



THE CONNECTICUT APARTMENT ASSOCIATION

Raised Bill 1340: AN ACT IMPLEMENTING A COMPREHENSIVE PLAN TO ERADICATE LEAD POISONING

As representative of the largest number of apartments in the state of Connecticut, the **Connecticut Apartment Association (CTAA)** urges the Joint Committee on Public Health to carefully deliberate the wording of SB-1340 which, in its present form, seems incomplete. While our organization supports efforts to remediate remaining lead sources in housing, this should be done in a reasonable, cost-effective manner. The proposed sweeping plan is not fully thought out, excessive in scope and prohibitively expensive. Ultimately the consequence of the legislation as written, which places the financial burden mainly on property owners, would be less affordable housing in the state, particularly in poor urban areas where lead sources in housing remain. Furthermore, without carefully deliberating how testing and remediation will be paid for and administered, little or no progress in reducing lead poisoning may take place where most needed. **What is required is an effort to formulate legislation such that children's blood screening and lead testing and remediation occurs *only where necessary*, in a manner that is *cost effective, and with funding from all available sources*.**

Tremendous progress has been made in reducing lead poisoning in children from housing since lead additives were banned from residential paint products some 28 years ago. According to National Health and Nutrition Examination Surveys (NHANES), the percentage of children aged 1-5 years with blood lead levels (BLL) ≥ 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) - the CDC baseline for harmful effects from lead - has fallen from 88.2% in the late-1970's to 2.2% as of 2000:

Table 1. NHANES Blood Lead Level Measurements for Children Aged 1-5 Years by Year of NHANES, United States

Year	Geometric Mean ¹ BLLs (95% CI) ²	Prevalence ³ of BLLs ≥ 10 $\mu\text{g}/\text{dL}$ ⁴ (95% CI)	Estimated Number of Children with BLLs ≥ 10 $\mu\text{g}/\text{dL}$ (95% CI)
1976 - 1980	14.9 (14.1 - 15.8)	88.2% (83.8 - 92.6)	13,500,000 (12,800,000 - 14,100,000)
1988 - 1991	3.6 (3.3-4.0)	8.6% ⁵ (4.8-12.4%)	1,700,000 (960,000-2,477,000)
1991 - 1994	2.7 (2.5-3.0)	4.4% (2.9-6.6%)	890,000 (590,000-1,330,000)
1999 - 2000	2.2	2.2%	434,000⁶

¹ A measure of central tendency that differs from an arithmetic mean because it uses multiplication rather than addition to summarize the data values

² This confidence interval (CI) means that there is a 95% probability that the true number is within that range

³ The number of children with BLLs ≥ 10 $\mu\text{g}/\text{dL}$ over the whole population at a given point in time

⁴ CDC has determined a blood lead level (BLL) 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) to be a level of concern

⁵ This estimate differs slightly from values published previously due to updates in coding and weighting of the survey data.

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Given the dramatic decline in lead poisoning into the year 2000, the state should consider gathering current data to determine the remaining extent of the problem similar to *The Report on the Status of Lead Poisoning in Connecticut* published in March of 1998. Such data collection should particularly focus on precisely where lead poisoning problems persist and consider a more affordable targeted response based upon empirical scientific research. A sweeping universal approach that unnecessarily burdens municipalities and property owners is unwarranted.

Presuming that a fraction of Connecticut's children continue to have toxic levels of lead in their bodies, some efforts are most likely still necessary for final eradication of the lead-poisoning problem. But those efforts should be measured and consistent with achieving a cost-effective, efficient solution.

Raised Bill 1340 is similar to legislation adopted in other states in order to qualify for grants from the Centers for Disease Control and Prevention (CDC). The federal goal is to end childhood lead poisoning by 2010. Accordingly, Connecticut needs to strengthen its lead laws to conform with federal statutes, and this apparently is the intent of the proposed legislation. However, such legislation shouldn't be blindly written and passed in an urgent effort to garner federal funding. CT legislators should be prudent and carefully think out what is to be made state law.

