

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2234

H.P. 1584

House of Representatives, January 28, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative MITCHELL of Vassalboro.

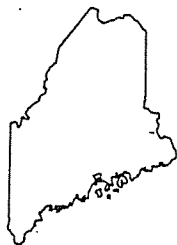
Cosponsored by Senator CLARK of Cumberland and Representative MANNING of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Protect Children from Lead Poisoning.

(EMERGENCY)



2 **Emergency preamble. Whereas,** Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4
6 **Whereas,** the 106th Legislature enacted the Lead Poisoning
Control Act to eliminate lead poisoning of children in Maine; and

8 **Whereas,** the objective of eliminating lead poisoning of
children in Maine remains unmet; and

10
12 **Whereas,** the federal Department of Health and Human Services
proclaimed in February 1991 that lead poisoning remains the most
common and societally devastating environmental disease of young
14 children; and

16 **Whereas,** the federal Centers for Disease Control
significantly changed the national guidelines for the effective
18 control of lead poisoning of children in October 1991; and

20 **Whereas,** current Maine statutes do not establish standards
and procedures to meet the new national guidelines; and

22 **Whereas,** the Centers for Disease Control have stated that,
24 based on the new national guidelines, up to 10 times as many
children have lead poisoning as was previously believed; and

26 **Whereas,** it has been estimated that 1/8 of the children in
28 Maine's 3 largest urban areas have blood lead levels more than 1
1/2 times the standard for poisoning now set by the Centers for
30 Disease Control; and

32 **Whereas,** environmental exposures to even low levels of lead
increase a child's risks of developing permanent learning
34 disabilities, behavior problems and reduced concentration and
attentiveness, all of which may persist and adversely affect the
36 child's chances for success in school and adult life; and

38 **Whereas,** the results of lead poisoning of children can
necessitate excessive and disproportionate expenditures of public
40 funds for health care and special education, causing a drain on
public revenues; and

42 **Whereas,** centralized laboratory testing for lead poisoning
44 will help to offset shrinking state funding and establish quality
assurance criteria; and

46 **Whereas,** lead poisoning of children is a completely
48 preventable illness; and

2 **Whereas,** the Centers for Disease Control requested in
3 October 1991 that public health and other agencies effectively
4 complement health care providers' activities in preventing lead
5 poisoning of children; and

6 **Whereas,** in the judgment of the Legislature, these facts
7 create an emergency within the meaning of the Constitution of
8 Maine and require the following legislation as immediately
9 necessary for the preservation of the public peace, health and
10 safety; now, therefore,

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

14 **Sec. 1. 5 MRSA §12004-I, sub-§37-B is enacted to read:**

16

18	<u>37-B.</u>	<u>Public Health</u>	<u>Not</u>	<u>22 MRSA</u>
	<u>Human</u>	<u>Lead Poisoning</u>	<u>Authorized</u>	<u>§1323-A</u>
20	<u>Services</u>	<u>Advisory</u>		
		<u>Committee</u>		

22 **Sec. 2. 22 MRSA §1315, sub-§§1-A and 5-A are enacted to read:**

24 **1-A. Advisory committee.** "Advisory committee" means the
25 Public Health Lead Poisoning Advisory Committee established by
26 Title 5, section 12004-I, subsection 37-B.

28 **5-A. Lead exposure hazard.** "Lead exposure hazard" means
29 the presence of a lead base substance:

30 **A.** In excess of permissible concentrations established by
31 the department, in consultation with the advisory committee;
32 or

34 **B.** In or on exposed surfaces of a dwelling, dwelling unit
35 or child care facility in a condition determined by the
36 department in consultation with the advisory committee to be
37 unacceptable.

40 **Sec. 3. 22 MRSA §1315, sub-§11, as enacted by PL 1975, c. 239,**
41 **§1, is amended to read:**

42 **11. Child care facility.** "Child care facility" means a
43 structure in which children ages 1 to 6 years of age or younger
44 are present on a regular basis.

46 **Sec. 4. 22 MRSA §1317-A, first ¶, as enacted by PL 1975, c.**
47 **239, §4, is amended to read:**

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

10 Sec. 5. 22 MRSA §1317-B, as amended by PL 1989, c. 331, is
11 repealed.

12 Sec. 6. 22 MRSA §1317-C is enacted to read:

14 **§1317-C. Funding; reimbursement by 3rd-party payors**

16 On or before January 1, 1993, the commissioner, in
17 consultation with the advisory committee, shall establish
18 procedures for lead screening, laboratory testing and
19 reimbursement. State laboratory services must be billed to and
20 reimbursed by insurers. Fees set must be based on the rates paid
21 by the insurers to private laboratories for blood lead analysis.
22 Reimbursement fees paid to the department must be deposited in
23 the restricted account of the Health and Environmental Testing
24 Laboratory. The commissioner may accept grants or appropriations
25 for deposit in the account. Funds deposited in that account
26 pursuant to this section must be used by the department to:

