



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bill 174 (as enacted)  
House Bill 4132 (as enacted)  
House Bill 4399 (as enacted)  
House Bill 4936 (as enacted)

Sponsor: Senator Roger Kahn, M.D. (S.B. 174)  
Representative Edward Gaffney (H.B. 4132)  
Representative Lisa Wojno (H.B. 4399)  
Representative Andy Coulouris (H.B. 4936)

Senate Committee: Health Policy  
House Committee: Health Policy

Date Completed: 7-1-09

### **RATIONALE**

Over the last few years, the recall of millions of toys and other children's products found to contain hazardous levels of lead has sparked national concern. Lead is a toxin that builds up in the body as it is ingested, and collects in bone tissue and blood. While people of any age can be adversely affected by lead poisoning, young children are particularly susceptible to it because their brains are still developing. Prolonged exposure to lead can interfere with the development of the central nervous system and has been linked to brain damage, mental retardation, developmental delays, learning difficulties, anemia, liver and kidney damage, hearing loss, seizures, hyperactivity, attention deficit disorder, and, in extreme cases, coma and death. Studies also have suggested a link between lead poisoning and juvenile delinquency and violent behavior. Due to the public health risk, it was suggested that the sale of children's products containing elevated lead levels be prohibited in Michigan.

In a related matter, some suggested that the Michigan Childhood Lead Poisoning and Control Commission should be reinstated. Public Acts 400 and 431 of 2004 established the Commission and required the Commission to fulfill its statutory duties and report its findings and recommendations to the Legislature and the Governor by July 1, 2007, and then be disbanded.

**PUBLIC ACT 159 of 2007**  
**PUBLIC ACT 161 of 2007**  
**PUBLIC ACT 160 of 2007**  
**PUBLIC ACT 162 of 2007**

### **CONTENT**

**Senate Bill 174 added Part 54C (Toxic Substances in Children's Products) to the Public Health Code to do the following:**

- Prohibit a person from using or applying a toxic substance in or on any toy or child care article in the State.
- Prohibit a person from selling, offering for sale, or transferring a toy or child care article containing a toxic substance in Michigan.
- Prescribe a civil fine for a violation of Part 54C by someone other than an individual consumer.

**House Bills 4132 and 4399 added Part 54B (Lead-Bearing Substances) to the Public Health Code to do the following:**

- Prohibit a person from using or applying a lead-bearing substance in or on any children's jewelry in Michigan.
- Prohibit a person from selling, offering for sale, or transferring in Michigan any children's jewelry that contains a lead-bearing substance.
- Prohibit a person from selling or offering for sale or use in Michigan a lunch box that contains a lead-bearing substance.

- **Require the Department of Community Health (DCH) to post on its website information about the hazards of lead-bearing substances, as well as educational programs regarding lead-bearing hazards offered by the Department.**
- **Prescribe a civil fine for a violation of Part 54B by someone other than an individual consumer.**

**House Bill 4936 amended the Lead Abatement Act (Part 54A of the Public Health Code) to reinstate the Childhood Lead Poisoning Prevention and Control Commission; and set a July 1, 2010, sunset date on the sections reinstating the Commission and prescribing its duties.**

The bills were tie-barred to each other. House Bill 4936 took effect on December 21, 2007. The other bills took effect on March 20, 2008.

**Senate Bill 174**

As added by the bill, Part 54C of the Public Health Code prohibits a person from doing either of the following in the State:

- Using or applying a toxic substance in or on any toy or child care article in the State.
- Selling, offering for sale, or transferring a toy or child care article that contains a toxic substance.

"Toxic substance" means a substance that contains lead, or a coating on an item that contains lead, so that the lead content is more than 0.06% of the total weight. The term does not include glass or crystal decorative components.

"Toy" means an article designed and made for the amusement of a minor or for the minor's use in play. "Child care article" means 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. "Children" means individuals who are seven years old or younger.

The prohibitions do not apply to the sale of a collectible toy that is not marketed to or intended to be used by a minor.

Except as otherwise provided, a person other than an individual consumer who violates Part 54C is subject to the following civil fine:

- For a first offense, up to \$100 per item, not to exceed \$5,000 total.
- For a second offense, up to \$500 per item, not to exceed \$25,000 total.
- For a third or subsequent offense, up to \$1,000 per item, not to exceed \$50,000 total.

A person who knowingly violates Part 54C is subject to a civil fine equal to three times the prescribed amounts.

A civil fine must be waived if it is determined that a person acted in good faith to comply with Part 54C, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

**House Bill 4132**

As added by the bill, Part 54B of the Code prohibits a person from doing either of the following in Michigan:

- Using or applying a lead-bearing substance in or on any children's jewelry.
- Selling, offering for sale, or transferring any children's jewelry that contains a lead-bearing substance.

