

## CHAPTER 483

(House Bill 62)

AN ACT concerning

### **Lead-Containing Children's Products - Prohibition**

FOR the purpose of prohibiting the manufacture, sale, offer for sale, importation, or distribution of certain lead-containing children's products ~~or lead-adulterated consumable products~~ in a certain manner; providing that certain provisions of this Act do not apply to certain electronic devices, certain distribution operations or activities, or certain vehicles, products, parts, or equipment; ~~authorizing an agent of the Department of Health and Mental Hygiene to enter certain factories, warehouses, and establishments to inspect certain products at any reasonable 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 of the Environment to issue and give certain notices under certain circumstances; requiring a manufacturer of a children's product to conduct a certain testing of the product and issue a certain certificate under certain circumstances; requiring a person to ensure that the certificate is transmitted to certain distributors and retailers in a certain manner; requiring certain manufacturers and retailers to maintain certain documents and to provide certain documents to the Department or any person on request; prohibiting a person from selling or offering for sale a children's product that is not accompanied by a certain certificate; 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; establishing certain penalties; authorizing the Comptroller to assess a certain fine against a certain person; requiring the Comptroller to distribute certain fines to a certain fund; providing that a violation of this Act is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions; defining certain terms; authorizing the Secretary of Health and Mental Hygiene the Environment to adopt certain regulations; making this Act an emergency measure;~~ and generally relating to prohibiting lead-containing children's products.

BY repealing and reenacting, with amendments,

Article – Commercial Law

Section 13–301(14)

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

BY adding to

Article – ~~Health – General~~ Environment

Section ~~22–601~~ 6–1301 through ~~22–609~~ 6–1311 to be under the new subtitle  
“Subtitle ~~6~~ 13. Lead-Containing Children’s Products”

Annotated Code of Maryland

(2005 2007 Replacement Volume and 2007 Supplement)

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

**Article – Commercial Law**

13–301.

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(i) This title;

(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;

(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;

(iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door Sales Act;

(v) Title 14, Subtitle 9 of this article, Kosher Products;

(vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

(vii) Section 14–1302 of this article;

(viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;

(ix) Section 22–415 of the Transportation Article;

- (x) Title 14, Subtitle 20 of this article;
  - Enforcement Act;
  - (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
  - Solicitations Act;
  - (xii) Title 14, Subtitle 21 of this article;
  - (xiii) Section 18–107 of the Transportation Article;
  - (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
  - Parts Act;
  - (xv) Title 14, Subtitle 23 of this article, the Automotive Crash
  - Act;
  - (xvi) Title 10, Subtitle 6 of the Real Property Article;
  - (xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales
  - Door-to-Door Solicitations Act;
  - (xviii) Title 14, Subtitle 26 of this article, the Maryland
  - Goods Movers Act;
  - (xix) Title 14, Subtitle 31 of this article, the Maryland Household
  - Consumer Protection Act;
  - (xx) Title 14, Subtitle 32 of this article, the Maryland Telephone
  - Number Privacy Act;
  - (xxi) Title 14, Subtitle 33 of this article, the Social Security
  - (xxii) Section 14–1319 or § 14–1320 of this article; [or]
  - (xxiii) Section 7–304 of the Criminal Law Article; or
  - (XXIV) TITLE 6, SUBTITLE 13 OF THE ENVIRONMENT
- ARTICLE; OR

**Article - ~~Health~~—~~General~~ Environment**

**SUBTITLE ~~6~~, 13. LEAD-CONTAINING CHILDREN'S PRODUCTS.**

**~~22-601~~, 6-1301.**

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

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, “CHILD CHILD” MEANS AN INDIVIDUAL WHO IS UNDER THE AGE OF 7 6 YEARS.

(2) IF A FEDERAL LAW ESTABLISHING THE PERMISSIBLE LEVEL OF LEAD IN CHILDREN’S PRODUCTS IS ENACTED, “CHILD” SHALL MEAN AN INDIVIDUAL WHO IS THE AGE SPECIFIED IN THE FEDERAL LAW.

(C) (1) “CHILDREN’S PRODUCT” MEANS:

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

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

(2) “CHILDREN’S PRODUCT” DOES NOT INCLUDE FOOD AS DEFINED IN § 21-101 OF THE HEALTH – GENERAL ARTICLE.

