

Roger Williams University Law Review

Volume 8 | Issue 2

Article 30

Spring 2003

2002 Survey of Rhode Island Law: Legislation: Public Health and Safety: An Act Relating to Health - Lead Hazard Mitigation

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Recommended Citation

Edgar, Charles M. Jr.; Romley, Mark Ted; and Taft, Jill A. (2003) "2002 Survey of Rhode Island Law: Legislation: Public Health and Safety: An Act Relating to Health - Lead Hazard Mitigation," *Roger Williams University Law Review*: Vol. 8: Iss. 2, Article 30.
Available at: http://docs.rwu.edu/rwu_LR/vol8/iss2/30

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Public Health. *An Act Relating to Health – Lead Hazard Mitigation.* On June 25, 2002, the general assembly amended many sections of the Rhode Island General Laws as they relate to lead paint mitigation. This is in effect a broadening of these laws. Effective June 25, 2002. 2002 R.I. Pub. Laws ch. 187.

SUMMARY

Real Estate Brokers and Salespersons

Section 5-20.5-6 of the Rhode Island General Laws was amended to require real estate brokers and sales persons who seek an initial license or a first renewal of their license after July 1, 2004 to show proof of a reasonable familiarity and knowledge of the duties and responsibilities established by the Lead Poisoning Prevention Act and the Lead Hazard Mitigation Act of the Rhode Island General Laws.¹ This requirement will apply to the first renewal of licenses issued after July 1, 2004.²

Lead Poisoning Prevention Act

Numerous sections of 23-24.6 were amended to broaden the purpose of the statute.³ The new purposes are aimed at protecting the public health and interest and seek:

to establish rigorous, systematic enforcement of requirements for the reduction of lead hazards in properties where children have been lead poisoned; and []to define the role of the department of health as the lead state agency charged with: (i) defining lead poisoning, (ii) establishing programs for screening persons, especially children under the age of six (6) years, who are at risk of lead poisoning, (iii) setting standards for eliminating and reducing lead hazards in buildings and premises, including dwellings where a child under the age of six (6) years who has been lead poisoned resides, (iv) providing information to the public and segments thereof about the risks of lead poisoning, and (v) initiating enforcement actions against persons who violate the provisions of this chapter or regulations promulgated pursuant to this chapter. The goal of

1. 2002 R.I. Pub. Laws ch. 187 (codified as amended at R.I. GEN. LAWS § 5-20.5-6(c) (2002)).

2. R.I. GEN. LAWS § 5-20.5-6(c) (2002).

3. *Id.* § 23-24.6-3.

this chapter is to reduce the incidence of childhood lead poisoning in Rhode Island to the greatest extent feasible.⁴

The Act amends section 23-24.6-6 by establishing within the department of health the interagency coordinating council on environmental lead, which became effective January 7, 2003.⁵ The new council will be comprised of six individuals and will coordinate the activities of its member agencies.⁶ Its responsibilities will include environmental lead policy, the development of educational materials, drafting regulations aimed at reducing or preventing lead poisoning, and enforcement of laws, regulations, and ordinances pertaining to lead poisoning and its prevention.⁷

The amendment requires the council to make a report to the governor, the speaker of the house, and the president of the senate on or before March 1 of each year on the progress of the lead program and recommendations for any potentially necessary changes in legislation.⁸ The report shall describe at a minimum, for each city and town, the occurrences and severity of lead poisoning in those locations; a description of educational programs; and any regulations adopted.⁹ The report must also state the number of enforcement actions undertaken; the number of enforcement actions closed or completed by successful remediation or other reasons; and the number of enforcement actions remaining open.¹⁰

Amendments to section 23-24.6-17 concern lead hazard reduction. Effective July 1, 2004, the change to this subsection removes the innocent owner status previously accorded to dwelling owners.¹¹ As of that date, limitations on the liability of an innocent owner will no longer apply where any incident of childhood lead poisoning is reported to the department of health.¹²

Amendments to section 23-24.6-23 speak to compliance and enforcement and require the department of health to establish a comprehensive, integrated enforcement program.¹³ The program

4. *Id.*

5. *Id.* § 23-24.6-6(a).

