

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 9

Session of
1975

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GILLETTE, MESSRS. DiDONATO AND COHEN, JANUARY 20, 1975

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 11, 1976

AN ACT

1 To promote the health and welfare of the people of the
2 Commonwealth by controlling and regulating lead paint
3 poisoning; prescribing the powers and duties of the
4 Department of Health and the Department of Environmental
5 Resources; authorizing lead analyses at State laboratories;
6 creating the Interagency Coordinating Committee and the
7 Advisory Committee; imposing restrictions; providing
8 penalties and making an appropriation.

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

9 Section 1. Short Title.--This act shall be known and may be
10 cited as the "Lead Paint Poisoning Prevention Act."

11 Section 2. Legislative Findings and Declaration of Policy.--

12 (a) The Legislature finds and declares that a serious public
13 emergency exists with respect to the health and well-being of a
14 substantial number of citizens of the Commonwealth, which
15 emergency is caused by the exposure to various causes of lead
16 paint poisoning present in their immediate environments, and
17 particularly the presence of hazardous paints in the dwellings
18 in which they reside; that as a result of such exposure,
19 significant numbers of citizens have contracted lead paint
20 poisoning, resulting in some cases in permanent and irreversible
21 mental and physical damage; that lead paint poisoning is a
22 chronic, cumulative disease causing serious mental and physical
23 disability and sometimes death; that the causes of and cures of
24 lead paint poisoning are well-established and well-known, such
25 that the serious public emergency created by numerous cases of
26 lead paint poisoning may readily be remedied with proper and
27 timely programs of prevention, diagnosis and treatment; that
28 unless such programs are instituted forthwith, the continued
29 occurrence of lead paint poisoning will produce serious threats
30 to the public health and safety and the general welfare of the

1 citizens of the Commonwealth, and that such emergency should be
2 met by the Commonwealth immediately.

3 (b) It is hereby declared to be the policy of the
4 Commonwealth of Pennsylvania through this act:

5 (1) To protect the public health, safety and welfare of its
6 citizens through the development and implementation of programs
7 for the prevention and treatment of lead paint poisoning.

8 (2) To provide coordinated and comprehensive direction for
9 such programs to avoid duplication of services.

10 (3) To insure the most effective use of available funding
11 resources.

12 Section 3. Department of Health; Powers and Duties.--(a) The
13 Secretary of Health shall have the power, and his duty shall be
14 to establish a Statewide program for the screening, diagnosis,
15 and treatment of lead paint poisoning in accordance with money
16 appropriated annually for said purposes. Wherever and whenever
17 possible, the Secretary of Health shall delegate responsibility
18 for the provisions of this section to a county or joint county
19 department of health, or local health units qualifying for State
20 per capita health subsidy.

21 (b) Lead paint poisoning or possible lead paint poisoning
22 shall be a reportable noncommunicable disease and as such must
23 be reported in accordance with the rules and regulations of the
24 Department of Health. Such reports shall be made on forms
25 prescribed by the Secretary of Health, and shall be submitted
26 within a reasonable time as prescribed by the Secretary of
27 Health, after said person or agency first diagnoses a case or
28 possible case of lead paint poisoning or is informed of such a
29 case.

30 (c) When a case of lead paint poisoning or possible lead

1 paint poisoning is reported to the Secretary of Health, he shall
2 inform such local boards of health, public health agencies, and
3 other persons and organizations as he deems necessary: Provided,
4 however, That the identity of any individual contracting lead
5 paint poisoning shall not be included unless the Secretary of
6 Health determines that such inclusion is necessary to serve the
7 purposes of this act or the health and well-being of the
8 affected individual. In no event shall the identity of the
9 individual be disclosed to the public.

10 (d) The Secretary of Health shall develop and maintain, as
11 necessary to carry out the intent of this act and with the
12 advice of the coordinating committee, a program for the
13 detection of lead paint poisoning or possible lead paint
14 poisoning in accordance with established procedures.

