

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1528 Session of
2003

INTRODUCED BY CURRY, BEBKO-JONES, BELFANTI, BUNT, CAWLEY,
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J. TAYLOR, THOMAS, WALKO, WASHINGTON AND YOUNGBLOOD,
JUNE 4, 2003

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 4, 2003

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 and lead-containing components and
17 coatings containing dangerous levels of lead.

18 "Certified de-leading contractor" shall include a person

1 licensed by the Department of Labor to conduct the abatement or
2 containment of lead-based coatings.

3 "Certified inspector" shall include a person licensed by the
4 Department of Health to conduct comprehensive lead inspections
5 and risk assessments.

6 "Comprehensive lead inspection" shall include a surface-by-
7 surface investigation to determine the presence of lead-based
8 coatings and the provision of a report explaining the results of
9 the investigation.

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

13 "Dangerous level of lead" shall include an amount of lead
14 that would result in adverse human health effects as established
15 by the Federal Government or the Department of Health or any
16 amount in excess of limits established by the Federal Government
17 or the Department of Health.

18 "Department" shall mean the Department of Health of the
19 Commonwealth.

20 "Emergency lead management plan" shall include a plan for
21 emergency abatement or containment of a lead-coating hazard that
22 utilizes interim control measures which have been approved by
23 the Department of Health.

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

27 "Lead-based coating hazard" shall include any condition that
28 causes exposure to lead from lead-contaminated dust, lead-
29 contaminated soil, lead-contaminated paint or other lead-
30 contaminated material that is deteriorated or present in

accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the Federal Government or the Department of Health.

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

(1) has legal title to any premises;

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

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

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

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

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

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

(2) visual inspection;

(3) limited wipe sampling or other environmental sampling;

(4) other activity as may be appropriate; and

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

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 certified inspector pursuant thereto. If, in the determination of a certified 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. An owner shall be eligible for an
2 emergency lead management plan and letter of interim control for
3 premises in which a lead-poisoned child resides only in the
4 instance of a waiver by the department.

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 certified inspector after an inspection and
8 assessment of the premises by the inspector, and for a letter of
9 interim control by a certified 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 certified 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) a requirement that all interim control work performed under this section comply with the requirements for use of certified 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 certified 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 certified 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)(1) 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.

(2) 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.

(3) In no case shall the premises be subject to an emergency lead management plan and letter of interim control for longer than two years.

1 (f) A letter of interim control shall be revocable by
2 operation of law upon occurrence of either of the following
3 conditions:

4 (1) Expiration by its own term.

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

8 (g)(1) If a certified inspector finds that the premises
9 contains peeling paint or otherwise fails to meet the standards
10 of the emergency lead management plan and the letter of interim
11 control, the inspector shall notify the owner of the premises,
12 the department, the local code enforcement agency or board of
13 health of the failure.

14 (2) The owner shall bring the premises into compliance with
15 the emergency lead management plan and the letter of interim
16 control within fourteen days of being notified to do so by the
17 department, the local code enforcement agency or board of health
18 or certified lead inspector, or within such greater period of
19 time as may be allowed by the department, the local code
20 enforcement agency or board of health, or by judicial order.

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

containment or abatement is to occur in common areas, including the exterior, all occupants of the premises shall be notified in writing.

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

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

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

(3) Peeling and intact lead-based coatings containing dangerous levels of lead shall be abated, on the interior and exterior surfaces of windows having sills below the five-foot level when surfaces are either movable or impact on movable surfaces. Such surfaces shall include, but not be limited to, interior and exterior window sashes, window sills and mullions,

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 window replacement and use of window liners to contain deteriorated areas.

(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 all residential exterior paint. Non-residential sandblasting shall be judged on a case-by-case basis, dependent upon the proximity of use by children or pregnant women. 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)(1) Upon the determination of a certified 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 certified inspectors shall use such standardized formats in issuing letters of full compliance.

(2) If the tenant believes that the premises fails to meet the standards of the letter of compliance or a certified inspector finds that the premises fails to meet the standards of the letter of full compliance, the tenant or inspector shall notify the owner of the premises, the department, the local code enforcement agency or board of health of said failure.

(3) The owner shall ensure that the condition of the premises meets the standards required by the letter of full compliance within fourteen days of being notified to do so by the department, local code enforcement agency or board of health or certified lead inspector, or within such greater period of time as may be allowed by the department, local code enforcement agency or board of health, or by judicial order.

Section 505-C. Performance of Containment, Abatement, and Daily and Final Cleanup.--(a)(1) Containment or abatement, and daily and final cleanup of lead-based coatings required under this article, whether undertaken for full compliance or as an interim measure under an emergency lead management plan, shall be conducted only by a contractor certified by the department, except that the owner of premises, acting pursuant to regulations promulgated by the department specifying the conditions under which owners may undertake such containment or abatement, need not be certified to engage in such activities.

(2) Any person who is not certified may undertake containment or abatement activities only after successful completion of a course of instruction approved by the department detailing the proper methods and health hazards of containment or abatement and final cleanup of paint, plaster or other

accessible structural material. All containment or abatement activities by an uncertified person shall be inspected and approved after completion by a certified inspector.

(3) Such 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)(1) 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.

(2) Such regulations shall provide that persons may occupy

1 the premises pursuant to specified conditions established on a
2 case-by-case basis by the department or local board of health or
3 code enforcement agency upon a finding that such occupancy will
4 not endanger or materially impair the health or the well-being
5 of any occupant.

