


1 
2 Councilmember Brianne K. Nadeau


Councilmember Charles Allen

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5 Councilmember David Grosso


Councilmember Anita Bonds

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8 Councilmember Robert C. White, Jr.


Councilmember Mary M. Cheh

13 A BILL

18 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

23 To amend the Lead-Hazard Prevention and Elimination Act of 2008 to modify
24 acceptable levels of lead exposure; to require an owner to provide a clearance
25 report before receiving any license, registration, or permit for the use of a
26 rental unit; to expand protections from lead exposure for all tenants in the
27 District of Columbia; to establish the Indoor Lead Hazard Reduction Fund to
28 provide assistance in bringing dwelling units constructed before 1978 and
29 occupied by low-income tenants into compliance with the requirements of
30 the act; and to provide a tenant with a right of action and remedies if an
31 owner does not comply with the requirements of the act.

33 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

34 That this act may be cited as the "Lead Hazard Prevention and Elimination Amendment
35 Act of 2019".

36 Sec. 2. The Lead-Hazard Prevention and Elimination Act of 2008, effective March
37 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01 *et seq.*), is amended as
38 follows:

39 (a) Section 2 (D.C. Official Code § 8-231.01) is amended as follows:

(1) Paragraph (1) is amended to read as follows:

“(1) “Abatement” means any measure or a set of measures, except interim controls, that eliminates lead-based paint hazards, including by:

“(A) The enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil; and

“(B) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.”.

(2) Paragraph (5) is amended to read as follows:

“(5) “Clearance examination” is an evaluation of a property or unit that is conducted by a certified risk assessor, a lead-based paint inspector, or in accordance with limitations specified by statute or by rule, a dust sampling technician to determine:

“(A) Whether the property or unit is a lead-free property or unit or a lead-safe property or unit; and

“(B) That the property or unit is free of any deteriorated lead-based paint and underlying condition, or any lead-based paint hazard, underlying condition, lead-contaminated dust, and lead-contaminated soil hazards.”.

(3) Paragraph (6) is amended by striking the phrase “or a dust sampling technician that finds that the area tested has passed a clearance examination, and that specifies the steps taken” and inserting the phrase “or a dust sampling technician that finds that the area tested has passed a clearance examination, including identifying the area tested as a lead-free property or unit, or a lead-safe property or unit, and that specifies the steps taken” in its place.

(4) Subparagraph (11)(A) is amended by striking the phrase “for a period

63 exceeding 30 days”.

64 (5) Paragraph 13 is amended by striking the phrase “equal to or greater
65 than 10 measured in micrograms of lead per deciliter of blood” and inserting the phrase
66 “equal to or greater than 5 measured in micrograms of lead per deciliter of blood” in its
67 place.

68 (6) Paragraph (20) is amended by striking the phrase “any quantity
69 exceeding 0.5% of the total weight of the material or more than one milligram per square
70 centimeter (1.0mg/cm/f2)” and inserting the phrase “any quantity exceeding 0.009% of
71 the total weight of the material or more than 0.7 milligrams per square centimeter
72 (0.7mg/cm/f2)” in its place.

73 (7) Paragraph (24) is amended as follows:

74 (A) Subparagraph (24)(A) is amended as follows:

75 (i) Sub-subparagraph (24)(A)(i) is amended by
76 striking the phrase “40 micrograms” and inserting the phrase “10 micrograms” in its
77 place.

78 (ii) Sub-subparagraph (24)(A)(ii) is amended by
79 striking the phrase “250 p mg^{l2}” and inserting the phrase “100 p mg^{l2}” in its place.

80 (B) Subparagraph (24)(B) is amended as follows:

81 (i) Sub-subparagraph (24)(B)(i) is amended by
82 striking the number 400 and inserting the number 10 in its place.

83 (ii) Sub-subparagraph (24)(B)(ii) is amended by
84 striking the number 800 and inserting the number 100 in its place.

85 (8) Paragraph (25) is amended by striking the phrase “contains lead in

excess of 400 ppm” and inserting the phrase “contains lead in excess of 80 ppm” in its place.

