

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

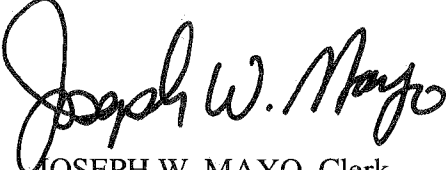
No. 1593

H.P. 1137

House of Representatives, March 19, 1997

An Act to Ensure Safe Abatement of Lead Hazards.

Submitted by the Department of Environmental Protection pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative JONES of Greenville.
Cosponsored by Representative BULL of Freeport.

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

2
3 **Sec. 1. 22 MRSA §1315, sub-§4-B**, as enacted by PL 1991, c.
4 810, §7, is amended to read:

6 **4-B. Lead abatement.** "Lead abatement" means the removal,
7 renovation, enclosure, repair, encapsulation, handling,
8 transportation or disposal of materials that contain lead any
9 measure or set of measures designed to permanently eliminate
10 lead-based paint hazards. "Lead abatement" includes, but is not
11 limited to:

12 A. The removal of lead-based paint and lead-contaminated
13 dust, the permanent enclosure or encapsulation of lead-based
14 paint, the replacement of lead-painted surfaces or fixtures
15 and the removal or covering of lead-contaminated soil; and

16 B. All preparation, cleanup and post-abatement clearance
17 testing activities associated with such measures.

18 "Lead abatement" does not include the stripping and repainting of
19 residential walls or other building components by the homeowner
20 or a contractor as part of routine residential maintenance.

21 **Sec. 2. 22 MRSA §1315, sub-§§4-C to 4-F**, as enacted by PL 1991,
22 c. 810, §7, are repealed.

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

24 **4-G. Lead-based paint activities.** "Lead-based paint
25 activities" means inspection, risk assessment, lead abatement
26 design, lead abatement and services related to lead-based paint
27 such as lead screening, lead determination and deleading.

28 **Sec. 4. 22 MRSA §1315, sub-§5-B**, as enacted by PL 1991, c.
29 810, §9, is amended to read:

30 **5-B. Lead inspector.** "Lead inspector" means a person
31 licensed by the department Department of Environmental Protection
32 pursuant to Title 38, chapter 12-B to perform environmental lead
33 inspections.

34 **Sec. 5. 22 MRSA §1321, sub-§5**, as enacted by PL 1995, c. 453,
35 §12, is repealed.

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

37 **6. Lead-based paint activities prohibition.** A person may
38 not perform lead-based paint activities unless that person is
39 licensed by the Department of Environmental Protection pursuant
40 to Title 38, chapter 12-B.

2 to Title 38, chapter 12-B or unless that person is at least 18
3 years of age and is performing lead abatement in the dwelling of
4 which the person is the owner and occupant.

5 A person who conducts lead-based paint activities without a
6 license in violation of this section commits a civil violation
7 for which a penalty of up to \$1,000 may be adjudged. A person
8 who engages in lead testing or lead abatement or who advertises
9 those services in violation of this chapter also violates Title
10 5, chapter 10.

11 This subsection does not limit the authority of the department or
12 any other state agency under law.

13 **Sec. 7. 22 MRSA §1322-A**, as amended by PL 1995, c. 453, §14,
14 is repealed.

15 **Sec. 8. 22 MRSA §1322-B**, as enacted by PL 1991, c. 810, §30,
16 is repealed.

17 **Sec. 9. 22 MRSA §1323, sub-§3**, as amended by PL 1995, c. 453,
18 §16, is repealed.

19 **Sec. 10. 22 MRSA §1323, sub-§3-A** is enacted to read:

20 **3-A. Department inspections.** Performing inspections of
21 residential child-care facilities, preschool facilities and other
22 dwellings for the purpose of determining the existence of
23 environmental lead hazards;

24 **Sec. 11. 22 MRSA §1323, sub-§§4 and 5**, as enacted by PL 1991,
25 c. 810, §31, are repealed.

