

HOUSE BILL 604

D3, M3, L2

8lr2339

By: **Delegates Mosby, Ali, Anderson, Clippinger, Conaway, Frush, Gibson, Glenn, Hayes, Lierman, McCray, McIntosh, Rosenberg, and M. Washington**

Introduced and read first time: January 29, 2018

Assigned to: Environment and Transportation and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City Lead Remediation and Recovery Act**

3 FOR the purpose of establishing that this Act applies only to an action brought against a
4 certain manufacturer of lead pigment for certain damages allegedly caused by the
5 presence of lead-based paint in a residential building located in Baltimore City;
6 providing that this Act does not apply to certain actions for certain damages arising
7 from personal injury or death, certain actions against a person other than a
8 manufacturer, or certain actions brought by a person other than the City of
9 Baltimore, the Housing Authority of Baltimore City, or an owner of a residential
10 building located in Baltimore City; providing that a plaintiff in an action under this
11 Act is not required to prove that a specific manufacturer manufactured or produced
12 the lead pigment used in the lead-based paint alleged to have caused the plaintiff's
13 harm; providing that a certain manufacturer may be held liable for certain damages
14 in an action under this Act under certain circumstances; establishing certain
15 defenses to an action under this Act; providing for the apportionment of certain
16 damages among certain manufacturers under certain circumstances; providing that
17 failure to join a certain manufacturer in a certain action does not constitute failure
18 to join a required party for any purpose; prohibiting a counterclaim or cross-claim
19 from being filed in an action under this Act, subject to a certain exception; providing
20 that certain provisions of this Act may not be construed or interpreted to prohibit a
21 manufacturer from bringing certain claims against another manufacturer; providing
22 that an action under this Act is not exclusive and is independent of and in addition
23 to certain other rights, remedies, and causes of action; declaring a certain intent of
24 the General Assembly; defining certain terms; providing for the application of this
25 Act; and generally relating to the liability of manufacturers for damage caused in
26 Baltimore City by lead pigment in lead-based paint.

27 BY adding to

28 Article – Courts and Judicial Proceedings

29 Section 3–2101 through 3–2106 to be under the new subtitle “Subtitle 21. Baltimore

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 City Lead Remediation and Recovery Act”
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2017 Supplement)

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

6 **Article – Courts and Judicial Proceedings**

7 **SUBTITLE 21. BALTIMORE CITY LEAD REMEDIATION AND RECOVERY ACT.**

8 **3-2101.**

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

11 (B) (1) “ABATEMENT” MEANS A SET OF MEASURES THAT ELIMINATE OR
12 REDUCE LEAD-BASED PAINT HAZARDS IN A RESIDENTIAL BUILDING IN
13 ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT OF THE
14 ENVIRONMENT.

15 (2) “ABATEMENT” INCLUDES:

16 (I) THE REMOVAL OF LEAD-BASED PAINT AND
17 LEAD-CONTAMINATED DUST, THE CONTAINMENT OR ENCAPSULATION OF
18 LEAD-BASED PAINT, THE REPLACEMENT OR DEMOLITION OF LEAD-BASED PAINTED
19 SURFACES OR FIXTURES, AND THE REMOVAL OR COVERING OF
20 LEAD-CONTAMINATED SOIL; AND

21 (II) PREPARATION, CLEANUP, DISPOSAL, AND POSTABATEMENT
22 CLEARANCE TESTING ACTIVITIES ASSOCIATED WITH THE MEASURES DESCRIBED IN
23 ITEM (I) OF THIS PARAGRAPH.

24 (C) “LEAD-BASED PAINT” MEANS LEAD-BASED PAINT AS DEFINED BY
25 REGULATIONS ADOPTED BY THE DEPARTMENT OF THE ENVIRONMENT.

26 (D) (1) “MANUFACTURER” MEANS A PERSON THAT MANUFACTURED OR
27 PRODUCED LEAD PIGMENT FOR SALE OR USE AS A COMPONENT OF LEAD-BASED
28 PAINT OR A PREDECESSOR-IN-INTEREST OF THE PERSON.

29 (2) “MANUFACTURER” DOES NOT INCLUDE A PERSON OR A
30 PREDECESSOR-IN-INTEREST OF THE PERSON THAT ONLY:

31 (I) SOLD LEAD PIGMENT OR LEAD-BASED PAINT AT RETAIL OR

1 WHOLESALE; OR

2 (II) APPLIED LEAD-BASED PAINT IN A RESIDENTIAL BUILDING.