(9) Paragraph (27) is amended by striking the phrase “exterior surfaces do not contain any lead-based paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm/f2)” and inserting the phrase “exterior surfaces do not contain any lead-dust, lead-based paint, or other surface coatings that contain lead” in its place.

(10) Paragraph (28) is amended by striking the phrase “exterior surfaces appurtenant to the unit do not contain any lead-based paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm/f2)” and inserting the phrase “exterior surfaces appurtenant to the unit do not contain any lead-dust, lead-based paint, or other surface coatings that contain lead” in its place.

(11) A new paragraph (28A) is added to read as follows:

“(28A) “Lead-safe property” means a property constructed before 1978 that has undergone abatement such that there is no risk of access or exposure to lead-dust, lead-based paint, or other surface coatings that contain lead, or to lead-contaminated soil.”.

(12) A new paragraph (28B) is added to read as follows:

“(28B) “Lead-safe unit” means a dwelling unit constructed before 1978 that has undergone abatement such that there is no risk of access or exposure to lead-dust, lead-based paint, or other surface coatings that contain lead, or to lead-contaminated soil.”.

(13) Paragraph (33) is amended as follows:

109 (A) Subparagraph (C) is amended by striking the phrase “;
110 and” and inserting a semicolon in its place.

111 (B) Subparagraph (D) is amended by striking the period and
112 inserting a semicolon in its place.

113 (C) A new subparagraph (E) is added to read as follows:

114 “(E) Per diem food expenses if the replacement housing does
115 not include a kitchen; and”.

116 (C) A new subparagraph (F) is added to read as follows:

117 “(F) Per diem travel expenses if the replacement housing is
118 more than one mile from the tenant’s dwelling unit.”.

119 (14) Subparagraph (36)(C) is amended by striking the phrase “and paint
120 testing, as appropriate” and inserting the phrase “and paint testing” in its place.

121 (b) Section 3 (D.C. Official Code § 8-231.02) is amended as follows:

122 (1) Subsection (c) is amended by striking the phrase “the District
123 government may deny” and inserting the phrase “the District government shall deny” in
124 its place.

125 (2) A new subsection (d) is added to read as follows:

126 “(d)(1) The Mayor shall not issue nor renew any license, registration, or permit
127 relating to the use of any rental housing unit unless the owner has provided a clearance
128 report issued within the previous 12 months; provided, that if the owner cannot provide a
129 clearance report issued within the previous 12 months, the Mayor shall complete a
130 clearance examination and provide the owner with a clearance report.

131 “(2) The Mayor shall waive the requirement of paragraph (1) of this

132 subsection if the property has been found to be a lead-free property.

133 “(3) The Mayor may waive the requirement of paragraph (1) of this
134 subsection if:

135 “(A) The owner provides at least 4 clearance reports issued at
136 least 12 months apart and within the prior 6 years;

137 “(B) The property was not, and is not, subject to any housing
138 code violations that occurred during the prior 6 years or any that are outstanding; and

139 “(C) Any clearance examination completed pursuant to section
140 5(c) of this act (D.C. Official Code § 8-231.04(c)), undertaken in the prior 6 years, found
141 the property to be a lead-safe property.”.

142 (c) Section 4(d) (D.C. Official Code § 8-231.03(d)) is amended as follows:

143 (1) Subparagraph (1)(D) is amended to read as follows:

144 “(D) Make temporary comparable alternative arrangements, as
145 determined by the Mayor, for the relocation of any person who is a tenant residing at the
146 property, in accordance with paragraph (2) of this subsection; and”.

147 (2) Subparagraph (2)(F) is amended by striking the phrase “the tenant may
148 agree to make alternative arrangement for temporary relocation” and inserting the phrase
149 “the tenant may agree to make alternative arrangement for temporary relocation, or the
150 tenant may terminate their tenancy without penalty” in its place.