26 **Sec. 12. 22 MRSA §1324-A, sub-§3, ¶A**, as enacted by PL 1995,
27 c. 453, §17, is amended to read:

28 A. Claims against lead abatement professionals licensed
29 under--this by the Department of Environmental Protection
30 pursuant to Title 38, chapter 12-B;

31 **Sec. 13. 38 MRSA c. 12-B** is enacted to read:

32 **CHAPTER 12-B**

33 **LEAD ABATEMENT**

34 **§1291. Definitions**

35 As used in this chapter, unless the context otherwise
36 indicates, the following terms have the following meanings.

2 1. Abatement. "Abatement" means any measure or set of
measures designed to permanently eliminate lead-based paint
4 hazards. "Abatement" includes, but is not limited to:

6 A. The removal of lead-based paint and lead-contaminated
dust, the permanent enclosure or encapsulation of lead-based
8 paint, the replacement of lead-painted surfaces or fixtures
and the removal or covering of lead-contaminated soil; and

10 B. All preparation, cleanup and post-abatement clearance
12 testing activities associated with such measures.

14 "Abatement" does not include the stripping and repainting of
residential walls or other building components by the homeowner
16 or a contractor as part of routine residential maintenance.

18 2. Accredited training program. "Accredited training
program" means a training program that has been accredited by the
20 State pursuant to rules adopted in accordance with this chapter.

22 3. Business entity. "Business entity" means a partnership,
firm, association, corporation, sole proprietorship or other
24 business concern.

26 4. Certificate. "Certificate" means a document issued to
an individual by the commissioner affirming that the individual
28 has successfully completed the training and other requirements
set forth in this chapter to qualify as a lead professional.

30 5. Commercial building. "Commercial building" means any
32 building used primarily for commercial or industrial activity
that is generally not open to the public or occupied or visited
34 by children, including, but not limited to, warehouses,
factories, storage facilities, aircraft hangars, garages and
36 wholesale distribution facilities.

38 6. Commissioner. "Commissioner" means the Commissioner of
Environmental Protection.

40 7. Department. "Department" means the Department of
42 Environmental Protection.

44 8. Design consultant. "Design consultant" means an
individual engaged in preparing and supervising the
46 implementation of plans for the removal or abatement of
lead-based paint. These activities include, but are not limited
48 to, design, inspection or monitoring of lead abatement
activities; and advising building owners, contractors and project

2 supervisors regarding lead abatement activities. This category
3 of specialists includes, but is not limited to, engineers,
4 architects, health professionals, industrial hygienists, private
5 consultants or other individuals involved in lead risk assessment
6 or regulatory activities.

7 9. Elevated blood-lead level. "Elevated blood-lead level"
8 means an excessive absorption of lead that is a confirmed
9 concentration of lead in whole blood of 20 micrograms per
10 deciliter for a single venous test or of 15 to 19 micrograms per
11 deciliter in 2 consecutive tests taken 3 to 4 months apart.

12 10. Employee. "Employee" means an individual who may be
13 permitted, required or directed by an employer, in consideration
14 of direct or indirect gain or profit, to engage in any employment.

15 11. In-house lead abatement unit. "In-house lead abatement
16 unit" means the unit of a business or public entity that engages
17 in or intends to engage in lead abatement activities or projects
18 solely within the confines of property owned or leased by the
19 entity and that employs one or more lead abatement supervisors
20 for lead abatement activities.

21 12. Inspection. "Inspection" means a surface-by-surface
22 investigation to determine the presence of lead-based paint and
23 the provision of a report explaining the results.

24 13. Lead abatement contractor. "Lead abatement contractor"
25 means a business entity that engages in or intends to engage in
26 lead abatement activities as a business service and that employs
27 or involves one or more project supervisors, design consultants
28 or inspectors for lead abatement activities.

29 14. Lead abatement professional. "Lead abatement
30 professional" means an individual certified by the commissioner
31 to engage in lead-based paint activities, including, but not
32 limited to, a lead abatement worker, a lead abatement project
33 supervisor, a lead inspector, a lead abatement design consultant
34 and a lead risk assessor.

