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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 9

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO LEAD-BASED PAINT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 2601, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2601. Short title; definitions.

4 (a) This ~~act~~chapter shall be known and may be cited as the Childhood Lead Poisoning Prevention Act.

5 (b) For purposes of this chapter:

6 (1) “Department” means the Department of Health and Social Services.

7 (1)(2) “Elevated blood lead level” means any blood lead level determined by regulations established by the
8 Division of Public Health to be detrimental to the health, behavioral development, or cognitive potential of a child. a
9 blood lead level that meets or exceeds 3.5 micrograms per deciliter or a blood lead level established by the federal
10 Centers for Disease Control and Prevention as the federal Centers for Disease Control and Prevention’s blood lead
11 reference value, whichever is lower.

12 (3) “Lead exposure site” means the location where a child was most likely exposed to lead.

13 (4) “Program”, used as a proper noun, means the Delaware State Lead-Based Paint Program created under §
14 2607 of this title.

15 (2)(5) “Screening” means a capillary blood lead test, including where a drop of blood is taken from a finger or
16 heel of the foot.

17 (3)(6) “Testing” means a venous blood lead test where blood is drawn from a vein.

18 Section 2. Amend § 2605, Title 16 of the Delaware Code by making deletions as shown by strike through and
19 insertions as shown by underline as follows:

20 § 2605. Childhood Lead Poisoning Prevention Advisory Committee.

21 (a) The Childhood Lead Poisoning Prevention Advisory Committee ("Committee") is established to advise on the
22 implementation of this chapter and to make any necessary recommendations for the implementation of this chapter or
23 improvements of the processes to be followed by the agencies responsible for the implementation of this chapter.

24 (b) The Committee shall annually prepare and distribute a report to the General Assembly regarding this chapter,
25 the intervention activities, studies of incidence, the State Blood Lead Screening Program, and monitoring and
26 implementation of regulations promulgated under this chapter.

27 (c) The Committee consists of the following:

28 (1) The Secretary of the Department of Education.

29 (2) The Secretary of the Department of Health and Social Services.

30 (3) The Secretary of the Department of Services for Children, Youth & their Families.

31 (4) The Director of the Delaware State Housing Authority.

32 (5) The President of the Delaware Association of School Administrators.

33 (6) The President of the Delaware Association of Realtors.

34 (7) A Delaware pediatric provider, appointed by the Governor.

35 (8) ~~Two~~ Five members, appointed by the Governor, ~~each from a different county.~~ with at least 1 from each
36 county.

37 (9) One member, appointed by the Speaker of the House of Representatives.

38 (10) One member, appointed by the President Pro Tempore of the Senate.

39 (d) A member serving by virtue of position may appoint a designee to serve in the member's stead and at the
40 member's pleasure.

41 (e) The Committee shall elect a Chair and a Vice Chair from among the Committee's members.

42 (f) The Committee may form advisory subcommittees, which may include individuals who are not members of the
43 Committee, to assist the Committee in its duties.

44 (g) ~~The Department of Health and Social Services~~ shall provide staff support for the Committee.

45 (h) The Committee shall oversee the Program, including to ensure that funds in the Delaware Lead-based Paint
46 Remediation and Abatement Fund are spent appropriately and that lead-based paint remediation and abatement activities
47 are taking place in a timely manner given funds available.

48 (i) The Committee is a public body.

49 Section 3. Amend Chapter 26, Title 16 of the Delaware Code by making deletions as shown by strike through and
50 insertions as shown by underline as follows:

51 § 2607. Delaware State Lead-Based Paint Program.

52 (a) A program is created in the Department to be known as the Delaware State Lead-Based Paint Program.

53 (b) Subject to subsection (c) of this section the Program shall exist and operate independently of any other lead-
54 based paint abatement or remediation program in this State.

55 (c) The Program shall coordinate its efforts with any other lead-based paint abatement or remediation program in
56 this State to ensure efficient use of State funds.

57 § 2608. Oversight of Delaware State Lead-Based Paint Program.

58 (a) The Department shall operate the Program.

