

BY: Environmental Matters Committee

AMENDMENTS TO HOUSE BILL 21
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “Environment” in line 2 down through “Language” in line 3 and substitute “Certificate of a Qualified Expert – Lead Paint Poisoning Claims”; strike beginning with “removing” in line 4 down through “housing” in line 7 and substitute “requiring the court to dismiss a certain claim filed in a circuit court or a United States District Court against a person for injury caused by the ingestion of lead-based paint or lead-contaminated dust if the person does not file a certificate of a qualified expert for each defendant; specifying the contents of the certificate; requiring the certificate to be filed within a certain period of time and be served on certain persons, subject to certain exceptions; requiring a person who files a certificate of a qualified expert to provide a defendant with a certain list of qualifications; requiring a defendant to produce certain evidence under certain circumstances; altering a certain time period for filing a certificate of a qualified expert under certain circumstances; providing that the failure to provide certain evidence constitutes a certain waiver; authorizing the court to waive or modify the requirement to file a certificate of a qualified expert under certain circumstances; requiring a defendant of a certain claim to file a written response to a certificate of a qualified expert; specifying the contents of the written response; requiring the written response to be filed within a certain period of time and be served on certain persons; providing that a failure to file a written response constitutes a certain admission; requiring the court to schedule and hold a hearing regarding the certificate of a qualified expert and the written response to a certificate of a qualified expert; authorizing the court to recall a former judge for temporary assignment for certain purposes; requiring the court to allow the claimant and defendant an opportunity to be heard; authorizing the court to enter summary judgment in favor of or against the claimant or defendant under certain circumstances; defining certain terms; providing

(Over)

for the application of this Act; and generally relating to lead paint poisoning claims”; and strike in their entirety lines 8 through 13, inclusive, and substitute:

“BY adding to

Article – Courts and Judicial Proceedings

Section 3-2D-01 through 3-2D-04 to be under the new subtitle “Subtitle 2D.

Lead Paint Poisoning Claims”

Annotated Code of Maryland

(2006 Replacement Volume and 2011 Supplement)”.

AMENDMENT NO. 2

On pages 1 through 8, strike in their entirety the lines beginning with line 16 on page 1 through line 23 on page 8, inclusive, and substitute:

“Article – Courts and Judicial Proceedings

SUBTITLE 2D. LEAD PAINT POISONING CLAIMS.

3-2D-01.

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

(B) “CLAIM” MEANS A CIVIL ACTION, INCLUDING AN ORIGINAL CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM, ORIGINALLY FILED IN A CIRCUIT COURT OR UNITED STATES DISTRICT COURT AGAINST A PERSON FOR INJURY CAUSED BY THE INGESTION OF LEAD-BASED PAINT OR LEAD-CONTAMINATED DUST, AS DEFINED IN § 6-801 OF THE ENVIRONMENT ARTICLE.

(C) (1) “QUALIFIED EXPERT” MEANS AN INDIVIDUAL WHO HAS EDUCATION, TRAINING, AND EXPERIENCE IN DETERMINING THE POTENTIAL

SOURCES OF INGESTION OF LEAD AND THE HEALTH CONSEQUENCES OF INGESTION OF LEAD.

(2) “QUALIFIED EXPERT” DOES NOT INCLUDE:

(I) A PARTY TO THE CLAIM;

(II) AN EMPLOYEE OR PARTNER OF A PARTY;

(III) AN EMPLOYEE OR STOCKHOLDER OF A PROFESSIONAL CORPORATION OF WHICH A PARTY IS A STOCKHOLDER; OR

(IV) A PERSON HAVING A FINANCIAL INTEREST IN THE OUTCOME OF THE CLAIM.

3-2D-02.

(A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, THE COURT SHALL DISMISS A CLAIM, WITHOUT PREJUDICE, IF THE CLAIMANT FAILS TO FILE A CERTIFICATE OF A QUALIFIED EXPERT WITH THE COURT FOR EACH DEFENDANT.

(2) A CERTIFICATE OF A QUALIFIED EXPERT SHALL:

(I) CONTAIN A STATEMENT FROM A QUALIFIED EXPERT ATTESTING THAT, WITH A REASONABLE DEGREE OF PROBABILITY, THE:

1. PROPERTY INVOLVED WAS A SOURCE OF THE CLAIMANT'S INGESTION OF LEAD, INCLUDING THE BASIS FOR SUCH A FINDING; AND

2. INGESTION OF LEAD FROM THE PROPERTY WAS A SUBSTANTIAL CONTRIBUTING FACTOR TO THE INJURIES ALLEGED BY THE CLAIMANT;

(II) SUBJECT TO THE PROVISIONS OF SUBSECTIONS (B) AND (C) OF THIS SECTION, BE FILED WITHIN 90 DAYS AFTER THE CLAIM IS FILED; AND

(III) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THE PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES.