35 15. Lead abatement worker. "Lead abatement worker" means
36 an individual engaging in any lead abatement activity for any
37 employer.

38 16. Lead-based paint. "Lead-based paint" means paint or
39 other surface coatings that contain lead equal to or in excess
40 of 1.0 milligrams per square centimeter or more than 0.5% by
41 weight.

42 17. Lead-based paint activities. "Lead-based paint
43 activities" means inspection, risk assessment, lead abatement
44 activities.

2 design, lead abatement and services related to lead-based paint
3 such as lead screening, lead determination and deleading.

4 18. Lead inspector. "Lead inspector" means an individual
5 whose activities include, but are not limited to, collecting
6 samples and assessing the potential for exposure associated with
7 the presence of lead-containing material.

8
9 19. License. "License" means a document issued by the
10 commissioner to a business entity or public entity, including,
11 but not limited to, a lead abatement contractor, an in-house lead
12 abatement unit or a lead training provider, affirming that the
13 entity has met the requirements set forth in this chapter to
14 engage in lead-based paint activities.

15 20. Owner or operator. "Owner" or "operator" means a
16 person who owns, leases, operates, controls or supervises a lead
17 abatement activity within a building, structure or facility.

18
19 21. Person. "Person" means any individual, business
20 entity, governmental body or other public or private entity.

21
22 22. Project supervisor. "Project supervisor" means an
23 individual with responsibility for the supervision of lead
24 abatement activities. "Project supervisor" includes, but is not
25 limited to, an abatement project supervisor employed by a
26 contractor or by an in-house lead abatement unit and a project
27 supervisor employed as a consultant to monitor and direct
28 abatement contractors.

29
30 23. Public building. "Public building" means any building
31 constructed before 1978, except residences and child care
32 facilities, that is generally open to the public or occupied or
33 visited by children, including, but not limited to, schools, day
34 care centers, museums, airport terminals, hospitals, stores,
35 restaurants, office buildings, convention centers and government
36 buildings.

37
38 24. Public entity. "Public entity" means the State, any of
39 its political subdivisions or any agency or instrumentality of
40 either.

41
42 25. Renovation and remodeling. "Renovation and remodeling"
43 means the replacement or reconstruction of any part of a
44 residence in which the primary intent is to repair, restore or
45 remodel a given structure, which may incidentally result in the
46 reduction of lead-based paint hazards.

47
48 26. Risk assessment. "Risk assessment" means the on-site
49 investigation to determine the nature, severity and location of
50 lead-based paint hazards.

2 lead-based paint hazards, and the provision of a written report
3 explaining the results of the investigation and options for
4 reducing lead-based paint hazards.

6 27. Risk assessor. "Risk assessor" means an individual who
7 has been trained to conduct risk assessments as well as lead
8 inspections.

10 28. Superstructure. "Superstructure" means a large steel
11 or other industrial structure, including, but not limited to
12 bridges or water towers.

14 29. Training manager. "Training manager" means the
15 individual responsible for administering a training program and
16 monitoring the performance of principal instructors and guest
17 instructors.

18 30. Training provider. "Training provider" means a person
19 providing training that is necessary to fulfill certification or
20 licensing requirements under this chapter.

22 §1292. Prohibitions

24 1. License or certificate required for residential
25 lead-based paint activities. A person may not engage in any
26 residential lead-based paint activities in the State unless
27 licensed or certified pursuant to this chapter.

28 2. License or certificate required for lead-based paint
29 activities in public buildings, commercial buildings and
30 superstructures. After the department adopts rules pursuant to
31 section 1295 for licensing and certification to conduct
32 lead-based paint activities in public buildings, commercial
33 buildings and superstructures, a person may not engage in any
34 lead-based paint activities in the State unless licensed or
35 certified pursuant to this chapter.

36 3. Notification required. A person may not engage in any
37 lead abatement activity unless that person notifies the
38 commissioner in writing at least 5 working days before beginning
39 any on-site work, including on-site preparation work, that has
40 the potential to create lead dust.

