

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 14-15, 2017

RESOLUTION

RESOLVED, That the American Bar Association urges national governments worldwide to adopt laws to phase out the manufacture, import, and sale of lead paint;

FURTHER RESOLVED, That the American Bar Association supports efforts of the international community, governments, industry, and non-governmental organizations to promote the phase-out of lead paint by no later than 2020; and

FURTHER RESOLVED, That the American Bar Association urges lawyers, law firms, bar associations, and other professional and nonprofit organizations to support adoption and implementation of laws to phase out and eliminate lead paint through pro bono support, educational initiatives, and other appropriate means.

REPORT

I. EXPLANATION OF RECOMMENDATION

Exposure to lead causes severe harm to human health and development, posing risks of permanent damage to the brain and nervous system, decreased IQ and behavioral problems, and harm to kidney function and blood and reproductive systems. Children are especially vulnerable. There is no known level of lead exposure that is considered safe for children. Globally, lead exposure imposes a tremendous burden in terms of impacts on human health and communities. The Institute for Health Metrics and Evaluation (IHME) estimates that in 2015 lead exposure worldwide accounted for 495,550 deaths due to long-term effects on health, with the highest burden in low and middle income countries. IHME also estimates that lead exposure in 2015 accounted for 12.4% of the global burden of idiopathic intellectual disability (i.e., disability other than that from known causes such as genetic factors), 2.5% of the global burden of ischemic heart disease (i.e., coronary artery disease), and 2.4% of the global burden of stroke.¹ Taking into account the neurodevelopmental impacts alone, the global cost of childhood lead exposure in low- and middle-income countries reaches \$977 billion dollars a year, equivalent to about 2 to 4% of GDP depending on the region.²

Lead in paint remains a leading source of lead exposure risk globally. Although cost-effective alternatives exist and the paint and coating industry is broadly supportive of its phase-out, lead in paint is regulated in only one third of countries around the world.³ It is primarily lower- and middle- income countries that do not have laws.⁴ Laws and regulations banning lead in paint are the most effective means to control this exposure risk.⁵ The United States has banned lead paint since 1978; the European Union similarly instituted a ban on lead compounds

¹ *Institute For Health Metrics And Evaluation GBD Compare*, UNIVERSITY OF WASHINGTON (2016), <<http://vizhub.healthdata.org/gbd-compare>> as reported by the WORLD HEALTH ORGANIZATION in the Lead Paint Alliance Regulatory Toolkit, Module Bi, *Health Hazards of Lead* (updated February 2017).

² M. Attina and Leonardo Trasande, *Economic Costs of Childhood Lead Exposure in Low- and Middle-Income Countries*, ENVIRONMENTAL HEALTH PERSPECTIVES (2013). Additional information available at: NYU SCHOOL OF MEDICINE, SECTION ON ENVIRONMENTAL PEDIATRICS, <<http://www.med.nyu.edu/pediatrics/research/environmentalpediatrics/leadexposure>>.

³ World Health Organization tracking of lead regulation indicates that only 65 countries have legally-binding restrictions of lead as of February 2017. This tracker does not account for whether the restrictions are adequately stringent. <http://www.who.int/gho/phe/chemical_safety/lead_paint_regulations/en/>

⁴ *Global Report on the Status of Legal Limits on Lead in Paint*, United Nations Environment Program (2016), <<http://web.unep.org/chemicalsandwaste/sites/unep.org.chemicalsandwaste/files/Status%20of%20Limits-Lead-Paint-2016%20Report-Final.pdf>>

⁵ *Lead In Enamel Decorative Paints National Paint Testing Results: A Nine Country Study*, UNITED NATIONS ENVIRONMENT PROGRAMME AND INTERNATIONAL POPS ELIMINATION NETWORK (2013), <http://www.unep.org/hazardoussubstances/Portals/9/Mercury/Documents/publications/Lead_in_Enamel_decorative_paints.pdf>.

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in paint to control lead exposure risk. Adopting legislation or regulation to phase out lead paint in a form that is clear, readily implemented and enforceable would mark a substantial step toward eliminating the harms of lead exposure, particularly to children. The ABA, with its objective to work for just laws in order to advance rule of law, has a clear role to play. Getting the law right is an essential component of the global solution to lead paint.

By urging national governments to adopt measures to phase out lead paint, the resolution advances rule of law, recognizing the critical role of law to respond to the global problem of lead exposure. The resolution joins the ABA in support of continuing efforts by the international community, including the Global Alliance to Eliminate Lead Paint (“Lead Paint Alliance”), a voluntary initiative led by the World Health Organization and the United Nations Environment Programme. The Lead Paint Alliance has established a goal that by 2020 all countries will have adopted laws to eliminate lead paint. The resolution is also a call to action to lawyers and bar associations to support global efforts to phase out lead paint, including through pro bono activities. ABA support for efforts to advance better legal frameworks to address the harms of lead exposure is a natural extension of its work to advance rule of law in countries around the globe –many of which likely lack adequate lead paint laws.

