

Legislative Analysis



LEAD IN LUNCH BOXES AND CHILDREN'S JEWELRY AND CHILD CARE ARTICLES

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House Bill 4132 (Substitute H-3)
Sponsor: Rep. Edward Gaffney, Jr.

House Bill 4240 (Substitute H-2)
Sponsor: Rep. Andy Coulouris

House Bill 4399 (Substitute H-1)
Sponsor: Rep. Lisa Wojno
Committee: Health Policy

First Analysis (6-26-07)

BRIEF SUMMARY: The bills would prohibit the sale and manufacture of toys and child care articles containing more than 0.06 percent lead by weight, prohibit the sale of most lunchboxes containing lead, and create penalties for violations.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local units of government. A more detailed analysis of the fiscal impact follows later in the document.

THE APPARENT PROBLEM:

Lead in paint and gasoline has long been banned, yet many children still are found to be suffering from lead poisoning. High blood levels of lead are known to cause physical and neurological damage in young children. Education efforts focused on the danger of lead paint and lead pipes in older homes, coupled with increased rates of testing children at high risk for lead poisoning has

Lead poisoning in children is often associated with children eating paint chips in older homes that contain lead or lead in drinking water due to old pipes. However, children are also exposed to toxic levels of lead found in toys, clothing, jewelry, various child care articles, and even vinyl lunchboxes. Even items not intended for consumption pose a risk because young children chew or suck on almost anything they can put in or near their mouths. In March of 2006, a four-year-old died from lead poisoning after swallowing a charm from a bracelet given away in a marketing promotion by Reebok that included a bracelet with each purchase of children's shoes. Over half of a million necklace and ring sets sold at low cost "dollar" stores had to be recalled in early 2006 after they were found to contain high levels of lead. Just this month, certain items from a popular brand of wooden toy trains marketed for young children were recalled due to lead in the paint used by the manufacturer. Even vinyl lunchboxes can contain lead at amounts sufficient to poison children because the lead can leach into food carried in the products or get on a child's fingers and be ingested if the child licks his or her fingers.

To further reduce incidents of childhood lead poisoning, legislation has been offered to prohibit the manufacture or sale of various items intended for use by children that contain an unsafe level of lead.

THE CONTENT OF THE BILLS:

The bills, which are tie-barred to each other, would all amend the Public Health Code to reduce childhood exposure to lead. House Bills 4132 and 4240 would take effect 90 days after enactment. The bills are detailed as follows:

House Bill 4132

The proposed substitute would add Part 54B, entitled Lead-Bearing Substances, to the Public Health Code (333.5481 et al.) to define terms, prohibit the use of lead-bearing substances in the manufacture of children's jewelry, prohibit the retail sale of children's jewelry containing lead-bearing substances, require the Department of Community Health to post specific information on its website, and prescribe penalties for violations.

Definitions. "Children's jewelry" would mean jewelry made for, marketed for use by, or marketed to, children. It would include jewelry represented in its packaging or advertising as appropriate for children; sold in conjunction with or attached to products for use by children; sized for children and not intended for adults; sold in a vending machine; sold in a retail store, catalog, or on an Internet website in which a person exclusively offered for sale products packaged, displayed, or advertised as appropriate for children; or sold in a discrete portion of a retail store, catalog, or online website in which products packaged, displayed, or advertised as appropriate for children were sold.

"Lead-bearing substance" would mean an item or substance containing lead, or a coating containing lead, so that an item's lead content was more than 0.06 of the total weight. The term would not include glass or crystal decorative components.

"Person" would mean an individual, partnership, corporation, association, governmental entity, or other legal entity.

Prohibition. A person could not use or apply a lead-bearing substance in or on any children's jewelry in this state. A person also could not sell, offer for sale, or transfer any children's jewelry within Michigan that contained a lead-bearing substance.

Penalties. Penalties would apply to a person who was not an individual consumer. A first offense would be a civil fine of not more than \$100 per item, not to exceed a total of \$5,000. The civil fine for a second offense would be not more than \$500 per item, not to exceed a total of \$25,000. A third or subsequent offense would carry a civil fine of not more than \$1,000 per item, not to exceed a total of \$50,000. A person who knowingly violated these prohibitions would be subject to a civil fine equal to three times the fine for a third or subsequent offense.

House Bill 4240

The bill would add Part 54C, entitled Toxic Substances in Children's Products, to the Public Health Code (333.5491 et al.) to define terms, prohibit the manufacture or retail sale of toys or child care articles containing a toxic substance, and prescribe penalties for violations.

Definitions. "Child care article" would be defined as a product designed or intended by the manufacturer to facilitate the sleep, relaxation, or feeding of children or to help children with sucking or teething. The bill would apply to children who were seven years old or younger.

