

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2715 Session of
2000

INTRODUCED BY CURRY, WILLIAMS, LAUGHLIN, COY, SHANER, TRICH,
MANDERINO, WALKO, YUDICHAK, OLIVER, HARHAI, MELIO,
YOUNGBLOOD, JAMES, THOMAS, MUNDY, BISHOP, WATERS, ROEBUCK AND
SOLOBAY, SEPTEMBER 11, 2000

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
SEPTEMBER 11, 2000

AN ACT

1 Amending the act of April 6, 1951 (P.L.69, No.20), entitled "An
2 act relating to the rights, obligations and liabilities of
3 landlord and tenant and of parties dealing with them and
4 amending, revising, changing and consolidating the law
5 relating thereto," providing for lead poisoning prevention
6 and control in rental housing and for penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of April 6, 1951 (P.L.69, No.20), known
10 as The Landlord and Tenant Act of 1951, is amended by adding an
11 article to read:

12 ARTICLE V-C.

13 LEAD POISONING PREVENTION AND CONTROL.

14 Section 501-C. Definitions.--As used in this article--

15 "Abatement" or "abate" shall include the removal and
16 replacement of lead-based coatings containing dangerous levels
17 of lead.

18 "Comprehensive lead inspection" shall include a surface-by-

1 surface investigation to determine the presence of lead-based
2 coatings and the provision of a report explaining the results of
3 the investigation.

4 "Containment" shall include the encapsulation, covering or
5 enclosing by means authorized by the Department of Health of
6 lead-based coatings containing dangerous levels of lead.

7 "Dangerous level of lead" shall include an amount of lead
8 that would result in adverse human health effects as established
9 by the Federal Government or the Department of Health or any
10 amount in excess of limits established by the Federal Government
11 or the Department of Health.

12 "Department" shall mean the Department of Health of the
13 Commonwealth.

14 "Emergency lead management plan" shall include a plan for
15 emergency abatement or containment of a lead-coating hazard that
16 utilizes interim control measures which have been approved by
17 the Department of Health.

18 "Lead-based coating" shall include any paint, lacquer or
19 other applied liquid surface coating, and putty or caulking or
20 other sealing compound which contains a quantity of lead.

21 "Lead-based coating hazard" shall include any condition that
22 causes exposure to lead from lead-contaminated dust, lead-
23 contaminated soil, lead-contaminated paint or other lead-
24 contaminated material that is deteriorated or present in
25 accessible surfaces, friction surfaces or impact surfaces that
26 would result in adverse human health effects as established by
27 the Federal Government or the Department of Health.

28 "Licensed de-leading contractor" shall include a person
29 licensed by the Department of Health to conduct the abatement or
30 containment of lead-based coatings.

1 "Licensed inspector" shall include a person licensed by the
2 Department of Health to conduct comprehensive lead inspections
3 and risk assessments.

4 "Owner" shall include any person who alone or jointly or
5 severally with others:

6 (1) has legal title to any premises;

7 (2) has charge or control of any premises as an agent who
8 has authority to expend money for compliance with the State
9 sanitary code, executor, administrator, trustee or guardian of
10 the estate or the holder of legal title;

11 (3) is an estate or trust of which such premises is a part,
12 or the grantor or beneficiary of such an estate or trust; or

13 (4) is the association of unit owners of a condominium or
14 cooperative, which shall be considered an owner solely with
15 respect to common areas and exterior surfaces and fixtures of
16 such condominium or cooperative.

17 "Premises" shall include any dwelling unit or residential
18 property that is leased or rented, constructed prior to 1978.

19 "Risk assessment" shall include an on-site investigation to
20 determine and report the existence, nature, severity and
21 location of lead-based coating hazards in residential dwellings,
22 including:

23 (1) information gathering regarding the age and history of
24 the housing and occupancy by children under six years of age;

25 (2) visual inspection;

26 (3) limited wipe sampling or other environmental sampling;

27 (4) other activity as may be appropriate; and

28 (5) provision of a report explaining the results of the
29 investigation.

30 Section 502-C. Duty of Residential Premises Owners.--

Whenever a child under six years of age resides in any premises in which any lead-based coating contains dangerous levels of lead, the owner shall abate or contain the lead-based coating in accordance with the requirements of section 503-C or 504-C.

Whenever any premises containing dangerous levels of lead undergoes a change of ownership and as a result a child under six years of age will become or will continue to be a resident therein, the new owner shall have ninety days to contain or abate the lead-based coating as required by this section.

