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1 A bill to be entitled
2 An act relating to the Lead Poisoning Prevention Act;
3 providing a popular name; creating the "Lead Poisoning
4 Prevention Act"; providing purposes of the act; providing
5 for a Director of Lead Poisoning Prevention; providing
6 duties and responsibilities of the director; providing for
7 a Lead Poisoning Prevention Coordinating Council;
8 providing membership of the council; providing for the
9 creation of a program for prevention of lead poisoning;
10 providing for a Lead Poisoning Prevention Commission;
11 providing for membership and duties of the commission;
12 providing requirements for "lead-free" and "lead-safe"
13 property status; providing time period for compliance;
14 providing for inspection of affected properties; providing
15 for expedited and emergency inspections; providing for
16 inspection reports; providing for accreditation of persons
17 performing lead hazard reduction activities; providing for
18 accreditation of persons performing inspections; providing
19 for duration of certification; providing registration fees
20 for persons performing lead hazard abatement and persons
21 performing inspections; providing for deposit of fees;
22 providing for enforcement of the act; providing for
23 registration of affected properties; providing for
24 contents and renewal of registration; providing
25 registration fees; providing for deposit of fees;
26 providing requirements for immunity from civil liability
27 for injuries or damages resulting from the ingestion of
28 lead; providing exceptions to immunity; providing for
29 documentation and notification of injury; defining
30 "qualified offer"; providing procedure and requirements



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31 with respect to a qualified offer; providing for
32 attorney's fees; providing for maximum amounts payable
33 under a qualified offer; providing for certification of
34 compliance with respect to a qualified offer; providing
35 for offers of compromise; providing for rules; providing
36 for presumption of negligence in actions against property
37 owners not in compliance; providing requirements with
38 respect to liability coverage for losses or damage caused
39 by exposure to lead-based paint offered by insurers in the
40 state; providing requirements of the Department of
41 Financial Services; requiring specified lead hazard
42 coverage; providing standards for determination of rates
43 for lead hazard coverage; creating the lead-safe or lead-
44 free property revolving loan fund account within the State
45 Housing Trust Fund; providing for the sale of bonds;
46 providing for administration and disbursement of funds;
47 providing for loans through intermediaries; providing for
48 reinvestment and repayment of funds; providing for
49 enforcement of criminal violations; providing for civil
50 remedies; providing for reporting of enforcement actions;
51 providing for receivership of properties not meeting
52 certain standards; providing for injunctive relief;
53 providing for notice of intent to seek injunctive relief;
54 providing for recovery of costs and attorneys fees;
55 defining "retaliatory eviction"; prohibiting retaliatory
56 evictions; providing for the establishment of a
57 comprehensive educational program; providing for a public
58 information initiative; providing for distribution of
59 specified literature; providing for lead-safe housing
60 seminars; providing for the adoption of rules and the



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61 distribution of information regarding insurance
 62 requirements; providing requirements of the Department of
 63 Business and Professional Regulation with respect to
 64 education and licensure requirements for real estate
 65 brokers and salespersons; requiring the establishment of a
 66 program for early identification of persons at risk of
 67 elevated levels of lead in the blood; providing for
 68 screening of children; providing for screening priorities;
 69 providing for the maintenance of records of screenings;
 70 providing for reportinng of cases of lead poisoning;
 71 providing definitions; providing an effective date.

72

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

74

75 Section 1. Popular name.--This act shall be known by the
 76 popular name, the "Lead Poisoning Prevention Act."

77 Section 2. Legislative findings.--

78 (1) Nearly one million American children may have levels
 79 of lead in their blood in excess of 10 micrograms per deciliter
 80 (µg/dL). Unless prevented or treated, elevated blood lead levels
 81 in egregious cases may result in impairment of the ability to
 82 think, concentrate, and learn.

83 (2) A significant cause of lead poisoning in children is
 84 the ingestion of lead particles from deteriorating or abraded
 85 lead-based paint from older, poorly maintained residences.

86 (3) The health and development of these children and many
 87 others are endangered by chipping or peeling lead-based paint or
 88 excessive amounts of lead-contaminated dust in poorly maintained
 89 homes.



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90 (4) Ninety percent of lead-based paint still remaining in
91 occupied housing exists in units built before 1960, with the
92 remainder in units built before 1978.

93 (5) The dangers posed by lead-based paint can be
94 substantially reduced and largely eliminated by taking measures
95 to prevent paint deterioration and limiting children's exposure
96 to paint chips and lead dust.

97 (6) The deterioration of lead-based paint in older
98 residences results in increased expenses each year for the State
99 in the form of special education and other education expenses,
100 medical care for lead-poisoned children, and expenditures for
101 delinquent youth and others needing special supervision.

102 (7) Older housing units remain an important part of the
103 makeup of the state's housing, particularly for those of modest
104 or limited incomes.

105 (8) The existing system of enforcing housing codes has
106 proven ineffective in inducing widespread lead-based paint
107 hazard abatement, mitigation, and control.

108 (9) The financial incentives currently in place have not
109 proven sufficient to motivate landlords and other property
110 owners to undertake widespread and effective lead-based paint
111 hazard abatement, mitigation, and control.

112 (10) Knowledge of lead-based paint hazards, their control,
113 mitigation, abatement, and risk avoidance is not sufficiently
114 widespread, especially outside urban areas.

115 Section 3. Purposes.--To promote the elimination of
116 childhood lead poisoning in the state, the purposes of this act
117 are:

118 (1) To substantially reduce, and eventually eliminate, the
119 incidence of childhood lead poisoning in the state;



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120 (2) To increase the supply of affordable rental housing in
121 the state in which measures have been taken to reduce
122 substantially the risk of childhood lead poisoning;

123 (3) To make enforcement of lead hazard control standards
124 in the state more certain and more effective;

125 (4) To improve public awareness of lead safety issues and
126 to educate both property owners and tenants about practices that
127 can reduce the incidence of lead poisoning;

128 (5) To assure the availability and affordability of
129 liability insurance protection to those landlords and other
130 owners who undertake specified lead hazard reduction measures;

131 (6) To mandate the testing of children likely to suffer
132 the consequences of lead poisoning so that prompt diagnosis and
133 treatment as well as the prevention of harm are possible;

134 (7) To provide a mechanism to facilitate prompt payment of
135 medical and rehabilitation expenses and relocation costs for
136 those remaining individuals who are affected by childhood lead
137 poisoning; and

138 (8) To define the scope of authority of state agencies and
139 departments for lead hazard control, mitigation, education, and
140 insurance availability, and to provide for the coordination of
141 these efforts.

142 Section 4. Director of Lead Poisoning Prevention; Lead
143 Poisoning Prevention Coordinating Council; Program for
144 Prevention of Lead Poisoning; Lead Poisoning Prevention
145 Commission.--

146 (1) The Governor shall appoint a Director of Lead Poisoning
147 Prevention who shall serve at the pleasure of the Governor. The
148 director shall be responsible, subject to the authority of the
149 Governor, for carrying out and administering all programs



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150 created pursuant to the provisions of this act. To the extent
151 necessary, the director shall designate which local government
152 officials shall assist him in carrying out the duties prescribed
153 by this act. The director may contract with any agency or
154 agencies, individuals, or groups for the provision of necessary
155 services, subject to appropriation; and shall adopt and from
156 time to time, amend, such rules as may be necessary;

157 (2) The director shall chair a Lead Poisoning Prevention
158 Coordinating Council that also shall include a designee of the
159 Governor from the department of Community Affairs and a designee
160 of the Governor from the Department of Health.

