

SENATE BILL 542

D3

7lr1721

By: **Senator Conway**

Introduced and read first time: February 1, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Lead Poisoning Recovery Act**

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

26 BY adding to

27 Article – Courts and Judicial Proceedings

28 Section 3-2101 through 3-2107 to be under the new subtitle “Subtitle 21. Maryland
29 Lead Poisoning Recovery Act”

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2016 Supplement)

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

Article – Courts and Judicial Proceedings

SUBTITLE 21. MARYLAND LEAD POISONING RECOVERY ACT.

3–2101.

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

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

(2) “ABATEMENT” INCLUDES:

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

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

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

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

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

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

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

2 3-2102.

3 (A) (1) THIS SUBTITLE APPLIES ONLY TO AN ACTION BROUGHT BY A UNIT
4 OF STATE OR LOCAL GOVERNMENT OR BY THE OWNER OF A RESIDENTIAL BUILDING
5 AGAINST A MANUFACTURER FOR PROPERTY DAMAGE OR CONSEQUENTIAL
6 ECONOMIC DAMAGE ALLEGEDLY CAUSED BY THE PRESENCE OF LEAD-BASED PAINT
7 IN A RESIDENTIAL BUILDING.

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

10 (I) DAMAGES SUSTAINED BY THE OWNER OF A RESIDENTIAL
11 BUILDING REQUIRED TO COMPLY WITH:

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

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

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

18 (II) EXPENSES VOLUNTARILY INCURRED BY THE OWNER OF A
19 RESIDENTIAL BUILDING TO ABATE LEAD-BASED PAINT HAZARDS;

20 (III) EXPENSES INCURRED BY A UNIT OF STATE OR LOCAL
21 GOVERNMENT TO:

22 1. ENFORCE LEAD-PAINT LAWS;

23 2. RAISE AWARENESS ABOUT LEAD POISONING; AND

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

26 (IV) THE REASONABLE FUTURE COSTS ASSOCIATED WITH THE
27 TESTING, REMOVAL, ABATEMENT, OR ELIMINATION OF LEAD-BASED PAINT
28 HAZARDS THAT EXIST IN A RESIDENTIAL BUILDING AT THE TIME AN ACTION IS
29 FILED; AND

1 (V) LOST RENT ATTRIBUTABLE TO THE PRESENCE OF
2 LEAD-BASED PAINT IN A RESIDENTIAL BUILDING.

3 (B) THIS SUBTITLE DOES NOT APPLY TO:

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

7 (2) AN ACTION AGAINST ANY PERSON OTHER THAN A
8 MANUFACTURER.

9 3-2103.

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

11 (I) A PLAINTIFF IS NOT REQUIRED TO PROVE THAT A SPECIFIC
12 MANUFACTURER MANUFACTURED OR PRODUCED THE LEAD PIGMENT CONTAINED
13 IN THE LEAD-BASED PAINT ALLEGED TO HAVE CAUSED THE PLAINTIFF'S HARM; AND

14 (II) A MANUFACTURER MAY BE HELD LIABLE FOR DAMAGES
15 ALLEGEDLY CAUSED BY THE PRESENCE OF LEAD-BASED PAINT IN A RESIDENTIAL
16 BUILDING, IF THE PLAINTIFF SHOWS THAT:

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

19 2. THE MANUFACTURER MANUFACTURED OR
20 PRODUCED LEAD PIGMENT FOR SALE OR USE AS A COMPONENT OF LEAD-BASED
21 PAINT; AND

22 3. THE MANUFACTURER BREACHED A LEGALLY
23 RECOGNIZED DUTY TO THE PLAINTIFF UNDER MARYLAND LAW IN THE COURSE OF
24 SELLING, MANUFACTURING, PROMOTING, OR DISTRIBUTING LEAD PIGMENT.

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

28 (I) IN THE GEOGRAPHIC AREA WHERE THE LEAD-BASED PAINT
29 ALLEGED TO HAVE CAUSED THE PLAINTIFF'S HARM WAS APPLIED; OR

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

3 **(B) (1) IF MORE THAN ONE MANUFACTURER IS FOUND LIABLE IN AN**
4 **ACTION UNDER THIS SUBTITLE, THE TRIER OF FACT SHALL APPORTION THE TOTAL**
5 **AMOUNT OF DAMAGES AMONG THE LIABLE MANUFACTURERS ON THE BASIS OF EACH**
6 **MANUFACTURER'S SHARE OF THE NATIONAL MARKET FOR LEAD PIGMENT DURING**
7 **THE TIME PERIOD WHEN THE LEAD-BASED PAINT ALLEGED TO HAVE CAUSED THE**
8 **PLAINTIFF'S HARM WAS APPLIED.**

