

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 electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

CHAPTER 276

S.P. 727 - L.D. 2047

An Act to Amend the Lead Poisoning Control Act**Be it enacted by the People of the State of Maine as follows:****Sec. 1. 22 MRSA §1315, sub-§1-C** is enacted to read:

1-C. Child-occupied facility. "Child-occupied facility" means a building or portion of a building visited regularly for the purpose of child care by the same child, 6 years of age or under, on at least 2 days within any week if each day's visit lasts at least 3 hours, the combined weekly visit lasts at least 6 hours and the combined annual visit lasts at least 60 hours.

Sec. 2. 22 MRSA §1315, sub-§3-A, as amended by PL 1995, c. 453, §2, is further 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 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 any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

Sec. 3. 22 MRSA §1315, sub-§§3-B and 3-C, as enacted by PL 1991, c. 810, §5, are amended to read:

3-B. Environmental lead inspection. "Environmental lead inspection" means an assessment performed by a lead inspector to identify lead based substances a lead inspection as defined in rules of the Department of Environmental Protection in chapter 424, "Lead Management Regulations."

3-C. Environmental lead investigation. "Environmental lead investigation" means a detailed and extensive investigation to determine the potential cause of a confirmed case of lead poisoning in a child.

Sec. 4. 22 MRSA §1315, sub-§6-B, as amended by PL 1997, c. 494, §3 and affected by §15, is repealed.

Sec. 5. 22 MRSA §1315, sub-§6-C, as enacted by PL 1995, c. 453, §6, is repealed.

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

6-D. Single-family residence. "Single-family residence" means a dwelling consisting of only one dwelling unit.

Sec. 7. 22 MRSA §1317-A, sub-§2, as enacted by PL 1991, c. 810, §21, is amended to read:

2. Inspections. Comprehensive environmental lead inspections and technical assistance and advice regarding the appropriate reduction of environmental lead hazards to families with children who have ~~lead poisoning~~ elevated levels of lead in their blood. By July 1, 1993, the department shall adopt rules defining lead poisoning and establishing priorities for inspections and technical assistance based on the degree of lead poisoning; and

Sec. 8. 22 MRSA §1319, as amended by PL 1991, c. 810, §25, is repealed.

Sec. 9. 22 MRSA §1319-B, as repealed and replaced by PL 1995, c. 453, §9, is repealed.

Sec. 10. 22 MRSA §1319-C is enacted to read:

§1319-C. Screening for potential lead hazards

1. Annual screening required. The department shall require a day care center as defined in chapter 1673 and a nursery school as defined in chapter 1675 to have an annual screening for potential lead hazards.

2. Exemptions. A facility may be exempt if:

A. The facility was constructed in 1978 or later;

B. The facility has been certified as lead-safe within the previous 12 months;

C. The facility has been certified as lead-free; or

D. The facility does not serve any children under 6 years of age.

3. Approval dependent on compliance. As of July 1, 1998, a day care center or nursery school may not be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

Sec. 11. 22 MRSA §1320, as amended by PL 1991, c. 810, §27, is further amended to read:

§1320. Inspection of dwelling units and child-occupied facilities by department

Any authorized representative of the department, upon presenting the appropriate credentials to the owner ~~and~~ or occupant, or ~~their representatives a representative of either~~, may inspect any dwelling unit or child-occupied facility at reasonable times for the purpose of ascertaining the presence of lead-based substances, and may remove samples or objects necessary for laboratory analysis. Inspections may be made only when there are reasonable grounds to suspect that there are lead-based substances in or upon the exposed surfaces of any dwelling unit or child-occupied facility, or upon the request of either the owner or the occupant with whom children reside, or when a case of lead poisoning has been reported.

Sec. 12. 22 MRSA §1320-A, as amended by PL 1981, c. 470, Pt. A, §64, is further amended to read:

§1320-A. Inspection of dwellings by department

~~The~~ Except in the case of an owner-occupied, single-family residence, the department shall within 30 days inspect all dwelling units in a dwelling when:

1. Lead poisoning found. A case of lead poisoning has been found in any dwelling unit within the dwelling; or

2. Lead-based substances. ~~Lead-base~~ Lead-based substances have been found in any dwelling unit within the dwelling.

The department may, at its discretion, inspect an owner-occupied single-family residence whenever a lead-poisoned child has been identified as residing in or receiving care in that residence.