"Lead-bearing substance" means an item or substance that contains lead, or a coating on an item that contains lead, so that the lead content is more than 0.06% of the total weight. The term does not include glass or crystal decorative components. "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to children, including all of the following:

- Jewelry represented in its packaging, display, or advertising as appropriate for use by children.
- Jewelry sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.
- Jewelry sized for children and not intended for use by adults.
- Jewelry sold in a vending machine.
- Jewelry sold in a retail store, catalog, or on-line website in which a person offers

for sale exclusively products that are packaged, displayed, or advertised as appropriate for use by children.

- Jewelry sold in a discrete portion of a retail store, catalog, or on-line website in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

The DCH must post on its website information about the hazards of lead-bearing substances and any programs it offers designed to educate individuals about those hazards.

Except as otherwise provided, a person who is not an individual consumer and who violates Part 54B is subject to the following:

- If the violation is the person's first offense under Part 54B, a civil fine of up to \$100 per item, not to exceed \$5,000 total.
- If the violation is the person's second offense under Part 54B, a civil fine of up to \$500 per item, not to exceed \$25,000 total.
- If the violation is the person's third or subsequent offense under Part 54B, a civil fine of up to \$1,000 per item, not to exceed \$50,000 total.
- If the person knowingly violates Part 54B, a civil fine equal to three times the amounts prescribed for a third or subsequent offense.

A civil fine must be waived if it is determined that a person acted in good faith to comply with Part 54B, pursued compliance with due diligence, and promptly corrected any noncompliance after discovery of the violation.

### **House Bill 4399**

The section of Part 54B added by this bill prohibits a person from selling or offering for sale or use in Michigan a lunch box that contains a lead-bearing substance. The prohibition does not apply to the sale of a collectible lunch box no longer intended to be used to carry food or drink for human consumption.

"Lunch box" means a fabricated container marketed or intended to be used to carry packaged or unpackaged food or drink for human consumption.

### **House Bill 4936**

Public Act 431 of 2004 created the Childhood Lead Poisoning Prevention and Control Commission within the Department of Community Health, and Public Act 400 of 2004 prescribed the Commission's duties. The sections enacted by those Acts were repealed on July 1, 2007. The bill states, "It is the intent of the legislature that the childhood lead poisoning prevention and control commission created in the department under former section 5474a shall be reinstated with minimal interruption." To this end, the following nine members appointed by the Governor with the advice and consent of the Senate and serving on the Commission on June 30, 2007, had to be reinstated to serve on the Commission:

- One member representing the DCH, who serves as the chairperson.
- One member representing the Department of Human Services.
- One member representing the Department of Environmental Quality.
- One member representing the Michigan State Housing Development Authority.
- One member representing "Get the Lead Out!" from a county with a population over 500,000 but not more than 700,000 (i.e., Kent County).
- One member representing a local health department located in a county with a population of more than 170,000 but not more than 200,000 (i.e., Muskegon County).
- One member representing certified lead-abatement contractors.
- Two members representing the general public.

Of the members representing the general public, one must be from a city with a population of at least 750,000 (Detroit) who is a parent of a child who has experienced lead poisoning or is a child advocate who has experience with lead poisoning in children. The other public member must represent property owners and developers in Michigan.

Effective January 20, 2008, the Commission must consist of 16 voting members. By that date, in addition to the nine members described above, the Governor had to appoint seven members, subject to the

advice and consent of the Senate, with one member representing each of the following:

- The Michigan Municipal League.
- The Department of Labor and Economic Growth.
- The Michigan chapter of the American Academy of Pediatrics.
- The Prosecuting Attorneys Coordinating Council.
- The Department of Education.
- The Michigan Association of Home Builders Remodelers Council.
- The Early Childhood Investment Corporation.

The term of office of individual members, except those appointed to fill vacancies, expires three years after appointment on December 31 of the year in which the term will expire. Members are eligible for reappointment to the Commission. If a vacancy occurs, it must be filled in the same manner as the original appointment.

Commission members must serve without compensation but, subject to appropriations, may receive reimbursement for their actual and necessary expenses while attending meetings or performing other authorized official Commission business.

The Commission may hold public hearings as it determines necessary or appropriate to carry out its duties under Part 54A. The Commission must seek input from the general public and all of the following individuals or groups (or their successor organizations) that have an interest in childhood lead poisoning prevention and control:

- The Michigan Association of Osteopathic Family Physicians.
- The Michigan Nurses Association.
- The Michigan Council of Nurse Practitioners.
- The Michigan Association of Health Plans.
- The Michigan Association for Local Public Health.
- Blue Cross Blue Shield of Michigan.
- The Michigan Health and Hospital Association.
- The Michigan Head Start Association.
- The Michigan Council for Maternal and Child Health.
- Michigan's Children.
- The Michigan League for Human Services.

