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LC03586  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2004**

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A N A C T

RELATING TO HEALTH -- LEAD HAZARD MITIGATION

Introduced By: Representatives Trillo, Picard, Ginatt, Kennedy, and Rose

Date Introduced: June 08, 2004

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 23-24.6-3, 23-24.6-17 and 23-24.6-23 of the General Laws in  
2 Chapter 23-24.6 entitled "Lead Poisoning Prevention Act" are hereby amended to read as follows:

3           **23-24.6-3. Declaration of purposes. [Effective until July 1, 2007.]** -- The purposes of  
4 this chapter are: (1) to protect the public health and public interest by establishing a  
5 comprehensive program to reduce exposure to environmental lead and prevent childhood lead  
6 poisoning, the most severe environmental health problem in Rhode Island; and (2) to establish  
7 rigorous, systematic enforcement of requirements for the reduction of lead hazards in properties  
8 where children have been lead poisoned only; and (3) to define the role of the department of  
9 health as the lead state agency charged with: (i) defining lead poisoning, (ii) establishing  
10 programs for screening persons, especially children under the age of six (6) years, who are at risk  
11 of lead poisoning, (iii) setting standards for eliminating and reducing lead hazards in buildings  
12 and premises, including dwellings where a child under the age of six (6) years who has been lead  
13 poisoned resides, (iv) providing information to the public and segments thereof about the risks of  
14 lead poisoning, and (v) initiating enforcement actions against persons who violate the provisions  
15 of this chapter or regulations promulgated pursuant to this chapter. The goal of this chapter is to  
16 reduce the incidence of childhood lead poisoning in Rhode Island to the greatest extent feasible.

17           **23-24.6-17. Lead hazard reduction. [Effective until July 1, 2007.]** -- (a) The director  
18 shall promulgate lead hazard reduction regulations. These regulations shall:

19           (1) Specify the circumstances under which owners of dwellings, dwelling units, or

1 premises must undertake lead hazard reduction in order to remedy conditions that present a clear  
2 and significant health risk to occupants of the dwelling, dwelling unit, or premises;

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

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

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

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

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

21 (b) ~~(1) Until July 1, 2004, the~~ The owner of any dwelling, dwelling unit, or premises  
22 shall be considered as an "innocent owner", and liability as to lead poisoning is limited to the  
23 reduction of any lead hazard as determined by a comprehensive environmental lead inspection  
24 within the requirements of the Housing Maintenance and Occupancy Code, chapter 24.3 of title  
25 45. The "innocent owner" provision will cease upon the owner's unreasonable failure to correct  
26 any lead paint violation within ninety (90) days of notice as provided in that chapter. Provided,  
27 any owner who has received notices on three (3) or more properties shall be presumed to be an  
28 unreasonable failure to correct.

29 ~~(2) "Innocent owner" status, and the limits on liability set forth in this subsection, shall~~  
30 ~~not apply to any incident of childhood lead poisoning reported to the department on or after July~~  
31 ~~1, 2004, and liability for lead poisonings after July 1, 2004, but shall include such correction of~~  
32 ~~lead hazards as may be required by this chapter.~~

33 (c) The owner of any dwelling, dwelling unit, or premises who fails to provide for lead  
34 hazard reduction as required by department regulations shall be issued a notice of violation by the

1 director in the manner provided by the Housing Maintenance and Occupancy Code, chapter 24.3  
2 of title 45. In addition to any other enforcement authority granted under this chapter, the  
3 department shall have the authority to utilize pertinent provisions of that code in enforcing this  
4 section in the same manner as an enforcing officer under the code, including but not limited to the  
5 provisions of sections 45-24.3-17 -- 45-24.3-21, except that the director or his or her designee  
6 may provide a reasonable time up to ninety (90) days for the correction of any violation alleged  
7 and, except where there exists a hardship as to financing the lead hazard reduction, or where  
8 material, personnel, or weather delays the reduction completion. Except as herein provided, if  
9 after ninety (90) days following the date of issuance of a notice of violation by the department,  
10 the owner has failed to correct the lead hazards, the department shall issue a second notice of  
11 violation.

12 (d) (1) One or more lead paint waste depositories shall be established and be in operation  
13 by January 1, 1993. The department of environmental management shall work with the solid  
14 waste management corporation to promulgate regulations governing these lead paint waste  
15 depositories.