There are numerous and substantial problems with Raised Bill 1340 as currently worded:

1. The time frame for addressing a problem is left at "reasonable". What is needed is specifics that are truly reasonable.
2. Lead hazards should be defined in concert with federal definitions, e.g., as defined by the EPA or HUD.
3. Environmental investigations for lead-poisoned children should be expanded to all the places the child routinely goes, not just the child's residence.
4. Connecticut should consider targeted screening for at-risk children, such as those covered by Medicaid, instead of universal screening at the expense of medical insurers.
5. The proposed legislation mandates universal screening of children up to six years old, a year more than the rest of the U.S. This unnecessarily increases the costs for Medicaid and medical insurers.
6. Up to 35% of elevated blood lead levels are attributed to non-paint sources. Consequently, the state should adopt the CDC's recommendation for a more systematic approach to identify and prevent the sale of lead-contaminated items, e.g., children's toy jewelry, fishing kits, gum-ball machine prizes, children's cribs, zippers pulls, candle wicks, chalk, Mexican candy, etc.
7. Variation in lab results should be factored into remediation decisions since current federal regulatory requirements permit labs to operate with a fixed allowable error of +/- 4 ug/dl for blood lead. A health inspector should order redundant tests to confirm BLLs before requiring remediation efforts that will cost tens of thousands of dollars.
8. The CDC has traditionally recommended testing a child's household for lead when their BLL gets to 20 ug/dl (or 2 readings at least 3 months apart at 15-19 ug/dl). Choosing 10 ug/dl may be unnecessary and increases the total number of official lead poisoning cases by nearly 2.5 times according to the March 1998 Report on the Status of Lead Poisoning in Connecticut.
9. Raised Bill 1340 gives doctors only 72 hours to notify parents. Yet there are no time limits set for Health Departments to provide information to a child's parents or complete lead-source investigations.
10. "On-site investigations" are mandated at a child's home when a BLL of 10 ug/dl is discovered instead of 20 ug/dl as is the case now. The term "onsite investigation" is not thoroughly defined and the basis for a lower BLL requirement is not established and potentially unwarranted according to some studies.
11. The health department is not required to do a full epidemiological investigation, but rather an undefined "onsite investigation" at the child's home, when there are many cases where a child's primary lead exposure is from a babysitter or relative's home where there are extremely bad conditions.
12. Bill 1340 allows the Public Health Department to determine regulations, on standards, testing, remediation and abatement. This is too broad there should be a set of parameters established by the general assembly. This broad language could allow the Public Health Department to set regulations that are as sweeping and costly as last years proposed bill regarding lead eradication.
13. CT legislation establishes a fund of money to be used for lead removal – but there is no explanation as to where that money will come from.
14. Raised Bill 1340 mandates that all children enrolling in school as of July 2010 must have a blood lead screening test prior to enrolment and that all insurance companies must cover this testing. Health insurance mandates raise insurance costs for everyone across the board – insurance is costly enough as it is. It seems

unnecessary to mandate testing, thus causing cost increases in health insurance policies for a problem that only effects 2.2% of the United States population

15. The proposed legislation introduces the new term "remediate" but does not define it. Presumably this means a lower level of work that would involve primarily painting and removing friction surfaces (such as trimming doors so they open without rubbing). However, this critical term is undefined as the bill is currently written.

Connecticut's lead removal laws are important for the welfare of children and the owners of residential properties. It is important to carefully balance the needs of both.

Seeking to force the costs of remediation on to property owners, without deference to their financial means, is a recipe for rising rents or loss of housing to foreclosures. The costs of lead testing and remediation in rental housing are ultimately passed on to tenants through increased rents. Since the majority of lead-contaminated housing is in poor urban areas like New Haven and Hartford, much of which is owned by small, poorly financed landlords, the ultimate victim of poor lead remediation legislation will be low income renters. This should be kept in mind as Raised Bill 1340 is deliberated.

On a final note, last year a jury in Rhode Island found three major paint makers could be held liable for damages and remediation costs caused by lead-based paints (see attached article). While Connecticut could tap taxpayers to fill the coffers of a state lead removal fund, it would certainly seem more appropriate if lead-based paint makers were to make significant contributions. Clearly this is a baton that should be picked up by CT Attorney General Blumenthal as soon as possible.

All in all, the CTAA would like to urge legislators to carefully consider the wording and implications of Raised Bill 1340. If the state's lead laws are going to be changed, it should be done in a thorough and well-reasoned manner that balances the interests of Connecticut's children with the actual means of property owners. Outside sources for lead remediation funding should be determined possibly including lead-based paint makers. Blood screening of children and testing and remediation of lead sources in housing should be done in a measured manner consistent with sound scientific and empirical reasoning.

