

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1378

S. P. 460

In Senate, March 16, 1971

Referred to Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Hichens of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to the Sale and Use of Lead Paint.

Be it enacted by the People of the State of Maine, as follows.

R. S., T. 22, c. 558-A, additional. Title 22 of the Revised Statutes is amended by adding a new chapter 558-A to read as follows:

CHAPTER 558-A

SALE AND USE OF LEAD PAINT

§ 2401. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Area of high risk. "Area of high risk" means an area designated as such by the Commissioner of Health and Welfare acting through its Bureau of Health and consisting of one or more dwellings in which a paint condition conducive to lead poisoning is present.

2. Dwelling. "Dwelling" means a building or structure or portion thereof which is occupied in whole or in part as a home, residence or sleeping place of one or more human beings.

3. A paint condition conducive to lead poisoning. "A paint condition conducive to lead poisoning" means paint or plaster containing lead in a condition accessible for ingestion or where peeling or chipping of the paint or plaster occurs or is likely to occur.

4. Paint or plaster containing lead. "Paint or plaster containing lead" means a paint or plaster containing more than 1% of metallic lead based on the nonvolatile content of the paint.

§ 2402. Manufacture and sale of lead painted toys and furniture

No person shall manufacture, sell, lease or hold for sale or lease a children's toy or children's furniture having thereon paint containing lead.

§ 2403. Use of leaded paint

No person shall apply paint containing lead to any interior surface or porch of a dwelling.

§ 2404. Abatement of lead poisoning

Whenever the Commissioner of Health and Welfare, acting through the Bureau of Health, shall designate an area of high risk, he shall give written notice and demand, served as provided in this chapter, for the discontinuance of a paint condition conducive to lead poisoning in any designated dwelling in such area within a specified period of time. Such notice and demand shall prescribe the method of discontinuance of a paint condition conducive to lead poisoning which may be the removal of paint containing lead from specified surfaces under such safety conditions as may be indicated and the refinishing of such surfaces with a suitable finish which is not in violation of section 2402 or the covering of such surfaces with such material as may be deemed necessary to protect the life and health of occupants of the dwelling.

A notice and demand required by this section may be served upon an owner or lessor of the dwelling or agent of the owner in the same manner as a summons in a civil action.

1. The commissioner may also issue his notice and demand for the discontinuance of violation of sections 2401 and 2402 within a specified period of time. The notice and demand shall prescribe the method of such discontinuance and be served as provided.

§ 2405. Enforcement

In the event of the failure of any person to comply within the time limited, with notice and demand issued pursuant to this chapter, the Commissioner of Health and Welfare may apply to the Superior Court in the county where the dwelling is located for an order requiring compliance. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

§ 2406. Hearings

Any person against whom a notice and demand shall be made by the commissioner may petition for a hearing and reconsideration of the notice and demand within 15 days after the notice and demand shall have been served. For cause shown, the commissioner may extend the time for filing such petition. If a petition for reconsideration of the notice and demand is filed, the commissioner shall hold a hearing and shall give the petitioner 5 days notice of the time and place thereof. At the hearing, the petitioner may appear personally, shall have the right of counsel and may cross-examine witnesses against him and produce evidence and witnesses in his behalf. Following the hearing, the commissioner may make appropriate determina-

tions and issue an order in accordance therewith. The decision of the commissioner shall include findings of fact and conclusions of law. A full and complete record shall be kept of all proceedings had before the commissioner, but the commissioner need not have a transcript of testimony prepared unless required for appeal.

Any person aggrieved by the decision upon such reconsideration may within 15 days after notice of the decision, appeal therefrom to the Superior Court in the county where the property is located by filing a complaint therefor. The court shall forthwith fix a time and place for immediate hearing and cause notice thereof to be given to the commissioner within 15 days after service of the complaint, or within such further time as the court may order. The commissioner shall transmit to the Superior Court an original of the entire record of the proceeding under review. If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner upon such conditions as the court deems proper. The commissioner may modify his findings and decision by reason of the additional evidence and shall file with the Superior Court, to become a part of the record, the additional evidence, together with any modification or new findings or decision.

The appeal shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commissioner not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs. After hearing, the court may affirm, modify or reverse the decision of the commissioner. Appeal may be taken by such person aggrieved by a decision of the Superior Court to the law court. Upon such appeal, the law court may after consideration affirm, reverse or modify any decree made by the Superior Court.

§ 2407. Penalty

Whoever hinders, obstructs or interferes with the commissioner or his duly authorized agents while in the performance of his duties or hinders, obstructs or interferes with the execution of a notice and demand or order issued under this chapter shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days. Whoever violates any provision of this chapter or rule or regulation of the commissioner issued under this chapter shall be punished by a fine of not less than \$10 nor more than \$100 for each offense.

§ 2408. Application

Sections 2403 to 2406 shall not be applicable to dwellings in any political subdivision of this State upon its enactment of ordinances and placing into effect a lead poisoning control program approved by the commissioner, which ordinances have the same or greater restrictions than this chapter.

STATEMENT OF FACT

The purpose of this bill is to regulate the sale and use of lead paint for the protection of the public.