

HOUSE BILL 754

M3

3lr0476

By: **Delegates Beidle, Niemann, and Stein**

Introduced and read first time: February 6, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Reduction of Lead Risk in Housing – Qualified Offer**

3 FOR the purpose of prohibiting a certain person from bringing a certain action against
4 certain owners under certain circumstances; entitling a certain person who
5 receives certain notice to certain evidence under certain circumstances;
6 requiring a certain person to provide certain evidence within a certain period of
7 time; authorizing a certain owner to require a certain test for elevated blood
8 lead for certain persons within a certain period of time; authorizing a certain
9 person to make a qualified offer in a certain manner; requiring certain qualified
10 offers to be made to certain persons within a certain period of time; providing
11 certain liability protection to a certain owner under certain circumstances;
12 requiring a qualified offer to include certain payments under certain
13 circumstances and in a certain manner; providing the maximum amount
14 payable under a qualified offer; defining certain terms; and generally relating to
15 qualified offers made by owners of rental property.

16 BY repealing and reenacting, with amendments,
17 Article – Environment
18 Section 6–826, 6–829, 6–830, 6–831, 6–836, 6–839, and 6–840
19 Annotated Code of Maryland
20 (2007 Replacement Volume and 2012 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Environment
23 Section 6–827 and 6–828
24 Annotated Code of Maryland
25 (2007 Replacement Volume and 2012 Supplement)

26 BY adding to
27 Article – Environment
28 Section 6–828.1

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2007 Replacement Volume and 2012 Supplement)

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

5 **Article – Environment**
6 6–826.

7 (a) In this part the following words have the meanings indicated.

8 (b) “Action” includes a complaint, counterclaim, cross–claim, or third–party
9 complaint.

10 (c) **“COMPLIANT OWNER” MEANS AN OWNER OF RESIDENTIAL RENTAL**
11 **PROPERTY THAT, DURING THE PERIOD OF AN ALLEGED INGESTION OF LEAD ON**
12 **THE OWNER’S PROPERTY:**

13 (1) **WAS IN COMPLIANCE WITH THE APPLICABLE REQUIREMENTS**
14 **OF §§ 6–811, 6–812, 6–815, 6–817, AND 6–819 OF THIS SUBTITLE; AND**

15 (2) **HAD SENT TO THE TENANT THE NOTICES REQUIRED BY §§**
16 **6–820 AND 6–823 OF THIS SUBTITLE.**

17 (d) “Co–offer” means a qualified offer which is made by or on behalf of more
18 than one person as provided under this part.

19 (e) (1) **“EVIDENCE OF ELEVATED BLOOD LEAD” MEANS THE**
20 **PRODUCTION OF RECORDS THAT:**

21 (i) **INDICATE THAT A PERSON AT RISK HAS OR HAS HAD AN**
22 **ELEVATED BLOOD LEAD LEVEL; AND**

23 (ii) **ARE CONFIRMED BY A DOCTOR, LABORATORY, OR**
24 **OTHER EXPERT.**

25 (2) **“EVIDENCE OF ELEVATED BLOOD LEAD” INCLUDES:**

26 (i) **MEDICAL OR LABORATORY RECORDS OF A PERSON AT**
27 **RISK; AND**

28 (ii) **RECORDS FROM A LOCAL HEALTH DEPARTMENT, THE**
29 **DEPARTMENT, OR THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.**

1 **(F) (1) “EVIDENCE OF RESIDENCE HISTORY” MEANS THE**
2 **PRODUCTION OF RECORDS FOR THE RESIDENCE HISTORY OF A PERSON AT RISK,**
3 **INCLUDING:**

4 **(I) THE ADDRESS OF EACH PROPERTY AT WHICH THE**
5 **PERSON AT RISK RESIDED AND THE PERIOD OF TIME SPENT AT EACH**
6 **PROPERTY; AND**

7 **(II) RECORDS FROM THE LOCAL HEALTH DEPARTMENT,**
8 **THE DEPARTMENT, OR THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.**

9 **(2) “EVIDENCE OF RESIDENCE HISTORY” INCLUDES AN**
10 **AFFIDAVIT OF THE PERSON AT RISK OR THE PARENT OR LEGAL GUARDIAN OF A**
11 **PERSON AT RISK.**

12 **[(d)] (G) “Offeror” means a person including an insurer or other agent who**
13 **makes a qualified offer under this part.**

14 **(H) “PERSON AT RISK” INCLUDES A PERSON WHO WAS A MINOR DURING**
15 **THE PERIOD OF AN ALLEGED INGESTION OF LEAD ON A COMPLIANT OWNER’S**
16 **PROPERTY.**

17 6–827.

