

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1847

H. P. 1531

House of Representatives, April 24, 1975

Reported by Mr. Hennessey from the Committee on Health and Institutional Services and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Amending the Lead Poisoning Control Act.

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

Sec. 1. 22 MRSA § 1315, sub-§§ 9, 10 and 11 are enacted to read:

9. Lead poisoning. "Lead poisoning" means a blood lead level at an elevation hazardous to health as established by the commissioner.

10. Commissioner. "Commissioner" means the Commissioner of Health and Welfare.

11. Child care facility. "Child care facility" means a structure in which children ages 1 to 6 are present on a regular basis.

Sec. 2. 22 MRSA § 1316, sub-§§ 1 and 2, as enacted by PL 1973, c. 367, are repealed and the following enacted in place thereof:

1. Interiors. In or upon any exposed surface of a dwelling, dwelling unit or child care facility;

2. Fixtures. In or upon any fixtures or other objects used, installed or located in or upon any exposed surface of a dwelling, dwelling unit or child care facility or intended to be so used, installed or located; and

Sec. 3. 22 MRSA § 1317, sub-§§ 3 and 4, as enacted by PL 1973, c. 367, are repealed and the following enacted in place thereof:

3. Fixtures. Fixtures or other objects intended to be used, installed or located in or upon any exposed surface of a dwelling, dwelling unit or child care facility; or

4. **Lead base substance.** Any lead base substance for use on any exposed surface of any dwelling, dwelling unit or child care facility.

Sec. 4. 22 MRSA §§ 1317-A and 1317-B are enacted to read:

§ 1317-A. Early diagnosis program

The commissioner shall establish a program for early diagnosis of cases of lead poisoning. To the extent permitted by appropriations, the program shall provide for systematic examination for lead poisoning of all children between one and 6 years of age residing within the State. Examinations shall be made by such means and at such intervals as the commissioner shall determine to be medically necessary and proper.

The commissioner, when informed of a case of lead poisoning pursuant to section 1319 or otherwise, shall have examined all other children between one and 6 years of age, and such other children as may be found advisable to examine, residing or recently residing in the household of the victim. The results of such examinations shall be reported to the commissioner, to the person or agency reporting the original case pursuant to section 1319 and to such other persons or agencies as the commissioner deems advisable.

Provided, however, nothing in this section should be construed to authorize or require the physical examination of any child whose parent or guardian objects thereto on the grounds such examination conflicts with the tenets and practices of a well recognized church or religious denomination of which he is an adherent.

§ 1317-B. Educational and publicity program

The commissioner shall institute an educational and publicity program in order to inform the general public of the dangers, frequency and sources of lead poisoning, and the methods of preventing such poisoning.

Sec. 5. 22 MRSA § 1319, as enacted by PL 1973, c. 367, is amended to read:

§ 1319. Report of suspected lead poisoning by physicians

Whenever any physician knows or has reason to ~~believe~~ **suspect** that any person he examines or treats has or is suspected of having lead poisoning, such physician shall ~~forthwith~~ **within 7 days** give notice thereof to the ~~Department~~ **department of Health and Welfare**. The department ~~will~~ **shall** specify the procedure to be followed in making such reports and shall provide necessary forms for the use of physicians. When such reports are received, the department ~~may~~ **shall**, by laboratory work and otherwise, assist the attending physician in determining whether the case is one of lead poisoning, and if so, the source of the poison. ~~For purposes of this section, the department may determine the definition of the term "lead poisoning"~~

Sec. 6. 22 MRSA § 1320, as enacted by PL 1973, c. 367, is repealed and the following enacted in place thereof:

§ 1320. Inspection of dwelling units and child care facilities by department

Any authorized representative of the department, upon presenting the appropriate credentials to the owner and occupant, or their representatives, may inspect any dwelling unit or child care facility at reasonable times for the purpose of ascertaining the presence of lead base substances, and may remove samples or objects necessary for laboratory analysis. Such inspections shall be made only where there are reasonable grounds to suspect that there are lead base substances in or upon the exposed surfaces of any dwelling unit or child care facility, or upon the request of either the owner or the occupant with whom children under 6 years of age reside, or where a case of lead poisoning has been reported.

