

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2218

H.P. 1584

House of Representatives, February 25, 2008

### **An Act To Protect Children from Hazardous Lead-based Paint**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Speaker CUMMINGS of Portland.  
Cosponsored by Representative WEBSTER of Freeport, Senator MARRACHÉ of Kennebec and Representatives: CAMPBELL of Newfield, KOFFMAN of Bar Harbor, MILLER of Somerville, PERRY of Calais, SAVAGE of Falmouth, Senators: BRANNIGAN of Cumberland, ROTUNDO of Androscoggin, TURNER of Cumberland.

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

2 **PART A**

3 **Sec. A-1. 22 MRSA §1317-C, sub-§2**, as enacted by PL 1991, c. 810, §23, is  
4 amended to read:

5 **2. Data.** At least annually, the department shall analyze and summarize lead-  
6 screening information provided by health care providers, facilities and programs and  
7 provide the information to other state and local agencies involved in lead-poisoning  
8 issues. The information must also be provided to interested parties on request in a format  
9 that is easily understood by the general public. ~~The department may not release any~~  
10 ~~information under this subsection if that information identifies or could lead to the~~  
11 ~~identification of individuals.~~

12 **Sec. A-2. 22 MRSA §1317-C, sub-§3** is enacted to read:

13 **3. Confidentiality.** Unless otherwise authorized by section 42, subsection 5, the  
14 department may not release any information described in subsection 2 regarding the  
15 screening of children for lead poisoning or the source of any lead exposure if that  
16 information identifies children, families or other persons, directly or indirectly. The  
17 department may disclose information that relates to the address of a residential unit in  
18 which an environmental lead hazard or case of lead poisoning has been identified if the  
19 disclosure contains only the information necessary to advance the public health and does  
20 not directly identify an individual.

21 **Sec. A-3. 22 MRSA §1322-E, sub-§3, ¶E**, as enacted by PL 2005, c. 403, §1, is  
22 amended to read:

23 E. Funding an assessment of current uses of lead and the availability, effectiveness  
24 and affordability of lead-free alternatives; ~~and~~

25 **Sec. A-4. 22 MRSA §1322-E, sub-§3, ¶F**, as enacted by PL 2005, c. 403, §1, is  
26 amended to read:

27 F. Funding for educational programs and information for owners of rental property  
28 used for residential purposes; ~~and~~

29 **Sec. A-5. 22 MRSA §1322-E, sub-§3, ¶G** is enacted to read:

30 G. Implementation of the lead-safe housing and the lead-safe renovation notification,  
31 inspection and enforcement programs administered by the Department of  
32 Environmental Protection pursuant to Title 38, chapter 12-B and achieving the goal  
33 of elimination of childhood lead poisoning risks in the State.

34 **Sec. A-6. 22 MRSA §1322-F, sub-§4**, as enacted by PL 2005, c. 403, §1, is  
35 amended to read:

36 **4. Contingent repeal.** This section is repealed July 1, 2011 when the Commissioner  
37 of Health and Human Services certifies that a period of 24 months has elapsed since the

1 Department of Health and Human Services identified a child with an elevated blood lead  
2 level through screening by health care providers under section 1317-C. The  
3 Commissioner of Health and Human Services shall provide notice to the Secretary of the  
4 Senate, the Clerk of the House of Representatives and the Office of the Revisor of the  
5 Statutes when this condition has been met. For purposes of this subsection, "elevated  
6 blood lead level" means a confirmed level of blood lead of 10 micrograms per deciliter or  
7 a level of blood lead defined by the federal Department of Health and Human Services,  
8 Centers for Disease Control and Prevention, whichever is lower.

9 **Sec. A-7. 22 MRSA §1329** is enacted to read:

10 **§1329. Lead poisoning warning statement**

11 **1. Display of poster; availability of brochure.** A retailer, store or commercial  
12 establishment that offers paint or other supplies intended for the removal of paint shall  
13 display a poster in a prominent and easily visible location and make available to its  
14 customers brochures containing statements that the dry sanding or scraping of paint in  
15 dwellings built before 1978 is dangerous and that the improper removal of old paint is a  
16 significant source of lead dust and the primary cause of lead poisoning. The poster and  
17 brochure must also inform consumers about where they may obtain more information on  
18 lead poisoning and paint removal.

19 **2. Posters and brochures.** The Department of Environmental Protection shall  
20 produce posters and brochures to meet the requirements of subsection 1 and shall provide  
21 paper copies of the posters and brochures to retailers, stores and commercial  
22 establishments and post copies for downloading on the department's website. A retailer,  
23 store or commercial establishment may display posters and provide brochures that differ  
24 from those provided by the Department of Environmental Protection if the posters and  
25 brochures provide the information required under subsection 1.

