

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

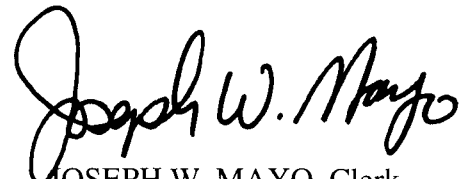
No. 1504

H.P. 1069

House of Representatives, May 4, 1995

**An Act to Clarify Terms and Increase Effectiveness of the Lead
Poisoning Control Act.**

Reference to the Committee on Human Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Vassalboro.

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

2
4 **Sec. 1. 5 MRSA §12004-I, sub-§54-B** is enacted to read:

6 **54-B.** Maine State Not Autho- 22 MRSA
7 Lead Advisory rized §1328
8 Poisoning Council on
9 Prevention Lead Poisoning
10 Prevention

12 **Sec. 2. 22 MRSA §1315, sub-§1-B**, as enacted by PL 1991, c.
13 810, §3, is repealed.

14 **Sec. 3. 22 MRSA §1315, sub-3-A**, as enacted by PL 1991, c. 810,
15 §5, is amended to read:

16 **3-A. Environmental lead hazard.** "Environmental lead
17 hazard" means the presence of lead in any form that exceeds the
18 permissible concentration and that exists in an unacceptable
19 condition. "Permissible concentration" and "unacceptable
20 condition" are defined by rules ~~adepted--by--the--department~~
21 promulgated under this Act, using current information from the
22 federal Environmental Protection Agency or the federal Department
23 of Housing and Urban Development. "Environmental lead hazard"
24 may include, but is not limited to, lead in dust, paint, soil or
25 water.

28 **Sec. 4. 22 MRSA §1315, sub-§3-D** is enacted to read:

30 **3-D. Interim controls.** "Interim controls" means a set of
31 measures designed to temporarily reduce human exposure to
32 lead-based paint hazards, including specialized cleaning,
33 repairs, maintenance, painting, temporary containment, ongoing
34 monitoring of lead-based paint hazards or potential hazards and
35 the establishment of management and resident education programs.

36 **Sec. 5. 22 MRSA §1315, sub-§5-A**, as enacted by PL 1991, c.
37 810, §9, is amended to read:

38 **5-A. Lead-free.** "Lead-free" means that a ~~children's-home,~~
39 residential facility or preschool facility, dwelling or premises
40 contains no lead that is injurious or that could be injurious in
41 the future.

42 **Sec. 6. 22 MRSA §1315, sub-§§5-C, 5-D, 5-E and 5-F**, as enacted by
43 PL 1991, c. 810, §9, are amended to read:

44 **5-C. Lead poisoning.** "Lead poisoning" means a confirmed
45 elevated level of blood lead that is ~~injurious,~~ as defined in
46 rules--adopted--by--the--department by the federal Centers for
47 Disease Control as being an intervention level.

2 **5-D. Lead-safe.** "Lead-safe" means that a ~~children's-home,~~
3 residential facility or preschool facility, dwelling or premises
4 does not contain lead at a level or in a condition that
5 constitutes an environmental lead hazard.

6
7 **5-E. Occupant.** "Occupant" means a person who resides in or
8 uses regularly a dwelling, ~~children's-home~~ residential facility
9 or preschool facility.

10 **5-F. Owner.** "Owner" means any person who individually,
11 jointly or in common with others:

12
13 A. ~~Has legal title to any dwelling or premises or, if the~~
14 ~~person having legal title can not be located through~~
15 ~~reasonable efforts, is the owner's agent, as described in~~
16 ~~Title 14, section 6023;~~

17
18 B. ~~Is the guardian of the owner or is the executor,~~
19 ~~administrator or trustee of the estate of the owner;~~

20
21 C. Is the chief executive officer of the municipality,
22 school administrative unit or state agency that controls the
23 use of publicly owned property; or

24
25 D. Is a mortgagee who has taken actual possession in
26 accordance with applicable law. A mortgagee who has not
27 taken actual possession is not the owner; or

28
29 E. Is characterized by the following:

30
31 (1) Has legal title to any dwelling or premises;

32
33 (2) Has charge, care or control of any premises as
34 owner or agent of the owner who has authority to expend
35 money for compliance with the state sanitary code or as
36 an executor, an administrator, a trustee or a guardian
37 of the estate or the holder of legal title;

38
39 (3) Is a real estate property manager or other entity
40 that has the authority to fund capital or major
41 property rehabilitation on the owner's behalf;

42
43 (4) Is an estate or trust of which the premises is a
44 party, or the grantor or beneficiary of an estate or
45 trust; or

46
47 (5) Is the association of unit owners of a condominium
48 or cooperative, which is considered as owner solely
49 with respect to common areas and exterior surfaces and
50 fixtures of that condominium or cooperative.

