

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 119

(Delegates Hubbard and Montgomery)

Health and Government Operations

Education, Health, and Environmental Affairs
and Finance

Children's Products Containing Lead - Modifications

This emergency bill alters the definition of a child, for purposes of regulating lead-containing children's products, to include individuals younger than age 13. The bill also incorporates the federal Consumer Product Safety Act of 2008 into the State's framework for the regulation of children's products containing lead.

Fiscal Summary

State Effect: None. The bill primarily makes State law consistent with federal law.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: In addition to increasing from 5 to 12 the age of children covered under the definition of "child" for purposes of regulating lead-containing children's products, the bill incorporates the federal Consumer Product Safety Act of 2008 by:

- altering the definition of a "children's product" as well as the exclusions from this definition in the State lead-containing children's products laws;
- altering the exclusion for an electronic device by removing discretion from the Secretary of the Environment and requiring compliance with federal law instead;

- adding a category of products and materials to be excluded from the State lead-containing children's products laws due to compliance with federal law; and
- incorporating a testing and certification process for children's products required of a U.S. manufacturer, or an importer if the manufacturer is foreign, to obtain a lead-free certificate under federal law.

The bill also exempts a thrift store, consignment store, yard sale, or any other secondhand point of sale from the requirement to maintain a copy of the certificate that the children's product is not a lead-containing product.

Current Law: Title 6 of the Environment Article prohibits a person from manufacturing, selling, offering for sale, importing, or distributing a lead-containing children's product. This prohibition does not affect the authority of a local agency to enforce a local law governing the amount of lead contained in a product if the local law is at least as restrictive as State law. The prohibition includes products such as accessories and jewelry, clothing, decorative objects, furniture, lunch boxes and eating utensils, toys, and any other item specified by the department in regulation.

The prohibition in State law does not apply to (1) food; (2) an electronic device that contains lead unless the Secretary determines that there is a significant risk a child could be exposed to the lead contained in the device during normal use; (3) distribution operation or activity performed in any factory, warehouse, or establishment, or in the course of surface transportation, at a port facility; and (4) a vehicle, product or part for use in a vehicle, or transportation equipment.

A "lead-containing product" is a product or a component of a product containing or coated with lead in a concentration of more than 0.06% of the product's total weight or the standard established under federal law.

State law requires a manufacturer of a children's product to test whether the product is a lead-containing product by using an independent, accredited third-party testing entity. The manufacturer has to issue a certificate, created or approved by MDE, which certifies that the product is not a lead-containing product. In addition to providing a copy to MDE or any person on request, the manufacturer must ensure that the certificate is transmitted with the product to any distributor or retailer.

A person may not sell, or offer for sale by any means, a children's product for which there is no certificate issued. Retailers have to maintain a copy of the certificate and must also provide a copy to MDE or any person on request.

If MDE determines that a person has manufactured or sold a children's product that contains lead, MDE has to give written notice to the violator that identifies the product. Within 15 days of receiving the notice, the violator has to send specified information about the product to MDE. Within 24 hours after a violation is determined, the person has to submit a report to MDE in a form required by the department.

The Comptroller is authorized to assess fines against persons that sell or offer for sale a children's product without the required certificate, of up to \$1,000 for each violation, up to a maximum of \$50,000. However, these fines cannot be assessed until the violator has been issued three warnings regarding the violation. This fine revenue is distributed to the Lead Poisoning Prevention Fund.

A person who violates the lead-containing children's product laws in Title 6 of the Environment Article is subject to a civil penalty of up to \$1,000 per day for each violation. The civil penalty may be assessed and recovered in any court of competent jurisdiction. A person who willfully violates these laws is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 per violation and/or imprisonment for up to one year. A violation of these laws is also considered an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and would therefore be subject to civil and criminal penalties under MCPA.

Background: According to the federal Centers for Disease Control and Prevention (CDC), adverse health effects exist in children at blood lead levels less than 10 micrograms per deciliter. No treatments are known to lower the blood lead levels for children with lead levels less than 10 micrograms per deciliter. Measuring blood levels below the 10 micrograms per deciliter threshold is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10 micrograms per deciliter threshold is the standard measure at which statistics are reported.

According to the most recent data, the number of children with elevated blood lead levels has been decreasing at both the State and national level. At the State level, out of the 105,708 children 0 to 72 months of age tested for lead in 2007, 892 (0.8%) were found to have blood lead levels greater than 10 micrograms per deciliter compared to 1,274 (1.2%) in 2006 and 1,331 (1.3%) in 2005. Over the past three years, three children in Maryland were tested and found to have elevated blood lead levels specifically traceable to lead-containing products. According to MDE, lead paint dust from deteriorated lead paint or from renovation is the major source of exposure for children in Maryland.

According to the National Conference of State Legislatures, 18 states have bans or restrictions on lead-containing products that provide regulatory authority beyond what the federal Consumer Product Safety Commission demands. In California and Michigan, lead content in children's jewelry is limited to less than 0.06%. California's law also

restricts the lead content in the plastic and rubber components of children's jewelry to less than 0.02% by August 31, 2009. The use of glass or crystal is limited to a total of one gram in the product unless it contains less than 0.02% lead by weight and has no intentionally added lead.

Illinois restricts the use of lead-bearing substances (any item containing or coated with lead so that the lead content is more than 0.06% lead by total weight). The use of these substances is banned in or upon any items, including clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, toys, furniture, or other articles used by or intended to be used and chewable by children.

At the federal level, President Bush signed into law the Consumer Product Safety Act of 2008. This law strengthens the restrictions on lead-containing products and enforcement provisions that existed under the original act, as signed in 1972. The new law phases in restrictions on lead in all children's products, requiring that lead levels be reduced to 600 parts per million by February 10, 2009; 300 parts per million by August 14, 2009; and 100 parts per million by August 14, 2011. Electronic devices and inaccessible component parts will be subject to rules to be issued by August 14, 2009. In addition, the law reduces permissible lead paint content from 0.06 % to 0.009 % by weight, effective August 14, 2009. On March 1, 2008, Wal-Mart and Toys "R" Us required their toy suppliers to conform to the 0.009% standard.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Centers for Disease Control and Prevention, Maryland Department of the Environment, Department of Legislative Services

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