18 This part applies to all potential bases of liability for alleged injury or loss to a
19 person caused by the ingestion of lead by a person at risk in an affected property.

20 6–828.

21 (a) This section applies to an owner of an affected property who has, with
22 respect to the affected property, complied with the applicable requirements of §§
23 6–811, 6–812, 6–815, 6–817, and 6–819 of this subtitle, and has sent to the tenant the
24 notices required by §§ 6–820 and 6–823 of this subtitle.

25 (b) A person may not bring an action against an owner of an affected
26 property for damages arising from alleged injury or loss to a person at risk caused by
27 the ingestion of lead by a person at risk that is first documented by a test for EBL of
28 25 µg/dl or more performed between February 24, 1996 and February 23, 2001,
29 inclusive, or 20 µg/dl or more performed between February 24, 2001 and February 23,
30 2006, inclusive, or 15 µg/dl or more performed on or after February 24, 2006, unless
31 the owner has been given:

32 (1) Written notice from any person that the elevated blood level of a
33 person at risk is:

1 (i) Greater than or equal to 25 µg/dl as first documented by a
2 test for EBL performed between February 24, 1996 and February 23, 2001, inclusive;

3 (ii) Between February 24, 2001 and February 23, 2006,
4 inclusive, an EBL greater than or equal to 20 µg/dl as first documented by a test for
5 EBL performed between February 24, 2001 and February 23, 2006, inclusive; or

6 (iii) On or after February 24, 2006, an EBL greater than or equal
7 to 15 µg/dl as first documented by a test for EBL performed on or after February 24,
8 2006; and

9 (2) An opportunity to make a qualified offer under § 6–831 of this
10 subtitle.

11 **6–828.1.**

12 **A PERSON MAY NOT BRING AN ACTION AGAINST A COMPLIANT OWNER FOR**
13 **DAMAGES ARISING FROM ALLEGED INJURY OR LOSS TO A PERSON AT RISK**
14 **CAUSED BY THE INGESTION OF LEAD BY THE PERSON AT RISK IN THE OWNER’S**
15 **PROPERTY UNLESS THE OWNER HAS BEEN GIVEN:**

16 **(1) WRITTEN NOTICE FROM ANY PERSON THAT THE ELEVATED**
17 **BLOOD LEAD LEVEL OF THE PERSON AT RISK WAS:**

18 **(I) GREATER THAN OR EQUAL TO 25 µG/DL AS FIRST**
19 **DOCUMENTED BY A TEST FOR EBL PERFORMED BETWEEN FEBRUARY 24, 1996,**
20 **AND FEBRUARY 23, 2001, INCLUSIVE;**

21 **(II) BETWEEN FEBRUARY 24, 2001, AND FEBRUARY 23,**
22 **2006, INCLUSIVE, AN EBL GREATER THAN OR EQUAL TO 20 µG/DL AS FIRST**
23 **DOCUMENTED BY A TEST FOR EBL PERFORMED BETWEEN FEBRUARY 24, 2001,**
24 **AND FEBRUARY 23, 2006, INCLUSIVE; OR**

25 **(III) ON OR AFTER FEBRUARY 24, 2006, AN EBL GREATER**
26 **THAN OR EQUAL TO 15 µG/DL AS FIRST DOCUMENTED BY A TEST FOR EBL**
27 **PERFORMED ON OR AFTER FEBRUARY 24, 2006; AND**

28 **(2) AN OPPORTUNITY TO MAKE A QUALIFIED OFFER UNDER §**
29 **6–831 OF THIS SUBTITLE.**

30 **6–829.**

31 **(a) [A] FOR THE PURPOSE OF DETERMINING WHETHER TO MAKE A**
32 **QUALIFIED OFFER UNDER THIS PART AND WHETHER THE QUALIFIED OFFER**
33 **SHOULD BE DESIGNATED AS A CO-OFFER, A person who receives notice under §**

1 6–828(b)(1) OR **§ 6–828.1** of this [subtitle] PART is entitled to [the results of any
2 available prior blood lead tests of the person at risk for the purpose of determining
3 whether to make a qualified offer under this subtitle and whether the qualified offer
4 should be designated as a co–offer]:

5 **(1) EVIDENCE OF ELEVATED BLOOD LEAD; AND**

6 **(2) EVIDENCE OF RESIDENCE HISTORY.**

7 **(b) UNLESS THE PARTIES AGREE OTHERWISE, A PERSON AT RISK SHALL**
8 **PROVIDE EVIDENCE OF ELEVATED BLOOD LEAD AND EVIDENCE OF RESIDENCE**
9 **HISTORY UNDER SUBSECTION (A) OF THIS SECTION WITHIN 60 DAYS AFTER**
10 **NOTICE WAS PROVIDED UNDER § 6–828 OR § 6–828.1 OF THIS PART.**

11 **(c)** In the event a local health department notifies an owner of an affected
12 property in accordance with § 6–828(b)(1) of this subtitle, the local health department
13 shall also provide the owner with any blood lead test results and history of residence
14 for the person at risk which the local health department has on record.

