

Legislation Text

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Amending Chapter 6-800 of The Philadelphia Code, entitled "Lead Paint Disclosure," to require a certification that a property is lead free or lead safe before it may be rented to a tenant; amending Chapter PM-102.0, entitled "Licensing," to require landlord certification of compliance with certain provisions of Chapter 6-800 as a condition of receipt of a housing inspection license; and making technical changes; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 6-800 of The Philadelphia Code is hereby amended to read as follows:

TITLE 6. HEALTH CODE.

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CHAPTER 6-800. LEAD PAINT DISCLOSURE AND CERTIFICATION.

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§ 6-802. Definitions.

In this Chapter, the following definitions shall apply:

(1) Certified Lead Inspector. A person who is certified by the Philadelphia Department of Public Health [, or the Commonwealth of Pennsylvania,] as qualified by training and experience to conduct comprehensive lead inspections and risk assessments, *or by the Commonwealth of Pennsylvania as an "inspector-risk assessor" pursuant to the Pennsylvania Department of Labor and Industry's Lead-Based Paint Occupation Accreditation and Certification Regulations; or is certified by the EPA and trained as a lead dust sampling technician.*

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(3) Deteriorated Paint. *Paint or other coating that is cracking, flaking, chipping, peeling, chalking, not intact or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated coating.*

[(3)] (4) Lead-based Paint. * * *

[(4)] (5) Lead-based Paint Hazard. * * *

(6) Lead-Contaminated Dust. *Surface dust that contains a mass per area concentration of*

lead equal to or exceeding 40 micrograms per square foot on floors or 250 micrograms per square foot on interior windowsills based on a wipe sample, or such other lesser level of lead either: (a) used to define a “dust-lead hazard” under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.

(7) Lead-Contaminated Soil. Soil that contains lead in excess of 400 ppm or such other lesser level of lead either: (a) used to define a “soil-lead hazard” in a play area under 40 C.F.R. § 745.65 or (b) determined by the Board of Health by regulation to be dangerous.

(8) Lead Free. The circumstance in which the interior and exterior surfaces of a property do not contain any lead-based paint and the property contains no lead- contaminated soil or lead contaminated dust.

(9) Lead Safe. The circumstance in which a property is free of a condition that causes or may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint, deteriorated presumed lead-based paint, or other similar threat of lead exposure due to the condition of the property itself.

(10) Presumed Lead-Based Paint. Surface coating affixed to a surface that was constructed prior to March 1978 that a landlord is unable to demonstrate contains no lead.

[(5)] (11) Risk Assessment. * * *

(12) Targeted Housing. For purposes of the provisions of this Chapter relating to lease agreements, residential property built before March 1978, but excluding: (a) dwelling units developed by or for an educational institution for the exclusive residential use and occupancy by that institution’s students; (b) buildings containing dwelling units all of which are leased only to students enrolled in a college or university degree program; (c) dwelling units owned or subsidized by the Philadelphia Housing Authority or its subsidiaries, or privately owned but currently leased under the Housing Choice Voucher Program and therefore subject to federal requirements administered by HUD; and (d) dwelling units in which children aged six (6) and under do not and will not reside during the lease term.

(13) Valid Certification. For a certification that a property is lead safe, a certification based on an inspection no more than 24 months prior to the date a lease is entered into. For a certification that a property is lead free, a certification based on an inspection performed at any time prior to the date a lease is entered into.

§ 6-803. Lead Disclosure Obligation.

(1) Before any buyer [or lessee] is obligated under any contract to purchase [or lease] residential housing constructed prior to 1978, the seller [or lessor] shall disclose the absence or presence of lead-based paint or lead-based paint hazards. This disclosure shall take one of the two following forms:

(a) the production of the results of a comprehensive lead inspection and risk assessment by a certified lead inspector; or

(b) provision of a multi-lingual form provided by the Philadelphia Department of

Public Health containing the following statement:

“The Philadelphia Department of Public Health has determined that most housing built in Philadelphia before 1978 contains dangerous lead paint. This property was built before 1978. Therefore, without a comprehensive lead inspection, conducted by a certified lead inspector, showing there is no lead paint or there are no lead-based paint hazards, you can assume that this property likely contains lead-based paint.”

(2) Before any buyer [or lessee] is obligated under any contract to purchase [or lease] residential housing constructed prior to 1978, the seller [or lessor] is also required to provide the buyer [or lessee] with a lead hazard information pamphlet as prescribed or approved by the Philadelphia Department of Public Health.

[(3) All lessors with existing leases, shall comply with the terms of subsection (1) within ninety (90) days after this Ordinance takes effect.]

(3) *Rental Protections.*

(a) No lessor shall enter into a lease agreement with a lessee, other than a renewal lease, to rent any Targeted Housing, or a unit in such Targeted Housing, unless (.1) he or she provides the lessee with a valid certification prepared by a certified lead inspector stating that the property is either lead free or lead safe; and (.2) the lessee acknowledges receipt of the certification by signing a copy.

(b) A valid certification that a property is lead safe under this section shall state that the certified lead inspector determined that the property or unit was free of any Deteriorated Paint, and that interior dust samples were collected in compliance with EPA regulations, including 40 C.F.R. § 745.227 and any amendments or successor regulations, were tested and were found not to contain Lead-Contaminated Dust as defined in this Chapter. Additional statements or test results are not required. Any corrective action taken in order to qualify the property for such certification shall be performed in compliance with applicable laws.

