

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 653

Introduced by Wayne, 13.

Read first time January 23, 2019

Committee:

1 A BILL FOR AN ACT relating to public health; to amend section 76-2,120,
2 Reissue Revised Statutes of Nebraska; to adopt the Healthy Kids Act;
3 to require tests for lead-based hazards in housing; to require
4 disclosures to buyers and tenants; to provide a duty for the State
5 Real Estate Commission; to provide operative dates; and to repeal
6 the original section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Healthy Kids Act.

3 Sec. 2. For purposes of the Healthy Kids Act:

4 (1) Department means the Department of Health and Human Services;

5 (2) Dwelling unit has the same meaning as in section 76-1410;

6 (3) Landlord has the same meaning as in section 76-1410;

7 (4) Lead-based paint hazard has the same meaning as in section
8 71-6319.28;

9 (5) Lead-dust wipe assessment means an investigation to determine
10 the presence of lead-based paint hazards conducted by a firm or
11 individual licensed in accordance with the Residential Lead-Based Paint
12 Professions Practice Act and conducted in accordance with such act and
13 rules and regulations adopted and promulgated by the department under
14 such act or the Healthy Kids Act. At a minimum, such assessment shall
15 include a wipe sample as defined in 40 C.F.R. 745.63, as such regulation
16 existed on January 1, 2019;

17 (6) Lead-free certification means a certification issued by the
18 department that confirms that a premises or residential real property
19 contains no lead-based paint hazards or that any such hazards have been
20 permanently eliminated;

21 (7) Premises has the same meaning as in section 76-1410;

22 (8) Rental agreement has the same meaning as in section 76-1410;

23 (9) Residential real property has the same meaning as in section
24 76-2,120;

25 (10) Seller has the same meaning as in section 76-2,120; and

26 (11) Tenant has the same meaning as in section 76-1410.

27 Sec. 3. (1) The requirements of this section apply to the sale of
28 residential real property located in Nebraska when:

29 (a) The seller is required to provide the written disclosure
30 provided for in section 76-2,120; and

31 (b) The sale includes any dwelling unit constructed prior to 1978.

1 (2) Except as provided in subsection (3) of this section, before
2 completing a sale described in subsection (1) of this section, the seller
3 shall cause to be performed a lead-dust wipe assessment of the
4 residential real property. The lead-dust wipe assessment shall be
5 performed no earlier than ninety days prior to the sale and shall be
6 performed at the seller's expense.

7 (3) The requirements of subsection (2) of this section do not apply
8 to residential real property for which the department has issued a lead-
9 free certification.

10 (4) The requirements of this section are in addition to any other
11 requirements imposed by state or federal law.

12 Sec. 4. (1) The requirements of this section apply to any rental of
13 a dwelling unit:

14 (a) That is subject to the Uniform Residential Landlord and Tenant
15 Act; and

16 (b) That is, or is within, a premises constructed prior to 1978.

17 (2) Except as provided in subsection (3) of this section, before
18 entering into a rental agreement for the rental of a dwelling unit
19 described in subsection (1) of this section, the landlord shall cause to
20 be performed a lead-dust wipe assessment for the premises. The lead-dust
21 wipe assessment shall be performed no earlier than ninety days prior to
22 entering into the rental agreement and shall be performed at the
23 landlord's expense. Prior to entering into the rental agreement, the
24 landlord shall disclose the results of the lead-dust wipe assessment to
25 the prospective tenant.

26 (3) The requirements of subsection (2) of this section do not apply
27 to a premises for which the department has issued a lead-free
28 certification. Prior to entering into the rental agreement, the landlord
29 shall provide a copy of the lead-free certification to the prospective
30 tenant.

31 (4) The requirements of this section are in addition to any other

1 requirements imposed by state or federal law.

2 Sec. 5. If a landlord fails to comply with subsection (2) of
3 section 4 of this act, the tenant shall have a cause of action against
4 the landlord and may recover actual damages, court costs, and reasonable
5 attorney's fees. The cause of action created by this section shall be in
6 addition to any other cause of action that the tenant may have. Any
7 action to recover damages under the cause of action shall be commenced
8 within one year after the rental agreement is signed.

9 Sec. 6. (1) If a landlord fails to comply with subsection (2) of
10 section 4 of this act, a tenant may terminate the rental agreement. To
11 terminate a rental agreement under this subsection, the tenant shall
12 provide to the landlord a written notice containing the date on which the
13 tenant wishes the termination to be effective, which shall not be later
14 than thirty days after delivery of the notice. Upon the termination date,
15 the rental agreement shall terminate.

16 (2) The tenant shall not be liable for rent for any period following
17 the termination date.

18 (3) A tenant who terminates a rental agreement pursuant to this
19 section:

20 (a) Shall not be subject to any fee solely because of termination of
21 the rental agreement; and

22 (b) Is entitled to the return of any rental deposit or prepaid rent,
23 subject to section 76-1416.

