

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 97

(Senator Pugh, *et al.*)

Finance

Health and Government Operations

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**Lead-Containing Children's Products - Prohibition**

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This bill prohibits a person from manufacturing, selling, offering for sale, importing, or distributing a lead-containing children's product. The bill does not affect the authority of a local agency to enforce a local law governing the amount of lead contained in a product if the local law is at least as restrictive as the bill.

The bill takes effect July 1, 2008.

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**Fiscal Summary**

**State Effect:** The Maryland Department of the Environment should be able to develop or authorize certificates and issue notices to violators using existing resources. Potential minimal increase in special fund revenues due to the requirement that fines levied by the Comptroller under the bill be distributed to the Lead Poisoning Prevention Fund. Potential minimal increase in general fund revenues and expenditures due to the bill's criminal and civil penalty provisions.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's criminal and civil penalty provisions.

**Small Business Effect:** Meaningful.

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**Analysis**

**Bill Summary:** A "lead-containing product" is a product or a component of a product containing or coated with lead in a concentration of more than 0.06% of the product's total weight or the standard established under federal law. This prohibition includes products such as accessories and jewelry, clothing, decorative objects, furniture, lunch

boxes and eating utensils, toys, and any other item specified by the department in regulation. The bill does not apply to • food; • an electronic device that contains lead unless the Secretary determines that there is a significant risk a child could be exposed to the lead contained in the device during normal use; • any factory, warehouse, or establishment, or in the course of surface transportation, at a port facility; and • a vehicle, product or part for use in a vehicle, or transportation equipment.

The bill requires a manufacturer of a children's product to test whether the product is a lead-containing product by using an independent, accredited third-party testing entity. The manufacturer has to issue a certificate that certifies that the product is not a lead-containing product and, in addition to providing a copy to MDE or any person on request, must ensure that the certificate is transmitted with the product to any distributor or retailer. In addition, retailers have to maintain a copy of the certificate and provide a copy to MDE or any person on request.

A person cannot sell or offer for sale by any means, a children's product for which there is no certificate issued. MDE has to create or approve the certificate form and may adopt regulations to carry out the bill's provisions. The bill authorizes the Comptroller to assess fines against persons that sell or offer for sale a children's product without the required certificate of up to \$1,000 for each violation, up to a maximum of \$50,000. However, these fines cannot be assessed until the violator has been issued three warnings regarding the violation. This fine revenue is distributed to the Lead Poisoning Prevention Fund.

If MDE determines that a person has manufactured or sold a children's product that contains lead, MDE has to give written notice to the violator that identifies the product. Within 15 days of receiving the notice, the violator has to send specified information about the product to MDE. Within 24 hours after a violation is determined, the person has to submit a report to MDE in a form required by the department.

### *Civil and Criminal Penalties*

A person who violates the bill is subject to a civil penalty of up to \$1,000 per day for each violation. The civil penalty may be assessed and recovered in any court of competent jurisdiction.

A person who willfully violates the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000 per violation and/or imprisonment for up to one year.

A violation of the bill is also considered an unfair or deceptive trade practice under the Maryland Consumer Protection Act and would therefore be subject to civil and criminal penalties under MCPA.

**Current Law:** Health care providers caring for children in at-risk areas have to administer a blood test for lead poisoning within the timeframe specified in DHMH regulations or according to Centers for Disease Control and Prevention guidelines for children older than 24 months who have not received a blood test for lead poisoning. Universal blood lead testing applies to children living in Baltimore City and children receiving Medicaid. Blood testing is not required of a child whose parent or guardian objects to the testing on the ground that it conflicts with bona fide religious beliefs and practices. However, this exemption does not apply if the responses to the questionnaire administered by the pediatrician indicate the child is at high risk for lead poisoning.

When a child enters a public prekindergarten program, kindergarten program, or first grade, a parent or guardian has to provide documentation from a health care provider certifying that the child has undergone blood testing for lead poisoning. A program or school must report the name, last known address, and telephone number of each child for whom certified documentation is not provided to the local health department where the child lives.

DHMH regulations specify that the child's blood lead analysis must be administered in connection with the child's 12-month visit and 24-month visit to a health care provider.

The Lead Poisoning Prevention Fund within MDE consists of all fees collected and penalties imposed under the Reduction of Lead Risk in Housing Subtitle and monies received by grant, donation, appropriation, or from any other source. MDE is directed to use the fund to cover the costs of fulfilling its duties and responsibilities under the Reduction of Lead Risk in Housing Subtitle and for program development. At least \$750,000 must be used each year for community outreach and education programs and enforcement efforts. Special fund revenues for the Lead Poisoning Prevention Program are derived from lead accreditation fees from those involved in lead abatement activities and from annual registration fees paid by rental property owners. The program also receives federal funds for lead poisoning prevention activities.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are "reasonable grounds" to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce MCPA. Violators of MCPA are subject to • civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to imprisonment for one year.