~~(D) “CONSUMABLE PRODUCT” INCLUDES:~~

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

~~(2) DIETARY SUPPLEMENTS.~~

~~(E) “HOMEOPATHIC REMEDY” MEANS A SUBSTANCE OR COMPOUND USED BY AN INDIVIDUAL TO TREAT A DISEASE, AILMENT, OR CONDITION.~~

~~(F) “LEAD ADULTERATED CONSUMABLE PRODUCT” MEANS ANY CONSUMABLE PRODUCT OR ITEM OR CONSUMABLE HOMEOPATHIC REMEDY THAT CONTAINS LEAD IN AN AMOUNT:~~

~~(1) IN EXCESS OF 0.1 PPM; OR~~

~~(2) SET BY THE SECRETARY IN REGULATION.~~

~~(G) (D) “LEAD-CONTAINING PRODUCT” MEANS A PRODUCT IN WHICH ANY PART, COMPONENT, OR COATING OF THE PRODUCT CONTAINS LEAD OR LEAD COMPOUNDS:~~

~~(1) GREATER GREATER THAN 0.02% THE LESSER OF:~~

(1) 0.06% BY WEIGHT OF THE TOTAL WEIGHT OF THE PART, COMPONENT, OR COATING; OR

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

(2) THE STANDARD ESTABLISHED UNDER FEDERAL LAW REGARDING THE PERMISSIBLE LEVEL OF LEAD IN CHILDREN'S PRODUCTS.

(E) "MANUFACTURER" MEANS A PERSON THAT IS THE BRAND OWNER OF A PRODUCT.

~~(H)~~ (F) "PRODUCT" INCLUDES:

(1) ACCESSORIES AND JEWELRY;

(2) CLOTHING;

(3) DECORATIVE OBJECTS;

(4) FURNITURE;

(5) ~~HOMEOPATHIC REMEDIES~~ LUNCH BOXES AND EATING UTENSILS;

(6) TOYS; AND

(7) ~~WRAPPERS~~ ANY OTHER ITEM SPECIFIED BY THE DEPARTMENT IN REGULATION.

~~(I) "WRAPPER" MEANS ANY PACKAGING MATERIAL THAT IS IN CONTACT WITH FOOD, INCLUDING:~~

~~(1) PAPER;~~

~~(2) CELLOPHANE;~~

~~(3) A PLASTIC CONTAINER;~~

~~(4) A STICK HANDLE;~~

~~(5) A SPOON;~~

~~(6) A POT;~~

~~(7) A SQUEEZE TUBE; AND~~

~~(8) ANY OTHER SIMILAR DEVICE.~~

~~22-602. 6-1302.~~

THIS SUBTITLE DOES NOT APPLY TO:

(1) 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; ~~AND~~

~~(2) ANY FACTORY, WAREHOUSE, OR ESTABLISHMENT AT A MARINE TERMINAL DISTRIBUTION OPERATION OR ACTIVITY PERFORMED IN A FACTORY, WAREHOUSE, OR ESTABLISHMENT, OR, IN THE COURSE OF SURFACE TRANSPORTATION, AT A PORT FACILITY AS DEFINED IN § 6-101 OF THE TRANSPORTATION ARTICLE; AND~~

~~(3) A VEHICLE AS DEFINED IN § 11-176 OF THE TRANSPORTATION ARTICLE, A PRODUCT OR PART FOR USE IN A VEHICLE, OR TRANSPORTATION EQUIPMENT.~~

~~22-603. 6-1303.~~

A PERSON MAY NOT ~~MANUFACTURE;~~

~~(1) MANUFACTURE A CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING PRODUCT; OR SELL;~~

~~(2) SELL, OFFER FOR SALE, IMPORT, OR DISTRIBUTE;~~

~~(1) A, BY ANY MEANS, INCLUDING THROUGH A SALES OUTLET, A CATALOG, OR THE INTERNET, A CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING PRODUCT; OR~~

~~(2) A LEAD-ADULTERATED CONSUMABLE PRODUCT.~~

~~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.~~

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

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

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

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

6-1304.

(A) A MANUFACTURER OF A CHILDREN'S PRODUCT SHALL:

(1) TEST WHETHER THE CHILDREN'S PRODUCT IS A LEAD-CONTAINING PRODUCT BY USING AN INDEPENDENT THIRD PARTY QUALIFIED TESTING ENTITY THAT:

**(I) IS NOT OWNED, MANAGED, CONTROLLED, OR DIRECTED BY THE MANUFACTURER; AND**

**(II) IS ACCREDITED IN ACCORDANCE WITH AN ACCREDITATION PROCESS ESTABLISHED OR RECOGNIZED BY THE DEPARTMENT; AND**

**(2) IF THE CHILDREN'S PRODUCT TESTED UNDER ITEM (1) OF THIS SUBSECTION IS NOT A LEAD-CONTAINING PRODUCT, ISSUE A CERTIFICATE THAT CERTIFIES THAT THE CHILDREN'S PRODUCT IS NOT A LEAD-CONTAINING PRODUCT.**

**(B) A PERSON SHALL ENSURE THAT THE CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION IS TRANSMITTED WITH THE CHILDREN'S PRODUCT TO ANY DISTRIBUTOR OR RETAILER WHO RECEIVES THE CHILDREN'S PRODUCT.**

