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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Representative Joseph A. Trillo

Date Introduced: February 16, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-24.6-17 of the General Laws in Chapter 23-24.6 entitled "Lead
2 Poisoning Prevention Act" is hereby amended to read as follows:

3 **23-24.6-17. Lead hazard reduction. [Effective until July 1, 2008.]** -- (a) The director
4 shall promulgate lead hazard reduction regulations. These regulations shall:

5 (1) Specify the circumstances under which owners of dwellings, dwelling units, or
6 premises must undertake lead hazard reduction in order to remedy conditions that present a clear
7 and significant health risk to occupants of the dwelling, dwelling unit, or premises;

8 (2) Define lead hazard reduction with respect to both the sources of lead that must be
9 treated and acceptable and unacceptable treatment methods;

10 (3) Require owners to make all reasonable efforts to ensure that occupants are not
11 present during the lead hazard reduction; variances may be granted according to regulations;
12 provided, that the owners are not responsible for providing alternative housing. If the occupants
13 refuse to vacate the premises after all reasonable efforts by the owner to ensure compliance
14 within this section, then the owners are exempt from any liability arising out of the occupants'
15 noncompliance. If the occupants are required to vacate the premises for a three (3) day period or
16 longer, there shall be a pro-rata adjustment or abatement of the rent during the period of lead
17 hazard reduction;

18 (4) Specify containment and clean up measures to be taken as part of lead hazard
19 reduction activities;

1 (5) Contain measures to protect the occupational safety and health of lead inspectors,
2 contractors, supervisors, workers, and other persons who perform lead hazard reduction which
3 may be more, but not less, stringent than applicable federal standards; and

4 (6) Specify the circumstances under which owners of dwellings, dwelling units, or
5 premises must undertake lead hazard reduction to at least the lead safe level of protect occupants
6 and neighbors.

7 (b) ~~(4)~~ Until November 1, 2005, the liability as to lead poisoning of the owner of any
8 dwelling, dwelling unit, or premises for any action, inaction or negligence with respect to
9 childhood ~~shall be considered as an "innocent owner", and liability as to~~ lead poisoning is limited
10 to the reduction of any lead hazard as determined by a comprehensive environmental lead
11 inspection within the requirements of the Housing Maintenance and Occupancy Code, chapter
12 24.3 of title 45. The ~~"innocent owner" provision will cease upon~~ limit on liability will not apply
13 to willful or wanton conduct resulting in lead poisoning, such, conduct shall include the owner's
14 unreasonable failure to correct any lead paint violation within ninety (90) days of notice as
15 provided in that chapter. Provided, any owner who has received notices on three (3) or more
16 properties shall be presumed to be an unreasonable failure to correct.

17 ~~(2) "Innocent owner" status, and the limits on liability set forth in this subsection, shall~~
18 ~~not apply to any incident of childhood lead poisoning reported to the department on or after~~
19 ~~November 1, 2005, and liability for lead poisonings after November 1, 2005, but shall include~~
20 ~~such correction of lead hazards as may be required by this chapter.~~

21 (c) The owner of any dwelling, dwelling unit, or premises who fails to provide for lead
22 hazard reduction as required by department regulations shall be issued a notice of violation by the
23 director in the manner provided by the Housing Maintenance and Occupancy Code, chapter 24.3
24 of title 45. In addition to any other enforcement authority granted under this chapter, the
25 department shall have the authority to utilize pertinent provisions of that code in enforcing this
26 section in the same manner as an enforcing officer under the code, including but not limited to the
27 provisions of sections 45-24.3-17 -- 45-24.3-21, except that the director or his or her designee
28 may provide a reasonable time up to ninety (90) days for the correction of any violation alleged
29 and, except where there exists a hardship as to financing the lead hazard reduction, or where
30 material, personnel, or weather delays the reduction completion. Except as herein provided, if
31 after ninety (90) days following the date of issuance of a notice of violation by the department,
32 the owner has failed to correct the lead hazards, the department shall issue a second notice of
33 violation.

34 (d) (1) One or more lead paint waste depositories shall be established and be in operation

1 by January 1, 1993. The department of environmental management shall work with the solid
2 waste management corporation to promulgate regulations governing these lead paint waste
3 depositories.

4 (2) Each lead paint waste depository may set fees to cover the costs of lead paint waste
5 storage, reduction, consolidation, incineration, and/or out of state disposal.

