

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 21

(Delegate McConkey)

Environmental Matters

Judicial Proceedings

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**Certificate of a Qualified Expert - Lead Paint Poisoning Claims**

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This bill generally establishes judicial procedures for claims for injury allegedly caused by the ingestion of lead-based paint or lead-contaminated dust, including requirements related to the filing of a certificate of a qualified expert. The bill only applies prospectively to civil actions.

The bill takes effect June 1, 2012.

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**Fiscal Summary**

**State Effect:** The bill is procedural and does not materially affect State finances.

**Local Effect:** The bill is procedural and does not materially affect local finances.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** The bill requires a court to dismiss a claim for injury caused by the ingestion of lead-based paint or lead-contaminated dust if the claimant fails to file a certificate of a qualified expert with the court for each defendant.

The bill defines a “qualified expert” as an individual who has education, training, and experience in determining the potential sources of ingestion of lead and associated health consequences; persons with specified relationships or interests to the claimant or claim are excluded from the definition.

A certificate of a qualified expert must be filed within 90 days after the claim is filed and contain a statement from the expert that, with a reasonable degree of probability, the property involved was a source of the ingestion and that the ingestion was a substantial contributing factor to the injury. The certificate must be served on all other parties or attorneys of record. The claimant must provide the defendant with specified information, including the expert's qualifications and previous cases in which the expert has testified.

On written request within 30 days of the date the claim is served, the defendant must provide documentary evidence that would otherwise be discoverable to a claimant if reasonably necessary to obtain a qualified expert. Failure to provide such information constitutes a waiver of the requirement for a claimant to file a certificate under the bill. The bill also provides for the waiver of the requirement to file a certificate on request by a claimant and a finding of good cause by the court.

On receipt of the certificate, the defendant must submit a written response to the court within 120 days. The response must be served on all other parties and state the reasons that the property was not a substantial contributing factor of the alleged injury. Failure to file the written response constitutes an admission that there is no dispute as to any material fact in the claim. On receipt of the written response, a court must schedule a hearing on the certificate and written response, after which the court may grant summary judgment.

**Current Law:** While claims involving the ingestion of lead-based paint are subject to specific judicial procedures enumerated in the Environment Article, there is no current requirement relating to qualified experts or any other certificate of merit for claims involving the ingestion of lead.

## **Background:**

### *Reduction of Lead Risk in Housing Law*

Chapter 114 of 1994 established the Lead Poisoning Prevention Program within the Maryland Department of the Environment (MDE). Chapter 114 establishes a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements.

If a landlord complies with the regulatory provisions, Chapter 114 provides liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits, for a total of \$17,000. Compliance with

Chapter 114 includes having registered with MDE, having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information. The liability protection provisions of Chapter 114, however, have been rendered invalid by a recent Maryland Court of Appeals decision.

Various administrative and civil penalties apply to violations of the Reduction of Lead Risk in Housing Subtitle. Any penalties collected are paid into the Lead Poisoning Prevention Fund. That fund, which is administered by MDE, also consists of any fees collected by MDE under the Reduction of Lead Risk in Housing Subtitle and moneys received by grant, donation, appropriation, or from any other source. MDE must use the fund to cover the costs of specified duties and responsibilities of MDE and the Lead Poisoning Prevention Commission. For each fiscal year, MDE must use at least \$750,000 from the fund for community outreach and education programs and enforcement efforts.

#### *Court of Appeals Deems Liability Limitation Unconstitutional*

In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, No. 131, September Term 2008), the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court stated that the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable. The court found that the \$17,000 remedy available under Chapter 114 was “miniscule” and, thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of rental units built between 1950 and 1978 that voluntarily opted to comply will be impacted by the court’s decision, as they will no longer have the liability protection previously afforded to them. However, it is not yet clear how landlords, along with tenants, will be impacted by the decision.

#### *Lead Poisoning in Children*

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 available, the number of children in Maryland with elevated blood lead levels has continued to decrease since the onset of the program. At the State level, out of the 114,829 children age six who were tested for lead in 2010, 531 (0.5%) were found to have blood lead levels greater than or equal to 10 micrograms per deciliter. This compares with 23.9% in 1993, the first year in which these data were tracked, and is the eighteenth straight year in which the rate has dropped in Maryland. According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 5, 2012  
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