59 (b) The Secretary of the Department shall appoint an employee of the Department as the Program Director.

60 (c) The Program Director shall have full authority and responsibility for the Program. The Secretary may use
61 discretionary funds allocated to the Department to provide contract support to the Program, however, the Program Director
62 and Secretary of the Department are ultimately responsible and accountable for the Program.

63 § 2609. Public information.

64 (a) Except as otherwise provided by the Freedom of Information Act, Chapter 100 of Title 29, and subsection (b)
65 of this section, all communications with the Program are public records under the Freedom of Information Act, Chapter 100
66 of Title 29.

67 (b) This section does not apply to confidential health information.

68 § 2610. Division of Public Health duty to investigate.

69 The Division of Public Health shall do all of the following within 60 days of receiving notification through the
70 universal reporting system established by this chapter that a child has an elevated blood lead level:

71 (1) Determine the residential address of the child from birth through the date of testing.

72 (2) Make a determination as to the child's lead exposure site.

73 (3) Determine the owner of the child's lead exposure site and obtain contact information for the owner of the
74 lead exposure site.

75 § 2611. Division of Public Health duty to notify.

76 Within 10 days of determining a child's lead exposure site and the owner of a lead exposure site under § 2610 of
77 this title, the Division of Public Health shall communicate all of the following to the Program:

78 (1) The location of the lead exposure site.

79 (2) The contact information for the owner of the lead exposure site.

80 § 2612. Remediation and abatement duties of Delaware State Lead-Based Paint Program.

81 (a) Within 10 days of receiving the information under § 2611 of this title, the Program shall do all of the
82 following:

83 (1) Inform a parent or guardian of a child with an elevated blood lead level of the child's elevated lead blood
84 level, lead-based paint assessment, abatement or remediation efforts that may be undertaken under this chapter, and
85 recommendations with respect to medical treatment of the child.

86 (2) Cause a contractor who is qualified under State regulations to conduct a lead risk assessment of a lead
87 exposure site that was constructed before January 1, 1979. The lead risk assessment must meet the standard established
88 under 24 C.F.R. § 35.110, must include paint testing and dust sampling and analysis as described under 40 C.F.R. §
89 745.227(c), and must, where indicated, include soil sampling and analysis as described under 40 C.F.R. § 745.227(d).

90 (3) If the lead risk assessment under paragraph (a)(2) of this section indicates the presence of a lead-based
91 paint hazard, as defined at 40 C.F.R. § 745.65, inform the owner of the lead exposure site that lead-based paint
92 abatement or remediation efforts, to be funded by the State except under subsection (b) of this section, may be
93 undertaken, and that the owner of the lead exposure site is required to take all steps necessary to make the property
94 accessible and available to individuals conducting lead-based paint abatement or remediation work for the Program.

95 a. The owner of the lead exposure site shall take all steps enumerated by the Program to make the
96 property accessible and available.

97 b. The Program shall keep records of all identified lead exposure sites where a lead risk assessment
98 indicates the presence of a lead-based paint hazard and of any remediation or abatement activities initiated by the
99 Program.

100 c. The annual report required under § 2606 of this title must include information on the number of lead
101 exposure sites with identified lead-based paint hazards that have been, and have not been, the subject of lead-based
102 paint remediation or abatement efforts.

103 (4) Provide adequate advance notice to a resident of a lead exposure site that the lead exposure site is
104 uninhabitable due to lead-based paint abatement or remediation efforts by the Program.

105 (5) Provide reasonable alternative lodging for a resident of a lead exposure site when the lead exposure site is
106 uninhabitable due to lead-based paint abatement or remediation efforts by the Program. Alternative lodging must be
107 sufficient to ensure that the resident does not suffer disproportionate injuries because of displacement. The Program
108 shall pay the resident's cost for meals and transportation during displacement.

109 (6) Assume all costs associated with abating or remediating any lead-based paint hazard in a lead exposure
110 site being abated or remediated by the program under paragraph (a)(3) of this section.