Further, the resolution is aligned with and advances the implementation of a 2003 resolution (reaffirmed in 2013) supporting the concept of sustainable development, which resolved, *inter alia*, that the ABA recognizes that “good governance and the rule of law are essential to achieving sustainable development” and that the ABA “should consider and promote sustainable development principles in the work of its entities.”⁶ ABA support for laws to phase out lead paint promotes sustainable development in furtherance of existing ABA policy.

II. BACKGROUND: Impacts of and Measures to Control Lead Exposure

Lead is present in a number of man-made products, including paints with added lead compounds. Lead is intentionally added to paint as a pigment, a drying agent, or an anti-corrosive. Globally, lead paint is a major remaining source of lead exposure for children, particularly in developing countries.⁷ In some countries, lead exposure from paint is estimated to account for 90% of childhood lead poisoning.⁸ Human health problems, societal costs, environmental contamination, and broader social and environmental justice impacts result from lead paint use.

⁶ *American Bar Association Report and Resolution on Sustainable Development, Adopted By The House Of Delegates*, AMERICAN BAR ASSOCIATION (2003), reaffirmed by American Bar Association Report and Resolution No. 105 (Aug 12-13, 2013) (Res. No. 91A10B).

⁷ Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, 117 ENVIRONMENTAL HEALTH PERSPECTIVES 1162 (2009).

⁸ P. Gloennec et al., *Identifying Sources of Lead Exposure for Children, with Lead Concentrations and Isotope Ratios*, working draft to be published in 7 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HYGIENE 253 (2010).

a. Human Health Effects:

Lead is a toxic metal that has the potential to harm physical and mental development. Lead paint can result in exposure to lead for many years after it has been applied to a surface, due to paint weathering, chipping or peeling that releases lead into dust and soil in and around homes, schools and other locations.⁹

Studies have shown that exposure to lead raises an individual's susceptibility to kidney disease, cardiovascular and reproductive problems, and causes dramatic neurological damage. The effects of lead exposure can range from high blood pressure to mental incapacitation and even death, depending on the age of the individual, amount of exposure and other factors. Young children can suffer profound and permanent adverse health effects from exposure to lead, particularly affecting the development of the brain and nervous system, and pregnant women have a high risk of experiencing a complicated pregnancy and damage to the developing fetus.¹⁰ Widespread production or use of lead paint also creates occupational safety issues for adults who work in paint production factories or in building, renovation, and demolition activities.

Lead paint has the greatest potential for toxic effects on children.¹¹ Global and U.S. studies have determined that young children are more vulnerable to lead poisoning than adults, and are particularly vulnerable to lead paint exposure for several reasons: 1) children's proximity to the ground and hand-to-mouth activity increases their contact with lead paint dust particles, which are easily ingestible; 2) children accumulate higher doses of lead relative to their lower body weights; and 3) a child's developing system is highly sensitive to lead toxicity.¹² In addition, lead paint tastes sweet, thus encouraging children to put lead paint chips and toys covered with lead paint or lead dust into their mouths.¹³

The United States Centers for Disease Control and Prevention has concluded that there is **no known level of lead exposure that is considered safe.**¹⁴ Even when children are exposed to small amounts of lead, there can

⁹ Shilu Tong et al., *Environmental Lead Exposure: A Public Health Problem of Global Dimensions*, WORLD HEALTH ORGANIZATION, <[http://www.who.int/bulletin/archives/78\(9\)1068.pdf](http://www.who.int/bulletin/archives/78(9)1068.pdf)>.

¹⁰ *Lead poisoning and health*, fact sheet, WORLD HEALTH ORGANIZATION (September 2016),

¹¹ P. Glorennec et al., *supra*, note 7.

¹² *Health Hazards of Lead*, WORLD HEALTH ORGANIZATION, (updated February 2017), from the Lead Paint Alliance Regulatory Toolkit, Module Bi: <<http://web.unep.org/sites/all/themes/noleadpaint/docs/Module%20Bi%20Health%20Impacts%20FINAL.pdf>>; *Lead poisoning and health*, fact sheet, WORLD HEALTH ORGANIZATION (September 2016), <<http://www.who.int/mediacentre/factsheets/fs379/en/>>; and *Protecting Children from Lead Poisoning and Building Healthy Communities*, 89 AMERICAN JOURNAL OF PUBLIC HEALTH (1999). <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1508654/pdf/amjph00006-0020.pdf>>.

¹³ *Lead paint*, Wikipedia (March 18, 2017).