28 **1. Administration.** Administer a comprehensive
29 environmental lead program that includes the performance of
30 environmental lead inspections by state inspectors for
31 enforcement purposes and the development, administration and
32 coordination of a comprehensive educational program on the
33 dangers of environmental lead exposure and the sources of lead
34 poisoning;

36 **2. Inspections; assistance to families.** Provide
37 comprehensive environmental lead inspections and technical
38 assistance with appropriate environmental lead hazard reduction
39 to families of children with a significant level of lead
40 poisoning and to families of uninsured and underinsured children
41 with lead poisoning on a priority basis by blood lead level. The
42 department shall adopt rules clearly identifying the blood lead
43 level corresponding to significant lead poisoning and
44 establishing the mechanism for prioritizing by blood lead level
45 no later than July 1, 1993;

48 **3. Inspections; assistance to certain facilities.** Provide
49 comprehensive environmental lead inspections and technical
50 assistance with appropriate environmental lead hazard reduction

2 to preschools, day care facilities, nursery schools, public and
4 private elementary schools, foster homes and shelters serving
6 children 6 years of age or younger;

8 4. Testing program. Administer a blood lead testing
10 program for children that includes processing, analyzing and
12 reporting of blood lead samples;

14 5. Screening; follow-up. Provide necessary blood lead
16 screening and follow-up blood lead testing for uninsured and
18 underinsured preschool children; and

20 6. Data management system. Develop a data management
22 system to track cases of lead poisoning to ensure that they
24 receive timely and appropriate medical treatment, to monitor
26 homes for environmental lead inspections and lead hazard
28 reduction and to determine the extent of lead poisoning of
30 children in the State.

32 The commissioner shall establish procedures required by this
34 section with due regard for the need to identify and give
36 priority attention to child populations determined to be most at
38 risk.

40 Beginning no later than July 1, 1993, screening for lead
42 poisoning, lead screening-related services provided pursuant to
44 this chapter and diagnostic evaluations for lead poisoning for
46 children, including but not limited to confirmatory blood lead
48 testing, must be a covered health benefit and be reimbursable
50 under any general or blanket policy of accident or health
insurance offered by an insurer, except for supplemental policies
that only provide coverage for specific diseases, hospital
indemnity Medicare supplements or other supplemental policies.
Beginning no later than July 1, 1993, the department shall pay
for such screening for lead poisoning, lead screening-related
services and diagnostic evaluations when the patient is otherwise
eligible for medical assistance or when the patient is not
covered by any health insurance. The department shall encourage
self-insurers for health care services to participate as other
insurers participate.

42 **Sec. 7. 22 MRSA §1321**, as amended by PL 1981, c. 470, Pt. A,
44 §65, is further amended to read:

46 **§1321. Notice and removal**

48 If the department or any other health or law enforcement
50 agency determines that a lead base substances--exist substance
exists in or on exposed surfaces of any dwelling, dwelling unit
or child care facility and is a health lead exposure hazard:

2 1. **Notice on the dwelling.** The department or agency shall
3 post in or upon the dwelling, dwelling unit or child care
4 facility, in a conspicuous place or places, notice of the
5 existence of the substance. Notice shall may not be
6 removed until the department or agency states that the lead base
7 substance no longer ~~constitute~~ constitutes a health
8 lead exposure hazard;

10 2. **Notice to persons.** The department or agency shall give
11 notice of the existence of the substance to all
12 persons residing in the dwelling or dwelling unit;

14 3. **Notice to owner or agent; removal.** The department or
15 agency shall give notice of the existence of the substance to the
16 owner or managing agent and order that the lead base substance
17 substance be removed, replaced or securely and permanently
18 covered within 30 days of receipt of the notice. The commissioner
19 shall establish ~~regulations~~ rules for removal, replacement or
20 covering of the lead base substance. If, at the discretion of the
21 commissioner, the lead base ~~substance cannot~~ substance can not
22 be removed, replaced or securely and permanently covered within
23 30 days, an extension of reasonable time may be granted; and
24

26 4. **Sale of dwelling, dwelling unit or child care facility.**
27 ~~If, before the end of the 30-day period or extension, the~~ The
28 ~~owner sells, if selling the dwelling, dwelling unit or child care~~
29 ~~facility, he must~~ before the end of the 30-day period or
30 extension provided under subsection 3, shall notify the
31 prospective buyer of the lead problem and the new owner must
32 assume the responsibility of carrying out the requirements of
33 this section within the specified time period.

34 **Sec. 8. 22 MRSA §1322**, as amended by PL 1975, c. 293, §4, is
35 repealed and the following enacted in its place:

36 **§1322. Occupants 6 years of age or younger**

38 A person may not rent a dwelling or dwelling unit to be
39 occupied by a child 6 years of age or younger when the department
40 or any other health or law enforcement agency has determined that
41 a lead base substance exists in or on exposed surfaces of the
42 dwelling or dwelling unit and is a lead exposure hazard. When
43 the presence of a lead base substance becomes known only after a
44 dwelling or dwelling unit is rented to a family with a child 6
45 years of age or younger, the family may not be evicted for that
46 reason.