(c) Upon entering into such a lease agreement, the lessor shall (.1) provide a copy of the signed certification to the Department of Public Health; and (.2) provide to the tenant, in addition to any written notifications required by applicable laws, a written notification advising the tenant to perform a visual inspection of all painted surfaces periodically during the term of the lease, and advising that the tenant may inform the lessor of any cracked, flaking, chipping, peeling, or otherwise deteriorated paint surfaces. Upon receipt of any such tenant notification the lessor shall promptly inspect and correct any defective conditions as required by section PM-305.3 of the Philadelphia Property Maintenance Code and in compliance with other applicable laws.

(d) Upon a City inspection for lead safety at any property rented by a lessor for which a lessor has not provided the lessee the certification required in this section, the lessor shall be liable to the City for the costs of such inspection.

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§ 6-804. Right to Conduct Independent Inspection or Risk Assessment and Right to Rescind.

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(3) Upon renewal of an existing lease [and after compliance by a lessor with the disclosure requirements of Section 6-803(2)], any lessee shall have the right to proceed with an inspection or risk assessment as provided by Section 6-804(2) except that such renewing lessee shall not be required to terminate the lease within two (2) days of performance of a comprehensive lead inspection or a risk assessment, but shall be afforded a ten (10) day period to notify lessor in writing of lessee's intention to terminate the lease, with actual termination and vacation of the premises to occur at a time not to exceed ninety (90) days after receipt of the comprehensive lead inspection or risk assessment, during which period all lease obligations shall remain in full force and effect.

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§ 6-806. Acknowledgment by Buyer [or Lessee].

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[(2) The lessee of any residential housing constructed prior to 1978, shall confirm in writing on a certification of disclosure form provided by the Philadelphia Department of Public Health, that he or she:

- (a) has received a written disclosure of lead-based paint and/or lead-based paint hazards;
- (b) has received and read the lead warning statement;
- (c) has received the lead hazard information pamphlet;

(d) was provided with a ten (10) day opportunity (unless the parties mutually agree upon a different period of time, by a separate writing) before becoming obligated under the contract to lease during which the buyer was permitted access to the housing to obtain an inspection for the presence of lead-based paint and/or lead-based paint hazards.]

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§ 6-809. Remedies.

(1) Where the seller does not comply with the provisions of Sections 6-803 [and] *or* 6-804 the buyer shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction.

(2) Where the lessor does not comply with the provisions of [Sections 6-803 and] *Section* 6-804 the lessee shall be entitled to damages in the amount of double the reasonable cost of a comprehensive residential lead inspection plus attorney's fees and costs. An aggrieved party may also obtain injunctive relief plus attorney's fees and costs to enforce the terms of this Section in any court having jurisdiction.

(3) *Where a lessor does not comply with any provision of Section 6-803, the lessee shall be entitled to bring an action in a court of competent jurisdiction and a prevailing lessee shall be entitled to the following remedies:*

- (a) an order requiring the lessor to provide the required certification and the performance of*

the necessary work to make the property lead safe;

(b) damages for any harm caused by the failure to provide the certification;

(c) exemplary damages of up to \$2,000;

(d) abatement and refund of rent for any period in which the lessee occupies the property without a certification having been provided; and

(e) attorney's fees and costs.

(4) Where a lessor does not comply with any provision of Section 6-803(3)(a), the lessor shall be denied the right to collect rent during or for the period of noncompliance.

[(3)] (5) The provisions of this Ordinance shall be liberally construed to effectuate its purpose of disclosure.

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§ 6-811. Penalties.

Any person who fails to comply with the provisions of this Chapter shall be subject to a fine or penalty of no more than [three hundred (300) dollars] *two thousand dollars (\$2,000) per offense*[, and/or by imprisonment not exceeding ninety (90) days for each offense]. Each day of non-compliance shall constitute a separate offense.

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SECTION 2. Section PM-102.0 of The Philadelphia Code is hereby amended to read as follows:

TITLE 4. THE PHILADELPHIA BUILDING
CONSTRUCTION AND OCCUPANCY CODE

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CHAPTER 4-200.0. TEXT OF SUBCODES

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SUBCODE "PM" (THE PHILADELPHIA PROPERTY MAINTENANCE CODE)

CHAPTER 1 ADMINISTRATION

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SECTION PM-102.0 LICENSING

PM-102.1 Dwellings: No person shall operate a multiple-family dwelling, rooming house, dormitory or

hotel, or offer for rent a one-family dwelling, two family dwelling or a rooming unit therein without first obtaining a housing inspection license from the Department. Every person applying for a license shall supply, *in addition to such information as required herein*, such information as the Department requires and shall pay an annual fee as set forth in the administrative code.

PM-102.1.1 Certification of Compliance with Lead Safety Certification Requirements. As a condition of receipt of a housing inspection license, and upon its annual renewal, every person shall:

1. identify each unit in Targeted Housing in connection with which a new lease was entered into in the 12 months preceding the date of application; and

2. certify that the requirements of Code Section 6-803 regarding the provision of a lead safe or lead free certification to all new lessees in Targeted Housing, and the requirements of Section 6-803(c) regarding provision of written notification to all new lessees and correction of any defects after receipt of notice of same, have been complied with in connection with each such lease.

A housing inspection license may be revoked based on the provision of a false certification pursuant to this subsection.

[PM-102.1.1] *PM-102.1.2 Special Requirement In Educational Housing Districts: * * **

SECTION 3. This Ordinance shall take effect one year after its adoption into law.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.