Section 503-C. Interim Control.--(a) Owners shall be eligible to contain and control lead-based coatings containing dangerous levels of lead on an interim basis until achieving full compliance as set out in section 504-C, in accordance with measures defined in an emergency lead management plan, and a letter of interim control issued by a licensed inspector pursuant thereto. If, in the determination of a licensed inspector, the condition of such premises makes it ineligible for interim control under an emergency lead management plan, the owner shall be required to satisfy the requirements of section 504-C and receive a letter of full compliance.

(b) The department shall promulgate regulations to establish a program of interim control measures that are eligible to be used in emergency lead management plans to address urgent lead-based coating hazards that include, but are not limited to, paint containing a dangerous level of lead that is chipping, peeling or flaking, and highly lead-contaminated dust. Interim control measures shall be used to address such urgent lead hazards until a letter of full compliance has been obtained pursuant to section 504-C, and all emergency lead management plans shall include full compliance in accord with section 504-C

1 as their ultimate goal. Only in the instance of a waiver by the
2 department shall an owner be eligible for an emergency lead
3 management plan and letter of interim control for premises in
4 which a lead-poisoned child resides.

5 (c) The owner of any premises containing a dangerous level
6 of lead may obtain approval for an emergency lead management
7 plan from a licensed inspector after an inspection and
8 assessment of the premises by the inspector, and for a letter of
9 interim control by a licensed inspector certifying compliance
10 with the emergency lead management plan and regulations
11 promulgated by the department under this section. The
12 regulations shall, at a minimum, include the following:

13 (1) a determination by the licensed inspector regarding the
14 need to correct structural defects, including roof and plumbing
15 leaks, and deteriorating windows, which may cause damage to
16 surfaces containing dangerous levels of lead, and a requirement
17 that any such defects found be repaired or replaced, as needed,
18 to prevent damage to interior surfaces containing lead;

19 (2) abatement or containment of all peeling paint and
20 installation of safeguards to protect lead-based coatings on
21 both interior and exterior surfaces and fixtures;

22 (3) removal of lead dust using specified methods, unless the
23 initial inspection indicates that there is no peeling paint and
24 that surface dust levels meet specified standards;

25 (4) provision of educational materials prepared by the
26 department to tenants occupying the affected premises, as well
27 as compliance with the tenant notification provisions of section
28 506-C;

29 (5) correction of any other lead-coating condition which the
30 department determines poses an urgent risk of lead poisoning to

children under six years of age or to pregnant women;

(6) requirement that all interim control work performed under this section comply with the requirements for use of licensed de-leading contractors or for the abatement and containment activities by property owners contained in the regulations promulgated by the department pursuant to section 505-C; and

(7) a final inspection by a licensed inspector, including testing to ensure that surface dust levels are within specified limits for particular surfaces.

(d) A letter of interim control shall expire at the end of one year from the date of its issuance, and may be renewed once, for an additional one-year period, upon reinspection and recertification pursuant to this section by a licensed inspector, in accordance with regulations promulgated by the department. The revocation and subsequent recertification of a letter of interim control shall not extend the initial letter of interim control beyond the time period allowed by this section.

(e) An emergency lead management plan and letter of interim control shall be issued for the premises, not its owner, and shall remain in effect should ownership of the premises be transferred during the existence of the emergency lead management plan and the letter of interim control. A subsequent owner of a premises under a preexisting emergency lead management plan and letter of interim control shall be responsible for complying with the terms of said plan and letter. In no case shall the premises be subject to an emergency lead management plan and letter of interim control for longer than two years.

(f) A letter of interim control shall be revocable by

1 operation of law upon occurrence of either of the following
2 conditions:

3 (1) Expiration by its own term.

4 (2) Upon the failure of the owner to bring the unit into
5 compliance, or keep the unit in compliance, as required by this
6 section.

7 (g) If a licensed inspector finds that the premises contains
8 peeling paint or otherwise fails to meet the standards of the
9 emergency lead management plan and the letter of interim
10 control, the inspector shall notify the owner of the premises,
11 the department, the local code enforcement agency or board of
12 health of the failure. The owner shall bring the premises into
13 compliance with the emergency lead management plan and the
14 letter of interim control within fourteen days of being notified
15 to do so by the department, the local code enforcement agency or
16 board of health or licensed lead inspector, or within such
17 greater period of time as may be allowed by the department, the
18 local code enforcement agency or board of health, or by judicial
19 order.

