

By Senator Miller

18-666-03

See HB 1451

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

1 providing for deposit of fees; providing
2 requirements for immunity from civil liability
3 for injuries or damages resulting from the
4 ingestion of lead; providing exceptions to
5 immunity; providing for documentation and
6 notification of injury; defining "qualified
7 offer"; providing procedure and requirements
8 with respect to a qualified offer; providing
9 for attorney's fees; providing for maximum
10 amounts payable under a qualified offer;
11 providing for certification of compliance with
12 respect to a qualified offer; providing for
13 offers of compromise; providing for rules;
14 providing for presumption of negligence in
15 actions against property owners not in
16 compliance; providing requirements with respect
17 to liability coverage for losses or damage
18 caused by exposure to lead-based paint offered
19 by insurers in the state; providing
20 requirements of the Department of Financial
21 Services; requiring specified lead hazard
22 coverage; providing standards for determination
23 of rates for lead hazard coverage; creating the
24 lead-safe or lead-free property revolving loan
25 fund account within the State Housing Trust
26 Fund; providing for the sale of bonds;
27 providing for administration and disbursement
28 of funds; providing for loans through
29 intermediaries; providing for reinvestment and
30 repayment of funds; providing for enforcement
31 of criminal violations; providing for civil

1 remedies; providing for reporting of
2 enforcement actions; providing for receivership
3 of properties not meeting certain standards;
4 providing for injunctive relief; providing for
5 notice of intent to seek injunctive relief;
6 providing for recovery of costs and attorneys
7 fees; defining "retaliatory eviction";
8 prohibiting retaliatory evictions; providing
9 for the establishment of a comprehensive
10 educational program; providing for a public
11 information initiative; providing for
12 distribution of specified literature; providing
13 for lead-safe housing seminars; providing for
14 the adoption of rules and the distribution of
15 information regarding insurance requirements;
16 providing requirements of the Department of
17 Business and Professional Regulation with
18 respect to education and licensure requirements
19 for real estate brokers and salespersons;
20 requiring the establishment of a program for
21 early identification of persons at risk of
22 elevated levels of lead in the blood; providing
23 for screening of children; providing for
24 screening priorities; providing for the
25 maintenance of records of screenings; providing
26 for reporting of cases of lead poisoning;
27 providing definitions; providing an effective
28 date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Popular name.--This act shall be known by
2 the popular name, the "Lead Poisoning Prevention Act."

3 Section 2. Legislative findings.--

4 (1) Nearly one million American children may have
5 levels of lead in their blood in excess of 10 micrograms per
6 deciliter (g/dL). Unless prevented or treated, elevated blood
7 lead levels in egregious cases may result in impairment of the
8 ability to think, concentrate, and learn.

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

13 (3) The health and development of these children and
14 many others are endangered by chipping or peeling lead-based
15 paint or excessive amounts of lead-contaminated dust in poorly
16 maintained homes.

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

20 (5) The dangers posed by lead-based paint can be
21 substantially reduced and largely eliminated by taking
22 measures to prevent paint deterioration and limiting
23 children's exposure to paint chips and lead dust.

24 (6) The deterioration of lead-based paint in older
25 residences results in increased expenses each year for the
26 State in the form of special education and other education
27 expenses, medical care for lead-poisoned children, and
28 expenditures for delinquent youth and others needing special
29 supervision.

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

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

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

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

14 Section 3. Purposes.--To promote the elimination of
15 childhood lead poisoning in the state, the purposes of this
16 act are:

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

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

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

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

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

30 (6) To mandate the testing of children likely to
31 suffer the consequences of lead poisoning so that prompt

1 diagnosis and treatment as well as the prevention of harm are
2 possible;

3 (7) To provide a mechanism to facilitate prompt
4 payment of medical and rehabilitation expenses and relocation
5 costs for those remaining individuals who are affected by
6 childhood lead poisoning; and

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

11 Section 4. Director of Lead Poisoning Prevention; Lead
12 Poisoning Prevention Coordinating Council; Program for
13 Prevention of Lead Poisoning; Lead Poisoning Prevention
14 Commission.--

15 (1) The Governor shall appoint a Director of Lead
16 Poisoning Prevention who shall serve at the pleasure of the
17 Governor. The director shall be responsible, subject to the
18 authority of the Governor, for carrying out and administering
19 all programs created pursuant to the provisions of this act.
20 To the extent necessary, the director shall designate which
21 local government officials shall assist him in carrying out
22 the duties prescribed by this act. The director may contract
23 with any agency or agencies, individuals, or groups for the
24 provision of necessary services, subject to appropriation; and
25 shall adopt and from time to time, amend, such rules as may be
26 necessary.

27 (2) The director shall chair a Lead Poisoning
28 Prevention Coordinating Council that also shall include a
29 designee of the Governor from the department of Community
30 Affairs and a designee of the Governor from the Department of
31 Health.

1 (3) Subject to appropriation, the director, working in
2 coordination with the Lead Poisoning Prevention Council, shall
3 establish a statewide program for the prevention, screening,
4 diagnosis, and treatment of lead poisoning, including
5 elimination of the sources of such poisoning, through such
6 research, educational, epidemiologic, and clinical activities
7 as may be necessary.