(3) FOR EACH CERTIFICATE OF A QUALIFIED EXPERT, THE CLAIMANT SHALL PROVIDE THE DEFENDANT WITH A LIST OF:

(I) THE QUALIFICATIONS AND PUBLICATIONS OF THE QUALIFIED EXPERT; AND

(II) THE CASES IN WHICH THE QUALIFIED EXPERT HAS TESTIFIED, INCLUDING WHICH PARTY THE QUALIFIED EXPERT REPRESENTED.

(B) (1) ON WRITTEN REQUEST MADE BY THE CLAIMANT WITHIN 30 DAYS OF THE DATE THE CLAIM IS SERVED, THE DEFENDANT SHALL PRODUCE DOCUMENTARY EVIDENCE THAT WOULD BE OTHERWISE DISCOVERABLE, IF THE

DOCUMENTARY EVIDENCE IS REASONABLY NECESSARY IN ORDER TO OBTAIN A CERTIFICATE OF A QUALIFIED EXPERT.

(2) THE TIME FOR FILING A CERTIFICATE OF A QUALIFIED EXPERT BEGINS ON THE DATE ON WHICH THE DEFENDANT'S PRODUCTION OF THE DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS COMPLETED.

(3) THE DEFENDANT'S FAILURE TO PRODUCE THE REQUESTED DOCUMENTARY EVIDENCE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL CONSTITUTE A WAIVER OF THE REQUIREMENT THAT THE CLAIMANT FILE A CERTIFICATE OF A QUALIFIED EXPERT AS TO THAT DEFENDANT.

(C) (1) ON WRITTEN REQUEST BY THE CLAIMANT AND A FINDING OF GOOD CAUSE BY THE COURT, THE COURT MAY WAIVE OR MODIFY THE REQUIREMENT FOR THE FILING OF THE CERTIFICATE OF A QUALIFIED EXPERT.

(2) THE TIME FOR FILING THE CERTIFICATE OF A QUALIFIED EXPERT SHALL BE SUSPENDED UNTIL THE COURT RULES ON THE REQUEST AND, ABSENT AN ORDER TO THE CONTRARY, THE CERTIFICATE SHALL BE FILED WITHIN 90 DAYS OF THE COURT'S RULING.

(D) DISCOVERY BY THE DEFENDANT AS TO THE BASIS OF THE CERTIFICATE OF A QUALIFIED EXPERT SHALL BE AVAILABLE.

3-2D-03.

(Over)

(A) A DEFENDANT WHO RECEIVES A CERTIFICATE OF A QUALIFIED EXPERT FROM A CLAIMANT SHALL FILE A WRITTEN RESPONSE WITH THE COURT.

(B) THE WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED EXPERT SHALL:

(1) STATE THE REASONS THAT THE PROPERTY ALLEGED TO BE A SOURCE OF THE CLAIMANT'S INGESTION OF LEAD WAS NOT A SUBSTANTIAL CONTRIBUTING FACTOR IN THE ALLEGED INJURIES OF THE CLAIMANT;

(2) BE FILED WITHIN 120 DAYS OF RECEIPT OF THE CERTIFICATE OF A QUALIFIED EXPERT; AND

(3) BE SERVED ON ALL OTHER PARTIES TO THE CLAIM OR THE PARTIES' ATTORNEYS OF RECORD IN ACCORDANCE WITH THE MARYLAND RULES.

(C) A DEFENDANT'S FAILURE TO FILE A WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED EXPERT WITH THE COURT SHALL CONSTITUTE AN ADMISSION THAT THERE IS NO DISPUTE AS TO ANY MATERIAL FACT IN THE CLAIM.

3-2D-04.

(A) (1) THE COURT SHALL SCHEDULE A HEARING AFTER A DEFENDANT FILES A WRITTEN RESPONSE TO A CERTIFICATE OF A QUALIFIED EXPERT.

(2) A FORMER JUDGE MAY BE RECALLED FOR TEMPORARY ASSIGNMENT UNDER § 1-302 OF THIS ARTICLE FOR PURPOSES RELATING TO THE HEARING.

(B) DURING THE HEARING, THE CLAIMANT AND DEFENDANT SHALL EACH HAVE AN OPPORTUNITY TO BE HEARD ON THE CERTIFICATE OF A QUALIFIED EXPERT AND THE WRITTEN RESPONSE TO THE CERTIFICATE OF A QUALIFIED EXPERT.

(C) FOLLOWING THE HEARING, THE COURT MAY ENTER JUDGMENT IN FAVOR OF OR AGAINST THE CLAIMANT OR DEFENDANT IN ACCORDANCE WITH RULE 2-501 OF THE MARYLAND RULES.”;

in line 24, after “ENACTED,” insert “That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any civil action filed before the effective date of this Act.”

SECTION 3. AND BE IT FURTHER ENACTED.”;

and in line 25, strike “October” and substitute “June”.