

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

100

L.D. 1504

DATE: 6/20/95

(Filing No. H- 556)

HUMAN RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1504, Bill, "An Act to Clarify Terms and Increase Effectiveness of the Lead Poisoning Control Act"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 22 MRSA §1315, sub-§1-B, as enacted by PL 1991, c. 810, §3, is repealed.

Sec. 2. 22 MRSA §1315, sub-3-A, as enacted by PL 1991, c. 810, §5, is amended to read:

3-A. Environmental lead hazard. "Environmental lead hazard" means the presence of lead in any form that exceeds the permissible concentration and that exists in an unacceptable condition. "Permissible concentration" and "unacceptable condition" are defined by rules adopted-by-the-department adopted under this Act, using information currently available on environmental lead hazards, including but not limited to information from the federal Environmental Protection Agency or the federal Department of Housing and Urban Development. "Environmental lead hazard" may include, but is not limited to, lead in dust, paint, soil or water.

Sec. 3. 22 MRSA §1315, sub-§3-D is enacted to read:

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure to lead-based paint hazards, including specialized cleaning.

COMMITTEE AMENDMENT

repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment of management and resident education programs.

**Sec. 4. 22 MRSA §1315, sub-§5-A,** as enacted by PL 1991, c. 810, §9, is amended to read:

**5-A. Lead-free.** "Lead-free" means that a ~~children's-home,~~ residential child-care facility or preschool facility, dwelling or premises contains no lead that is injurious or that could be injurious in the future.

**Sec. 5. 22 MRSA §1315, sub-§§5-C, 5-D, 5-E and 5-F,** as enacted by PL 1991, c. 810, §9, are amended to read:

**5-C. Lead poisoning.** "Lead poisoning" means a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the department using intervention levels no higher than those set by the federal Centers for Disease Control.

**5-D. Lead-safe.** "Lead-safe" means that a ~~children's-home,~~ residential child-care facility or preschool facility, dwelling or premises does not contain lead at a level or in a condition that constitutes an environmental lead hazard.

**5-E. Occupant.** "Occupant" means a person who resides in or uses regularly a dwelling, ~~children's-home~~ residential child-care facility or preschool facility.

**5-F. Owner.** "Owner" means any person who individually, jointly or in common with others:

~~A. Has legal title to any dwelling or premises or, if the person having legal title can not be located through reasonable efforts, is the owner's agent, as described in Title 14, section 6023;~~

~~B. Is the guardian of the owner or is the executor, administrator or trustee of the estate of the owner;~~

C. Is the chief executive officer of the municipality, school administrative unit or state agency that controls the use of publicly owned property; or

D. Is a mortgagee who has taken actual possession in accordance with applicable law. A mortgagee who has not taken actual possession is not the owner; or

E. Is characterized by the following:

1 of 5

COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1504

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48

(1) Has legal title to any dwelling or premises;

(2) Has charge, care or control of any premises as owner or agent of the owner and has authority to expend money for compliance with the state sanitary code or as an executor, an administrator, a trustee or a guardian of the estate or the holder of legal title;

(3) Is a real estate property manager or other entity that has the authority to fund capital or major property rehabilitation on the owner's behalf;

(4) Is an estate or trust of which the premises is a part or the grantor or beneficiary of an estate or trust; or

(5) Is the association of unit owners of a condominium or cooperative, which is considered as owner solely with respect to common areas and exterior surfaces and fixtures of that condominium or cooperative.

Sec. 6. 22 MRSA §1315, sub-§6-C is enacted to read:

6-C. Small preschool facility. "Small preschool facility" means a preschool facility, as defined in subsection 6-B, licensed to take no more than 12 children in its program.

Sec. 7. 22 MRSA §1315-A, first ¶, as enacted by PL 1991, c. 810, §18, is amended to read:

The commissioner may take any action that is in accordance with the purposes of this chapter and is within the powers granted in this Title to protect ~~children~~ the public from lead poisoning. That action may include, but is not limited to, the following:

Sec. 8. 22 MRSA §1316, sub-§§1 and 2, as amended by PL 1991, c. 810, §19, are further amended to read:

1. **Interiors.** In or upon any exposed surface of a dwelling, ~~children's--home~~ residential child-care facility or preschool facility;

2. **Fixtures.** In or upon any fixtures or other objects used, installed or located in or upon any exposed surface of a dwelling, ~~children's--home~~ residential child-care facility or preschool facility or intended to be so used, installed or located; and



105

COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1504

2 hazard and the new owner must assume the responsibility of  
3 carrying out the requirements of this section within the  
4 specified time period; and

6 **Sec. 12. 22 MRSA §1321, sub-§5** is enacted to read:

8 5. Abatement procedures. An individual performing  
9 abatement procedures authorized under this Act is subject to the  
10 standards and rules adopted under this Act, including the  
11 abatement and postabatement testing standards.