15 6–830.

16 **(a)** If, between February 24, 1996 and February 23, 2001, inclusive, the
17 concentration of lead in a whole venous blood sample of a person at risk tested within
18 30 days after the person at risk begins residence or to regularly spend at least 24
19 hours per week in an affected property that is certified as being in compliance with the
20 provisions of § 6–815 of this subtitle is greater than or equal to 25 µg/dl, or, between
21 February 24, 2001 and February 23, 2006, inclusive, greater than or equal to 20 µg/dl,
22 or, on or after February 24, 2006, greater than or equal to 15 µg/dl, it shall be
23 presumed that the ingestion of lead occurred before a person at risk began residing or
24 regularly spending at least 24 hours per week in the affected property.

25 **(b)** On or after July 1, 2006, the EBL concentration of lead in a blood sample
26 shall be determined in accordance with § 6–801(f) of this subtitle.

27 **(c) (1) AT THE OWNER’S EXPENSE AND WITHIN 30 DAYS AFTER THE**
28 **EXECUTION OF A LEASE, AN OWNER OF AN AFFECTED PROPERTY MAY REQUIRE**
29 **A TEST FOR ELEVATED BLOOD LEAD FOR EACH PERSON AT RISK WHO WILL**
30 **RESIDE OR WILL REGULARLY SPEND AT LEAST 24 HOURS PER WEEK IN AN**
31 **AFFECTED PROPERTY THAT IS CERTIFIED AS BEING IN COMPLIANCE WITH THE**
32 **PROVISIONS OF § 6–815 OF THIS SUBTITLE.**

33 **(2) A PERSON AT RISK OR A PARENT OR LEGAL GUARDIAN OF A**
34 **PERSON AT RISK MAY SUBMIT TO THE OWNER A TEST FOR ELEVATED BLOOD**
35 **LEAD THAT WAS CONDUCTED WITHIN 30 DAYS BEFORE THE TENANCY TO**
36 **SATISFY THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

1 6-831.

2 (a) A qualified offer may be made to a person at risk under this part by:

3 (1) The owner of the affected property in which the person at risk
4 resides or regularly spends at least 24 hours a week;

5 (2) **A COMPLIANT OWNER OF A PROPERTY IN WHICH THE PERSON**
6 **AT RISK RESIDED OR REGULARLY SPENT AT LEAST 24 HOURS A WEEK;**

7 (3) An insurer of the owner; or

8 ~~(3)~~ (4) An agent of the owner.

9 (b) Upon notice to a third party, an offeror may designate the third party as
10 a co-offeror.

11 (c) If a qualified offer is made under subsection (a) of this section, the
12 qualified offer shall:

13 (1) **(I) [Be] FOR RELOCATION EXPENSES PAYABLE UNDER §**
14 **6-840 OF THIS PART, BE** made within 30 days after the offeror receives [notice]:

15 1. NOTICE under § 6-828 OR § 6-828.1 of this
16 [subtitle] PART; AND

17 2. EVIDENCE OF ELEVATED BLOOD LEAD AND
18 EVIDENCE OF RESIDENCE HISTORY UNDER § 6-829 OF THIS PART.

19 (II) **FOR OTHER AMOUNTS PAYABLE UNDER § 6-840 OF THIS**
20 **PART, BE MADE WITHIN 90 DAYS AFTER THE OFFEROR RECEIVES:**

21 1. NOTICE UNDER § 6-828 OR § 6-828.1 OF THIS
22 PART; AND

23 2. EVIDENCE OF ELEVATED BLOOD LEAD AND
24 EVIDENCE OF RESIDENCE HISTORY UNDER § 6-829 OF THIS PART.

25 (2) Include the provisions specified in § 6-839 of this subtitle; and

26 (3) Satisfy the requirements of § 6-832(a) of this subtitle.

27 6-836.