¹⁴ CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention. Recommendations in "*Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention.*" <https://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf>

¹⁴ *Childhood Lead Poisoning*, WORLD HEALTH ORGANIZATION (2010),

be a wide range of effects on their brain and neurological systems, causing children to appear hyperactive or irritable. Both long and short term exposure to lead will put children at risk for developmental and learning deficiencies, delayed growth, and sensory failure. These effects are often permanent.¹⁵

b. Harm to Communities

Beyond the public health impacts, lead exposure takes a serious toll on communities. Lead paint exposure also imposes socio-economic burdens, reducing economic growth and driving up crime and other forms of conflict.¹⁶ Multiple studies indicate that there is a causal link between lead exposure and increased violent crime rates.¹⁷ A 2010 study links lead exposure to aggressive neurobehavioral performance, while initial data from an ongoing study indicates that lead exposure may damage a portion of the brain aligned with aggression control.¹⁸ The increased aggressive behavior, in turn, is linked to an increase in crime and economic losses for the community.¹⁹

Lead exposure both impairs intelligence and slows or halts certain cognitive capabilities.²⁰ Cognitive ability affects school performance, academic attainment, and entry into the labor market. Reduction in

¹⁵ *Childhood Lead Poisoning*, WORLD HEALTH ORGANIZATION (2010), <<http://www.who.int/ceh/publications/leadguidance.pdf>>.

¹⁶ *Summaries & Evaluations: Inorganic And Organic Lead Compounds*, INTERNATIONAL AGENCY FOR RESEARCH ON CANCER (IARC) MONOGRAPHS FOR THE EVALUATION OF CARCINOGENIC RISKS TO HUMANS, VOL. 87, <<http://www.inchem.org/documents/iarc/vol87/volume87.pdf>>.

¹⁷ See, e.g., John Paul Wright et al., *Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood*, 5 PUBLIC LIBRARY OF SCIENCE MEDICINE E101 (2008); James J. Feigenbaum and Christopher Muller, *Lead Exposure and Violent Crime in the Early Twentieth Century*, EXPLORATIONS IN ECONOMIC HISTORY, ELSEVIER BV (2016); Mielke, H.W. and S. Zahran, *The Urban Rise And Fall Of Air Lead (Pb) and the Latent Surge And Retreat Of Societal Violence*. ENVIRONMENT INTERNATIONAL (2012).

¹⁸ See Alexandra Katsiri, *Levels of Lead in Children's Blood*, European Environment and Health Information Center, WORLD HEALTH ORGANIZATION EUROPE (2010). In an ongoing United States study, researchers are investigating the association between actual measurements of prenatal and childhood blood lead concentrations and criminal arrests in early adulthood to get a clear idea about whether early lead exposure is associated with subsequent violent behavior; the interim data from this study has shown that lead exposure damages a portion of the brain aligned with aggression control. John Paul Wright et al., *Association of Prenatal and Childhood Blood Lead Concentrations with Criminal Arrests in Early Adulthood*, 5 PUBLIC LIBRARY OF SCIENCE MEDICINE E101 (2008).

¹⁹ See *supra* note 17. Similar studies have been completed in Europe and Australia, all resulting in the same conclusion that lead exposure during adolescence is likely to result in aggressive criminal behavior during adulthood. Mark Patrick Taylor et al., *The Relationship between Atmospheric Lead Emissions and Aggressive Crime: An Ecological Study*, 15 ENVIRONMENTAL HEALTH SPRINGER SCIENCE + BUSINESS MEDIA (2016).

²⁰ Kim M. Cecil et al., *Decreased Brain Volume in Adults with Childhood Lead Exposure*, 5 PUBLIC LIBRARY OF SCIENCE (PLOS) MEDICINE E112 (2008).

cognitive ability from exposure to lead paint reduces economic productivity, profits and tax revenues, and increases crime rates.²¹

In the United States, the legacy of lead paint used for housing prior to a ban in 1978 has fallen most heavily upon poor and minority communities, particularly those in areas with old deteriorating housing stock.²² The American Bar Association has previously recognized that lead paint exposure poses an environmental justice concern in the U.S.^{23 24} In the absence of effective regulation, lead paint is also a significant environmental justice issue in middle- and low-income countries, with the devastating effects of lead exposure falling disproportionately on communities that are already vulnerable and that lack the resources to manage its effects.

c. Environmental Contamination

Over time lead paint can chip and peel and contaminate dust and soil. These lead-contaminated dust and soil particles can move through ecosystems and cause contamination of vegetation, groundwater, surface water and air. Lead contamination imposes stress on ecosystems, destroying microorganisms and slowing decomposition of soil material and harming certain plants and invertebrates.^{25 26}

d. The Benefits of Measures to Control Lead Content in New Paints Far Outweigh their Costs

Lead poisoning is often preventable through lead control measures, which have significantly reduced population-level blood lead concentrations in the U.S. and other countries where such measures are in place. The benefits of government action to limit the lead content in new

²¹ Alexandra Katsiri, *Levels of Lead in Children's Blood*, European Environment and Health Information Center, WORLD HEALTH ORGANIZATION EUROPE (2010).

