

By Senator Miller

18-1437-04

See HB 937

1 A bill to be entitled
2 An act relating to the Florida Childhood Lead
3 Poisoning Reduction Act; providing a popular
4 name; creating the "Florida Childhood Lead
5 Poisoning Reduction Act"; providing legislative
6 findings; providing legislative purposes of the
7 act; providing for a Director of Lead Poisoning
8 Prevention; providing duties and
9 responsibilities of the director; providing for
10 a Lead Poisoning Prevention Coordinating
11 Council; providing membership of the council;
12 providing for the establishment of a statewide
13 program for the prevention, screening,
14 diagnosis, and treatment of lead poisoning;
15 providing for a Lead Poisoning Prevention
16 Commission; providing for membership and duties
17 of the commission; providing criteria for
18 lead-free and lead-safe property status;
19 providing notice requirements when an owner of
20 an affected property intends to make repairs to
21 or perform specified maintenance work on an
22 affected property; providing requirements and
23 procedures with respect to access to and
24 vacation of affected properties; providing for
25 voluntary inspection of affected properties;
26 requiring the Lead Poisoning Prevention
27 Commission to develop a proposal for the
28 implementation of mandatory inspections of all
29 affected properties or to develop alternative
30 measures of enforcement and penalties to ensure
31 compliance with lead-free or lead-safe

1 standards by a specified date; providing for
2 involuntary inspections under specified
3 circumstances; providing for inspection
4 reports; providing for accreditation of persons
5 performing lead-hazard-reduction activities;
6 providing for accreditation of persons
7 performing inspections; providing for duration
8 of accreditation; providing registration fees
9 for persons performing lead-hazard abatement
10 and persons performing inspections; providing
11 for deposit of fees; providing for enforcement;
12 providing requirements for immunity from civil
13 liability for injuries or damages resulting
14 from the ingestion of lead; providing
15 exceptions to immunity; providing requirements
16 with respect to documentation and notification
17 of injury; providing procedure and requirements
18 with respect to a qualified offer; providing
19 for maximum amounts payable under a qualified
20 offer; providing for certification of
21 compliance with respect to a qualified offer;
22 providing for presumption of negligence in
23 actions against property owners not in
24 compliance; providing for enforcement of the
25 act; providing for reporting of enforcement
26 actions; providing for receivership of
27 properties not meeting certain standards;
28 providing for injunctive relief; providing for
29 notice of intent to seek injunctive relief;
30 providing for recovery of costs and attorney's
31 fees; prohibiting retaliatory evictions;

1 defining "retaliatory action"; providing for
2 relief for retaliatory eviction and retaliatory
3 action; providing for the establishment of a
4 statewide comprehensive educational program;
5 providing for a public information initiative;
6 providing for distribution of specified
7 literature; providing for a Lead Poisoning
8 Prevention for Properties seminar; requiring
9 the establishment of a program for early
10 identification of persons at risk of elevated
11 levels of lead in the blood; providing for
12 screening of children; providing for screening
13 priorities; providing for the maintenance of
14 records of screenings; providing for reporting
15 of cases of lead poisoning; providing
16 definitions; providing an effective date.

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

19

20 Section 1. Popular name.--This act shall be known by
21 the popular name, the "Florida Childhood Lead Poisoning
22 Reduction Act."

23 Section 2. Legislative findings.--

24 (1) Nearly 300,000 American children may have levels
25 of lead in their blood in excess of 10 micrograms per
26 deciliter (ug/dL). Unless prevented or treated, elevated
27 blood-lead levels in egregious cases may result in impairment
28 of the ability to think, concentrate, and learn.

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

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

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

10 (5) The dangers posed by lead-based paint can be
11 substantially reduced and largely eliminated by taking
12 measures to prevent paint deterioration and limiting
13 children's exposure to paint chips and lead dust.

14 (6) The deterioration of lead-based paint in older
15 residences results in increased expenses each year for the
16 state in the form of special education and other education
17 expenses, medical care for lead-poisoned children, and
18 expenditures for delinquent youth and others needing special
19 supervision.

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

23 (8) The possibility of liability exposure among
24 landlords has led many to abandon older properties or to place
25 them in "shell corporations" in order to avoid personal
26 liability.

27 (9) The incidence of childhood lead poisoning can be
28 reduced substantially without significant additional cost to
29 the state by creating appropriate incentives for property
30 owners to make their properties lead-free or lead-safe and by
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1 targeting existing state resources used to prevent childhood
2 lead poisoning more effectively.

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

6 (11) A majority of Florida children living in
7 circumstances suggesting a significant possibility that they
8 have elevated levels of lead in their blood are not currently
9 tested for the presence of such elevated blood-lead levels.

10 (12) Early detection of elevated blood levels in
11 children allows treatment and mitigation of the conditions
12 resulting in further elevation of blood-lead levels and often
13 can prevent further harm.

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

17 (1) To significantly reduce the incidence of childhood
18 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 provide protection from potentially ruinous
23 tort actions for those landlords who undertake specified
24 lead-hazard-reduction measures.

25 (4) To provide a mechanism to facilitate prompt
26 payment of medical and rehabilitation expenses and relocation
27 costs for those remaining individuals who are affected by
28 childhood lead poisoning.

29 (5) To improve public awareness of lead safety issues
30 and to educate both property owners and tenants about
31 practices that can reduce the incidence of lead poisoning.

1 (6) To encourage the testing of children likely to
2 suffer the consequences of lead poisoning so that prompt
3 diagnosis and treatment, as well as the prevention of harm,
4 are possible.