161 (3) Subject to appropriation, the director, working in
162 coordination with the Lead Poisoning Prevention Council, shall
163 establish a statewide program for the prevention, screening,
164 diagnosis, and treatment of lead poisoning, including
165 elimination of the sources of such poisoning, through such
166 research, educational, epidemiologic, and clinical activities as
167 may be necessary.

168 (4) The Governor shall appoint a Lead Poisoning Prevention
169 Commission.

170 (a) The duties of the commission are to:

171 1. Study and collect information on the effectiveness of
172 this act in fulfilling its legislative purposes as defined in
173 section 3;

174 2. Make policy recommendations on achieving the
175 legislative purposes of this act as set forth in section 3;

176 3. Consult with the Director of Lead Poisoning Prevention
177 and applicable state agencies on the implementation of this act;
178 and



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179 4. Prepare and submit a report annually to the Governor on
180 the results of implementing this act.

181 (b) The commission shall consist of fifteen members. The
182 membership shall include:

183 1. The Director of Lead Poisoning Prevention and the
184 additional two members of the Lead Poisoning Coordinating
185 Council as described in section 4(2);

186 2. One member of the Senate appointed by the President of
187 the Senate;

188 3. One member of the House of Representatives appointed by
189 the Speaker of the House of Representatives; and

190 4. Nine members appointed by the Governor, including:

191 a. A child advocate;

192 b. A health care provider;

193 c. A parent of a lead-poisoned child;

194 d. A representative of local government;

195 e. Two owners of rental property in the state;

196 f. A representative from the insurance industry that
197 offers premises liability coverage in the state;

198 g. Either a lead hazard control professional/contractor or
199 a lead hazard identification professional; and

200 h. One other member of the public whose experience and
201 expertise will ensure meaningful contribution to the commission.

202 (c) The terms of the members are as follows:

203 1. The term of a member appointed by the Governor is 4
204 years;

205 2. A member appointed by the President of the Senate or
206 the Speaker of the House of Representatives serves at the
207 pleasure of the appointing officer;

208 3. The terms of the initial members may be shortened or



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209 lengthened so that the terms of future members are staggered;

210 4. At the end of a term, a member shall continue to serve
 211 until a successor is appointed and qualifies;

212 5. A member who is appointed after a term has commenced
 213 serves only for the remainder of the term and until a successor
 214 is appointed.

215 Section 5. Requirements for lead-free status and lead-safe
 216 status.--

217 (1) An affected property shall comply with the
 218 requirements of either "lead-free" status, as defined by section
 219 5(3), or "lead-safe" status, as defined by section 5(4), on or
 220 before July 1, 2005, except as otherwise provided in section
 221 5(2) .

222 (2) An owner of five or more affected properties may apply
 223 to the director or the director's local designee for an
 224 extension of time in which to comply with the requirement of
 225 section 5(1). The extension of time in which to comply shall be
 226 for a period of 3 years beyond the deadline specified in section
 227 5(1), meaning that the extended deadline for compliance shall be
 228 July 1, 2008. The director shall grant the owner's request for
 229 an extension if and only if:

230 (a) The owner of the affected property states under
 231 penalty of perjury that the affected property for which an
 232 extension is sought is not occupied by a person at risk; and

233 (b) The owner of the affected property has complied with
 234 the requirements of section 5(1) for more than 50 percent of the
 235 other affected properties which the owner owns or in which he or
 236 she has a beneficial interest.

237 (3) An affected property is "lead-free" if:

238 (a) The affected property was constructed after 1978; or



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239 (b) The owner of the affected property submits to the
240 director or the director's designee for the jurisdiction in
241 which such property is located an inspection report which
242 indicates that the affected property has been tested for the
243 presence of lead in accordance with standards and procedures
244 established by the regulations promulgated by the director and
245 states that:

246 1. All interior surfaces of the affected property are
247 lead-free; and

248 2.a. All exterior painted surfaces of the affected
249 property that were chipping, peeling, or flaking have been
250 restored with non-lead-based paint; or

251 b. No exterior painted surfaces of the affected property
252 are chipping, peeling, or flaking.

253 (c) In order to maintain exemption from the provisions of
254 this act, the owner of any affected property with lead-based
255 paint on any exterior surface which has been certified as "lead-
256 free" pursuant to subsection (3) shall submit to the director or
257 the director's designee for the jurisdiction in which such
258 property is located every 3 years a certification, by an
259 inspector, accredited pursuant to the provisions of section 7,
260 stating that no exterior painted surface of the affected
261 property is chipping, peeling, or flaking.

262 (4) An affected property is lead-safe if the following
263 treatments to reduce lead-based paint hazards have been
264 completed by someone certified under section 7 and in compliance
265 with the regulations established by the director:

266 (a) Visual review of all exterior and interior painted
267 surfaces;



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- 268 (b) Removal and repainting of chipping, peeling, or
269 flaking paint on exterior and interior painted surfaces;
- 270 (c) Stabilization and repainting of any interior or
271 exterior painted surfaces which have lead-based paint hazards;
- 272 (d) Repair of any structural defect that is causing the
273 paint to chip, peel, or flake that the owner of the affected
274 property has knowledge of or, with the exercise of reasonable
275 care, should have knowledge of;
- 276 (e) Stripping and repainting, replacing, or encapsulating
277 all interior windowsills and window troughs with vinyl, metal,
278 or any other durable materials which render the surface smooth
279 and cleanable;
- 280 (f) Installation of caps of vinyl, aluminum, or any other
281 material in a manner and under conditions approved by the
282 director in all window wells in order to make the window wells
283 smooth and cleanable;
- 284 (g) Fixing the top sash of all windows in place in order
285 to eliminate the friction caused by movement of the top sash,
286 except for a treated or replacement window that is free of lead-
287 based paint on its friction surfaces;
- 288 (h) Rehanging all doors as necessary to prevent the
289 rubbing together of a lead-painted surface with another surface;
- 290 (i) Making all bare floors smooth and cleanable;
- 291 (j) Ensuring that all kitchen and bathroom floors are
292 overlaid with a smooth, water-resistant covering; and
- 293 (k) HEPA-vacuuming and washing of the interior of the
294 affected property with high phosphate detergent or its
295 equivalent, as determined by the director.
- 296 (5)(a) Whenever an owner of an affected property intends
297 to make repairs or perform maintenance work that will disturb



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298 the paint on interior surfaces of an affected property, the
299 owner shall give any tenant in such affected property at least
300 48 hours' written advance notice and shall make reasonable
301 efforts to ensure that all persons who are not persons at risk
302 are not present in the area where work is performed and that all
303 persons at risk are removed from the affected property when the
304 work is performed.

305 (b) A tenant shall allow access to an affected property,
306 at reasonable times, to the owner to perform any work required
307 under this act.

308 (c) If a tenant must vacate an affected property for a
309 period of 24 hours or more in order to allow an owner to perform
310 work that will disturb the paint on interior surfaces, the owner
311 shall pay the reasonable expenses that the tenant incurs
312 directly related to the required relocation.

313 (d) If an owner has made all reasonable efforts to cause
314 the tenant to temporarily vacate an affected property in order
315 to perform work that will disturb the paint on interior
316 surfaces, and the tenant refuses to vacate the affected
317 property, the owner shall not be liable for any damages arising
318 from the tenant's refusal to vacate.

319 (e) If an owner has made all reasonable efforts to gain
320 access to an affected property in order to perform any work
321 required under this act, and the tenant refuses to allow access,
322 even after receiving reasonable advance notice of the need for
323 access, the owner shall not be liable for any damages arising
324 from the tenant's refusal to allow access.

