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1 A bill to be entitled

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

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31 performing inspections; providing for duration of
32 accreditation; providing registration fees for persons
33 performing lead hazard abatement and persons performing
34 inspections; providing for deposit of fees; providing for
35 enforcement; providing requirements for immunity from
36 civil liability for injuries or damages resulting from the
37 ingestion of lead; providing exceptions to immunity;
38 providing requirements with respect to documentation and
39 notification of injury; providing procedure and
40 requirements with respect to a qualified offer; providing
41 for maximum amounts payable under a qualified offer;
42 providing for certification of compliance with respect to
43 a qualified offer; providing for presumption of negligence
44 in actions against property owners not in compliance;
45 providing for enforcement of the act; providing for
46 reporting of enforcement actions; providing for
47 receivership of properties not meeting certain standards;
48 providing for injunctive relief; providing for notice of
49 intent to seek injunctive relief; providing for recovery
50 of costs and attorney's fees; prohibiting retaliatory
51 evictions; defining "retaliatory action"; providing for
52 relief for retaliatory eviction and retaliatory action;
53 providing for the establishment of a statewide
54 comprehensive educational program; providing for a public
55 information initiative; providing for distribution of
56 specified literature; providing for a Lead Poisoning
57 Prevention for Properties seminar; requiring the
58 establishment of a program for early identification of
59 persons at risk of elevated levels of lead in the blood;
60 providing for screening of children; providing for

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61 screening priorities; providing for the maintenance of
 62 records of screenings; providing for reporting of cases of
 63 lead poisoning; providing definitions; providing an
 64 effective date.

65
 66 Be It Enacted by the Legislature of the State of Florida:

67
 68 Section 1. Popular name.--This act shall be known by the
 69 popular name, the "Florida Childhood Lead Poisoning Reduction
 70 Act."

71 Section 2. Legislative findings.--

72 (1) Nearly 300,000 American children may have levels of
 73 lead in their blood in excess of 10 micrograms per deciliter
 74 (µg/dL). Unless prevented or treated, elevated blood lead levels
 75 in egregious cases may result in impairment of the ability to
 76 think, concentrate, and learn.

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

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

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

87 (5) The dangers posed by lead-based paint can be
 88 substantially reduced and largely eliminated by taking measures
 89 to prevent paint deterioration and limiting children's exposure
 90 to paint chips and lead dust.

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91 (6) The deterioration of lead-based paint in older
92 residences results in increased expenses each year for the state
93 in the form of special education and other education expenses,
94 medical care for lead-poisoned children, and expenditures for
95 delinquent youth and others needing special supervision.

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

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

102 (9) The incidence of childhood lead poisoning can be
103 reduced substantially without significant additional cost to the
104 state by creating appropriate incentives for property owners to
105 make their properties lead free or lead safe and by targeting
106 existing state resources used to prevent childhood lead
107 poisoning more effectively.

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

111 (11) A majority of Florida children living in
112 circumstances suggesting a significant possibility that they
113 have elevated levels of lead in their blood are not currently
114 tested for the presence of such elevated blood lead levels.

115 (12) Early detection of elevated blood levels in children
116 allows treatment and mitigation of the conditions resulting in
117 further elevation of blood lead levels and often can prevent
118 further harm.

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119 Section 3. Legislative purposes.--To promote the
 120 elimination of childhood lead poisoning in the state, the
 121 purposes of this act are:

122 (1) To significantly reduce the incidence of childhood
 123 lead poisoning in the state.

124 (2) To increase the supply of affordable rental housing in
 125 the state in which measures have been taken to reduce
 126 substantially the risk of childhood lead poisoning.

127 (3) To provide protection from potentially ruinous tort
 128 actions for those landlords who undertake specified lead hazard
 129 reduction measures.

130 (4) To provide a mechanism to facilitate prompt payment of
 131 medical and rehabilitation expenses and relocation costs for
 132 those remaining individuals who are affected by childhood lead
 133 poisoning.

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

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

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

144 (1) The Secretary of the Department of Health shall
 145 appoint a Director of Lead Poisoning Prevention who shall serve
 146 at the pleasure of the secretary. The director shall be
 147 responsible, subject to the authority of the secretary, for
 148 carrying out and administering all programs created pursuant to

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149 the provisions of this act. To the extent necessary, the
 150 director shall designate which local government officials shall
 151 assist him or her in carrying out these duties. The director may
 152 contract with any agency or agencies, individuals, or groups for
 153 the provision of necessary services, subject to appropriation,
 154 and shall adopt and from time to time amend such rules as may be
 155 necessary; provided, however, that such rules, regulations or
 156 amendments thereto shall be filed with the appropriate
 157 legislative committees responsible for health matters and
 158 housing matters at least 30 days before the effective date of
 159 such rules, regulations, or amendments.

160 (2) The director shall chair the Lead Poisoning Prevention
 161 Coordinating Council. The council shall include a designee of
 162 the Secretary of the Department of Community Affairs and a
 163 designee of the Secretary of the Department of Environmental
 164 Protection.

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

172 (4) The Lead Poisoning Prevention Commission is hereby
 173 created.

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

175 1. To report to the Governor, the President of the Senate,
 176 and the Speaker of the House of Representatives in writing by
 177 October 1, 2005, recommending legislation providing both
 178 additional incentives for all affected property owners to bring

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179 their premises into compliance with the lead safe standards
 180 outlined in section 5(2) and additional means of enforcement and
 181 penalties for those property owners who fail to achieve
 182 compliance. The incentives to be considered should include,
 183 among others, local property tax credits and revolving loan
 184 funds.

185 2. Study and collect information on the effectiveness of
 186 this act in fulfilling its legislative purposes as defined in
 187 section 3.

