

Legislative Analysis



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

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House Bill 4132 (Substitute H-2)
Sponsor: Rep. Edward Gaffney, Jr.

House Bill 4240 (Substitute H-1)
Sponsor: Rep. Andy Coulouris

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

Complete to 6-20-07

A SUMMARY OF HOUSE BILLS 4132, 4240, AND 4399 AS SUBSTITUTED

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 \$10,000. 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 proposed substitute 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 several types of phthalates, materials used in the manufacture of plastics. (Note: this definition may be changed in a subsequent version of the bill.) "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 proposed substitute 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 IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky

■ 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.