325 Section 6. Inspection of affected properties.--



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326 (1)(a) Initial inspection of each affected property shall
327 occur on or before July 1, 2005, except as provided in
328 section 5(2).

329 (b) Subsequent inspections shall occur at intervals of not
330 greater than 3 years.

331 (c) The requirement for a subsequent inspection may be
332 satisfied by certification of the owner with the director or the
333 director's designee for the jurisdiction in which such property
334 is located, under penalty of perjury, that the tenants occupying
335 an affected property have not changed since the last inspection
336 and that no one residing within the affected property is a
337 person at risk.

338 (d) If the requirement for reinspection of an affected
339 property has been satisfied by certification pursuant to section
340 6(1)(c), the requirement for a reinspection under section
341 6(1)(b) is reactivated by either a change in tenancy or the
342 residence of a person at risk within the affected property.

343 (2) The director or the director's designee for the
344 jurisdiction in which such property is located shall order an
345 inspection of an affected property, at the expense of the owner
346 of the affected property, whenever the director or the
347 director's designee for the jurisdiction in which such property
348 is located, after July 1, 2005, is notified that the affected
349 property reasonably appears to comply with neither the lead-free
350 standard nor the lead-safe standard as those standards are
351 defined in section 5 and a person at risk resides in the
352 affected property or spends more than 24 hours per week in the
353 affected property. An inspection required under this subsection
354 shall be completed within 90 days after notification of the



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355 director or the director's designee for the jurisdiction in
356 which such property is located.

357 (3) The director or the director's designee for the
358 jurisdiction in which such property is located shall order an
359 inspection of an affected property, at the expense of the owner
360 of the affected property, whenever the director or the
361 director's designee for the jurisdiction in which such property
362 is located, after July 1, 2003, is notified that a person at
363 risk who resides in the affected property or spends more than 24
364 hours per week in the affected property has an elevated blood
365 lead level greater than or equal to 15 µg/dL. An inspection
366 under this subsection shall be completed within 15 days after
367 notification of the director or the director's designee for the
368 jurisdiction in which such property is located.

369 (4) The inspector shall submit a verified report of the
370 result of the inspection to the director or the director's
371 designee for the jurisdiction in which such property is located,
372 the owner, and the tenant, if any, of the affected property.

373 Section 7. Accreditation of inspectors and contractors
374 performing work.--

375 (1) No person shall act as a contractor or supervisor to
376 perform the work necessary for lead-hazard abatement as defined
377 in this act unless that person is accredited by the director.
378 The director shall accredit for these purposes any person
379 meeting the standards described as follows:

380 (a) Regulations to be adopted by the director pursuant to
381 this act governing the accreditation of individuals to engage in
382 lead-based paint activities sufficient to satisfy the
383 requirements of 40 Code of Federal Regulations (C.F.R.) 745.325
384 or any applicable successor provisions to 40 C.F.R. 745.325.



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385 (b) Certification by the United States Environmental
386 Protection Agency to engage in lead-based paint activities
387 pursuant to 40 C.F.R. 745.226 or any applicable successor
388 provisions to 40 C.F.R. 745.226.

389 (c) Certification by a state or tribal program authorized
390 by the United States Environmental Protection Agency to certify
391 individuals engaged in lead-based paint activities pursuant to
392 40 C.F.R. 745.325 or any applicable successor provisions to 40
393 C.F.R. 745.325.

394
395 The director shall, by regulation, create exceptions to the
396 accreditation requirement for instances where the disturbance of
397 lead-based paint is incidental.

398 (2) An inspector accredited by the director shall conduct
399 all inspections required by sections 5 or 6 of this act, or
400 otherwise required by this act. The director shall accredit as
401 an inspector any individual meeting the requirements of section
402 7(2)(a) or (b):

403 (a) Regulations to be adopted by the director pursuant to
404 this act governing the accreditation of individuals eligible to
405 conduct the inspections required by this act; or

406 (b) Certification to conduct risk assessments by the EPA
407 pursuant to 40 C.F.R. 745.226(b) or any applicable successor
408 provisions to 40 C.F.R. 745.226.

409 (3) The accreditation of contractors or supervisors of
410 those performing the work necessary for lead hazard abatement,
411 and the accreditation of those performing the inspections
412 required by this section, shall extend for a period of 3 years
413 unless the director has probable cause to believe a person
414 accredited under this section has violated the terms of the



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415 accreditation or engaged in illegal or unethical conduct related
416 to inspections required by this act, in which case the
417 accreditation to perform inspections shall be suspended pending
418 a hearing in accordance with the provisions of state law.

419 (4) The director shall establish by regulation a schedule
420 of fees for the registration of persons performing lead hazard
421 abatement and a separate schedule for persons performing
422 inspections pursuant to this act. Such fees shall be required
423 to be paid at the time of initial registration and at the time
424 of subsequent renewal of registration, and shall be sufficient
425 to cover all costs, including the costs of state personnel,
426 attributable to accreditation activities conducted under this
427 section.

428 (a) Fees collected pursuant to this subsection will be
429 held in a separate account within the State Housing Trust Fund
430 to be used for accreditation purposes under this section.

431 (b) The State Treasurer shall hold and the Chief Financial
432 Officer shall account for this fund.

433 (c) Funds deposited in the separate account within the
434 State Housing Trust Fund established under this subsection shall
435 be invested and reinvested and any investment earnings shall be
436 paid into the fund.

437 (5) The provisions and procedures of the Department of
438 Business and Professional Regulation shall be used for and shall
439 apply to the enforcement of violations of this section, any
440 rules adopted under this act, and any condition of accreditation
441 issued under this act.

442 Section 8. Registration of affected properties.--

443 (1) On or before July 1, 2005, the owner of an affected
444 property shall register the affected property with the director



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445 or the director's designee for the jurisdiction in which such
446 property is located.

447 (2) Contents of Registration. The owner shall register
448 each affected property using forms prepared by the director,
449 including the following information:

450 (a) The name and address of the owner;

451 (b) The address of the affected property;

452 (c) If applicable, the name and address of each property
453 manager employed by the owner to manage the affected property;

454 (d) The name and address of each insurance company
455 providing property insurance or lead hazard coverage for the
456 affected property, together with the policy numbers of that
457 insurance or coverage;

458 (e) The name and address of a resident agent, other agent
459 of the owner, or contact person in the state with respect to the
460 affected property;

461 (f) The date of construction of the affected property;

462 (g) The date of the latest change in occupancy of the
463 affected property; and

464 (h) The latest date, if any, on which the affected
465 property has been certified to be in compliance with the
466 provisions of section 5, and the name and address of the person
467 conducting the inspection.

468 (3) Registration shall be renewed every 2 years; however,
469 owners shall update the information contained in the owner's
470 registration within 30 days after any change in the registration
471 information.

472 (4) The information provided by an owner under this
473 Section shall be open to the public.



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474 (5) The director shall establish by regulation a schedule
475 of fees for the registration of affected properties, required to
476 be paid at the time of initial registration and at the time of
477 subsequent renewals of registration, sufficient to cover all
478 costs, including the costs of state personnel, involved with
479 registration activities conducted under this section.

480 (a) Fees collected pursuant to this subsection will be
481 held in a separate account within the State Housing Trust Fund
482 to be used for registration purposes under this section.

483 (b) The State Treasurer shall hold and the Chief Financial
484 Officer shall account for this fund.

485 (c) Funds deposited in the separate account within the
486 State Housing Trust Fund established under this subsection shall
487 be invested and reinvested and any investment earnings shall be
488 paid into the fund.

