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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - LEAD HAZARD MITIGATION

Introduced By: Senators Ottiano, Goodwin, Felag, and DiPalma

Date Introduced: February 25, 2015

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 42-128.1-4 of the General Laws in Chapter 42-128.1 entitled "Lead  
2 Hazard Mitigation" is hereby amended to read as follows:

3           **42-128.1-4. Definitions.** -- The following definitions shall apply in the interpretation and  
4 enforcement of this chapter:

5           (1) "At-risk occupant" means a person under six (6) years of age, or a pregnant woman,  
6 who has been a legal inhabitant in a dwelling unit for at least thirty (30) days; provided, however,  
7 that a guest of any age shall not be considered an occupant for the purposes of this chapter.

8           (2) "Designated person" means either: (i) a property owner, or the agent of the property  
9 owner, who has completed a housing resources commission approved awareness seminar on lead  
10 hazards and their control; or (ii) a person trained and certified as either a lead hazard mitigation  
11 inspector, an environmental lead inspector, or a lead hazard inspection technician.

12           (3) "Dwelling" or "dwelling unit" means an enclosed space used for living and sleeping  
13 by human occupants as a place of residence, including, but not limited to, a house, an apartment,  
14 or condominium, but for the purpose of this chapter shall not include, hotels or "temporary  
15 housing".

16           (4) "Lead abated" means a dwelling and premises which are lead free or lead safe, as  
17 those terms are defined in chapter 24.6 of title 23.

18           (5) "Lead Free" means that a dwelling, dwelling unit, or premises contains no lead or  
19 contains lead in amounts less than the maximum acceptable environmental lead levels established

1 by regulation by the Rhode Island department of health.

2 (6) "Lead hazard mitigation standards" means standards adopted by the housing  
3 resources commission for a dwelling unit and associated common areas that provide for:

4 (i) A continuing and ongoing responsibility for lead hazard control that includes: (A)  
5 repair of deteriorated paint; (B) correction of dust generating conditions such as friction or impact  
6 areas; (C) provision of cleanable surfaces to eliminate harmful dust loading; (D) correction of soil  
7 lead hazards; (E) safe work practices;

8 (ii) At unit turnover: (A) the provision of information on lead hazards and their  
9 avoidance and control to tenants; (B) documentation of lead hazard mitigation compliance; (C) an  
10 explicit process for notification by tenants to property owners of instances of deterioration in  
11 conditions effecting lead hazards; and

12 (iii) Maintenance of "lead hazard control." "Lead hazard control" means those portions  
13 of the lead hazard mitigation standard pertaining to repair of deteriorating paint, correction of  
14 dust generating conditions, provision of cleanable surfaces, and correction of soil lead hazards  
15 that can be identified by visual inspection as provided for in paragraph (5)(ii) of this section or  
16 through inspections conducted in accordance with chapter 24.2 of title 45, "Minimum Housing  
17 Standards", and chapter 24.3 of title 45, "Housing Maintenance and Occupancy Code".

18 (7) "Lead hazard mitigation compliance" means an independent clearance inspection and  
19 certificate, as specified in this subdivision, undertaken to determine whether the lead hazard  
20 mitigation measures have been completed. Said inspection shall be valid for two (2) years or until  
21 the next turnover of the dwelling unit, whichever period is longer. The requirements for a  
22 clearance review inspection shall be met either by an independent clearance inspection or a visual  
23 inspection as set forth in this subdivision:

24 (i) An "independent clearance inspection" means an inspection performed by a person  
25 who is not the property owner or an employee of the property owner and who is authorized by the  
26 housing resources commission to conduct independent clearance inspections, which shall include:  
27 (A) a visual inspection to determine that the lead hazard controls have been met, and (B) dust  
28 testing in accordance with rules established by the department of health and consistent with  
29 federal standards. A certificate of conformance shall be issued by the person who conducted the  
30 inspection on the passage of the visual inspection and the required dust testing. An independent  
31 clearance inspection shall be required at unit turn over or once in a twenty-four (24) month  
32 period, whichever period is the longer. If the tenancy of an occupant is two (2) years or greater,  
33 the certificate of conformance shall be maintained by a visual inspection as set forth in paragraph  
34 (ii) of this subdivision.

1 (ii) A "visual inspection" means a visual inspection by a property owner or designated  
2 person to determine that the lead hazard controls have been met. If the designated person  
3 concluded that the lead hazard controls specified in this chapter have been met, the designated  
4 person may complete an Affidavit of Completion of Visual Inspection. The affidavit shall be  
5 valid upon its being notarized within thirty (30) days after the completion of the visual inspection  
6 and shall set forth:

7 (A) The date and location that the designated person took the lead hazard control  
8 awareness seminar;

9 (B) The date and findings of the lead hazard evaluation;

10 (C) The date and description of the lead hazard control measures undertaken;

11 (D) The date of the visual inspection; and

12 (E) The name and signature of the designated person and date of the Affidavit of  
13 Completion of Visual Inspection.

