

Chapter 387

(House Bill 644)

AN ACT concerning

Environment – Reducing the Incidence of Lead Poisoning

FOR the purpose of altering the application of certain provisions of law relating to reducing lead risk in housing to apply to certain property constructed before a certain date; exempting certain properties built between certain dates from certain requirements relating to certain risk reduction standards; authorizing the Department of the Environment or a local health department to order a certain abatement in ~~any residential~~ certain property under certain circumstances; authorizing the Department to enforce the terms of a certain abatement order in a certain manner; ~~establishing a certain rebuttable presumption; providing that the presumption may be rebutted by clear and convincing a preponderance of the evidence~~; providing for the admissibility of certain evidence in certain actions for damages for alleged injury or loss caused by the ingestion of lead; requiring a court to require a certain party, the party's attorney, or both to pay certain costs under certain circumstances; altering a certain annual fee for certain rental property; ~~authorizing the Department to administer a certain program consistent with certain federal regulations; requiring a certain vendor of certain property to deliver to a certain purchaser a certain lead-contaminated dust test under certain circumstances; declaring the intent of the General Assembly regarding certain compliance with certain provisions of law relating to reducing lead risk in housing~~ authorizing certain regulations adopted by the Department to include certain standards and procedures for certain abatement involving the renovation, repair, and painting of lead-containing substances; altering a certain definition; and generally relating to reducing the incidence of lead poisoning.

BY repealing and reenacting, without amendments,

Article – Environment

Section 6–801(a) and 6–843(a)(1)

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,

Article – Environment

Section 6–801(b), 6–817(a)(1) and (b)(1), 6–819(f), 6–822, 6–843(a)(2), 6–1001(b), and 6–1003, and 6–1004

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

BY repealingArticle – EnvironmentSection 6-830.1 6-838Annotated Code of Maryland(2007 Replacement Volume and 2011 Supplement)

BY adding to

Article – Environment

Section ~~6-830.1 6-838~~, and ~~6-1002.1 to be under the amended subtitle “Subtitle 10. Accreditation of Lead Paint Abatement and Renovation Services”~~

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

~~BY adding to~~~~Article – Real Property~~~~Section 10-711~~~~Annotated Code of Maryland~~~~(2010 Replacement Volume and 2011 Supplement)~~

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

Article – Environment

6-801.

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

(b) (1) “Affected property” means:

(i) A property constructed before ~~[1950] 1978~~ that contains at least one rental dwelling unit; ~~or~~

(ii) ON AND AFTER JANUARY 1, 2015, A PROPERTY CONSTRUCTED BEFORE 1978 THAT CONTAINS AT LEAST ONE RENTAL UNIT; OR

~~(ii)~~ **(iii)** Any residential rental property for which the owner makes an election under § 6-803(a)(2) of this subtitle.

(2) “Affected property” includes an individual rental dwelling unit within a multifamily rental dwelling.

(3) “Affected property” does not include property exempted under § 6-803(b) of this subtitle.

6-817.

(a) (1) [On] EXCEPT FOR PROPERTIES CONSTRUCTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31, ~~1997~~ 1977, BOTH INCLUSIVE, ON and after February 24, 2001, an owner of affected properties shall ensure that at least 50% of the owner's affected properties have satisfied the risk reduction standard specified in § 6-815(a) of this subtitle, without regard to the number of affected properties in which there has been a change in occupancy.

(b) (1) [On] EXCEPT FOR PROPERTIES CONSTRUCTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31, ~~1997~~ 1977, BOTH INCLUSIVE, ON and after February 24, 2006, an owner of affected properties shall ensure that 100% of the owner's affected properties in which a person at risk resides, and of whom the owner has been notified in writing, have satisfied the risk reduction standard specified in § 6-815(a) of this subtitle.

6-819.

(f) Except as provided in § 6-817(b) of this subtitle AND EXCEPT FOR PROPERTIES CONSTRUCTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31, ~~1997~~ 1977, BOTH INCLUSIVE, on and after February 24, 2006, an owner of affected properties shall ensure that 100% of the owner's affected properties in which a person at risk does not reside have satisfied the modified risk reduction standard.

6-822.

(a) The provisions of this subtitle do not affect:

(1) The duties and obligations of an owner of an affected property to repair or maintain the affected property as required under any applicable State or local law or regulation; or

(2) The authority of a State or local agency to enforce applicable housing or livability codes or to order lead abatements in accordance with any applicable State or local law or regulation.

(b) (1) Notwithstanding § 6-803 of this subtitle, following an environmental investigation in response to a report of a lead poisoned person at risk, **THE DEPARTMENT OR a local jurisdiction, INCLUDING THE LOCAL HEALTH DEPARTMENT,** may order an abatement, as defined in § 6-1001 of this title, in any residential property, **CHILD CARE CENTER, FAMILY CHILD CARE HOME, OR PRESCHOOL FACILITY.**

(2) No provision of this Act may be construed to limit the treatments which may be encompassed by an order to abate lead hazards.

