

By Senators Jones and Garcia

40-1173-02

See HB

1 A bill to be entitled

2 An act relating to lead poisoning prevention;

3 creating the "Florida Lead-Poisoning Prevention

4 Act"; providing legislative findings; providing

5 definitions; establishing the Lead-Based-Paint

6 Hazard-Reduction Program within the Department

7 of Business and Professional Regulation;

8 providing for the adoption of rules for the

9 licensing or certification of persons

10 performing lead-hazard detection and

11 lead-hazard-reduction services; providing rule

12 criteria; requiring the establishment of fees

13 for the approval of training programs;

14 requiring the department to establish training

15 and licensure requirements; requiring the

16 department to establish specified fees;

17 prohibiting the performance of, or training of

18 persons to perform, any lead-based-paint

19 activities regulated under the act without

20 appropriate licensure or certification;

21 providing exceptions; requiring the department

22 to adopt rules establishing standards of

23 professional conduct for the performance of

24 lead-hazard detection and lead-hazard-reduction

25 activities and grounds for reprimand of a

26 licensee, suspension or revocation of a

27 license, and denial of issuance or renewal of a

28 license; authorizing the department to adopt

29 rules for the implementation and enforcement of

30 the act; providing a civil penalty; requiring

31 the department to provide current federal

1 regulations to persons licensed or certified
2 under the act; authorizing the department to
3 issue corrective orders for violations of the
4 act; providing a penalty; providing an
5 effective date.

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7 Be It Enacted by the Legislature of the State of Florida:

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9 Section 1. Short title.--This act may be cited as the
10 "Florida Lead-Poisoning Prevention Act."

11 Section 2. Legislative findings.--

12 (1) The Legislature finds that childhood lead
13 poisoning is a devastating environmental health hazard to the
14 children of this state. Exposure to even low levels of lead
15 increases a child's risks of developing permanent reading and
16 learning disabilities, intelligence-quotient deficiencies,
17 impaired hearing, reduced attention span, hyperactivity,
18 behavior problems, and other neurological problems. It is
19 estimated that thousands of children below the age of 6 are
20 affected by lead poisoning in Florida. Childhood lead
21 poisoning is dangerous to the public health, safety, and
22 welfare.

23 (2) Childhood lead poisoning is the result of
24 environmental exposure to lead. The most significant source of
25 environmental lead exposure is lead-based paint, found
26 particularly in housing built prior to 1978, which becomes
27 accessible to children in lead-based paint chips,
28 lead-contaminated dust, and lead-contaminated soil. The danger
29 posed by lead-based paint hazards can be controlled by
30 abatement or interim controls of lead-based paint or by
31 measures to limit exposure to lead-based paint hazards.

1 (3) It is crucial that the identification of lead
2 hazards, including lead-contaminated waste, and subsequent
3 implementation of interim controls or abatement procedures be
4 accomplished in a manner that does not result in additional
5 harm to the public or the environment. Improper lead-hazard
6 abatement constitutes a serious threat to persons residing in
7 or otherwise using an affected structure or site, to those
8 performing lead-hazard-abatement procedures, to the
9 environment, and to the public.

10 (4) The Legislature finds that it is in the public
11 interest to establish minimum standards for the training,
12 certification, and licensure of all persons performing
13 lead-hazard detection and lead-hazard-reduction activities,
14 including inspections, risk assessments, and planning and
15 performance of interim controls or abatement measures.

16 Section 3. Definitions.--As used in this act, the
17 term:

18 (1) "Abatement" means any set of measures designed to
19 eliminate lead-based-paint hazards, in accordance with
20 standards developed by the department, including removal of
21 lead-based paint and lead-contaminated dust, the permanent
22 containment or encapsulation of lead-based paint, the
23 replacement of lead-painted surfaces or fixtures, the removal
24 or covering of lead-contaminated soil, and all preparation,
25 cleanup, disposal, and postabatement clearance-testing
26 activities associated with such measures.

27 (2) "Accessible surface" means an interior or exterior
28 surface painted with lead-based paint which is accessible for
29 a young child to place in his or her mouth or to chew.

30 (3) "Department" means the Department of Business and
31 Professional Regulation.

1 (4) "Friction surface" means an interior or exterior
2 surface that is subject to abrasion or friction, including
3 certain window, floor, and stair surfaces.

4 (5) "Impact surface" means an interior or exterior
5 surface or fixture that is subject to damage by repeated
6 impacts, including certain parts of door frames.

7 (6) "Inspection" means a surface-by-surface
8 investigation to determine the presence of lead-based paint
9 and the provision of a report explaining the results of the
10 investigation.

11 (7) "Interim controls" means a measure or set of
12 measures, as specified by the department, taken by the owner
13 of a structure which is designed to temporarily control human
14 exposure or likely exposure to lead-based-paint hazards.

