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HOUSE BILL NO. 889

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 10, 2006)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact § 8.01-226.7 of the Code of Virginia, relating to immunity from liability for lead-based paint maintenance.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-226.7 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-226.7. Owner and agent compliance with residential lead-based paint notification; maintenance immunity.

A. As used in this section, the following definitions apply:

"Agent" means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing a residential dwelling. This term includes all persons licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1. This term does not apply to purchasers or any purchaser's representative who receives compensation from the purchaser.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal or state agency.

"Lead-based paint maintenance" means ensuring that the painted surfaces are maintained in accordance with the provisions of the International Property Maintenance Code adopted as part of the Uniform Statewide Building Code.

"Residential dwelling" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily.

B. Any agent who has complied with the requirements of the United States Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 et seq.) shall not be liable for civil damages in any personal injury or wrongful death action for lead poisoning arising from the condition of a residential dwelling, provided that before the purchaser or tenant signs any contract to purchase the residential dwelling or the tenant signs any lease for an initial term to rent the residential dwelling:

1. An EPA-approved lead hazard information pamphlet was provided to the purchaser or lessee;

2. Any known lead-based paint and lead-based paint hazard on the property and any additional information or reports available to the owner concerning the same were provided to the purchaser or lessee. The agent disclosed to the lessee the presence of any known lead-based paint and/or lead-based paint hazards and any additional information or reports about which the agent had actual knowledge concerning the known lead-based paint or lead-based paint hazards;

3. The purchaser or tenant signed a written statement acknowledging the disclosure and receipt of the literature; and

4. If the agent is a public housing authority, it has complied with all applicable federal laws and regulations. Nothing in this subdivision shall be construed to require compliance with the federal laws and regulations that are applicable to federal housing authorities by owners or agents who are not a public housing authority.

5. The disclosure requirements in subsection B shall continue during the term of the tenancy for any new information in the possession of the agent or about which the agent has actual knowledge concerning the presence of lead-based paint or lead-based paint hazards.

However, if the agent is responsible for performs or agrees to perform lead-based paint maintenance on the residential dwelling or if the party, a purchaser or a lessee is instructed to contract for lead-based paint repairs, the agent shall not be entitled to immunity unless the agent has also met the requirements of subsection C of this section. For purposes of subsection B, an agent is responsible for lead-based paint maintenance if the agent is a party to a written agreement that requires the agent to be responsible for the maintenance of the painted surfaces in accordance with the International Property Maintenance Code adopted as part of the Uniform Statewide Building Code.

C. An owner of a residential dwelling, or agent responsible for the lead-based paint maintenance of a residential dwelling, who has complied with the requirements of the United States Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 et seq.) shall not be liable for civil damages in a personal injury or wrongful death action for lead poisoning arising from the condition of

60 the residential dwelling, provided that before the purchaser ~~or tenant~~ signs any contract to purchase ~~or~~
61 ~~lease~~ the residential dwelling, *or the tenant signs any lease for an initial term to rent the residential*
62 *dwelling;*

63 1. An EPA-approved lead hazard information pamphlet was provided to the purchaser or lessee;

64 2. ~~Any known lead-based paint and lead-based paint hazard on the property and any additional~~
65 ~~information or reports available to the owner concerning same were provided to the purchaser or~~
66 ~~lessee~~*The owner or agent responsible for the lead-based paint maintenance of a residential dwelling*
67 *disclosed to the lessee the presence of any known lead-based paint and/or lead-based paint hazards and*
68 *any additional information or reports about which the owner or such agent had of their own actual*
69 *knowledge concerning the known lead-based paint or lead-based paint hazards;*

70 3. The purchaser or tenant signed a written statement acknowledging the disclosure and receipt of the
71 literature; and

72 4. With regards to lead-based paint and lead-based paint hazards, *the painted surfaces of the*
73 *residential dwelling was were maintained in a fit and habitable condition and in compliance with the*
74 *state laws and regulations, including but not limited to the International Property Maintenance Code of*
75 *the Uniform Statewide Building Code, and applicable federal laws and regulations.*

76 5. *The disclosure requirements in subsection C shall continue during the term of the tenancy for any*
77 *new information in the possession of the owner or about which the owner has actual knowledge*
78 *concerning the presence of lead-based paint or lead-based paint hazards. Further, the disclosure*
79 *requirements in subsection C shall continue during the term of the tenancy for any new information in*
80 *the possession of such agent or about which such has actual knowledge concerning the presence of*
81 *lead-based paint or lead-based paint hazards.*

82 D. An owner or agent claiming immunity under this section may assert such immunity in responsive
83 pleadings and request a hearing, after discovery on issues related to immunity, before the court to
84 determine entitlement to such immunity prior to further proceedings in the case.