6 SECTION 2. Sections 42-128.1-4 and 42-128.1-8 of the General Laws in Chapter 42-
7 128.1 entitled "Lead Hazard Mitigation [Repealed effective July 1, 2008.]" are hereby amended
8 to read as follows:

9 **42-128.1-4. Definitions. [Repealed effective July 1, 2008.]** -- The following definitions
10 shall apply in the interpretation and enforcement of this chapter:

11 (1) "At-risk occupant" means a person under six (6) years of age, or a pregnant woman,
12 who has been a legal inhabitant in a dwelling unit for at least thirty (30) days; provided, however,
13 that a guest of any age shall not be considered an occupant for the purposes of this chapter.

14 (2) "Designated person" means either: (i) a property owner, or the agent of the property
15 owner, who has completed a housing resources commission approved awareness seminar on lead
16 hazards and their control; or (ii) a person trained and certified as either a lead hazard mitigation
17 inspector, an environmental lead inspector, or a lead hazard inspection technician.

18 (3) "Dwelling" or "dwelling unit" means an enclosed space used for living and sleeping
19 by human occupants as a place of residence, including, but not limited to, a house, an apartment,
20 or condominium, but for the purpose of this chapter shall not include, hotels or "temporary
21 housing".

22 (4) "Lead abated" means a dwelling and premises which are lead free or lead safe, as
23 those terms are defined in chapter 24.6 of title 23.

24 (5) "Lead Free" means that a dwelling, dwelling unit, or premises contains no lead or
25 contains lead in amounts less than the maximum acceptable environmental lead levels established
26 by regulation by the Rhode Island department of health.

27 (6) "Lead hazard mitigation standards" means standards adopted by the housing
28 resources commission for a dwelling unit and associated common areas that provide for:

29 (i) A continuing and ongoing responsibility for lead hazard control that includes: (A)
30 repair of deteriorated paint; (B) correction of dust generating conditions such as friction or impact
31 areas; (C) provision of cleanable surfaces to eliminate harmful dust loading; (D) correction of soil
32 lead hazards; (E) safe work practices;

33 (ii) At unit turnover: (A) the provision of information on lead hazards and their
34 avoidance and control to tenants; (B) documentation of lead hazard mitigation compliance; (C) an

1 explicit process for notification by tenants to property owners of instances of deterioration in
2 conditions effecting lead hazards; and

3 (iii) Maintenance of "lead hazard control." "Lead hazard control" means those portions
4 of the lead hazard mitigation standard pertaining to repair of deteriorating paint, correction of
5 dust generating conditions, provision of cleanable surfaces, and correction of soil lead hazards
6 that can be identified by visual inspection as provided for in paragraph (5)(ii) of this section or
7 through inspections conducted in accordance with chapter 24.2 of title 45, Minimum Housing,
8 and chapter 24.3 of title 45, Housing Maintenance and Occupancy.

9 (7) "Lead hazard mitigation compliance" means an independent clearance inspection and
10 certificate, as specified in this subdivision, undertaken to determine whether the lead hazard
11 mitigation measures have been completed. Said inspection shall be valid for two (2) years or until
12 the next turnover of the dwelling unit, whichever period is longer. The requirements for a
13 clearance review inspection shall be met either by an independent clearance inspection or a visual
14 inspection as set forth in this subdivision:

15 (i) An "independent clearance inspection" means an inspection performed by a person
16 who is not the property owner or an employee of the property owner and who is authorized by the
17 housing resources commission to conduct independent clearance inspections, which shall include:
18 (A) a visual inspection to determine that the lead hazard controls have been met, and (B) dust
19 testing in accordance with rules established by the department of health and consistent with
20 federal standards. A certificate of conformance shall be issued by the person who conducted the
21 inspection on the passage of the visual inspection and the required dust testing. An independent
22 clearance inspection shall be required at unit turn over or once in a twenty-four (24) month
23 period, whichever period is the longer. If the tenancy of an occupant is two (2) years or greater,
24 the certificate of conformance shall be maintained by a visual inspection as set forth in paragraph
25 (ii) of this subdivision.

26 (ii) A "visual inspection" means a visual inspection by a property owner or designated
27 person to determine that the lead hazard controls have been met. If the designated person
28 concluded that the lead hazard controls specified in this chapter have been met, the designated
29 person may complete an Affidavit of Completion of Visual Inspection. The affidavit shall be
30 valid upon its being notarized within thirty (30) days after the completion of the visual inspection
31 and shall set forth:

32 (A) The date and location that the designated person took the lead hazard control
33 awareness seminar;

34 (B) The date and findings of the lead hazard evaluation;

- 1 (C) The date and description of the lead hazard control measures undertaken;
- 2 (D) The date of the visual inspection; and
- 3 (E) The name and signature of the designated person and date of the Affidavit of
- 4 Completion of Visual Inspection.