15 (8) "Lead-based paint" means paint or other surface
16 coatings that contain lead in excess of limits established by
17 the department.

18 (9) "Lead-contaminated dust" means surface dust in a
19 residential dwelling or in any other facility occupied or
20 regularly used by children which contains an area or mass
21 concentration of lead in excess of levels determined by the
22 department to pose a threat of adverse health effects in
23 pregnant women or young children.

24 (10) "Lead-contaminated soil" means bare soil on
25 residential real property or on other sites frequented by
26 children which contains lead at or in excess of levels
27 determined by the department to be hazardous to human health.

28 (11) "Lead-contaminated waste" means any discarded
29 material resulting from an abatement activity that fails the
30 toxicity characteristics determined by the department.

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1 (12) "Lead firm" means a company, partnership,
2 corporation, sole proprietorship, association, or other
3 business entity that employs or contracts with persons to
4 perform lead-based-paint hazard-reduction activities.

5 (13) "Lead hazard" means any condition that causes
6 exposure to lead from lead-contaminated dust,
7 lead-contaminated soil, or lead-contaminated paint which is
8 characterized by deterioration or is present in accessible
9 surfaces, friction surfaces, or impact surfaces and would
10 result in adverse human health effects as established by the
11 department.

12 (14) "Lead-based-paint activities" means the
13 inspection and assessment of lead hazards and the planning,
14 implementation, and inspection of interim controls and
15 abatement activities as determined by the department.

16 (15) "Lead-project designer" means a person who plans
17 or designs abatement activities and interim controls.

18 (16) "Lead inspector" means a person who conducts
19 inspections to determine the presence of lead-based-paint or
20 lead-based paint hazards.

21 (17) "Program" means the Florida Lead-Based-Paint
22 Hazard-Reduction Program within the Department of Business and
23 Professional Regulation as established by this act.

24 (18) "Risk assessment" means an onsite investigation
25 to determine and report the existence, nature, severity, and
26 location of lead-based-paint hazards in or on any structure or
27 site, including:

28 (a) Information gathering regarding the age and
29 history of the structure and the occupancy or other use by
30 young children.

31 (b) Visual inspection.

1 (c) Limited wipe sampling or other environmental
2 sampling techniques.

3 (d) Any other appropriate investigative activity.

4 (e) Provision of a report explaining the results of
5 the investigation.

6 (19) "Lead-risk assessor" means a person who conducts
7 onsite risk assessments of lead hazards.

8 (20) "Lead worker" means any person or employee
9 performing lead-hazard detection or lead-hazard-reduction
10 activities.

11 Section 4. Florida Lead-Based-Paint Hazard-Reduction
12 Program.--

13 (1) There is established within the Department of
14 Business and Professional Regulation the Florida
15 Lead-Based-Paint Hazard-Reduction Program. The department is
16 designated as the state agency responsible for implementation,
17 administration, and enforcement of the program.

18 (2) Not later than 1 year after the effective date of
19 regulations promulgated by the United States Environmental
20 Protection Agency relating to lead-paint-abatement
21 certification programs, the department shall adopt rules
22 pursuant to sections 120.536(1) and 120.54, Florida Statutes,
23 requiring the development and approval of training programs
24 for the licensing or certification of persons performing
25 lead-hazard detection and lead-hazard-reduction services,
26 which may include, but need not be limited to, lead
27 inspectors, lead-risk assessors, lead-project designers, lead
28 firms, lead supervisors, and lead workers employed by such
29 persons or entities. Rules for the approval of training
30 programs shall include minimum requirements for approval of
31 training providers, curriculum requirements, training-hour

1 requirements, hands-on-training requirements, examinations of
2 competency and proficiency, and training-program quality
3 control. The rules shall provide for reciprocal approval of
4 training programs having comparable requirements which are
5 approved by other states or by the Federal Government. The
6 approval program may be designed to meet the minimum
7 requirements for federal approval under the United States
8 Toxic Substances Control Act and the department may apply for
9 such approval. The department shall establish by rule fees for
10 the approval of such training programs.

11 (3) Within 1 year after the effective date of
12 regulations promulgated by the United States Environmental
13 Protection Agency relating to lead-paint-abatement
14 certification programs, the department shall establish
15 training, licensure, and licensure-renewal requirements for
16 lead inspectors, lead-risk assessors, lead-reduction planners,
17 lead-project designers, and lead contractors, and shall
18 establish certification requirements for workers employed by
19 such persons or entities. A person may not be licensed under
20 this act unless such person has successfully completed the
21 appropriate training program, passed an examination approved
22 by the department for the appropriate category of license, and
23 completed any additional requirement imposed by the department
24 by rule. The department may accept any lead-hazard training
25 completed after January 1, 1990, in full or partial
26 satisfaction of the training requirements under this act. The
27 department may establish continuing-education requirements for
28 licensees as a condition of license renewal.