(c) **(1)** Whenever there is a conflict between the requirements of an abatement order issued by a State or local agency to an owner of an affected property and the provisions of this subtitle, the more stringent provisions of this subtitle and of the abatement order shall be controlling in determining the owner's obligations regarding the necessary lead hazard reduction treatments that shall be performed in the affected property that is subject to the abatement order.

(2) THE DEPARTMENT MAY ENFORCE THE TERMS OF AN ABATEMENT ORDERED BY A LOCAL JURISDICTION OR LOCAL HEALTH DEPARTMENT IN A CIVIL OR AN ADMINISTRATIVE ACTION.

~~6-830.1.~~

~~(A) THERE IS A REBUTTABLE PRESUMPTION THAT A PERSON AT RISK WITH ELEVATED BLOOD LEAD DID NOT INGEST LEAD IN AN AFFECTED PROPERTY IF THE OWNER OF AN AFFECTED PROPERTY:~~

~~(1) HAS GIVEN TO THE TENANT THE NOTICES REQUIRED BY §§ 6-820 AND 6-823 OF THIS SUBTITLE; AND~~

~~(2) WAS IN COMPLIANCE WITH:~~

~~(i) THE REGISTRATION PROVISIONS OF PART III OF THIS SUBTITLE; AND~~

~~(ii) THE APPLICABLE RISK REDUCTION STANDARD AND RESPONSE STANDARD UNDER § 6-815 OR § 6-819 OF THIS SUBTITLE AND THE RISK REDUCTION SCHEDULE UNDER § 6-817 OF THIS SUBTITLE.~~

~~(B) THE PRESUMPTION ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING A PREPONDERANCE OF THE EVIDENCE.~~

~~[6-838.~~

(a) An owner of an affected property that is not in compliance with the provisions of Part IV of this subtitle during the period of residency of the person at risk is presumed to have failed to exercise reasonable care with respect to lead hazards during that period in an action seeking damages for alleged injury or loss caused by the ingestion of lead by a person at risk in the affected property.

(b) The owner has the burden of rebutting the presumption established under subsection (a) of this section by a preponderance of the evidence.]

6-838.

(A) (1) IN AN ACTION SEEKING DAMAGES FOR ALLEGED INJURY OR LOSS CAUSED BY THE INGESTION OF LEAD BY A PERSON AT RISK IN AN AFFECTED PROPERTY, EVIDENCE THAT THE OWNER OF THE AFFECTED PROPERTY WAS IN COMPLIANCE WITH THE PROVISIONS OF PART IV OF THIS SUBTITLE DURING THE PERIOD OF RESIDENCY OF THE PERSON AT RISK IS ADMISSIBLE AS EVIDENCE THAT THE OWNER EXERCISED REASONABLE CARE WITH RESPECT TO LEAD HAZARDS DURING THAT PERIOD.

(2) IN AN ACTION SEEKING DAMAGES FOR ALLEGED INJURY OR LOSS CAUSED BY THE INGESTION OF LEAD BY A PERSON AT RISK IN AN AFFECTED PROPERTY, EVIDENCE THAT THE OWNER OF THE AFFECTED PROPERTY WAS NOT IN COMPLIANCE WITH THE PROVISIONS OF PART IV OF THIS SUBTITLE DURING THE PERIOD OF RESIDENCY OF THE PERSON AT RISK IS ADMISSIBLE AS EVIDENCE THAT THE OWNER FAILED TO EXERCISE REASONABLE CARE WITH RESPECT TO LEAD HAZARDS DURING THAT PERIOD.

(B) IF A PARTY TO AN ACTION FOR DAMAGES ARISING FROM INGESTION OF LEAD BY A PERSON AT RISK IN AN AFFECTED PROPERTY ALLEGES OR DENIES THE TIME AND PLACE OF RESIDENCE OF, OR VISITATION BY, THE PERSON AT RISK WITHOUT A GOOD FAITH BASIS FOR THE ALLEGATION OR DENIAL, THE COURT SHALL REQUIRE THE OFFENDING PARTY, THE PARTY'S ATTORNEY, OR BOTH TO PAY THE REASONABLE COSTS, INCLUDING ATTORNEY'S FEES, INCURRED BY THE ADVERSE PARTY IN OPPOSING THE ALLEGATION OR DENIAL.

6-843.

(a) (1) Except as provided in this subsection and subsection (b) of this section, and in cooperation with the Department of Housing and Community Development, the State Department of Assessments and Taxation, and other appropriate governmental units, the Department shall provide for the collection of an annual fee for every rental dwelling unit in the State.

(2) The annual fee for an affected property is ~~[\$15]~~ **\$30**.

~~Subtitle 10. Accreditation of Lead Paint Abatement AND RENOVATION Services.~~

6-1001.