111 (b) The failure of an owner of a lead exposure site to comply with the deadlines established by the Program under
112 paragraph (a)(3) of this section constitutes a criminal nuisance which adversely impacts the community under § 7111 of
113 Title 10. A finding by a court of competent jurisdiction that a failure to comply with the deadlines established by the
114 Program under paragraph (a)(3) of this section has resulted in a criminal nuisance results in the owner's forfeiture of the
115 owner's right to state-funded abatement or remediation under this section and in the owner's assumption of the cost of
116 abatement or remediation unless the court specifically orders otherwise.

117 (c) All lead-based paint abatement or remediation work conducted under this section must be performed by a
118 contractor who has been certified by the State to perform the abatement or remediation and must be awarded under a
119 competitive bid process overseen by the Program. A contractor may submit bids to perform lead-based paint abatement or
120 remediation work under this section before the contractor's certification on commitment to be certified before the
121 performance of any abatement or remediation work. The Program may not pay a contractor for lead-based paint abatement
122 or remediation work unless the contract is certified as required by this subsection.

123 (d) Competitive bid invitations issued by the Program for lead-based paint abatement or remediation must contain
124 all of the following:

125 a. Provisions requiring verification by bidders of procedures to be used for risk assessment.

126 b. Provisions requiring verification by bidders of procedures to be specified by the Program to limit the
127 generation of lead dust, contain lead dust within work areas, conduct daily and final cleanings, and perform clearance
128 testing.

129 c. Provisions requiring verification by bidders of procedures regarding treatment of exteriors, including siding
130 and carpentry repairs, porch repairs, and garage repairs.

131 d. Provisions requiring verification by bidders regarding the testing and treatment of soil.

132 e. Provisions requiring verification by bidders of procedures regarding interior treatment, including initial and
133 daily cleaning; repairs and component replacements; paint stabilization treatment of windows, doors, stairs, walls,
134 ceilings, hard surface and basement floors, and radiators; and final cleaning.

135 (e)(1) A county or municipal government entity notified by the Program that a property is designated as a lead
136 exposure site and is to have lead-based paint abated or remediated shall grant priority status to any approvals needed by any
137 applicant for any abatement or remediation work that must be performed.

138 (2) A contractor whose request for project approval is not approved or denied within 30 days by the county or
139 municipal government entity shall report the delay to the Program.

140 (3) The Program shall make a public report by January 1 of each calendar year to the Governor and General
141 Assembly of each delay reported under paragraph (e)(2) of this section.

142 (f) The owner of any multi-unit property or property that has been rented to a third party in the year before
143 notification under paragraph (a)(3) of this section, for which abatement or remediation work has been performed at State
144 expense under this chapter, is prohibited from increasing the rental fee assessed to any tenant on that property for 3 years
145 from the date of notification under paragraph (a)(4) of this section.

146 § 2613. Delaware Lead-Based Paint Abatement and Remediation Fund.

147 (a) A special fund of the State is created in the Department of Finance to be known as the “The Delaware Lead-
148 Based Paint Abatement and Remediation Fund” (“the Fund”). All other moneys, including gifts, bequests, grants, or other
149 funds from private or public sources specifically designated for the Fund must be deposited or transferred to the Fund.
150 Moneys in the Fund may be saved and deposited in an interest-bearing savings or investment account. Interest or other
151 income earned on the moneys in the Fund must be deposited or transferred into the Fund. The Fund may not lapse or revert
152 to the General Fund.

153 (b) Moneys from the Fund may only be expended on the following:

154 (1) Payment to contractors for conducting lead risk assessments.

155 (2) Payment to contractors for the abatement or remediation of lead-based paint on properties specifically
156 approved for abatement or remediation by the Program.

157 (3) Temporary lodging of persons temporarily displaced during the abatement or remediation of lead-based
158 paint at a lead exposure site.

159 (4) Payments to third parties necessary to oversee proper administration of funds under paragraphs (b)(1) and
160 (b)(2) of this section.

161 (c) Moneys from the Fund may not be used to supplant any funds from any federal, state, or local government
162 entity.

163 (d) Each submission of a proposed budget from the Governor to the General Assembly under § 6335 of Title 29
164 must contain a specific proposed appropriation to the Fund.