5 Section 4. Director of Lead Poisoning Prevention; Lead
6 Poisoning Prevention Coordinating Council; Program for
7 Prevention of Lead Poisoning; Lead Poisoning Prevention
8 Commission.--

9 (1) The Secretary of the Department of Health shall
10 appoint a Director of Lead Poisoning Prevention who shall
11 serve at the pleasure of the secretary. The director shall be
12 responsible, subject to the authority of the secretary, for
13 carrying out and administering all programs created pursuant
14 to the provisions of this act. To the extent necessary, the
15 director shall designate which local government officials
16 shall assist him or her in carrying out these duties. The
17 director may contract with any agency or agencies,
18 individuals, or groups for the provision of necessary
19 services, subject to appropriation, and shall adopt and from
20 time to time amend such rules as may be necessary; provided,
21 however, that such rules, regulations or amendments thereto
22 shall be filed with the appropriate legislative committees
23 responsible for health matters and housing matters at least 30
24 days before the effective date of such rules, regulations, or
25 amendments.

26 (2) The director shall chair the Lead Poisoning
27 Prevention Coordinating Council. The council shall include a
28 designee of the Secretary of the Department of Community
29 Affairs and a designee of the Secretary of the Department of
30 Environmental Protection.

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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 Lead Poisoning Prevention Commission is hereby
9 created.

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

11 1. Report to the Governor, the President of the
12 Senate, and the Speaker of the House of Representatives in
13 writing by October 1, 2005, recommending legislation providing
14 both additional incentives for all affected property owners to
15 bring their premises into compliance with the lead-safe
16 standards outlined in section 5(2) and additional means of
17 enforcement and penalties for those property owners who fail
18 to achieve compliance. The incentives to be considered should
19 include, among others, local property tax credits and
20 revolving loan funds.

21 2. Study and collect information on the effectiveness
22 of this act in fulfilling its legislative purposes as defined
23 in section 3.

24 3. Make policy recommendations, in addition to those
25 mandated by subparagraph 1., regarding how best to achieve the
26 legislative purposes of this act as set forth in section 3.

27 4. Consult with the responsible departments of state
28 government and applicable state agencies on the implementation
29 of this act.

30 5. Prepare and submit a report by October 1, 2005, to
31 the Governor, the President of the Senate, and the Speaker of

1 the House of Representatives on the results of implementing
2 this act.

3 (b) The commission shall consist of nine members. The
4 membership shall include:

5 1. The Director of Lead Poisoning Prevention.

6 2. The Secretary of Community Affairs or his or her
7 designee.

8 3. One member of the Senate, appointed by the
9 President of the Senate.

10 4. One member of the House of Representatives,
11 appointed by the Speaker of the House of Representatives.

12 5. Five members appointed by the Governor, including:

13 a. A child advocate.

14 b. A health care provider.

15 c. A representative of local government.

16 d. Two owners of rental property in the state.

17 (c) The commission shall be chaired by the Director of
18 Lead Poisoning Prevention.

19 (d) Members of the commission shall serve without
20 compensation.

21 Section 5. Requirements for lead-free and lead-safe
22 property status.--

23 (1) An affected property is "lead free" if:

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

25 or

26 (b) The owner of the affected property submits to the
27 director or the director's designee for the jurisdiction in
28 which such property is located an inspection report that
29 indicates that the affected property has been tested for the
30 presence of lead in accordance with standards and procedures

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1 established by the regulations promulgated by the director and
2 states that:
3 1. All interior surfaces of the affected property are
4 lead free; and
5 2.a. All exterior painted surfaces of the affected
6 property that were chipping, peeling, or flaking have been
7 restored with paint that is not lead-based paint; or
8 b. No exterior painted surfaces of the affected
9 property are chipping, peeling, or flaking.
10 (2) An affected property is "lead safe" if the
11 following treatments to reduce lead-based-paint hazards have
12 been completed by someone accredited under section 7 and in
13 compliance with the regulations established by the director:
14 (a) Visual review of all exterior and interior painted
15 surfaces;
16 (b) Removal and repainting of chipping, peeling, or
17 flaking paint on exterior and interior painted surfaces;
18 (c) Stabilization and repainting of any interior or
19 exterior painted surfaces that have lead-based-paint hazards;
20 (d) Repair of any structural defect that is causing
21 the paint to chip, peel, or flake which the owner of the
22 affected property has knowledge of or, with the exercise of
23 reasonable care, should have knowledge of;
24 (e) Stripping and repainting, replacing, or
25 encapsulating of all interior windowsills and window troughs
26 with vinyl, metal, or any other durable material that renders
27 the surface smooth and cleanable;
28 (f) Installing caps of vinyl, aluminum, or any other
29 material in a manner and under conditions approved by the
30 director in all window wells in order to make the window wells
31 smooth and cleanable;

1 (g) Fixing the top sash of all windows in place in
2 order to eliminate the friction caused by movement of the top
3 sash, except for a treated or replacement window that is free
4 of lead-based paint on its friction surfaces;

5 (h) Rehanging all doors as necessary to prevent the
6 rubbing together of a lead-painted surface with another
7 surface;

8 (i) Making all bare floors smooth and cleanable;

9 (j) Ensuring that all kitchen and bathroom floors are
10 overlaid with a smooth, water-resistant covering; and

11 (k) HEPA-vacuumping and washing of the interior of the
12 affected property with high phosphate detergent or its
13 equivalent, as determined by the director.

