

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 472 (Delegates McIntosh and Feldman)

Environmental Matters and Economic
Matters

Finance

Workgroup on Lead Liability Protection for Rental Property

This bill requires the Maryland Insurance Commissioner to convene a workgroup to evaluate and make recommendations relating to lead liability protection for owners of rental property built before 1978. The Maryland Insurance Commissioner must report the findings and recommendations of the workgroup to the Governor and General Assembly by December 1, 2012.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Given the State's fiscal difficulties, agency budgets have been constrained. Thus, the requirement to convene the workgroup and develop the required report may not be absorbable within the existing budgeted resources of the Maryland Insurance Administration (MIA). Instead, special fund expenditures may increase in FY 2012 and 2013 to support the workgroup and complete the required report, particularly to the extent that the designated workgroup members do not possess sufficient time or expertise to evaluate the many issues that the workgroup must assess. If workgroup members are unable to conduct the required evaluation, MIA will require contractual assistance from one or more consultants with relevant expertise.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The workgroup must evaluate the feasibility of establishing a new insurance fund for lead liability insurance coverage, including (1) accounting and financial reporting standards; (2) minimum surplus requirements based on risk; (3) appropriate underwriting standards; (4) premium levels; (5) the applicability of the State's premium tax; and (6) projected start-up and ongoing costs to administer a fund. The workgroup must also evaluate the extent to which private risk management tools, such as insurance and bonds, are available on the commercial market.

Finally, the workgroup must evaluate the feasibility of (1) encouraging the existing insurance marketplace to provide lead liability coverage to pre-1978 rental property; and (2) establishing other mechanisms for providing coverage that apply to such property.

Current Law/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.

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.

MDE 2011 Lead Study

Chapter 610 of 2011 required MDE to conduct a study in consultation with members of the General Assembly and representatives of several State and local agencies and organizations reflecting the interests of landlords, housing owners, lead poisoning prevention advocates, and others. The study was required to evaluate processes that reduce the incidence of lead poisoning in both affected and nonaffected properties, including rental properties built from 1950 through 1978 and owner-occupied properties. The study group met seven times between July and December of 2011 and made recommendations regarding six different issues, which are contained in a report issued on December 31, 2011.

Expansion of the Reduction of Lead Risk in Housing Law

The study group considered expanding the properties subject to the State’s Reduction of Lead Risk in Housing Law to also include rental housing built between 1950 and 1960 or to cover all rental housing built prior to 1978. Members of the study group representing property owners expressed concern about this expansion of regulation given the recent Court of Appeals decision that overturned the limited liability protections of the State’s lead law for property owners. The study group recommended further examination of this issue following a more detailed study by MDE and the Department of Health and Mental Hygiene of blood lead testing data.

Funding to Support Current Law Program and Any Future Expansion

The study group also discussed the long-term decline in funding for MDE’s Lead Poisoning Prevention Program, which has been caused in significant part by a reduction in federal funds. Moreover, the study group discussed the likelihood that these federal sources of funding will be reduced further in the next several fiscal years. Thus, the study group found that, not only will additional funding sources be needed to support any

recommended expansion of the program, but greater funding will also be needed to sufficiently administer the current program. Several sources of additional funds were discussed, including increasing the program's current registration fee and establishing a fee on each gallon of paint sold. The study group recommended increasing the registration fee from \$15 per unit to \$30 per unit.

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 it 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.

Additional Information

Prior Introductions: None.

Cross File: SB 873 (Senator Pugh) - Finance.

Information Source(s): Department of Health and Mental Hygiene, Maryland Department of the Environment, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Centers for Disease Control and Prevention, Department of Legislative Services

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