26 **PART B**

27 **Sec. B-1. 38 MRSA §1291, sub-§9-A** is enacted to read:

28 **9-A. Exterior surface.** "Exterior surface" means:

29 A. Any surface of a fence or porch that is part of real property that is or contains a  
30 residential dwelling; and

31 B. A painted surface that is:

32 (1) Located in a stairway, hallway, entrance area, recreation area, laundry area or  
33 garage within a multifamily dwelling that is common to individual dwelling  
34 units, one or more of which constitutes a residential dwelling; or

35 (2) The outside surface of a building appurtenant to a residential dwelling, such  
36 as a garage or shed.

37 **Sec. B-2. 38 MRSA §1291, sub-§19-A** is enacted to read:

1        **19-A. Lead-safe.** "Lead-safe" means premises do not contain lead at a level or in a  
2 condition that constitutes an environmental hazard, according to rules adopted pursuant to  
3 section 1298.

4        **Sec. B-3. 38 MRSA §1291, sub-§23-A** is enacted to read:

5        **23-A. Property owner.** "Property owner" means a person, firm, corporation,  
6 guardian, conservator, trustee, executor, legal representative or registered agent who  
7 alone or jointly and severally with others owns, holds or controls the whole or any part of  
8 the freehold or leasehold interest to any property, with or without actual possession.

9        **Sec. B-4. 38 MRSA §1291, sub-§26-A** is enacted to read:

10       **26-A. Residential dwelling.** "Residential dwelling" means a room or group of  
11 rooms that form a single independent habitable unit for permanent occupation by one or  
12 more individuals that has facilities with permanent provisions for living, sleeping, eating,  
13 cooking and sanitation, including common areas and appurtenant structures. "Residential  
14 dwelling" does not include:

15       A. An area not used for living, sleeping, eating, cooking or sanitation, such as an  
16 unfinished basement, that is not readily accessible to children under 6 years of age;

17       B. A unit within a hotel, motel or seasonal or temporary lodging facility unless the  
18 unit is occupied by one or more children under 6 years of age for a period exceeding  
19 30 days;

20       C. An area that is secured and inaccessible to occupants;

21       D. A unit that is not offered for occupation, either for rent or as an incident to  
22 employment;

23       E. Housing for the elderly, or a dwelling unit designated exclusively for adults with  
24 disabilities. This exemption does not apply if a child under 6 years of age resides or  
25 is expected to reside in the dwelling unit or visit the dwelling unit on a regular basis;  
26 or

27       F. An unoccupied dwelling unit that is to be demolished, as long as the dwelling unit  
28 remains unoccupied until demolition.

29       **Sec. B-5. 38 MRSA §1292, sub-§3,** as enacted by PL 1997, c. 375, §14, is  
30 amended to read:

31       **3. Notification required.** A person may not engage in any residential lead  
32 abatement activity, or in any renovation and remodeling activity identified by the  
33 department as an activity likely to cause lead hazards in a residential dwelling built before  
34 1978, unless that person notifies the commissioner in writing at least 5 working days  
35 before beginning any on-site work, including on-site preparation work, that has the  
36 potential to create lead dust. After the effective date of rules adopted by the department  
37 pursuant to section 1295 for notification of lead abatement activities in public buildings,  
38 commercial buildings and superstructures, a person may not engage in those lead  
39 abatement activities unless the person notifies the commissioner in writing at least 5

1 working days before beginning any on-site work, including on-site preparation work, that  
2 has the potential to create lead dust.

3 **Sec. B-6. 38 MRSA §1292, sub-§4**, as enacted by PL 1997, c. 375, §14, is  
4 amended to read:

5 **4. Work practices.** All residential lead-based paint activities and renovation and  
6 remodeling activities identified by the department as activities likely to cause lead  
7 hazards in residential dwellings built before 1978 must be conducted in accordance with  
8 work practice standards adopted by rule pursuant to this chapter. After the effective date  
9 of rules adopted by the department pursuant to section 1295 for work practices pertaining  
10 to lead-based paint activities in public buildings, commercial buildings and  
11 superstructures, those lead-based paint activities must be conducted in accordance with  
12 the applicable work practice standards adopted by rule.

13 **Sec. B-7. 38 MRSA §1292, sub-§5**, as amended by PL 1997, c. 624, §14 and PL  
14 2003, c. 689, Pt. B, §6, is further amended to read:

15 **5. Exemption.** A person who is 18 years of age or older need not obtain licensing  
16 and certification to perform lead abatement activities within a residential dwelling unit  
17 that the person owns and personally occupies, as long as a child residing in the dwelling  
18 unit has not been identified as lead-poisoned. A person 18 years of age or older who  
19 owns and personally occupies a dwelling unit in which a resident child has been  
20 identified as lead-poisoned need not obtain licensing and certification to perform  
21 abatement activities within that dwelling unit, as long as the person completes any  
22 training required by the Department of Health and Human Services. A person 18 years of  
23 age or older who owns and personally occupies a residential dwelling and who engages in  
24 renovation or remodeling activities is exempt from the notification and work practice  
25 requirements of this section.

