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HOUSE BILL NO. 889

Offered January 11, 2006

Prefiled January 10, 2006

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.*

Patron—Kilgore

Referred to Committee for Courts of Justice

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 a standard or set of standards that address lead-based paint hazards and that are required to be met in accordance with the provisions of the Property Maintenance Code of the Uniform Statewide Building Code by a person licensed as a lead contractor under Chapter 5 (§ 54.1-500 et seq.) of Title 54.1.

"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~~ *in the possession of* the owner concerning the same were provided to the purchaser or lessee;

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 section shall be construed to require compliance with the federal laws and regulations by owners or agents who are not a public housing authority.*

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.

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 the residential dwelling, provided that before the purchaser ~~or tenant~~ signs any contract to purchase ~~or lease~~ 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

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HB889

59 information or reports available to the owner concerning same were provided to the purchaser or lessee;
60 3. The purchaser or tenant signed a written statement acknowledging the disclosure and receipt of the
61 literature; and

62 4. ~~With regards to lead-based paint and lead-based paint hazards~~ *If a lead-based paint hazard exists*
63 *in the residential dwelling, the owner or agent responsible for lead-based paint maintenance has*
64 *contracted with a licensed lead contractor to maintain the residential dwelling was maintained in a fit*
65 *and habitable condition and in compliance with the state laws and regulations, including but not limited*
66 *to Property Maintenance Code of the Uniform Statewide Building Code, and applicable federal laws and*
67 *regulations.*

68 *D. An owner or agent claiming immunity under this section may assert such immunity in responsive*
69 *pleadings and request a hearing before the court to determine entitlement to such immunity prior to*
70 *further proceedings in the case.*