

# HOUSE BILL 1191

D3, M3

9lr2202  
CF SB 488

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By: **Delegates Mosby, Anderson, Boyce, Glenn, Haynes, Rosenberg, and Wells**

Introduced and read first time: February 8, 2019

Assigned to: Environment and Transportation and Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City – Civil Actions – Liability of Toxic Substance Manufacturers**

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

28 BY adding to

29 Article – Courts and Judicial Proceedings

30 Section 3–2201 through 3–2205 to be under the new subtitle “Subtitle 22. Baltimore

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 City – Liability of Toxic Substance Manufacturers”  
2 Annotated Code of Maryland  
3 (2013 Replacement Volume and 2018 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 22. BALTIMORE CITY – LIABILITY OF TOXIC SUBSTANCE**  
8 **MANUFACTURERS.**

9 **3–2201.**

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

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

15 (2) “ABATEMENT” INCLUDES:

16 (I) THE REMOVAL OF A TOXIC SUBSTANCE AND DUST  
17 CONTAMINATED WITH A TOXIC SUBSTANCE, THE CONTAINMENT OR ENCAPSULATION  
18 OF A TOXIC SUBSTANCE, THE REPLACEMENT OR DEMOLITION OF SURFACES OR  
19 FIXTURES PAINTED OR COATED WITH A PRODUCT CONTAINING A TOXIC SUBSTANCE,  
20 AND THE REMOVAL OR COVERING OF SOIL CONTAMINATED WITH A TOXIC  
21 SUBSTANCE; AND

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

25 (C) (1) “MANUFACTURER” MEANS A PERSON THAT MANUFACTURED OR  
26 PRODUCED A TOXIC SUBSTANCE FOR SALE OR USE AS A COMPONENT OF PAINT OR  
27 OTHER SURFACE COATINGS, OR A PREDECESSOR-IN-INTEREST OF THE PERSON.

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

30 (I) SOLD A TOXIC SUBSTANCE OR PRODUCT CONTAINING A  
31 TOXIC SUBSTANCE AT RETAIL OR WHOLESALE; OR

1 (II) APPLIED A PRODUCT CONTAINING A TOXIC SUBSTANCE IN A  
2 RESIDENTIAL BUILDING.

3 (D) (1) "TOXIC SUBSTANCE" MEANS A COMPONENT USED IN PAINT OR  
4 OTHER SURFACE COATINGS THAT IS HARMFUL TO HUMAN HEALTH AND THE  
5 ENVIRONMENT.

6 (2) "TOXIC SUBSTANCE" INCLUDES LEAD PIGMENT.

7 3-2202.

8 (A) (1) THIS SUBTITLE APPLIES ONLY TO AN ACTION AGAINST A  
9 MANUFACTURER FOR PROPERTY DAMAGE OR CONSEQUENTIAL ECONOMIC DAMAGE  
10 ALLEGEDLY CAUSED BY THE PRESENCE OF PAINT OR OTHER SURFACE COATINGS  
11 CONTAINING A TOXIC SUBSTANCE IN A RESIDENTIAL BUILDING LOCATED IN  
12 BALTIMORE CITY.

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

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

- 18 1. THE REQUIREMENTS OF TITLE 6, SUBTITLE 8 OF THE  
19 ENVIRONMENT ARTICLE;
- 20 2. AN ABATEMENT ORDER ISSUED BY A UNIT OF THE  
21 STATE OR A LOCAL GOVERNMENT; OR
- 22 3. A REQUIREMENT TO REPAIR ANY DEFECT UNDER §  
23 8-211 OR § 8-211.1 OF THE REAL PROPERTY ARTICLE;

24 (II) EXPENSES VOLUNTARILY INCURRED BY THE HOUSING  
25 AUTHORITY OF BALTIMORE CITY OR THE OWNER OF A RESIDENTIAL BUILDING  
26 LOCATED IN BALTIMORE CITY TO ABATE TOXIC HAZARDS;

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

- 28 1. ENFORCE LEAD-BASED PAINT LAWS;
- 29 2. RAISE AWARENESS ABOUT THE PRESENCE OF TOXIC  
30 SUBSTANCES IN HOUSING; AND

1                   **3. CONDUCT OUTREACH AND SCREENING EFFORTS**  
2 **AIMED AT POPULATIONS AT RISK FOR POISONING FROM PAINTS AND SURFACE**  
3 **COATINGS CONTAINING TOXIC SUBSTANCES;**

4                   **(IV) THE REASONABLE FUTURE COSTS ASSOCIATED WITH THE**  
5 **TESTING, REMOVAL, ABATEMENT, OR ELIMINATION OF TOXIC HAZARDS THAT EXIST**  
6 **IN A RESIDENTIAL BUILDING LOCATED IN BALTIMORE CITY AT THE TIME AN ACTION**  
7 **IS FILED; AND**

8                   **(V) LOST RENT ATTRIBUTABLE TO THE PRESENCE OF**  
9 **PAINT OR SURFACE COATINGS CONTAINING A TOXIC SUBSTANCE IN A RESIDENTIAL**  
10 **BUILDING LOCATED IN BALTIMORE CITY.**