(b) "Abatement" means a set of measures [designed to] THAT eliminate or reduce lead-based paint hazards in residential, public, or commercial buildings, bridges, or other structures or superstructures in accordance with standards established by the Department which may include:

(1) The removal of lead-based paint and lead-contaminated dust, the containment or encapsulation of lead-based paint, the replacement or demolition of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; [and]

(2) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with these measures; AND

(3) THE RENOVATION, REPAIR, AND PAINTING OF A LEAD-CONTAINING SUBSTANCE IN A RESIDENTIAL, PUBLIC, OR COMMERCIAL BUILDING BUILT BEFORE 1978.

~~6-1002.1.~~

~~THE DEPARTMENT MAY ADMINISTER A RENOVATION, REPAIR, AND PAINTING PROGRAM CONSISTENT WITH THE ENVIRONMENTAL PROTECTION AGENCY'S RENOVATION, REPAIR AND PAINTING RULE, 40 C.F.R. 745, SUBPART E.~~

6-1003.

(a) ~~{The} EXCEPT AS OTHERWISE PROVIDED IN § 6-1002.1 OF THIS SUBTITLE, THE~~ Department shall adopt regulations to carry out the provisions of this subtitle.

(b) Regulations adopted under this subtitle may include:

(1) Initial and continuing standards and procedures for accreditation, including education, training, examination, and job performance standards;

(2) Standards and procedures for renewal of accreditation;

(3) Standards and procedures for modification, suspension, or revocation of accreditation;

(4) Different standards and procedures for different lead paint abatement services;

(5) STANDARDS AND PROCEDURES FOR ABATEMENT INVOLVING THE RENOVATION, REPAIR, AND PAINTING OF LEAD-CONTAINING SUBSTANCES, INCLUDING A REQUIREMENT FOR LEAD-DUST TESTING;

~~(5)~~ **(6)** Recognition of accreditation or similar approvals of persons by other governmental entities; and

~~(6)~~ **(7)** Such other provisions as may be necessary to effectuate the purposes of this subtitle.

(c) The Department shall review and revise its certification and other regulations under this subtitle as necessary to ensure continued eligibility for federal funding of lead-hazard activities in the State.

(d) The Department shall set reasonable fees for the accreditation of persons who provide lead paint abatement, ~~RENOVATION, OR RENOVATION TRAINING~~ services sufficient to cover the Department's direct and indirect costs of administering this subtitle.

~~6-1004.~~

~~(a) There is a Lead Accreditation Fund.~~

~~(b) (1) All fees collected under § 6-1003(d) and fines and penalties imposed under § 6-1005 of this subtitle shall be deposited in the Lead Accreditation Fund.~~

~~(2) The Department may apply for and accept any funds or grants from any federal, State, local, or private source for credit to the Fund that might assist with development, establishment, administration, and education and enforcement activities of the lead paint abatement AND RENOVATION services accreditation [program] PROGRAMS under this subtitle.~~

~~(c) The Department shall use the Lead Accreditation Fund for activities by the Department that are related to processing, monitoring and regulating the accreditation of lead paint abatement services, and for program development of these activities.~~

~~(d) (1) The Lead Accreditation Fund shall be a continuing, nonlapsing special fund, and is not subject to § 7-302 of the State Finance and Procurement Article.~~

~~(2) The State Treasurer shall hold and the State Comptroller shall account for the Accreditation Fund.~~

~~(3) The Accreditation Fund shall be invested and reinvested. Any investment earnings shall be paid into the Accreditation Fund.~~

~~Article — Real Property~~

~~10-711.~~

~~(A) THIS SECTION APPLIES TO THE SALE OF PROPERTY ON WHICH A DWELLING BUILT BEFORE 1978 IS LOCATED.~~

~~(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AT LEAST 7 DAYS BEFORE SETTLEMENT OF A CONTRACT FOR THE SALE OF PROPERTY, A VENDOR SHALL DELIVER TO EACH PURCHASER THE RESULTS OF A LEAD CONTAMINATED DUST TEST PERFORMED FOR THE PROPERTY IN ACCORDANCE WITH THE PROCEDURES AND STANDARDS ADOPTED UNDER § 6-816 OF THE ENVIRONMENT ARTICLE.~~

~~(C) A PURCHASER MAY WAIVE IN WRITING THE RIGHT TO RECEIVE THE RESULTS OF A LEAD CONTAMINATED DUST TEST.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that on or before January 1, 2013, an owner of affected property that was built between 1950 and 1978 shall be in compliance with:~~

~~(a) the notice requirements under §§ 6-820 and 6-823 of the Environment Article;~~

~~(b) the registration provisions of Title 6, Subtitle 8, Part III of the Environment Article;~~

~~(c) the risk reduction standard under § 6-815(a) of the Environment Article; and~~

~~(d) any other requirement under Title 6, Subtitle 8 of the Environment Article, applicable to affected properties.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October June 1, 2012.~~

Approved by the Governor, May 2, 2012.