

# DRAFT

April 8, 2019

The Honorable David Chiu  
California State Assembly  
State Capitol, Room 4112  
Sacramento, CA 95814

**RE: AB 206 (Chiu) Public nuisance: abatement: lead-based paint. - SUPPORT**

Dear Assemblyman Chiu,

The County of Monterey is pleased to support AB 206 (Chiu), which would protect homeowners from threats of legal action by lead paint manufacturers or other defendants if the homeowners participate in an abatement program created as a result of a judgment or settlement in a public nuisance or similar lawsuit. This would include protection of homeowners involved in the abatement program resulting from the landmark 2017 judgment against lead paint manufacturers in *People of the State of California v. ConAgra Grocery Products Company* (2017) 17 Cal.App.5th 51.

Lead is a highly toxic metal that is particularly harmful to the health of young children. At high levels of exposure, it can cause coma, convulsions, and even death. At low levels of exposure, it can result in permanent and adverse consequences, such as reduced IQ, reduced attention span, reduced educational attainment, and increased antisocial behavior. No level of exposure to lead is considered safe. Household paint that contained lead was sold and used in California until it was banned for residential use in 1978. All homes in the state built before 1978 are presumed to contain lead paint. Deteriorated lead paint contaminates the air, floors, and other surfaces in the home, as well as soil surrounding the home. Deteriorated lead paint is the most common cause of lead poisoning in children living in pre-1978 homes. In 2014 alone, 10,331 children throughout California tested positive for lead poisoning.

Since 2000, a coalition of ten cities and counties - including the County of Monterey, since 2006 - has pursued litigation brought on behalf of the People of the State of California against certain former lead paint manufacturers. The litigation alleged that the manufacturers sold lead paint that they knew was highly toxic to young children and created a public nuisance that threatens the health of California's children to this day. In 2014, a judge issued a \$1.15 billion judgment in favor of the People, ruling that three of the manufacturers were liable for the harm that they created and, therefore, responsible for abating lead paint in all pre-1980 homes in the ten cities and counties involved. In 2017, the Court of Appeal upheld the trial court's decision as to pre-1951 homes only and remanded the case to trial court for further proceedings. In February 2018, the California Supreme Court denied requests by the manufacturers to hear an appeal, and in October 2018, the U.S. Supreme Court did the same.

Although the lead paint manufacturers can no longer contest their liability for the public nuisance in this lawsuit, they are actively seeking to shift some portion of their liability onto others. They have publicly stated their interest in pursuing claims against homeowners who participate in the resulting abatement program to hold those homeowners jointly responsible for the lead paint in their homes. In addition, at least one of the lead paint manufacturers has sent

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letters to a number of public entities indicating they will pursue contribution from these entities for abatement of the lead paint public nuisance.

AB 206 would insulate homeowners from threats of legal action by the lead paint manufacturers if homeowners participate in the abatement program created by the judgment. This action will allow the judgment to be implemented effectively and maximize use of the abatement program. Without this protection, homeowners who remove toxic paint from their homes expose themselves to threats of frivolous lawsuits by the paint companies.

For these reasons, Monterey County supports AB 206.

Please feel free to contact Monterey County's Public Policy advisor, Jennifer Capitolo of Nossaman LLP at [jcapitolo@nossaman.com](mailto:jcapitolo@nossaman.com) or 916-930-7706, if you have further questions.

Sincerely,

John M. Phillips  
Chair, Board of Supervisors

cc: Senator Bill Monning  
Senator Anna Caballero  
Assemblyman Mark Stone  
Assemblyman Robert Rivas  
California State Association of Counties