15 (1) Such screening and diagnosis shall be made by such means
16 and at such intervals as the Secretary of Health shall, by
17 regulation, determine to be necessary, giving priority to areas
18 showing a high incidence of lead paint poisoning or possible
19 lead paint paint poisoning.

20 (2) All cases or possible cases of lead paint poisoning, as
21 defined by regulation by the Secretary of Health, found in the
22 course of screening and diagnosis conducted pursuant to this
23 section, shall be reported immediately to the Secretary of
24 Health, and to the victim or to the victim's parent or legal
25 guardian if the victim is a minor.

26 (3) The Secretary of Health shall inform the Secretary of
27 Environmental Resources of the existence of such cases or
28 possible cases.

29 (4) When the Secretary of Health is informed of a confirmed
30 case of lead paint poisoning pursuant to this section, or

1 otherwise, he shall cause to have examined all such confirmed
2 cases of lead paint poisoning and to test all other persons as
3 he may find advisable to test, residing or recently residing in
4 the household of the victim. The results of such testing shall
5 be reported in accordance with the provisions of subsection (b).

6 (5) The Secretary of Health shall develop programs for
7 follow-up and treatment of individuals affected, as may be
8 necessary, in accordance with accepted medical practice.

9 (e) The Secretary of Health shall maintain comprehensive
10 records of all reports submitted pursuant to this section. Such
11 records shall be geographically indexed in order to determine
12 the location of areas of relatively high incidence of lead paint
13 poisoning or possible lead paint poisoning. Such records shall
14 be made available to the coordinating committee and the advisory
15 committee, upon request. In addition, a summary report will be
16 submitted by the Secretary of Health to the coordinating
17 committee and advisory committee semi-annually. Such records
18 shall be public records, except that at no time shall the
19 identity of individuals reporting or contracting lead paint
20 poisoning be disclosed to the public.

21 Section 4. Department of Environmental Resources; Powers and
22 Duties.--(a) The Secretary of Environmental Resources shall have
23 the power, and his duty shall be to establish a comprehensive
24 Statewide program for the prevention of lead paint poisoning in
25 accordance with money appropriated annually for said purposes.
26 Wherever and whenever possible, the Secretary of Environmental
27 Resources shall delegate responsibility for the provisions of
28 this section to a county or joint county department of health,
29 or local health units qualifying for State per capita health
30 subsidy.

1 (1) Such a program shall attempt to locate all premises in
2 which the paint contains dangerous levels of lead or other toxic
3 heavy metals. The means of detection shall be determined by
4 rules and regulations promulgated by the Secretary of
5 Environmental Resources, giving priority in inspections to those
6 premises located in areas containing significant numbers of
7 older residential premises, where significant numbers of lead
8 paint poisoning cases or possible cases of lead paint poisoning,
9 have recently been reported.

10 (2) Upon the request of any occupant, the Secretary of
11 Environmental Resources shall cause to have the occupant's
12 premises inspected within a reasonable time.

13 (3) When the Secretary of Environmental Resources is
14 informed of a case of lead paint poisoning or possible lead
15 paint poisoning, he shall cause to have inspected the premises
16 in which the victim resides, or has recently resided. The
17 findings of such inspections shall be reported to the Secretary
18 of Health and to the appropriate enforcement authorities set out
19 in this act.

20 (4) A dangerous level of lead found in premises inspected
21 pursuant to this section, or otherwise, shall be reported
22 immediately in writing to the owner or agent of the premises and
23 all affected tenants, and the Secretary of Environmental
24 Resources shall cause to have prominently posted on all
25 entrances to said dwelling a notice that the premises contains
26 hazardous paint which should not be eaten or chewed. Such
27 notices may not be removed until the premises have been found to
28 comply with this act.

29 (5) Authorized agents of the Department of Environmental
30 Resources assigned to perform inspections pursuant to this

1 section may enter all premises at reasonable hours and with
2 reasonable notice to the occupants thereof.

