

# 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)



# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

---

Legislative Document

No. 1532

H.P. 1077

House of Representatives, April 4, 2005

---

### **An Act To Modify Liability To Protect Maine Citizens from Lead Hazards That Harm Maine Children and Families**

---

Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FAIRCLOTH of Bangor.  
Cosponsored by Senator HOBBS of York and  
Representatives: BRYANT of Windham, CUMMINGS of Portland, DUNN of Bangor, EDER  
of Portland, PELLETIER-SIMPSON of Auburn, Speaker RICHARDSON of Brunswick,  
Senators: BRENNAN of Cumberland, MILLS of Somerset.

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24

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

**Sec. 1. 5 MRSA §4582**, as amended by PL 1991, c. 99, §§13 to 17, is further amended by adding after the 2nd paragraph a new 3rd paragraph to read:

For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any agent of these to refuse to sell, rent, lease or otherwise deny or withhold from any person or to discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of such premises because the premises do or may contain environmental lead hazards or because the sale, rental or lease would trigger liability under Title 14, section 222 or duties under Title 22, chapter 252. Refusing to rent to families with children in violation of law does not constitute compliance with Title 22, chapter 252. Refusing to renew the lease of or evicting families with children does not constitute compliance with Title 22, chapter 252.

20  
22  
24

**Sec. 2. 14 MRSA §222** is enacted to read:

**§222. Liability for lead poisoning**

26  
28

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

30  
32

**A. "Owner"** has the same meaning as set forth in Title 22, section 1315, subsection 5-F.

34  
36

**B. "Premises"** has the same meaning as set forth in Title 22, section 1315, subsection 6-A.

38  
40  
42

**2. Liability.** The owner of premises is strictly liable for all damages to a child who suffers lead poisoning caused by the owner's failure to comply with Title 22, chapter 252 if the child was under 6 years of age at the time of the lead poisoning. A child is considered lead poisoned upon proof that the child's blood lead level equals or exceeds the blood lead level at which the Department of Health and Human Services by rule defines lead poisoning.

44  
46

**3. Exceptions.** An owner is not liable under subsection 2 if:

48

**A. The premises were constructed in 1978 or later; or**

50

**B. The premises were certified as lead-free or lead-safe within the 12 months previous to the presence of the child**

2 unless, after the lead-free or lead-safe certification, the  
3 owner was negligent in letting a lead hazard develop and in  
4 failing to promptly correct it.

5 Nothing in this subsection may be construed to eliminate,  
6 diminish or restrict an owner's liability other than as specified  
7 in subsection 2.

8 **Sec. 3. 14 MRSA §6030-B is enacted to read:**

9 **§6030-B. Environmental lead hazards**

10 **1. Environmental lead hazard disclosure.** A landlord or  
11 other lessor shall provide to potential tenants and lessees a  
12 property disclosure statement that includes, but is not limited  
13 to, information about the presence or prior removal of lead-based  
14 paint in accordance with Title 22, section 1328.

15 **2. Application.** The landlord or lessor shall provide the  
16 property disclosure statement under subsection 1 when a structure  
17 that is part of the real property was built prior to 1978.

18 **Sec. 4. 22 MRSA §1317-D, sub-§8 is enacted to read:**

19 **8. Blood lead levels; triggers.** The department shall adopt  
20 rules that establish the blood lead levels upon which department  
21 action must be initiated under this chapter. The rules adopted  
22 under this subsection are routine technical rules as defined in  
23 Title 5, chapter 375, subchapter 2-A.

24 **A.** The department shall notify the child's physician if the  
25 child's blood lead level is at 5 or more micrograms per  
26 deciliter.

27 **B.** The department shall require inspection of the dwelling  
28 under section 1321 if the child's blood lead level is 15 or  
29 more micrograms per deciliter.

30 **Sec. 5. 22 MRSA §1320-B is enacted to read:**

31 **§1320-B. Liability for inspection costs**

32 If the department determines after an inspection conducted  
33 under section 1320 or 1320-A that an environmental lead hazard  
34 exists, the owner is responsible for reimbursing the department  
35 for the reasonable costs of inspection.