"Toxic substance" would mean a substance containing lead, or a coating on an item that contained lead, so that the lead content was more than 0.06 percent of the total weight. The term would not include glass or crystal decorative components. "Toy" would be defined to mean an article designed and made for the amusement of children or for children's use in play.

Prohibition. A person (an individual, partnership, corporation, association, governmental entity, or other legal entity) could not use or apply a toxic substance in or on any toy or child care article in Michigan. A person also could not sell, offer for sale, or transfer any toy or child care article in this state that contained a toxic substance.

Penalties. A person who was not an individual consumer who violated the bill's provision would be subject to a civil fine in the following amounts: for a first offense, a civil fine of not more than \$100 per item not to exceed a total of \$5,000; a second offense, a civil fine of not more than \$500 per item not to exceed a total of \$25,000; and for a third or subsequent offense, a civil fine of not more than \$1,000 per item not to exceed a total of \$50,000. A person who knowingly violated these prohibitions would be subject to a civil fine equal to three times the fine for a third or subsequent offense.

House Bill 4399

The bill would add a new section to the Public Health Code (333.5485) to prohibit the sale or offer of sale of lunch boxes containing a lead-bearing substance. The bill would not apply to the sale of a collectible lunch box or any other lunch box no longer intended to be used to carry food or drink for human consumption. The bill would apply to a fabricated container marketed or intended to be used to carry packaged or unpackaged food or drink for human consumption.

(The bill does not specify a penalty for a violation; however, Section 1299 of the code provides that a person who violates a provision of the code for which a penalty is not specified is guilty of a misdemeanor. A county prosecutor, the attorney general, or local health department could enforce this provision. Under the Michigan Penal Code, an unspecified misdemeanor is punishable by imprisonment for not more than 90 days, a fine of not more than \$500, or both.)

FISCAL INFORMATION:

House Bill 4132 would not have a fiscal impact on the Department of Community Health currently as the department uses its website for information on lead hazards and should not have any additional costs due to the requirements of the bill. The bill would also impose a civil fine for the stated violations without classifying the violations as civil infractions or directing the fine revenue. In these cases, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). Thus, the bill would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bills' provisions.

House Bill 4240 would impose a civil fine for the stated violations without classifying the violations as civil infractions or directing the fine revenue. In these cases, it is assumed that a provision of the Management and Budget Act would apply and the fines would be deposited into the state General Fund (MCL 18.1443). Thus, the bill would increase the state General Fund by an indeterminate amount, depending upon how many new civil fines are collected under the bills' provisions.

House Bill 4399 would have an indeterminate impact on local units of government; any impact would depend on the number of misdemeanor convictions obtained under the bill. Costs of any jail incarceration or misdemeanor probation supervision would be borne by local units of government, and vary by jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bills would further reduce exposure to lead by young children. High blood levels of lead can cause kidney disease, brain damage, learning disabilities, and even death in an individual, but children are particularly sensitive to lead. Despite many educational efforts and increased efforts to screen high-risk children for blood lead levels, Michigan still ranks sixth in the nation for the number of children found to have lead poisoning.

Some feel that manufacturers and retailers should be more responsible in making and selling items intended for use by children. The bills would address this concern by prohibiting the manufacture of certain items containing more than 0.06 percent by weight of lead. It is known that amounts higher than this can raise the amount of lead in a child's bloodstream to dangerous levels.

In addition, retailers could not sell lunchboxes, whether metal or vinyl, that contained lead in excess of 0.06 percent by weight. However, an exception is provided for antique dealers and resale shops selling old lunchboxes as collectibles, since those items are no longer recommended for use in transporting food.

Items made of glass and crystal that contain lead are also excluded as the lead in those items do not pose the same danger if ingested or used for food storage as the other products targeted by the bills.

Response:

The bills certainly should help in the fight against incidents of childhood lead poisoning, but do not go far enough to protect children. Even small amounts of lead can injure children and lead to long-lasting, if not permanent, health effects. According to the Michigan Network for Children's Environmental Health, the threshold for lead contained in the bill is the level that the Consumer Product Safety Commission has set as a trigger for product recall; the commission's policy urges manufacturers to reduce lead content in their products to the greatest extent possible. Reportedly, 0.02 percent of lead by weight is considered to be a safer level and would be the appropriate threshold for manufacturers and retailers to follow. In addition, other articles used by children, especially those made of soft plastics, contain chemicals that can be toxic; these substances should also be prohibited.

POSITIONS:

The following associations, agencies, and organizations indicated support for the bills on 6-21-07:

Department of Community Health
Michigan Environmental Council
Michigan Primary Care Association
Ecology Center
Michigan Network for Children's Environmental Health
Michigan Nurses Association
Fashion Jewelry Trade Association

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey
Viola Bay Wild
Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.