24 (4) The right to terminate a rental agreement under this section
25 shall remain effective for the duration of the rental agreement.

26 (5) A rental agreement may not waive or vary a tenant's rights or
27 the landlord's duties under the Healthy Kids Act. Any such part or
28 portion of a rental agreement shall be void.

29 (6) The remedies provided in this section are in addition to any
30 other remedies available under other state or federal law.

31 Sec. 7. The department shall develop a safe housing registry. The

1 registry shall contain a list of all residential real properties and
2 premises for which the department has issued a lead-free certification.
3 The registry shall be available on a publicly accessible web site and may
4 include such other information as the department deems necessary or
5 appropriate. Upon request by the owner of residential real property on
6 the registry or the landlord of a premises on the registry, the
7 department may post contact information for such owner or landlord.

8 Sec. 8. The department shall adopt and promulgate rules and
9 regulations necessary to carry out the Healthy Kids Act, including, but
10 not limited to, the standards and procedures for lead-dust wipe
11 assessments and lead-free certifications. The department shall consider,
12 and may adopt, the regulations of the United States Department of Housing
13 and Urban Development found in 24 C.F.R. part 35, as such part existed on
14 January 1, 2019, and the Guidelines for the Evaluation and Control of
15 Lead-Based Paint Hazards in Housing (2012 Edition).

16 Sec. 9. Section 76-2,120, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 76-2,120 (1) For purposes of this section:

19 (a) Ground lease coupled with improvements means shall mean a lease
20 for a parcel of land on which one to four residential dwelling units have
21 been constructed;

22 (b) Purchaser means shall mean a person who acquires, attempts to
23 acquire, or succeeds to an interest in land;

24 (c) Residential real property means shall mean real property which
25 is being used primarily for residential purposes on which no fewer than
26 one or more than four dwelling units are located; and

27 (d) Seller means shall mean an owner of real property who sells or
28 attempts to sell, including lease with option to purchase, residential
29 real property, whether an individual, partnership, limited liability
30 company, corporation, or trust. A sale of a residential dwelling which is
31 subject to a ground lease coupled with improvements shall be a sale of

1 residential real property for purposes of this subdivision.

2 (2) Each seller of residential real property located in Nebraska
3 shall provide the purchaser with a written disclosure statement of the
4 real property's condition. The disclosure statement shall be executed by
5 the seller. The requirements of this section shall also apply to a sale
6 of improvements which contain residential real property when the
7 improvements are sold coupled with a ground lease and to any lease with
8 the option to purchase residential real property.

9 (3) The disclosure statement shall include language at the beginning
10 which states:

11 (a) That the statement is being completed and delivered in
12 accordance with Nebraska law;

13 (b) That Nebraska law requires the seller to complete the statement;

14 (c) The real property's address and legal description;

15 (d) That the statement is a disclosure of the real property's
16 condition as known by the seller on the date of disclosure;

17 (e) That the statement is not a warranty of any kind by the seller
18 or any agent representing a principal in the transaction;

19 (f) That the statement should not be accepted as a substitute for
20 any inspection or warranty that the purchaser may wish to obtain;

21 (g) That even though the information provided in the statement is
22 not a warranty, the purchaser may rely on the information in deciding
23 whether and on what terms to purchase the real property;

24 (h) That any agent representing a principal in the transaction may
25 provide a copy of the statement to any other person in connection with
26 any actual or possible sale of the real property; and

27 (i) That the information provided in the statement is the
28 representation of the seller and not the representation of any agent and
29 that the information is not intended to be part of any contract between
30 the seller and purchaser.

31 (4) In addition to the requirements of subsection (3) of this

1 section, the disclosure statement shall disclose the condition of the
2 real property and any improvements on the real property, including:

3 (a) The condition of all appliances that are included in the sale
4 and whether the appliances are in working condition;

5 (b) The condition of the electrical system;

6 (c) The condition of the heating and cooling systems;

7 (d) The condition of the water system;

8 (e) The condition of the sewer system;

9 (f) The condition of all improvements on the real property and any
10 defects that materially affect the value of the real property or
11 improvements;

12 (g) Any hazardous conditions, including substances, materials, and
13 products on the real property which may be an environmental hazard;

14 (h) Any title conditions which affect the real property, including
15 encroachments, easements, and zoning restrictions;

16 (i) The utility connections and whether they are public, private, or
17 community;

18 (j) The existence of any private transfer fee obligation as defined
19 in section 76-3107; ~~and~~

20 (k) Information relating to compliance with the requirements for a
21 carbon monoxide alarm as provided in sections 76-604 and 76-605; and -

22 (l) Beginning January 1, 2020, for a sale subject to section 3 of
23 this act, the results of a lead-dust wipe assessment or a copy of a lead-
24 free certification.