36 **Sec. 6. 22 MRSA §1328 is enacted to read:**

37 **§1328. Real property disclosure statement forms**

2       1. Sellers of real property. The department shall prepare  
3 a standard real property disclosure statement form for potential  
4 sellers of real property to use to disclose to potential  
5 purchasers information concerning environmental lead hazards, in  
6 or about the real property, to comply with Title 33, section 173,  
7 subsection 4, paragraph B. The statement is in addition to that  
8 required under 42 United States Code, Section 4852d and  
9 implementing regulations.

10  
11       A. The following warning must be included at the top of the  
12 form. The heading and the first and last paragraphs must be  
13 printed in a font that is at least as large as 16-point type  
14 in Times Roman font.

15                   WARNING REGARDING LEAD-BASED PAINT HAZARDS

16  
17       ANY RESIDENCE BUILT BEFORE 1978 MAY CONTAIN LEAD SUFFICIENT  
18 TO POISON CHILDREN AND SOMETIMES ADULTS. LEAD POISONING  
19 POSES A PARTICULAR RISK IF YOU ARE PREGNANT OR MAY BECOME  
20 PREGNANT. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE  
21 PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING  
22 DISABILITIES, A REDUCED INTELLIGENCE QUOTIENT (IQ), IMPAIRED  
23 MEMORY AND BEHAVIORAL PROBLEMS SUCH AS ATTENTION DEFICIT  
24 HYPERACTIVE DISORDER AND A PROPENSITY FOR VIOLENCE.

25  
26       Every purchaser of any interest in residential real property  
27 on which a residential dwelling was built prior to 1978 is  
28 notified that such property may present exposure to lead  
29 from lead-based paint that may place young children at risk  
30 of developing lead poisoning. The seller of any interest in  
31 real property is required to provide the buyer with any  
32 information on lead-based paint hazards from risk  
33 assessments or inspections in the seller's possession and  
34 notify the buyer of any known lead-based paint hazards. A  
35 risk assessment or inspection for possible lead-based paint  
36 hazards is recommended prior to purchase.

37  
38       The owner of property is strictly liable for damages  
39 resulting from the lead poisoning of children under the age  
40 of 6 when the owner has failed to comply with Maine law  
41 relating to environmental lead hazards under the Maine  
42 Revised Statutes, Title 22, chapter 252.

43  
44       THE ONLY WAY TO KNOW WITH CERTAINTY WHETHER LEAD-BASED PAINT  
45 HAZARDS ARE PRESENT ON THE PROPERTY IS TO TEST THE PROPERTY  
46 FOR THE PRESENCE OF LEAD.

47  
48       B. The form must include the seller's disclosure and the  
49 agent's disclosure as required by federal law.  
50

2 C. The form must include the purchaser's acknowledgment as  
4 required by federal law and an acknowledgment that the  
6 purchaser has received the property disclosure statement  
8 required by this section. The form must include the  
10 following statement: "This acknowledgment does not  
12 constitute a waiver of any rights."

14 D. The form must include the certification of accuracy as  
16 required by federal law.

18 2. Landlords and lessors. The department shall prepare a  
20 standard real property disclosure statement form for landlords  
22 and other lessors of real property to use to disclose to  
24 potential tenants and lessees information concerning  
26 environmental lead hazards, in or about the real property, to  
28 comply with Title 14, section 6030-B. The statement is in  
30 addition to that required under 42 United States Code, Section  
32 4852d and implementing regulations.

34 A. The following warning must be included at the top of the  
36 form. The heading and the first and last paragraphs must be  
38 printed in a font that is at least as large as 16-point type  
40 in Times Roman font.

