

Chapter 1081.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-one

AN ACT PROVIDING FOR A COMPREHENSIVE PROGRAM OF LEAD PAINT POISONING,
PREVENTION AND CONTROL.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, immediately to prevent the further spread of lead poisoning, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 111 of the General Laws as hereby amended by inserting after section 109 the following ten sections:-

Section 100. The department shall establish a statewide program for the prevention, screening, diagnosis and treatment of lead poisoning, including elimination of the sources of such poisoning, through such research, educational, epidemiological and clinical activities as may be necessary.

The commissioner shall appoint a lead poisoning control director, who shall serve at the pleasure of the commissioner. The director shall be responsible, subject to the authority of the commissioner, for carrying out and administering all programs created pursuant to this and the following nine sections. As used in the following nine sections, "director" shall refer to the lead poisoning control director.

The director may contract with any agencies, individuals or groups for the provision of necessary services, subject to appropriation; and shall issue and from time to time, amend, such rules and regulations as may be necessary.

The governor shall appoint an advisory committee for the lead poisoning prevention program, which shall consist of nine members, at least four of whom shall be physicians or persons active in the field of public health and who shall serve at the pleasure of the governor. At least two members of said advisory committee shall be parents of children under six years of age who reside in lower-income urban areas. The committee shall advise the director on matters of policy; shall be consulted by the director prior to the issuance of rules and regulations; and shall perform such other duties as the director may request.

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The members of the advisory committee shall not be paid in their services but they shall be reimbursed for travel and other expenses necessary for the performance of their duties. As used in the following nine sections, "advisory committee" shall refer to said committee.

Section 101. Any examining physician, hospital, public health nurse or other diagnosing person or agency shall report to the director the existence and circumstances of each case of lead poisoning known to them and not previously reported. Such reports shall be made on forms prescribed by the director and shall be submitted not later than three days after said person or agency first diagnoses or is informed of such case. The director shall by regulation with the advice of the advisory committee and in accordance with sound medical practice define the terms "lead poisoning" and "previously reported".

When a case of lead paint poisoning is reported to the director, he shall inform such local boards of health, public health agencies and other persons and organizations as he deems necessary; provided, however, that the name of any individual contracting lead poisoning shall not be included unless the director determines that such inclusion is necessary to protect the health and well-being of the affected individual.

The director shall maintain comprehensive records of all reports submitted pursuant to this section. Such records shall be properly indexed in order to determine the location of areas of relatively high incidence of lead poisoning. Such records shall be public records, subject to the provision of the preceding paragraph relating to the names of individuals.

Section 102. The director shall institute an educational and publicity program, in order to inform the general public, and particularly parents of children residing in areas of significant exposure to sources of lead poisoning, teachers, social workers and other human service personnel; owners of residential property, particularly property constructed previous to the year nineteen hundred and forty-five; and health services personnel, and particularly interns, residents and other intake personnel at major hospitals, of the dangers, frequency, and sources of lead poisoning, and the methods of preventing such poisoning.

Section 103. The director shall establish a program for early diagnosis of cases of lead poisoning. Such program shall, to the extent permitted by appropriations, systematically examine all children under six years of age residing within the commonwealth for the presence of lead poisoning. Such examinations shall be made by such means and at such intervals as the director shall by regulation determine may be medically necessary and proper. Such program shall also

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Such program of diagnosis shall, to the extent that all children residing in the commonwealth are not systematically examined, give priority in examinations to those children residing, or who have recently resided, in areas where significant numbers of lead poisoning cases have recently been reported or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found.

When the director is informed of a case of lead poisoning pursuant to section one hundred and ninety-one, or otherwise, he shall cause to have examined all other children under six years of age, and such other children as he may find advisable to examine, residing or recently residing in the household of the victim, unless the parents of such child object to said examination because it conflicts with their religious beliefs and practices. The results of such examinations shall be reported to the director, to the person or agency reporting the original case pursuant to section one hundred and ninety-one, and to such other persons or agencies as the director deems advisable.