25 (5) The disclosure statement shall be completed to the best of the
26 seller's belief and knowledge as of the date the disclosure statement is
27 completed and signed by the seller. If any information required by the
28 disclosure statement is unknown to the seller, the seller may indicate
29 that fact on the disclosure statement and the seller shall be in
30 compliance with this section. On or before the effective date of any
31 contract which binds the purchaser to purchase the real property, the

1 seller shall update the information on the disclosure statement whenever
2 the seller has knowledge that information on the disclosure statement is
3 no longer accurate.

4 (6) This section shall not apply to a transfer:

5 (a) Pursuant to a court order, a foreclosure sale, or a sale by a
6 trustee under a power of sale in a deed of trust;

7 (b) By a trustee in bankruptcy;

8 (c) To a mortgagee by a mortgagor or successor in interest or to a
9 beneficiary of a deed of trust by a trustor or successor in interest;

10 (d) By a mortgagee, a beneficiary under a deed of trust, or a seller
11 under a land contract who has acquired the real property at a sale
12 conducted pursuant to a power of sale under a deed of trust, at a sale
13 pursuant to a court-ordered foreclosure, or by a deed in lieu of
14 foreclosure;

15 (e) By a fiduciary in the course of the administration of a
16 decedent's estate, guardianship, conservatorship, or trust except when
17 the fiduciary is also the occupant or was an occupant of one of the
18 dwelling units being sold;

19 (f) From one or more co-owners to one or more other co-owners;

20 (g) Made to a spouse or to a person or persons in the lineal line of
21 consanguinity of one or more of the transferors;

22 (h) Between spouses resulting from a decree of dissolution of
23 marriage or a decree of legal separation or from a property settlement
24 agreement incidental to such a decree;

25 (i) Pursuant to a merger, consolidation, sale, or transfer of assets
26 of a corporation pursuant to a plan of merger or consolidation filed with
27 the Secretary of State;

28 (j) To or from any governmental entity;

29 (k) Of newly constructed residential real property which has never
30 been occupied; or

31 (l) From a third-party relocation company if the third-party

1 relocation company has provided the prospective purchaser a disclosure
2 statement from the most immediate seller unless the most immediate seller
3 meets one of the exceptions in this section. If a disclosure statement is
4 required, and if a third-party relocation company fails to supply a
5 disclosure statement from its most immediate seller on or before the
6 effective date of any contract which binds the purchaser to purchase the
7 real property, the third-party relocation company shall be liable to the
8 prospective purchaser to the same extent as a seller under this section.

9 (7) The disclosure statement and any update to the statement shall
10 be delivered by the seller or the agent of the seller to the purchaser or
11 the agent of the purchaser on or before the effective date of any
12 contract which binds the purchaser to purchase the real property, and the
13 purchaser shall acknowledge in writing receipt of the disclosure
14 statement or update.

15 (8) The seller shall not be liable under this section for any error,
16 inaccuracy, or omission of any information in a disclosure statement if
17 the error, inaccuracy, or omission was not within the personal knowledge
18 of the seller.

19 (9) A person representing a principal in the transaction shall not
20 be liable under this section for any error, inaccuracy, or omission of
21 any information in a disclosure statement unless that person has
22 knowledge of the error, inaccuracy, or omission on the part of the
23 seller.

24 (10) A person licensed as a salesperson or broker pursuant to the
25 Nebraska Real Estate License Act shall not be required to verify the
26 accuracy or completeness of any disclosure statement prepared pursuant to
27 this section, and the only obligation of a buyer's agent pursuant to this
28 section is to assure that a copy of the statement is delivered to the
29 buyer on or before the effective date of any purchase agreement which
30 binds the buyer to purchase the property subject to the disclosure
31 statement. This subsection does not limit the duties and obligations

1 provided in section 76-2418 or in subsection (9) of this section with
2 respect to a buyer's agent.

3 (11) A transfer of an interest in real property subject to this
4 section may not be invalidated solely because of the failure of any
5 person to comply with this section.

6 (12) If a conveyance of real property is not made in compliance with
7 this section, the purchaser shall have a cause of action against the
8 seller and may recover the actual damages, court costs, and reasonable
9 attorney's fees. The cause of action created by this section shall be in
10 addition to any other cause of action that the purchaser may have. Any
11 action to recover damages under the cause of action shall be commenced
12 within one year after the purchaser takes possession or the conveyance of
13 the real property, whichever occurs first.

14 (13) The State Real Estate Commission shall adopt and promulgate
15 rules and regulations to carry out this section. By January 1, 2017, the
16 commission shall adopt and promulgate rules and regulations to amend the
17 disclosure statement prepared pursuant to this section to be in
18 compliance with the requirements of subdivision (4)(k) of this section.

19 (14) By January 1, 2020, the State Real Estate Commission shall
20 adopt and promulgate rules and regulations to amend the disclosure
21 statement prepared pursuant to this section to be in compliance with the
22 requirements of subdivision (4)(l) of this section.

23 Sec. 10. Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this act become
24 operative on January 1, 2020. The other sections of this act become
25 operative on their effective date.

26 Sec. 11. Original section 76-2,120, Reissue Revised Statutes of
27 Nebraska, is repealed.