²² *Blood Lead Levels In Children Aged 1–5 Years — United States, 1999–2010*, Morbidity and Mortality Weekly Report, CENTERS FOR DISEASE CONTROL AND PREVENTION (Apr. 5, 2013), <<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6213a3.htm>>.

²³ Environmental Law Report No. 109 discusses the harms of lead paint in the context of environmental justice. American Bar Association Recommendation, Adopted By the House of Delegates, *Environmental Law (Report No. 109)*, AMERICAN BAR ASSOCIATION (1993), <http://www.americanbar.org/content/dam/aba/directories/policy/1993_am_109.authcheckdam.pdf>.

²⁴ A Report and Recommendation on the inadequacy of health care for American Indians recognizes the consequences lead-based paint has on children's cognitive health. American Bar Association Section Of Individual Rights And Responsibilities, AMERICAN BAR ASSOCIATION (2004), <http://www.americanbar.org/content/dam/aba/directories/policy/2004_my_103c.authcheckdam.pdf>.

²⁵ Deni Greene, *Effects of Lead on the Environment*, LEAD ACTION NEWS (1993), <<https://www.lead.org.au/lanv1n2/lanv1n2-8.html>>.

²⁶ *Final Review of Scientific Information on Lead*, UNITED NATIONS ENVIRONMENT PROGRAMME, CHEMICALS BRANCH, DTIE (2010), <http://www.unep.org/hazardoussubstances/Portals/9/Lead_Cadmium/docs/Interim_reviews/UNEP_GC26_INF_11_Add_1_Final_UNEP_Lead_review_and_appendix_Dec_2010.pdf>.

paints include the avoidance of future costs due to new cases of lead poisoning, resulting in increased health care costs, decreased productivity and increased crime rates, as well as the avoidance of future costs to safely remove old lead paint after its application in order to prevent new or continuing lead exposure from that source.

The cost for manufacturers to switch to using non-lead additives is relatively low, especially for decorative paint for use on houses and public buildings. Non-lead alternatives to some lead pigments have been available for many decades, including common compounds such as titanium dioxide and zinc oxide. Lead-containing additives used as paint pigments, driers, and anti-corrosive agents are a small component of paint, and contribute relatively little to its cost, making lead-free paint generally cost-competitive.²⁷ Numerous paint testing studies conducted in 46 middle- and low-income countries around the globe found that at least a few local paint companies are producing lead-free paint in every country, demonstrating that alternatives to lead paint are currently available.²⁸

On the other side of the ledger, the costs of lead exposure are monumental. A 2009 study estimated that the economic cost of lead poisoning in children in the United States from existing old, or “legacy,” lead paint in housing can be broken down into the following categories: health care (\$11-\$53 billion), lifetime earnings (\$165-\$233 billion), tax revenue (\$25-\$35 billion), special education (\$30-\$146 million), and attention deficit–hyperactivity disorder (\$267 million).²⁹ ³⁰ Studies of the global costs of lead paint tend to consider only a subset of these costs. A recent study, analyzing only the costs of lost IQ points, found the global cost of childhood lead exposure from all sources in low- and middle-income countries to reach \$977 billion dollars a year. The economic impact of only this one aspect of the health impacts of lead amounts to nearly 2 to 4% of GDP depending on the region; in some countries in Africa, the economic cost of lost IQ points due to childhood lead exposure exceeds annual development assistance.³¹ As noted above, lead paint is a major source of childhood lead exposure globally, and in some countries, lead paint is the largest source of lead poisoning.

In the face of clear evidence of the tremendous human and economic harms of exposure to lead in paint, many countries have adopted some form

²⁷ *Alternatives to Lead in Paint* INTERNATIONAL POPS ELIMINATION NETWORK (2016). Presentation based on the Lead Paint Alliance Regulatory Toolkit, Module E.

²⁸ The various studies have tested paints available on the market, and assessed the percentage of paints containing less than 90 or 600 parts per million (PPM) of lead, which generally indicates that no lead compounds were added to the paint. *Global Lead Paint Elimination Report*, INTERNATIONAL POPS ELIMINATION NETWORK (October 2016).

²⁹ Gould, *supra*, note 6.

³⁰ A 2002 study found the costs of direct medical and indirect societal costs of childhood lead exposure in the U.S. amounted to \$43 billion annually. *Childhood Lead Poisoning Report*, WORLD HEALTH ORGANIZATION (2010), <<http://www.who.int/ceh/publications/leadguidance.pdf>>.

³¹ Attina, *supra*, note 2.

of ban on lead in paint.³² The United States banned lead in consumer paint in 1978; Canada did so in 1976. Australia has restricted lead paint since 1970. In Europe, some countries adopted restrictions on lead paint use as far back as the early 1900s; in 1989, the European Union adopted a region-wide ban.³³ ³⁴ Moreover, as more information has become available regarding health problems caused by even low levels of exposure to lead, some countries have adopted increasingly stringent limits on the allowable percentage of lead contaminants in paint. For example, the U.S. tightened its restriction on lead in paint from 600 parts per million (ppm) in 1978 to 90 ppm by 2009.