14 (3)(a) Whenever an owner of an affected property
15 intends to make repairs or perform maintenance work that will
16 disturb the paint on interior surfaces of an affected
17 property, the owner shall give any tenant in such affected
18 property at least 48 hours' written advance notice and shall
19 make reasonable efforts to ensure that all persons who are not
20 persons at risk are not present in the area where work is
21 performed and that all persons at risk are removed from the
22 affected property when the work is performed.

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

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

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

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

13 Section 6. Voluntary inspection; mandatory
14 inspection.--

15 (1) An owner of an affected property at any time after
16 the effective date of this act may request that the Director
17 of Lead Poisoning Prevention or his or her local designee
18 inspect an affected property to determine whether it complies
19 with the requirements for lead-free property status as
20 specified in section 5(1) or the requirements for lead-safe
21 property status as specified in section 5(2). Such inspection
22 shall be completed within 30 days after the owner's request.

23 (2) Any affected property certified as either
24 lead-free or lead-safe following a voluntary inspection
25 pursuant to subsection (1) shall be:

26 (a) Entitled to the liability protection provisions of
27 section 8.

28 (b) Deemed in compliance with all state and local
29 requirements, whether included in housing codes, ordinances,
30 or any other regulatory or criminal statutes or ordinances
31 governing lead paint contained in an affected property.

1 (3) The Lead Poisoning Prevention Commission shall
2 either develop a proposal for mandatory inspections of all
3 affected properties to be implemented by January 1, 2007, or
4 shall develop alternative measures of enforcement and
5 penalties to ensure that all affected properties comply with
6 either the lead-free standard described in section 5(1) or the
7 lead-safe standard described in section 5(2) within a
8 reasonable period of time after January 1, 2007.

9 (4) After July 1, 2005, the director or the director's
10 designee for the jurisdiction in which an affected property is
11 located shall order an inspection of an affected property, at
12 the expense of the owner of the affected property, whenever
13 the director or the director's designee for the jurisdiction
14 in which such property is located is notified that the
15 affected property reasonably appears to comply with neither
16 the lead-free standard nor the lead-safe standard as those
17 standards are defined in section 5 and a person at risk
18 resides in the affected property or spends more than 24 hours
19 per week in the affected property. An inspection required
20 under this subsection shall be completed within 90 days after
21 notification of the director or the director's designee for
22 the jurisdiction in which such property is located.

23 (5) The director or the director's designee for the
24 jurisdiction in which an affected property is located shall
25 order an inspection of an affected property, at the expense of
26 the owner of the affected property, whenever the director or
27 the director's designee for the jurisdiction in which such
28 property is located is notified that a person at risk who
29 resides in the affected property or spends more than 24 hours
30 per week in the affected property has an elevated blood-lead
31 level greater than or equal to 15 ug/dL. An inspection under

1 this subsection shall be completed within 15 days after
2 notification of the director or the director's designee for
3 the jurisdiction in which such property is located.

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

9 (7) The owner of an affected property shall pay a fee
10 at the time of the inspection of an affected property
11 sufficient to pay the full costs of the inspection.

12 Section 7. Accreditation of inspectors and contractors
13 performing work.--

14 (1) No person shall act as a contractor or supervisor
15 to perform the work necessary for lead-hazard abatement as
16 defined in this act unless that person is accredited by the
17 director. The director shall accredit for these purposes any
18 person meeting the standards described in one of the following
19 paragraphs:

20 (a) Regulations to be adopted by the director pursuant
21 to this act governing the accreditation of individuals to
22 engage in lead-based paint activities sufficient to satisfy
23 the requirements of 40 C.F.R. s. 745.325 or any applicable
24 successor provisions to 40 C.F.R. s. 745.325.

25 (b) Certification by the United States Environmental
26 Protection Agency to engage in lead-based paint activities
27 pursuant to 40 C.F.R. s. 745.226 or any applicable successor
28 provisions to 40 C.F.R. s. 745.226.

29 (c) Certification by a state or tribal program
30 authorized by the United States Environmental Protection
31 Agency to certify individuals engaged in lead-based paint

1 activities pursuant to 40 C.F.R. s. 745.325 or any applicable
2 successor provisions to 40 C.F.R. s. 745.325.

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4 The director shall, by regulation, create exceptions to the
5 accreditation requirement for instances where the disturbance
6 of lead-based paint is incidental.

7 (2) An inspector accredited by the director shall
8 conduct all inspections required by section 6 of this act, or
9 otherwise required by this act. The director shall accredit as
10 an inspector any individual meeting the requirements of
11 paragraph (a) or paragraph (b):

12 (a) Regulations to be adopted by the director pursuant
13 to this act governing the accreditation of individuals
14 eligible to conduct the inspections required by this act; or

15 (b) Certification to conduct risk assessments by the
16 EPA pursuant to 40 C.F.R. s. 745.226(b) or any applicable
17 successor provisions to 40 C.F.R. s. 745.226.

18 (3) The accreditation of contractors or supervisors of
19 those performing the work necessary for lead-hazard abatement,
20 and the accreditation of those performing the inspections
21 required by this section, shall extend for a period of 3 years
22 unless the director has probable cause to believe a person
23 accredited under this section has violated the terms of the
24 accreditation or engaged in illegal or unethical conduct
25 related to inspections required by this act, in which case the
26 accreditation to perform inspections shall be suspended
27 pending a hearing in accordance with the provisions of state
28 law.