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

18 **23-24.6-23. Compliance and enforcement. [Effective until July 1, 2007.]** -- (a) Except  
19 as provided in this chapter, the inspection, enforcement, and penalties for violations of the  
20 provisions of this chapter shall be in accordance with the provisions and procedures set forth in  
21 sections 23-1-19 -- 23-1-25. In addition to the provisions for enforcement of this section found  
22 elsewhere in this chapter, there shall be the following powers of enforcement, which shall be in  
23 addition to other provisions of the general laws pertaining to enforcement of the laws of this state  
24 and shall not be deemed to limit or replace such other provisions. The provisions of this section  
25 shall be liberally construed and shall be considered an essential responsibility of the state to  
26 protect public health and welfare.

27 (b) The department shall establish a comprehensive integrated enforcement program,  
28 which shall be designed: (1) to assure that enforcement is certain, predictable, and effective as a  
29 means of reducing the incidence of childhood lead poisoning; (2) to direct enforcement efforts to  
30 places, areas, and types of structures where there is a high incidence of childhood lead poisoning;  
31 and (3) to identify and give priority to addresses where there are multiple instances of childhood  
32 lead poisoning and to identify and as consistent with law to provide for the prosecution of persons  
33 at whose properties there have been multiple instances of childhood lead poisoning and lead  
34 hazards have not been corrected. In order to effectuate the provisions of this subsection, the

1 department of health: (i) shall maintain a list as a public document of the addresses of properties  
2 that are not lead safe and in which more than three (3) children lived at the time their blood was  
3 tested for lead concentration and at least two (2) of these children were lead poisoned, (ii) shall  
4 maintain a database with the names and addresses of owners of rental housing at the time any  
5 child residing in the rental housing was tested positive for lead poisoning for which a second  
6 notice of violation has been issued and lead hazards have not been corrected as required pursuant  
7 to the provisions of this chapter, which database shall be public and provided to government and  
8 nonprofit agencies that are attempting to prevent lead poisoning or to enforce lead poisoning  
9 regulations, and (iii) shall notify the attorney general of all second notices of violation, issued  
10 pursuant to the provisions of section 23-24.6-17, to which there has not been a response meeting  
11 the requirements of law within thirty (30) days after the notice.

12 (c) The attorney general shall maintain an office of lead advocate, which office shall  
13 have, in addition to any other powers that the attorney general may assign to it, the power:

14 (1) To investigate any alleged failures to comply with the lead hazard reduction, to  
15 initiate either a civil or criminal cause of action, or both, to compel compliance via injunctive  
16 relief and/or impose penalties and fines, as appropriate;

17 (2) To bring any actions that may be necessary or appropriate to secure the performance  
18 by state agencies and political subdivisions the duties assigned to them by this section;

19 (3) To notify in writing on behalf of the attorney general any person, who has received a  
20 second notice of violation issued by the department of health and has not responded consistent  
21 with the requirements of law within thirty (30) days, of the person's obligations under law and the  
22 potential penalties for continued violations; and

23 (4) To establish guidelines to prevent retaliatory actions by property owners against  
24 tenants on the basis of complaints or notices of violations arising from this chapter and chapter  
25 128.1 of title 42, or based on the presence of a pregnant woman or child under age six (6) who in  
26 any manner seeks to enforce their right to housing in which lead hazards have been corrected in  
27 accordance with this chapter or chapter 128.1 of title 42. These guidelines shall define retaliatory  
28 actions, including, but not limited to, arbitrary termination of tenancy or other form of  
29 constructive eviction, arbitrary refusal to renew a lease, or arbitrary and unreasonable increase in  
30 rent or decrease in services to which the tenant is entitled, for all tenants, whether or not they  
31 have leases or are tenants at will. It shall be unlawful to take retaliatory actions against tenants  
32 arising from enforcement of the provisions of this chapter or chapter 128.1 of title 42; this  
33 prohibition against retaliatory actions applies whether or not the tenant has a lease. Damages and  
34 remedies for retaliatory actions under this paragraph shall be as provided for in chapter 18 of title

1 34.

2 (5) No provision of this chapter shall derogate the common law or any statutory  
3 authority of the attorney general, nor shall any provision be construed as a limitation on the  
4 common law or statutory authority of the attorney general.