**Background:** According to CDC, adverse health effects exist in children at blood lead levels less than 10µg/dL. However, no clinical interventions are known to lower the blood lead levels for children with lead levels less than 10µg/dL, and measuring blood levels below this threshold is difficult. Therefore, although CDC warns there are no safe blood lead levels, the 10µg/dL threshold is the standard measure at which statistics are reported.

The number of children with elevated blood lead levels decreased in 2006 at both the State and national level compared to 2005. At the State level, out of 102,974 children 0 to 72 months tested for lead in 2006, 1,274 (1.2%) were found to have blood lead levels greater than 10 µg/dL compared to 1,331 (1.3%) in 2005. Over the past two years, three children in Maryland were tested and found to have elevated blood lead levels specifically traceable to lead-containing products.

There are lead product bans in California, Illinois, and Michigan. In California and Michigan, lead content in children's jewelry is limited to less than 0.06%. California's law also restricts the lead content in the plastic and rubber components of children's jewelry to less than 0.02% by August 31, 2009. The use of glass or crystal is limited to a total of one gram in the product unless it contains less than 0.02% lead by weight and has no intentionally added lead.

Illinois restricts the use of lead-bearing substances (any item containing or coated with lead so that the lead content is more than 0.06% lead by total weight). The use of these substances is banned in or upon any items, including clothing, accessories, jewelry, decorative objects, edible items, candy, food, dietary supplements, toys, furniture, or other articles used by or intended to be used and chewable by children.

At the federal level, the Consumer Product Safety Commission (CPSC) is drafting a proposed rule to ban children's jewelry containing more than 0.06% lead by weight. In September 2007, CPSC announced an agreement with its product safety counterparts in the Chinese government to immediately stop using lead paint in its manufacture of all toys exported to the United States. At the close of 2006, CPSC reported that it had conducted more than a dozen recalls of children's metal jewelry due to the risk of lead poisoning since 2004.

As of March 1, 2008, Wal-Mart and Toys "R" Us will require their toy suppliers to conform to a 0.009% by weight standard.

MDE's Lead Poisoning Prevention Program serves as the coordinating agency of statewide efforts to eliminate childhood lead poisoning. Under the 1994 Reduction of Lead Risk in Housing Law, MDE • assures compliance with mandatory requirements for lead risk reduction in rental units built before 1950; • maintains a statewide listing of

registered and inspected units; and • provides blood lead surveillance through a registry of test results of all children tested in Maryland. The program also • oversees case management follow-up by local health departments for children with elevated blood lead levels; • certifies and enforces performance standards for inspectors and contractors working in lead hazard reduction; and • performs environmental investigations for lead poisoned children. In addition, the program provides oversight for community education to parents, tenants, rental property owners, homeowners, and health care providers to enhance their role in lead poisoning prevention.

**State Revenues:** Potential minimal increase in special fund revenues due to the requirement that fines levied by the Comptroller under the bill be distributed to the Lead Poisoning Prevention Fund. General fund revenues could increase minimally as a result of the bill's criminal and civil monetary penalty provisions from cases heard in District Court.

**State Expenditures:** MDE should be able to create or approve required certificate forms and issue written notices to violators using existing resources.

If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction facilities. The number of people convicted because of the bill's proposed crime is expected to be minimal.

**Local Revenues:** Revenues could increase minimally as a result of the bill's criminal and civil monetary penalty provisions from cases heard in circuit courts.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$40 to \$129 per inmate in fiscal 2009.

**Small Business Effect:** Small business manufacturer revenues could decrease for any small business manufacturer making products that contain lead above the amount specified under the bill. Small business retailer revenues could decrease for retailers that would not be allowed to sell any products in their existing stock that contain more than the specified amount of lead. Small business manufacturer expenditures would increase to test each children's product for lead.

## Additional Information

**Prior Introductions:** A similar bill, HB 1214 of 2007 as amended by the House Health and Government Operations Committee, was subsequently referred to the Senate Finance Committee, where no further action was taken.

**Cross File:** HB 62 (Delegate Hubbard) – Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of the Environment, Department of Health and Mental Hygiene, Centers for Disease Control and Prevention, *Childhood Blood Lead Surveillance in Maryland 2006 Annual Report*, Department of Legislative Services

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