6. *Id.* § 23-24.6-6(b)(1).

7. *Id.*

8. *Id.* § 23-24.6-6(b)(4).

9. *Id.*

10. *Id.*

11. *Id.* § 23-24.6-17(a)(6)(b).

12. *Id.*

13. *Id.* § 23-24.6-23(b).

must ensure effective enforcement aimed at reducing the occurrence of childhood lead poisoning by: focusing efforts on areas or structures where childhood lead poisoning has a high incidence; on identifying and prioritizing areas where multiple instances of childhood lead poisoning have occurred, and consistent with the law, to prosecute those persons on whose properties the multiple instances have taken place, and on whose property lead hazards remain uncorrected.¹⁴ The powers of enforcement created by these amendments do not limit or override any other enforcement available under existing law.¹⁵

Additionally, this section requires the attorney general to maintain an office of lead advocate.¹⁶ The advocate shall have the power to investigate compliance with lead hazard reduction and to impose civil or criminal penalties, fines, and injunctions.¹⁷ Moreover, the advocate is charged with establishing protectionist guidelines to shield any tenant who reports the presence of lead in his or her home from retaliatory action by a landlord.¹⁸

For rental dwellings inhabited by children under six years of age or women who are pregnant, the act allows that following a second notice of violation, rental property failing to meet the applicable lead hazard reduction standards shall be deemed abandoned and declared a public nuisance, "which is a menace to public health."¹⁹ In such an instance, the attorney general, certain non-profit corporations, the department of health or the city or town where the unit is located has the specific power to request that the court appoint a receiver for the property.²⁰ The receiver is authorized to apply for funding, including loans and grants that will be used to address the lead hazards and meet the hazard mitigation standards.²¹ The receiver may hold such property for as long as the funding source requires, ensuring compliance with the purpose of the funding.²²

14. *Id.*

15. *Id.* § 23-24.6-23.

16. *Id.* § 23-24.6-23(c).

17. *Id.* § 23-24.6-23(c)(1).

18. *Id.* § 23-24.6-23(c)(4).

19. *Id.* § 23-24.6-23(d).

20. *Id.*

21. *Id.*

22. *Id.*

High-risk properties are also addressed by the amendments.²³ The department of health is required to notify an owner whose property meets the following conditions:

(i) there have been three (3) or more at risk children under the age of six (6) years with at least environmental intervention blood levels and (ii) fifty percent (50%) of children under the age of six (6) years from the premises who have been tested have had at least environmental intervention blood lead levels, that the premises present a high risk of lead poisoning.²⁴

Any owner of property who fails to abate the lead hazard after receiving notice that the dwelling is high risk may be subject to felony prosecution.²⁵

State Affairs and Government

Title 42 of the Rhode Island General Laws entitled "State Affairs and Government" has been amended by adding chapter 128.1 – Lead Hazard Mitigation, to be known as the Lead Hazard Mitigation Act.²⁶ The purpose of this legislation is to promote the prevention of childhood lead poisoning in Rhode Island, specifically:

(1) To increase the supply of rental housing in Rhode Island in which lead hazards are, at a minimum, mitigated; (2) To improve public awareness of lead issues and to educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; (3) To resolve disjointed insurance practices arising from lead liabilities exclusions.²⁷

Section 42-128.1-6 adds amendments establishing an educational program.²⁸ In order to achieve the purposes of the Lead Hazard Mitigation Act this section creates a comprehensive educational program targeted at those who should be informed of the hazards of lead paint.²⁹ The section provides that the Governor, the department of health, and the housing resources commission shall together sponsor a series of public service announcements

23. *Id.* § 23-24.6-23(e).