2 **Sec. 7. 22 MRSA §1315, sub-§§6-C and 6-D** are enacted to read:

4 **6-C. Residential facility.** "Residential facility" means a
4 residential child care facility.

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

10 **Sec. 8. 22 MRSA §1315-A, first ¶,** as enacted by PL 1991, c. 810,
12 §18, is amended to read:

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

20 **Sec. 9. 22 MRSA §1316, sub-§§1 and 2,** as amended by PL 1991, c.
20 810, §19, are further amended to read:

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

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

32 **Sec. 10. 22 MRSA §1317-C, sub-§2,** as enacted by PL 1991, c.
32 810, §23, is amended to read:

34 **2. Data.** At least annually, the department shall analyze
36 and summarize lead-screening information provided by health care
36 providers, facilities and programs and provide the information to
38 other state and local agencies involved in lead-poisoning
38 issues. The information must also be maintained in a central
40 registry that must be provided to interested parties on request
40 in a format that is easily understood by the general public. The
42 Notwithstanding section 1322-D, the department may not release
42 any information under this subsection if that information
44 identifies or could lead to the identification of individuals.

46 **Sec. 11. 22 MRSA §1319-B,** as enacted by PL 1991, c. 810, §26,
46 is repealed and the following enacted in its place:

48 **§1319-B. Inspection of residential facilities and preschool**
48 **facilities**

2 The department shall adopt rules that require all
4 residential facilities and preschool facilities to have
6 environmental lead inspections at least every 3 years except that
8 environmental lead inspections are not required if the
10 residential facility or preschool facility has been certified by
12 a lead inspector as lead-safe within the previous 3 years or has
 been certified as lead-free. As of July 1, 1998, a small
 preschool facility, residential facility or preschool facility
 may not be licensed, registered, certified or otherwise approved
 or receive any state funds unless it is in compliance with this
 section.

14 **Sec. 12. 22 MRSA §1321, first ¶**, as amended by PL 1991, c. 810,
16 §28, is further amended to read:

 If the department determines that an environmental lead
18 hazard exists in or on any dwelling, premises, ~~children's--home~~
 residential facility or preschool facility:

20 **Sec. 13. 22 MRSA §1321, sub-§§1, 3 and 4**, as amended by PL 1991,
22 c. 810, §28, are further amended to read:

24 **1. Notice posted.** The department shall post in or upon the
26 dwelling, premises, ~~children's--home~~ residential facility or
 preschool facility, in a conspicuous place or places, notice of
28 the existence of environmental lead hazard. Notice may not be
 removed until the department states that the environmental lead
 hazard no longer exists;

30 **3. Notice to owner; removal.** The department shall give
32 notice of the existence of the environmental lead hazard to the
 owner and order that the lead-based substances be removed,
34 replaced or securely and permanently covered within 30 days of
 receipt of the notice. The department shall adopt rules for
36 removal, replacement or covering of the lead-based substance. If
 the lead-based substances can not be removed, replaced or
38 securely and permanently covered within 30 days, the department
 may grant an extension of reasonable time; and

40 **4. Sale of dwelling, residential facility or preschool**
42 **facility.** If, before the end of the 30-day period or extension,
 the owner sells the dwelling, premises, ~~children's--home~~
44 residential facility or preschool facility, the owner must notify
 the prospective buyer of the environmental lead hazard and the
46 new owner must assume the responsibility of carrying out the
 requirements of this section within the specified time period;
48 and

50 **Sec. 14. 22 MRSA §1321, sub-§5** is enacted to read:

2 **5. Abatement procedures.** An individual completing
3 abatement procedures authorized under this Act is subject to the
4 standards and rules adopted under this Act. An individual may
5 not be exempt from the requirement of compliance with the rules
6 setting forth abatement and post-abatement testing standards.

