

Legislative Analysis



PENALTIES FOR RENTING UNIT WITH A LEAD-BASED PAINT HAZARD

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 757 (Substitute H-2)

Sponsor: Sen. Hansen Clarke

House Committee: Judiciary

Senate Committee: Families and Human Services

First Analysis (8-4-04)

BRIEF SUMMARY: The bill would prohibit, and establish penalties for, renting a residential housing unit to a family with a minor child who was found to be lead poisoned.

FISCAL IMPACT: Senate Bill 757 (H-2) has a fiscal impact on state and local government due to implementation and enforcement of a new law with penalties. The conviction of offenders could result in increased local incarceration and probation costs and increased revenues from fines, which are directed constitutionally to local libraries. In 2003, 12.3% of Michigan's 814,505 children below 6 years of age (2000 census) were tested for lead poisoning and 3,141 tested positive for elevated blood lead levels. The Michigan Department of Community Health estimates that a total of approximately 20,000 children in Michigan may be lead poisoned. It is unknown how many of these children reside in Michigan's 300,000-400,000 rental housing units constructed prior to 1950, when the usage of lead-based paint was high. It is unknown how many rental housing units currently are health hazards due to deterioration of lead-based paint.

THE APPARENT PROBLEM:

Efforts to reduce the number of children being poisoned by ingesting lead started in the 1970s after evidence surfaced linking high blood lead levels to serious health and developmental problems. The federal government began requiring the removal of lead additives from paint, gasoline, and other household products; lead-based paint was banned in 1978. The number of children with lead poisoning has dropped from a high of 15 million in 1979 to under 500,000 today (*The Detroit News*, 8-23-03); however, lead poisoning remains a significant public health risk, particularly for children in low-income families who live in urban settings in older homes.

According to a July 2003 State of Michigan report entitled *Childhood Lead Poisoning Prevention: A Call to Action*, lead poisoning affects an estimated 20,000 Michigan children under the age of six. A multi-bill, bi-cameral package of legislation addressing various issues related to childhood lead poisoning has been working its way through the legislature since the beginning of the year. Two of the bills, House Bills 5117 and 5119 have already been signed into law (Public Acts 54 and 55, respectively). One area of concern considered to be of great importance is the problem of property owners or managers who know a rental unit to be contaminated with lead based paint but who continue to rent that unit to families with young children. It is hoped that punishing such conduct will act as a deterrent to renting units with a known lead paint hazard, encourage

responsible property owners and managers to abate lead hazards, and provide a greater number of affordable, safe rental units.

THE CONTENT OF THE BILL:

The bill would add a new section to the Public Health Code to prohibit and punish certain conduct involving the renting of residential housing units with a lead-based paint hazard to a family with a minor child when the child is found to be lead poisoned. “Lead-based paint hazard” is defined in Section 5458 of the code. The bill would apply to a property manager, housing commission, or owner of a rental unit who rented or continued to rent a residential housing unit to a family with a minor child who was found to be lead poisoned. “Property manager” is defined in Section 2501 of the Occupational Code. The individual or individuals renting the unit would be subject to the bill’s penalties if all of the following applied:

- The individual had prior actual knowledge that the rental unit contained a lead-based paint hazard.
- At least 90 days had passed since the lead-based paint hazard became known to the individual.
- The individual failed to act in good faith to reduce the lead paint hazards through interim controls or abatement or a combination of the two.

The individual would be considered as having had prior actual knowledge that a unit contained a lead-based paint hazard only if he or she had signed an acknowledgement of the hazard as a result of a risk assessment under Part 54A, entitled “Lead Abatement”, at the time the risk assessment had been made; or the individual had been served as a result of a risk assessment under Part 54A with notice of the hazard by first-class mail and a return receipt of that service had been obtained.

It would be an affirmative defense if the property manager, housing commission, or owner had requested or contracted with a person having responsibility for maintaining the rental unit to reduce the hazard through interim controls or abatement and had reasonably expected that the hazard would have been reduced, or could substantiate that the tenant would not allow entry into or upon the premises where the hazard was located or otherwise interfered with correcting the hazard.

A violation of the bill would be a misdemeanor. A first offense would be punishable by imprisonment for not more than 93 days, a fine of not more than \$5,000, or both. The maximum term of imprisonment for a second or subsequent offense would be the same, but the maximum fine would be increased to \$10,000, and the court could impose imprisonment, a fine, or both.

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HOUSE COMMITTEE ACTION:

The committee adopted a substitute that substantially changed the bill from the Senate-passed version. Among other things, the House version amends the Public Health Code instead of the Lead Abatement Act; applies the prohibitions and penalties in the bill to a property manager or housing commission (instead of a rental agent or landlord) in addition to an owner of a rental unit; changes the criteria that would subject a person to the penalties; allows imprisonment for up to 93 days for a first offense; increases the maximum term of imprisonment for a second or subsequent offense to 93 days (increased from 90); revises the elements of an affirmative defense; defines “property manager”; revises the definition of “lead-based paint hazard”; and adds an effective date.

