

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 754 (Delegate Beidle, *et al.*)
Environmental Matters

Environment - Reduction of Lead Risk in Housing - Qualified Offer

This bill makes various changes to the qualified offer under the Reduction of Lead Risk in Housing Law (the limited liability provisions of which have been deemed unconstitutional by the Maryland Court of Appeals). Among other changes, the bill's provisions (1) prohibit a person from bringing an action against a compliant owner for damages arising from alleged injury or loss to a person at risk caused by the ingestion of lead by the person in the owner's property, unless the owner has been given specified written notice and an opportunity to make a specified qualified offer; (2) increase the statutory amounts payable under a qualified offer; (3) alter the definition of "person at risk" to include any person who was a minor during the period of an alleged ingestion of lead on a compliant owner's property; (4) specify that a compliant owner is not liable, for alleged injury or loss caused by ingestion of lead by a person at risk in the property, to a person at risk who rejects a qualified offer made by the owner (or the owner's insurer or agent); and (5) authorize an owner of an affected property to require a test for elevated blood lead for each person at risk.

Fiscal Summary

State Effect: Special and/or general fund expenditures may increase to the extent that the bill's alteration of the definition of "person at risk" results in increased Public Information Act (PIA) requests received by the Maryland Department of the Environment (MDE). The extent to which the definition of "person at risk" is expanded under the bill is unclear, as discussed below. Thus, any increase in State expenditures cannot be reliably estimated at this time.

Local Effect: Local expenditures may decrease to the extent that the bill reinstates a legally permissible qualified offer that may cap the maximum liability of locally owned housing entities in cases involving lead poisoning. Revenues are not affected.

Small Business Effect: Potential meaningful beneficial impact on certain small business rental property owners to the extent that the bill reinstates a legally permissible qualified offer that may cap their maximum liability for damage caused by lead poisoning.

Analysis

Bill Summary: For the purpose of determining whether to make a qualified offer (and whether the qualified offer should be designated as a co-offer), an owner that receives notice of the elevated blood lead level of a person at risk is entitled to evidence of the person's residence history and elevated blood lead. Unless the parties agree otherwise, a person at risk must provide such evidence within 60 days after notice was provided. At the owner's expense, and within 30 days after the execution of a lease, an owner of an affected property may require a blood lead test for each person at risk who will reside, or will regularly spend at least 24 hours per week, in an affected property that is certified as compliant. To satisfy this requirement, a person at risk (or a parent or legal guardian of a person at risk) may submit to the owner a blood lead test that was conducted within 30 days before the tenancy.

The maximum amounts payable under a qualified offer are \$10,000 for medically necessary treatments, \$15,000 for supplemental educational expenses (which may be paid if such expenses are not otherwise provided by, or are in addition to services provided by, the public school system), \$15,000 for relocation and related expenses, and \$100,000 in aggregate. Amounts payable may also include (1) an amount to compensate for lost future earnings of the person at risk, calculated at \$11,727 for each one-point reduction in the person's Intelligence Quotient (estimated according to the person's elevated blood lead level) and (2) an amount to compensate the person at risk for living with lead-based paint risk, calculated at \$2,500 for each year the person at risk spent in the affected property. Amounts payable are subject to an annual cost-of-living adjustment.

In general, if there are co-offerors, each offeror is jointly and severally responsible for amounts payable. However, amounts payable for economic damages relating to lost future earnings and noneconomic damages relating to living with lead-based paint risk must be paid by each offeror.

Payable relocation expenses must be made within 30 days after the offeror receives the required notice and evidence; other amounts payable must be made within 90 days.

Current Law/Background:

Reduction of Lead Risk in Housing Law

According to MDE, lead paint dust from deteriorated lead paint or home renovation is the major source of exposure for children in Maryland. Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. Chapter 114 established 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.

Qualified Offer and Recent Court of Appeals Case

Previously, if a landlord complied with the program's regulatory provisions, Chapter 114 provided 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. However, in a decision filed October 24, 2011, 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 may be impacted by the court's decision, as they no longer have the liability protection previously afforded to them.

Recent Study and Changes to the Reduction of Lead Risk in Housing Law

Unrelated to the Court of Appeals decision, Chapter 610 of 2011 (HB 1033) 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 residential properties not currently regulated by MDE, 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 including (among others) expanding the scope of regulation to include rental properties built before 1978 and owner-occupied properties; increasing the program's property registration fee to address the program's declining revenue sources; and evaluating whether to require MDE to seek delegation of the federal renovation, repair, and repainting rule.

Chapter 387 of 2012 (HB 644) makes various changes to the Reduction of Lead Risk in Housing Law to address the recent Court of Appeals decision and some of the issues examined by the study group. Changes under Chapter 387 include (1) expanding the application of the law to owners of residential rental property built between 1950 and 1978 beginning January 1, 2015; (2) increasing the annual registration fee from \$15 to \$30; (3) altering the definition of "abatement" to include renovation, repair, and painting in specified properties built before 1978; (4) authorizing MDE to adopt regulations related to abatements involving renovation, repair, and painting; (5) repealing a rebuttable presumption that an owner of property that is not in compliance with the lead law is presumed to have failed to exercise reasonable care; (6) providing that evidence that a property owner was or was not in compliance with the lead law is admissible to prove that the owner exercised or failed to exercise reasonable care; and (7) requiring a party who makes certain allegations or denials without a good faith basis to pay reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

Lead Poisoning Prevention Fund and Enforcement

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, which is administered by MDE and 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.

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. However, no treatments are known to lower the blood lead levels for children with lead

levels less than 10 micrograms per deciliter, and measuring blood levels below that level is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10 micrograms per deciliter threshold has long been 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 121,524 children age six who were tested for lead in 2011, 452 (0.4%) 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 nineteenth straight year in which the rate has dropped in Maryland.

State Expenditures: MDE advises that it currently receives between 3,000 and 4,000 PIA requests annually and expects this number to double under the bill's expansion of the definition of "person at risk" to include minors older than age six. Accordingly, MDE advises that the bill necessitates the hiring of one additional full-time employee (FTE) to handle additional PIA requests received under the bill.

However, the Department of Legislative Services (DLS) notes that the bill's definition of "person at risk" is in another sense more narrow than the current definition, in that it excludes pregnant women. Thus, DLS advises that the extent of any increase in PIA requests cannot be determined without any actual experience under the bill. To the extent that MDE does experience a significant increase in PIA requests under the bill, Lead Poisoning Prevention Fund expenditures increase for MDE to hire additional staff. (Because MDE advises that one FTE is currently assigned to handle all PIA requests, it is assumed that up to one additional FTE could be needed.)

It is assumed that sufficient special funds are available to hire any necessary staff. However, general fund expenditures increase to the extent that the Lead Poisoning Prevention Fund cannot support any increase in costs resulting from the bill.

Additional Comments: MDE advises that the bill's provision authorizing an owner to require a person at risk to submit to a blood test may violate the Federal Fair Housing Act's prohibition on requiring a person to undergo a medical procedure in order to be allowed to rent a property.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Housing and Community Development, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mc/lgc

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