9 **(2) IF A MANUFACTURER IS BANKRUPT OR INSOLVENT, THE COURT**
10 **SHALL REAPPORTION THE DAMAGES FOR WHICH THAT MANUFACTURER IS LIABLE**
11 **AMONG THE OTHER LIABLE MANUFACTURERS AS DESCRIBED IN PARAGRAPH (1) OF**
12 **THIS SUBSECTION.**

13 **(C) FAILURE TO JOIN A SPECIFIC MANUFACTURER IN AN ACTION UNDER**
14 **THIS SUBTITLE DOES NOT CONSTITUTE FAILURE TO JOIN A REQUIRED PARTY FOR**
15 **ANY PURPOSE.**

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

19 **(E) THIS SECTION MAY NOT BE CONSTRUED OR INTERPRETED TO PROHIBIT**
20 **A MANUFACTURER FROM BRINGING CLAIMS AGAINST ANOTHER MANUFACTURER**
21 **FOR CONTRIBUTION OR INDEMNIFICATION.**

22 **3-2104.**

23 **AN ACTION UNDER THIS SUBTITLE IS NOT EXCLUSIVE AND IS INDEPENDENT**
24 **OF AND IN ADDITION TO ANY RIGHT, REMEDY, OR CAUSE OF ACTION AVAILABLE TO**
25 **ANY PERSON OR PUBLIC ENTITY TO RECOVER DAMAGES CAUSED BY LEAD-BASED**
26 **PAINT.**

27 **3-2105.**

28 **(A) THERE IS A LEAD-BASED PAINT RESTITUTION FUND.**

29 **(B) (1) THE FUND IS A CONTINUING, NONLAPSING FUND THAT IS NOT**
30 **SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

31 **(2) ALL REVENUES CONSISTING OF FUNDS RECEIVED BY THE STATE**
32 **FROM ANY SOURCE RESULTING, DIRECTLY OR INDIRECTLY, FROM A JUDGMENT**

1 AGAINST OR SETTLEMENT WITH A MANUFACTURER OR ANOTHER PERSON IN THE
2 LEAD-BASED PAINT INDUSTRY RELATING TO LITIGATION, ADMINISTRATIVE
3 PROCEEDINGS, OR ANY OTHER CLAIMS MADE OR PROSECUTED BY THE STATE TO
4 RECOVER DAMAGES FOR VIOLATIONS OF STATE LAW SHALL BE CREDITED TO THE
5 FUND.

6 (C) THE TREASURER SHALL:

7 (1) INVEST AND REINVEST THE FUND IN THE SAME MANNER AS
8 OTHER STATE FUNDS; AND

9 (2) CREDIT ANY INVESTMENT EARNINGS TO THE FUND.

10 (D) EXPENDITURES FROM THE FUND SHALL BE MADE BY AN
11 APPROPRIATION IN THE ANNUAL STATE BUDGET.

12 (E) (1) THE FUND SHALL BE EXPENDED SUBJECT TO ANY RESTRICTIONS
13 ON THE USE OF THE FUND OR OTHER LIMITATIONS ON THE ALLOCATION OF THE
14 FUND THAT ARE:

15 (I) EXPRESSLY PROVIDED BY STATUTE;

16 (II) REQUIRED AS A CONDITION OF THE ACCEPTANCE OF
17 FUNDS; OR

18 (III) DETERMINED TO BE NECESSARY TO AVOID RECOUPMENT
19 BY THE FEDERAL GOVERNMENT OF MONEY PAID TO THE FUND.

20 (2) DISBURSEMENTS FROM THE FUND TO PROGRAMS FUNDED BY
21 THE STATE OR WITH FEDERAL FUNDS ADMINISTERED BY THE STATE SHALL BE USED
22 SOLELY TO SUPPLEMENT, AND NOT TO SUPPLANT, FUNDS OTHERWISE AVAILABLE
23 FOR THE PROGRAMS UNDER FEDERAL OR STATE LAW AS PROVIDED IN THIS
24 SECTION.