24. *Id.*

25. *Id.* § 23-24.6-23(e)(5).

26. *Id.* § 42-128.1-1.

27. *Id.* § 42-128.1-3.

28. *Id.* § 42-128.1-6.

29. *Id.*

about the nature of lead hazards, the importance of lead hazard control and mitigation and other information about the act.³⁰

Section 42-128.1-8 addresses amendments directed at duties imposed on property owners of rental dwellings constructed prior to 1978.³¹ Property owners of pre-1978 rental dwellings, which have not been made lead-safe now must mitigate lead hazards and must comply with numerous requirements including:

- (1) Learn about lead hazards by taking a lead hazard awareness seminar;
- (2) Evaluate the dwelling unit and premises for lead hazards consistent with the requirements for a lead hazard control evaluation;
- (3) Correct identified lead hazards by meeting and maintaining the lead hazard mitigation standard;
- (4) Provide tenants: (i) basic information about lead hazard control; (ii) a copy of the independent clearance inspection; and (iii) information about how to give notice of deteriorating conditions;
- (5) Correct lead hazards within thirty (30) days after notification from the tenant of a dwelling unit with an at risk occupant, or as provided for by section 34-18-22.³²

The section also addresses duties of new owners of pre-1978 rental dwellings.³³ If the rental unit is occupied by an at-risk occupant, these owners have up to sixty days to comply with the requirements for lead hazard mitigation, as long as the new owner has arranged to have the property visually inspected in cases where lead hazard mitigation requirements had not been met by the previous owner.³⁴ The requirements for lead hazard mitigation shall apply to the first change in ownership or tenancy after July 1, 2004.³⁵

Section 42-128.1-9 addresses insurance coverage. Providers of insurance to rental property owners may not exclude coverage for damages arising from lead poisoning.³⁶ As of July 1, 2004, insurers issuing commercial and personal lines of insurance must include coverage for liability arising from lead poisoning that is equal or greater than underlying policy limits for personal injury/

30. *Id.* § 42-128.1-6(1).

31. *Id.* § 42-128.1-8.

32. *Id.* § 42-128.1-8(a).

33. *Id.* § 42-128.1-8(b).

34. *Id.*

35. *Id.* § 42-128.1-8(c).

36. *Id.* § 42-128.1-9.

bodily injury coverage provided under such policies issued to residential rental owners.³⁷ Insurance companies may, however, require rental owners to prove compliance with the strictures of this act.³⁸ Rates for lead poisoning coverage will be reviewed by the department of business regulation to ensure that they are not “excessive, inadequate, or unfairly discriminatory.”³⁹

Section 42-128.1-10 of the act addresses the right to housing where lead hazards have been corrected. This subsection grants pregnant women and families with children under the age of six the right to live in housing that has been lead-abated.⁴⁰ A right to private action has been established for “households that include an at-risk occupant” that will allow injunctive relief against owners of rental dwellings who fail to comply with the standards of lead hazard mitigation.⁴¹ Relief in these cases may include reasonable attorneys’ fees.⁴²

Section 42-128.1-11 states that lead hazard control standards and mitigation standards in pre-1978 housing are to be considered a basic housing standard and will be enforced by the provisions within this chapter.⁴³ Additionally, this section has as its goal, consistency between state and local programs for enforcing certain housing standards, establishing a means of identifying cases of noncompliance, and providing for consistent enforcement of the requirements of this act.⁴⁴ These standards shall go into effect on July 1, 2004.⁴⁵

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37. *Id.* § 42-128.1-9(c).

38. *Id.*

39. *Id.* § 42-128.1-9(e)(1).

40. *Id.* § 42-128.1-10.

41. *Id.* § 42-128.1-10(1).

42. *Id.*

43. *Id.* § 42-128.1-11(a).

44. *Id.* § 42-128.1-11(b).

45. *Id.*