41 4. Work practices. All lead-based paint activities must be
42 conducted in accordance with work practice standards adopted by
43 rule pursuant to this chapter.

44 5. Exemption. A person who is 18 years of age or older
45 need not obtain licensing and certification to perform abatement
46 activities within a residential dwelling that the person owns and
47 occupies.

2 personally occupies, provided that a child residing in the
4 dwelling has not been identified as having an elevated blood-lead
6 level. A person 18 years of age or older who owns or personally
8 occupies a dwelling in which a resident child has been identified
as having an elevated blood-lead level need not obtain licensing
and certification to perform abatement activities within that
dwelling, if the person has undergone a lead poisoning awareness
training program approved by the department.

10 **§1293. Certification, licensing and accreditation requirements**

12 **1. Certification and licensing.** The board shall adopt and
14 amend rules necessary to govern the licensing of business or
16 public entities, including, but not limited to, lead abatement
18 contractors and in-house lead abatement units, the accreditation
of lead training providers and the certification of lead
abatement professionals.

20 **2. Approval of training courses.** The board shall adopt and
22 amend rules establishing criteria and procedures for the approval
24 of training courses and examinations that ensure the
26 qualifications of applicants for certification as required in
28 this chapter. These rules are routine, technical rules in
30 accordance with Title 5, chapter 375, subchapter II-A. To ensure
a smooth transition period before the adoption of accreditation
rules in conformance with the requirements of this chapter, the
commissioner shall provide for interim accreditation of training
providers by establishing procedures in accordance with 40 Code
of Federal Regulations, Part 745, Subpart L, Section 745.228.

32 To qualify for approval, a training course must contain a
34 combination of class instruction, practical application and
public health procedures of a length and content that ensure
adequate training for the level and type of responsibility for
each named certification category.

36 Courses certified under this section must be conducted by
38 instructors whose training and experience are determined by the
40 commissioner to be appropriate for the subject matter being
42 taught and the level of certification category for which the
course is designed. Courses must be designed and conducted under
the guidance of a training manager.

44 **3. Renewal.** A license or certificate issued under this
46 chapter expires one year after the date of issue. A licensee or
48 certificate holder may apply to the commissioner for the renewal
of a license or certificate. A renewal may not be granted if the
application is received more than 2 years following expiration of
the previously issued license or certificate.

2 To qualify for renewal of a license or certificate, the applicant
3 must submit:

4 A. The appropriate fees as prescribed by rule pursuant to
5 section 1295;

6 B. Evidence of completion of any continuing education or
7 training that may be required by rules adopted by the board;
8 and

9 C. A signed statement disclosing any violations of lead
10 abatement standards for which the applicant may have been
11 cited by a regulatory agency of the Federal Government or
12 the State. If no citations were received during the
13 previous year, that fact must be stated. The disclosure
14 must include evidence that all penalties and fees assessed
15 to the applicant are paid in full.

16
17 **§1294. Reciprocity agreement**

18
19 The commissioner may develop reciprocity agreements with
20 other states and with federally recognized tribes when the states
21 and tribes have established licensing and certification and
22 accreditation requirements that are at least as stringent as
23 those set forth in this chapter.

24
25 **§1295. Rules**

26
27 The department shall adopt and amend rules to carry out the
28 purposes of this chapter and to ensure that state law relating to
29 lead-based paint activities satisfies minimum requirements of
30 federal law in all respects. The rules are routine, technical
31 rules in accordance with Title 5, chapter 375, subchapter II-A
32 and may address, but are not limited to, the following:

33
34 **1. Licenses and certification.** Licensing lead abatement
35 contractors and in-house lead abatement units, and certification
36 of lead abatement professionals;

37
38 **2. Training programs.** Accreditation of training providers
39 offering courses for lead abatement professionals and in lead
40 awareness for homeowners and for contractors involved in
41 renovation, remodeling and painting;

