

Legislation Text

File #: 180936-A, Version: 2

Amending Title 6 of The Philadelphia Code, entitled "Health Code," relating to lead paint hazards and other violations, to provide for appeal periods and for penalties, to provide for inspections and fees, to revise definitions, and to promote lead safety, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Title 6 of The Philadelphia Code is amended to read as follows:

TITLE 6. HEALTH CODE

\* \* \*

CHAPTER 6-400. MISCELLANEOUS STANDARDS AND REQUIREMENTS

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§ 6-403. [Residential and Occupancy Hygiene.] *Lead Paint and Other Lead Hazards.*

\* \* \*

(4) Hazardous Conditions.

(a) The Department of Public Health, upon application by any owner or person in control of a premises, *or upon receipt of a credible report that a child living at the premises has a blood lead level of greater than 10 micrograms per deciliter, or such lower level as shall be established by the Board of Health as cause for significant concern*, shall test or cause to be tested said premises to determine the presence of lead based coating. The Department shall make such additional determinations as to enable the Department to issue a certificate that the premises is or is not in compliance with this Section of The Philadelphia Code.

\* \* \*

(5) Tenant Protection Against Retaliation.

\* \* \*

(6) *Penalties and enforcement.*

[(b) (.1)] (a) Any owner or representative of the owner who violates any provision of [subsection 6-403(5)(a)] *this Section 6-403* shall be subject to a fine of three hundred (300) dollars [and/or imprisonment of up to ninety (90) days] for each offense for each residential unit, *except that failure to comply with any order issued under this Section shall be subject to a fine of two thousand dollars for each residential*

*unit. Continuing violation of the same provision or continuing failure to comply with an order shall constitute a separate violation for each day for each residential housing unit. Any person who knowingly participates in, or who has reason to know that his or her participation will materially contribute to, any violation of this Section or any failure to comply with any order issued under this Section shall be subject to the same penalties as if he or she personally committed the violation or failed to comply.*

[(.2)] (b) Any tenant may enforce the provisions of subsection 6-403(5)(a) in the Philadelphia Court of Common Pleas, the Philadelphia Municipal Court or any other Court having jurisdiction. A prevailing tenant shall be entitled to actual damages and to not less than triple the monthly rent for each violation, plus attorneys' fees and costs.

\* \* \*

#### CHAPTER 6-500. ADMINISTRATIVE PROVISIONS

\* \* \*

##### § 6-504. Appeals.

(1) Any person whose application for any license has been denied, or whose license has been suspended or revoked, or who is aggrieved by an order directed to him or requiring any action, forbearance, or compliance from him may appeal to the Board of License and Inspection Review *within thirty days of the denial, suspension, revocation or order, except where a specific provision of this Code or regulation provides for a different appeal period, all* in accordance with the Charter and the procedures prescribed by that Board.

\* \* \*

#### CHAPTER 6-800. LEAD PAINT DISCLOSURE

\* \* \*

##### § 6-802. Definitions.

In this Chapter, the following definitions shall apply:

\* \* \*

(4) Lead-based Paint. Paint or other surface coatings that contain lead in excess of  $0.7\text{mg}/\text{cm}^2$ , or such stricter limits as may be established by [Federal Law or Regulation] *federal law or by regulation of the Board of Health.*

\* \* \*

(12) Targeted Housing. [For purposes of the provisions of this Chapter relating to lease agreements, residential] *Subject to the transition period provided for at § 6-802.1, property built before March 1978 (even if renovated thereafter) that is currently used as housing, 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.] *students, where non-student family members are not permitted to reside. There shall be a rebuttable presumption that a rental property was built before March 1978.*

(15) Valid Certification. For a certification that a property is lead safe, a certification based on an inspection no more than [24] *forty eight (48)* months prior to the date *a rental license for the premises is issued (or, if no rental license is issued, the date a lease is entered [into] into)* or the date of an application for a Family Child Day Care facility license. For a certification that a property is lead free, a certification based on an inspection performed at any time prior to the date *a rental license for the premises is issued (or, if no rental license is issued, the date a lease is entered [into] into)* or any time prior to the date of an application for a Family Child Day Care facility license.

*§ 6-802.1. Transition Period.*

*(1) Notwithstanding the definition of Targeted Housing provided for at § 6-802(12), dwelling units in which children aged six (6) and under do not and will not reside during the lease term shall only qualify as Targeted Housing according to a transition schedule established as follows:*

*(a) For each active zip code in the City, the Department shall certify, by posting prominently on its website, the percent of screened children living in such zip code area with elevated blood lead levels (BLL)  $\geq 5$   $\mu\text{g/dL}$ , over such period of time as the Department of Public Health deems appropriate. The Department shall post the zip code areas in rank order, beginning with the zip code area with the highest such percentage of screened children with elevated blood lead levels and continuing through to the zip code area with the lowest such percentage of screened children with elevated blood lead levels.*

*(b) There shall be four regions of the City, defined as follows: The areas of the City comprising the eleven highest ranked zip codes shall constitute Region I. The areas of the City comprising the next eleven highest ranked zip codes shall constitute Region II. The areas of the City comprising the next eleven highest ranked zip codes shall constitute Region III. The remaining areas of the City shall constitute Region IV. The Department of Public Health shall post prominently on its website the zip code composition of each Region, and shall file a copy with the Chief Clerk of Council.*