5 (d) ~~Receivership of properties not meeting standards. — Following the second notice of~~  
6 ~~violation, issued by the department of health pursuant to the provisions of section 45-24.3-17(e)~~  
7 ~~for failure to meet the applicable lead hazard reduction for rental dwellings occupied by a~~  
8 ~~pregnant woman or a child under the age of six (6) years unless the violations alleged to exist are~~  
9 ~~corrected, the unit shall be considered abandoned and a public nuisance, which is a menace to~~  
10 ~~public health, as the term "abandon" or "abandonment" and "public nuisance" defined by section~~  
11 ~~34-44-2. In those instances the department of health, the attorney general, a nonprofit corporation~~  
12 ~~as provided for in section 34-44-3, or the city or town in which the unit is located shall have the~~  
13 ~~specific power to request the court to appoint a receiver for the property, the court in such~~  
14 ~~instances may specifically authorize the receiver to apply for loans, grants and other forms of~~  
15 ~~funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold~~  
16 ~~the property for any period of time that the funding source may require to assure that the purposes~~  
17 ~~of the funding have been met.~~

18 (e) High risk premises and dwellings. - (1) The department of health shall notify the  
19 property owner where both the following conditions have been met: (i) there have been three (3)  
20 or more at risk children under the age of six (6) years with at least environmental intervention  
21 blood levels and (ii) fifty percent (50%) of children under the age of six (6) years from the  
22 premises who have been tested have had at least environmental intervention blood lead levels,  
23 that the premises present a high risk of lead poisoning.

24 (2) A property owner who receives notice that the premises are high risk: (i) shall have  
25 ~~thirty (30)~~ ninety (90) days in which to conduct a comprehensive lead inspection that shows that  
26 lead hazards have been corrected to the lead safe standard, or (ii) shall present a compliance  
27 schedule to the department of health to meet the lead safe standard, which compliance schedule  
28 shall be subject to approval by the department of health and shall provide for achieving the lead  
29 hazard reduction within ninety (90) days. The requirements of the compliance schedule shall be  
30 deemed to have been met if a comprehensive lead inspection shows that the lead safe standard has  
31 been met at the premises.

32 (3) A property owner who fails to meet the requirements of subdivision (2) of this  
33 subsection shall be notified that the premises are declared unsafe for habitation by children under  
34 six (6). A list of property owners so notified and of addresses of premises for which the notice has

1 been given shall be a public record.

2 (4) A copy of this notice shall be sent to the town clerk or recorder of deeds in the city or  
3 town where the property is located, to be recorded pursuant to the provisions of chapter 13 of title  
4 34. The property owner, so notified, shall post and maintain a warning at the primary entrance to  
5 the premises and to each dwelling unit therein declaring that the unit is unsafe for children under  
6 six (6) years of age. If the property owner shall fail to make or maintain the posting herein  
7 required, the department of health shall post the premises as provided for in section 23-24.6-  
8 12(2).

9 (5) Any property owner who receives notice that a dwelling unit is high risk and who  
10 fails to abate lead hazards in accordance with a compliance schedule as provided in subdivision  
11 (2) of this subsection and there is a subsequent instance of an at risk occupant with an  
12 environmental intervention blood lead level, which is attributable in whole ~~or in part~~ to conditions  
13 in the dwelling unit, shall be deemed to have committed a felony and shall be punished by  
14 imprisonment for not less than one year, ~~but not more than five (5) years~~ and/or by a fine of not  
15 ~~less than five thousand dollars (\$5,000) nor more than twenty thousand dollars (\$20,000)~~ more  
16 than five thousand dollars (\$5,000).

17 (f) Nothing in this section shall be deemed to limit or impair the existing rights of parties  
18 to take action to compel property owners to improve or maintain property under common law or  
19 pursuant to any of the general laws of the state of Rhode Island.

20 SECTION 2. Chapter 23-24.6 of the General Laws entitled "Lead Poisoning Prevention  
21 Act" is hereby amended by adding thereto the following sections:

22 **23-24.6-28. Training program.** – The department of health will establish and administer  
23 a lead paint mitigation-training program for landlords and tenants, which shall include instruction  
24 in self-mediation.

25 **23-24.6-29. Certification.** – The department of health shall establish and administer a  
26 program to certify that: (1) properties have eliminated or covered lead paint; and (2) a person has  
27 satisfactorily completed the self-mediation training program. A tenant so certified may, upon  
28 presentation of his/her certification to his/her landlord, carry out the mitigation of the leased  
29 premises and legal responsibility and liability shall thereupon be assumed by the tenant and the  
30 landlord shall be free from civil and criminal liability with respect to such premises.

31 SECTION 3. Section 42-128.1-7 of the General Laws in Chapter 42-128.1 entitled "Lead  
32 Hazard Mitigation [Repealed effective July 1, 2007.]" is hereby repealed.