29 (4) The director shall establish by regulation a
30 schedule of fees for the registration of persons performing
31 lead-hazard abatement and a separate schedule for persons

1 performing inspections pursuant to this act. Such fees shall
2 be required to be paid at the time of initial registration and
3 at the time of subsequent renewal of registration, and shall
4 be sufficient to cover all costs, including the costs of state
5 personnel, attributable to accreditation activities conducted
6 under this section.

7 (a) Fees collected pursuant to this subsection shall
8 be held in a separate account within the State Housing Trust
9 Fund to be used for accreditation purposes under this section.

10 (b) The Chief Financial Officer shall administer the
11 account.

12 (c) Funds deposited in the separate account within the
13 State Housing Trust Fund established under this subsection
14 shall be invested and reinvested and any investment earnings
15 shall be paid into the account.

16 (5) The provisions and procedures of the Department of
17 Business and Professional Regulation shall be used for and
18 shall apply to the enforcement of violations of this section,
19 any rules adopted under this act, and any condition of
20 accreditation issued under this act.

21 Section 8. Liability protection and qualified offer.--

22 (1) This section applies to all potential bases of
23 civil liability for alleged injury or loss to a person caused
24 by the ingestion of lead by a person at risk in an affected
25 property; except that this section does not apply to any claim
26 in which the elevated blood-lead level of the person at risk
27 is documented to have existed on or before the date 60 days
28 after the affected property at which the person at risk
29 resides or otherwise allegedly was exposed to lead has been
30 certified as lead-free under section 5(1) or lead-safe under
31 section 5(2).

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

6 (a) The property has been certified as lead-free under
7 section 5(1) or as lead-safe under section 5(2); and

8 (b) The property owner or his agent has made a
9 qualified offer as described in subsection (5) to the person
10 at risk, or his or her parent or legal guardian, in a case in
11 which the person at risk has a documented elevated blood-lead
12 level of 15 ug/dL or more performed more than 60 days
13 following certification of the premises as lead-safe or
14 lead-free pursuant to section 5, regardless of whether such
15 qualified offer has been accepted or rejected by the person at
16 risk, or his or her parent or legal guardian.

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

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

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

23 (c) During renovation, remodeling, maintenance, or
24 repair after receiving the certificate, the owner or his or
25 her employee or agent created a lead-based-paint hazard that
26 was present in the affected property at the time the person at
27 risk either was exposed to a lead-based-paint hazard or first
28 was tested with an elevated blood-lead level greater than 15
29 ug/dL;

30 (d) The owner or his or her employee or agent failed
31 to respond in a timely manner to notification by a tenant, by

1 the director, by the director's designee for the jurisdiction
2 in which such property is located, or by a local housing or
3 health department that a lead-based-paint hazard might be
4 present;

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

8 (4) A person may not bring an action against an owner
9 of an affected property whose property has been certified as
10 lead-free under section 5(1) or lead-safe under section 5(2)
11 for damages arising from alleged injury or loss to a person at
12 risk caused by lead-based-paint hazard unless he or she
13 documents his or her alleged injury with a test for elevated
14 blood-lead levels and presents a written notice to the owner
15 of the affected property or his or her agent or employee of
16 the claim and test results.

17 (a) If such test results show an elevated blood-lead
18 level of less than 15 ug/dL, the person at risk or his or her
19 parent or legal guardian shall not recover damages from the
20 owner of the affected property, or his or her agents or
21 employees unless the person at risk or his or her parent or
22 legal guardian can show by clear and convincing evidence that
23 the damage or injury to the person at risk resulted from
24 exposure to lead-based paint and was caused by either:

25 1. Intentional acts by the owner or his or her agents
26 or employees; or

27 2. Actions of the owner or his or her agents or
28 employees with knowledge with a substantial certainty that
29 such actions would injure the person at risk or others
30 similarly situated.

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1 (b) If such test results show an elevated blood level
2 of 15 ug/dL or greater, the owner of the affected property or
3 his or her agent or employee shall have the opportunity to
4 make a qualified offer under subsection (5).

5 (c) If the concentration of lead in a whole venous
6 blood sample of a person at risk tested within 60 days after
7 the person at risk begins residing or regularly spends at
8 least 24 hours per week in an affected property that is
9 certified as being in compliance with the provisions of
10 section 5(1) or section 5(2) is equal to or greater than 15
11 ug/dL, it shall be presumed that the exposure to lead-based
12 paint occurred before a person at risk began residing or
13 regularly spending at least 24 hours per week in the affected
14 property.

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

19 (b) To qualify for the protection of liability under
20 subsection (1), a qualified offer must be made in writing and
21 delivered by certified mail, return receipt requested, within
22 30 days after the owner of the affected property or his or her
23 agent or employee receives notice of the elevated blood level
24 described in subsection (4).

25 (c) A qualified offer made under this section may be
26 accepted or rejected by a person at risk or, if the person at
27 risk is a minor, the minor's parent or legal guardian. If the
28 qualified offer is not accepted within 30 days after receipt
29 of the qualified offer, it shall be deemed to have been
30 rejected. By mutual agreement, the parties may extend the
31 period for acceptance of the qualified offer.

1 (d) Subject to the exception in section 5(3),
2 acceptance of a qualified offer by a person at risk, or by a
3 parent, legal guardian, or other person authorized to respond
4 on behalf of a person at risk, discharges and releases all
5 potential liability of the offeror, the offeror's insured or
6 principal, and any participating co-offeror to the person at
7 risk and to the parent or legal guardian of the person at risk
8 for alleged injury or loss caused by the lead-based-paint
9 hazard in the affected property.