3 (b) When a dangerous level of lead or other toxic heavy
4 metals is found in premises inspected pursuant to subsection
5 (a), or otherwise, the Secretary of Environmental Resources
6 shall notify the Secretary of Health for screening, diagnosis,
7 treatment, and follow-up activities provided in this act.

8 (c) The Secretary of Environmental Resources shall maintain
9 comprehensive records of all reports submitted pursuant to this
10 section. Such records shall be geographically indexed in order
11 to determine the location of areas of relatively high incidence
12 of dangerous lead or other toxic heavy metal levels. Such
13 records shall be available to the coordinating committee and
14 advisory committee, upon request. Such records shall be public
15 records. In addition, a summary report will be submitted by the
16 Secretary of Environmental Resources to the coordinating
17 committee and advisory committee semi-annually.

18 Section 5. Laboratories.--Laboratories of the Department of
19 Health and the Department of Environmental Resources shall be
20 maintained for the analysis of biological and nonbiological
21 specimens, to carry out the purposes of this act. The Department
22 of Health shall certify laboratories conducting tests on
23 biological specimens under the Clinical Laboratory Act Pub.L.
24 1539. The Department of Environmental Resources shall have the
25 power to certify laboratories conducting tests on nonbiological
26 specimens. The State laboratories may charge a fee for such
27 services not greater than the cost of providing such services.

28 Section 6. Interagency Coordinating Committee.--(a) The
29 Governor shall appoint an Interagency Coordinating Committee on
30 Lead Paint Poisoning Prevention which shall be composed of

1 representatives of the following State agencies:

2 (1) Department of Environmental Resources (2).

3 (2) Department of Health (2).

4 (3) Department of Public Welfare (2).

5 (4) Department of Community Affairs (1).

6 (5) Department of Education (1).

7 (6) Commonwealth Child Development Committee (1).

8 (7) Citizens' Advisory Council to the Department of
9 Environmental Resources (1).

10 (8) Chairman of the Advisory Committee (1).

11 (9) Senate, to be appointed by the President pro tempore
12 (1).

13 (10) House of Representatives, to be appointed by the
14 Speaker (1).

15 The committee, with the approval of the Governor, may also
16 include in its membership representatives of Federal and local
17 governmental agencies and private agencies when such memberships
18 would further the purposes of the committee. The committee
19 coordinator shall be selected by the membership of the
20 committee. As used in this act, "coordinating committee" shall
21 refer to the Interagency Coordinating Committee.

22 (b) The coordinating committee shall be responsible for
23 coordinating all Commonwealth programs on lead paint poisoning.

24 (c) The coordinating committee shall meet at least
25 quarterly.

26 (d) The coordinating committee shall advise the Department
27 of Health and Environmental Resources, the Governor's Office and
28 the Legislature on the direction, scope, content, and
29 effectiveness of programs and policies to prevent, abate and
30 treat lead paint poisoning.

1 (e) The coordinating committee, with the advice of the
2 advisory committee, shall develop, and the Department of Health
3 shall institute, an educational and publicity program in order
4 to inform the general public, and particularly parents of
5 children residing in areas of significant exposure to sources of
6 lead paint poisoning; teachers, social workers, and other human
7 service personnel; owners of residential property; and health
8 services personnel, particularly interns, residents, and other
9 intake personnel at major hospitals, of the dangers, frequency,
10 sources, and methods of preventing lead paint poisoning.

11 (f) The interagency coordinating committee shall cease to
12 exist five years from the effective date of this act.

13 Section 7. Advisory Committee on Lead Paint Poisoning
14 Prevention.--(a) The Governor shall appoint an Advisory
15 Committee on Lead Paint Poisoning Prevention which shall consist
16 of 16 members. As used in this act, "advisory committee" shall
17 refer to the Advisory Committee on Lead Paint Poisoning
18 Prevention. At least two-thirds of the advisory committee must
19 live in neighborhoods affected by lead paint poisoning or
20 possible lead paint poisoning, and a majority of the advisory
21 committee members shall have one child under age six at the time
22 of their appointment. In addition, the advisory committee shall
23 have competency in the fields of medicine, law, public health,
24 social services, housing, construction, paint industry and
25 environmental health.

