

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 9

Session of
1975

INTRODUCED BY FINEMAN, M. E. MILLER, JR., COLE, GALLAGHER,
DeMEDIO, LAUDADIO, BENNETT, SCHWEDER, REED, WANSACZ, BERLIN,
FEE, LEDERER, WOJDAK, PIEVSKY, RAPPAPORT, OLIVER, ROMANELLI,
PRATT, GARZIA, HOPKINS, PERRY, MORRIS, GREENFIELD, TOLL,
GREEN, ABRAHAM, McCALL, GILLETTE AND DiDONATO,
JANUARY 20, 1975

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JANUARY 20, 1975

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," imposing powers and duties
21 on the Department of Environmental Resources relating to lead
22 paint poisoning and providing for civil actions and
23 penalties.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The act of April 9, 1929 (P.L.177, No.175), known

1 as "The Administrative Code of 1929," is amended by adding a
2 section to read:

3 Section 2103.1. Lead Paint Poisoning Prevention and Control
4 Program.--

5 (a) The Department of Environmental Resources shall have the
6 power, and its duty shall be to establish a Statewide program
7 for the prevention, screening, diagnosis and treatment of lead
8 poisoning, including elimination of the sources of such
9 poisoning, through such research, educational, epidemiological
10 and clinical activities in cooperation with the Department of
11 Health and the Department of Community Affairs where their
12 jurisdictions overlap as may be necessary.

13 (b) The Secretary of Environmental Resources, hereinafter
14 referred to as the secretary, shall designate an officer or
15 employee of the department as Lead Poisoning Control Director.
16 The director shall be responsible, subject to the authority of
17 the secretary, for carrying out the purposes of this section and
18 administering all programs created hereunder. As used in this
19 section, "director" shall refer to the Lead Poisoning Control
20 Director.

21 (c) The director may contract with any agencies, individuals
22 or groups for the provision of necessary services and shall
23 issue, and from time to time amend, such rules and regulations
24 as may be necessary to serve the purposes of this section.

25 (d) The secretary shall appoint an advisory committee for
26 the lead poisoning prevention program, which shall consist of
27 nine members, at least four of whom shall be physicians or
28 persons active in the field of public health. At least two
29 members of said advisory committee shall be parents of children
30 under six years of age who reside in lower-income urban areas.

1 The committee shall advise the director on matters of policy
2 relating to the programs set forth in this section; shall be
3 consulted by the director prior to the issuance of rules and
4 regulations pursuant to this section; and shall perform such
5 other duties as the director may request not inconsistent with
6 the provisions of this section. The members of the advisory
7 committee shall not be paid for their services, but they shall
8 be reimbursed for travel and other expenses necessary for the
9 performance of their duties. As used in this section, "advisory
10 committee" shall refer to said committee.

11 (e) Any examining physician, hospital, public health nurse
12 or other diagnosing person or agency shall report to the
13 director the existence and circumstances of each case of lead
14 poisoning known to them and not previously reported. Such
15 reports shall be made on forms prescribed by the director, and
16 shall be submitted not later than three days after said person
17 or agency first diagnoses or is informed of such case. The
18 director shall by regulation with the concurrence of the
19 advisory committee and in accordance with sound medical practice
20 define further the terms "lead poisoning" and "previously
21 reported" in order to best serve the purposes of this section.

22 (f) When a case of lead paint poisoning is reported to the
23 director, he shall inform the Department of Health and such
24 local boards of health, public health agencies and other persons
25 and organizations as he deems necessary: Provided, however,
26 That the name of any individual contracting lead poisoning shall
27 not be included unless the director determines that such
28 inclusion is necessary to serve the purposes of this section or
29 the health and well-being of the affected individual.

30 (g) The director shall maintain comprehensive records of all

1 reports submitted pursuant to this section. Such records shall
2 be geographically indexed in order to determine the location of
3 areas of relatively high incidence of lead poisoning. Such
4 records shall be public records, subject to the provision of
5 subsection (f) relating to the names of individuals.

6 (h) The director shall institute an educational and
7 publicity program, in order to inform the general public, and
8 particularly parents of children residing in areas of
9 significant exposure to sources of lead poisoning; teachers,
10 social workers and other human service personnel; owners of
11 residential property, particularly property constructed previous
12 to the year 1945; and health services personnel, and
13 particularly interns, residents and other intake personnel at
14 major hospitals, of the dangers, frequency, sources and methods
15 of preventing lead poisoning.

16 (i) The director shall establish a program for early
17 diagnosis of cases of lead poisoning. Such program shall
18 systematically examine all children under six years of age
19 residing within this Commonwealth for the presence of lead
20 poisoning. Such examinations shall be made by such means and at
21 such intervals as the director shall by regulation determine may
22 be medically necessary and proper. Such program shall employ, to
23 the maximum extent possible, residents of the areas in which
24 screening and examinations are conducted.

25 (j) Such program of diagnosis shall, to the extent that all
26 children residing in this Commonwealth are not systematically
27 examined, give priority in examinations to those children
28 residing, or who have recently resided, in areas where
29 significant numbers of lead poisoning cases have recently been
30 reported or where other reliable evidence indicates that

1 significant numbers of lead poisoning cases may be found.