20 Section 504-C. Full Compliance.--(a) Owners may proceed
21 either directly or at the end of the process of interim control
22 set out in a poisoning prevention management plan approved
23 pursuant to section 503-C to abate or to contain lead-based
24 coatings in a particular premises in order to achieve full
25 compliance. Prior to beginning such work, the owner or his agent
26 shall notify the occupants of the premises, the department and
27 the local board of health or code enforcement agency of the date
28 on which such containment and abatement for full compliance will
29 occur, and the method or methods that will be used. Where
30 containment or abatement is to occur in common areas, including

1 the exterior, all occupants of the premises shall be notified in
2 writing.

3 (b) All containment or abatement for full compliance subject
4 to this article shall, pursuant to regulations promulgated by
5 the department to ensure the safety of occupants, be performed
6 as follows:

7 (1) All peeling lead-based coatings containing dangerous
8 levels of lead, on both interior and exterior surfaces and
9 fixtures shall be abated or contained.

10 (2) Intact lead-based coatings containing dangerous levels
11 of lead shall be abated on door frames below the five-foot level
12 and four inches from all edges; stair rails; stair rail
13 spindles; stair treads from the lip to the riser on the bottom
14 and four inches back from the lip on the top of the tread; doors
15 below the five-foot level and four inches from all edges; porch
16 railings; and all other exterior and interior surfaces and
17 fixtures that may be readily mouthed by, or are otherwise
18 accessible to, children. The department may, by regulation,
19 require that in order to maintain the stability of any
20 encapsulants used as a containing agent as part of the process
21 to achieve full compliance, intact lead-based coatings
22 containing dangerous levels of lead be contained beyond the
23 height of five feet and more than four inches from all edges.

24 (3) Peeling and intact lead-based coatings containing
25 dangerous levels of lead shall be abated, on the interior and
26 exterior surfaces of windows having sills below the five-foot
27 level when surfaces are either movable or impact on movable
28 surfaces. Such surfaces shall include, but not be limited to,
29 interior and exterior window sashes, window sills and mullions,
30 window wells and parting beads, headers on the lower side of the

window that impact on the sash, and interior and exterior inner sides of the window casings that impact on the sash.

(4) Exterior lead-based coatings containing dangerous levels of lead shall be abated pursuant to regulations issued by the department, after consultation with the Department of Environmental Protection, specifying acceptable methods and prescribing encapsulation, shrouding or other containment methods. The department shall ban sandblasting of exterior paint where the department determines that children under six years of age are at risk of exposure to dangerous levels of lead. The use of potassium or sodium hydroxide in removing exterior lead-based coatings shall be prohibited. Such regulations shall recommend appropriate methods of containment or abatement for properties listed on the Pennsylvania Register of Historic Places. Local boards of health or code enforcement agencies shall enforce compliance with this regulation.

(5) Paint chips, dust and other debris created by the containment or abatement of interior or exterior lead-based coatings shall be cleaned up by the person performing the abatement in conformance with regulations promulgated by the department.

(c) Upon the determination of a licensed inspector that the premises fully comply with the requirements of this section, the inspector shall issue a letter of full compliance for said premises. The department shall prepare one or more standard formats for letters of full compliance which may be revised from time to time as appropriate. All licensed inspectors shall use such standardized formats in issuing letters of full compliance. If the tenant believes that the premises fails to meet the standards of the letter of compliance or a licensed inspector

1 finds that the premises fails to meet the standards of the
2 letter of full compliance, the tenant or inspector shall notify
3 the owner of the premises, the department, the local code
4 enforcement agency or board of health of said failure. The owner
5 shall ensure that the condition of the premises meets the
6 standards required by the letter of full compliance within
7 fourteen days of being notified to do so by the department,
8 local code enforcement agency or board of health or licensed
9 lead inspector, or within such greater period of time as may be
10 allowed by the department, local code enforcement agency or
11 board of health, or by judicial order.

12 Section 505-C. Performance of Containment, Abatement, and
13 Daily and Final Cleanup.--(a) Containment or abatement, and
14 daily and final cleanup of lead-based coatings required under
15 this article, whether undertaken for full compliance or as an
16 interim measure under an emergency lead management plan, shall
17 be conducted only by a contractor licensed by the department,
18 except that the owner of premises or the owner's agent, acting
19 pursuant to regulations promulgated by the department specifying
20 the conditions under which owners or their agents may undertake
21 such containment or abatement, need not be licensed to engage in
22 such activities. Any person who is not licensed may undertake
23 containment or abatement activities only after successful
24 completion of a course of instruction approved by the department
25 detailing the proper methods and health hazards of containment
26 or abatement and final cleanup of paint, plaster or other
27 accessible structural material. All containment or abatement
28 activities by an unlicensed person shall be inspected and
29 approved after completion by a licensed inspector. Such
30 regulations shall include, but not be limited to, the removal of

doors, windows, woodwork or other elements or fixtures
containing dangerous levels of lead and shall address the
presence of residents during de-leading and cleanup. In no
instance shall lead-based coatings containing such dangerous
levels of lead be stripped or scraped from the doors, windows,
woodwork, elements or fixtures while residents are on the
premises. The department shall make available to the public
standard guidelines relative to the owner de-leading activities
made permissible pursuant to this section.