10 (e) No owner of an affected property, or his or her
11 agent, employee, attorney, or anyone acting on his or her
12 behalf, shall represent to a person at risk, his or her parent
13 or guardian, or anyone acting on his or her behalf that an
14 offer of settlement in an action resulting from a
15 lead-based-paint hazard in an affected property is a qualified
16 offer unless the affected property has been certified as
17 lead-free under section 5(1) or lead-safe under section 5(2)
18 and unless the offeror reasonably believes that the settlement
19 offer satisfies all requirements of this section. Any
20 settlement resulting from a settlement offer purporting to be
21 a qualified offer which does not satisfy the requirements of
22 this section shall, at the election of the person at risk, his
23 or her parent or guardian, or other representative, be deemed
24 null and void and of no legal effect. Further,
25 misrepresentation of a settlement offer as a qualified offer
26 when the offer does not meet these requirements shall subject
27 the offeror to criminal penalties for perjury and/or
28 applicable professional disciplinary action. The statute of
29 limitations for an action by a person at risk with an elevated
30 blood-lead level or his or her parent or legal guardian is
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1 tolled until the misrepresentation described in this paragraph
2 is discovered.

3 (f) A copy of the qualified offer shall be sent to the
4 director or the director's local designee. The director or the
5 director's local designee shall maintain a copy of the
6 qualified offer in the case management file of the person at
7 risk. In addition, the director or his or her designee also
8 shall directly notify the person at risk or, in the case of a
9 minor, the parent or legal guardian of the minor, of state and
10 local resources available for lead-poisoning prevention and
11 treatment.

12 (g) A qualified offer shall include payment for
13 reasonable expenses and costs incurred by the person at risk
14 with an elevated blood-lead level of 15 ug/dL or greater for:

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

18 a. The permanent relocation of the household of the
19 affected person at risk to lead-safe housing, including
20 relocation expenses, a rent subsidy, and incidental expenses;
21 or

22 b. The temporary relocation of the household of the
23 affected person at risk to lead-safe housing while necessary
24 lead-hazard reduction treatments are being performed in the
25 affected property to make the affected property lead-safe;

26 2. Medically necessary treatment for the affected
27 person at risk as determined by the treating physician or
28 other health care provider or case manager of the person at
29 risk which is necessary to mitigate the effects of lead
30 poisoning, as defined by the Department of Health by rule, and
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1 in the case of a child, until the child reaches the age of 18
2 years; and

3 3. Reasonable attorney's fees, not to exceed the
4 lesser of \$2,500 or actual time spent in the investigation,
5 preparation, and presentation of the claim multiplied by an
6 hourly rate of \$150 per hour.

7 (h) An offeror is required to pay reasonable expenses
8 for the medically necessary treatments under subparagraph
9 (g)2. only if coverage for these treatments is not otherwise
10 provided by Medicaid or by a health insurance plan under which
11 the person at risk has coverage or in which the person at risk
12 is enrolled. The health insurance plan shall have no right of
13 subrogation against the party making the qualified offer.

14 (i) The amounts payable under a qualified offer made
15 under this section are subject to the following aggregate
16 maximum caps:

17 1. Twenty-five thousand dollars for all medically
18 necessary treatments as provided and limited in subparagraph
19 (g)2.; and

20 2. Ten thousand dollars for all relocation benefits as
21 provided and limited in subparagraph (g)1.

22
23 All payments under a qualified offer as specified in paragraph
24 (g) shall be paid to the provider of the service, except that
25 payment of incidental expenses may be paid directly to the
26 person at risk or, in the case of a child, to the parent or
27 legal guardian of the person at risk. The payments under a
28 qualified offer may not be considered income or an asset of
29 the person at risk, the parent of a person at risk who is a
30 child, or the legal guardian for purposes of determining
31 eligibility under any state or federal entitlement program.

1 (j) A qualified offer shall include a certification by
2 the owner of the affected property, under the penalty of
3 perjury, that the owner has complied with the applicable
4 provisions of section 5 and this section in a manner that
5 qualified the owner to make a qualified offer.

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

9 (l) The director may adopt regulations necessary to
10 carry out the provisions of this section.

11 (6)(a) An owner of an affected property who is not in
12 compliance with the provisions of either section 5(1) or
13 section 5(2) during the period of residency of a person at
14 risk is presumed to have failed to exercise reasonable care
15 with respect to lead-based-paint hazards during that period in
16 an action seeking damages on behalf of the person at risk for
17 alleged injury or loss resulting from exposure to
18 lead-based-paint hazards in the affected property.

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

21 (c) The plaintiff in an action against an owner of an
22 affected property described in paragraph (6)(a), in addition
23 to recovering all other legally cognizable damages, including
24 punitive damages where appropriate, shall be entitled to
25 recover reasonable attorney's fees.

26 Section 9. Enforcement.--

27 (1) Owners of affected properties who fail to comply
28 with the provisions of section 5 shall be deemed in violation
29 of this act. The Office of the Attorney General and any local
30 authorities responsible for the enforcement of housing codes
31 shall enforce vigorously civil remedies or criminal penalties

1 provided for by law arising out of the failure to comply with
2 the requirements of this act and may seek injunctive relief
3 where appropriate.

4 (2)(a) Any civil or criminal action by state or local
5 officials to enforce the provisions of this act shall be
6 reported to the director or his or her designee.