2 (k) When the director is informed of a case of lead
3 poisoning pursuant to this section, or otherwise, he shall cause
4 to have examined all other children under six years of age, and
5 such other children as he may find advisable to examine,
6 residing or recently residing in the household of the victim.
7 The results of such examinations shall be reported to the
8 director, to the person or agency reporting the original case
9 pursuant to this section, and to such other persons or agencies
10 as the director deems advisable.

11 (l) The director shall maintain comprehensive records of all
12 examinations conducted pursuant to this section. Such records
13 shall be geographically indexed in order to determine the
14 location of areas of relatively high incidence of lead
15 poisoning. Such records shall be public records, subject to the
16 proviso of subsection (f) relating to the names of examined
17 individuals. A summary of the results of all examinations
18 conducted pursuant to this section shall be released quarterly,
19 or more frequently if the director so determines, to all
20 interested parties.

21 (m) All cases of probable cases of lead poisoning, as
22 defined by regulation by the director, found in the course of
23 examinations conducted pursuant to this section shall be
24 reported immediately to the affected individual, to his parent
25 or legal guardian if he is a minor, and to the director. The
26 director shall inform such persons or agencies as he deems
27 advisable of the existence of such case or probable case,
28 subject to the proviso of subsection (f) relating to the names
29 of individuals.

30 (n) The director shall establish a comprehensive program for

detection of sources of lead poisoning. Such program shall attempt to locate all dwellings in which the paint, plaster or other accessible substance contains dangerous levels of lead. The means of detection, and the level of lead content that produces the danger of lead poisoning, shall be determined by regulation by the director in accordance with sound medical practice and current technical knowledge.

(o) Such program of detection shall, to the extent that all appropriate dwellings are not inspected, give priority in inspections to those dwellings located in areas where significant numbers of lead poisoning cases have recently been reported, and in which children under six years of age reside. Such program shall employ, to the maximum extent possible, residents of the areas in which inspections are conducted.

(p) Upon the request of any occupant, the director shall cause to have the occupant's premises inspected within a reasonable time, not to exceed ten days, unless systematic inspection of the area in which the person requesting the inspection resides is scheduled within thirty days, in which case said inspection may be deferred up to twenty additional days.

(q) When the director is informed of a case of lead poisoning pursuant to this section, or otherwise, he shall cause to have inspected the dwelling in which the victim resides, or has recently resided. The findings of such inspection shall be reported to the director and to the appropriate enforcement authorities set out in this section.

(r) A dangerous level of lead found in a dwelling inspected pursuant to this section, or otherwise, shall be reported immediately to the owner of the building, all affected tenants,

all mortgagees and lienholders of record, the appropriate enforcement authorities hereinafter set out and the director. The director shall inform such other persons or agencies as he deems advisable, and shall cause to have prominently posted on all entrances to said dwelling a notice that the dwelling contains dangerous amounts of lead paint or other materials which children should not be allowed to eat or chew. Such notice may not be removed until all premises have been found to comply with this section.

(s) When a dangerous level of lead is found in a dwelling inspected pursuant to this section, or otherwise, the director shall cause to have examined all children under six years of age, and such other children as he may find advisable to examine, residing or who have recently resided in said dwelling. The results of such examinations shall be reported to the director, the affected individual and his parent or legal guardian. The director shall inform such other persons or agencies as he deems advisable, subject to the proviso of subsection (f) relating to the names of affected individuals.

(t) The director shall maintain comprehensive records of all inspections conducted pursuant to this section. Such records shall be geographically indexed in order to determine the location of areas of relatively high incidence of dangerous lead levels. Such records shall be public records. A summary of the results of all inspections conducted pursuant to this section shall be released quarterly, or more frequently if the director so determines, to all interested parties.

(u) Authorized agents of the director assigned to perform inspections pursuant to this section may enter all dwellings at reasonable hours falling between 9 a.m. and 5 p.m. and with

1 reasonable notice to the occupants thereof. Such agents shall
2 secure a search warrant to permit entry when the same is
3 required by any other provision of law, or any constitutional
4 provision.

5 (v) The director shall establish a State laboratory for lead
6 and lead poisoning detection. Said laboratory shall analyze
7 tests administered to children for the presence of lead
8 poisoning, and samples of paint and other materials for
9 dangerous levels of lead taken pursuant to this section, and
10 otherwise.

11 (w) Said laboratory shall analyze tests and samples
12 submitted by persons and agencies not within the department as
13 its facilities permit, and may charge for such services a fee
14 not greater than the cost to it of such services.

15 (x) No person shall apply or cause to be applied any lead-
16 based paint, glaze or other substance to any toy, furniture,
17 cooking, drinking, or eating utensil, interior surface or
18 fixture of any dwelling, or to any exterior surface or fixture
19 of any dwelling that may be reached unaided by children under
20 the age of six years; and no person shall sell, expose for sale,
21 deliver, give away or possess with intent to sell, deliver or
22 give away any toy, furniture, cooking, drinking or eating
23 utensil to which any lead-based paint, glaze or other substance
24 has been applied. For the purposes of this section, any exterior
25 surface or fixture less than four feet from the floor or ground
26 nearest to it shall be conclusively presumed to be accessible by
27 children under the age of six years. For the purposes of this
28 section, any paint, glaze or other substance shall be deemed to
29 be lead-based when it contains six-hundredths of one per centum
30 or more of metallic lead, by weight.