Sec. 7. 22 MRSA § 1320-A is enacted to read:

§ 1320-A. Inspection of dwellings by department

The department shall within 30 days inspect all dwelling units in a dwelling when:

1. Lead poisoning found. A case of lead poisoning has been found in any dwelling unit within the dwelling;
2. Lead base substances. Lead base substances have been found in any dwelling unit within the dwelling.

Sec. 8. 22 MRSA § 1321, as enacted by PL 1973, c. 367, is repealed and the following enacted in place thereof:

§ 1321. Notice and removal

If the department determines that lead base substances exist in or on exposed surfaces of any dwelling, dwelling unit or child care facility and is a health hazard:

1. Notice on the dwelling. The department shall post in or upon the dwelling, dwelling unit or child care facility, in a conspicuous place or places, notice of the existence of the substances. Notice shall not be removed until the department states that the lead base substances no longer constitute a health hazard.
2. Notice to persons. The department shall give notice of the existence of the substances to all persons residing in the dwelling or dwelling unit.
3. Notice to owner or agent; removal. The department shall give notice of the existence of the substance to the owner or managing agent and order that the lead base substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. The commissioner shall establish regulations for removal, replacement or covering of the lead base substance. If, at the discretion of the commissioner, such lead base substances cannot be removed, replaced or securely and permanently covered within 30 days, an extension of reasonable time may be granted.
4. Sale of dwelling, dwelling unit or child care facility. If, before the end of the 30-day period or extension, the owner sells the dwelling or child care

facility, he must notify the prospective buyer of the lead problem and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period.

Sec. 9. 22 MRSA § 1322, as enacted by PL 1973, c. 367, is repealed and the following enacted in place thereof:

§ 1322. Occupants under 6 years of age

No person shall knowingly rent a dwelling or dwelling unit which has been posted and ordered cleared of harmful lead base substances in accordance with section 1321 to be occupied by children 6 years of age or younger. In circumstances where the presence of lead base paint or building materials is unsuspected and becomes known when the dwelling or dwelling unit is already rented to a family with children 6 years of age or younger, the family of the children shall not be evicted for that reason and the owner and occupant of the dwelling or dwelling unit shall be given written notice by the Commissioner of Health and Welfare advising of the existence of such substances in the dwelling or dwelling unit and ordering that within 30 days such lead base substances be removed, replaced or securely and permanently covered.

Sec. 10. 22 MRSA § 1323, as enacted by PL 1973, c. 367, is amended by adding at the end the following new sentences:

The commissioner, after due notice, shall hold a public hearing prior to the promulgation of any rules and regulations. These rules and regulations shall become effective after a 60-day public review period following the public hearing.

Sec. 11. 22 MRSA § 1324-A is enacted to read:

§ 1324-A. Liability of owner of residential property; damages

The owner of any residential property or child care facility shall be liable for all damages caused by his failure to perform the duties required of him pursuant to this chapter.

The owner of any residential property or child care facility who is notified pursuant to this chapter of a dangerous level of lead in paint, plaster or other material present upon his premises and who does not satisfactorily correct or remove said dangerous conditions shall in addition to the preceding paragraph be subject to punitive damages, which shall be treble the actual damages found.

Sec. 12. 22 MRSA § 1325, as enacted by PL 1973, c. 367, is amended to read:

§ 1325. Violation

Any person who violates any section of this chapter shall be punished for each violation by a fine of not more than ~~\$100~~ \$500 or by imprisonment for not more than 6 months, or by both. Violations existing within individual dwelling units or child care facilities shall be considered separate violations.

Sec. 13. 22 MRSA § 1326 is enacted to read:

§ 1326. Injunction requiring removal

If the lead base substance remains a health hazard at the expiration of 30 days or extension given by the commissioner, section 1321, the State may in addition to any other remedies it has, seek a mandatory injunction ordering the health hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, dwelling unit or child care facility.

STATEMENT OF FACT

The purpose of this bill is to strengthen the Lead Poisoning Control Act. The bill establishes by statute the early diagnosis program presently being carried out and clarifies some of the existing legislation. The bill also allows the Department of Health and Welfare to order deposits of lead found to be endangering a child to be removed, replaced or securely and permanently covered.