**(C) A MANUFACTURER SHALL:**

**(1) MAINTAIN A COPY OF ANY DOCUMENTS RELATED TO LEAD TESTING AND ANY CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION; AND**

**(2) PROVIDE A COPY TO THE DEPARTMENT OR ANY PERSON ON REQUEST.**

**(D) A RETAILER SHALL:**

**(1) MAINTAIN A COPY OF ANY CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION; AND**

**(2) PROVIDE A COPY TO THE DEPARTMENT OR ANY PERSON ON REQUEST.**

**(E) A PERSON MAY NOT SELL OR OFFER FOR SALE IN THE STATE, BY ANY MEANS, INCLUDING TRANSACTIONS CONDUCTED THROUGH A SALES OUTLET, A CATALOG, OR THE INTERNET, A CHILDREN'S PRODUCT FOR WHICH THERE IS NO CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION.**

**(F) A CERTIFICATE ISSUED IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION SHALL BE:**



**(1) BASED ON A TEST OF EACH CHILDREN'S PRODUCT OR ON A TESTING PROTOCOL THAT IS ESTABLISHED OR RECOGNIZED BY THE DEPARTMENT; AND**

**(2) ON A FORM CREATED OR APPROVED BY THE DEPARTMENT.**

**~~22-605.~~ 6-1305.**

**(A) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS VIOLATED § ~~22-603~~ 6-1303 OF THIS SUBTITLE, THE DEPARTMENT SHALL:**

**~~(1) ISSUE A HEALTH ADVISORY NOTICE TO LOCAL HEALTH OFFICERS; AND~~**

**~~(2) GIVE GIVE WRITTEN NOTICE TO THE PERSON DETERMINED TO HAVE VIOLATED § ~~22-603~~ 6-1303 OF THIS SUBTITLE THAT IDENTIFIES THE CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING PRODUCT OR THE LEAD-ADULTERATED CONSUMABLE PRODUCT AND THE ASSOCIATED HEALTH HAZARD.~~**

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

**(1) A LIST OF ALL CHILDREN'S PRODUCTS OF THE SAME STYLE PRODUCED BY THE SAME MANUFACTURER ~~AS THE SAMPLE OBTAINED BY THE AGENT OF THE DEPARTMENT UNDER § ~~22-604~~ OF THIS SUBTITLE;~~**

**(2) THE NAME OF THE MANUFACTURER OR SELLER FROM WHOM THE PERSON OBTAINED THE CHILDREN'S PRODUCT THAT IS A LEAD-CONTAINING PRODUCT ~~OR THE LEAD-ADULTERATED CONSUMABLE PRODUCT;~~ AND**

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

**~~22-606.~~ 6-1306.**

**WITHIN 24 HOURS AFTER A PERSON DETERMINES THAT THE PERSON HAS MANUFACTURED, SOLD, OFFERED FOR SALE, IMPORTED, OR DISTRIBUTED A CHILDREN'S PRODUCT IN VIOLATION OF § ~~22-603~~ 6-1303 OF THIS SUBTITLE,**

**THE PERSON SHALL SUBMIT A REPORT TO THE DEPARTMENT IN A FORM REQUIRED BY THE DEPARTMENT.**

**22-607. 6-1307.**

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

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

**(B) A PERSON WHO WILLFULLY VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING ~~\$1,000~~ \$10,000 FOR EACH VIOLATION OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**

**6-1308.**

**(A) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, THE COMPTROLLER MAY ASSESS AGAINST A PERSON WHO VIOLATES § 6-1304(E) OF THIS SUBTITLE A FINE NOT EXCEEDING \$1,000 FOR EACH VIOLATION, UP TO A MAXIMUM OF \$50,000.**

**(B) A FINE ASSESSED UNDER SUBSECTION (A) OF THIS SECTION MAY NOT BE ASSESSED UNTIL THE PERSON WHO COMMITTED THE VIOLATION HAS BEEN ISSUED THREE WARNINGS REGARDING THE VIOLATION.**

**(C) EACH DAY ON WHICH A VIOLATION OCCURS OR CONTINUES IS A SEPARATE VIOLATION UNDER THIS SECTION.**

**(D) AT THE END OF EACH QUARTER, THE COMPTROLLER SHALL DISTRIBUTE ALL FINES ASSESSED UNDER THIS SECTION TO THE LEAD POISONING PREVENTION FUND IN A MANNER DETERMINED BY THE DEPARTMENT AND THE COMPTROLLER.**

**6-1309.**

**IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A VIOLATION OF THIS SUBTITLE IS:**

**(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW ARTICLE; AND**

**(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.**

**~~22-608, 6-1310.~~**

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

**~~(B) ANY REGULATION ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE CONSISTENT WITH APPLICABLE GUIDELINES PUBLISHED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.~~**

**~~22-609, 6-1311.~~**

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

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted shall take effect July 1, 2008.~~

**Approved by the Governor, May 13, 2008.**