

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1214

(Delegate Hubbard, *et al.*)

Health and Government Operations

Finance

Lead-Containing Products - Prohibition

This bill prohibits a person from manufacturing, selling, offering for sale, importing, or distributing a lead-containing children's product or a lead-adulterated consumable product. The bill 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 the bill.

Fiscal Summary

State Effect: DHMH general fund expenditures could increase by \$29,600 in FY 2008 to conduct lead tests. Future year expenditures assume annualization and inflation. Potential minimal increase in general fund revenues and expenditures due to the bill's criminal and civil penalty provisions.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	-	-	-	-	-
GF Expenditure	29,600	39,600	40,000	40,400	40,800
Net Effect	(\$29,600)	(\$39,600)	(\$40,000)	(\$40,400)	(\$40,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local health departments could collect any samples identified as potentially containing a prohibited amount of lead using existing budgeted resources. Potential increase in expenditures if local health department staff are required to pay for the samples collected for testing. Potential minimal increase in revenues and expenditures due to the bill's criminal and civil penalty provisions.

Small Business Effect: Meaningful.

Analysis

Bill Summary: 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 amount set by the Secretary of Health and Mental Hygiene. This prohibition includes products such as accessories and jewelry, clothing, consumable products or items, decorative objects, furniture, homeopathic remedies, and toys. “Lead-adulterated consumable product” means any consumable product or item or consumable homeopathic remedy that contains lead in an amount in excess of 0.1 ppm or set by the Secretary. The bill does not apply to an electronic device that contains lead unless the Secretary determines that during the normal use of the device there is a significant risk that a child could be exposed to the lead contained in the device.

Inspections and Testing

At any reasonable time, a DHMH agent may enter a factory, warehouse, or establishment in which a product is manufactured, processed, packaged, stored, sold, or offered for sale to inspect any finished or unfinished product. During an inspection, an agent may obtain a sample of any product, package, or labeling. The agent must pay or offer to pay for the sample and give the owner, operator, or agent in charge a receipt that describes the sample.

DHMH must test the sample to determine whether the product is a lead-containing product or a lead-adulterated consumable product. If the test result shows that the item is such a product, the Secretary must declare the product hazardous and require its removal from the commerce stream and declare all similar products by the same manufacturer to be hazardous and require their removal as well.

If a person violates the bill, DHMH must issue a health advisory notice to local health officers and give written notice to the violator that identifies the product and the associated health hazard. Within 15 days of receiving the notice, the person must send specified information to DHMH. Within 24 hours after a person determines that the person has manufactured, sold, offered for sale, imported, or distributed a product that violates the bill, the person must submit a report to DHMH.

Civil and Criminal Penalties

A person who violates the bill is subject to a civil penalty not exceeding \$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 the bill is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 for each violation and/or imprisonment not exceeding one year.

Workgroup

DHMH must convene a workgroup consisting of the Maryland Department of the Environment, the Maryland Retailers Association, advocates, and other stakeholders to examine the issue of lead-containing products. The workgroup must determine the appropriate requirements for labeling lead-containing products. By December 1, 2007, the workgroup must report its findings and recommendations to specified legislative committees.

Current Law: The Health-General statute limits the manufacture or sale of certain items to protect the public's health. For example, a person is prohibited from knowingly manufacturing, selling, renting, or offering for sale any toy depicting torture or resembling a torture device. This restriction does not apply to a toy gun or a model of an aircraft, ship, car, spacecraft, or other vehicle.

The Secretary must require providers caring for children in at-risk areas to administer a blood test for lead poisoning within the timeframe specified in DHMH regulations or according to Centers for Disease Control and Prevention (CDC) guidelines for children older than 24 months who have not received a blood test for lead poisoning. Universal blood lead testing applies to children living in Baltimore City and children receiving Medicaid. This does not require blood testing of a child whose parent or guardian objects to the testing on the ground that it conflicts with the parent's or guardian's bona fide religious beliefs and practices. However, this exemption does not apply if the responses to the questionnaire administered by the pediatrician indicate the child is at high risk for lead poisoning.

When a child enters a public prekindergarten program, kindergarten program, or first grade, a parent or guardian must provide documentation from a health care provider certifying that the child has undergone blood testing for lead poisoning. A program or school must report the name, last known address, and telephone number of each child for

whom certified documentation is not provided to the local health department where the child lives.

DHMH regulations specify that the child's blood lead analysis must be administered in connection with the child's 12-month visit and 24-month visit to a health care provider.

Background: The number of children with elevated blood lead levels in 2005 and the rate of elevated blood levels decreased compared to 2004. The number of children with blood lead levels above 10 ug/dL, CDC's level of concern, decreased to 1,331 in 2005 (1.3% of children tested statewide) from 1,811 in 2004 (1.7% of children tested statewide). Children with significant elevations of blood lead levels, 20 ug/dL or greater, decreased to 106 children in 2005 (0.1% of children tested statewide) from 230 children in 2004 (0.2% of children tested statewide).

The Consumer Product Safety Commission (CPSC) is considering banning children's metal jewelry containing more than 0.06% lead by weight in metal components. Written comments regarding the proposed ban were due to CPSC by March 12, 2007. CPSC can take a number of actions, including banning children's metal jewelry containing lead, requiring warning labels and instructions for such jewelry, adopting an existing standard as a proposed regulation, deferring to an industry voluntary standard, or pursuing certain corrective actions on a case-by-case basis.

There are lead product bans in California and Illinois, both of which were enacted in 2006.

In California, lead content in children's jewelry is limited to less than 0.06% by September 1, 2007. Lead content in the plastic and rubber components of children's jewelry is limited 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.

State Revenues: General fund revenues could increase minimally as a result of the bill's criminal and civil monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures could increase by an estimated \$29,560 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of DHMH's Laboratories Administration purchasing supplies to test for lead on an estimated 900 samples collected statewide (1,200 annually, 50 samples collected in Baltimore City and in each county). Existing DHMH staff would conduct the lead tests. Future year expenditures assume annualization and inflation.

This analysis assumes that the bill would *not* require the testing of every retail item for lead.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal.

Local Revenues: Revenues could increase minimally as a result of the bill's criminal and civil monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: This analysis assumes that the bill would *not* require the testing of every retail item for lead. As a result, existing local health department staff could collect the product samples for which there is probable cause to believe that the product violates the bill. Further, local health department staff could send a sample of the product for testing to DHMH's Laboratories Administration using existing resources. Legislative Services assumes that sending the entire product would not be necessary for the lead test to be conducted.

Local health department expenditures could increase if staff are required to pay for the sample that would be tested for lead. Any such increase would depend on the cost of the item to be tested and whether the business would or would not require the item to be purchased by the local health department.

Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Small Business Impact: Small business manufacturers revenues could potentially decrease for any small business manufacturers making products that contain lead above the amount specified under the bill. Small business retailers' revenues could potentially

decrease for retailers that would not be allowed to sell any products in their existing stock that contain more than the specified amount of lead.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; Garrett County; Judiciary (Administrative Office of the Courts); Anne Arundel County; Department of Health and Mental Hygiene; Federal Register, Vol. 72, No. 5, January 9, 2007, Proposed Rules; *Childhood Blood Lead Surveillance in Maryland: 2005 Annual Report*, Maryland Department of the Environment, July 2006; Department of Legislative Services

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