26 (b) The advisory committee shall be directly responsible to
27 the coordinating committee.

28 (c) The advisory committee shall have advisory
29 responsibilities in planning, implementing, and evaluating
30 program activities; in stimulating public education and public

1 action; and in seeking funding for project activities.

2 (d) The members of the advisory committee shall not be paid
3 for their services, but they shall be reimbursed by the
4 Department of Environmental Resources for travel and other
5 expenses necessary for the performance of their duties.

6 (e) Members shall be appointed initially serving only one
7 year. After the first year, eight members of the advisory
8 committee will be appointed for a two-year term and seven
9 members for a one-year term.

10 (f) The advisory committee shall cease to exist five years
11 from the effective date of this act.

12 Section 8. Restrictions.--(a) No person shall manufacture,
13 store, sell, or transfer for retail household or residential
14 purposes hazardous paint.

15 (b) Effective July 1, 1976, no person shall apply or cause
16 to be applied any hazardous paint to any toy, furniture,
17 cooking, drinking, or eating utensil, interior surface or
18 fixture of any premises intended for residential habitation, or
19 to any exterior surface or fixture of any premises intended for
20 residential inhabitation; no person shall sell, expose for sale,
21 deliver, give away, or possess with intent to sell any toy,
22 furniture, cooking, drinking, or eating utensil to which any
23 hazardous paint has been applied. For the purposes of this
24 section any paint shall be deemed to be hazardous when it
25 contains lead or any other toxic heavy metal in excess of limits
26 established in applicable Federal laws, rules or regulations.

27 Section 9. Penalties.--(a) Any person who violates any
28 provision of this act or any rule or regulation or order of the
29 Department of Health or the Department of Environmental
30 Resources promulgated or issued pursuant to this act shall be

1 guilty of a summary offense, and, upon conviction, shall pay a
2 fine of not less than \$100 nor more than \$300 for each separate
3 offense, and, in default of the payment of such fine, the
4 person, or if such person be a partnership, then the offending
5 members thereof, or if such person be a corporation or
6 association, then the offending officers, members, agents,
7 servants, or employees thereof, shall be imprisoned in the
8 county jail for a period of 60 days.

9 (b) Any person who within two years after a summary
10 conviction provided in subsection (a) violates any provision of
11 this act or any rule or regulation or order of the Department of
12 Health or the Department of Environmental Resources promulgated
13 or issued pursuant to this act is guilty of a misdemeanor of the
14 third degree and, upon conviction, shall be subject to a fine of
15 not less than \$500 nor more than \$2,500 for each separate
16 offense or to imprisonment in the county jail for a period of
17 not more than one year, or both. In the case of a partnership,
18 the offending members thereof, and in the case of a corporation,
19 or an association the offending officers, members, agents,
20 servants, or employees, may be subject to any such sentence of
21 imprisonment.

22 (c) Each day of continued violation of any provision of this
23 act or any rule or regulation or order of the Department of
24 Health or the Department of Environmental Resources promulgated
25 or issued pursuant to this act shall constitute a separate
26 offense under subsections (a) and (b).

27 (d) In addition to proceeding under any other remedy
28 available at law or in equity for a violation of the provisions
29 of this act or a rule or order of the Department of
30 Environmental Resources promulgated or issued pursuant to this