6 (3) Notwithstanding paragraph (2), no pregnant women and
7 children under the age of six may be permitted to occupy the
8 dwelling unit during de-leading activities.

9 (e)(1) Any owner undertaking to abate or contain dangerous
10 levels of lead in any dwelling unit may, at the owner's option,
11 reasonably delay the commencement of the tenancy until a letter
12 of compliance or interim control certificate has been issued
13 provided that no duly executed lease exists between owner and
14 tenant. No such delay shall exceed thirty days. During any such
15 period of delay of occupancy the prospective tenant shall bear
16 any living expenses.

17 (2) Should the owner decide to bring any residential
18 premises into compliance with the provisions of this article
19 while a tenant is occupying a dwelling unit, the owner shall
20 have the right and the obligation to move the tenant to a
21 substitute dwelling unit which is determined to be lead-safe
22 upon reasonable notice, provided the owner pays reasonable
23 moving expenses and any use and occupancy charges for a
24 substitute dwelling unit which exceed the rent for the vacated
25 dwelling unit for which the tenant remains responsible. A
26 substitute dwelling unit may not cause undue economic or
27 personal hardship to the tenant.

28 (3) If the tenant fails to accept the substitute dwelling
29 unit selected by the owner during such period of time reasonably
30 required to bring the vacated dwelling unit into compliance with

1 the provisions of this article, the owner shall have no
2 obligation to reimburse the tenant for any exposure or
3 inconvenience other than moving expenses and any use and
4 occupancy charges for the substitute dwelling unit selected by
5 the owner which may exceed the rent for the vacated dwelling
6 unit.

7 Section 506-C. Disclosure.--(a) Tenants of premises and
8 those prospective tenants who are about to enter an agreement to
9 rent premises shall be notified about the hazards of dangerous
10 levels of lead as follows:

11 (1)(i) The department shall prepare a standard notification
12 brochure and such other materials as may be necessary to inform
13 such tenants and owners about the hazards associated with
14 dangerous levels of lead, the symptoms and treatment of lead
15 poisoning, measures which can be taken by parents and owners to
16 reduce the risk of lead exposure to children, and the
17 requirements of this article and regulations promulgated
18 hereunder. Such materials shall also describe the significance
19 of letters of interim control and letters of full compliance,
20 and the need for tenants to promptly notify owners, the
21 department, the local code enforcement agency or board of health
22 in writing whenever an intact coating surface begins to peel or
23 flake.

24 (ii) The department shall prepare a standard form to be
25 distributed by owners to tenants and prospective tenants about
26 to enter an agreement to rent the premises, which shall include
27 the name, address and telephone number of the owner or the
28 owner's managing agent and the address and telephone number of
29 the childhood lead poisoning prevention program.

30 (iii) An owner shall disclose any information actually known

by the owner concerning the location of any lead-based coating containing dangerous levels of lead, including such intact lead-based coatings containing dangerous levels of lead which have been covered or encapsulated.

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

(i) a copy of the materials and standard form completed pursuant to clause (1);

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

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

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

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

(c) The receipt by a tenant or prospective tenant of a notification brochure or other disclosure materials from an owner pursuant to this section shall not be construed to bar any claim for liability by the tenant or his minor children against the owner. The disbursement by an owner of a notification brochure to a tenant shall not operate as an admission of liability to any claim for liability by the tenant or his minor

children against the owner under any provision of this article or regulations promulgated hereunder.

Section 507-C. Independent Inspection.--(a) Notwithstanding any of the provisions of this article, every agreement to rent a premises shall provide in writing that the tenant shall have a ten-day period, unless the parties agree in writing to a different period of time, during which the tenant may, at the tenant's expense, obtain a comprehensive lead inspection and risk assessment from a certified lead inspector. If the inspection reveals lead-based coatings or lead-based coating hazards on the premises, the tenant may terminate the lease within two business days of the receipt of the inspection report, with all money paid on account to be refunded to the tenant. Failure of the tenant to obtain such inspection within the permitted ten days or failure to terminate the lease upon a finding of lead-based coating or lead-based coating hazards within the two-day period constitutes a waiver of the right to conduct an independent inspection and the lease shall remain in full force and effect.

(b) Upon renewal of an existing lease and after compliance by an owner with the disclosure requirements of section 506-C, any tenant shall have the right to proceed with an inspection or risk assessment as provided by this section, except that such renewing tenant:

(1) shall not be required to terminate the lease within two days of performance of a comprehensive lead inspection or a risk assessment; and

(2) shall be afforded a ten-day period to notify the owner in writing of the tenant's intention to terminate the lease, with the actual termination and the vacating of the premises to

1 occur at a time not to exceed ninety days after receipt of the
2 comprehensive lead inspection or risk assessment, during which
3 period all lease obligations shall remain in full force and
4 effect.

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

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

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

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

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

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

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

28 (c) (1) Any owner or representative of the owner who
29 violates any provision of this section shall be subject to a
30 fine of three hundred dollars or imprisonment of up to ninety

1 days for each offense for each premises or both. Continuing
2 violation of the same provision shall constitute a separate
3 violation for each day for each premises.

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

7 Section 509-C. Insurance.--All landlords in this
8 Commonwealth shall carry a minimum of \$100,000 lead liability
9 insurance.

10 Section 510-C. Regulations.--The department shall, within
11 one hundred and eighty days of the effective date of this
12 section, promulgate regulations pursuant to this article.

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

14 (1) The addition of sections 501-C, 507-C(a), 509-C and
15 510-C of the act shall take effect immediately.

16 (2) This section shall take effect immediately.

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