

SENATE No. 955

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act enhancing justice for families harmed by lead.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/11/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/13/2019</i>

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 955) of Patricia D. Jehlen, Denise Provost, James B. Eldridge, David Henry Argosky LeBoeuf and other members of the General Court for legislation to enhance justice for families harmed by lead . The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act enhancing justice for families harmed by lead.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 189A of Chapter 111, as appearing in the 2016 Official Edition, is
2 hereby amended striking out the words “one hundred and ninety-nine B”, in line 2, and inserting
3 in place thereof the following:- “one hundred and ninety-nine C”

4 SECTION 2. Said section 189A of Chapter 111, as so appearing, is hereby further
5 amended by inserting after the word “seventy-eight”, in line 39, the following:-

6 “Placing lead in commerce”. A party shall be regarded as having placed lead in
7 commerce if it offers lead for sale or incorporates lead into products and offers the products for
8 sale, or the party knows or should have known that the sold materials consisting of lead or
9 containing lead would be incorporated into products that would be offered for sale. This shall
10 not include sale for use that is not expected to cause exposures, such as lead batteries that are
11 intended to be used in a closed-loop fashion and recycled, if the party placing lead into
12 commerce has taken action to restrict sale to such uses and to provide assistance with recycling,

13 unless it is shown that the party should have known the batteries or other lead-containing product
14 intended to be used in a closed-loop fashion and recycled would not in fact be recycled. It shall
15 not include retail facilities that accept articles for sale and do not themselves incorporate lead
16 into the products they sell. It shall not include materials containing lead below limits set under
17 federal or state definitions pertaining to lead-containing products.

18 “Lead-containing materials used to convey drinking water” shall include lead service
19 lines and other components of drinking water systems, with the exception of solder, brass fittings
20 and pumps and decorative items, unless it is shown that lead content was present in excess of
21 limits or in violation of proscriptions on use by any government authority.

22 SECTION 3. Said Chapter 111 is hereby amended by inserting, after Section 199B, the
23 following section:-

24 Section 199C. (a) In any legal proceeding to recover damages caused by exposure to lead
25 from coatings, lead-containing materials used to convey drinking water, materials prohibited by
26 Section 196 of this chapter, and any other product made of or containing lead placed in
27 commerce and used in residences, schools, hospitals or child-occupied facilities as defined under
28 the federal Residential Lead-Based Paint Hazard Reduction Act, the inability to identify the
29 specific party that placed lead or lead-containing products into commerce shall not prevent those
30 harmed by such placement from recovering for damages caused by exposure to the lead or the
31 lead-containing product. Plaintiffs harmed by exposure caused by the placement of such
32 products in commerce may recover damages for their injury by establishing by a preponderance
33 of evidence the following:

34 (1) that the placement of the lead or lead-containing products into commerce was a
35 substantial contributing factor in bringing about their injury, and

36 (2) that the party placing lead in commerce knew or should have known that such harm
37 was a likely consequence of their actions, and

38 (3) the party placing lead in commerce took no or insufficient action to prevent such
39 harm.

40 (b) No party placing lead into commerce shall be liable if they can show the following:

41 (1) that they took actions to prevent exposures by users of their product, sufficient to
42 reach and adequately inform all potential users and to include all potential uses. Proof of
43 adequate measures taken to ensure safety through the life-cycle of the use of the lead or lead-
44 containing product must include information about appropriate post-use management of the
45 product, or

46 (2) that they sold their product for uses that a reasonable person could expect would not
47 subject anyone to harm, or

48 (3) that their product could not have harmed the plaintiff, or

49 (4) that they had no reason to expect that their product might be used in residences,
50 schools, hospitals, or child-occupied facilities as defined by the federal Residential Lead-Based
51 Paint Hazard Reduction Act, or

52 (5) that their product was not sold after 1960.

53 (c) A court may use any reasonable means of allocating liability amongst those who
54 placed lead in commerce, including determining that liability may be apportioned according to
55 the market share relevant to the activity that caused the harm. The ability of courts to dictate
56 allocation of liability amongst jointly responsible parties shall not mitigate the ability of
57 plaintiffs to recover from any particular defendant found to be liable under this section.

58 (d) This section does not pertain to, nor does it remove any existing liability applicable to
59 providers or sellers of housing, nor to the availability of a cause of action against defendants
60 described herein by any plaintiffs except those injured by lead, except that public officials may
61 seek compensation for victims of lead poisoning as part of an action seeking reimbursement for
62 the costs of remediating lead-contaminated properties.

63 (e) The remedy provided by this section is not exclusive and supplements any existing
64 statutory or common law cause of action.

65 (f) A parent or guardian of a child, landlord, seller or manager of properties, housing
66 authority, retailer, government official, child-occupied facility, school district or other entity
67 except those placing lead in commerce shall not be liable to those placing lead in commerce in
68 an action for contribution for damages recovered under this section.

69 (g) Nothing in this section shall prevent or mitigate any right to recover damages from
70 exposure to lead nor any defense to such recovery available under other statutes or common law.

71 (h) The ability to recover damages from lead exposure under this section shall be
72 available for six years after its passage, or six years from the time that a plaintiff has reason to
73 know or should have known that they have the right to such recovery.

74 (i) The Department of Public Health, in consultation with agencies of the
75 Commonwealth on the Toxics Use Reduction Administrative Council, and the Departments of
76 Agricultural Resources and Fish and Wildlife as relevant, may add other products to this chapter,
77 even though not commonly used in residences, schools, hospitals or child-occupied facilities, if
78 they deem it advisable for the protection of public health.