

CHAPTER 250
SB 135-FN – FINAL VERSION

03/12/2015 0715s
6May2015... 1424h
06/24/2015 2313CofC

2015 SESSION

15-0970
01/10

SENATE BILL ***135-FN***

AN ACT relative to lead poisoning in children.

SPONSORS: Sen. Feltes, Dist 15; Sen. Pierce, Dist 5; Sen. Carson, Dist 14; Sen. Bradley, Dist 3;
Sen. Stiles, Dist 24; Rep. Wallner, Merr 10

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill:

I. Changes the notice requirements for blood lead levels found in a child's blood.

II. Establishes the childhood poisoning prevention and lead screening commission to assess existing screening rates in relation to the department of health and human services' screening guidelines.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to lead poisoning in children.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 250:1 Lead Paint Poisoning Prevention; Report Required. Amend RSA 130-A:3 to read as
2 follows:

3 130-A:3 Laboratory Reporting.

4 ***I.*** Any laboratory performing blood lead analysis on adults or children residing in
5 New Hampshire shall report, in accordance with rules adopted under RSA 130-A:10, test results of
6 such analysis.

7 ***II.*** ***Using the data provided under paragraph I, the department shall annually***
8 ***determine the percentage of children 6 years of age or younger, who are being screened***
9 ***with blood lead level tests in accordance with the department's childhood lead poisoning***
10 ***screening and management guidelines and shall make an annual report, commencing on***
11 ***November 1, 2015, to the president of the senate, the speaker of the house of representatives,***
12 ***the chairpersons of the senate and house committees having jurisdiction over health and***
13 ***human services issues, the senate clerk, the house clerk, and the state library.***

14 250:2 New Section; Capillary Blood Tests. Amend RSA 130-A by inserting after section 3 the
15 following new section:

16 130-A:3-a Capillary Blood Test Screening. Any health care provider or organization conducting
17 capillary blood tests, including, but not limited to community action programs, shall inform the
18 department of such fact and shall provide a fact sheet prepared by the department to the parent or
19 guardian of any child whose test indicates any presence of lead. Such fact sheet shall, at a
20 minimum, describe the health effects of childhood lead poisoning, the advisability of obtaining a
21 venous blood test, and the benefits of identifying and addressing lead hazards. It shall include a
22 statement that, in the case of rental properties, it is advisable to inform the property owner of the
23 capillary blood test result and venous blood test result, that measures to identify and address lead
24 hazards shall not be conducted without the property owner's knowledge and opportunity to take such
25 measures, and that a property owner cannot evict a tenant based on the presence in the dwelling or
26 dwelling unit of a child whose capillary blood test or venous blood test indicates a blood lead level.

27 250:3 New Sections; Lead Paint Poisoning Prevention; Health Care Providers. Amend RSA 130-
28 A by inserting after section 5 the following new sections:

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1 130-A:5-a Health Care Providers; Not Liable. All health care providers who provide primary
2 medical care shall ensure that parents and guardians of children 6 years of age or younger are
3 advised of the availability and advisability of screening and testing their children for lead in
4 accordance with this chapter. A health care provider shall not be liable for not performing a
5 screening or confirmation test for blood lead level when a parent or guardian has been informed of
6 the availability and advisability of screening and has refused to consent or has failed to follow
7 through in response to a referral for a screening or confirmation test.

8 130-A:5-b Child Screenings. If by 2017 fewer than 85 percent of one-year olds and 2-year olds in
9 the following categories of children are receiving blood lead level tests, the department shall adopt
10 rules, pursuant to RSA 541-A, to require that all health care providers who provide primary medical
11 care to young children shall ensure that their patients in such categories are screened and educated
12 according to the department's childhood lead poisoning screening and management guidelines:

13 I. Children who live in high-risk communities designated by the department.

14 II. Children who are in Medicaid.

15 III. Children who are receiving benefits under the Women, Infants, and Children Program
16 (WIC).

17 IV. Children who are enrolled in Head Start.

18 250:4 Lead Paint Poisoning Prevention; Property Owner Notification. Amend RSA 130-A:6-a to
19 read as follows:

20 130-A:6-a Property Owner Notification.