8 (4) The Governor shall appoint a Lead Poisoning
9 Prevention Commission.

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

11 1. Study and collect information on the effectiveness
12 of this act in fulfilling its legislative purposes as defined
13 in section 3;

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

16 3. Consult with the Director of Lead Poisoning
17 Prevention and applicable state agencies on the implementation
18 of this act; and

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

21 (b) The commission shall consist of fifteen
22 members. The membership shall include:

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

26 2. One member of the Senate appointed by the President
27 of the Senate;

28 3. One member of the House of Representatives
29 appointed by the Speaker of the House of Representatives; and

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

31 a. A child advocate;

- 1 b. A health care provider;
2 c. A parent of a lead-poisoned child;
3 d. A representative of local government;
4 e. Two owners of rental property in the state;
5 f. A representative from the insurance industry that
6 offers premises liability coverage in the state;
7 g. Either a lead hazard control
8 professional/contractor or a lead hazard identification
9 professional; and
10 h. One other member of the public whose experience and
11 expertise will ensure meaningful contribution to the
12 commission.
13 (c) The terms of the members are as follows:
14 1. The term of a member appointed by the Governor is 4
15 years;
16 2. A member appointed by the President of the Senate
17 or the Speaker of the House of Representatives serves at the
18 pleasure of the appointing officer;
19 3. The terms of the initial members may be shortened
20 or lengthened so that the terms of future members are
21 staggered;
22 4. At the end of a term, a member shall continue to
23 serve until a successor is appointed and qualifies; and
24 5. A member who is appointed after a term has
25 commenced serves only for the remainder of the term and until a
26 successor is appointed.
27 Section 5. Requirements for lead-free status and
28 lead-safe status.--
29 (1) An affected property shall comply with the
30 requirements of either "lead-free" status, as defined by
31 section 5(3), or "lead-safe" status, as defined by section

1 5(4), on or before July 1, 2005, except as otherwise provided
2 in section 5(2).

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

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

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

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

19 (a) The affected property was constructed after 1978;

20 or

21 (b) The owner of the affected property submits to the
22 director or the director's designee for the jurisdiction in
23 which such property is located an inspection report which
24 indicates that the affected property has been tested for the
25 presence of lead in accordance with standards and procedures
26 established by the regulations promulgated by the director and
27 states that:

28 1. All interior surfaces of the affected property are
29 lead-free; and

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

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

6 (c) In order to maintain exemption from the provisions
7 of this act, the owner of any affected property with
8 lead-based paint on any exterior surface which has been
9 certified as "lead-free" pursuant to subsection (3) shall
10 submit to the director or the director's designee for the
11 jurisdiction in which such property is located every 3 years a
12 certification, by an inspector, accredited pursuant to the
13 provisions of section 7, stating that no exterior painted
14 surface of the affected property is chipping, peeling, or
15 flaking.

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

20 (a) Visual review of all exterior and interior painted
21 surfaces;

22 (b) Removal and repainting of chipping, peeling, or
23 flaking paint on exterior and interior painted surfaces;

24 (c) Stabilization and repainting of any interior or
25 exterior painted surfaces which have lead-based paint hazards;

26 (d) Repair of any structural defect that is causing
27 the paint to chip, peel, or flake that the owner of the
28 affected property has knowledge of or, with the exercise of
29 reasonable care, should have knowledge of;

30 (e) Stripping and repainting, replacing, or
31 encapsulating all interior windowsills and window troughs with

1 vinyl, metal, or any other durable materials which render the
2 surface smooth and cleanable;
3 (f) Installation of caps of vinyl, aluminum, or any
4 other material in a manner and under conditions approved by
5 the director in all window wells in order to make the window
6 wells smooth and cleanable;
7 (g) Fixing the top sash of all windows in place in
8 order to eliminate the friction caused by movement of the top
9 sash, except for a treated or replacement window that is free
10 of lead-based paint on its friction surfaces;
11 (h) Rehanging all doors as necessary to prevent the
12 rubbing together of a lead-painted surface with another
13 surface;
14 (i) Making all bare floors smooth and cleanable;
15 (j) Ensuring that all kitchen and bathroom floors are
16 overlaid with a smooth, water-resistant covering; and
17 (k) HEPA-vacuuming and washing of the interior of the
18 affected property with high phosphate detergent or its
19 equivalent, as determined by the director.
20 (5)(a) Whenever an owner of an affected property
21 intends to make repairs or perform maintenance work that will
22 disturb the paint on interior surfaces of an affected
23 property, the owner shall give any tenant in such affected
24 property at least 48 hours' written advance notice and shall
25 make reasonable efforts to ensure that all persons who are not
26 persons at risk are not present in the area where work is
27 performed and that all persons at risk are removed from the
28 affected property when the work is performed.
29 (b) A tenant shall allow access to an affected
30 property, at reasonable times, to the owner to perform any
31 work required under this act.

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

6 (d) If an owner has made all reasonable efforts to
7 cause the tenant to temporarily vacate an affected property in
8 order to perform work that will disturb the paint on interior
9 surfaces, and the tenant refuses to vacate the affected
10 property, the owner shall not be liable for any damages
11 arising from the tenant's refusal to vacate.

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

18 Section 6. This act shall take effect July 1, 2003.