

SENATE No. 1008

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act enhancing justice for families harmed by lead.

PETITION OF:

NAME:

Patricia D. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

SENATE No. 1008

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1008) of Patricia D. Jehlen for legislation to enhance justice for families harmed by lead. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1056 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act enhancing justice for families harmed by lead.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 189A of Chapter 111, as appearing in the 2018 Official Edition, is
2 hereby amended striking out the words “one hundred and ninety-nine B”, in line 2, and inserting
3 in place thereof the following:- “one hundred and ninety-nine C”.

4 SECTION 2. Said section 189A of Chapter 111, as so appearing, is hereby further
5 amended by inserting after the word “seventy-eight”, in line 39, the following:-

6 “Placing lead in commerce”. A party shall be regarded as having placed lead in
7 commerce if it offers lead for sale or incorporates lead into products and offers the products for
8 sale, or the party knows or should have known that the sold materials consisting of lead or
9 containing lead would be incorporated into products that would be offered for sale. This shall
10 not include sale for use that is not expected to cause exposures, such as lead batteries that are

intended to be used in a closed-loop fashion and recycled, if the party placing lead into commerce has taken action to restrict sale to such uses and to provide assistance with recycling, unless it is shown that the party should have known the batteries or other lead-containing product intended to be used in a closed-loop fashion and recycled would not in fact be recycled. It shall not include retail facilities that accept articles for sale and do not themselves incorporate lead into the products they sell. It shall not include materials containing lead below limits set under federal or state definitions pertaining to lead-containing products.

“Lead-containing materials used to convey drinking water” shall include lead service lines and other components of drinking water systems. However, solder, brass fittings and pumps and decorative items shall not be included unless it is shown that lead content was present in excess of limits or in violation of proscriptions on use by any government authority.

SECTION 3. Said Chapter 111 is hereby amended by inserting, after Section 199B, the following section:-

Section 199C. (a) In any legal proceeding to recover damages caused by exposure to lead from coatings, lead-containing materials used to convey drinking water, materials prohibited by Section 196 of this chapter, and any other product made of or containing lead placed in commerce and used in residences, schools, hospitals or child-occupied facilities as defined under the federal Residential Lead-Based Paint Hazard Reduction Act, the inability to identify the specific party that placed lead or lead-containing products into commerce shall not prevent those harmed by such placement from recovering for damages caused by exposure to the lead or the lead-containing product. When a plaintiff is shown to have lead in blood, bones, teeth or other body tissues at levels identified in the scientific literature causative of injury such injury shall be

presumed to have been caused by lead exposure. Plaintiffs suffering injury consistent with exposure to lead caused by the placement of such products in commerce may recover damages for their injury by establishing by a preponderance of evidence the following:

(1) that the defendant placed lead or lead-containing products into commerce which caused exposures sufficient to cause injury, and (2) that the party placing lead in commerce knew or should have known that such harm was a likely consequence of their actions, and (3) the party placing lead in commerce took no or insufficient action to prevent such harm.

(b) No party placing lead into commerce shall be liable if they can show the following:

(1) that they took actions to prevent exposures by users of their product, sufficient to reach and adequately inform all potential users and to include all potential uses. Proof of adequate measures taken to ensure safety through the life-cycle of the use of the lead or lead-containing product must include information about appropriate post-use management of the product, or

(2) that they sold their product for uses that a reasonable person could expect would not subject anyone to harm, or

(3) that their product could not have harmed the plaintiff, or

(4) that they had no reason to expect that their product might be used in residences, schools, hospitals, or child-occupied facilities as defined by the federal Residential Lead-Based Paint Hazard Reduction Act, or used by consumers in a manner that would cause exposure to lead, or

(c) A court may use any reasonable means of allocating liability amongst those who placed lead in commerce, including determining that liability may be apportioned according to the market share relevant to the activity that caused the harm. The ability of courts to dictate allocation of liability amongst jointly responsible parties shall not mitigate the ability of plaintiffs to recover from any particular defendant found to be liable under this section.

(d) This section does not pertain to, nor does it remove any existing liability applicable to providers or sellers of housing, nor to the availability of a cause of action against defendants described herein by any plaintiffs except those injured by lead, except that public officials may seek compensation for victims of lead poisoning as part of an action seeking reimbursement for the costs of remediating lead-contaminated properties.

(e) The remedy provided by this section is not exclusive and supplements any existing statutory or common law cause of action.

(f) A parent or guardian of a child, landlord, seller or manager of properties, housing authority, retailer, government official, child-occupied facility, school district or other entity except those placing lead in commerce shall not be liable to those placing lead in commerce in an action for contribution for damages recovered under this section.

(g) Nothing in this section shall prevent or mitigate any right to recover damages from exposure to lead nor any defense to such recovery available under other statutes or common law.

(h) The ability to recover damages from lead exposure under this section shall be available for six years after its passage, or six years from the time that a plaintiff has reason to know or should have known that they have the right to such recovery, whichever is longer.

74 (i) The Department of Public Health, in consultation with agencies of the
75 Commonwealth on the Toxics Use Reduction Administrative Council, and the Departments of
76 Agricultural Resources and Fish and Wildlife as relevant, may add other products to this chapter,
77 even though not commonly used in residences, schools, hospitals or child-occupied facilities, if
78 they deem it advisable for the protection of public health.