The experiences of industrialized nations leave little doubt that banning lead in new paint is the best preventive solution to reducing lead paint exposures. The cost of removing existing lead paint from homes or other sources after application is large, with estimates of lead hazard controls (including removal) for existing lead paint in housing in the United States ranging from \$1-11 billion. But even these significant legacy costs of removal or otherwise remediating the hazards of existing lead paint in the U.S. are dwarfed by the benefits of reducing childhood lead exposure in a ratio of 1:17 to 1:220.³⁵ For middle- and low-income countries that have not yet banned lead paint, the answer is even more clear-cut: adopting legislation to ban lead paint will generate societal benefits far exceeding any costs.

III. INTERNATIONAL RESPONSE TO LEAD PAINT: A Call to Action

Paints containing lead are still widely manufactured and sold for use in many developing countries, and international activities are increasingly focused on the goal of eliminating lead paint as a significant global source of lead poisoning. In 2002, the World Summit on Sustainable Development included in its implementation plan a call to “phase-out lead in lead-based paints and other sources of human exposure and work to prevent, in particular, children’s exposure to lead and to strengthen monitoring and surveillance efforts and the treatment of lead poisoning.”³⁶ In 2008, the Intergovernmental Forum on Chemical Safety adopted the “Dakar Resolution for Eliminating Lead in Paints.” This was followed in 2009 by a resolution of the International Conference on Chemicals Management, which created a global partnership “to promote phasing out the use of lead in paints” as

³² Many, but not all, of these measures focus target only “decorative” paints (also referred to as architectural, household or consumer paint).

³³ The EU ban entered into effect in 1992. Hodel, Rebecca, “Lead Legislation: the World’s Best and Worst Practice Regulating Lead Paint” LEAD GROUP (2010).

³⁴ In 2016, lead additives became regulated under EU REACH. See “REACH restrictions underway for lead and tattoo inks – where are we?” ECHA newsletter (May 2016: issue 2). <https://newsletter.echa.europa.eu/home/-/newsletter/entry/2_16_reach-restrictions-underway-for-lead-and-tattoo-inks-where-are-we>.

³⁵ Gould, *supra*, note 6.

³⁶ *Report of the World Summit on Sustainable Development*, 26 August to 4 September 2002, Johannesburg, South Africa, http://www.un.org/jsummit/html/documents/summit_docs.html.

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an important contribution to the resolution of the World Summit on Sustainable Development and to the Strategic Approach to International Chemicals Management.³⁷

To implement the resolution of the International Conference on Chemicals Management, international organizations, national governmental bodies, non-governmental organizations, and the private sector have joined together in a voluntary partnership called the Global Alliance to Eliminate Lead Paint (Lead Paint Alliance). To facilitate achievement of this goal, the United Nations Environment Programme (UNEP), the World Health Organization (WHO) and other Lead Paint Alliance partners are developing a “Guidance and Sample Law for Regulating Lead Paint” to assist national governments in adopting laws to eliminate lead paint. The Guidance and Sample Law will offer model provisions that can be adapted to a country’s national legal context.

a. Global Alliance to Eliminate Lead Paint (Lead Paint Alliance)

The Lead Paint Alliance is jointly led by UNEP and WHO. It is a voluntary international initiative aiming to prevent children’s exposure and to minimize occupational exposure to lead paint by promoting the phase-out of paints containing lead. The Lead Paint Alliance is guided by an advisory committee consisting of representatives of national governments, the private sector, UN bodies, and non-governmental organizations. The United States chairs the advisory group, through the U.S. Environmental Protection Agency and the U.S. Centers for Disease Control and Prevention.

The Lead Paint Alliance has an aspirational goal of all countries having laws in place by 2020 to control lead in paint.³⁸ Through the engagement of the Lead Paint Alliance and other supporting organizations, progress is being made toward this goal. Since 2013, the Lead Paint Alliance has sponsored an annual International Lead Poisoning Prevention Week of Action to raise awareness of lead exposure risks, with a special focus on lead paint. A number of countries have recently adopted or are in the process of adopting new laws to restrict lead paint, including India, Thailand, Cambodia, Ethiopia and Cameroon. In addition, the East African Community is in the process of amending its mandatory regional standards to further restrict the use of lead paint that its five member states (Kenya, Tanzania, Uganda, Rwanda and Burundi) are required to implement in their national regulatory systems.³⁹

³⁷ *Operational Framework for the Global Alliance to Eliminate Lead Paint*, UN Environment Programme and the World Health Organization (March 2011).