26 **Sec. B-8. 38 MRSA §1298** is enacted to read:

27 **§1298. Lead-safe leased residential dwellings**

28 **1. Reasonable precautions required.** A property owner shall take reasonable  
29 precautions to ensure each residential dwelling offered for lease is maintained free of  
30 lead-based paint hazards. A violation of this subsection is a breach of the implied  
31 warranty of habitability.

32 **2. Annual self-inspection by the property owner.** The department shall maintain a  
33 registry of residential dwellings built before 1978 that are lead-safe pursuant to standards  
34 established by rule according to subsection 3.

35 **3. Lead-safe residential property.** A leased residential dwelling is considered to be  
36 lead-safe for the purposes of this chapter if the property owner has submitted to the  
37 department an application for the property to be placed on the registry created pursuant to  
38 subsection 2, together with a report by a lead inspector that indicates that the residential  
39 dwelling has been tested for the presence of lead-based paint and lead-contaminated dust  
40 and that the dwelling meets the requirements for certification as lead-safe in accordance

1 with the standards and procedures established by rules adopted by the commissioner. The  
2 application must be sworn to and signed by the property owner.

3 A. The rules, which are designated as routine technical rules as defined in Title 5,  
4 chapter 375, subchapter 2-A, must establish standards defining lead-safe.

5 B. The property owner shall retain a copy of the inspection report that indicates that  
6 the property meets the requirements of lead-safe status for a period of 5 years and  
7 shall provide a copy of the report to the commissioner upon request.

8 C. In order to maintain lead-safe status for the purposes of inclusion on the registry,  
9 the property owner of a leased residential dwelling with lead-based paint on any  
10 exterior surface that is considered to be lead-safe pursuant to this section shall  
11 annually conduct an investigation of the property and swear to and sign a statement  
12 that no painted exterior surface of the residential dwelling is chipping, peeling or  
13 flaking and that there has been no compromise of any interior abatement system that  
14 relies upon the enclosure or encapsulation of lead-based paint. A copy of the sworn  
15 statement must be retained by the property owner, made available for inspection by  
16 the commissioner and provided to the residential tenant.

17 **PART C**

18 **Sec. C-1. Review and report.** The Department of Environmental Protection, the  
19 Maine State Housing Authority and the Department of Health and Human Services,  
20 Maine Center for Disease Control and Prevention, jointly referred to in this section as  
21 "the agencies," shall review issues related to achieving housing safe from lead hazards  
22 and the elimination of childhood lead poisoning. These issues must include, but are not  
23 limited to, resources and incentives to promote housing that is lead-safe, as defined in the  
24 Maine Revised Statutes, Title 38, section 1291, subsection 19-A, including the lead  
25 poisoning prevention fee established in Title 22, section 1322-F. The agencies shall also  
26 review the establishment of a requirement to ensure that every leased residential dwelling  
27 is maintained free of lead-based paint hazards, including routine maintenance and owner  
28 self-inspection requirements. The agencies shall also review ways to fully implement and  
29 enforce lead poisoning prevention programs established by statute and make  
30 recommendations to eliminate lead paint and lead poisoning risks in the State. By  
31 January 1, 2009, the agencies shall submit a report to the joint standing committees of the  
32 Legislature having jurisdiction over health and human services matters and natural  
33 resources matters on the results of the review and recommendations, including proposed  
34 legislation to achieve housing safe from lead hazards and lead poisoning prevention.

35 **SUMMARY**

36 This bill protects children from hazardous lead-based paint.

37 1. The bill authorizes use of the Lead Poisoning Prevention Fund for lead-safe  
38 housing and lead-safe renovation notification, inspection and enforcement.

39 2. The bill amends the provision of law that repeals the lead poisoning prevention fee  
40 on July 1, 2011.

1           3. The bill requires certain paint retailers, stores and commercial establishments to  
2 display posters and make brochures available to consumers warning of lead hazards.

3           4. The bill clarifies the activities covered by the requirements for residential lead  
4 abatement.

5           5. The bill provides a mechanism for the Department of Environmental Protection to  
6 maintain a registry of lead-safe pre-1978 residential dwellings.

7           6. The bill requires owners of leased residential dwellings to take reasonable  
8 precautions to ensure that the dwellings are free of lead-based paint hazards.

9           7. The bill provides confidentiality protections for certain lead poisoning and lead  
10 exposure information.

11           8. The bill requires the Department of Environmental Protection, the Maine State  
12 Housing Authority and the Department of Health and Human Services, Maine Center for  
13 Disease Control and Prevention to review issues related to achieving lead-safe housing  
14 and the elimination of childhood lead poisoning and to report to the joint standing  
15 committees of the Legislature having jurisdiction over health and human services matters  
16 and natural resources matters on the results of the review and recommendations,  
17 including proposed legislation to achieve lead-safe housing and lead poisoning  
18 prevention.