8 **Sec. 15. 22 MRSA §1322-A, sub-§1,** as enacted by PL 1991, c.
9 810, §30, is amended to read:

10

11 **1. Prohibition.** A person may not conduct environmental
12 lead inspections or lead abatement unless that person is licensed
13 by the department under this chapter or unless the person is at
14 least 18 years of age and is performing lead abatement ~~on or~~ in
15 the dwelling unit of which the person is ~~an~~ the owner and
16 occupant. This prohibition includes persons located in other
17 states who offer lead-related services to residents of the State
18 directly or through the mail.

19 **Sec. 16. 22 MRSA §1322-D,** as enacted by PL 1991, c. 810, §30,
20 is amended to read:

21

22 **§1322-D. Reports and records**

23

24 All lead inspectors shall report the results of their
25 inspections to the department within 45 30 days of the
26 inspections. ~~Any records received or maintained by the~~
27 ~~department under this chapter that contain information that~~
28 ~~identifies, or could lead to the identification of, an individual~~
29 ~~are confidential.~~ All lead inspection results, letters of
30 compliance and all other records reflecting compliance or
31 noncompliance under this Act must be maintained by the department
32 in a central registry. This registry reflecting lead abatement
33 compliance or noncompliance must be a public record except for
34 information protected under section 1317-C, subsection 2.

35

36 **Sec. 17. 22 MRSA §1323, first ¶,** as amended by PL 1991, c. 810,
37 §31, is further amended to read:

38

39 The department shall adopt rules to carry out the purposes
40 of this chapter in accordance with the recommendations of the
41 Maine State Advisory Council on Lead Poisoning Prevention
42 established in section 1328. The rules may address, but are not
43 limited to, the following:

44 **Sec. 18. 22 MRSA §1323, sub-§3,** as enacted by PL 1991, c. 810,
45 §31, is amended to read:

46

47 **3. Inspections; tests; abatement.** Inspecting, testing and
48 abating lead in dwellings where children are at risk of lead
49 poisoning, in ~~children's homes~~ residential facilities and in
50 preschool facilities;
51

52

2 **Sec. 19. 22 MRSA §1324-A**, as amended by PL 1991, c. 810, §32,
is further amended to read:

4 **§1324-A. Liability of owners; damages**

6 The owner of any dwelling, premises, ~~children's--home~~
8 residential facility or preschool facility is liable for all
damages caused by failure to perform the duties required under
10 this chapter.

12 The owner of any dwelling, premises, ~~children's--home~~
14 residential facility or preschool facility who has received
notice under this chapter of an environmental lead hazard and who
16 does not satisfactorily correct or remove the environmental lead
hazard is in addition to the preceding paragraph subject to
18 punitive damages, which are treble the actual damages found.

20 In actions for damages permitted by this Act, the claim for
22 an award of damages for all losses may not exceed \$250,000. This
24 limitation on damages does not apply to an claims against lead
26 abatement professionals, licensed under this Act. This
28 limitation on damages does not apply to an individual who engages
30 in deliberate conduct resulting in a lead poisoning incident.
32 For purposes of this Act, "deliberate conduct" is defined as an
34 individual who rents or sells property to anyone with children
 and has knowledge of the presence of lead paint in a dwelling or
 dwelling unit and deliberately fails to disclose to the
 prospective tenant or buyer the presence of lead paint, and an
 individual who receives written notification of the presence of
 an environmental lead hazard or of a child poisoning incident,
 and who fails or refuses to take corrective measures, including
 interim controls, within a 60-day period from the date of the
 notification.

36 **Sec. 20. 22 MRSA §1326**, as amended by PL 1991, c. 810, §34,
is further amended to read:

38 **§1326. Injunction requiring removal**

40 If the lead-based substance remains an environmental lead
42 hazard at the expiration of 30 days or at the expiration of an
extension given by the commissioner pursuant to section 1321, the
44 State, in addition to any other remedies it has, may seek a
mandatory injunction ordering the environmental lead hazard
46 removed by a suitable 3rd party at the expense of the owner of
the dwelling, premises, ~~children's--home~~ residential facility or
48 preschool facility.

50 **Sec. 21. 22 MRSA §§1327, 1328 and 1329** are enacted to read:

2 **§1327. Paint and paint product warning requirements**

4 **1. Paint products labelled.** A wholesaler or retailer may
6 not sell, offer for sale, distribute or give away any residential
8 paint, paint brushes, paint rollers or pans, paint mixing sticks
10 or pans, scrapers or sandpaper unless a warning is clearly and
12 conspicuously provided in the vicinity of the sale of these
14 items, which reads as follows:

16 Warning: Houses built before 1978 may have lead paint.
18 Scraping or sanding lead paint may increase the amount of
20 lead paint dust in the house. Increased lead paint dust
22 increases the possibility of lead poisoning and may
24 permanently injure children and fetuses. Call your local
26 health office for more information.