48 **Sec. 9. 22 MRSA §§1322-A and 1323-A** are enacted to read:
50

2 **§1322-A. Notice prior to residential property transfer**

4 Beginning January 1, 1993, every contract for the purchase
6 and sale of residential real estate located in this State must
8 contain the following language: "Every buyer of residential real
10 estate built prior to 1980 is hereby notified that such
12 properties may have lead exposure hazards that place young
14 children at risk of developing lead poisoning. Lead poisoning in
16 young children may produce permanent neurological damage,
18 including learning disabilities, reduced intelligence level,
20 behavioral problems and impaired memory. An environmental lead
22 inspection may be advisable prior to purchase, if the presence of
24 lead is suspected." Failure to include this language in a
26 purchase and sale agreement does not void the agreement or create
28 a defect in title but is punishable pursuant to section 1325.

30 **§1323-A. Public Health Lead Poisoning Advisory Committee**

32 The Public Health Lead Poisoning Advisory Committee is
34 established in accordance with Title 5, section 12004-I,
36 subsection 37-B and consists of members appointed by the
38 commissioner. The advisory committee includes, but is not
40 limited to, licensed pediatricians, public health nurses and
42 social workers specializing in child care. The commissioner
44 shall appoint the chair of the advisory committee, who must be a
46 licensed pediatrician. The advisory committee shall meet at
48 least annually and may meet as often as it considers necessary.
50 Duties of the advisory committee include advising the
commissioner regarding the appropriate content of rules adopted
pursuant to section 1323 and the appropriate procedures and
standards otherwise required by this chapter. Members of the
advisory committee have immunity from any damages claimed as a
result of fulfillment of their functions pursuant to this section.

Sec. 10. 22 MRSA §1324-A, as enacted by PL 1975, c. 239, §11,
is repealed and the following enacted in its place:

§1324-A. Liability of owner of dwelling or child care facility:
damages

The owner of any dwelling, dwelling unit or child care
facility is liable for all damages caused by the owner's failure
to perform any duty imposed on the owner pursuant to this chapter.

The owner of any dwelling, dwelling unit or child care
facility who, after receiving notice pursuant to section 1321
that a lead exposure hazard exists, fails to remove or correct
such hazard is subject to punitive damages equal to treble actual
damages found in addition to any other existing liability.

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Sec. 11. 24 MRSA §2320-B is enacted to read:

§2320-B. Lead poisoning

Beginning no later than July 1, 1993, all individual and group nonprofit medical services plan contracts and all nonprofit health care plan contracts must provide coverage for screening for lead poisoning, lead screening-related services provided pursuant to the Lead Poisoning Control Act and diagnostic evaluations for lead poisoning for children, including but not limited to confirmatory blood lead testing, except that such coverage need not be provided in policies designed to cover only dental procedures or hospital indemnity Medicare supplements or other supplemental policies.

Sec. 12. 24-A MRSA §2745-B is enacted to read:

§2745-B. Lead poisoning

Beginning no later than July 1, 1993, screening for lead poisoning, lead screening-related services provided pursuant to the Lead Poisoning Control Act and diagnostic evaluations for lead poisoning for children, including but not limited to confirmatory blood lead testing, must be a covered health benefit and be reimbursable under any general or blanket policy of accident or health insurance offered by an insurer, except for policies designed to cover only dental procedures, supplemental policies that only provide coverage for specific diseases, hospital indemnity Medicare supplements or other supplemental policies.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

STATEMENT OF FACT

The purpose of this bill is to amend the laws governing lead poisoning control so as to make achievable the goal of eliminating lead poisoning of children in the State. The bill accomplishes the following:

1. Establishes the Public Health Lead Poisoning Advisory Committee and outlines the duties and responsibilities of the advisory committee in counseling the Department of Human Services in rule-making, administrative and enforcement functions;

2. Defines what constitutes a hazard from exposed lead. The definition grants the Department of Human Services discretion to establish a more specific definition in consultation with the

Public Health Lead Poisoning Advisory Committee and in
2 consideration of state-of-the-art scientific and medical
knowledge;

4
3. Specifies that the law applies to all children 6 years
6 of age or younger;

8
4. Requires the Commissioner of Human Services to establish
a comprehensive program for diagnosis and treatment of lead
10 poisoning among Maine children;

12
5. Establishes what is intended to be a self-supporting
system for screening and diagnosis of Maine children. The bill
14 requires a prioritization for provision of services, so that
children most at risk will receive attention first as resources
16 allow. This provision is modeled on a Rhode Island statute;

18
6. Amends the law to ensure that local health and law
enforcement agencies, as well as the Department of Human
20 Services, are empowered to order appropriate remedial action when
a lead base substance creates a health hazard;

22
7. Amends the law to eliminate the requirement that public
24 intervention and abatement may be ordered only after a child's
poisoning actually occurs; and

26
8. Requires notice to all property purchasers after January
28 1, 1993 that older housing may present a lead exposure hazard.