(b) The department may waive or alter any requirements of
this section or sections 503-C and 504-C concerning the required
containment or abatement of lead-based coatings on specified
surfaces and fixtures or specified substrates upon a finding
that no substantial risk is posed to the health of children
under six years of age by the continued presence of the lead-
based coating.

(c) Under no circumstances shall recoating with a nonlead-
based paint or other material, without containment or abatement
of the offending lead-based coating, constitute compliance with
either section 503-C or 504-C.

(d) No person shall occupy the premises while containment or
abatement of dangerous levels of lead-based coatings is taking
place and until such time as the premises has been cleaned up
and found to be in compliance with this section, except pursuant
to regulations issued by the department. Such regulations shall
provide that persons may occupy the premises pursuant to
specified conditions established on a case-by-case basis by the
department or local board of health or code enforcement agency
upon a finding that such occupancy will not endanger or
materially impair the health or the well-being of any occupant.

1 Pregnant women and children under the age of six are not
2 permitted to occupy the dwelling unit during de-leading
3 activities.

4 (e) Any owner undertaking to abate or contain dangerous
5 levels of lead in any dwelling unit may, at the owner's option,
6 reasonably delay the commencement of the tenancy until a letter
7 of compliance or interim control certificate has been issued
8 provided that no duly executed lease exists between owner and
9 tenant. No such delay shall exceed thirty days. During any such
10 period of delay of occupancy the prospective tenant shall bear
11 any living expenses. Should the owner decide to bring any
12 residential premises into compliance with the provisions of this
13 article while a tenant is occupying a dwelling unit, the owner
14 shall have the right to move the tenant to a substitute dwelling
15 unit upon reasonable notice, provided the owner pays reasonable
16 moving expenses and any use and occupancy charges for a
17 substitute dwelling unit which exceed the rent for the vacated
18 dwelling unit for which the tenant remains responsible. A
19 substitute dwelling unit shall be defined as one that does not
20 cause undue economic or personal hardship to the tenant. If the
21 tenant fails to accept the substitute dwelling unit selected by
22 the owner during such period of time reasonably required to
23 bring the vacated dwelling unit into compliance with the
24 provisions of this article, the owner shall have no obligation
25 to reimburse the tenant for any exposure or inconvenience other
26 than moving expenses and any use and occupancy charges for the
27 substitute dwelling unit selected by the owner which may exceed
28 the rent for the vacated dwelling unit.

29 Section 506-C. Disclosure.--(a) Tenants of premises and
30 those prospective tenants who are about to enter an agreement to

1 rent premises shall be notified about the hazards of dangerous
2 levels of lead as follows:

3 (1) The department shall prepare a standard notification
4 brochure and such other materials as may be necessary to inform
5 such tenants and owners about the hazards associated with
6 dangerous levels of lead, the symptoms and treatment of lead
7 poisoning, measures which can be taken by parents and owners to
8 reduce the risk of lead exposure to children, and the
9 requirements of this article and regulations promulgated
10 hereunder. Such materials shall also describe the significance
11 of letters of interim control and letters of full compliance,
12 and the need for tenants to promptly notify owners, the
13 department, the local code enforcement agency or board of health
14 in writing whenever an intact coating surface begins to peel or
15 flake. The department shall also prepare a standard form to be
16 distributed by owners to tenants and prospective tenants about
17 to enter an agreement to rent the premises, which shall include
18 the name, address and telephone number of the owner or the
19 owner's managing agent and the address and telephone number of
20 the State childhood lead poisoning prevention program. In
21 addition, the owner shall disclose any information actually
22 known by the owner concerning the location of any lead-based
23 coating containing dangerous levels of lead, including such
24 intact lead-based coatings containing dangerous levels of lead
25 which have been covered or encapsulated.

26 (2) Prior to entering into a tenancy agreement, the owner of
27 a premises or such other person to whom rent is to be regularly
28 paid shall provide a prospective tenant who is about to enter
29 such an agreement to rent premises with:

30 (i) a copy of the materials and standard form completed

1 pursuant to clause (1);

2 (ii) a copy of the most recent lead paint inspection report,
3 letter of interim control, letter of compliance or abatement
4 plan applicable to the dwelling unit and to the common areas or
5 exterior surfaces of the residential premises; and

6 (iii) two copies of a statement certifying that the
7 prospective tenant received all of the above materials, one copy
8 of which is to be retained by the tenant and one by the owner.