489 (d) An owner of an affected property who fails to pay the
490 fees imposed under this subsection shall be liable for a civil
491 penalty of triple the cumulative amount of any and all unpaid
492 registration fees or \$150, whichever is greater, together with
493 all the costs of collection, including reasonable attorneys'
494 fees. These penalties shall be collected in a civil action in
495 any court of competent jurisdiction. Any unpaid penalty shall
496 constitute a lien against the affected property.

497 Section 9. Liability protection and qualified offer.--

498 (1) This section applies to all potential bases of civil
499 liability for alleged injury or loss to a person caused by the
500 ingestion of lead by a person at risk in an affected property;
501 except that this section does not apply to any claim in which
502 the elevated blood lead level of the person at risk is
503 documented to have existed on or before the date 60 days after



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504 the affected property where the person at risk resides or
505 otherwise allegedly was exposed to lead has been certified as
506 lead-free under section 5(2) or lead-safe under section 5(3).

507 (2) A property owner and his or her agents and employees
508 are immune from civil liability to a person at risk, or his or
509 her parents or legal guardian, for injuries or damages resulting
510 from the ingestion of lead contained in an affected property if:

511 (a) The property has been certified as lead-free under
512 section 5(3) or as lead-safe under section 5(4); and

513 (b) The property owner or his agent has made a "qualified
514 offer" as defined in section 9(5) to the person at risk, or his
515 or her parent or legal guardian, in a case in which the person
516 at risk has a documented elevated blood lead level of 15 µg/dL
517 or more performed more than 60 days following certification of
518 the premises as lead-safe or lead-free pursuant to section 5,
519 regardless of whether such qualified offer has been accepted or
520 rejected by the person at risk, or his or her parent or legal
521 guardian.

522 (3) The immunity described in subsection (2) does not
523 apply if it is shown that one of the following has occurred:

524 (a) The owner or his or her employee or agent obtained the
525 certification of lead-free or lead-safe status by fraud;

526 (b) The owner or his or her employee or agent violated a
527 condition of the certification;

528 (c) During renovation, remodeling, maintenance, or repair
529 after receiving the certificate, the owner or his or her
530 employee or agent created a lead-based paint hazard that was
531 present in the affected property at the time the person at risk
532 either was exposed to a lead-based paint hazard or first was
533 tested with an elevated blood lead level greater than 15 µg/dL;



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534 (d) The owner or his or her employee or agent failed to
535 respond in a timely manner to notification by a tenant, by the
536 director, by the director's designee for the jurisdiction in
537 which such property is located, or by a local health department
538 that a lead-based paint hazard might be present;

539 (e) The lead poisoning or lead exposure was caused by a
540 source of lead in the affected property other than lead-based
541 paint.

542 (4) A person may not bring an action against an owner of
543 an affected property whose property has been certified as lead-
544 free under section 5(3) or lead-safe under section 5(4) for
545 damages arising from alleged injury or loss to a person at risk
546 caused by lead-based paint hazard unless he or she documents his
547 or her alleged injury with a test for elevated blood lead levels
548 and presents a written notice to the owner of the affected
549 property or his or her agent or employee of the claim and test
550 results.

551 (a) If such test results show an elevated blood lead level
552 of less than 15 µg/dL, the person at risk or his or her parent
553 or legal guardian shall not recover damages from the owner of
554 the affected property, or his or her agents, and/or employees
555 unless the person at risk, his or her parent or legal guardian
556 can show by clear and convincing evidence that the damage or
557 injury to the person at risk resulted from exposure to lead-
558 based paint and was caused by either:

559 1. Intentional acts by the owner, his or her agents or
560 employees; or

561 2. Actions of the owner or his or her agents or employees
562 with knowledge with a substantial certainty that such actions
563 would injure the person at risk or others similarly situated.



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564 (b) If such test results show an elevated blood level of
565 15 µg/dL or greater, the owner of the affected property or his
566 or her agent or employee shall have the opportunity to make a
567 qualified offer under section 9(5).

568 (c) If the concentration of lead in a whole venous blood
569 sample of a person at risk tested within 60 days after the
570 person at risk begins residing or regularly spends at least 24
571 hours per week in an affected property that is certified as
572 being in compliance with the provisions of section 5(3) or
573 section 5(4) is equal to or greater than 15 µg/dL, it shall be
574 presumed that the exposure to lead-based paint occurred before a
575 person at risk began residing or regularly spending at least 24
576 hours per week in the affected property.

577 (5)(a) A qualified offer as defined in this section may be
578 made to a person at risk by the owner of the affected property,
579 an insurer of the owner, or an agent, employee, or attorney of
580 the owner.

581 (b) To qualify for the protection of liability under
582 section 9(1), a qualified offer must be made in writing and
583 delivered by certified mail return receipt requested within 30
584 days after the owner of the affected property, his or her agent
585 or employee receives notice of the elevated blood level referred
586 to in section 9(4).

587 (c) A qualified offer made under this section may be
588 accepted or rejected by a person at risk or, if a person at risk
589 is a minor, such person's parent or legal guardian. If the
590 qualified offer is not accepted within 30 days of receipt of the
591 qualified offer, it shall be deemed to have been rejected. By
592 mutual agreement, the parties may extend the period for
593 acceptance of the qualified offer.



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594 (d) Subject to the exception in section 5(5), acceptance
595 of a qualified offer by a person at risk, or by a parent, legal
596 guardian, or other person authorized to respond on behalf of a
597 person at risk, discharges and releases all potential liability
598 of the offeror, the offeror's insured or principal, and any
599 participating co-offeror to the person at risk and to the parent
600 or legal guardian of the person at risk for alleged injury or
601 loss caused by the lead-based paint hazard in the affected
602 property.

603 (e) No owner of an affected property, or his or her agent,
604 employee, attorney or anyone acting on his or her behalf shall
605 represent to a person at risk, his or her parent or guardian, or
606 anyone acting on his or her behalf, that an offer of settlement
607 in an action resulting from a lead-based paint hazard in an
608 affected property is a "qualified offer" unless the affected
609 property has been certified as "lead-free" under section 5(3) or
610 "lead-safe" under section 5(4) and unless the offeror reasonably
611 believes that the settlement offer satisfies all requirements of
612 this section. Any settlement resulting from a settlement offer
613 purporting to be a qualified offer which does not satisfy the
614 requirements of this section, shall at the election of the
615 person at risk, his or her parent or guardian, or other
616 representative, be deemed null and void and of no legal effect.

617 Further, misrepresentation of a settlement offer as a qualified
618 offer when the offer does not meet these requirements shall
619 subject the offeror to criminal penalties for perjury. The
620 statute of limitations for an action by a person at risk with an
621 elevated blood lead level, his or her parent, or legal guardian
622 is tolled until the misrepresentation described in this
623 paragraph is discovered.



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624 (f) A copy of the qualified offer shall be sent to the
625 director and the local health department. The director and the
626 local health department shall maintain a copy of the qualified
627 offer in the case management file of the person at risk. In
628 addition, the director and the local health department also
629 shall directly notify the person at risk, or in the case of a
630 minor, the parent or legal guardian of the minor, of state and
631 local resources available for lead poisoning prevention and
632 treatment.