The director shall maintain comprehensive records of all examinations conducted pursuant to this section. Such records shall be geographically indexed in order to determine the location of areas of relatively high incidence of lead poisoning. Such records shall be public records, subject to the provision of section one hundred and ninety-one relating to the names of examined individuals. A summary of the results of all examinations conducted pursuant to this section shall be released quarterly, or more frequently if the director so determines, to all interested parties.

All cases or probable cases of lead poisoning, as defined by regulation by the director, found in the course of examinations conducted pursuant to this section shall be reported immediately to the affected individual, to his parent or legal guardian if he is a minor, and to the director. The director shall inform such persons or agencies as he deems advisable of the existence of such case or probable case, subject to the provision of section one hundred and ninety-one relating to the names of individuals.

Section 19a. The director shall establish a comprehensive program for detection of sources of lead poisoning. Such program shall attempt, to the extent permitted by appropriations, to locate all dwellings in which the paint, plaster or other accessible substance contains dangerous amounts of lead. The name of

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detection, and the amount of lead 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.

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 extent possible, residents of the areas in which inspections are conducted, which residents shall not be subject to the provisions of chapter thirty-one, unless required as a condition for receipt of federal funds, or section nine A of chapter thirty.

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.

When the director is informed of a case of lead poisoning pursuant to sections one hundred and ninety-one or one hundred and ninety-three, or otherwise, he shall cause to have inspected the dwelling in which the victim resides, or has recently resided, if the occupants of said dwelling consent, after reasonable notice, to such inspection. If the occupant refuses admittance, an agent of the director or of any local board of health or code enforcement agency may apply for a search warrant to permit entry. A court may issue a warrant upon a showing that a victim of lead poisoning resides, or has recently resided in said dwelling. The findings of such inspection shall be reported to the director and to the appropriate enforcement authorities set out in section one hundred and ninety-eight.

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 set out in section one hundred and ninety-eight, 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 section one hundred and ninety-seven.

When a dangerous level of lead is found in a dwelling inspected pursuant to

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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 provision of section one hundred and ninety-one relating to the names of affected individuals.

The director shall maintain comprehensive records of all inspections conducted pursuant to this section. Such records shall be geographically indexed in great detail 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.

Section 193. The commissioner shall establish, within the Bureau of Institute of Laboratories, a state laboratory for lead and lead poisoning detection. Said laboratory shall analyze specimens received from children for the presence of lead poisoning, and samples of paint and other materials for dangerous levels of lead.

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

Section 194. (a) No person shall apply or cause to be applied any lead-based paint, glass or other substance to any toy, furniture, cooking, drinking, or eating utensil, or interior or exterior surface or fixture of any dwelling; and no person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away any toy, furniture, cooking, drinking or eating utensil to which any lead-based paint, glass or other substance has been applied.

Any paint, glass or other substance shall be deemed to be lead-based when it contains more than one-half of one per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint or glass already applied, or when it contains a substantially equivalent amount of lead measured by such alternative reliable method of measurement as the director shall by regulation establish.

Any person who violates the provision of this subsection shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each violation. Each article, surface or fixture to which a lead-based substance is applied shall constitute a separate violation. Any person who will-

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Any article of personal property in violation of this subsection may be impounded by the director in the manner provided in section one hundred and ninety-four and A of chapter ninety-four.

Section 194. Whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead as defined pursuant to section one hundred and ninety-four, the owner shall remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age. Whenever any such residential premises containing said dangerous levels of lead undergoes a change of ownership and as a result thereof, a child or children under six years of age will become a resident therein, the new owner shall remove or cover said paint, plaster or other material so as to make it inaccessible to such children.