9 For purposes of this section, inclusion of such certification as
10 a provision in a written tenancy agreement shall be permitted.

11 (b) Any owner who fails to comply with the provisions of
12 this section shall be liable for all damages caused by the
13 failure to comply and, in addition, shall be subject to
14 assessment of a penalty not to exceed one thousand dollars.

15 (c) The receipt by a tenant or prospective tenant of a
16 notification brochure or other disclosure materials from an
17 owner pursuant to this section shall not be construed to bar any
18 claim for liability by the tenant or his minor children against
19 the owner. The disbursement by an owner of a notification
20 brochure to a tenant shall not operate as an admission of
21 liability to any claim for liability by the tenant or his minor
22 children against the owner under any provision of this article
23 or regulations promulgated hereunder.

24 Section 507-C. Independent Inspection.--(a) Notwithstanding
25 any of the provisions of this article, every agreement to rent a
26 premises shall provide in writing that the tenant shall have a
27 ten-day period, unless the parties agree in writing to a
28 different period of time, during which the tenant may, at the
29 tenant's expense, obtain a comprehensive lead inspection and
30 risk assessment from a licensed lead inspector. If the

1 inspection reveals lead-based coatings or lead-based coating
2 hazards on the premises, the tenant may terminate the lease
3 within two business days of the receipt of the inspection
4 report, with all money paid on account to be refunded to the
5 tenant. Failure of the tenant to obtain such inspection within
6 the permitted ten days and/or failure to terminate the lease
7 upon a finding of lead-based coating or lead-based coating
8 hazards within the two-day period constitutes a waiver of the
9 right to conduct an independent inspection and the lease will
10 remain in full force and effect.

11 (b) Upon renewal of an existing lease and after compliance
12 by an owner with the disclosure requirements of section 503-C,
13 any tenant shall have the right to proceed with an inspection or
14 risk assessment as provided by this section, except that such
15 renewing tenant shall not be required to terminate the lease
16 within two days of performance of a comprehensive lead
17 inspection or a risk assessment, but shall be afforded a ten-day
18 period to notify the owner in writing of the tenant's intention
19 to terminate the lease, with the actual termination and the
20 vacating of the premises to occur at a time not to exceed ninety
21 days after receipt of the comprehensive lead inspection or risk
22 assessment, during which period all lease obligations shall
23 remain in full force and effect.

24 Section 508-C. Protection Against Retaliation.--(a) In any
25 premises where a child under six years of age resides and in
26 which lead-based coatings contain dangerous levels of lead, the
27 owner of the premises or a representative of the owner is
28 prohibited from:

29 (1) Evicting or attempting to evict the tenant from the
30 premises through judicial process, self-help or any other means.

1 (2) Coercing or attempting to coerce the tenant into
2 abandoning the premises.

3 (3) Otherwise changing or attempting to change the lease
4 terms.

5 (4) Re-renting the premises to a subsequent tenant or
6 tenants, until such time as the lead-based coating hazard has
7 been eliminated, as set forth in section 502-C.

8 (5) Collecting or attempting to collect any further rent
9 from the tenant of the premises if the owner or the owner's
10 representative fails to comply or substantially comply with
11 section 502-C within thirty days.

12 (b) An owner or representative of the owner of any premises
13 in which lead-based coatings contain dangerous levels of lead
14 may not discriminate against a prospective tenant with a child
15 under six years of age in order to avoid compliance with this
16 article.

17 (c) (1) Any owner or representative of the owner who
18 violates any provision of this section shall be subject to a
19 fine of three hundred dollars and/or imprisonment of up to
20 ninety days for each offense for each premises. Continuing
21 violation of the same provision shall constitute a separate
22 violation for each day for each premises.

23 (2) A prevailing or prospective tenant shall be entitled to
24 actual damages and to not less than triple the monthly rent for
25 each violation, plus attorney fees and costs.

26 Section 509-C. Regulations.--The department shall, within
27 180 days of the effective date of this section, promulgate
28 regulations pursuant to this article.

29 Section 2. This act shall take effect as follows:

30 (1) The addition of sections 501-C, 507-C(a) and 509-C

1 of the act shall take effect immediately.

2 (2) This section shall take effect immediately.

3 (3) The remainder of this act shall take effect 90 days
4 following publication of notice in the Pennsylvania Bulletin
5 that the regulations required by this act have been finally
6 adopted.