12 **Sec. 13. 22 MRSA §1322**, as enacted by PL 1991, c. 810, §29,  
13 is amended by adding at the end a new paragraph to read:

14 If the owner decides to bring any residential dwelling or  
15 premises into compliance with this Act while a tenant is  
16 occupying a dwelling unit, the owner may move the tenant to a  
17 substitute dwelling unit upon reasonable notice as long as the  
18 owner pays reasonable moving expenses and any use and occupancy  
19 charges for a substitute dwelling unit that exceed the rent for  
20 the vacated dwelling unit for which the tenant remains  
21 responsible. "Substitute dwelling unit" means a dwelling unit of  
22 like or similar accommodation and in like or similar location  
23 that is lead-safe. If the tenant fails to accept the substitute  
24 dwelling unit selected by the owner while the owner is required  
25 to bring the vacated dwelling unit into compliance with this Act  
26 or the tenant fails to remain current in rent pursuant to the  
27 lease or tenancy at will under Title 14, section 6002, including  
28 the statutory period of right to cure, the owner is not obligated  
29 beyond 10 days after completion of remediation to reimburse the  
30 tenant for any expense or inconvenience other than moving  
31 expenses and any use and occupancy charges for the substitute  
32 dwelling unit selected by the owner that exceed the rent for the  
33 vacated dwelling unit.

36 **Sec. 14. 22 MRSA §1322-A, sub-§1**, as enacted by PL 1991, c.  
37 810, §30, is amended to read:

38 **1. Prohibition.** A person may not conduct environmental  
39 lead inspections or lead abatement unless that person is licensed  
40 by the department under this chapter or unless the person is at  
41 least 18 years of age and is performing lead abatement ~~on-er~~ in  
42 the dwelling unit of which the person is ~~an~~ the owner and  
43 occupant. This prohibition includes persons located in other  
44 states who offer lead-related services to residents of the State  
45 directly or through the mail.

48 **Sec. 15. 22 MRSA §1323, first ¶**, as amended by PL 1991, c. 810,  
49 §31, is further amended to read:

50

R 13

COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1504

2 The department shall adopt rules to carry out the purposes  
of this chapter and to ensure that state law relating to lead  
4 poisoning satisfies minimum requirements of federal law in all  
respects. The rules may address, but are not limited to, the  
following:

6 **Sec. 16. 22 MRSA §1323, sub-§3,** as enacted by PL 1991, c. 810,  
8 §31, is amended to read:

10 **3. Inspections; tests; abatement.** Inspecting, testing and  
abating lead in dwellings where children are at risk of lead  
12 poisoning, in ~~children's-homes~~ residential child-care facilities  
and in preschool facilities;

14 **Sec. 17. 22 MRSA §1324-A,** as amended by PL 1991, c. 810, §32,  
16 is repealed and the following enacted in its place:

18 **§1324-A. Liability of owners; damages**

20 The owner of any dwelling, premises, residential child-care  
facility or preschool facility is liable for damages as a result  
22 of lead poisoning in accordance with this section.

24 1. Owner liable for damages. Subject to the limitation of  
liability under subsection 3, an owner is liable for all damages  
26 caused by failure to perform the duties required under this  
chapter.

28 2. Punitive damages. Subject to the limitation of  
30 liability under subsection 3, an owner who has received notice  
under this chapter of an environmental lead hazard and who does  
32 not satisfactorily correct or remove the environmental lead  
hazard is, in addition to subsection 1, subject to punitive  
34 damages, which are treble the actual damages found.

36 3. Limitation on award. In actions for damages, the claim  
for and award of damages for all losses, except expenses for  
38 medical care and treatment, including devices and aids, may not  
exceed \$750,000 except for the following claims:

40 A. Claims against lead abatement professionals licensed  
42 under this chapter;

44 B. Claims against an individual who rents or sells property  
to anyone with children, has knowledge of the presence of an  
46 environmental lead hazard in a dwelling or dwelling unit and  
deliberately fails to disclose to the prospective tenant or  
48 buyer the presence of lead paint; and

R 4 8

2 C. Claims against an individual who receives written  
3 notification of the presence of an environmental lead hazard  
4 or of a child-poisoning incident and who fails or refuses to  
5 take corrective measures, including interim controls, within  
6 a 60-day period from the date of notification.