21 I. The department shall ~~[make reasonable efforts to]~~ notify in writing the owner **or**
22 **registered agent of an owner** of a dwelling or dwelling unit where the child resides if **a venous**
23 **blood test** lead ~~[levels]~~ **level** of ~~[6-]~~ **5** to 9.9 micrograms per deciliter ~~[are]~~ **is** found in the child's
24 blood. Such notice to the property owner shall specify that it is neither a finding that a lead
25 exposure hazard exists in the property nor is it an order for lead hazard reduction. **Such notice**
26 **shall include information about the health hazards of lead poisoning, standards for**
27 **identifying and eliminating lead hazards, and the federal Renovation, Repair, and**
28 **Painting Program.**

29 II. **(a)** Eviction of a tenant based on the presence in the dwelling or dwelling unit of a child
30 ~~[with a blood level of 6 to 9.9 micrograms per deciliter]~~ **who has tested positive for the presence**
31 **of lead in his or her bloodstream** shall be unlawful. There shall be a rebuttable presumption that
32 any eviction action, instituted by the owner within 6 months of receipt of ~~[the]~~ notice ~~[sent by the~~
33 ~~department pursuant to paragraph I, is based on the child's elevated blood lead level; provided that~~
34 ~~this shall not be construed to alter any cause for eviction under RSA 540:2.]~~ **of a child's elevated**
35 **blood lead level by the department, the child's physician, or the child's parent or guardian,**
36 **is based on the child's elevated blood level; provided that:**

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1 (1) *If the notice came from a parent or guardian only, such parent or*
2 *guardian shall provide the owner with a copy of the child’s blood test prior to the*
3 *expiration of the eviction notice for the rebuttable presumption in this subparagraph to*
4 *apply; and*

5 (2) *This subparagraph shall not be construed to alter any cause for eviction*
6 *under RSA 540:2.*

7 (b) If a court finds that an eviction is based on the child’s elevated blood lead level, it
8 shall deny the eviction and award damages to the tenant pursuant to RSA 540:14, II. However, if an
9 owner in response to the notice from the department, ***the child’s physician, or the child’s parent***
10 ***or guardian*** discovers a lead exposure hazard in the dwelling or dwelling unit, the owner may
11 proceed with relocation of the tenants, provided that the owner meets the requirements of RSA 130-
12 A:8-a, I or II.

13 III. *In circumstances where the presence of a lead exposure hazard is unsuspected,*
14 *and becomes known only after the dwelling or dwelling unit has been rented to a family*
15 *with a child, the owner may withdraw the unit from the residential rental market in lieu of*
16 *undertaking reduction of the lead exposure hazard. In such case the owner may bring an*
17 *action to evict the family but only if the owner fulfills all of the conditions set forth in*
18 *RSA 130-A:8-a, II. The dwelling unit shall not be subsequently rented for residential*
19 *purposes without reduction of all lead exposure hazards associated with the unit.*

20 IV. Refusal of a tenant to permit the owner to have access to the dwelling or dwelling unit in
21 order to inspect for lead exposure hazards shall be good cause for eviction pursuant to RSA 540:2,
22 II(e); provided, however, that the owner gives the tenant at least 48 hours’ prior written notice, and
23 that the inspection is to be conducted at a reasonable time.

24 250:5 New Section; Lead Paint Poisoning Prevention; Parent Notification. Amend RSA 130-A by
25 inserting after section 6-a the following new section:

26 130-A:6-b Parent Notification. The department shall send materials to the parents of any child
27 with a blood lead level of 5 micrograms per deciliter or higher. Such materials shall inform parents
28 who are tenants to work with the property owner and advise against engaging in renovation, repair,
29 or painting activities themselves. Such materials shall inform parents who own and occupy the
30 house in which the child resides of resources for identifying and eliminating lead hazards, including
31 the Renovation, Repair and Painting Program.

32 250:6 New Subdivision; Childhood Lead Poisoning Prevention and Screening Commission.
33 Amend RSA 130-A by inserting after section 18 the following new subdivision:

Childhood Lead Poisoning Prevention and Screening Commission

34 130-A:19 Childhood Lead Poisoning Prevention and Screening Commission Established.

35 I. There is established a childhood lead poisoning prevention and screening commission to
36

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1 assess and recommend measures for preventing childhood lead poisoning and improving screening
2 rates among New Hampshire children ages 6 years old and younger.

3 II. The members of the commission shall be as follows:

4 (a) One member of the senate, appointed by the senate president.

5 (b) One member of the house of representatives, appointed by the speaker of the house of
6 representatives.

7 (c) The commissioner of the department of health and human services, or designee.

8 (d) The executive director of the New Hampshire housing finance authority, or designee.

9 (e) Two municipal public health officials with knowledge and experience in childhood
10 lead poisoning prevention, one appointed by the New Hampshire Municipal Association, and one
11 appointed by the governor.

12 (f) A landlord owning 10 or fewer rental units, with experience owning and renting pre-
13 1978 rental housing, appointed by the speaker of the house of representatives.

14 (g) A landlord owning more than 10 and fewer than 50 rental units, with experience
15 owning and renting pre-1978 rental housing, appointed by the senate president.

16 (h) A landlord owning more than 50 rental units, with experience owning and renting
17 pre-1978 rental housing, appointed by the Apartment Association of New Hampshire.

18 (i) A representative of the New Hampshire Property Owners Association, appointed by
19 the association.

