

# Legislative Analysis



## REDUCE CHILDHOOD LEAD POISONING

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**House Bill 4132 as enrolled**  
**Public Act 161 of 2007**  
**Sponsor: Rep. Edward Gaffney, Jr.**

**House Bill 4936 as enrolled**  
**Public Act 162 of 2007**  
**Sponsor: Rep. Andy Coulouris**

**House Bill 4399 as enrolled**  
**Public Act 160 of 2007**  
**Sponsor: Rep. Lisa Wojno**

**Senate Bill 174 as enrolled**  
**Public Act 159 of 2007**  
**Sponsor: Sen. Roger Kahn**

**Senate Committee: Health Policy**  
**House Committee: Health Policy**

### Second Analysis (11-21-08)

**BRIEF SUMMARY:** House Bills 4132 and 4399 and Senate Bill 174 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. House Bill 4936 would reenact enabling legislation for the Michigan Childhood Lead Poisoning Prevention and Control Commission; extend the sunset date of the Commission to July 1, 2010; specify that Commissioners would serve three year terms; and increase the Commission's membership by seven members.

**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. Though some gains have been made over the past few years, such as increased screening of children with a high risk of exposure to lead, Michigan still ranks as the sixth worst state in regard to the percentage of young children with lead poisoning. This is very serious, as high blood levels of lead in children can have life-long effects such as anemia, hearing loss, hyperactivity, aggressive behavior, liver and kidney damage, developmental delays, learning disabilities, and brain damage, and can even lead to coma or death.

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. In June of 2007, 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.

In a separate but related matter, the Michigan Childhood Lead Poisoning Prevention and Control Commission was created by Public Act 431 of 2004 with a mission to prevent and control childhood lead poisoning through public awareness, testing and treatment of lead poisoned children, and prevention and remediation of lead hazards, in addition to maximizing public and private resources to that end. No later than March of each year, the Commission must provide an annual report and recommendations to the Governor and Legislature.

Since its inception, the Commission has, according to testimony offered before the House Committee on Health Policy, "provided a very effective means of assessing the performance of government and private sector lead poisoning efforts, and of identifying remaining gaps and problems within and across many agencies. . ."

However, the Commission's underlying statutory provision sunsetted or expired, on July 1, 2007. Legislation introduced to extend the sunset failed to be enacted by that date and the provisions expired. Some feel that to eliminate the Commission at this time will slow the momentum realized over the past few years to eliminate lead exposure, thus placing the state's children at risk of lead poisoning. The legislation was subsequently amended to reinstate the Commission and extend the sunset to allow the Commission more time to meet its goals.

### ***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. The bills took effect March 20, 2008. The bills are detailed as follows:

#### House Bill 4132

The bill would add Part 54B, entitled Lead-Bearing Substances, to the Public Health Code (MCL 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 to any person 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.

A civil fine imposed under this provision would have to be waived if it were determined that a person acted in good faith to be in compliance with Part 54B, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

#### Senate Bill 174

The bill would add Part 54C, entitled Toxic Substances in Children's Products, to the Public Health Code (MCL 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.

A civil fine imposed under this provision would have to be waived if it were determined that a person acted in good faith to be in compliance with Part 54C, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

#### House Bill 4399

The bill would add a new section to the Public Health Code (MCL 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.)

#### House Bill 4936

The underlying statutory provisions that created the Michigan Childhood Lead Poisoning Prevention and Control Commission sunsetted on July 1, 2007. In the Commission's

Annual Report to the Legislature issued in March of 2007, the commissioners reported on the action taken over the past year and also included a new list of recommendations packaged into six objectives. Objective V (5) recommended that the Commission sunset be extended, that board membership be increased, and that the term of office for a commissioner be set at three years with the option for a second term.

House Bill 4936 would add two new sections to the Public Health Code (MCL 333.5478 and 333.5479) to essentially reenact the provisions that expired. The bill would also incorporate the recommendations of Objective V of the Annual Report to the Legislature, dated March 2007, issued by the Michigan Childhood Lead Poisoning Prevention and Control Commission.

The bill specifies that it is the intent of the Legislature that the Childhood Lead Poisoning Prevention and Control Commission created under former Section 5474a be reinstated with minimal interruption. To that end, the bill specifies that the nine members appointed by the Governor under that former section and serving on the Commission on June 30, 2007 be reinstated to serve on the Commission.

Secondly, beginning 30 days after the bill's effective date, the number of board members of the reinstated Commission would be increased by 7 to a total of 16. The new members would represent the Michigan Municipal League, Michigan Department of Labor and Economic Growth, Michigan Chapter of the American Academy of Pediatrics, Prosecuting Attorneys Coordinating Council, Michigan Department of Education, Michigan Association of Home Builders Remodeling Council, and Michigan Early Childhood Investment Corporation. The new members would have to be appointed by the Governor within 30 days of the bill's effective date.

In addition, except for an appointment to fill a vacancy, the term of office for commissioners would be identified as three years with the appointment expiring on December 31 of the year in which the term is to expire. Members would be eligible for reappointment to the Commission.

The bill would also revise a reinstated provision that originally required the Commission to conduct at least two public hearings to seek input from the general public and all of a long list of groups and individuals having an interest in childhood lead poisoning prevention and control. Instead, the bill would require the Commission to seek input from the general public and the listed individuals and groups. The list would remain the same except for the deletion of the Michigan Department of Education and the American Academy of Pediatrics; both groups would now be represented on the expanded Commission.

Lastly, the bill would make slight revisions to the duties of the Commissions that had been in former Section 5474c. The two substantive changes are as follows:

- Require the Commission to study and report on the environmental threats of lead poisoning to children's health, including, but not limited to, the incidence of exposure, source of exposure, and degree of exposure. (Changes are underlined.)
- Add a requirement for the Commission to evaluate and report on whether there is a need to adjust the lead content level referenced in the definitions of lead-bearing substance and toxic substance in Parts 54B (added by House Bill 4132) and 54C (added by Senate Bill 174) in order to reduce the incidence of lead poisoning in children.

***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.

Senate Bill 174 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.

House Bill 4936, by increasing the number of voting members and extending the sunset for the Childhood Lead Poisoning Prevention and Control Commission, will sustain and may slightly increase costs for this function in the Department of Community Health budget.

***ARGUMENTS:***

***For:***

Senate Bill 174 and House Bills 4132 and 4399 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 among the top ten states regarding 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 bills 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.

***For:***

Lead poisoning continues to be a significant health threat to children around the state, especially those living near industrialized areas or in older homes that still contain lead paint and fixtures containing lead. Children exposed to lead suffer physical and neurological damage that can last a lifetime. But the effects go beyond the individual child and affect the community, also. According to the Michigan Childhood Lead Poisoning Prevention and Control Commission, a single case of childhood lead poisoning can cost at least \$45,000 in medical, special education, and other needed services, many of which are provided with public monies. Yet, with appropriate and effective policy measures in place, lead poisoning can be prevented. The Commission has already made an impact in the first two years since it was formed, and can do much more in coming years if allowed to continue. House Bill 4936 would enable the Commission to continue for another three years, at which time the issue of dissolving the Commission can be revisited. For instance, a new duty of the Commission would be to determine if the lead

content level for products marketed for use by children referenced in House Bill 4132 and Senate Bill 174 is appropriate. If that figure is inadequate to lower lead exposure among children, the Commission can recommend an appropriate level in its annual report. In addition, the bill would expand the membership of the Commission to include representatives of seven entities uniquely suited to helping the Commission achieve its goal of eliminating lead poisoning in the state.

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■ 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.