1 (y) Any person who violates the provision of subsection (x)
2 shall in a summary proceeding be fined not less than one hundred
3 dollars (\$100) and not more than five hundred dollars (\$500) for
4 each violation. Each article, surface or fixture to which a
5 lead-based substance is applied shall constitute a separate
6 violation. Any person who repeatedly or willfully violates the
7 provisions of subsection (x) shall in a summary proceeding be
8 imprisoned for not more than three months for each violation.

9 (z) Effective January 1, 1976, no person shall sell, expose
10 for sale, deliver, give away or possess with intent to sell,
11 deliver or give away any lead-based paint, glaze or other
12 surface covering, as defined in subsection (x). Any person who
13 violates the provisions of this subsection shall in a summary
14 proceeding be fined not less than two hundred dollars (\$200) and
15 not more than five hundred dollars (\$500) for each violation.
16 Each can, bottle or other container of any prohibited substance
17 shall constitute a separate violation. Any person who repeatedly
18 or willfully violates the provisions of this subsection shall in
19 a summary proceeding be imprisoned for not more than six months
20 for each violation. Prosecutions under this subsection and under
21 subsection (y) may be commenced by the local board of health or
22 the Department of Environmental Resources. Any aggrieved party
23 may bring a bill in equity in the Commonwealth Court against any
24 person having powers and duties of enforcement under this act
25 for failure to adequately perform such duties if the court finds
26 that such duties have not been adequately performed, it shall
27 order them so performed, either by the named defendant or any
28 other person having the legal duty to enforce this act.

29 (aa) The owner of any residential premises in which any
30 paint, plaster or other accessible materials contain dangerous

levels of lead, as defined in this section shall remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age. Repainting with non-lead-based paint, without removal of the offending paint, plaster or other material shall not be treated as compliance with this subsection. Such removal or covering shall be performed as follows:

(1) All peeling paint, plaster or other material, on both interior and exterior surfaces and fixtures, shall be removed or adequately covered.

(2) Paint, plaster or other material that is not peeling must be removed or covered on window sills; door frames below the four-foot level; windows, including mullions, below the four-foot level; stair rail spindles; stair treads from the lip to the riser on bottom and four inches back from the lip on the top of the tread; doors below the four-foot level and four inches from all edges; stair rails; porch railings; and all other accessible exterior and interior surfaces.

This duty shall apply to every owner of residential premises whether or not his premises have been inspected pursuant to this section, or otherwise. No owner shall raise the rent for any residential premises, evict the tenant or terminate a lease with a tenant or make, alter, amend or modify any term or condition of any existing lease or arrangement of tenancy of the tenant as a consequence of any violation having been found against the premises, the filing of a complaint alleging the violation, a tenant seeking a lead paint inspection of the premises or of performing repairs mandated by this section. In any civil proceeding in which notice of termination of the lease or arrangement of tenancy or alteration of a term or condition of

1 the lease was within one year after a lead paint violation was
2 found, it shall be the burden of the owner, landlord, agent or
3 other persons operating or managing such premises to prove that
4 the notice or alteration was not given as a consequence of the
5 exercise or enjoyment of the tenant of his legal rights under
6 this section. The director may by regulation further define the
7 terms and conditions of repair or removal pursuant to this
8 section. This section shall be strictly construed and enforced
9 so as to best protect the safety of residents of such dwellings.

10 (bb) The owner of any residential property shall be strictly
11 and absolutely liable for all damages caused by his failure to
12 perform the duties required of him pursuant to this section.
13 Such failure shall constitute negligence per se. For the
14 purposes of this subsection, the actions of a child under six
15 years of age in chewing on painted surfaces or plaster or
16 ingesting chips of paint or plaster shall be deemed to be
17 reasonably foreseeable to any adult. In any action or proceeding
18 under this section the court, in its discretion, may allow the
19 plaintiff reasonable attorney's fees as part of the costs.

20 (cc) The owner of any residential property who is notified
21 of a dangerous level of lead pursuant to this section, or
22 otherwise, in paint, plaster or other material present upon his
23 premises and who does not satisfactorily correct or remove said
24 dangerous condition shall in addition to the provisions of
25 subsection (bb) be subject to punitive damages, which shall be
26 treble the actual damages found.

27 (dd) The director shall maintain a special State lead paint
28 poisoning abatement order to remove lead paint in cases where
29 owners of premises fail to perform their duties under this act
30 by refusing or delaying the removal of lead paint. The costs of

1 such State abatement work will be assessed against the owner of
2 the premises by establishing a lien on the property. Such
3 program of abatement by the State shall employ to the maximum
4 extent possible community residents of the areas in which
5 abatement takes place.

6 Section 2. This act shall take effect in 60 days.