14 An Affidavit of Completion of Visual Inspection shall be valid for two (2) years after the  
15 date it was notarized or until unit turn over, whichever time period is the longer, and shall be kept  
16 by the property owner for a minimum of five (5) years.

17 (iii) Presumptive Compliance. - A property owner of ten (10) or more dwelling units  
18 shall be eligible to obtain a certificate of presumptive compliance from the housing resources  
19 commission provided that the following conditions are met: (A) the dwelling units were  
20 constructed after 1960 [or after 1950 on federally-owned or leased lands](#), (B) there are no major  
21 outstanding minimum housing violations on the premises, (C) the property owner has no history  
22 of repeated lead poisonings, and (D) independent clearance inspections have been conducted on  
23 at least five (5) percent of the dwelling units, not less than two (2) dwelling units and at least  
24 ninety (90) percent of the independent clearance inspections were passed. "Repeated lead  
25 poisoning", for purposes of this paragraph, shall mean a lead poisoning rate of less than one half  
26 (.5) percent per dwelling unit year, with dwelling unit years being calculated by multiplying the  
27 number of dwelling units owned by the property owner by the number of years of ownership  
28 since 1992. Major minimum housing violations shall be defined by rule by the housing resources  
29 commission. The housing resources commission shall not arbitrarily withhold its approval of  
30 applications for presumptive compliance. A certificate of presumptive compliance shall be  
31 deemed to be satisfactory for purposes of demonstrating compliance with the requirements of this  
32 chapter. If a unit qualifies for a presumptive compliance certificate, by itself having passed an  
33 independent clearance inspection at least once, that unit's compliance may be maintained by a  
34 visual inspection as set forth in this chapter.

1 (8) "Lead hazard mitigation inspector" means either a person approved by the housing  
2 resources commission to perform independent clearance inspections under this chapter or  
3 inspections required by 24 CFR 35 Subpart M, or approved by the department of health to  
4 conduct inspections pursuant to chapter 24.6 of title 23.

5 Lead hazard mitigation inspectors performing independent clearance inspections shall  
6 not have any interest, financial or otherwise, direct or indirect, or engage in any business or  
7 employment with regards to:

8 (a) The dwelling unit that is the subject of an independent clearance inspection; or

9 (b) The contractor performing lead hazard control work in the dwelling unit; or

10 (c) The laboratory that is used to analyze environmental lead samples for the  
11 independent clearance inspection unless the lead hazard mitigation inspector discloses his or her  
12 relationship with the laboratory to the person requesting the inspection and on the inspection  
13 report.

14 Employees of public agencies and quasi-public agencies that hold a financial interest in  
15 the property may perform independent clearance inspections.

16 (9) "Lead poisoned" means a confirmed venous blood lead level established by the  
17 department of health pursuant to § 23-24.6-4(1).

18 (10) "Lead Safe" means that a dwelling, dwelling unit, or premises has undergone  
19 sufficient lead hazard reduction to ensure that no significant environment lead hazard is present  
20 and includes, but is not limited to, covering and encapsulation and is evidenced by a lead safe  
21 certificate issued by the department of health.

22 (11) "Property owner" means any person who, alone or jointly or severally with others:

23 (i) Shall have legal title to any dwelling, dwelling unit, or structure with or without  
24 accompanying actual possession of it; or

25 (ii) Shall have charge, care, or control of any dwelling, dwelling unit, or structure as  
26 owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the  
27 owner. Any person representing the actual owner shall be bound to comply with the provisions of  
28 this chapter, and of rules and regulations adopted pursuant to this chapter, to the same extent as if  
29 that person were the owner.

30 (iii) Notwithstanding the foregoing, no holder of a mortgage or other lien holder who, in  
31 enforcing a security interest, acquires title by foreclosure or deed in lieu of foreclosure shall be  
32 considered a property owner for purposes of this chapter, if the holder transfers the title within  
33 one year after the date the title is acquired; provided, however, if the mortgagee or lien holder,  
34 subsequent to acquiring title, is notified of a lead hazard under chapter 24.6 of title 23 or § 42-

1 128.1-8(a)(5), then and in that event, the mortgagee or lien holder shall take any steps to reduce  
2 the lead hazard that shall be required under the provisions of chapter 24.6 of title 23 or this  
3 chapter, as applicable.

4 (12) "Temporary housing" means any seasonal place of residence that is rented for no  
5 more than one hundred (100) days per calendar year to the same tenant, where no lease renewal  
6 or extension can occur, and any emergency shelter intended for night to night accommodation.

7 (13) "Tenant turnover" means the time at which all existing occupants vacate a unit and  
8 all new occupants move into the unit.

9 (14) "Environmental lead poisoning level" means a confirmed venous blood lead level as  
10 defined pursuant to § 23-24.6-4.

11 (15) "Elderly housing" means a federal, state or local program that is specifically  
12 designed and operated to assist elderly persons, sixty-two (62) years of age, or older, as set forth  
13 in a regulatory agreement or zoning ordinance.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would make a change in the definition of housing presumed to be in compliance  
2 with lead-safe laws.

3           This act would take effect upon passage.

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