7 (b) The director or his or her designee shall issue an
8 annual report outlining specifically the enforcement actions
9 brought pursuant to section 13, the identity of the owners of
10 the affected properties, the authority bringing the
11 enforcement action, the nature of the action, and a
12 description of the criminal penalties or civil relief.

13 (c) After the second written notice from the director,
14 the director's local designee, the Department of Community
15 Affairs, the state or local housing authority, the Department
16 of Health, or the local health department of violations of the
17 provisions of this act occurring within an affected property,
18 or after two criminal or civil actions brought by either state
19 or local officials to enforce this act arising out of
20 violations occurring within an affected property, unless the
21 violations alleged to exist are corrected, the affected
22 property shall be considered abandoned, and the Attorney
23 General, the director or his or her designee, the Secretary of
24 Community Affairs, the secretary's local designee, the state
25 or local housing authority, the Department of Health, the
26 local health department, or any other officials having
27 jurisdiction over the affected property shall have the
28 specific power to request the court to appoint a receiver for
29 the property. The court in such instances may specifically
30 authorize the receiver to apply for loans, grants, and other
31 forms of funding necessary to correct lead-based-paint hazards

1 and meet the standards for lead-safe or lead-free status, and
2 to hold the affected property for such period of time as the
3 funding source may require to ensure that the purposes of the
4 funding have been met. The costs of such receivership shall
5 constitute a lien against the property that, if not discharged
6 by the owner upon receipt of the receiver's demand for
7 payment, shall constitute grounds for foreclosure proceedings
8 instituted by the receiver to recover such costs.

9 Section 10. Private right to injunctive relief.--

10 (1) A person at risk shall be deemed to have a right
11 to housing which is either lead-free or lead-safe under the
12 standards set forth in this act.

13 (2) If an owner of an affected property fails to
14 comply with such standards, a private right of action shall
15 exist that allows a person at risk or the parent or legal
16 guardian of a person at risk to seek injunctive relief from a
17 court with jurisdiction against the owner of the affected
18 property in the form of a court order to compel compliance
19 with the requirements of this act.

20 (3) A court shall not grant the injunctive relief
21 requested pursuant to section 13, unless, at least 30 days
22 prior to the filing requesting the injunction, the owner of
23 the affected property has received written notice of the
24 violation of standards contained in section 5 and has failed
25 to bring the affected property into compliance with the
26 applicable standards. This notice to the owner of the affected
27 property is satisfied when any of the following has occurred:

28 (a) A person at risk or his or her parent, legal
29 guardian, or attorney has notified the owner of an affected
30 property that the property fails to meet the requirements for
31

1 either lead-free status under section 5(1) or for lead-safe
2 status under section 5(2);

3 (b) The director or his or her designee, a local or
4 state housing authority, or the Department of Health has
5 notified the owner of the affected property of violations of
6 the provisions of the act occurring within an affected
7 property; or

8 (c) A criminal or civil action pursuant to section 13
9 has been brought by either state or local enforcement
10 officials to enforce this act arising out of violations
11 occurring within an affected property.

12 (4) A person who prevails in an action under section
13 13(2) is entitled to an award of the costs of the litigation
14 and to an award of reasonable attorney's fees in an amount to
15 be fixed by the court.

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

18 Section 11. Retaliatory evictions prohibited.--

19 (1) An owner of an affected property may not evict or
20 take any other retaliatory action against a person at risk or
21 his or her parent or legal guardian in response to the actions
22 of the person at risk or his or her parent or legal guardian
23 for:

24 (a) Providing information to the owner of the affected
25 property, the director, the director's designee for the
26 jurisdiction in which such property is located, the Secretary
27 of Community Affairs, the secretary's designee for the
28 jurisdiction in which such property is located, the Department
29 of Health, the Department of Community Affairs, local health
30 officials, or local housing officials concerning
31

1 lead-based-paint hazards within an affected property or
2 elevated blood levels of a person at risk; or
3 (b) Enforcing any of his or her rights under this act.
4 (2) For purposes of this section, a "retaliatory
5 action" includes any of the following actions in which the
6 activities protected under section 14(1) are a material factor
7 in motivating said action:
8 (a) A refusal to renew a lease;
9 (b) Termination of a tenancy;
10 (c) An arbitrary rent increase or decrease in services
11 to which the person at risk or his or her parent or legal
12 guardian is entitled; or
13 (d) Any form of constructive eviction.
14 (3) A person at risk or his or her parent or legal
15 guardian subject to an eviction or retaliatory action under
16 this section is entitled to relief deemed just and equitable
17 by the court and is eligible for reasonable attorney's fees
18 and costs.
19 Section 12. Educational programs.--
20 (1) In order to achieve the purposes of this act, a
21 statewide, multifaceted, ongoing educational program designed
22 to meet the needs of tenants, property owners, health care
23 providers, early childhood educators and care providers,
24 realtors and real estate agents, insurers and insurance
25 agents, and local building officials is hereby established.
26 (2) The Governor, in conjunction with the director and
27 the Lead Poisoning Prevention Council, shall sponsor a series
28 of public service announcements on radio, television, the
29 Internet, and print media about the nature of lead-based-paint
30 hazards, the importance of standards for lead poisoning
31 prevention in properties, the importance of lead-free and

1 lead-safe housing, and the purposes and responsibilities set
2 forth in this act. In developing and coordinating this public
3 information initiative, the sponsors shall seek the
4 participation and involvement of private industry
5 organizations, including those involved in real estate,
6 insurance, mortgage banking, and pediatrics.