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

12                   **(1) AGAINST A MANUFACTURER FOR DAMAGES ARISING FROM**  
13 **PERSONAL INJURY OR DEATH ALLEGEDLY CAUSED BY THE PRESENCE OF**  
14 **PAINT OR SURFACE COATINGS CONTAINING A TOXIC SUBSTANCE IN A RESIDENTIAL**  
15 **BUILDING LOCATED IN BALTIMORE CITY;**

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

17                   **(3) BROUGHT BY ANY PERSON OTHER THAN:**

18                   **(I) THE CITY OF BALTIMORE;**

19                   **(II) THE HOUSING AUTHORITY OF BALTIMORE CITY; OR**

20                   **(III) AN OWNER OF A RESIDENTIAL BUILDING LOCATED IN**  
21 **BALTIMORE CITY.**

22 **3-2203.**

23           **(A) (1) IN AN ACTION UNDER THIS SUBTITLE:**

24                   **(I) A PLAINTIFF IS NOT REQUIRED TO PROVE THAT A SPECIFIC**  
25 **MANUFACTURER MANUFACTURED OR PRODUCED THE TOXIC SUBSTANCE**  
26 **CONTAINED IN THE PAINT OR SURFACE COATING ALLEGED TO HAVE CAUSED THE**  
27 **PLAINTIFF'S HARM; AND**

28                   **(II) A MANUFACTURER MAY BE HELD LIABLE FOR DAMAGES**  
29 **ALLEGEDLY CAUSED BY THE PRESENCE OF PAINT OR SURFACE COATINGS**

1 CONTAINING A TOXIC SUBSTANCE IN A RESIDENTIAL BUILDING LOCATED IN  
2 BALTIMORE CITY, IF THE PLAINTIFF SHOWS THAT:

3 1. THE PLAINTIFF'S ALLEGED HARM WAS CAUSED BY A  
4 TOXIC SUBSTANCE USED AS A COMPONENT OF PAINT OR SURFACE COATINGS;

5 2. THE MANUFACTURER MANUFACTURED OR  
6 PRODUCED THE TOXIC SUBSTANCE FOR SALE OR USE AS A COMPONENT OF PAINT OR  
7 SURFACE COATINGS; AND

8 3. THE MANUFACTURER BREACHED A LEGALLY  
9 RECOGNIZED DUTY TO THE PLAINTIFF UNDER MARYLAND LAW IN THE COURSE OF  
10 SELLING, MANUFACTURING, PROMOTING, OR DISTRIBUTING THE TOXIC  
11 SUBSTANCE.

12 (2) IT IS A DEFENSE TO AN ACTION UNDER THIS SUBTITLE THAT THE  
13 MANUFACTURER DID NOT SELL, MANUFACTURE, PROMOTE, OR DISTRIBUTE THE  
14 TOXIC SUBSTANCE:

15 (I) IN BALTIMORE CITY; OR

16 (II) DURING THE TIME PERIOD WHEN THE PAINT OR SURFACE  
17 COATING ALLEGED TO HAVE CAUSED THE PLAINTIFF'S HARM WAS APPLIED.

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

21 (2) (I) A MANUFACTURER MAY REDUCE ITS SHARE OF LIABILITY  
22 UNDER A VERDICT BY SHOWING THAT THE MANUFACTURER WAS RESPONSIBLE FOR  
23 A PARTICULAR SHARE OF THE MARKET FOR A TOXIC SUBSTANCE DURING THE TIME  
24 PERIOD WHEN THE PAINT OR SURFACE COATING ALLEGED TO HAVE CAUSED THE  
25 PLAINTIFF'S HARM WAS APPLIED.

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

29 1. THE COURT SHALL REDUCE THE MANUFACTURER'S  
30 SHARE OF THE VERDICT TO BE THE SAME AS THE MANUFACTURER'S SHARE OF THE  
31 MARKET; AND

32 2. ANY MANUFACTURERS THAT HAVE NOT SHOWN THAT

1 THEY WERE RESPONSIBLE FOR A PARTICULAR SHARE OF THE MARKET IN  
2 ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE JOINTLY  
3 AND SEVERALLY RESPONSIBLE FOR THE REMAINING AMOUNT OF THE VERDICT.

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

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

10 (E) THIS SECTION MAY NOT BE CONSTRUED OR INTERPRETED TO PROHIBIT  
11 A MANUFACTURER FROM BRINGING CLAIMS AGAINST ANOTHER MANUFACTURER  
12 FOR CONTRIBUTION OR INDEMNIFICATION.

13 **3-2204.**

14 AN ACTION UNDER THIS SUBTITLE IS NOT EXCLUSIVE AND IS INDEPENDENT  
15 OF AND IN ADDITION TO ANY RIGHT, REMEDY, OR CAUSE OF ACTION AVAILABLE TO  
16 ANY PERSON OR PUBLIC ENTITY TO RECOVER DAMAGES CAUSED BY PAINT OR  
17 SURFACE COATINGS CONTAINING A TOXIC SUBSTANCE.

18 **3-2205.**

19 **THE GENERAL ASSEMBLY DECLARES THAT:**

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

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

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

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2019.