1 act, the Environmental Hearing Board, after hearing, may assess
2 a civil penalty upon a person for such violation. Such a penalty
3 may be assessed whether or not the violation was wilful. The
4 civil penalty so assessed shall not exceed \$5,000 plus \$500 for
5 each day of continued violation. In determining the amount of
6 the civil penalty the Environmental Hearing Board shall consider
7 the wilfulness of the violation, damage or injury to property or
8 persons, cost of restoration or treatment, and other relevant
9 factors. It shall be payable to the Commonwealth of Pennsylvania
10 and shall be collectible in any manner provided by law for the
11 collection of debts. If any person liable to pay any such
12 penalty, neglects or refuses to pay the same after demand, the
13 amount, together with interest and any costs that may accrue,
14 shall be a lien in favor of the Commonwealth upon the property,
15 both real and personal, of such person, but only after same has
16 been entered and docketed of record by the prothonotary of the
17 county where such is situated. The Environmental Hearing Board
18 may, at any time, transmit to the prothonotaries of the
19 respective counties certified copies of all such liens, and it
20 shall be the duty of each prothonotary to enter and docket the
21 same of record in his office, and to index the same as judgments
22 are indexed, without requiring the payment of costs as a
23 condition precedent to the entry thereof. All fines and civil
24 penalties collected under this act shall be paid into the
25 Treasury of the Commonwealth in a special fund known as "The
26 Lead Paint Poisoning Prevention Fund," which shall be
27 administered by the Department of Environmental Resources for
28 use in the prevention of lead paint poisoning.

29 (e) All summary proceedings under the provisions of this act
30 may be brought before any district justice, justice of the

1 peace, alderman or magistrate in the county where the offense
2 was committed, and to that end jurisdiction is hereby conferred
3 upon said district justices, justices of the peace, aldermen, or
4 magistrates, subject to appeal by either party in the manner
5 provided by law.

6 (f) The owner of any premises in which there is any paint
7 which contain dangerous levels of lead, or other toxic heavy
8 metal, as defined in this act, shall cause said materials to be
9 removed or covered according to the Philadelphia Department of
10 Public Health Specifications For The Removal of Lead Paint and
11 Safety Standards For Removal of Lead Paint. The presence in
12 premises of any paint which contain dangerous levels of lead or
13 any other toxic heavy metal accessible to children under six
14 years of age is hereby declared to be a nuisance.

15 (f.1) In cases where the owner of any premises is required
16 to remove or cover materials in accordance with this act, and
17 the cost of removal or covering such material according to the
18 specifications referred to in this act would cause a financial
19 hardship on the owner, the local taxing authority shall cause to
20 be issued a real estate tax credit in the amount of the actual
21 expenditures made by the owner, however, such credit shall not
22 exceed the actual amount of the tax.

23 (g) No owner shall raise the rent for any residential
24 premises, evict the tenant or terminate a lease with a tenant or
25 make, alter, amend or modify any term or condition of any
26 existing lease or arrangement of tenancy of the tenant as a
27 consequence of any violation having been found against the
28 premises, the filing of a complaint alleging the violation, a
29 tenant seeking a lead paint inspection of the premises or of
30 performing repairs mandated by this section. In any civil

1 proceeding in which notice of termination of the lease or
2 arrangement of tenancy or alteration of a term or condition of
3 the lease was within one year after a lead paint violation was
4 found, it shall be the burden of the owner, landlord, agent or
5 other persons operating or managing such premises to prove that
6 the notice or alteration was not given as a consequence of the
7 exercise or enjoyment of the tenant of his legal rights under
8 this section. The terms and conditions of repair or removal
9 pursuant to this section shall be the Philadelphia Department of
10 Public Health Specifications For The Removal of Lead Paint and
11 Safety Standards For Removal of Lead Paint. This section shall
12 be strictly construed and enforced so as to best protect the
13 safety of residents of such dwellings.

14 (h) The Department of Environmental Resources may issue such
15 orders as are necessary to aid in the enforcement of the
16 provisions of this act. Failure to comply with any such order is
17 hereby declared to be a nuisance.