633 (g) A qualified offer shall include payment for reasonable
634 expenses and costs incurred by the person at risk with an
635 elevated blood lead level of 15 µg/dL or greater for:

636 1. The relocation of the household of the person at risk
637 to a lead-safe dwelling unit of comparable size and quality that
638 may provide either:

639 a. The permanent relocation of the household of the
640 affected person at risk to lead-safe housing, including
641 relocation expenses, a rent subsidy, and incidental expenses; or

642 b. The temporary relocation of the household of the
643 affected person at risk to lead-safe housing while necessary
644 lead hazard reduction treatments are being performed in the
645 affected property to make that affected property lead-safe; and

646 2. Medically necessary treatment for the affected person
647 at risk as determined by the treating physician or other health
648 care provider or case manager of the person at risk that is
649 necessary to mitigate the effects of lead poisoning, and in the
650 case of a child, until the child reaches the age of 18 years;
651 and

652 3. Reasonable attorneys' fees, not to exceed the lesser of
653 \$2,500 or actual time spent in the investigation, preparation,



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654 and presentation of the claim multiplied by an hourly rate of
655 \$150 per hour.

656 (h) An offeror is required to pay reasonable expenses for
657 the medically necessary treatments under section 5(g)2. only if
658 coverage for these treatments is not otherwise provided by
659 Medicaid or by a health insurance plan under which the person at
660 risk has coverage or in which the person at risk is enrolled.
661 The health insurance plan shall have no right of subrogation
662 against the party making the qualified offer.

663 (i) The amounts payable under a qualified offer made under
664 this section are subject to the following aggregate maximum
665 caps:

666 1. \$25,000 for all medically necessary treatments as
667 provided and limited in section 5(g)1.;

668 (b) \$10,000 for all relocation benefits as provided and
669 limited in section 5(g)2.

670
671 All payments under a qualified offer specified in section 5(g)
672 shall be paid to the provider of the service, except that
673 payment of incidental expenses may be paid directly to the
674 person at risk, or in the case of a child, to the parent or
675 legal guardian of the person at risk. The payments under a
676 qualified offer may not be considered income or an asset of the
677 person at risk, the parent of a person at risk who is a child,
678 or the legal guardian, for purposes of determining eligibility
679 under any state or federal entitlement program.

680 (j) A qualified offer shall include a certification by the
681 owner of the affected property, under the penalties of perjury,
682 that the owner has complied with the applicable provisions of



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683 section 5 and this section in a manner that qualified the owner
684 to make a qualified offer.

685 (k) A qualified offer shall not be treated as an offer of
686 compromise for purposes of admissibility in evidence,
687 notwithstanding that the amount is not in controversy.

688 (l) The director may adopt regulations that are necessary
689 to carry out the provisions of this section.

690 (6)(a) An owner of an affected property who is not in
691 compliance with the provisions of either section 5(3) or section
692 5(4) during the period of residency of a person at risk is
693 presumed to have failed to exercise reasonable care with respect
694 to lead-based paint hazards during that period in an action
695 seeking damages on behalf of the person at risk for alleged
696 injury or loss resulting from exposure to lead-based paint
697 hazards in the affected property.

698 (b) The owner has the burden of rebutting this presumption
699 by clear and convincing evidence.

700 (c) The plaintiff in an action against an owner of an
701 affected property described in paragraph (6)(a), in addition to
702 recovering all other legally cognizable damages, including
703 punitive damages where appropriate, shall be entitled to recover
704 reasonable attorneys' fees.

705 Section 10. Availability of insurance coverage.--

706 (1) Except as otherwise provided by this act, no insurer
707 licensed or permitted by the Department of Financial Services to
708 provide liability coverage to rental property owners shall
709 exclude, after September 1, 2005, or 60 days after certification
710 under section 5(3) or section 5(4) of an affected property
711 covered under a policy, whichever date occurs earlier, coverage
712 for losses or damages caused by exposure to lead-based paint.



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713 The Department of Financial Services shall not permit,
714 authorize, or approve any exclusion for injury or damage
715 resulting from exposure to lead-based paint, except as
716 specifically provided for in this act, that was not in effect as
717 of July 1, 2003, and all previously approved exclusions shall
718 terminate on or before September 1, 2005, or 60 days after
719 certification under section 5(3) or section 5(4) of an affected
720 property covered under a policy, whichever date occurs earlier].

721 (2) All insurers issuing liability insurance policies,
722 including commercial lines insurance policies, personal lines
723 insurance policies, and/or any other policies, covering affected
724 properties that are in compliance with the requirements of this
725 act shall offer coverage for bodily injury caused by exposure to
726 lead-based paint. Such coverage must encompass any and all
727 claims made more than 60 days after certification of the
728 affected property as lead-free under section 5(3) or lead-safe
729 under section 5(4) asserting injury resulting from exposure to
730 lead-based paint on the premises of an affected property.
731 Policy limits for such coverage shall be in an amount equal to
732 or greater than the underlying policy limits of the applicable
733 policy insuring the affected property.

734 (a) Liability coverage under this subsection for losses or
735 damages caused by lead-based paint at the insured premises may
736 be limited to the damages defined under section 9(5).

737 (2) Notwithstanding the the provisions of subsection (1),
738 in order for the owner of the affected property to be eligible
739 for the liability coverage under this subsection, such owner
740 may, at the time insurance is sought, be required to present to
741 the insurer proof of meeting the lead-free standard under
742 section 5(3) or lead-safe standard under section 5(4) in the



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743 form of an affidavit signed by the owner or designated party
 744 that certification has been provided pursuant to inspection
 745 under section 6 and that the property has been properly
 746 registered under section 8.

747 (3) Nothing in this act shall prevent insurers from
 748 offering an endorsement for personal injury/bodily injury
 749 liability coverage for injuries resulting from exposure to lead-
 750 based paint for properties not in compliance with the provisions
 751 of either section 5(3) or section 5(4).

752 (4) Rates for the coverage specified in subsection (2)
 753 shall be approved by the Department of Financial Services using
 754 the following standards:

755 (a) Such rates must not be excessive, inadequate, or
 756 unfairly discriminatory; and

757 (b) In establishing such rates, consideration shall be
 758 given to:

- 759 1. Past and prospective loss experience;
- 760 2. A reasonable margin for profits and contingencies;
- 761 3. Past and prospective expenses;
- 762 4. Such other data as the department may deem necessary;

763 and

764 5. The past history of the owner with regard to lead
 765 poisoning or any other liability or violations of ordinances or
 766 statutes relating to the affected property or similar properties
 767 reasonably believed by the insurer to be relevant.

768 (c) The Department of Financial Services shall determine
 769 by July 1, 2005, the availability in the state of the liability
 770 personal injury/bodily injury coverage described in section
 771 10(2), and may if such coverage is not generally available,
 772 establish a market assistance plan or take other measures to



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773 assure the availability of such coverage that offers a liability
774 limit which is at least \$300,000 or shall require that such
775 coverage be made available through a joint underwriting plan

776 Section 11. Lead-safe or lead-free property revolving loan
777 fund account.--

778 (1) There is created as a separate account within the
779 State Housing Trust Fund, the Lead-Safe or Lead-Free Property
780 Revolving Loan Fund Account. The account shall consist of
781 proceeds received from the sale of bonds pursuant to section
782 12(2), and any sums that the state may from time to time
783 appropriate, as well as donations, gifts, bequests, or otherwise
784 from any public or private source, which money is intended to
785 assist owners of residential properties in meeting the standards
786 for either lead-free or lead-safe certification.

787 (2) The state shall issue bonds in an amount specified for
788 the purpose of funding the lead-safe or lead-free property
789 revolving loan fund account.

790 (a) Any bonds issued or to be issued pursuant to this
791 subsection shall be subject to all the requirements and
792 conditions established by the state for the sale of bonds.

793 (b) The interest rate and other terms upon which bonds are
794 issued pursuant to this subsection shall not create a
795 prospective obligation of the state in excess of the amount of
796 revenues that can reasonably be expected from the loan
797 repayments, interests on such loans, and fees that the state can
798 reasonably expect to charge under the provisions of this act.