3 3-2102.

4 (A) (1) THIS SUBTITLE APPLIES ONLY TO AN ACTION AGAINST A
5 MANUFACTURER FOR PROPERTY DAMAGE OR CONSEQUENTIAL ECONOMIC DAMAGE
6 ALLEGEDLY CAUSED BY THE PRESENCE OF LEAD-BASED PAINT IN A RESIDENTIAL
7 BUILDING LOCATED IN BALTIMORE CITY.

8 (2) DAMAGES THAT MAY BE CLAIMED IN AN ACTION UNDER THIS
9 SUBTITLE INCLUDE:

10 (I) DAMAGES SUSTAINED BY THE HOUSING AUTHORITY OF
11 BALTIMORE CITY OR THE OWNER OF A RESIDENTIAL BUILDING LOCATED IN
12 BALTIMORE CITY REQUIRED TO COMPLY WITH:

13 1. THE REQUIREMENTS OF TITLE 6, SUBTITLE 8 OF THE
14 ENVIRONMENT ARTICLE;

15 2. AN ABATEMENT ORDER ISSUED BY A UNIT OF THE
16 STATE OR A LOCAL GOVERNMENT; OR

17 3. A REQUIREMENT TO REPAIR LEAD-BASED PAINT
18 DEFECTS UNDER § 8-211 OR § 8-211.1 OF THE REAL PROPERTY ARTICLE;

19 (II) EXPENSES VOLUNTARILY INCURRED BY THE HOUSING
20 AUTHORITY OF BALTIMORE CITY OR THE OWNER OF A RESIDENTIAL BUILDING
21 LOCATED IN BALTIMORE CITY TO ABATE LEAD-BASED PAINT HAZARDS;

22 (III) EXPENSES INCURRED BY THE CITY OF BALTIMORE TO:

23 1. ENFORCE LEAD-BASED PAINT LAWS;

24 2. RAISE AWARENESS ABOUT LEAD POISONING; AND

25 3. CONDUCT OUTREACH AND SCREENING EFFORTS
26 AIMED AT POPULATIONS AT RISK FOR LEAD POISONING;

27 (IV) THE REASONABLE FUTURE COSTS ASSOCIATED WITH THE
28 TESTING, REMOVAL, ABATEMENT, OR ELIMINATION OF LEAD-BASED PAINT
29 HAZARDS THAT EXIST IN A RESIDENTIAL BUILDING LOCATED IN BALTIMORE CITY

1 AT THE TIME AN ACTION IS FILED; AND

2 (v) LOST RENT ATTRIBUTABLE TO THE PRESENCE OF
3 LEAD-BASED PAINT IN A RESIDENTIAL BUILDING LOCATED IN BALTIMORE CITY.

4 (B) THIS SUBTITLE DOES NOT APPLY TO AN ACTION:

5 (1) AGAINST A MANUFACTURER FOR DAMAGES ARISING FROM
6 PERSONAL INJURY OR DEATH ALLEGEDLY CAUSED BY THE PRESENCE OF
7 LEAD-BASED PAINT IN A RESIDENTIAL BUILDING LOCATED IN BALTIMORE CITY;

8 (2) AGAINST ANY PERSON OTHER THAN A MANUFACTURER; OR

9 (3) BROUGHT BY ANY PERSON OTHER THAN:

10 (i) THE CITY OF BALTIMORE;

11 (ii) THE HOUSING AUTHORITY OF BALTIMORE CITY; OR

12 (iii) AN OWNER OF A RESIDENTIAL BUILDING LOCATED IN
13 BALTIMORE CITY.

14 3-2103.

15 (A) (1) IN AN ACTION UNDER THIS SUBTITLE:

16 (i) A PLAINTIFF IS NOT REQUIRED TO PROVE THAT A SPECIFIC
17 MANUFACTURER MANUFACTURED OR PRODUCED THE LEAD PIGMENT CONTAINED
18 IN THE LEAD-BASED PAINT ALLEGED TO HAVE CAUSED THE PLAINTIFF'S HARM; AND

19 (ii) A MANUFACTURER MAY BE HELD LIABLE FOR DAMAGES
20 ALLEGEDLY CAUSED BY THE PRESENCE OF LEAD-BASED PAINT IN A RESIDENTIAL
21 BUILDING LOCATED IN BALTIMORE CITY, IF THE PLAINTIFF SHOWS THAT:

22 1. THE PLAINTIFF'S ALLEGED HARM WAS CAUSED BY
23 LEAD PIGMENT USED AS A COMPONENT OF LEAD-BASED PAINT;