*(c) Dwelling units in which children aged six (6) and under do not and will not reside during the lease term shall only qualify as Targeted Housing as follows:*

*(.1) From October 1, 2020, through March 31, 2021 : only in Region I.*

*(.2) From April 1, 2021, through September 30, 2021: only in Regions I and II.*

*(.3) From October 1, 2021, through March 31, 2022 : only in Regions I, II and III.*

*(.4) From April 1, 2022, and thereafter: in Regions I, II, III and IV.*

*(d) This transition schedule shall only apply if, by the effective date of the Ordinance adding*

*this § 6-802.1 to the Code, the Department has made the requisite filing with the Chief Clerk and posted the requisite material on its website, as provided in paragraph (b), above.*

§ 6-803. Lead Disclosure Obligation.

\* \* \*

(3) Rental Protections.

(a) *No rental license under Chapter 9-3900 shall be issued or renewed to a lessor with respect to any Targeted Housing, and no lessor shall enter into a lease agreement with a [lessee, other than a renewal lease,] lessee 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; (.3) the lessor has provided to the Department of Public Health a copy of such certification. For purposes of this subsection (a), a lease agreement shall include a renewal of a lease agreement, including an automatic renewal, provided that, no certification shall be required upon renewal of a lease if a prior certification provided to the lessee remains valid, as provided for at § 6-802(15). In the event the applicant for a rental license does not have any lessees, no license shall be issued with respect to any Targeted Housing unless the applicant has provided to the Department of Public Health a current certification that the property is lead free or lead safe.*

(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.] The certification shall be accompanied by a copy of the corresponding laboratory results of wipe tests for lead-contaminated dust. Any corrective action taken in order to qualify the property for such certification shall be performed in compliance with applicable laws. Expenses relating to obtaining any lead safe or lead free certification required by this Section 6-803 shall be the responsibility of the lessor.*

\* \* \*

(d) *The Department of Public Health shall publish annually, effective on the same transition schedule provide for at § 6-802.1(1)(c):*

(.1) *A list of each rental unit, including the address and name of lessor, for which a certification was provided to the Department pursuant to subsection (c)(1), above.*

(.2) *A list of each rental unit, including the address and name of lessor, for which the Department or its designee has issued a notice of violation, or taken other enforcement action, for failure to submit a certification to the Department pursuant to subsection (c)(1), above.*

(e) *The Department of Public Health shall maintain on its website a publicly-available list of Certified Lead Inspectors and a list of persons qualified to perform lead remediation.*

(f) A lessee shall cooperate and provide reasonable access to the rental unit for the lessor to have a certified lead inspector do an evaluation of the unit for a lead-safe certification in accordance with § 6-803 (3)(b). The lessee shall also provide reasonable access to have any corrective action performed on the property to qualify the property for such certification. The lessor shall provide reasonable notice to the lessee to have the above work done on the property. If a lessor believes that a lessee has not provided reasonable access, the lessor may provide notice to the Department of Public Health. The Department may promulgate regulations to implement the provisions of this paragraph.

(g) Upon request of the Department, a lessor shall provide to the Department such documentation as identified by the Department as necessary to determine compliance with the provisions of this Section 6-803.

(h) The Department of Public Health shall file a report with the Chief Clerk of Council, no later than October 30, 2022, setting forth the Department's experience with this § 6-803, including an assessment of its effectiveness in reducing exposure to lead paint and recommendations for revisions or improvements.

[(d)] (i) \* \* \*

(j) No person shall take any retaliatory action against any person who exercises in good faith a right established by this Chapter or any regulation promulgated hereunder, or who causes any lessor to take any steps required by this Chapter or any regulation hereunder. Retaliatory action shall include, but not be limited to, any of the actions listed at § 6-403(5)(a) (Tenant Protection Against Retaliation).

§ 6-809. Remedies.

\* \* \*

(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:

\* \* \*

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

\* \* \*

(4) Where a lessor does not comply with any provision of Section 6-803(3)(a), the lessor shall be denied the right to *recover possession of the premises* or to collect rent during or for the period of noncompliance. *In any action for eviction or collection of rent, the owner shall attach either a copy of the certification required by Section 6-803(3)(a) or documentation that the premises do not qualify as Targeted Housing.*

\* \* \*

§ 6-811. Penalties.

Any person who fails to comply with the provisions of this Chapter, *and any person who knowingly participates in any such failure to comply by any other person or who has reason to know that his or her participation will materially contribute to any such failure by another person*, shall be subject to a fine or penalty of no more than two thousand dollars (\$2,000) per offense. Each day of non-compliance shall constitute a separate offense.

§ 6-812. Non-Waiverability.

Any attempted waiver of this Ordinance shall be void and unenforceable. *No waiver of rights under this Ordinance shall be implied, including by:*

(a) [Similarly, the] *The* passage of time during the term of a lease or so long as the lessee lawfully occupies the [property, shall not constitute a waiver of this Chapter.] *property*.

(b) *Appearance as a defendant in an eviction proceeding.*

\* \* \*

SECTION 2. This Ordinance shall be effective October 1, 2020.

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**Explanation:**

[Brackets] indicate matter deleted.

*Italics* indicate new matter added.