³⁸ *Global Alliance to Eliminate Lead Paint: Business Plan*, 24 August 2012. Published in 2013., United Nations Environment Programme and World Health Organization; <http://web.unep.org/chemicalsandwaste/sites/unep.org.chemicalsandwaste/files/publications/GAELP_BusinessPlan.pdf>

³⁹ *Global Lead Paint Elimination Report*, *supra*, note 28.

b. Private Sector Support for Elimination of Lead Paint

The private sector is playing a critical role in advancing the goals of the Lead Paint Alliance. The International Paint and Printing Ink Council (IPPIC), an association comprised of national paint and coating manufacturer's organizations that includes the American Coatings Association, is a member of the Lead Paint Alliance advisory committee. IPPIC issued a policy statement in 2009 supporting the widespread adoption of measures to regulate the use of lead in paint and printing ink, and called upon its member organizations to partner with the Lead Paint Alliance.⁴⁰

Support is also growing among industry groups primarily operating in middle and low-income countries. Support from local industry is needed to encourage governments to pass laws to control lead in paint. For example, the Thai Paint Manufacturers Association, representing key exporters in the region, issued a letter of support for a ban on lead in decorative paints in 2012.⁴¹ By 2016, Thailand had adopted legal limits restricting lead paint.⁴² Within the past year, several companies and numerous national and regional paint associations from all over the world have joined the Alliance.⁴³

While further action is needed across the paint and coatings industry, individual paint manufacturers are also stepping up to advance the goals of the Lead Paint Alliance.⁴⁴ A leading multinational paint manufacturer in Switzerland, AkzoNobel, has called for elimination of lead paint for all uses by all manufacturers.⁴⁵ PPG, a Pittsburgh-based global producer, announced in 2016 its plans to eliminate the use of lead additives in all its products by 2020.⁴⁶

c. Guidance and Sample Law for Regulating Lead Paint

Existing regulations of lead paint around the world take a number of forms and vary in scope. A control measure can restrict the total lead content in the product (e.g., limiting it to 90 ppm), the soluble lead content

⁴⁰ IPPIC, Statement of Support (2009)

<http://www.ippic.org/advocacy/global_alliance_to_eliminate_lead_in_paints>

⁴¹ "EU Helps Asia Paint a Lead-Free Future" Durability and Design News (October 16, 2012)

<<http://www.durabilityanddesign.com/news/?fuseaction=view&id=8559>>

⁴² "Thailand Institutes Lead Paint Regulation" IPEN (March 16, 2016).

<<http://www.ipen.org/news/thailand-institutes-lead-paint-regulation>.

⁴³ The List of Current Partners of the Lead Paint Alliance includes dated copies of partner letters.

<<http://web.unep.org/chemicalsandwaste/what-we-do/technology-and-metals/lead/lead-paint-alliance/partners> (accessed 3-27-17)>

⁴⁴ *Firms Phase Out Lead From Paints*, CHEMICAL WATCH: GLOBAL RISK & REGULATION NEWS, <<https://chemicalwatch.com>>.

⁴⁵ *Lead Free Extrusion Coatings - Part of Our Commitment to Offering Sustainable Products*, AKZONOBEL COIL & EXTRUSION AMERICAS (2015), <https://www.akzonobel.com/ccna/extrusion_coatings/leadfree/>.

⁴⁶ Rachel Dissell and Brie Zeltner, *Paint Giant PPG Announces it Will Phase Lead Out of its Products by 2020*, CLEVELAND.COM (Apr. 22, 2016), <http://www.cleveland.com/healthfit/index.ssf/2016/04/paint_giant_ppg_announces_phas.html>.

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of a product (i.e., the amount of lead extracted under a particular acid test), or particular lead additives (e.g., restrict lead sulfates and lead carbonates). Each of these types of restrictions on lead in paint can vary in stringency, setting higher or lower acceptable limits of lead in paint. A regulatory regime may include testing and/or certification of the lead content of paint products in order to ensure compliance. A phase-out may incorporate a delay in the effective date of the restriction and/or make provision for stocks of lead paint that have already entered into commerce. In addition, some countries regulate lead only in paints and coatings for residential use (often called decorative, architectural, or consumer paints), while others also cover industrial uses.

To assist countries in navigating these regulatory choices and tailoring a control measure to the national context, UNEP, WHO and other partners in the Lead Paint Alliance are developing a Guidance and Sample Law. The Guidance and Sample Law are intended to help governments without lead paint laws to adopt clear, effective and readily implementable and enforceable measures to control lead paint exposures. The Guidance is a tool to support drafting measures that: 1) clearly define regulated substances, limits, and activities, 2) set effective dates of new requirements, 3) establish a mechanism to promote compliance, and 4) set clear consequences for non-compliance. The guidance is scheduled to be finalized in early summer 2017.

IV. ROLE OF THE ABA

The first element of the resolution urges national governments, the entities best-placed to regulate lead paint, to adopt laws to control the risks of lead paint exposure. Around the world, only about a third of countries currently regulate lead paint. Urging action to adopt lead paint laws is an important first step to addressing the global health threat from lead paint.

