

CHAPTER 129

(House Bill 119)

AN ACT concerning

Children's Products Containing Lead – Modifications

FOR the purpose of altering the requirements for the testing entity that is to be used by a manufacturer of a children's product; altering certain definitions; defining a certain term; altering the electronic devices, products, and materials to which this Act does not apply; clarifying the manufacturers and importers that are required to perform certain testing; clarifying the children's products to be tested to determine whether they are lead-containing products; providing that a certain certificate is not required for the sale of certain products; making this Act an emergency measure; and generally relating to children's products containing lead.

BY repealing and reenacting, with amendments,
Article – Environment
Section 6–1301, 6–1302, and 6–1304
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)

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

Article – Environment

6–1301.

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

(b) [(1) Subject to paragraph (2) of this subsection, “child”] **“CHILD”** means an individual who is under the age of [6] **13** years.

[(2) If a federal law establishing the permissible level of lead in children's products is enacted, “child” shall mean an individual who is the age specified in the federal law.]

(c) (1) “Children's product” means[:

(i) A product that is marketed for use by a child; or

(ii) A product the use of which by a child is foreseeable] **A PRODUCT DESIGNED OR INTENDED PRIMARILY FOR A CHILD AS SPECIFIED IN FEDERAL LAW.**

(2) “Children’s product” does not include:

(I) [food] **FOOD** as defined in § 21–101 of the Health – General Article; **OR**

(II) **ANY COMPONENT PART OF A CHILDREN’S PRODUCT THAT IS NOT ACCESSIBLE TO A CHILD THROUGH NORMAL AND REASONABLY FORESEEABLE USE AND ABUSE OF THE PRODUCT AS SPECIFIED IN FEDERAL LAW.**

(D) **“FEDERAL LAW” MEANS THE CONSUMER PRODUCT SAFETY ACT OF 2008 AND REGULATIONS ADOPTED UNDER THE ACT.**

[(d)] (E) “Lead–containing product” means a product in which any part, component, or coating of the product contains lead or lead compounds greater than the lesser of:

(1) 0.06% by weight of the total weight of the part, component, or coating; or

(2) The standard established under federal law regarding the permissible level of lead in children’s products.

[(e)] (F) “Manufacturer” means a person that is the brand owner of a product.

[(f)] (G) “Product” includes:

(1) Accessories and jewelry;

(2) Clothing;

(3) Decorative objects;

(4) Furniture;

(5) Lunch boxes and eating utensils;

(6) Toys; and

(7) Any other item specified by the Department in regulation.

6–1302.

This subtitle does not apply to:

(1) An electronic device that [is a lead–containing product unless the Secretary determines that during the normal use of the electronic device there is a significant risk that a child could be exposed to the lead contained in the electronic device] **IS IN COMPLIANCE WITH FEDERAL LAW;**

(2) Any distribution operation or activity performed in a factory, warehouse, or establishment, or, in the course of surface transportation, at a port facility as defined in § 6–101 of the Transportation Article; [and]

(3) A vehicle as defined in § 11–176 of the Transportation Article, a product or part for use in a vehicle, or transportation equipment; **AND**

(4) **A PRODUCT OR MATERIAL EXCLUDED BY FEDERAL LAW.**

6–1304.

(a) **A UNITED STATES manufacturer, OR IF THE MANUFACTURER IS NOT A UNITED STATES MANUFACTURER, THE IMPORTER OF RECORD, of a children’s product FOR WHICH A CHILDREN’S PRODUCT CERTIFICATION IS REQUIRED UNDER FEDERAL LAW** shall:

(1) Test whether the children’s product is a lead–containing product by using [an independent third party qualified testing entity that:

(i) Is not owned, managed, controlled, or directed by the manufacturer; and

(ii) Is accredited in accordance with an accreditation process established or recognized by the Department] **A TESTING ENTITY QUALIFIED OR CERTIFIED UNDER FEDERAL LAW;** and

(2) If the children’s product tested under item (1) of this subsection is not a lead–containing product, issue a certificate that certifies that the children’s product is not a lead–containing product.

(b) A person shall ensure that the certificate issued in accordance with subsection (a) of this section is transmitted with the children’s product to any distributor or retailer who receives the children’s product.

(c) A manufacturer shall:

(1) Maintain a copy of any documents related to lead testing and any certificate issued in accordance with subsection (a) of this section; and

(2) Provide a copy to the Department or any person on request.

(d) A retailer shall:

(1) Maintain a copy of any certificate issued in accordance with subsection (a) of this section; and

(2) Provide a copy to the Department or any person on request.

(e) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A** person may not sell or offer for sale in the State, by any means, including transactions conducted through a sales outlet, a catalog, or the Internet, a children's product for which there is no certificate issued in accordance with subsection (a) of this section.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, A CERTIFICATE IS NOT REQUIRED FOR THE SALE OF A USED CHILDREN'S PRODUCT AT A THRIFT STORE, CONSIGNMENT STORE, YARD SALE, OR ANY OTHER ~~SECOND-HAND~~ SECONDHAND POINT OF SALE.

(f) A certificate issued in accordance with subsection (a) of this section shall be:

(1) Based on a test of each children's product or on a testing protocol that is established or recognized by the Department; and

(2) On a form created or approved by the Department.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, April 14, 2009.