Sec. 13. 22 MRSA §1321, sub-§§1, 3 and 4, as amended by PL 1995, c. 453, §11, are further amended to read:

1. Notice posted. The department shall post in or upon the dwelling, premises, ~~residential child care facility or preschool facility~~ day care center or nursery school, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

3. Notice to owner; removal. The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. ~~The department shall adopt rules for removal, replacement or covering of the lead-based substance.~~ If the lead-based substances can not be removed,

replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time. All lead-based paint activities must be performed in accordance with rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 12-B. In the case of an owner-occupied, single-family residence, the department may provide technical assistance and guidance in lieu of enforcement activity at the department's discretion;

4. Sale of dwelling, residential facility, day care center or nursery school. If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, ~~residential child care facility or preschool facility~~ day care center or nursery school, the owner ~~must~~ shall notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period; and

Sec. 14. 22 MRSA §1321, sub-§6, as amended by PL 1997, c. 375, §§6 and 7, is repealed.

Sec. 15. 22 MRSA §1322, as amended by PL 1995, c. 453, §13, is further amended to read:

§1322. Child occupants

A person may not knowingly rent a dwelling that has been posted and ordered cleared of harmful lead-based substances in accordance with section 1321 ~~to be occupied by children~~. In circumstances where the presence of lead-based paint or building materials is unsuspected and becomes known when the dwelling is already rented to a family with children, the family of the children may not be evicted for that reason and the owner and occupant of the dwelling must be given written notice by the department advising of the existence of lead-based substances in the dwelling and ordering that within 30 days the lead-based substances be removed, replaced or securely and permanently covered.

If the owner decides to bring any residential dwelling or premises into compliance with this Act while a tenant is occupying a dwelling unit, the owner ~~may~~ shall move the tenant to a substitute dwelling unit upon reasonable notice ~~as long as the~~. The owner pays shall pay reasonable moving expenses and any use and occupancy charges for a substitute dwelling unit that exceed the rent for the vacated dwelling unit for which the tenant remains responsible. "Substitute dwelling unit" means a dwelling unit of like or similar accommodation and in like or similar location that is lead-safe. If the tenant fails to accept the substitute dwelling unit selected by the owner while the owner is required to bring the vacated dwelling unit into compliance with this Act or the tenant fails to remain current in rent pursuant to the lease or tenancy at will under Title 14, section 6002, including the statutory

period of right to cure, the owner is not obligated beyond 10 days after completion of remediation to reimburse the tenant for any expense or inconvenience other than moving expenses and any use and occupancy charges for the substitute dwelling unit selected by the owner that exceed the rent for the vacated dwelling unit.

Sec. 16. 22 MRSA §1322-D, as enacted by PL 1991, c. 810, §30, is repealed.

Sec. 17. 22 MRSA §1325, as amended by PL 1991, c. 810, §33, is further amended to read:

§1325. Violation

In addition to any other penalty imposed under this chapter, any person who violates any section of this chapter may be punished for each violation by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both. Violations existing within individual dwelling units are considered separate violations. This section does not limit the authority of the Department of Environmental Protection to seek penalties for violations under the authority of Title 38, section 349.

Sec. 18. 22 MRSA §1327, as enacted by PL 1995, c. 453, §19, is amended to read:

§1327. Essential maintenance practices

Notwithstanding any other provision of law, an owner of a building constructed prior to 1978 that is rented for residential purposes or used as a ~~residential child care facility or a preschool facility~~ may perform essential maintenance practices ~~if the owner, as defined under rules of the Department of Environmental Protection, chapter 424, "Lead Management Regulations."~~

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

A. ~~A prohibition against paint removal by burning, water blasting, dry scraping, power sanding or sandblasting, unless undertaken with proper containment, cleanup and disposal;~~

B. ~~A description of good work practices and precautions to prevent the spread of lead dust, including limiting access to work areas to workers, covering the work area with appropriate protective covering, protecting workers, protect-~~

~~ing 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.~~

See title page for effective date.

CHAPTER 277

S.P. 319 - L.D. 953

An Act to Reclassify Certain Waters of the State

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