25 (F) (1) THE FUND SHALL BE USED TO FUND:

26 (I) THE LEAD POISONING PREVENTION PROGRAM OF THE
27 DEPARTMENT OF THE ENVIRONMENT; AND

28 (II) OTHER PROGRAMS THAT SERVE THE FOLLOWING
29 PURPOSES:

30 1. ELIMINATION AND PREVENTION OF LEAD POISONING;

1 **2. PRIMARY HEALTH CARE PREVENTION, EDUCATION,**
2 **SCREENING, AND TREATMENT OF LEAD POISONING;**

3 **3. PUBLIC EDUCATION TO PREVENT LEAD POISONING;**

4 **4. ENFORCEMENT OF THE LAWS REGARDING**
5 **LEAD-BASED PAINT;**

6 **5. RESEARCH CONCERNING PREVENTION AND**
7 **TREATMENT OF LEAD POISONING;**

8 **6. RESEARCH CONCERNING REDUCTION, REMOVAL,**
9 **ABATEMENT, AND ELIMINATION OF LEAD-BASED PAINT;**

10 **7. REDUCTION, REMOVAL, ABATEMENT, AND**
11 **ELIMINATION OF LEAD-BASED PAINT;**

12 **8. SPECIAL EDUCATION ADDRESSING THE NEEDS OF**
13 **LEAD-POISONED CHILDREN AND ADULTS;**

14 **9. JOB TRAINING ADDRESSING THE NEEDS OF**
15 **LEAD-POISONED ADULTS; AND**

16 **10. ANY OTHER PUBLIC PURPOSE RELATED TO LEAD**
17 **POISONING OR LEAD-BASED PAINT.**

18 **(2) THE PROVISIONS OF THIS SUBSECTION MAY NOT BE CONSTRUED**
19 **TO AFFECT THE POWERS OF THE GOVERNOR WITH RESPECT TO A REQUEST FOR AN**
20 **APPROPRIATION IN THE ANNUAL BUDGET BILL.**

21 **(G) (1) AMOUNTS MAY BE EXPENDED FROM THE FUND ONLY THROUGH**
22 **APPROPRIATIONS IN THE BUDGET BILL AS PROVIDED IN THIS SUBSECTION.**

23 **(2) THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL**
24 **APPROPRIATIONS FROM THE FUND EQUIVALENT TO THE LESSER OF \$100,000,000**
25 **OR 90% OF THE FUNDS ESTIMATED TO BE AVAILABLE TO THE FUND IN THE FISCAL**
26 **YEAR FOR WHICH THE APPROPRIATIONS ARE MADE.**

27 **(3) (I) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE**
28 **MADE, AT LEAST 50% OF THE APPROPRIATIONS SHALL BE MADE FOR THOSE**
29 **PURPOSES ENUMERATED IN SUBSECTION (F)(1)(I) AND (II)1 THROUGH 9 OF THIS**
30 **SECTION SUBJECT TO THE REQUIREMENT OF SUBSECTION (E)(2) OF THIS SECTION.**

1 (II) APPROPRIATIONS MADE FOR THE PURPOSES OF THE
2 MARYLAND MEDICAL ASSISTANCE PROGRAM MAY NOT BE COUNTED AS
3 APPROPRIATIONS SATISFYING THE REQUIREMENT UNDER SUBPARAGRAPH (I) OF
4 THIS PARAGRAPH.

5 (4) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE MADE,
6 AT LEAST 30% OF THE APPROPRIATIONS SHALL BE MADE FOR THE PURPOSES OF
7 THE MARYLAND MEDICAL ASSISTANCE PROGRAM.

8 (5) ADDITIONAL APPROPRIATIONS NOT SUBJECT TO PARAGRAPH (3)
9 OR (4) OF THIS SUBSECTION MAY BE MADE FOR ANY LAWFUL PURPOSE.

10 (H) FOR EACH PROGRAM, PROJECT, OR ACTIVITY RECEIVING FUNDS
11 APPROPRIATED UNDER SUBSECTION (G)(3) OF THIS SECTION, THE GOVERNOR
12 SHALL:

13 (1) DEVELOP APPROPRIATE STATEMENTS OF VISION, MISSION, KEY
14 GOALS, KEY OBJECTIVES, AND KEY PERFORMANCE INDICATORS AND REPORT THESE
15 STATEMENTS IN A DISCRETE PART OF THE STATE BUDGET SUBMISSION, WHICH
16 SHALL ALSO PROVIDE DATA FOR KEY PERFORMANCE INDICATORS; AND

17 (2) REPORT ANNUALLY, SUBJECT TO § 2-1246 OF THE STATE
18 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY NO LATER THAN OCTOBER 1
19 ON:

20 (i) TOTAL FUNDS EXPENDED, BY PROGRAM AND SUBDIVISION,
21 IN THE PRIOR FISCAL YEAR FROM THE FUND ESTABLISHED UNDER THIS SECTION;
22 AND

23 (ii) THE SPECIFIC OUTCOMES OR PUBLIC BENEFITS RESULTING
24 FROM THAT EXPENDITURE.

25 3-2106.

26 THE GENERAL ASSEMBLY DECLARES THAT:

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

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

1 **3-2107.**

2 **THIS SUBTITLE MAY BE CITED AS THE MARYLAND LEAD POISONING**
3 **RECOVERY ACT.**

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2017.