151 (3) A new paragraph (3A) is added to read as follows:

152 “(3A) When the Mayor has ordered relocation of a tenant pursuant to
153 subsection (d)(2) the owner shall comply with the requirements of subsection (d)(2)
154 within 7 days of receipt of a written order; provided, that the tenant may file a request for

the Mayor to reconsider the owner's relocation plan if the owner has not made a good faith effort to comply with subparagraphs (d)(2)(C) and (d)(2)(D).".

(4) Paragraph 4 is amended by striking the phrase "the Mayor may require that the owner submit to the Mayor a clearance report" and inserting the phrase "the Mayor shall require that the owner submit to the Mayor and the tenant a clearance report" in its place.

(d) Section 5 (D.C. Official Code § 8-231.04) is amended as follows:

(1) Subsection (b) is amended to read as follows:

"(b) Upon signing a lease, the owner of a dwelling unit constructed before 1978 shall provide to the tenant an accurately and fully completed lead disclosure form and a clearance report issued within the previous 12 months. Within 10 days after receiving the disclosures required by this subsection, the tenant may terminate their tenancy without penalty.".

(2) Subsection (c) is amended to read as follows:

"(c) If a tenant of a dwelling unit constructed before 1978 notifies the owner of the property or the Mayor in writing that there exists evidence of a lead-based paint hazard, including a positive test indicated by an EPA-approved home lead-test kit, the owner of the dwelling unit shall provide to the tenant within 30 days a clearance report issued within the previous 12 months; provided, that, if the owner of the dwelling unit cannot provide a clearance report issued within the previous 12 months, the Mayor shall complete a clearance examination and provide the tenant and the owner with a clearance report.".

(3) Subsection (d) is amended to read as follows:

178 “(d) Instead of providing the disclosure form and clearance report required by this
179 section, an owner may provide a report from a risk assessor inspector certifying that the
180 dwelling unit is a lead-free unit; provided, that for the purposes of this subsection, the
181 term “lead-free unit” shall mean the definition of lead-free unit in effect at the time of
182 unit certification.”.

183 (4) Subsection (g) is amended to read as follows:

184 “(g) Twelve months after the effective date of the Lead Hazard Prevention and
185 Elimination Amendment Act of 2019, as introduced on July 9, 2019 (Bill 23-XXX), the
186 Mayor shall submit a report on the status of the implementation of this section. The report
187 shall include:

188 “(1) The cost to the District and to property owners to carry out the
189 provisions of this section;

190 “(2) A description of the capacity of the public and private sector to carry
191 out the provisions of this section;

192 “(3) The number of dwelling units that were certified as lead-free
193 properties each month and the ward in which the properties are located; and

194 “(4) Any barriers to full compliance with this section.”.

195 (e) Subsection 7(b) (D.C. Official Code § 8-231.06)(b)) is amended as follows:

196 (1) Paragraph (3) is amended by striking the phrase “; and” and inserting a
197 semicolon in its place.

198 (2) A new paragraph (3A) is added to read as follows:

199 “(3A) A copy of any documentation or report regarding risk assessment,
200 lead clearance, or lead testing of any kind; and”.

201 (f) Section 8 (D.C. Official Code § 8-231.07) is amended as follows:

202 (1) A new subsection (a-1) is added to read as follows:

203 “(a-1) In response to an owner’s failure to comply with any provision of this act, a
204 tenant may provide information to the Mayor and may pursue damages or penalties
205 pursuant to section 16 (D.C. Official Code § 8-231-15).”.

206 (2) Subsection (b) is amended to read as follows:

207 “(b) The tenant actions described in subsections (a) and (a-1) of this section shall
208 be considered tenant rights, and retaliation in bad faith by an owner shall entitle the
209 tenant to two months’ rent plus attorneys’ fees.”.

210 (g) A new section 10a is added to read as follows:

211 “Sec. 10a. Indoor Lead Hazard Reduction Fund.

212 “(a) There is established as a special fund the Indoor Lead Hazard Reduction Fund
213 (“Fund”), which shall be administered by Mayor in accordance with subsection (c) of this
214 section:

215 “(b) Revenue from the following sources shall be deposited in the Fund:

216 “(1) All administrative and application fees collected pursuant to this act;

217 “(2) All civil infraction fines, penalties, and fees collected pursuant to this
218 act, including monetary damages awarded in a civil action commenced by the Attorney
219 General for the District of Columbia pursuant to subsection 16(e) (D.C. Official Code §
220 8-321.15(e)); and

221 “(3) Criminal fines collected pursuant to this act.