- Detroit Public Schools.
- The Rental Property Owners Association.
- The Michigan Associated General Contractors.
- The Michigan Association of Realtors.
- The Michigan Environmental Council.
- The Michigan Adult Blood Lead Epidemiology and Surveillance Program.
- The Michigan State University Extension Program.
- The Detroit Lead Partnership.
- The Michigan Lead Safe Partnership.
- The Detroit Mayor's Lead-Based Paint Task Force.
- United Parents Against Lead.
- The Michigan Occupational Safety and Health Administration.
- The DCH Bureau of Laboratories.
- The DCH Medical Services Administration.
- An occupational and environmental medicine specialist.
- Parents or patient advocates of children who have experienced lead poisoning.
- A local housing authority.
- A community reinvestment officer.
- The Michigan State Medical Society.
- The Michigan Academy of Family Physicians.
- Saint Mary's Field Neurosciences Institute.
- The Arc Michigan Organization.
- Any other interested organization or association concerned with the prevention, treatment, and control of lead poisoning that the DCH determines necessary.

The Commission is subject to the Open Meetings Act and the Freedom of Information Act.

The bill reenacted the provisions of Public Act 400 requiring the Commission to review the State's lead poisoning prevention program; evaluate the effectiveness of the program, including its ability to satisfy Federal law requirements that 100% of all young children enrolled in Medicaid be screened with a blood lead test; and make recommendations for improvements to the program. Additionally, the bill reenacted a requirement that the Commission study the environmental threads of lead poisoning to children's health, and added a requirement that the Commission report on the environmental threats, including the incidence, source, and degree of exposure. The bill also requires the Commission to

evaluate and report on whether there is a need to adjust the lead content level referred to in the definitions of "lead-bearing substance" and "toxic substance" in Parts 54B and 54C in order to reduce the incidence of lead poisoning in children.

As required by Public Act 400, the Commission must consider all information received from its public hearings, review information from other sources, study the experiences of other states, and develop short- and long-range strategic recommendations for childhood lead poisoning prevention and control in Michigan. The recommendations must include strategies to do all of the following:

- Enhance public and professional awareness of lead poisoning as a child health emergency.
- Significantly increase blood lead testing rates for young children.
- Eliminate or manage the sources of lead poisoning, especially focusing on lead-based paint in aged housing.
- Assure State interagency as well as public and private cooperation and communication regarding resolution of this complex environmental and public health problem.

The Commission must submit a written report of its findings, including the recommendations, to the Governor and the Legislature by March 31 each year, beginning in 2008. A DCH representative must provide testimony summarizing the Commission's findings and recommendations to the standing committees of the Senate and House of Representatives with jurisdiction over issues pertaining to public health and children.

MCL 333.5481-333.5483 (S.B. 147)  
333.5481 et al. (H.B. 4132)  
333.5485 (H.B. 4399)  
333.5478 & 333.5479 (H.B. 4936)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

There is said to be no safe level of lead; any level might harm children's brains and

bodies. Over the last several years, millions of children's toys and other products, most of them imported, have been recalled after children ingested the products and were sickened or even died. Although consumers can check recall lists in an effort to avoid purchasing products that present a known risk, there is no requirement that products be subjected to testing before reaching store shelves, so a particular product's absence from a recall list does not provide assurance that it is safe. Furthermore, some people are concerned that the U.S. Consumer Product Safety Commission (USCPSC) does not have sufficient authority and ability to recall and ban lead-contaminated products in a timely manner. By prohibiting the sale of products containing harmful lead levels at the State level and establishing civil fines for violators, the legislation will give companies an incentive to test their products before offering them for sale to Michigan consumers, which will help protect the health of children in this State.

**Response:** The bills establish a threshold of 600 parts per million (ppm), which is the level the USCPSC uses to trigger a recall. Since there is no safe level of lead, however, it would be more appropriate to adopt the recommendation of the American Academy of Pediatrics of 40 ppm. Additionally, the definition of "children" should include people up to 12 years old, rather than seven.

#### **Opposing Argument**

It is important for the Childhood Lead Poisoning Prevention and Control Commission to carry on the critical work it performed in efforts to eliminate lead poisoning in the State. The Commission's scope covers all sources of lead hazards, including lead-based paint in aged housing, which remains the primary source of childhood lead poisoning.

Legislative Analyst: Julie Cassidy

#### **FISCAL IMPACT**

##### **Senate Bill 174**

The bill will have an indeterminate fiscal impact on State government. Additional civil fine revenue will be deposited in the State's General Fund.

**House Bill 4132**

The Department of Community Health will see a minor increase in cost associated with updating the website. Additional civil fine revenue will be deposited in the State's General Fund.

**House Bill 4399**

Additional civil fine revenue will be deposited in the State's General Fund.

**House Bill 4936**

Upon the re-establishment of Commission, the Department saw a minor, indeterminate increase in administrative cost associated with supporting its work.

Fiscal Analyst: David Fosdick  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.