24 2. THE MANUFACTURER MANUFACTURED OR
25 PRODUCED LEAD PIGMENT FOR SALE OR USE AS A COMPONENT OF LEAD-BASED
26 PAINT; AND

27 3. THE MANUFACTURER BREACHED A LEGALLY
28 RECOGNIZED DUTY TO THE PLAINTIFF UNDER MARYLAND LAW IN THE COURSE OF

1 SELLING, MANUFACTURING, PROMOTING, OR DISTRIBUTING LEAD PIGMENT.

2 (2) IT IS A DEFENSE TO AN ACTION UNDER THIS SUBTITLE THAT THE
3 MANUFACTURER DID NOT SELL, MANUFACTURE, PROMOTE, OR DISTRIBUTE LEAD
4 PIGMENT:

5 (I) IN BALTIMORE CITY; OR

6 (II) DURING THE TIME PERIOD WHEN THE LEAD-BASED PAINT
7 ALLEGED TO HAVE CAUSED THE PLAINTIFF'S HARM WAS APPLIED.

8 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF
9 MORE THAN ONE MANUFACTURER IS FOUND LIABLE IN AN ACTION UNDER THIS
10 SUBTITLE, LIABILITY SHALL BE JOINT AND SEVERAL.

11 (2) (I) A MANUFACTURER MAY REDUCE ITS SHARE OF LIABILITY
12 UNDER A VERDICT BY SHOWING THAT THE MANUFACTURER WAS RESPONSIBLE FOR
13 A PARTICULAR SHARE OF THE MARKET FOR LEAD PIGMENT DURING THE TIME
14 PERIOD WHEN THE LEAD-BASED PAINT ALLEGED TO HAVE CAUSED THE PLAINTIFF'S
15 HARM WAS APPLIED.

16 (II) IF A MANUFACTURER SHOWS THAT THE MANUFACTURER
17 WAS RESPONSIBLE FOR A PARTICULAR SHARE OF THE MARKET IN ACCORDANCE
18 WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH:

19 1. THE COURT SHALL REDUCE THE MANUFACTURER'S
20 SHARE OF THE VERDICT TO BE THE SAME AS THE MANUFACTURER'S SHARE OF THE
21 MARKET; AND

22 2. ANY MANUFACTURERS THAT HAVE NOT SHOWN THAT
23 THEY WERE RESPONSIBLE FOR A PARTICULAR SHARE OF THE MARKET IN
24 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE JOINTLY
25 AND SEVERALLY RESPONSIBLE FOR THE REMAINING AMOUNT OF THE VERDICT.

26 (C) FAILURE TO JOIN A SPECIFIC MANUFACTURER IN AN ACTION UNDER
27 THIS SUBTITLE DOES NOT CONSTITUTE FAILURE TO JOIN A REQUIRED PARTY FOR
28 ANY PURPOSE.

29 (D) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A
30 COUNTERCLAIM OR CROSS-CLAIM MAY NOT BE FILED IN AN ACTION BROUGHT
31 UNDER THIS SUBTITLE.

32 (E) THIS SECTION MAY NOT BE CONSTRUED OR INTERPRETED TO PROHIBIT

1 A MANUFACTURER FROM BRINGING CLAIMS AGAINST ANOTHER MANUFACTURER
2 FOR CONTRIBUTION OR INDEMNIFICATION.

3 **3-2104.**

4 AN ACTION UNDER THIS SUBTITLE IS NOT EXCLUSIVE AND IS INDEPENDENT
5 OF AND IN ADDITION TO ANY RIGHT, REMEDY, OR CAUSE OF ACTION AVAILABLE TO
6 ANY PERSON OR PUBLIC ENTITY TO RECOVER DAMAGES CAUSED BY LEAD-BASED
7 PAINT.

8 **3-2105.**

9 THE GENERAL ASSEMBLY DECLARES THAT:

10 (1) THE PURPOSE OF THIS SUBTITLE IS REMEDIAL AND ESSENTIAL TO
11 THE PUBLIC INTEREST; AND

12 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS
13 SUBTITLE BE LIBERALLY CONSTRUED BY THE COURTS.

14 **3-2106.**

15 THIS SUBTITLE MAY BE CITED AS THE BALTIMORE CITY LEAD REMEDIATION
16 AND RECOVERY ACT.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
18 apply only prospectively and may not be applied or interpreted to have any effect on or
19 application to any case filed before the effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2018.