While calling on governments to adopt a phase out of the manufacture, import, and sale of lead paint that would prevent the introduction of new lead paint into commerce, the resolution does not proscribe the form or scope of measures to achieve that objective. A variety of approaches can effectively advance the aim of preventing children's exposure and minimizing occupational exposures to lead paint, and national governments are in the best position to tailor a measure to the national context. The report identifies a forthcoming resource, the Lead Paint Alliance's Guidance and Sample Law, to assist national authorities in developing appropriate measures.

The second element of the resolution voices ABA support for the goal endorsed by the Lead Paint Alliance to attain a phase out of lead paint by 2020. By recognizing this goal, the resolution emphasizes the urgency of action. While achieving the global adoption of controls on lead paint by all national governments by 2020 presents a significant challenge, the aspirational goal galvanizes enhanced

action and provides an important target date to focus momentum. Where every year of avoided exposure may amount to significant benefits to childhood health and development, there is value to encouraging early actions.

Finally, the third element of the resolution aims to mobilize the tremendous legal resources of the ABA to support the achievement of the goal to eliminate lead paint globally. Legal professionals can play a critical role in advancing this goal. The Lead Paint Alliance recognizes that, while many countries are willing to adopt lead paint regulation, they lack the legislative authority and/or the regulatory experience needed to do so. Expert assistance to national governments can help overcome a key barrier to developing measures to control lead paint risks. The American Bar Association can help to direct legal resources to respond to this need for technical support. The ABA International Legal Resource Center, in collaboration with the UN Development Programme (UNDP), provides such technical legal assistance, and has previously supported assessment and reform of environmental laws. The resolution provides an opportunity to enhance ABA impact through existing mechanisms such as the International Legal Resource Center, drawing in new experts to provide needed pro bono support and raising the profile of such work with potential partners and recipients.

In addition, ABA members, law firms, ABA entities, and/or partner professional organizations may be in a position to support educational activities to promote awareness of the risks of lead paint exposure and encourage adoption of national measures to control the risks of lead paint exposure. The ABA Rule of Law Initiative, with in-country representatives and strong networks among local stakeholders, is a significant resource to support implementation of the resolution. The ABA Section of International Law committees, which foster partnerships and develop programs in other jurisdictions, are another important asset in encouraging widespread adoption of national lead paint laws.

Through the resolution, the ABA advances its Goal IV on rule of law, by supporting the adoption of just laws. The resolution builds upon and is responsive to a 2007 ABA resolution, which urged governments and other actors to consider and integrate Rule of Law initiatives with global environmental issues⁴⁷, and a predecessor 2003 ABA resolution (reaffirmed in 2013), calling on the ABA to consider and promote sustainable development principles in the work of its entities.⁴⁸ The resolution encourages ABA entities, ABA members, and partner bar and other professional associations to advance rule of law and sustainable development principles in the context of the global risks of lead paint.

⁴⁷ *American Bar Association Report and Resolution No. 110A, Adopted By The House Of Delegates*, AMERICAN BAR ASSOCIATION (Aug 13-14, 2007),

⁴⁸ *American Bar Association Report and Resolution on Sustainable Development, Adopted By The House Of Delegates*, AMERICAN BAR ASSOCIATION (2003), *reaffirmed by American Bar Association Report and Resolution No. 105* (Aug 12-13, 2013).
<<http://www.americanbar.org/content/dam/aba/migrated/intlaw/policy/environment/sustainabledevelopment.authcheckdam.pdf>>.

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Respectfully submitted,

Sara P. Sanford
Chair, Section of International Law
August 2017

GENERAL INFORMATION FORM

Submitting Entity: Section for International Law

Submitted By: Sara P. Sandford, Chair, Section of International Law

1. Summary of Resolution(s).

The resolution urges national governments to adopt measures to control the risks of lead paint by phasing out its manufacture, import, and sale, and voices support for efforts to achieve worldwide adoption of such measures by 2020. The language of the resolution is formulated to track the aims of the “Lead Paint Alliance,” a voluntary initiative led by the World Health Organization and the United Nations Environmental Programme, which includes representatives from the paint and coatings industry, NGOs, and the U.S. government. The resolution also aims to mobilize ABA members, ABA components, and other affiliates to support adoption of lead paint laws through awareness-raising and educational activities and pro-bono technical support.

2. Approval by Submitting Entity.

The Council of the Section of International Law approved this recommendation and resolution at its Meeting on April 29, 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The Resolution is consistent with and mutually supportive of three existing ABA policies:

- Rule of Law and Global Environmental Issues (07A110A);
- Sustainable Development (91A10B); and
- Environmental Equality. (93A109).