799 (c) All money received from the sale of bonds shall be
800 deposited into the lead-safe or lead-free property revolving
801 loan fund account.



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802 (3) The Chief Financial Officer shall contract with an
803 appropriate existing state agency for the administration and
804 disbursement of funds deposited in the account. The director
805 shall adopt rules in conjunction with the Department of
806 Community Affairs which provide for the orderly and equitable
807 disbursement and repayment of funds.

808 (4) Funds placed in the lead-safe or lead-free property
809 revolving loan fund account shall be made available, at the
810 discretion of the director, to the owners of affected properties
811 or non-profit organizations for the purpose of bringing affected
812 properties into compliance with either section 5(3) or section
813 5(4). An owner of a pre-1978 property who owns and occupies the
814 dwelling unit shall be eligible for loans under this section in
815 the same manner, and to the same extent, as an owner of an
816 affected property.

817 (5) Loans made available under the provisions of this
818 section may be made directly, or in cooperation with other
819 public and private lenders, or any agency, department, or bureau
820 of the federal government or the state.

821 (6) The proceeds from the repayment of any loans made for
822 that purpose shall be deposited in and returned to the lead-safe
823 or lead-free property revolving loan fund account to constitute
824 a continuing revolving fund for the purposes provided in this
825 section.

826 (7) The director, secretary of the Department of Community
827 Affairs, and appropriate state agencies shall take any action
828 necessary to obtain federal assistance for lead hazard reduction
829 to be used in conjunction with the lead-safe or lead-free
830 property revolving loan fund account.

831 Section 12. Enforcement.--



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832 (1) Owners of affected properties who fail to comply with
833 the provisions of section 5 shall be deemed in violation of this
834 act. The Office of the Attorney General and any local
835 authorities responsible for the enforcement of housing codes
836 shall enforce vigorously civil remedies and/or criminal
837 penalties provided for by law arising out of the failure to
838 comply with the requirements of this act and may seek injunctive
839 relief where appropriate.

840 (2)(a) Any civil or criminal action by state or local
841 officials to enforce the provisions of this act shall be
842 reported to the director.

843 (2) The director shall issue an annual report outlining
844 specifically the enforcement actions brought pursuant to section
845 13(1), the identity of the owners of the affected properties,
846 the authority bringing the enforcement action, the nature of the
847 action, and describing the criminal penalties and/or civil
848 relief.

849 (3) After the second written notice from the director, the
850 director's local designee, the state or local housing authority,
851 or the state or local department of health of violations of the
852 provisions of this act occurring within an affected property, or
853 after two criminal or civil actions pursuant to subsection 13(1)
854 brought by either state or local officials to enforce this act
855 arising out of violations occurring within an affected property,
856 unless the violations alleged to exist are corrected, the
857 affected property shall be considered abandoned, and the
858 Attorney General, the director, the director's local designee,
859 the state or local housing authority, the state or local
860 department of health, and/or any other officials having
861 jurisdiction over the affected property shall have the specific



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862 power to request the court to appoint a receiver for the
863 property. The court in such instances may specifically
864 authorize the receiver to apply for loans, grants, and other
865 forms of funding necessary to correct lead-based paint hazards
866 and meet the standards for lead-safe or lead-free status, and to
867 hold the affected property for such period of time as the
868 funding source may require to assure that the purposes of the
869 funding have been met. The costs of such receivership shall
870 constitute a lien against the property that, if not discharged
871 by the owner upon receipt of the receiver's demand for payment,
872 shall constitute grounds for foreclosure proceedings instituted
873 by the receiver to recover such costs.

874 Section 13. Private right to injunctive relief.--

875 (1) A person at risk shall be deemed to have a right,
876 effective July 1, 2005, to housing which is lead-free or lead-
877 safe as outlined in this act.

878 (2) If an owner of an affected property fails to comply
879 with such standards, a private right of action shall exist that
880 allows a person at risk or the parent or legal guardian of a
881 person at risk to seek injunctive relief from a court with
882 jurisdiction against the owner of the affected property in the
883 form of a court order to compel compliance with the requirements
884 of this act.

885 (3) A court shall not grant the injunctive relief
886 requested pursuant to section 14(2), unless, at least 30 days
887 prior to the filing requesting the injunction, the owner of the
888 affected property has received written notice of the violation
889 of standards contained in section 5 and has failed to bring the
890 affected property into compliance with the applicable standards.



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891 This notice to the owner of the affected property is satisfied
 892 when any of the following has occurred:

893 (a) A person at risk, his or her parent or legal guardian,
 894 or attorney, has notified the owner of an affected property that
 895 the property fails to meet the requirements for either lead-free
 896 status under section 5(3) or for lead-safe status under section
 897 5(4);

898 (b) A local or state housing authority or the Department
 899 of Health has notified the owner of the affected property of
 900 violations of the provisions of the act occurring within an
 901 affected property; or

902 (c) A criminal or civil action pursuant to section 13(1)
 903 has been brought by either state or local enforcement officials
 904 to enforce this Act arising out of violations occurring within
 905 an affected property.

906 (4) A person who prevails in an action under section 13(2)
 907 is entitled to an award of the costs of the litigation and to an
 908 award of reasonable attorneys' fees in an amount to be fixed by
 909 the court.

910 (5) Cases brought before the court under this section
 911 shall be granted an accelerated hearing.

912 Section 14. Retaliatory evictions prohibited.--

913 (1) An owner of an affected property may not evict or take
 914 any other retaliatory action against a person at risk or his or
 915 her parent or legal guardian in response to the actions of the
 916 person at risk, his or her parent or legal guardian in:

917 (a) Providing information to the owner of the affected
 918 property, the director, the director's designee for the
 919 jurisdiction in which such property is located, the Department
 920 of Health, the Department of Community Affairs, local health



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921 officials, or local housing officials concerning lead-based
 922 paint hazards within an affected property or elevated blood
 923 levels of a person at risk; or

924 (b) enforcing any of his or her rights under this act.

925 (2) For purposes of this section, a "retaliatory action"
 926 includes any of the following actions in which the activities
 927 protected under section 15(1) are a material factor in
 928 motivating said action:

929 (a) A refusal to renew a lease;

930 (b) Termination of a tenancy;

931 (c) An arbitrary rent increase or decrease in services to
 932 which the person at risk or his or her parent or legal guardian
 933 is entitled; or

934 (d) Any form of constructive eviction.

935 (3) A person at risk or his or her parent or legal
 936 guardian subject to an eviction or retaliatory action under this
 937 section is entitled to relief deemed just and equitable by the
 938 court, and is eligible for reasonable attorneys' fees and costs.

939 Section 15. Educational programs.--

940 (1) In order to achieve the purposes of this act, a
 941 statewide, multifaceted, ongoing educational program designed to
 942 meet the needs of tenants, property owners, health care
 943 providers, early childhood educators and care providers,
 944 realtors and real estate agents, insurers and insurance agents,
 945 and local building officials, is hereby established.

946 (2) The Governor, in conjunction with the director and the
 947 Lead Poisoning Prevention Council, shall sponsor a series of
 948 public service announcements on radio, television, the Internet,
 949 and print media about the nature of lead-based paint hazards,
 950 the importance of lead-free and lead-safe housing, and the



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951 purposes and responsibilities set forth in this act. In
952 developing and coordinating this public information initiative
953 the sponsors shall seek the participation and involvement of
954 private industry organizations, including those involved in real
955 estate, insurance, mortgage banking, and pediatrics.