5 An Affidavit of Completion of Visual Inspection shall be valid for two (2) years after the
6 date it was notarized or until unit turn over, whichever time period is the longer, and shall be kept
7 by the property owner for a minimum of five (5) years.

8 (iii) Presumptive Compliance. - A property owner of ten (10) or more dwelling units
9 shall be eligible to obtain a certificate of presumptive compliance from the housing resources
10 commission provided that the following conditions are met: ~~(A) the dwelling units were~~
11 ~~constructed after 1960;~~ ~~(B)~~(A) there are no major outstanding minimum housing violations on the
12 premises, ~~(C)~~(B) the property owner has no history of repeated lead poisonings, and ~~(D)~~(C)
13 independent clearance inspections have been conducted on at least five (5) percent of the
14 dwelling units, not less than two (2) dwelling units and at least ninety (90) percent of the
15 independent clearance inspections were passed. Repeated lead poisoning for purposes of this
16 paragraph shall mean a lead poisoning rate of less than one half (.5) percent per dwelling unit
17 year, with dwelling unit years being calculated by multiplying the number of dwelling units
18 owned by the property owner by the number of years of ownership since 1992. Major minimum
19 housing violations shall be defined by rule by the housing resources commission. The housing
20 resources commission shall not arbitrarily withhold its approval of applications for presumptive
21 compliance. A certificate of presumptive compliance shall be deemed to be satisfactory for
22 purposes of demonstrating compliance with the requirements of this chapter. If a unit qualifies for
23 a presumptive compliance certificate, by itself having passed an independent clearance inspection
24 at least once, that units' compliance may be maintained by a visual inspection as set forth in this
25 chapter.

26 (8) "Lead hazard mitigation inspector" means either a person approved by housing
27 resources commission to perform independent clearance inspections under this chapter or
28 inspections required by 24 CFR 35 Subpart M, or approved by the department of health to
29 conduct inspections pursuant to chapter 24.6 of title 23.

30 Lead hazard mitigation inspectors performing independent clearance inspections shall
31 not have any interest, financial or otherwise, direct or indirect, or engage in any business or
32 employment with regards to:

- 33 (a) The dwelling unit that is the subject of an independent clearance inspection; or
- 34 (b) The contractor performing lead hazard control work in the dwelling unit; or

1 (c) The laboratory that is used to analyze environmental lead samples for the
2 independent clearance inspection unless the lead hazard mitigation inspector discloses his/her
3 relationship with the laboratory to the person requesting the inspection and on the inspection
4 report.

5 Employees of public agencies and quasi-public agencies that hold a financial interest in
6 the property may perform independent clearance inspections.

7 (9) "Lead poisoned" means a confirmed venous blood lead level established by the
8 department of health pursuant to section 23-24.6-4(1).

9 (10) "Lead Safe" means that a dwelling, dwelling unit, or premises has undergone
10 sufficient lead hazard reduction to ensure that no significant environment lead hazard is present
11 and includes, but is not limited to, covering and encapsulation and is evidenced by a lead safe
12 certificate issued by the department of health.

13 (11) "Property owner" means any person who, alone or jointly or severally with others:

14 (i) Shall have legal title to any dwelling, dwelling unit, or structure with or without
15 accompanying actual possession of it; or

16 (ii) Shall have charge, care, or control of any dwelling, dwelling unit, or structure as
17 owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the
18 owner. Any person representing the actual owner shall be bound to comply with the provisions of
19 this chapter, and of rules and regulations adopted pursuant to this chapter, to the same extent as if
20 that person were the owner.

21 (iii) Notwithstanding the foregoing, no holder of a mortgage or other lien holder who, in
22 enforcing a security interest, acquires title by foreclosure or deed in lieu of foreclosure shall be
23 considered a property owner for purposes of this chapter, if the holder transfers the title within
24 one year after the date the title is acquired; provided, however, if the mortgagee or lien holder,
25 subsequent to acquiring title, is notified of a lead hazard under chapter 24.6 of title 23 or section
26 42-128.1-8(a)(5), then and in that event, the mortgagee or lien holder shall take any steps to
27 reduce the lead hazard that shall be required under the provisions of chapter 24.6 of title 23 or this
28 chapter, as applicable.

