

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 308

(Senator Eckardt)

Judicial Proceedings

Lead Risk Reduction Standards - Maintenance of Exemptions

This bill requires, in order for an affected property to maintain a specified exemption from the risk reduction standards under the Reduction of Lead Risk in Housing Program, an owner to submit to the Maryland Department of the Environment (MDE) every five years, and within 30 days after receiving a written notice of chipping, peeling, or flaking paint from any source on the exterior of the property (1) a certification by an accredited inspector stating that no exterior painted surface is chipping, peeling, or flaking and (2) a yearly notarized affidavit affirming that all exterior surfaces of the property remain free of chipping, peeling, or flaking paint. The bill also establishes requirements for the written notice and requires the owner to maintain a copy of each affidavit submitted to MDE for at least 10 years or the duration of ownership of the affected property, whichever is longer. On request of MDE, the owner must submit a copy of the affidavit to MDE.

The bill also specifies that specified exemptions for a multifamily rental dwelling expire on October 1, 2020, unless the number of units tested for the inspection report was in accordance with regulations adopted by MDE.

Fiscal Summary

State Effect: While the bill may result in some administrative efficiencies for MDE, the bill is not anticipated to materially affect State finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law: All affected rental properties are required to pass an inspection for lead contaminated dust, performed by an MDE-accredited inspection contractor, prior to every change in occupancy. In order to pass the inspection, the property must be free of chipping, peeling, or flaking paint on the interior and exterior of the property.

An affected property is exempt from the risk reduction standards if the owner submits to MDE an inspection report that (1) indicates that the affected property has been tested in accordance with standards and procedures established by MDE; (2) states that all interior and exterior surfaces of the affected property are lead-free (lead-free exemption), *or* that all interior surfaces are lead-free and all exterior surfaces that were chipping, peeling, or flaking have been restored with nonlead-based paint and that no exterior painted surfaces of the affected property are chipping, peeling, or flaking (limited lead-free exemption); and (3) is verified by the MDE-accredited inspector who performed the test. In order to maintain a limited lead-free exemption, the owner must submit to MDE every two years a certification by an accredited inspector stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

Outside surfaces of an affected property, including windows, doors, trim, fences, porches, and other buildings or structures that are part of the affected property, are exempt from the risk reduction standards if all exterior surfaces of an affected property are lead-free and the owner submits to MDE an inspection report that (1) indicates that the outside surfaces have been tested for the presence of lead-based paint in accordance with standards and procedures established by MDE; (2) states that all outside surfaces of the affected property are lead-free; and (3) is verified by the MDE-accredited inspector who performed the test.

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.

Lead Poisoning in Children

According to the federal Centers for Disease Control and Prevention (CDC), there is no safe level of lead exposure, and adverse health effects exist in children at blood lead levels

less than 10 micrograms per deciliter. Since 2012, CDC has urged health care providers and authorities to follow up on any young child with a level as low as 5 micrograms per deciliter. CDC is no longer using the 10 micrograms per deciliter level or referring to a “level of concern.” The new reference level of 5 micrograms per deciliter represents the blood lead levels of children (ages one through five) in the highest 2.5 percentiles for blood lead levels.

According to MDE’s 2014 Childhood Lead Registry, the most recent data available, 109,031 children younger than age six were tested out of an estimated statewide population of 527,304. In that same year, 355 children (or 0.3% of those tested) were identified as having a blood lead level of greater than 10 micrograms per deciliter, down from 371 in 2013. Of the 355 cases in 2014, 262 were new cases. An additional 2,004 children had blood lead levels between five and nine micrograms per deciliter, down from 2,251 in 2013. Of those 2,004 cases, 1,607 were new cases. According to MDE, much of the decline in blood lead levels in recent years is the result of implementation and enforcement of Maryland’s lead law.

Limited Lead-free Certificates and Recent Enforcement Actions

MDE advises that, as of January 1, 2016, 43,117 dwelling units were covered by active limited lead-free certificates. There are approximately 360 certified third-party inspectors in the State qualified to perform inspections for limited lead-free certificates. On average, between calendar 2011 and 2015, limited lead-free inspections were performed for 1,317 certificates per year, covering an average of 9,380 units per year.

In January 2016, MDE reported that, in coordination with the U.S. Environmental Protection Agency, it has opened an investigation to determine whether rental properties certified as *lead-free* by one private inspector are actually lead-free. The investigation was prompted after MDE found lead paint in seven properties that had been certified as lead-free by that inspector. MDE is notifying 384 properties that were certified lead-free by the inspector to inform them of the investigation. MDE reports that it is making arrangements to retest properties that were certified lead-free by the inspector between 2010 and 2014.

MDE advises that between 2013 and 2015, there were 49 enforcement actions against inspectors, averaging approximately 16 per year.

Guidelines for Testing of Multifamily Properties

The U.S. Department of Housing and Urban Development’s *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (1997 Revision) establishes standards for the number of similar units, similar common areas, or exterior sites in a

building or development that should be tested in pre-1960 buildings, or buildings developed between 1960 and 1977, based on the total number of units in a building or development. MDE advises that prior to September 29, 2003, MDE's regulations allowed inspectors to issue lead-free or limited lead-free certificates for multiunit buildings or complexes based on a sampling of a random selection of units to be tested. Properties with fewer than 20 units were required to select 6 units for testing, while properties with more than 20 units were required to select 10 units; this was less stringent than the federal regulations. On September 29, 2003, MDE amended its regulations to be consistent with the federal regulations.

Maryland 2015 Lead Targeting Plan

In October 2015, the State released the *Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning*. The revised targeting plan and accompanying proposed regulations called for blood lead testing at 12 months and 24 months of age throughout the State. Previously, only children living in certain at-risk ZIP codes or who were enrolled in Medicaid were targeted for testing.

State Expenditures: MDE advises that its workload to perform oversight on limited lead-free certificates is extensive, and that extending the reinspection timeline for a limited lead-free certificate has a positive impact on its operations. MDE also notes however, that the bill requires MDE to accept and track affidavits submitted annually, offsetting some of the administrative efficiencies achieved from extending the reinspection timeline. Overall, MDE expenditures are not materially affected.

Small Business Effect: Small business rental property owners may benefit from the bill's change to the frequency (from every two years to every five years) with which a limited lead-free certification must be submitted to MDE. However, at least some small business providers of lead paint inspection services may incur a reduction in the demand for their services as a result of that change.

Additional Information

Prior Introductions: HB 1158 of 2015 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None designated. However, HB 396 (Delegate Stein, *et al.* – Environment and Transportation) is identical.

Information Source(s): Maryland Department of the Environment, Maryland Association of County Health Officers, Baltimore City, Montgomery and Prince George's counties, Department of Health and Mental Hygiene, Department of Housing and Community Development, Department of Legislative Services

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