Sincerely,

Jay Adams

CTAA Legislative Committee Chairperson

LEAD PAINT VERDICT SENDS SHOCK WAVES ACROSS THE NATION

Providence Business News

February 24, 2006

By Marion Davis, Staff Writer

R.I. case is the first lost by the manufacturers

A jury verdict against The Sherwin-Williams Co., the nation's largest paint retailer, and two other companies could cost the former lead paint makers \$1 billion or more as they face the prospect of paying for the removal of lead hazards across Rhode Island.

The verdict against Sherwin-Williams, NL Industries and Millennium Holdings LLC, which came after six days' deliberations and more than six years of court battles, sent shock waves across the country, and shocked an industry that's won dozens of similar lawsuits.

"This is a precedent-setting case," Roberta Hazen Aaronson, director of the Child Lead Action Group in Providence, said outside Superior Court, Providence, after the verdict. "It's going to open the floodgates to paint litigation across the country."

Attorney General Patrick C. Lynch, who inherited the case from his predecessor, Sheldon A. Whitehouse, and chose to keep going despite a 2002 hung jury and critics' arguments that it was a lost cause, pronounced himself "thrilled."

"You're talking about the biggest civil finding ever in the history of Rhode Island, and one of the biggest in the nation," he said in an interview. "There's also a host of appellate issues ... but the victory is one that has rocked the nation. It's an enormously important victory."

Sherwin-Williams shares fell rapidly, by 18 percent, the most in almost five years, erasing about \$1.3 billion of market value. The company issued a statement vowing to "vigorously defend itself" in further proceedings.

"The jury verdict ... is only a part of a long legal process," the company said. "We continue to believe that the facts and the law are on our side. The court still has to rule on various remaining issues before the next steps in the legal process can be determined."

Aside from a potential appeal, two major steps remain: The jury is returning Feb. 28 to determine whether the paint makers should pay punitive damages, and then Judge Michael A. Silverstein will decide whether they must pay for lead removal, or a less-costly abatement.

Lead paint is present in the majority of Rhode Island's housing stock; Lynch said about 330,000 units would be affected, each at a cost of as much as \$15,000. The defendants themselves, he noted, have pegged the cost of the verdict at \$2 billion to \$3 billion.

"This is great news for taxpayers, great news for public health, but particularly ... great news for tens of thousands of Rhode Island children who have been poisoned or have been threatened with being poisoned," Lynch said.

Lead paint became illegal in 1978, but it continues to harm children today, especially in urban areas with old housing. As of 2004, 1,685 Rhode Island children under age 6 were known to be lead-poisoned, including 1,167 cases newly identified that year – 3.7 percent of those screened.

And those numbers reflect more than a decade's effort to control the problem. In 1994, the lead poisoning rate was 18.8 percent, according to the R.I. Department of Health.

Whitehouse, who is now seeking a U.S. Senate seat, sued the paint companies in 1999, drawing national attention both from other states and public-health advocates, and from the industry. The case went to trial in 2002, but it ended with a hung jury.

Whitehouse was exultant after last week's verdict.

"These companies intentionally and deliberately used toxic levels of lead in our homes," he said in a statement. "This verdict sends a clear message to them and to any industry that harms our children: In Rhode Island, we will not sit by quietly. We will fight, and we will win. My heart and soul has been in this case since we started it, and I am overjoyed at the jury's verdict."

Courts in California, Illinois and New Jersey have dismissed similar claims in the past three years. But the plaintiffs' lawyers in Rhode Island's case persuaded the jury that lead paint manufacturers had known as early as 1908 that the lead pigment used to make paint more durable and easier to clean was hazardous to children.

Lawyers for former lead-paint makers have argued that the mere presence of lead pigment in paint doesn't pose a health risk, but rather, risks arise only when homeowners or landlords let the paint deteriorate.

DuPont Co., the third-largest U.S. chemical maker, was a defendant in the Rhode Island suit before agreeing to pay \$11.85 million last June for lead paint remediation, public education and compliance programs in the state in a deal that DuPont insisted was not a "settlement."

Lawrence Horan, an analyst at Janney Montgomery Scott LLC in Pittsburgh, told Bloomberg News that an appeal of last week's verdict is likely. Lawyers for the defendants have asked Silverstein to bar jurors from punishing the companies with further damages.

"The industry won't give up easily on this one," said Horan.

With Bloomberg News reports.

Published 02/25/2006

Issue 20-46