33 ~~**42-128.1-7. Lead hazard mitigation. [Repealed effective July 1, 2007.]** – The housing~~  
34 ~~resources commission, shall adopt no later than April 1, 2003, rules:~~

1 ~~(1) For housing constructed prior to 1978, which require property owners to certify at the~~  
2 ~~time of transfer that the dwelling and/or premises meet the requirements for lead hazard~~  
3 ~~mitigation or lead hazard abatement, or that the party or parties acquiring the property are notified~~  
4 ~~of the potential lead hazards, and at the time of rental of units that the requirements for meeting~~  
5 ~~the appropriate standards have been met;~~

6 ~~(2) For a lead hazard mitigation standard;~~

7 ~~(3) For any training, certification or licensing necessary to carry out the provisions of~~  
8 ~~this chapter; and~~

9 ~~(4) For a process to receive, investigate, and decide whether the correction of a lead~~  
10 ~~hazard, pursuant to section 42-128.1-8(a)(3) and (d) was satisfactory. These rules shall establish~~  
11 ~~an expeditious procedure to determine whether the allegation of unsatisfactory correction has~~  
12 ~~merit. The process may be integrated with or make use of the technical assistance service~~  
13 ~~provided for in section 42-128.1-13.~~

14 SECTION 4. Sections 42-128.1-8 and 42-128.1-10 of the General Laws in Chapter 42-  
15 128.1 entitled "Lead Hazard Mitigation [Repealed effective July 1, 2007.]" are hereby amended  
16 to read as follows:

17 **42-128.1-8. Duties of property owners of pre-1978 rental dwellings. [Repealed**  
18 **effective July 1, 2007.]** -- (a) Property owners of pre-1978 rental dwellings, which have not been

19 made lead safe or have not been lead hazard abated, shall mitigate lead hazards and shall comply  
20 with all the following requirements:

21 (1) Learn about lead hazards by taking a lead hazard awareness seminar;

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

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

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

29 (5) Correct lead hazards within ~~thirty (30)~~ ninety (90) days after notification from the  
30 tenant of a dwelling unit with an at risk occupant, or as provided for by section 34-18-22.

31 (b) New property owners of a pre-1978 rental dwelling that is occupied by an at risk  
32 occupant shall have up to ~~sixty (60)~~ one hundred twenty (120) days to meet requirements for lead  
33 hazard mitigation, if those requirements were not met by the previous owner at the time of  
34 transfer, provided that the new property owner has the property visually inspected within ten (10)

1 business days after assuming ownership to determine conformity with the lead hazard control  
2 standard.

3 (c) The requirements for lead hazard mitigation shall apply to the first change in  
4 ownership or tenancy after July 1, 2004; provided further that unless requested and agreed to by  
5 an at-risk occupant, meeting the lead hazard mitigation standard shall not be construed to  
6 authorize a property owner to compel or cause a person, who is in tenancy on January 1, 2003,  
7 and remains in tenancy continuously thereafter, to vacate a rental unit temporarily or otherwise.

8 (d) If the tenant receives no response to the notification, if the response is in the tenant's  
9 opinion unsatisfactory, or if the remedy performed is in the tenant's opinion unsatisfactory, the  
10 tenant may request a review of the matter by the housing resources commission. After its review  
11 of the matter, the housing resources commission shall either send notice to the property owner in  
12 which notice shall be issued in a manner substantially similar to a notice of violation issued by  
13 the director pursuant to the Housing Maintenance Code, chapter 24.3 of title 45, or promptly  
14 inform the tenant of the reasons why the notice is not being issued.

15 **42-128.1-10. Right to housing where lead hazards are corrected. [Repealed effective**  
16 **July 1, 2007.]** -- (a) Pregnant women and families with children under six (6) years of age shall  
17 be deemed to have a right, to housing in which lead hazards have been mitigated or abated.  
18 [Normal screening process including reference check and credit history may still be used in](#)  
19 [determining tenant suitability.](#)

20 (b) Injunctive Relief. - Effective July 1, 2004, if the property owner of a rental dwelling  
21 fails to comply with such standards for lead hazard mitigation, or abatement, as applicable, a right  
22 of private action shall exist that allows households that include an at risk occupant to seek  
23 injunctive relief from a court with jurisdiction against the property owner in the form of a court  
24 order to compel compliance with requirements for lead hazard control or mitigation. A person  
25 who prevails is entitled to an award of the costs of the litigation and reasonable attorneys' fees in  
26 an amount to be fixed by the court. Cases brought before the court under this section shall be  
27 granted an accelerated hearing.

28 SECTION 5. 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 -- LEAD HAZARD MITIGATION

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- 1           This act would limit the potential fine for violation of the Lead Poisoning Prevention Act  
2 to not more than five thousand dollars and would implement a training program for landlords and  
3 tenants.  
4           This act would take effect upon passage.

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