28 **§1328. Maine State Advisory Council on Lead Poisoning Prevention**

30 **1. Council established.** The Maine State Advisory Council
32 on Lead Poisoning Prevention, referred to in this chapter as the
34 "council," is established to function in coordination with the
36 department. The council consists of the following 21 members:

- 38 A. The commissioner or the commissioner's designee;
40 B. The Commissioner of Environmental Protection or the
42 commissioner's designee;
44 C. The Commissioner of Labor or the commissioner's designee;
46 D. The Commissioner of Conservation or the commissioner's
48 designee;
50 E. The Commissioner of Economic and Community Development
 or the commissioner's designee;
 F. The Superintendent of Insurance or the superintendent's
 designee; and
 G. Fifteen public members appointed by the Governor. The
 public members must have a demonstrated expertise or
 interest in lead poisoning prevention and at least one
 public member must be representative of each of the
 following:
 (1) Local government;
 (2) Community groups;
 (3) Multi-family property owners;

- 2 (4) Labor unions;
4 (5) Real estate;
6 (6) Industry;
8 (7) Parents;
10 (8) Educators;
12 (9) Local housing authorities;
14 (10) Child health advocates;
16 (11) Environmental groups;
18 (12) Professional medical organizations or hospitals;
20 (13) Lead abatement professionals;
22 (14) Lead inspection professionals; and
24 (15) Attorneys.

26 The public members of the council serve terms of 3 years,
28 except that 5 of the initial appointments are for 2 years
30 and 5 of the initial appointments are for one year. The
32 council shall select a chair from among the commissioners.

34 **2. Compensation.** Members of the council are not entitled
36 to reimbursement, except for compensation for necessary and
38 actual expenses incurred in the performance of their duties under
40 this chapter.

42 **3. Meetings.** The council shall meet on a quarterly basis.

44 **4. Powers and duties.** The council has the following powers
46 and duties:

48 A. To develop a comprehensive statewide plan to prevent
50 lead poisoning;

52 B. To coordinate the activities of the member agencies with
54 respect to environmental lead policy and the statewide plan;

56 C. To recommend the adoption of policies for detecting and
58 eliminating lead hazards in the environment;

- 2 D. To recommend the adoption of policies for identifying
3 and managing children with elevated lead levels;
- 4
- 5 E. To recommend the adoption of policies regarding the
6 education and outreach strategies related to lead exposure
7 detection and risk reduction;
- 8
- 9 F. To make recommendations to ensure the qualifications of
10 persons performing inspection and abatement of lead through
11 a system of licensure and certification or otherwise;
- 12
- 13 G. To recommend strategies for funding the lead poisoning
14 prevention program, including, but not limited to, ways to
15 enhance the funding of screening through insurance coverage
16 and other means, and ways to financially assist property
17 owners in abating environmental lead, such as tax credits,
18 loan funds, grants or other approaches;
- 19
- 20 H. To recommend in coordination and cooperation with the
21 department a set of rules that implement the purposes of
22 this Act; and
- 23
- 24 I. To report on or before January 1st of each year to the
25 Governor and the Legislature concerning the development and
26 implementation of the statewide plan and the operation of
27 the program, together with recommendations the council
28 considers necessary.

30 **§1329. Essential maintenance practices**

32 **1. Maintenance practices.** An owner of a dwelling,
33 residential facility or preschool facility constructed prior to
34 1978 shall perform the following essential maintenance practices:

36 A. Take all necessary precautions to avoid creating lead
37 hazards during any renovation, remodeling, maintenance or
38 repair project that disturbs a lead-based painted surface
39 pursuant to guidelines issued by the department. For
40 purposes of essential maintenance practices, all paint is
41 presumed to be lead-based unless a certified inspector has
42 determined that it is not lead-based paint. The guidelines
43 include:

44

45 (1) A prohibition against paint removal by burning,
46 water blasting, dry scraping, power sanding or
47 sandblasting, unless authorized by the department;

48

49 (2) Good work practices and precautions to prevent the
50 spread of lead dust including limiting access to work