29 (12) "Temporary housing" means any seasonal place of residence that is rented for no
30 more than one hundred (100) days per calendar year to the same tenant, where no lease renewal
31 or extension can occur, and any emergency shelter intended for night to night accommodation.

32 (13) "Tenant turnover" means the time at which all existing occupants vacate a unit and
33 all new occupants move into the unit.

34 (14) "Environmental lead poisoning level" means a confirmed venous blood lead level as

1 defined pursuant to section 23-24.6-4.

2 (15) "Elderly housing" means a federal, state or local program that is specifically
3 designed and operated to assist elderly persons, sixty-two (62) years of age, or older, as set forth
4 in a regulatory agreement or zoning ordinance.

5 **42-128.1-8. Duties of property owners of pre-1978 rental dwellings. [Repealed**
6 **effective July 1, 2008.]** -- (a) Property owners of pre-1978 rental dwellings, which have not been

7 made lead safe or have not been lead hazard abated shall comply with all the following
8 requirements:

9 (1) Learn about lead hazards by taking a lead hazard awareness seminar, himself or
10 herself or through a designated person;

11 (2) Evaluate the dwelling unit and premises for lead hazards consistent with the
12 requirements for a lead hazard control evaluation;

13 (3) Correct identified lead hazards by meeting and maintaining the lead hazard
14 mitigation standard;

15 (4) Provide tenants: (i) basic information about lead hazard control; (ii) a copy of the
16 independent clearance inspection; and (iii) information about how to give notice of deteriorating
17 conditions;

18 (5) Correct lead hazards within thirty (30) days after notification from the tenant of a
19 dwelling unit with an at risk occupant, or as provided for by section 34-18-22.

20 (b) New property owners of a pre-1978 rental dwelling that is occupied by an at risk
21 occupant shall have up to sixty (60) days to meet requirements for lead hazard mitigation, if those
22 requirements were not met by the previous owner at the time of transfer, provided that the new
23 property owner has the property visually inspected within thirty (30) business days after assuming
24 ownership to determine conformity with the lead hazard control standard.

25 (c) The requirements for lead hazard mitigation shall apply to the first change in
26 ownership or tenancy after November 1, 2005; provided further that unless requested and agreed
27 to by an at-risk occupant, meeting the lead hazard mitigation standard shall not be construed to
28 authorize a property owner to compel or cause a person, who is in tenancy on January 1, 2004,
29 and remains in tenancy continuously thereafter, to vacate a rental unit temporarily or otherwise.

30 (d) If the tenant receives no response to the notification to the property owner of
31 deteriorating conditions affecting lead hazards, if the response is in the tenant's opinion
32 unsatisfactory, or if the remedy performed is in the tenant's opinion unsatisfactory, the tenant may
33 request a review of the matter by the housing resources commission. After its review of the
34 matter, the housing resources commission shall either send notice to the property owner in which

1 notice shall be issued in a manner substantially similar to a notice of violation issued by the
2 director pursuant to the Housing Maintenance Code, chapter 24.3 of title 45, or promptly inform
3 the tenant of the reasons why the notice is not being issued.

4 (e) Notwithstanding the foregoing, the provisions of this chapter shall not apply to
5 common areas in condominium complexes that are owned and operated by condominium
6 associations, or to pre-1978 rental dwelling units that are:

7 (1) Lead-safe or lead free; or

8 (2) Temporary housing; or

9 (3) Elderly housing; or

10 (4) Comprised of ~~two (2) or three (3) units, one of which is occupied by the property~~
11 ~~owner; or~~ no more than nine (9) total units.

12 The department of health shall report to the legislature annually on the number of
13 children who are lead poisoned in any of the exempted dwelling units as referred to in subdivision
14 (e)(4) of this section.

15 Nothing contained herein shall be construed to prevent an owner who is seeking to
16 obtain lead liability insurance coverage in the policy from complying with the provisions of this
17 chapter, by securing and maintaining a valid and in force letter of compliance or conformance in
18 force.

19 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY

- 1 This act would limit the liability of property owners with respect to lead poisoning. This
- 2 act would also remove the year 1960 from the presumptive compliance requirement and would
- 3 also exclude rental condominium units that total no more than nine (9) total units.
- 4 This act would take effect upon passage.

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