BACKGROUND INFORMATION:

The following information was supplied by the Senate Fiscal Agency:

Lead Poisoning. Lead is a toxin that builds up in the body as it is ingested, and collects in bone tissue and blood. Although lead-based paint itself is not dangerous, it can crack and peel in deteriorating buildings. Small children and pets can ingest the paint chips or dust. Industrial pollution can contribute to the problem when lead in the emissions from factories and incinerators gets into the air and soil surrounding homes where children play. The dust can saturate carpets and build up in ventilation ducts. Drinking water in older structures also can be contaminated by lead, which is often present in the pipes and solder used in the plumbing. A lead-based paint hazard is abated either by removal, which makes the building lead-free, or, more commonly, by encapsulation, which makes it lead-safe. Encapsulation entails activities short of removal, such as painting over lead-based paint with lead-free paint. The procedure, however, does not necessarily mean that the new paint will not deteriorate, exposing the lead-based paint in the future.

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. Recent studies also have suggested a link between lead poisoning and juvenile delinquency and violent behavior. Lead poisoning can be treated through a potentially painful and expensive process called “chelation therapy”, in which the lead is cleared from the blood and excreted in urine.

In Michigan, the highest incidence of lead poisoning is in the counties of Wayne, Kent, Muskegon, Berrien, Calhoun, Kalamazoo, Genesee, Ingham, Saginaw, and Oakland. Childhood lead poisoning is of particular concern in the cities of Detroit, where 63 percent of the homes were constructed before 1950, and Grand Rapids, which has the highest concentration of lead poisoning in the state. Based on data from 1998 blood screenings, in some Detroit zip codes, children had blood lead levels up to 10 times the national average (*The Detroit News*, 5-17-01).

Lead Abatement Act. The Federal Toxic Substances Control Act contains requirements for the certification of individuals engaged in lead-based paint activities and for the accreditation of lead-based paint activity training programs. In 1996, the U.S. Environmental Protection Agency (EPA) promulgated final regulations for the accreditation of training programs, the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing these activities. The regulations required states to have an authorized program in place as of August 1998; in a state without an authorized program, no individual or firm could perform lead-based paint activity without certification from the EPA.

Before the EPA regulations were promulgated, Michigan had administratively established a certification program. In response to the regulations, Public Acts 219 and 220 of 1998 created the Lead Abatement Act within the Public Health Code. The act contains training program requirements, prescribes accreditation and certification fees, and requires the DCH to conduct training programs. The act also required the DCH to establish a lead poisoning prevention program. The program must include a comprehensive educational and community outreach program regarding lead poisoning prevention, as well as a technical assistance system to assist health care providers in managing cases of childhood lead poisoning. As part of this system, the DCH must require that results of all blood lead level tests conducted in Michigan be reported to the department. When the DCH receives notice of blood lead levels above 10 micrograms per deciliter, it must initiate contact with the local public health department or the physician, or both, of the child whose blood lead level exceeds that level.

ARGUMENTS:

For:

It is estimated that almost two million homes within Michigan were constructed before 1950; almost 400,000 of those dwellings are rental properties. Since about 90 percent of homes built before 1950 used lead-based paint, and lead-based paint wasn't banned until 1978, it is reasonable to assume that many rental properties are potential lead-based paint hazards. Federal law already requires the seller or lessor of each home built before 1978 to provide a buyer or renter with a lead hazard information pamphlet and to disclose the presence of any known lead-based paint hazard (along with a copy of any lead hazard evaluation report the seller or lessor may have). Violators are subject to civil money penalties and civilly liable for up to three times the amount of damage incurred by an individual. However, federal agencies responsible for prosecuting violators do not always do so in a timely or consistent manner. Despite these federal regulations and penalties, which have been in effect since the mid-1990s, the number of lead-poisoned children in the state remains high – about 20,000 children under the age of six years of age. Some feel that the seriousness of the problem, such as life-long physical and neurological effects, warrants more drastic action on the part of the state.

The bill would target those property managers and owners who deliberately fail to properly deal with known lead-based paint hazards and continue to rent to families with young children. Setting the maximum term of imprisonment at 93-days will trigger

certain fingerprinting requirements that will enable communities to identify repeat offenders. However, the bill's penalties would only apply when a minor child was found to be lead poisoned. The bill grants property managers, a housing commission, or the property owner a reasonable amount of time to take remedial actions to contain the hazard through interim controls, abatement, or a combination. Further, the bill would provide an affirmative defense against prosecution for those individuals who tried to address the problem within the bill's timeframe but were unable to do so because of delays caused or experienced by the contractor hired to do the work. Also, the affirmative defense would apply if a tenant refused entry to a contractor hired to correct the hazard. In short, the bill is fair to both tenants and landlords.

POSITIONS:

A representative of the Department of Community Health testified in support of the bill. (7-14-04)

A representative of the Michigan Environmental Council indicated support for the bill. (7-14-04)

A representative of the Rental Property Owners Association indicated support for the bill. (7-14-04)

A representative of the Property Management Association of Michigan indicated a position of neutrality on the bill. (7-14-04)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Susan Frey

■ 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.