20 (j) An owner of a licensed child care facility located in a pre-1978 building, appointed by
21 the governor.

22 (k) A representative of the New Hampshire Building Officials Association, appointed by
23 the association.

24 (l) A representative of the New Hampshire Pediatric Society, appointed by the society.

25 (m) A representative of New Hampshire Kids Count, appointed by the director of the
26 organization.

27 (n) A representative of Housing Action New Hampshire, appointed by the director of the
28 organization.

29 (o) A pediatric physician licensed under RSA 329 and another pediatric health care
30 provider, appointed by the board of medicine.

31 (p) Three public members, one appointed by the governor, one appointed by the senate
32 president, and one appointed by the speaker of the house of representatives.

33 III. The members of the commission shall elect a chairperson from among the members. The
34 first meeting of the commission shall be called by the commissioner of the department of health and
35 human services. The first meeting of the commission shall be held within 45 days of the effective
36 date of this section. Ten members of the commission shall constitute a quorum. Legislative

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1 members of the commission shall receive mileage at the legislative rate when attending to the duties
2 of the commission.

3 IV. The chairperson is authorized to establish a subcommittee addressing childhood lead
4 prevention strategies and a subcommittee relative to improving screening rates, and to appoint from
5 among the commission membership the chairpersons of such subcommittees.

6 V. In addressing childhood lead prevention strategies, the commission shall consider the
7 advisability of adopting an essential maintenance practices program uniquely suited to
8 New Hampshire to prevent lead poisoning in pre-1978 rental housing and pre-1978 buildings
9 containing child care, and the elements of such a program. The commission shall assess:

10 (a) Essential maintenance practices programs in other jurisdictions.

11 (b) Coordination of an essential maintenance practices program with existing public
12 health laws and regulations concerning lead, to maximize efficiency.

13 (c) Incentives and other mechanisms to encourage compliance with essential
14 maintenance practices, including but not limited to, issues concerning limitations on liability for
15 compliance and liability for noncompliance.

16 (d) Other matters deemed relevant to the commission's determination.

17 VI. The commission shall explore and examine options for assisting property owners in the
18 abatement of lead-based paint hazards.

19 VII. The commission shall assess existing screening rates in relation to the department's
20 childhood lead poisoning screening and management guidelines, and assess the actions necessary to
21 achieve screening rates consistent with such guidelines.

22 VIII. The commission shall assess the feasibility and benefits of requiring the department to
23 provide notice to landlords and parents pursuant to RSA 130-A:6-a and RSA 130-A:6-b when a child
24 has been found to have a blood lead level less than 5 micrograms per deciliter.

25 IX. The commission shall review and assess effective and practicable means by which
26 municipal and local building officials may help ensure contractors and property owners are informed
27 about lead-safe renovation, repair, and painting practices, including the existing federal Renovation,
28 Repair and Painting Program.

29 X. The commission shall submit an annual report of its activities, together with
30 recommendations for legislation commencing on December 1, 2016 to the president of the senate, the
31 speaker of the house of representatives, the governor, and the state library.

32 250:7 Lead Paint Poisoning Prevention; Civil Suits. Amend RSA 130-A:18 to read as follows:

33 130-A:18 Civil Suits. Owners of pre-1978 rental housing and childcare facilities shall take
34 reasonable care to prevent exposure to, and the creation of, lead hazards. Notwithstanding any
35 provision of law to the contrary, the mere presence of a lead base substance shall not constitute
36 negligence on the part of an owner of any dwelling. To establish negligence on the part of an owner,

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1 the plaintiff in a civil suit shall demonstrate actual injury caused by the lead base substance.
2 Evidence of actions taken or not taken by the owner of a pre-1978 rental property or childcare facility
3 in compliance with applicable public health laws and regulations concerning lead may be admissible
4 evidence of reasonable care or negligence. Remedial actions taken by a property owner after a lead
5 exposure has occurred shall not be admissible evidence for purposes of establishing liability.
6 Evidence of a tenant's disturbance of painted surfaces containing lead paint also shall be admissible
7 evidence. In addition, the mere presence of a lead base substance in a dwelling shall not by itself
8 violate any warranty of habitability.

9 250:8 Repeal. RSA 130-A:19, relative to the childhood lead poisoning prevention and screening
10 commission, is repealed.

11 250:9 Effective Date.

12 I. RSA 130-A:19 as inserted by section 6 of this act shall take effect upon its passage.

13 II. Section 8 of this act shall take effect November 1, 2018.

14 III. The remainder of this act shall take effect 60 days after its passage.

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16 Approved: July 13, 2015

17 Effective Date: I. RSA 130-A:19 as inserted by section 6 shall take effect July 13, 2015.

18 II. Section 8 shall take effect November 1, 2018.

19 III. Remainder shall take effect September 11, 2015.