Repainting with non-lead-based paint, without removal of the offending paint, plaster or other material shall not constitute compliance with this section. Such removal or covering shall be performed as follows:-

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

(b) Paint, plaster or other material that is not peeling shall 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 exterior and interior surfaces or fixtures that may be readily chewed by children.

This duty shall apply to every owner of residential premises whenever a child or children under six years of age reside therein or whenever such premises undergo a change of ownership and as a result thereof a child or children under six years of age shall reside therein, whether or not his premises have been inspected pursuant to section one hundred and ninety-four or otherwise. This section shall be strictly construed and enforced so as to best protect the safety of residents of such dwellings.

Section 195. Any violation of sections one hundred and ninety-four and one hundred and ninety-seven may be treated by any party as a violation of the state sanitary code and all procedures and remedies applicable to such violations of

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said sanitary code shall be available to correct, deter or punish violations of said sections. The district and superior courts shall have jurisdiction to enforce the provisions of said sections to the same extent that said courts have jurisdiction to enforce said sanitary code.

All local boards of health or other code enforcement agencies, including in the city of Boston the commissioner of housing inspection shall enforce sections one hundred and ninety-six and one hundred and ninety-seven in the same manner and with the same authority as they may enforce the sanitary code.

The director shall have concurrent responsibility and authority to enforce sections one hundred and ninety-six and one hundred and ninety-seven and in so doing shall have available to him all powers and authority which shall be available to local boards of health pursuant to sections one hundred twenty-seven A through one hundred twenty-seven K inclusive.

Violations of sections one hundred and ninety-six and one hundred and ninety-seven shall be treated as emergency matters, and shall be of an emergency to enforcing agencies and speedy hearings by district and superior courts.

Section 189. The owner of any residential property shall be liable for all damages caused by his failure to perform the duties required of him pursuant to subsection (c) of section one hundred and ninety-six or section one hundred and ninety-seven.

The owner of any residential property who is notified of a dangerous level of lead in paint, plaster or other material present upon his premises pursuant to section one hundred and ninety-four, and who does not satisfactorily correct or remove said dangerous conditions shall in addition to the provisions of the preceding paragraph be subject to punitive damages, which shall be triple the actual damages found.

SECTION 2. Section 196 of Chapter 171 of the General Laws, as appearing in section 1 of this act is hereby amended by adding the following subsection:-

(h) No person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away any lead-based paint, paint or other surface covering, as defined in subsection (a), provided, however, that the director may by regulation with the concurrence of a majority of the advisory committee exempt from the provisions of this subsection certain lead-based paints that are not intended or suitable for use on or within residential premises, and are not advertised or labeled as intended or suitable for such uses, and are not sold to the general public on a retail basis, when he finds with substantial certainty that the sale or use of said paints will not result in the exposure of children

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danger to life or health for such children or for the general public.

Whoever violates the provisions of this subsection shall be punished by a fine
of not less than two hundred dollars nor more than five hundred dollars for each
violation. Each can, bottle or other container of any prohibited substance shall
constitute a separate violation. Whoever willfully violates the provisions of
this subsection shall be punished by imprisonment for not more than six months
for each violation. Any article or substance in violation of this subsection
may be embargoed by the director in the manner provided in section one hundred
eighty-nine A of chapter ninety-four.

SECTION 3. Sections one hundred and ninety-six to one hundred and ninety-nine
inclusive, of the General Laws, inserted by this act, shall take
effect on January first, nineteen hundred and seventy-three.

House of Representatives, November 9, 1971.

Preamble adopted, *David M. Bartley*, Speaker.

In Senate, November 9, 1971.

Preamble adopted, *Harold B. Hanger*, President.

House of Representatives, November 9, 1971.

Bill passed to be enacted, *David M. Bartley*, Speaker.

In Senate, November 9, 1971.

Bill passed to be enacted, *Harold B. Hanger*, President.

November 15, 1971.

Approved,

at 1 o'clock and 40 minutes, P. M.

Francis B. Langstaff
Governor.

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