956 (3) Within 120 days after the effective date of this act,
957 the director, in consultation with the Lead Poisoning Prevention
958 Council and the Lead Poisoning Prevention Commission, shall
959 develop culturally and linguistically appropriate information
960 pamphlets regarding childhood lead poisoning, the importance of
961 testing for elevated blood lead levels, prevention of childhood
962 lead poisoning, treatment of childhood lead poisoning, and where
963 appropriate, the requirements of this act. It is a requirement
964 of this act that these information pamphlets be distributed to
965 parents or the other legal guardians of children 6 years of age
966 or younger on the following occasions:

967 (a) By the owner of any affected property or his or her
968 agents or employees at the time of the initiation of a rental
969 agreement to a new tenant whose household includes a person at
970 risk or any other woman of childbearing age;

971 (b) By the health care provider at the time of the child's
972 birth and at the time of any childhood immunization or vaccine
973 unless it is established that such information pamphlet has been
974 provided previously to the parent or legal guardian by the
975 health care provider within the prior 12 months; and

976 (c) By the owner or operator of any child care facility,
977 pre-school, or kindergarten class on or before October 15 of the
978 calendar year.

979 (4) The director, in conjunction with the the Department
980 of Community Affairs, within 120 days after the effective date



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981 of this act, shall establish guidelines and a trainer's manual
 982 for a "Lead-Safe Housing Awareness Seminar" with a total class
 983 time of 3 hours or less. Such courses shall be offered by
 984 professional associations and community organizations with
 985 training capabilities, existing accredited educational
 986 institutions, and for-profit educational providers. All such
 987 offerings shall be reviewed and approved, on the criteria of
 988 seminar content and qualifications of instructors, by the
 989 Department of Community Affairs.

990 (5) The Department of Financial Services within 18 months
 991 after the effective date of this act, shall:

992 (a) Adopt rules for and issue an advisory bulletin to all
 993 licensed insurers in the state providing liability coverage for
 994 property owners regarding their responsibilities under this act;
 995 and

996 (b) Adopt rules for and issue an advisory bulletin to all
 997 licensed insurance agents and brokers in the state outlining the
 998 provisions of this act and the new requirements for insurers
 999 licensed in the state.

1000 (6) The Department of Business and Professional Regulation
 1001 within 18 months after the effective date of this act shall:

1002 (a) Require reasonable familiarity with the relevant
 1003 portions of this act as a prerequisite for the licensure or
 1004 renewal of licenses of real estate brokers and salespersons; and

1005 (b) Develop an educational program for real estate brokers
 1006 and salespersons regarding such duties and responsibilities.

1007 Section 16. Screening program.--

1008 (1) The director shall establish a program for early
 1009 identification of persons at risk with elevated blood lead
 1010 levels. Such program shall systematically screen children under



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1011 6 years of age in the target populations identified in
1012 subsection (2) for the presence of elevated blood lead levels.
1013 Children within the specified target populations shall be
1014 screened with a blood lead test at age 12 months and age 24
1015 months, or between the age of 36 months to 72 months if they
1016 have not previously been screened. The director shall, after
1017 consultation with recognized professional medical groups and
1018 such other sources as he or she deems appropriate, promulgate
1019 regulations establishing: (a) The means by which and the
1020 intervals at which such children under 6 years of age shall be
1021 screened for lead poisoning and elevated blood lead levels; and
1022 (b) Guidelines for the medical followup on children found
1023 to have elevated blood lead levels.

1024 (2) In developing screening programs to identify persons
1025 at risk with elevated blood lead levels, the director shall give
1026 priority to persons within the following categories:

1027 (a) All children enrolled in Medicaid at ages 12 months
1028 and 24 months, or between the ages of 36 months to 72 months if
1029 they have not previously been screened;

1030 (b) Children under the age of 6 years exhibiting delayed
1031 cognitive development or other symptoms of childhood lead
1032 poisoning;

1033 (c) Persons at risk residing in the same household, or
1034 recently residing in the same household, as another person at
1035 risk with a blood lead level of 10 µg/dL or greater;

1036 (d) Persons at risk residing, or who have recently
1037 resided, in buildings or geographical areas where significant
1038 numbers of cases of lead poisoning or elevated blood lead levels
1039 have recently been reported;



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1040 (e) Persons at risk residing, or who have recently
1041 resided, in affected properties contained in buildings which
1042 during the preceding 3 years have been subject to enforcement
1043 actions described in section 13(1), receivership actions under
1044 section 13(3), or where injunctive relief has been sought
1045 pursuant to section 14;

1046 (f) Persons at risk residing, or who have recently
1047 resided, in other affected properties with the same owner as
1048 another building containing affected properties which during the
1049 preceding 3 years have been subject to enforcement actions
1050 described in section 13(1), receivership actions under section
1051 13(3), or where injunctive relief has been sought pursuant to
1052 section 14; and

1053 (g) Persons at risk residing in other buildings or
1054 geographical areas where the director reasonably determines
1055 there to be a significant risk of affected individuals having a
1056 blood lead level of 10 µg/dL or greater.

1057 (3) The director shall maintain comprehensive records of
1058 all screenings conducted pursuant to this section. Such records
1059 shall be indexed geographically and by owner in order to
1060 determine the location of areas of relatively high incidence of
1061 lead poisoning and other elevated blood lead levels. Such
1062 records shall be public records.

1063
1064 All cases or probable cases of lead poisoning, as defined by
1065 regulation by the director, found in the course of screenings
1066 conducted pursuant to this section shall be reported immediately
1067 to the affected individual, to his or her parent or legal
1068 guardian if he or she is a minor, and to the director.

1069 Section 17. Definitions.--



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1070 (1) "Abatement" means any set of measures designed to
1071 permanently eliminate lead-based paint or lead-based paint
1072 hazards. Abatement includes the removal of lead-based paint and
1073 dust-lead hazards, the permanent enclosure or encapsulation of
1074 lead-based paint, the replacement of components or fixtures
1075 painted with lead-based paint, and the removal or permanent
1076 covering of soil-based hazards.

1077 (2) "Affected property" means a room or group of rooms
1078 within a property constructed before 1978 that form a single
1079 independent habitable dwelling unit for occupation by one or
1080 more individuals that has living facilities with permanent
1081 provisions for living, sleeping, eating, cooking, and
1082 sanitation. "Affected property" does not include:

1083 (a) An area not used for living, sleeping, eating,
1084 cooking, or sanitation, such as an unfinished basement;

1085 (b) A unit within a hotel, motel, or similar seasonal or
1086 transient facility unless such unit is occupied by one or more
1087 persons at risk for a period exceeding 30 days;

1088 (c) An area which is secured and inaccessible to
1089 occupants; or

1090 (d) A unit which is not offered for rent.

1091
1092 "Affected property" excludes any property owned or operated by a
1093 unit of federal, state, or local government, or any public,
1094 quasi-public, or municipal corporation, if the property is
1095 subject to lead standards that are equal to, or more stringent
1096 than, the requirements for lead-safe status under section 5(3).
1097



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1098 (3) "Change in occupancy" means a change of tenant in an
 1099 affected property in which the property is vacated and
 1100 possession is either surrendered to the owner or abandoned.

1101 (4) Chewable surface" means an interior or exterior
 1102 surface painted with lead-based paint that a child under the age
 1103 of 6 can mouth or chew. Hard metal substrates and other
 1104 materials that cannot be dented by the bite of a child under the
 1105 age of six 6 are not considered chewable.

1106 (5) "Containment" means the physical measures taken to
 1107 ensure that dust and debris created or released during lead-
 1108 based paint hazard reduction are not spread, blown, or tracked
 1109 from inside to outside of the worksite.