The Resolution would serve as a tangible example of the importance and impact of incorporating Rule of Law initiatives with global environmental issues, as called for by Resolution 07A110A. Second, the Resolution would demonstrate the ABA’s continued commitment to sustainable development and incorporating that framework into the ABA’s support for good governance and the rule of law. The Resolution thus advances core elements of Resolution 91A10B. Finally, the Resolution would manifest the concern for environmental equality espoused in Resolution 93A109, by placing a spotlight upon and seeking to address an environmental harm that falls disproportionately on the most vulnerable in middle- and low-income nations.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

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6. Status of Legislation. (If applicable) N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

We have already initiated discussions with two key ABA partners regarding implementation of the policy, the ABA Rule of Law Initiative (ROLI) and the ABA International Legal Resources Center (ILRC). If the policy is adopted, ROLI believes it can support implementation of the resolution, particularly through its representatives in-country. In some countries, there may be scope to incorporate outreach and awareness-raising about lead paint laws into ROLI's engagement with local stakeholders.

ILRC also sees a potential role to support implementation of the policy. We will explore opportunities to ensure adequate resources, in the form of a committed roster of experts, is available to provide technical support regarding lead paint laws. Furthermore, we will reach out to UNDP to discuss ways to increase provision of technical support regarding lead paint on a wider, more programmatic basis. If we successfully identify means for ROLI and/or ILRC to support the policy, UNEP North America has indicated it would be eager to highlight these efforts as voluntary pledges from the private sector at the UNEP General Assembly or other relevant fora.

Finally, in developing the Resolution and Report, we worked with ten different Committees (including one Taskforce) from across multiple sections of the ABA, including the Section for International Law, the Section for Energy, Environment, and Resources, and the Civil Rights and Social Justice Section. We would continue to engage with these supporting Committees to explore opportunities to implement the policy through ABA programs and cooperation with other bar associations and ABA partners.

8. Cost to the Association. (Both direct and indirect costs)

No direct cost. We would seek to implement the policy within the existing budget of the ABA components, and may seek outside support where appropriate to supplement those resources. We expect the primary indirect cost of implementation to be staff time at ROLI and ILRC.

9. Disclosure of Interest. (If applicable)
N/A.

10. Referrals.

This Resolution and Report is supported by two additional Sections of the ABA. On April 21, 2017 the Executive Committee of the Section for Energy, Environment, and Resources voted to support the policy, and subsequently ratified that decision at its Council Meeting on May 6, 2017. On April 28, 2017, the Section of Civil Rights and Social Justice Council

voted to support the policy, conditional on certain stylistic edits that have since been adopted.

Further referrals are being undertaken to the Tort Trial and Insurance Practice Section, Young Lawyers Division, Solo and Small Firm and General Practice Division, Section of Real Property Trust and Estate Law, Section of State and Local Government Law, and ABA Rule of Law Initiative.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges national governments to adopt measures to control the risks of lead paint by phasing out its manufacture, import, and sale, and voices support for efforts to achieve worldwide adoption of such measures by 2020. The language of the resolution is formulated to track the aims of the “Lead Paint Alliance,” a voluntary initiative led by the World Health Organization and the United Nations Environmental Programme, which includes representatives from the paint and coatings industry, NGOs, and the U.S. government. The resolution also aims to mobilize ABA members, ABA components, and other affiliates to support adoption of lead paint laws through awareness-raising and educational activities and pro-bono technical support.

2. Summary of the Issue that the Resolution Addresses

Lead exposure causes severe harm to human health and development, particularly to children. Although exposure to lead in paint remains a leading source of exposure globally, only one third of countries in the world have adopted laws to address lead in paint. Primarily low- and middle-income countries lack such laws. The consequences of lead exposure are tremendous – in some regions the neurodevelopmental impacts alone amount to two to four percent of GDP. Adopting legislation or regulation to phase out lead paint in a form that is clear, readily implemented and enforceable would mark a substantial step toward eliminating the harms of lead exposure, particularly to children.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution enables the ABA to urge national governments to adopt laws to phase out lead paint, and helps to focus the resources of ABA components to support governments’ and other stakeholders’ efforts to achieve global adoption of such measures by 2020.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

The Rules and Calendar Committee met May 20-21, 2017 and recommended certain changes to the resolution. These changes were adopted as proposed, with one exception. The Committee recommended deleting the term “national” in the first clause of the resolution. (“That the American Bar Association urges *national* governments worldwide to adopt laws to phase out the manufacture, import, and sale of lead paint;”) We decline to adopt this recommendation in order to clarify that the ABA is urging only “national,” rather than sub-national governments such as states, provinces, municipalities, etc., to adopt measures to address lead paint. National governments are the governmental body best-placed to regulate lead paint hazards through restrictions on manufacture, import, and sale. Restrictions on trade by sub-nationals is sub-optimal for a number of reasons, including lack of expertise and implementation/enforcement authority among sub-national authorities and increased economic costs due to patchwork regulation.