1 **(A)** An owner of an affected property is not liable, for alleged injury or loss
2 caused by ingestion of lead by a person at risk in the affected property, to a person at
3 risk or a parent, legal guardian, or other person authorized under § 6–833 of this
4 subtitle to respond on behalf of a person at risk who rejects a qualified offer made by
5 the owner or the owner’s insurer or agent if, during the period of the alleged ingestion
6 of lead by the person at risk, and with respect to the affected property in which the
7 exposure allegedly occurred, the owner:

8 (1) Has given to the tenant the notices required by §§ 6–820 and 6–823
9 of this subtitle; and

10 (2) Was in compliance with:

11 (i) The registration provisions of Part III of this subtitle; and

12 (ii) The applicable risk reduction standard and response
13 standard under § 6–815 or § 6–819 of this subtitle, and the risk reduction schedule
14 under § 6–817 of this subtitle.

15 **(B) A COMPLIANT OWNER IS NOT LIABLE, FOR ALLEGED INJURY OR**
16 **LOSS CAUSED BY INGESTION OF LEAD BY A PERSON AT RISK IN THE PROPERTY,**
17 **TO A PERSON AT RISK OR A PARENT, LEGAL GUARDIAN, OR OTHER PERSON**
18 **AUTHORIZED UNDER § 6–833 OF THIS SUBTITLE TO RESPOND ON BEHALF OF A**
19 **PERSON AT RISK WHO REJECTS A QUALIFIED OFFER MADE BY THE OWNER OR**
20 **THE OWNER’S INSURER OR AGENT.**

21 6–839.

22 (a) Whenever a qualified offer is made under this part, the qualified offer
23 shall include payment for reasonable expenses and costs up to the amount specified in
24 § 6–840 of this subtitle for:

25 (1) The relocation of the household of the person at risk to lead–safe
26 housing of comparable size and quality that may provide:

27 (i) The permanent relocation of the household of the affected
28 person at risk to lead–safe housing, including relocation expenses, a rent subsidy, and
29 incidental expenses; or

30 (ii) The temporary relocation of the household of the affected
31 person at risk to lead–safe housing while necessary lead hazard reduction treatments
32 are being performed in the affected property to make that affected property lead–safe;
33 [and]

34 (2) Medically necessary treatment for the affected person at risk as
35 determined by the treating physician or other health care provider or case manager of

1 the person at risk that is necessary to mitigate the effects of lead poisoning, as defined
2 by the Department by regulation, and, in the case of a child, until the child reaches the
3 age of 18 years;

4 **(3) SUPPLEMENTAL EDUCATIONAL EXPENSES FOR THE**
5 **AFFECTED PERSON AT RISK, INCLUDING TUITION, TUTORING, AND INDIVIDUAL**
6 **EDUCATION PROGRAMS;**

7 **(4) ECONOMIC DAMAGES RELATING TO LOST FUTURE EARNINGS**
8 **OF THE AFFECTED PERSON AT RISK; AND**

9 **(5) NONECONOMIC DAMAGES RELATING TO LIVING WITH**
10 **LEAD-BASED PAINT RISK.**

11 (b) **(I)** An offeror is required to pay reasonable expenses for the medically
12 necessary treatments under subsection (a)(2) of this section if coverage for these
13 treatments is not otherwise provided by the Maryland Medical Assistance Program
14 under Title 15, Subtitle 1 of the Health – General Article or by a third-party health
15 insurance plan under which the person at risk has coverage or in which the person at
16 risk is enrolled.

17 **(II) AN OFFEROR MAY PAY REASONABLE EXPENSES FOR**
18 **SUPPLEMENTAL EDUCATIONAL SERVICES UNDER SUBSECTION (A)(3) OF THIS**
19 **SECTION IF:**

20 **1. THE EXPENSES FOR THESE SERVICES ARE NOT**
21 **OTHERWISE PROVIDED BY THE PUBLIC SCHOOL SYSTEM OF THE COUNTY IN**
22 **WHICH THE PERSON AT RISK IS ENROLLED; OR**

23 **2. THE SERVICES ARE IN ADDITION TO SERVICES**
24 **PROVIDED BY THE PUBLIC SCHOOL SYSTEM OF THE COUNTY IN WHICH THE**
25 **PERSON AT RISK IS ENROLLED.**

26 (c) A qualified offer shall include a certification by the owner of the affected
27 property **OR THE COMPLIANT OWNER**, under the penalties of perjury, that the owner
28 has complied with the applicable provisions of Parts III and IV of this subtitle in a
29 manner that qualifies the owner to make a qualified offer under this part.

30 (d) The Department may adopt regulations that are necessary to carry out
31 the provisions of this section.

32 6-840.