42
43 **3. Standards of acceptable work practices.** Criteria and
44 procedures of acceptable work practices for licensees and
45 certificate holders and for persons exempt from licensing and
46 certification requirements;
47

2 4. Standards of conduct. Standards of acceptable
3 professional conduct for licensees and certificate holders
4 engaged in lead-based paint activities, as well as specific acts
5 and omissions that constitute grounds for the reprimand of any
6 licensee or certificate holder, the suspension or revocation of a
7 license or certificate or the denial of the renewal of a license
8 or certificate; and

9 5. Fees. Establishing fees for notifications and annual
10 fees for each license and certification category. The fees must
11 be deposited in the Maine Environmental Protection Fund.

12 **§1296. Emergency provisions**

13 A person engaged in any residential renovation, remodeling,
14 maintenance or repair project involving lead-based paint not
15 subject to the licensing and certification requirements of this
16 chapter shall take reasonable precautions to prevent the release
17 of lead to the environment. If the commissioner finds, after
18 investigation, that any location at which lead dust, lead chips
19 or other lead-contaminated wastes are or were handled or
20 otherwise came to be located may create a danger to public health
21 or the safety of any person or to the environment, the
22 commissioner may order the person responsible for the lead dust,
23 lead chips or lead-contaminated waste to cease the activity
24 immediately or to prevent that activity and to take an action
25 necessary to terminate or mitigate the danger or likelihood of
26 danger. The commissioner may also order any person contributing
27 to the danger or likelihood of danger to cease or prevent that
28 contribution.

29 An order issued under this section must contain findings of
30 fact describing, insofar as possible, the site of the activity
31 and the danger to the public health or safety. Service of the
32 commissioner's findings and an order must be made pursuant to the
33 Maine Rules of Civil Procedure.

34 The person to whom the order is directed shall comply
35 immediately and may apply to the board for a hearing on the order
36 if the application is made within 5 days after receipt of the
37 order by a responsible party. The board shall hold the hearing
38 within 5 days after receipt of the application. The nature of
39 the hearing before the board is an appeal. At the hearing, all
40 witnesses must be sworn and the commissioner shall first
41 establish the basis for the order and for naming the person to
42 whom the order is directed. The burden of going forward then
43 shifts to the person appealing to demonstrate, based upon a
44 preponderance of the evidence, that the order should be modified
45 or rescinded. Within 7 days after the hearing, the board shall
46 make findings of fact and shall continue, revoke or modify the
47 order.

2 order. The decision of the board may be appealed to the Superior
3 Court in accordance with Title 5, chapter 375, subchapter VII.

4 A person who fails without sufficient cause to undertake
5 abatement or remedial action promptly in accordance with an order
6 issued pursuant to this section may be liable to the State for
7 punitive damages in an amount at least equal to, and not more
8 than 3 times, the amount expended by the commissioner as a result
9 of such failure to take proper action.

10
11 The Attorney General may commence a civil action against any
12 such responsible party to recover the punitive damages, which are
13 in addition to any fines and penalties established pursuant to
14 section 349.

15 **§1297. Assistance from other departments**

16
17 The Commissioner of Administrative and Financial Services,
18 the Commissioner of Labor and the Commissioner of Human Services
19 shall assist the commissioner in the enforcement of the licensing
20 and certification requirements of this chapter.

21
22 **Sec. 14. Transition.** Beginning on the effective date of this
23 Act, the Department of Environmental Protection shall administer
24 and enforce the rules adopted by the Department of Human Services
25 pursuant to the Maine Revised Statutes, Title 22, chapter 252
26 governing the abatement of environmental lead hazards, licensure
27 of lead inspectors and lead abatement personnel and environmental
28 lead inspections.

29
30
31 **SUMMARY**

32
33 This bill transfers authority for implementing a lead
34 abatement licensing, certification and accreditation program and
35 for establishing lead abatement work practice standards to the
36 Department of Environmental Protection from the Department of
37 Human Services. This will consolidate services for the
38 licensing, certification and accreditation of lead and asbestos
39 abatement professionals.
40