7 4. Repeal. This section is repealed April 15, 1996.

8  
9 **Sec. 18. 22 MRSA §1326**, as amended by PL 1991, c. 810, §34,  
10 is further amended to read:

11 **§1326. Injunction requiring removal**

12  
13 If the lead-based substance remains an environmental lead  
14 hazard at the expiration of 30 days or at the expiration of an  
15 extension given by the commissioner pursuant to section 1321, the  
16 State, in addition to any other remedies it has, may seek a  
17 mandatory injunction ordering the environmental lead hazard  
18 removed by a suitable 3rd party at the expense of the owner of  
19 the dwelling, premises, children's--home residential child-care  
20 facility or preschool facility.

21  
22 **Sec. 19. 22 MRSA §1327** is enacted to read:

23 **§1327. Essential maintenance practices**

24  
25 Notwithstanding any other provision of law, an owner of a  
26 building constructed prior to 1978 that is rented for residential  
27 purposes or used as a residential child-care facility or a  
28 preschool facility may perform essential maintenance practices if  
29 the owner:

30  
31 **1. Precautions.** Takes all necessary precautions to avoid  
32 creating lead hazards during any renovation, remodeling,  
33 maintenance or repair project that disturbs a lead-based painted  
34 surface pursuant to guidelines issued by the department. For  
35 purposes of essential maintenance practices, all paint is  
36 presumed to be lead-based unless a certified inspector has  
37 determined that it is not lead-based paint. The guidelines must  
38 include:

39  
40 **A.** A prohibition against paint removal by burning, water  
41 blasting, dry scraping, power sanding or sandblasting,  
42 unless undertaken with proper containment, cleanup and  
43 disposal;

44  
45 **B.** A description of good work practices and precautions to  
46 prevent the spread of lead dust, including limiting access  
47 to work areas to workers, covering the work area with  
48 appropriate protective covering, protecting workers,  
49



protecting belongings of occupants by covering or removing them from the work area, wetting painted surfaces before disturbing the paint and wet sweeping debris; and

C. Appropriate cleaning of the work area at the conclusion of the work using methods designed to remove lead dust;

**2. Checks.** Performs visual checks of the property to identify deteriorated paint upon a change of tenant or within 12 months of the effective date of this subsection, whichever is sooner, and annually thereafter;

**3. Removes or stabilizes paint.** Promptly and safely removes or stabilizes paint if more than one square foot of deteriorated paint is found on any interior surface, exterior porch or exterior wall or surface or fixture within an exterior porch, and restore that surface within 30 days after visual identification of deteriorated paint or within 30 days of receiving a written or oral report of deteriorated paint from a tenant or from an owner of a child-care facility. If exterior repair work is identified after November 1st of any year, the repair work may be delayed but must be commenced no later than May 31st of the following year;

**4. Repairs.** If more than one contiguous square foot of deteriorated paint is found on any exterior wall, surface or fixture not covered by subsection 3 and is located in an area frequented by children in warm weather, promptly and safely repairs and stabilizes the paint and restores the surface or prohibits access to the area, surface or fixture to ensure that children can not come into contact with the deteriorated paint; and

**5. Provides information.** Provides written lead-based paint hazard information to current and prospective tenants and to current and prospective owners or managers of child-care or preschool facilities, including but not limited to information on the importance of promptly reporting the presence of deteriorated paint to the owner or to the owner's agent. The notice must include the name, address and telephone number of the owner or the owner's agent.'

Further amend the bill by inserting at the end before the statement of fact the following:

#### FISCAL NOTE

The additional costs to respond to an increase in the number of inquiries and to adopt and administer the revised provisions

R 48

COMMITTEE AMENDMENT "A" to H.P. 1069, L.D. 1504

2 of the Lead Poisoning Control Act can be absorbed by the  
Department of Human Services utilizing existing budgeted  
resources.'

4

6

### STATEMENT OF FACT

8

This amendment replaces the bill. It clarifies certain definitions in the Lead Poisoning Control Act.

10

12 It expands the focus of the Act from protecting children to protecting the public as a whole.

14

It limits the award of damages in nondeliberate cases for all losses except medical care and treatment involving lead poisoning to \$750,000. This provision is repealed April 15, 1996.

16

18

It establishes guidelines for essential maintenance practices for all owners of dwellings rented for residential purposes, residential child-care facilities and preschool facilities constructed prior to 1978.

20

22

It adds a fiscal note to the bill.

24