1 (a) [The] **SUBJECT TO SUBSECTIONS (E) AND (F) OF THIS SECTION, THE**
2 amounts payable under a qualified offer made under this part are subject to the
3 following aggregate maximum caps:

4 (1) **[\$7,500] \$10,000** for all medically necessary treatments as
5 provided and limited in § 6–839(a) and (b) of this [subtitle] **PART; [and]**

6 (2) **[\$9,500] \$15,000** for relocation benefits which shall include:

7 (i) Relocation expenses;

8 (ii) A rent subsidy, up to 150% of the existing rent each month,
9 for the period until the person at risk reaches the age of 6 years, or in the case of a
10 pregnant woman, until the child born as a result of that pregnancy reaches the age of
11 6 years; and

12 (iii) Incidental expenses which may be incurred by the
13 household, such as transportation and child care expenses;

14 **(3) \$15,000 FOR SUPPLEMENTAL EDUCATIONAL EXPENSES AS**
15 **PROVIDED AND LIMITED IN § 6–839(A) AND (B) OF THIS PART;**

16 **(4) AN AMOUNT TO COMPENSATE FOR LOST FUTURE EARNINGS**
17 **OF THE PERSON AT RISK, CALCULATED IN ACCORDANCE WITH SUBSECTION (B)**
18 **OF THIS SECTION; AND**

19 **(5) AN AMOUNT TO COMPENSATE THE PERSON AT RISK FOR**
20 **LIVING WITH LEAD–BASED PAINT RISK, CALCULATED IN ACCORDANCE WITH**
21 **SUBSECTION (C) OF THIS SECTION.**

22 (b) **THE AMOUNT PAYABLE UNDER A QUALIFIED OFFER FOR LOST**
23 **FUTURE EARNINGS SHALL BE CALCULATED AS FOLLOWS:**

24 **(1) FOR EACH 1 POINT REDUCTION IN THE INTELLIGENCE**
25 **QUOTIENT (IQ) OF THE PERSON AT RISK, THE AMOUNT PAYABLE IS \$11,727;**
26 **AND**

27 **(2) IN DETERMINING THE POINT REDUCTION IN IQ UNDER THIS**
28 **SUBSECTION, THE ELEVATED BLOOD LEAD, AS DOCUMENTED IN THE EVIDENCE**
29 **OF ELEVATED BLOOD LEAD SUBMITTED IN ACCORDANCE WITH THIS PART,**
30 **SHALL BE MULTIPLIED BY 0.25.**

1 **(C) THE AMOUNT PAYABLE UNDER A QUALIFIED OFFER FOR LIVING**
2 **WITH LEAD-BASED PAINT RISK SHALL BE \$2,500 PER YEAR FOR EACH YEAR THE**
3 **PERSON AT RISK SPENT IN AN AFFECTED PROPERTY OF THE OFFEROR.**

4 **(D) All payments under a qualified offer specified in subsection (a) of this**
5 **section shall be paid to the provider of the service, except that payment of incidental**
6 **expenses as provided by subsection (a)(2)(iii) of this section AND AMOUNTS PAYABLE**
7 **UNDER SUBSECTION (A)(3) AND (4) OF THIS SECTION may be paid directly to the**
8 **person at risk, or in the case of a child, to the parent or legal guardian of the person at**
9 **risk.**

10 **(E) SUBJECT TO SUBSECTION (F) OF THIS SECTION, THE MAXIMUM**
11 **AGGREGATE AMOUNT FOR PAYMENTS UNDER THE QUALIFIED OFFER IS LIMITED**
12 **TO \$100,000.**

13 **(F) AMOUNTS PAYABLE UNDER THIS SECTION ARE SUBJECT TO AN**
14 **ANNUAL COST OF LIVING ADJUSTMENT.**

15 **(G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
16 **SUBSECTION, IF THERE ARE CO-OFFERORS, EACH OFFEROR SHALL BE JOINTLY**
17 **AND SEVERALLY RESPONSIBLE FOR PAYMENTS UNDER SUBSECTION (A) OF THIS**
18 **SECTION.**

19 **(2) AMOUNTS PAYABLE UNDER SUBSECTION (A)(4) AND (5)**
20 **SHALL BE PAID BY EACH OFFEROR.**

21 **[(c)] (H) The payments under a qualified offer may not be considered**
22 **income or an asset of the person at risk, the parent of a person at risk who is a child,**
23 **the legal guardian, or a person who accepts the offer on behalf of a person at risk who**
24 **is a child under § 6-833 of this subtitle for the purposes of determining eligibility for**
25 **any State entitlement program.**

26 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
27 **October 1, 2013.**