1110 (6) "Deteriorated paint" means any interior or exterior
 1111 paint or other coating that is peeling, chipping, chalking, or
 1112 cracking, or any paint or coating located on an interior or
 1113 exterior surface or fixture that is otherwise damaged or
 1114 separated from the substrate.

1115 (7) "Director" means the Director of Lead Paint Poisoning
 1116 Prevention.

1117 (8) "Dust-lead hazard" means surface dust in a residential
 1118 dwelling or a facility occupied by a person at risk that
 1119 contains a mass per area concentration of lead equal to or
 1120 exceeding 40 µg/ft² on floors or 250 µg/ft² on interior
 1121 windowsills based on wipe samples.

1122 (9) "Dwelling unit" means a:

1123 (a) Single-family dwelling, including attached structures
 1124 such as porches and stoops; or

1125 (b) Housing unit in a structure that contains more than
 1126 one separate housing unit, and in which each such unit is used
 1127 or occupied, or intended to be used or occupied, in whole or in



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1128 part, as the home or separate living quarters of one or more
 1129 persons.

1130 (10) "Elevated blood lead level" or "EBL" means a quantity
 1131 of lead in whole venous blood, expressed in micrograms per
 1132 deciliter (µg/dL), that exceeds 15 µg/dL or such other level as
 1133 may be specifically provided in this act.

1134 (11) "Encapsulation" means the application of a covering
 1135 or coating that acts as a barrier between the lead-based paint
 1136 and the environment and that relies for its durability on
 1137 adhesion between the encapsulant and the painted surface, and on
 1138 the integrity of the existing bonds between paint layers and
 1139 between the paint and the substrate. Encapsulation may be used
 1140 as a method of abatement if it is designed and performed so as
 1141 to be permanent.

1142 (12) "Exterior surfaces" means:

1143 (a) All fences and porches that are part of an affected
 1144 property;

1145 (b) All outside surfaces of an affected property that are
 1146 accessible to a child under the age of 6 years and that:

- 1147 1. Are attached to the outside of an affected property; or
- 1148 2. Consist of other buildings that are part of the
 1149 affected property; and

1150 (c) All painted surfaces in stairways, hallways, entrance
 1151 areas, recreation areas, laundry areas, and garages within a
 1152 multifamily rental dwelling unit that are common to individual
 1153 dwelling units and are accessible to a child under the age of 6
 1154 years.

1155 (13) "Friction surface" means an interior or exterior
 1156 surface that is subject to abrasion or friction, including, but
 1157 not limited to, certain window, floor, and stair surfaces.



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1158 (14) "g" means gram, "mg" means milligram (thousandth of a
1159 gram), and "µg" means microgram (millionth of a gram).

1160 (15) "Hazard reduction" means measures designed to reduce
1161 or eliminate human exposure to lead-based hazards through
1162 methods including interim controls or abatement or a combination
1163 of the two.

1164 (16) "High efficiency particle air vacuum" or "HEPA-
1165 vacuum" means a device capable of filtering out particles of 0.3
1166 microns or greater from a body of air at an efficiency of 99.97%
1167 or greater. "HEPA-vacuum" includes the use of a HEPA-vacuum.

1168 (17) "Impact surface" means an interior or exterior
1169 surface that is subject to damage from the impact of repeated
1170 sudden force, such as certain parts of door frames.

1171 (18) "Inspection" means a comprehensive investigation to
1172 determine the presence of lead-based paint hazards and the
1173 provision of a report explaining the results of the
1174 investigation.

1175 (19) "Interim controls" means a set of measures designed
1176 to reduce temporarily human exposure to lead-based paint
1177 hazards. Interim controls include, but are not limited to,
1178 repairs, painting, temporary containment, specialized cleaning,
1179 clearance, ongoing lead-based paint maintenance activities, and
1180 the establishment and operation of management and resident
1181 education programs.

1182 (20) "Interior windowsill" means a portion of the
1183 horizontal window ledge that is protruding into the interior of
1184 a room.

1185 (21) "Lead-based paint" means paint or other surface
1186 coatings that contain lead equal to or exceeding 1.0 milligram



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1187 per square centimeter or 0.5 percent by weight or 5,000 parts
 1188 per million (ppm) by weight.

1189 (22) "Lead-based paint hazard" means paint-lead hazards
 1190 and dust-lead hazards.

1191 (23) "Lead-contaminated dust" means dust in affected
 1192 properties that contains an area or mass concentration of lead
 1193 in excess of the lead content level determined by the director
 1194 by rule.

1195 (24) "Director's local designee" means a municipal,
 1196 county, or other official designated by the Director of Lead
 1197 Paint Poisoning Prevention as responsible for assisting the
 1198 director, relevant state agencies, and relevant county and
 1199 municipal authorities, in implementing the activities specified
 1200 by the Act for the geographical area in which the affected
 1201 property is located.

1202 (25) "Owner" means a person, firm, corporation, nonprofit
 1203 organization, partnership, government, guardian, conservator,
 1204 receiver, trustee, executor, or other judicial officer, or other
 1205 entity which, alone or with others, owns, holds, or controls the
 1206 freehold or leasehold title or part of the title to property,
 1207 with or without actually possessing it. The definition includes
 1208 a vendee who possesses the title, but does not include a
 1209 mortgagee or an owner of a reversionary interest under a ground
 1210 rent lease. "Owner" includes any authorized agent of the owner,
 1211 including a property manager or leasing agent.

1212 (26) "Paint-lead hazard" means any one of the following:

1213 (a) Any lead-based paint on a friction surface that is
 1214 subject to abrasion and where the dust-lead levels on the
 1215 nearest horizontal surface underneath the friction surface



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1216 (e.g., the windowsill or floor) are equal to or greater than the
1217 dust-lead hazard levels set forth in subsection (8);

1218 (b) Any damaged or otherwise deteriorated lead-based paint
1219 on an impact surface that is caused by impact from a related
1220 building material, such as a door knob that knocks into a wall
1221 or a door that knocks against its door frame;

1222 (c) Any chewable lead-based painted surface on which there
1223 is evidence of teeth marks;

1224 (d) Any other deteriorated lead-based paint in or on the
1225 exterior of any residential building or any facility occupied by
1226 a person at risk.

1227 (27) "Permanent" means an expected design life of at least
1228 20 years.

1229 (28) "Person at risk" means a child under the age of six 6
1230 years or a pregnant woman who resides or regularly spends at
1231 least 24 hours per week in an affected property.

1232 (29) "Relocation expenses" means all expenses necessitated
1233 by the relocation of a tenant's household to lead-safe housing,
1234 including moving and hauling expenses, the HEPA-vacuuuming of all
1235 upholstered furniture, payment of a security deposit for the
1236 lead-safe housing, and installation and connection of utilities
1237 and appliances.

1238 (30) "Soil-lead hazard" means soil on residential real
1239 property or on property of a facility occupied by a person at
1240 risk that contains total lead equal to or exceeding 400 parts
1241 per million (g/g) in a play area or average of 1,200 parts per
1242 million of bare soil in the rest of the yard based on soil
1243 samples.



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1244 (31) "Tenant" means the individual named as the lessee in
 1245 a lease, rental agreement or occupancy agreement for a dwelling
 1246 unit.

1247 (32) "Wipe sample" means a sample collected by wiping a
 1248 representative surface of known area, as determined by ASTM
 1249 E1728 "Standard Practice for the Field Collection of Settled
 1250 Dust Samples Using Wipe Sampling Methods for Lead Determination
 1251 by Atomic Spectrometry Techniques", with lead determination
 1252 conducted by an accredited laboratory participating in the
 1253 Environmental Lead Laboratory Accreditation Program (NLAP).

1254 Section 18. This act shall take effect July 1, 2003.