7 (3) Within 120 days after the effective date of this
8 act, the director, in consultation with the Lead Poisoning
9 Prevention Council and the Lead Poisoning Prevention
10 Commission, shall develop culturally and linguistically
11 appropriate information pamphlets regarding childhood lead
12 poisoning, the importance of testing for elevated blood-lead
13 levels, prevention of childhood lead poisoning, treatment of
14 childhood lead poisoning, and where appropriate, the
15 requirements of this act. It is a requirement of this act that
16 these information pamphlets be distributed to parents or the
17 other legal guardians of children 6 years of age or younger on
18 the following occasions:

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

23 (b) By the health care provider at the time of the
24 child's birth and at the time of any childhood immunization or
25 vaccination unless it is established that such information
26 pamphlet has been provided previously to the parent or legal
27 guardian by the health care provider within the prior 12
28 months; and

29 (c) By the owner or operator of any child care
30 facility or preschool or kindergarten class on or before
31 October 15 of the calendar year.

1 (4) The director, in conjunction with the Department
2 of Community Affairs, within 120 days after the effective date
3 of this act shall establish guidelines and a trainer's manual
4 for a Lead Poisoning Prevention for Properties Awareness
5 Seminar with a total class time of 3 hours or less. Such
6 courses shall be offered by professional associations and
7 community organizations with a training capacity, existing
8 accredited educational institutions, and for-profit
9 educational providers. All such offerings shall be reviewed
10 and approved, on the criteria of seminar content and
11 qualifications of instructors, by the Department of Community
12 Affairs.

13 Section 13. Screening program.--

14 (1) The director shall establish a program for early
15 identification of persons at risk with elevated blood-lead
16 levels. Such program shall systematically screen children
17 under 6 years of age in the target populations identified in
18 subsection (2) for the presence of elevated blood-lead levels.
19 Children within the specified target populations shall be
20 screened with a blood-lead test at age 12 months and age 24
21 months, or between the ages of 36 months and 72 months if they
22 have not previously been screened. The director shall, after
23 consultation with recognized professional medical groups and
24 such other sources as he or she deems appropriate, promulgate
25 regulations establishing:

26 (a) The means by which and the intervals at which such
27 children under 6 years of age shall be screened for lead
28 poisoning and elevated blood-lead levels; and

29 (b) Guidelines for the medical follow-up of children
30 found to have elevated blood-lead levels.

31

1 (2) In developing screening programs to identify
2 persons at risk with elevated blood-lead levels, the director
3 shall give priority to persons within the following
4 categories:

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

8 (b) Children under the age of 6 years exhibiting
9 delayed cognitive development or other symptoms of childhood
10 lead poisoning;

11 (c) Persons at risk residing in the same household, or
12 recently residing in the same household, as another person at
13 risk with a blood-lead level of 10 ug/dL or greater;

14 (d) Persons at risk residing, or who have recently
15 resided, in buildings or geographical areas in which
16 significant numbers of cases of lead poisoning or elevated
17 blood-lead levels have recently been reported;

18 (e) Persons at risk residing, or who have recently
19 resided, in affected properties contained in buildings that
20 during the preceding 3 years have been subject to enforcement
21 actions, injunctive relief actions, or receivership actions
22 for violations of lead-poisoning-prevention regulations as
23 specified by the director; and

24 (f) Persons at risk residing in other buildings or
25 geographical areas in which the director reasonably determines
26 there is a significant risk of affected individuals having a
27 blood-lead level of 10 ug/dL or greater.

28 (3) The director shall maintain comprehensive records
29 of all screenings conducted pursuant to this section. Such
30 records shall be indexed geographically and by owner in order
31 to determine the location of areas of relatively high

1 incidence of lead poisoning and other elevated blood-lead
2 levels. Such records shall be public records.

3
4 All cases or probable cases of lead poisoning, as defined by
5 regulation by the director, found in the course of screenings
6 conducted pursuant to this section shall be reported
7 immediately to the affected individual, to his or her parent
8 or legal guardian if he or she is a minor, and to the
9 director.

10 Section 14. Definitions.--

11 (1) "Abatement" means any set of measures designed to
12 permanently eliminate lead-based paint or lead-based-paint
13 hazards. Abatement includes the removal of lead-based paint
14 and dust-lead hazards, the permanent enclosure or
15 encapsulation of lead-based paint, the replacement of
16 components or fixtures painted with lead-based paint, and the
17 removal or permanent covering of soil-based hazards.

18 (2) "Affected property" means a room or group of rooms
19 within a property constructed before 1978 that form a single
20 independent habitable dwelling unit for occupation by one or
21 more individuals which has living facilities with permanent
22 provisions for living, sleeping, eating, cooking, and
23 sanitation. Affected property does not include:

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

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

29 (c) An area which is secured and inaccessible to
30 occupants; or

31 (d) A unit that is not offered for rent.

1
2 Affected property excludes any property owned or operated by a
3 unit of federal, state, or local government, or any public,
4 quasi-public, or municipal corporation, if the property is
5 subject to lead standards that are equal to, or more stringent
6 than, the requirements for lead-safe status under section
7 5(2).

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

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

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

20 (6) "Deteriorated paint" means any interior or
21 exterior paint or other coating that is peeling, chipping,
22 chalking, or cracking, or any paint or coating located on an
23 interior or exterior surface or fixture that is otherwise
24 damaged or separated from the substrate.

25 (7) "Director" means the Director of Lead Paint
26 Poisoning Prevention.