29 (4) The department shall by rule establish examination
30 fees, license fees, and license-renewal fees for all licenses
31 issued under this act, provided that such fees must be

1 reasonable, must reflect the cost of issuing and renewing such
2 licenses and the cost of licensing activities regulated under
3 the act, and must be determined in such a manner as to
4 approximate the total of the direct and indirect costs to the
5 state of the operation and administration of the program. Fees
6 may be refunded for good cause as determined by the
7 department.

8 (5) On and after the effective date of rules
9 promulgated by the department as provided in subsection (3), a
10 person may not perform, represent that such person is
11 qualified to perform, or engage in the training of persons to
12 perform any lead-based-paint activities regulated under this
13 act unless such person possesses the appropriate license or
14 certification as determined by the department. The
15 requirements for licensure or certification to perform
16 lead-based-paint activities regulated under this act do not
17 apply to:

18 (a) An owner of a residential dwelling unit performing
19 abatement upon the residential dwelling unit in which he or
20 she resides;

21 (b) An employee of a property-management company
22 performing routine cleaning or repainting upon property
23 managed by that company where there is insignificant damage,
24 wear, or corrosion of existing lead-based paint or
25 lead-containing-coating substances; or

26 (c) An owner routinely cleaning or repainting his or
27 her property where there is insignificant damage to, wear of,
28 or corrosion of existing lead-based paint or
29 lead-containing-coating substances.

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1 A person who is employed by a state or county health
2 department or state or federal agency to conduct lead
3 investigations to determine the sources of lead poisonings, as
4 determined by the department, shall be subject to licensing
5 pursuant to subsection (3) as a lead-risk assessor but shall
6 not be required to pay any fees as otherwise required under
7 this act or under rules adopted by the department under this
8 act.

9 (6) The department shall adopt rules pursuant to
10 sections 120.536(1) and 120.54, Florida Statutes, establishing
11 standards of acceptable professional conduct for the
12 performance of lead-hazard-detection activities and
13 lead-hazard-reduction activities, as well as specific acts and
14 omissions that constitute grounds for the reprimand of any
15 licensee, the suspension or revocation of a license, or the
16 denial of issuance or renewal of a license. The department is
17 authorized to revoke or suspend any license, certification,
18 approval, or accreditation issued hereunder in accordance with
19 rules adopted pursuant to this act.

20 (7) The department may adopt rules pursuant to
21 sections 120.536(1) and 120.54, Florida Statutes, necessary
22 for the implementation and enforcement of this act. In
23 addition to any action that may be taken to reprimand a
24 licensee or to revoke or suspend a license, any person who
25 violates any provision of this act, any rule adopted pursuant
26 to this act, or any term or condition of licensure may be
27 subject to a civil penalty of not more than \$10,000 to be
28 imposed by the department. Each day or any portion thereof in
29 which a violation continues shall constitute a separate
30 violation for the purpose of calculating the civil penalty
31 imposed under this subsection.

1 (8) The department shall make available to all persons
2 licensed or certified under this act current federal
3 regulations affecting such licensees or certified persons.

4 (9) The department may issue a corrective order to any
5 person in violation of this act or any rule adopted pursuant
6 thereto. The order must specify the provisions of this act or
7 any rule alleged to have been violated and shall order
8 necessary corrective action to be taken within a reasonable
9 time to be prescribed in such order.

10 (10) Any person who violates the provisions of this
11 act commits a misdemeanor of the second degree, punishable as
12 provided in section 775.082 or section 775.083, Florida
13 Statutes.

14 Section 5. This act shall take effect upon becoming a
15 law.

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LEGISLATIVE SUMMARY

Creates the "Florida Lead-Poisoning Prevention Act."
Provides legislative findings. Provides definitions.
Establishes the Lead-Based-Paint Hazard-Reduction Program
within the Department of Business and Professional
Regulation. Provides for the adoption of rules for the
licensing or certification of persons performing
lead-hazard-detection services and lead-hazard-reduction
services. Provides rule criteria. Requires the
establishment of fees for the approval of training
programs. Requires the department to establish training
and licensure requirements. Requires the department to
establish specified fees. Prohibits the performance of,
or training of persons to perform, any lead-based-paint
activities regulated under the act without appropriate
licensure or certification and provides exceptions.
Requires the department to adopt rules establishing
standards of professional conduct for the performance of
lead-hazard detection and lead-hazard-reduction
activities and for grounds for reprimand of a licensee,
suspension or revocation of a license, or denial of
issuance or renewal of a license. Authorizes the
department to adopt rules for the implementation and
enforcement of the act. Provides a civil penalty.
Requires the department to provide current federal
regulations to persons licensed or certified under the
act. Authorizes the department to issue corrective orders
for violations of the act. Provides a second degree
misdemeanor penalty for violation of the act.