222 “(c) Money in the Fund shall be used for the following purposes:

223 “(1) Enforcement of the requirements of this act; and

224 “(2) Providing to owners of dwelling units constructed before 1978
225 assistance complying with the requirements of this act, if:
226 “(A) The owner can demonstrate financial hardship, as
227 determined by the Mayor; and
228 “(B) The property was not, and is not, subject to any
229 housing code violations, other than a violation of this act for which the owner is seeking
230 assistance, that occurred during the past 5 years or any that are outstanding.”
231 “(d)(1) The money deposited into the Fund and the interest earned shall not revert
232 to the unrestricted fund balance of the General Fund of the District of Columbia at the
233 end of a fiscal year, or at any other time.
234 “(2) Subject to authorization in an approved budget and financial plan any
235 funds appropriated in the Fund shall be continually available without regard to fiscal year
236 limitation.”.
237 (h) Section 15 (D.C. Official Code § 8-231.14) is amended as follows:
238 (1) The existing text is designated as subsection (a).
239 (2) The newly designated subsection (a) is amended as follows:
240 (A) Paragraph (4) is repealed.
241 (B) Paragraph (7) is amended by striking the semicolon and
242 inserting the phrase “; or” in its place.
243 (B) Paragraph (8) is repealed.
244 (8) A new subsection (b) is added to read as follows:
245 “(b) The Mayor, after notice and opportunity for hearing, shall suspend, revoke,
246 modify, or refuse to issue, renew, or restore a certificate or accreditation issued under this

247 act if the Mayor finds that the applicant or holder:

248 “(1) Has submitted a false or fraudulent record, invoice, or report;

249 “(2) Has misrepresented facts relating to a lead-based paint activity to a
250 client or customer in a manner that did or could have resulted in lead exposure to a
251 person at risk; or

252 “(3) Has had a history of repeated violations of this act.”.

253 (i) Section 16 (D.C. Official Code § 8-231.15) is amended as follows:

254 (1) Subsection (e) is amended by striking the phrase “or other appropriate
255 relief to enforce compliance with the provisions of this act” and inserting the phrase “or
256 other appropriate relief, including monetary damages, to enforce compliance with the
257 provisions of this act” in its place.

258 (2) A new subsection (e-1) is added to read as follows:

259 “(e-1)(1) If an owner fails to comply with any provision of this act the tenant shall
260 be entitled to bring an action in a court of competent jurisdiction and shall be entitled to
261 the following remedies:

262 “(A) An order requiring the owner:

263 “(i) To provide a clearance report to the tenant; or

264 “(ii) To perform the necessary work to make the
265 dwelling unit a lead-safe property or a lead-free property, or a lead-safe property or a
266 lead-safe unit;

267 “(B) Damages for any harm caused by the failure to provide a
268 clearance report, including, if applicable, the reasonable cost of lead-based paint
269 activities;

270 “(C) Punitive damages of up to \$4,000;
271 “(D) Refund of rent for any period in which the tenant
272 occupied a dwelling unit without a clearance report having been provided; and
273 “(E) Attorney’s fees and costs.
274 “(2) If an owner fails to comply with the requirements of section 5 (D.C.
275 Official Code § 8-231.04), the owner shall be denied the right to collect rent during or for
276 the period of noncompliance.”.
277 Sec. 4. Fiscal impact statement.
278 The Council adopts the fiscal impact statement in the committee report as the fiscal
279 impact statement required by section 4a of the General Legislative Procedures Act of
280 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).
281 Sec. 5. Effective date.
282 This act shall take effect following approval by the Mayor (or in the event of veto
283 by the Mayor, action by the Council to override the veto), a 30-day period of
284 congressional review as provided in section 602(c)(1) of the District of Columbia Home
285 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
286 206.02(c)(1)), and publication in the District of Columbia Register.