27 (8) "Dwelling unit" means a:

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

30 (b) Housing unit in a structure that contains more
31 than one separate housing unit and in which each such unit is

1 used or occupied, or intended to be used or occupied, in whole
2 or in part, as the home or separate living quarters of one or
3 more persons.

4 (9) "Elevated blood-lead level" or "EBL" means a
5 quantity of lead in whole venous blood, expressed in
6 micrograms per deciliter (ug/dL), that exceeds 15 ug/dL or
7 such other level as may be specifically provided in this act.

8 (10) "Encapsulation" means the application of a
9 covering or coating that acts as a barrier between the
10 lead-based paint and the environment and that relies for its
11 durability on adhesion between the encapsulant and the painted
12 surface, and on the integrity of the existing bonds between
13 paint layers and between the paint and the substrate.

14 Encapsulation may be used as a method of abatement if it is
15 designed and performed so as to be permanent.

16 (11) "Exterior surfaces" means:

17 (a) All fences and porches that are part of an
18 affected property;

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

21 1. Are attached to the outside of an affected
22 property; or

23 2. Consist of other buildings that are part of the
24 affected property; and

25 (c) All painted surfaces in stairways, hallways,
26 entrance areas, recreation areas, laundry areas, and garages
27 within a multifamily rental dwelling unit that are common to
28 individual dwelling units and are accessible to a child under
29 the age of 6 years.

30
31

1 (12) "Friction surface" means an interior or exterior
2 surface that is subject to abrasion or friction, including,
3 but not limited to, certain window, floor, and stair surfaces.

4 (13) "g" means gram.

5 (14) "Hazard reduction" means measures designed to
6 reduce or eliminate human exposure to lead-based hazards
7 through methods including interim controls or abatement or a
8 combination of the two.

9 (15) "Impact surface" means an interior or exterior
10 surface that is subject to damage from the impact of repeated
11 sudden force, such as certain parts of door frames.

12 (16) "Inspection" means a comprehensive investigation
13 to determine the presence of lead-based-paint hazards and the
14 provision of a report explaining the results of the
15 investigation.

16 (17) "Interim controls" means a set of measures
17 designed to temporarily reduce human exposure to
18 lead-based-paint hazards. Interim controls include, but are
19 not limited to, repairs, painting, temporary containment,
20 specialized cleaning, clearance, ongoing lead-based paint
21 maintenance activities, and the establishment and operation of
22 management and resident education programs.

23 (18) "Interior windowsill" means a portion of the
24 horizontal window ledge that is protruding into the interior
25 of a room.

26 (19) "Lead-based paint" means paint or other surface
27 coatings that contain lead equal to or exceeding 1.0 milligram
28 per square centimeter or 0.5 percent by weight or 5,000 parts
29 per million (ppm) by weight.

30 (20) "Lead-based-paint hazard" means paint-lead
31 hazards and dust-lead hazards.

1 (21) "Local designee" means a municipal, county, or
2 other official designated by either the Director of Lead Paint
3 Poisoning Prevention, the Secretary of Community Affairs, or
4 the Secretary of Health as responsible for assisting the
5 director, relevant state agencies, and relevant county and
6 municipal authorities, in implementing the activities
7 specified by the act for the geographical area in which the
8 affected property is located.

9 (22) "mg" means milligram (thousandth of a gram).

10 (23) "Owner" means a person, firm, corporation,
11 nonprofit organization, partnership, government, guardian,
12 conservator, receiver, trustee, executor, or other judicial
13 officer, or other entity which, alone or with others, owns,
14 holds, or controls the freehold or leasehold title or part of
15 the title to property, with or without actually possessing it.
16 The definition includes a vendee who possesses the title, but
17 does not include a mortgagee or an owner of a reversionary
18 interest under a ground rent lease. Owner includes any
19 authorized agent of the owner, including a property manager or
20 leasing agent.

21 (24) "Paint-lead hazard" means any one of the
22 following:

23 (a) Any lead-based paint on a friction surface that is
24 subject to abrasion and where the dust-lead levels on the
25 nearest horizontal surface underneath the friction surface
26 (e.g., the windowsill or floor) are equal to or greater than
27 the dust-lead-hazard level of a mass per area concentration of
28 lead equal to or exceeding 40 ug/ft² on floors or 250 ug/ft²
29 on interior windowsills based on wipe samples;

30 (b) Any damaged or otherwise deteriorated lead-based
31 paint on an impact surface that is caused by impact from a

1 related building material, such as a door knob that knocks
2 into a wall or a door that knocks against its door frame;
3 (c) Any chewable lead-based painted surface on which
4 there is evidence of teeth marks;
5 (d) Any other deteriorated lead-based paint in or on
6 the exterior of any residential building or any facility
7 occupied by a person at risk.
8 (25) "Permanent" means an expected design life of at
9 least 20 years.
10 (26) "Person at risk" means a child under the age of 6
11 years or a pregnant woman who resides or regularly spends at
12 least 24 hours per week in an affected property.
13 (27) "Relocation expenses" means all expenses
14 necessitated by the relocation of a tenant's household to
15 lead-safe housing, including moving and hauling expenses, the
16 HEPA-vacuuming of all upholstered furniture, payment of a
17 security deposit for the lead-safe housing, and installation
18 and connection of utilities and appliances.
19 (28) "Tenant" means the individual named as the lessee
20 in a lease, rental agreement, or occupancy agreement for a
21 dwelling unit.
22 (29) "ug" means microgram (millionth of a gram).
23 Section 15. This act shall take effect July 1, 2004.
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