165 § 2614. Provisional certification of contractors.

166 (a) The Department may grant provisional certification for abatement and remediation work conducted under this
167 chapter to an individual who has been certified to conduct equivalent abatement and remediation work in another state with
168 certification standards the Department finds to be at least as stringent as the standards enforced by this State.

169 (b) A provisional certification issued under subsection (a) of this section is valid for 1 year.

170 (c) During the provisional certification under subsection (a) of this section a contractor must receive appropriate
171 certification as required under the law of this State.

172 (d) Nothing in this chapter prohibits the Department from granting reciprocal certification to an individual who is
173 certified to perform equivalent work in another state with certification standards the Department finds to be at least as
174 stringent as those enforced by this State.

175 (e) The Department may require proof of knowledge of standards and practices as a condition of provisional or
176 reciprocal certification under this section.

177 § 2615. Universal reporting system requirement.

178 The universal reporting system established under § 2602 of this title must require that a child's health care
179 provider provide to the Division of Public Health the lead level found in the blood of each child who is screened or tested.

180 § 2616. Regulatory authority.

181 The Department may adopt regulations to administer, implement, and enforce this chapter.

182 Section 4. The Department of Finance shall report to the Governor and General Assembly by January 1, 2024, on
183 the revenue implications of adding 0.25% to the transfer tax created by § 5402 of Title 30 of the Delaware Code for
184 transfers of property constructed before January 1, 1978, that are subject in whole or in part to rental agreements.

185 Section 5. The Department of Health and Social Services shall propose regulations necessary to implement Section
186 2 of this Act within 60 days of the effective date of this Act and shall adopt final regulations within 120 days of the
187 effective date of this Act.

188 Section 6.

189 (1) Not later than January 1, 2024, the Childhood Lead Poisoning Prevention Advisory Committee shall
190 recommend to the Governor and General Assembly a plan for a statutory requirement that all rental properties built
191 before January 1, 1978, be screened for the presence of lead based paint hazards, as defined at 40 C.F.R. § 745.65,
192 before the rental properties are made available to a new tenant, and at least once before January 1, 2026, even if the
193 rental properties are not made available to a new tenant, and that all lead based paint hazards are abated or remediated
194 promptly on discovery.

195 (2) The plan must include all of the following:

196 a. Provisions for the state to augment, where appropriate, the cost of lead abatement or remediation based
197 on an objective eligibility standard, through the use of state or federal funds.

198 b. Specific recommendations to ensure that an adequate work force is available to perform all screening,
199 remediation, and abatement work required by the adoption of the statutory requirement under paragraph (2)a. of
200 this Section.

201 Section 7. Sections 1, 3 through 6, and 8 of this Act take effect on the date of enactment of this Act. Section 2 of
202 this Act takes effect 120 days after the enactment date of this Act.

203 Section 8. This Act is intended to be consistent with federal law regarding remediation and abatement of lead-
204 based paint and is to be construed, whenever possible, to be consistent with federal law.

SYNOPSIS

Although lead-based paint is prevalent in many Delaware residences and causes extraordinary neurological damage in children, including seizures, behavioral disorders, developmental delays, and cognitive disabilities, Delaware does not have a comprehensive system to eliminate lead-based paint from those residences where children are still exposed to lead. This Act creates such a system, including:

(1) Creating a system by which all properties where a child who is found to have high blood lead levels live are promptly screened for lead-based paint and, where that paint is found, treated to abate or remediate the lead-based paint.

(2) Prohibiting landlords of properties where the State has paid for lead-based paint abatement from raising rents on those properties for a period of 3 years.

(3) Taking steps to ensure that neither landlords nor local governments present unreasonable delays to the abatement of lead-based paint.

(4) Creating a dedicated fund for abatement and remediation of lead-based paint hazards so that all levels of state government can be held accountable for funding lead-based paint abatement efforts.

(5) Expanding the duties of the Childhood Lead Poisoning Prevention Advisory Committee to include a plan for prompt inspection and, where necessary, abatement or remediation of lead-based paint in all pre-1978 rental properties.

Author: Senator S. McBride