42 WARNING REGARDING LEAD-BASED PAINT HAZARDS

44 ANY RESIDENCE BUILT BEFORE 1978 MAY CONTAIN LEAD SUFFICIENT  
46 TO POISON CHILDREN AND SOMETIMES ADULTS. LEAD POISONING  
48 POSES A PARTICULAR RISK IF YOU ARE PREGNANT OR MAY BECOME  
50 PREGNANT. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE  
PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING  
DISABILITIES, A REDUCED INTELLIGENCE QUOTIENT (IQ), IMPAIRED  
MEMORY AND BEHAVIORAL PROBLEMS SUCH AS ATTENTION DEFICIT  
HYPERACTIVE DISORDER AND A PROPENSITY FOR VIOLENCE.

Every tenant or lessor of any interest in residential real  
property on which a residential dwelling was built prior to  
1978 is notified that such property may present exposure to  
lead from lead-based paint that may place young children at  
risk of developing lead poisoning. The landlord or other  
lessor of any interest in real property is required to  
provide the tenant or lessee with any information on  
lead-based paint hazards from risk assessments or  
inspections in the landlord's or lessor's possession and  
notify the tenant or lessee of any known lead-based paint  
hazards.

The owner of property is strictly liable for damages  
resulting from the lead poisoning of children under the age

2 of 6 when the owner has failed to comply with Maine law  
3 relating to environmental lead hazards under the Maine  
4 Revised Statutes, Title 22, chapter 252.

5 THE ONLY WAY TO KNOW WITH CERTAINTY WHETHER LEAD-BASED PAINT  
6 HAZARDS ARE PRESENT ON THE PROPERTY IS TO TEST THE PROPERTY  
7 FOR THE PRESENCE OF LEAD.

8  
9 B. The form must include the lessor's disclosure and the  
10 agent's disclosure as required by federal law.

11 C. The form must include the lessee's acknowledgment as  
12 required by federal law and an acknowledgment that the  
13 lessee has received the property disclosure statement  
14 required by this section. The form must include the  
15 following statement: "This acknowledgment does not  
16 constitute a waiver of any rights."

17  
18 D. The form must include the certification of accuracy as  
19 required by federal law.

20  
21 3. Downloadable forms. The department shall post and  
22 maintain the forms required by this section on the Internet in a  
23 format that is easily downloadable.

24  
25 **Sec. 7. 33 MRSA §173, sub-§4, ¶B,** as enacted by PL 1999, c.  
26 476, §1, is amended to read:

27  
28 B. Lead-based paint for pre-1978 homes in accordance with  
29 federal regulations and Title 22, section 1328;

30  
31  
32 **SUMMARY**

33  
34 This bill addresses lead poisoning from lead-based paint by  
35 imposing liability on a property owner whose failure to comply  
36 with the Lead Poisoning Control Act results in a child's lead  
37 poisoning. The liability is for all damages to a child under 6  
38 years of age and is modeled on Massachusetts' lead control laws.  
39 The liability does not attach if the dwelling or premises were  
40 constructed in 1978 or later. The owner is also not liable if  
41 the dwelling or premises were certified as lead-free or lead-safe  
42 within the 12 months previous to the presence of the child,  
43 unless the owner was negligent in letting a lead hazard develop  
44 and in failing to promptly correct it.

45  
46 This bill prohibits housing discrimination that occurs  
47 because the property does or may contain an environmental lead  
48 hazard for which liability for the lead poisoning of a child  
49 could be imposed.  
50

2           This bill establishes in statute the minimum blood lead  
4 levels necessary to trigger the graduated department action.  
6 Notification of the child's physician must be made with a test of  
8 5 or more micrograms per deciliter. Inspection of the dwelling  
is required when the blood lead level is 15 or more micrograms  
per deciliter.

10           This bill requires the owner of real property to reimburse  
12 the Department of Health and Human Services for inspection costs  
if an environmental lead hazard exists on the inspected premises.

14           This bill requires the Department of Health and Human  
16 Services to prepare a form that sellers of real property are  
18 required to provide to purchasers, explaining the dangers of lead  
20 exposure. The form is in addition to the form required under  
federal law. It must include specific language about the  
potential consequences of lead poisoning. The department must  
prepare a similar form for landlords and lessors to provide to  
potential tenants and lessees. This bill requires the property  
disclosure statement when the property was built before 1978.