prohibiting the manufacture, sale, offer for sale, importation, or  
4 distribution of certain lead-containing children's products or lead-adulterated  
5 consumable products; providing that certain provisions of this Act do not apply  
6 to certain electronic devices; authorizing an agent of the Department of Health  
7 and Mental Hygiene to enter certain factories, warehouses, and establishments  
8 to inspect certain products at any reasonable time; requiring an agent of the  
9 Department to present certain credentials to certain persons under certain  
10 circumstances; authorizing an agent of the Department to obtain a sample of  
11 any product, package, or labeling during an inspection; requiring an agent of  
12 the Department to take certain actions when obtaining a certain sample;  
13 requiring the Department to test a certain sample of a product under certain  
14 circumstances; requiring the Secretary of Health and Mental Hygiene to make  
15 certain declarations if a product is a lead-containing product or a  
16 lead-adulterated consumable product; requiring the Department to issue and  
17 give certain notices under certain circumstances; requiring a certain person to  
18 send certain information to the Department under certain circumstances;  
19 requiring a certain person to submit a certain report to the Department under  
20 certain circumstances; providing that certain provisions of this Act do not affect  
21 the enforcement of certain local laws; establishing certain penalties; defining  
22 certain terms; authorizing the Secretary of Health and Mental Hygiene to adopt  
23 certain regulations; making this Act an emergency measure; and generally  
24 relating to prohibiting lead-containing products.

25 BY adding to

26 Article - Health - General

27 Section 22-601 through 22-609 to be under the new subtitle "Subtitle 6.

28 Lead-Containing Products"

29 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2007 Supplement)

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

4 **Article - Health - General**

5 **SUBTITLE 6. LEAD-CONTAINING PRODUCTS.**

6 **22-601.**

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

9 (B) "CHILD" MEANS AN INDIVIDUAL WHO IS UNDER THE AGE OF 7  
10 YEARS.

11 (C) "CHILDREN'S PRODUCT" MEANS:

12 (1) A PRODUCT THAT IS MARKETED FOR USE BY A CHILD; OR

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

14 (D) "CONSUMABLE PRODUCT" INCLUDES:

15 (1) CANDY AND CONFECTIONARY ITEMS THAT ARE LIKELY TO BE  
16 CONSUMED BY A CHILD; AND

17 (2) DIETARY SUPPLEMENTS.

18 (E) "HOMEOPATHIC REMEDY" MEANS A SUBSTANCE OR COMPOUND  
19 USED BY AN INDIVIDUAL TO TREAT A DISEASE, AILMENT, OR CONDITION.

20 (F) "LEAD-ADULTERATED CONSUMABLE PRODUCT" MEANS ANY  
21 CONSUMABLE PRODUCT OR ITEM OR CONSUMABLE HOMEOPATHIC REMEDY  
22 THAT CONTAINS LEAD IN AN AMOUNT:

23 (1) IN EXCESS OF 0.1 PPM; OR

24 (2) SET BY THE SECRETARY IN REGULATION.

25 (G) "LEAD-CONTAINING PRODUCT" MEANS A PRODUCT IN WHICH ANY  
26 PART, COMPONENT, OR COATING OF THE PRODUCT CONTAINS LEAD OR LEAD  
27 COMPOUNDS:

1           (1)   **GREATER THAN 0.02% BY WEIGHT OF THE TOTAL WEIGHT OF**  
2 **THE PART, COMPONENT, OR COATING; OR**

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

4       **(H) “PRODUCT” INCLUDES:**

5           (1)   **ACCESSORIES AND JEWELRY;**

6           (2)   **CLOTHING;**

7           (3)   **DECORATIVE OBJECTS;**

8           (4)   **FURNITURE;**

9           (5)   **HOMEOPATHIC REMEDIES;**

10          (6)   **TOYS; AND**

11          (7)   **WRAPPERS.**

12       **(I) “WRAPPER” MEANS ANY PACKAGING MATERIAL THAT IS IN**  
13 **CONTACT WITH FOOD, INCLUDING:**

14          (1)   **PAPER;**

15          (2)   **CELLOPHANE;**

16          (3)   **A PLASTIC CONTAINER;**

17          (4)   **A STICK HANDLE;**

18          (5)   **A SPOON;**

19          (6)   **A POT;**

20          (7)   **A SQUEEZE TUBE; AND**

21          (8)   **ANY OTHER SIMILAR DEVICE.**

22   **22-602.**

23       **THIS SUBTITLE DOES NOT APPLY TO:**

1           (1) AN ELECTRONIC DEVICE THAT IS A LEAD-CONTAINING  
2 PRODUCT UNLESS THE SECRETARY DETERMINES THAT DURING THE NORMAL  
3 USE OF THE ELECTRONIC DEVICE THERE IS A SIGNIFICANT RISK THAT A CHILD  
4 COULD BE EXPOSED TO THE LEAD CONTAINED IN THE ELECTRONIC DEVICE;  
5 AND

6           (2) ANY FACTORY, WAREHOUSE, OR ESTABLISHMENT AT A  
7 MARINE TERMINAL.

8 **22-603.**

9           A PERSON MAY NOT MANUFACTURE, SELL, OFFER FOR SALE, IMPORT, OR  
10 DISTRIBUTE:

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

13           (2) A LEAD-ADULTERATED CONSUMABLE PRODUCT.

14 **22-604.**

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

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

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

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

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

29           (II) GIVE TO THE OWNER, OPERATOR, OR AGENT IN CHARGE  
30 OF THE FACTORY, WAREHOUSE, OR ESTABLISHMENT A RECEIPT THAT  
31 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 PRODUCT 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  
29 LEAD-CONTAINING PRODUCT OR THE LEAD-ADULTERATED CONSUMABLE  
30 PRODUCT; AND

31                   (3) THE NAME OF EACH PERSON TO WHOM THE PERSON  
32 TRANSFERRED THE CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING

1 PRODUCT OR THE LEAD-ADULTERATED CONSUMABLE PRODUCT OF THE SAME  
2 STYLE PRODUCED BY THE SAME MANUFACTURER.

3 **22-606.**

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

9 **22-607.**

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

12 (2) THE CIVIL PENALTY UNDER PARAGRAPH (1) OF THIS  
13 SUBSECTION MAY BE ASSESSED AND RECOVERED IN ANY COURT OF COMPETENT  
14 JURISDICTION.

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

19 **22-608.**

20 (A) THE SECRETARY MAY ADOPT REGULATIONS THAT SET THE AMOUNT  
21 OF LEAD THAT MAY BE CONTAINED IN A LEAD-CONTAINING PRODUCT AND A  
22 LEAD-ADULTERATED CONSUMABLE PRODUCT.

23 (B) ANY REGULATION ADOPTED UNDER SUBSECTION (A) OF THIS  
24 SECTION SHALL BE CONSISTENT WITH APPLICABLE GUIDELINES PUBLISHED BY  
25 THE FEDERAL FOOD AND DRUG ADMINISTRATION.

26 **22-609.**

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

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
32 measure, is necessary for the immediate preservation of the public health or safety,

1 has been passed by a yea and nay vote supported by three-fifths of all the members  
2 elected to each of the two Houses of the General Assembly, and shall take effect from  
3 the date it is enacted.