2 areas to workers, covering the work area with 6 mil
4 polyethylene plastic or the equivalent, protecting
6 workers, 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

8 (3) Specialized cleaning of the work area at the
10 conclusion of the work using methods designed to remove
 lead dust;

12 B. Perform visual checks of the property to identify
14 deteriorated paint upon a change of tenant or within 12
 months of the effective date of this paragraph, whichever is
 sooner, and annually thereafter;

16 C. Promptly and safely remove or stabilize paint if more
18 than one square foot of deteriorated paint is found on any
20 interior surface, exterior porch or exterior wall or surface
22 or fixture within an exterior porch, and restore that
24 surface within 30 days after visual identification of
26 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 completed no later than May
 31st of the following year;

28 D. If more than one square foot of deteriorated paint is
30 found on any exterior wall, surface or fixture not covered
32 by paragraph C and is located in an area frequented by
34 children in warm weather, promptly and safely repair and
36 stabilize the paint and restore the surface or prohibit
 access to the area, surface or fixture to ensure that
 children can not come into contact with the deteriorated
 paint;

38 E. Provide written lead-based paint hazard information
40 prepared or approved by the department to current and
42 prospective tenants and current and prospective owners of
 child care facilities;

44 F. Post in a prominent place in buildings containing
46 residential rental units or a child care facility a notice
48 to occupants emphasizing the importance of promptly
 reporting deteriorated paint to the owner or to the owner's
 agent. The notice shall include the name, address and
 telephone number of the owner or the owner's agent;

50 G. Attend a training program offered or approved by the
52 department. The training is available to any person who
 owns, maintains, repairs, remodels or renovates property; and

2 H. Ensure that any person who performs essential
4 maintenance work has attended a department-approved training
6 program and complies with the essential maintenance
 practices.

8 2. Proof of completion. When the essential maintenance
10 practices are completed, the owner shall sign an affidavit
12 indicating that the essential maintenance practices have been
14 performed, the dates they were completed and by whom they were
 performed, and file the affidavit with the owner's liability
 insurance carrier. Annually, the owner shall conduct a visual
 check, perform required essential maintenance practices and sign
 and file an affidavit as required by this subsection.

16 **Sec. 22. Mandated benefits study.** The Bureau of Insurance shall
18 conduct a study regarding the following.

20 1. The study must consider whether all policies, plans and
22 contracts provided by nonprofit medical service organizations and
24 by insurers, except for policies, plans or contracts designed to
26 cover only dental procedures, supplemental policies that only
28 provide coverage for specific diseases, hospital indemnity
 Medicare supplements or other supplemental policies, should
 provide coverage for screening for lead poisoning, services
 related to lead screening and diagnostic evaluations for lead
 poisoning for children, including, but not limited to,
 confirmatory blood lead testing.

30 2. The study must be submitted by January 1, 1996 to the
32 joint standing committee of the Legislature having jurisdiction
34 over human resource matters and the joint standing committee of
 the Legislature having jurisdiction over insurance matters. A
 copy of the study must be submitted to the Executive Director of
 the Legislative Council

36 **Sec. 23. Brochure.** When the Real Estate Commission reprints
38 the brochure entitled "Buyer-Seller Information," it shall
40 include in the brochure a revised section addressing the dangers
42 of lead poisoning. In preparing the revised section, the Real
 Estate Commission shall consult with the Director of the Bureau
 of Health within the Department of Human Services.

44

STATEMENT OF FACT

46

This bill amends the Lead Poison Control Act.

48

1. It clarifies the definitions of certain terms in the Act.

- 2 2. It expands the focus of the Act from protecting children
to protecting the public as a whole.
- 4
- 6 3. It directs the Department of Human Services to maintain
a central registry of information from health-care providers,
facilities and programs on lead poisoning.
- 8
- 10 4. It limits the award of damages for all losses involving
lead poisoning to \$250,000.
- 12 5. It establishes lead warning requirements on the sale of
paint and related items.
- 14
- 16 6. It establishes essential maintenance practices for all
owners of buildings built before 1978.
- 18 7. It establishes the Maine State Advisory Council on Lead
Poisoning Prevention to implement the Lead Poison Control Act.
- 20
- 22 8. It directs the Bureau of Insurance to conduct a study on
medical policies and lead poisoning.
- 24 9. It directs the Real Estate Commission to provide a
brochure on information regarding lead poisoning.