18 (i) Any activity or condition declared by this act as being
19 a nuisance shall be abateable in the manner provided by law or
20 equity for the abatement of public nuisances. The Secretary of
21 the Department of Environmental Resources shall maintain a
22 special State lead paint poisoning abatement order to remove
23 lead paint in cases where owners of premises fail to perform
24 their duties under this act by refusing or delaying the removal
25 of lead paint. The costs of such State abatement work will be
26 assessed against the owner of the premises by establishing a
27 lien on the property. Such program of abatement by the State
28 shall employ to the maximum extent possible community residents
29 of the areas in which abatement takes place. In addition, suits
30 to abate such nuisances or suits to restrain or prevent any

1 violation of this act may be instituted in equity or at law in
2 the name of the Commonwealth upon relation of the Attorney
3 General, or upon relation of any district attorney of any
4 county, or upon relation of the solicitor of any municipality
5 affected, after notice has first been served upon the Attorney
6 General of the intention of the district attorney or solicitor
7 to so proceed. Such proceedings may be prosecuted in the
8 Commonwealth Court, or in the court of common pleas of the
9 county in which the activity has taken place, the condition
10 exists, or the public affected, and to that end jurisdiction is
11 hereby conferred in law and equity upon such courts: Provided,
12 however, That except in cases of emergency where, in the opinion
13 of the court, the exigencies of the cases require immediate
14 abatement of said nuisances, the court may, in its decree fix a
15 reasonable time during which the person responsible for the
16 nuisances may make provision for the abatement of the same. In
17 cases where the circumstances require it or the public health is
18 endangered, a mandatory preliminary injunction or special
19 injunction may be issued upon the terms prescribed by the court,
20 notice of the application having been given to the defendant in
21 accordance with the rules of equity practice. In any case
22 brought under this subsection the Attorney General, the district
23 attorney, or the solicitor of any municipality shall not be
24 required to give bond.

25 (j) Any aggrieved party may bring a bill in equity in the
26 Commonwealth Court against any person having duties of
27 enforcement under this act for failure to adequately perform
28 such duties. If the court finds that such duties have not been
29 adequately performed, it shall order them so performed, either
30 by the named defendant or any other person having a legal duty

1 to enforce this act.

2 (k) The collection of any penalties under the provisions of
3 this act shall not be construed as estopping the Commonwealth or
4 any district attorney or solicitor of a municipality, from
5 proceeding in courts of law to abate nuisances forbidden under
6 this act or abate nuisances under existing law. It is hereby
7 declared to be the purpose of this act to provide additional and
8 cumulative remedies to abate public health hazards endangering
9 the lives of citizens of this Commonwealth, and nothing in this
10 act contained shall in any way abridge or alter rights of action
11 or remedies now or hereafter existing in equity, or under the
12 common law or statutory law, civil or criminal, nor shall any
13 provision in this act, or any act done by virtue of this act, be
14 construed as estopping the Commonwealth, persons or
15 municipalities, in the exercise of their rights under the common
16 law or decisional law or in equity, from proceeding in courts of
17 law or equity to suppress nuisances, or to abate any pollution
18 now or hereafter existing, or enforce common law or statutory
19 rights.

20 Section 10. Appropriation.--The ~~sums of \$250,000 and~~ <—
21 ~~\$175,000 are hereby~~ SUM OF \$1,750,000 IS appropriated to the <—
22 Department of Environmental Resources and THE SUM OF \$1,250,000 <—
23 IS APPROPRIATED TO the Department of Health, ~~respectively,~~ for <—
24 the fiscal year ~~1975-1976~~ 1976-1977 to carry out the purposes of <—
25 this act.

26 Section 11. Severability.--The provisions of this act shall
27 be severable. If any provision of this act is found by a court
28 of record to be unconstitutional and void, the remaining
29 provisions of the act shall, nevertheless, remain valid unless
30 the court finds the valid provisions of the act are so

1 essentially and inseparably connected with, and so depend upon,
2 the void provision, that it cannot be presumed the General
3 Assembly would have enacted the remaining valid provisions
4 without the void ones; or unless the court finds the remaining
5 valid provisions standing alone, are incomplete and are
6 incapable of being executed in accordance with the legislative
7 intent.

8 Section 12. Repeals.--All acts and parts of acts are
9 repealed in so far as they are inconsistent herewith.

10 Section 13. Effective Date.--This act shall take effect
11 ~~immediately~~ IN 60 DAYS.

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