

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1041 (Delegate Waldstreicher, *et al.*)
Environmental Matters

The Lead Paint Reduction Act of 2010

This bill authorizes a community association in Baltimore City and Anne Arundel, Baltimore, and Prince George’s counties to seek monetary damages in an action for abatement of a nuisance, including a condition relating to lead paint. The bill also repeals restrictions in the specified counties that limit standing for actions in which the alleged nuisance consists of a condition relating to lead paint.

Fiscal Summary

State Effect: None. The changes do not materially affect governmental finances.

Local Effect: Potential significant increase in the workload of circuit courts arising from additional case filings in the affected jurisdictions. Potential significant increase in local expenditures to the extent affected jurisdictions own residential rental properties and become parties to lawsuits seeking monetary damages for lead-based hazards.

Small Business Effect: Potential significant increase in liability for multi-family residential real property owners to the extent community associations have standing to seek monetary damages in causes of action for lead-based paint hazards.

Analysis

Current Law: “Nuisance” means, within the boundaries of the community represented by a community association, an act or condition knowingly created, performed, or maintained on private property that constitutes a local code violation that:

- significantly affects other neighborhood residents;

- negatively impacts neighboring property values; and
- is injurious to the public health, safety, or welfare of neighborhood residents or obstructs the reasonable use of property in the neighborhood.

In Anne Arundel County, a nuisance also includes a property where the tenant, owner, or other occupant has been convicted of specified disorderly conduct violations occurring on, in, or in relation to the property; and a property to which law enforcement agents have responded to complaints or calls for service 10 or more times within any 30-day period.

A community association and other specified parties in Baltimore City and Anne Arundel, Baltimore, and Prince George's counties may seek injunctive or other equitable relief in the circuit courts for nuisance abatement if certain notice requirements have been met and the nuisance has not been abated. The ability of a community association and other specified parties to seek injunctive or equitable relief for the abatement of a nuisance may not be construed as to grant standing for an action:

- challenging any zoning application or approval;
- in which the alleged nuisance consists of a condition relating to lead paint or an interior or physical property defect;
- involving a violation of alcoholic beverage laws; or
- involving any matter in which a certificate, license, permit, or registration is required or allowed under the Environment Article.

Additional restrictions on standing apply in Baltimore City and Baltimore County.

An action may not be brought until 60 days after the community association notifies the local enforcement agency. Similarly, an action may not be brought until 60 days after the tenant and owner receive notice from the association that a nuisance exists and that legal action may be taken. Certain notices issued by the Department of Housing and Community Development must be considered evidence in matters involving nuisances. Political subdivisions of the State or their agencies are not subject to any actions taken by community associations.

Background: According to guidelines set by the federal Centers for Disease Control and Prevention, the maximum recommended blood lead level for a child is 10 micrograms per deciliter of blood (10 µg/dL). Lead poisoning impacts the cognitive and physical development of young children. Children are exposed to lead through breathing lead paint dust, eating lead paint chips, or absorbing lead while in-utero. Most exposures can be eliminated by removing lead paint from the homes of children and pregnant women.

Chapter 114 of 1994 established the Lead Paint Poisoning Prevention Program within the Maryland Department of the Environment (MDE). The program provides limited liability relief for owners of rental property built before 1950 and others in exchange for the reduction of lead hazards in these older rental properties. The program also provides for limited compensation to children who are poisoned by lead. By December 31, 1995, the owner of an affected property must have registered that property with MDE.

An owner who first acquires affected property after that date must register the property within 30 days of acquisition. At each change in occupancy, before the next tenant occupies the property, an owner must satisfy the risk reduction standard by passing the test for lead contaminated dust *or* performing specified lead hazard reduction treatments. An affected property is exempt from the risk reduction standards under specified conditions. An affected property is one that is built before 1950 or residential rental units built between 1950 and 1978 owned by a person electing to comply with the reduction of lead risk in housing subtitle of the Environment Article.

Additional Information

Prior Introductions: HB 1447 of 2006 would have applied in Baltimore City only. HB 1447 was heard in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Baltimore City, Baltimore County, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), State's Attorney's Association, Maryland Department of the Environment, Department of Legislative Services

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