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

191 4. Consult with the responsible departments of state
 192 government and applicable state agencies on the implementation
 193 of this act.

194 5. Prepare and submit a report by October 1, 2005, to the
 195 Governor, the President of the Senate, and the Speaker of the
 196 House of Representatives on the results of implementing this
 197 act.

198 (b) The commission shall consist of 9 members. The
 199 membership shall include:

200 1. The Director of Lead Poisoning Prevention.

201 2. The Secretary of Community Affairs or his or her
 202 designee.

203 3. One member of the Senate, appointed by the President of
 204 the Senate.

205 4. One member of the House of Representatives, appointed
 206 by the Speaker of the House of Representatives.

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

208 a. A child advocate.

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- 209 b. A health care provider.
- 210 c. A representative of local government.
- 211 d. Two owners of rental property in the state.
- 212 (c) The commission shall be chaired by Director of Lead
- 213 Poisoning Prevention.
- 214 (d) Members of the commission shall serve without
- 215 compensation.

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

217 property status.--

- 218 (1) An affected property is "lead free" if:
- 219 (a) The affected property was constructed after 1978; or
- 220 (b) The owner of the affected property submits to the
- 221 director or the director's designee for the jurisdiction in
- 222 which such property is located an inspection report which
- 223 indicates that the affected property has been tested for the
- 224 presence of lead in accordance with standards and procedures
- 225 established by the regulations promulgated by the director and
- 226 states that:

227 1. All interior surfaces of the affected property are lead

228 free; and

229 2.a. All exterior painted surfaces of the affected

230 property that were chipping, peeling, or flaking have been

231 restored with paint that is not lead-based paint; or

232 b. No exterior painted surfaces of the affected property

233 are chipping, peeling, or flaking.

234 (2) An affected property is "lead safe" if the following

235 treatments to reduce lead-based paint hazards have been

236 completed by someone accredited under section 7 and in

237 compliance with the regulations established by the director:

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- 238 (a) Visual review of all exterior and interior painted
- 239 surfaces;
- 240 (b) Removal and repainting of chipping, peeling, or
- 241 flaking paint on exterior and interior painted surfaces;
- 242 (c) Stabilization and repainting of any interior or
- 243 exterior painted surfaces which have lead-based paint hazards;
- 244 (d) Repair of any structural defect that is causing the
- 245 paint to chip, peel, or flake that the owner of the affected
- 246 property has knowledge of or, with the exercise of reasonable
- 247 care, should have knowledge of;
- 248 (e) Stripping and repainting, replacing, or encapsulating
- 249 of all interior windowsills and window troughs with vinyl,
- 250 metal, or any other durable material which renders the surface
- 251 smooth and cleanable;
- 252 (f) Installing caps of vinyl, aluminum, or any other
- 253 material in a manner and under conditions approved by the
- 254 director in all window wells in order to make the window wells
- 255 smooth and cleanable;
- 256 (g) Fixing the top sash of all windows in place in order
- 257 to eliminate the friction caused by movement of the top sash,
- 258 except for a treated or replacement window that is free of lead-
- 259 based paint on its friction surfaces;
- 260 (h) Rehanging all doors as necessary to prevent the
- 261 rubbing together of a lead-painted surface with another surface;
- 262 (i) Making all bare floors smooth and cleanable;
- 263 (j) Ensuring that all kitchen and bathroom floors are
- 264 overlaid with a smooth, water-resistant covering; and
- 265 (k) HEPA-vacuuming and washing of the interior of the
- 266 affected property with high phosphate detergent or its
- 267 equivalent, as determined by the director.

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268 (3)(a) Whenever an owner of an affected property intends
269 to make repairs or perform maintenance work that will disturb
270 the paint on interior surfaces of an affected property, the
271 owner shall give any tenant in such affected property at least
272 48 hours' written advance notice and shall make reasonable
273 efforts to ensure that all persons who are not persons at risk
274 are not present in the area where work is performed and that all
275 persons at risk are removed from the affected property when the
276 work is performed.

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

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

285 (d) If an owner has made all reasonable efforts to cause
286 the tenant to temporarily vacate an affected property in order
287 to perform work that will disturb the paint on interior
288 surfaces, and the tenant refuses to vacate the affected
289 property, the owner shall not be liable for any damages arising
290 from the tenant's refusal to vacate.

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

297 Section 6. Voluntary inspection; mandatory inspection.--

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298 (1) An owner of an affected property at any time after the
 299 effective date of this act may request that the Director of Lead
 300 Poisoning Prevention or his or her local designee inspect an
 301 affected property to determine whether it complies with the
 302 requirements for lead-free property status as specified in
 303 section 5(1) or the requirements for lead-safe property status
 304 as specified in section 5(2). Such inspection shall be completed
 305 within 30 days after the owner's request.

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

309 (a) Entitled to the liability protection provisions of
 310 section 8.

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

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

323 (4) After July 1, 2005, the director or the director's
 324 designee for the jurisdiction in which an affected property is
 325 located shall order an inspection of an affected property, at
 326 the expense of the owner of the affected property, whenever the
 327 director or the director's designee for the jurisdiction in

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328 which such property is located is notified that the affected
 329 property reasonably appears to comply with neither the lead-free
 330 standard nor the lead-safe standard as those standards are
 331 defined in section 5 and a person at risk resides in the
 332 affected property or spends more than 24 hours per week in the
 333 affected property. An inspection required under this subsection
 334 shall be completed within 90 days after notification of the
 335 director or the director's designee for the jurisdiction in
 336 which such property is located.

337 (5) The director or the director's designee for the
 338 jurisdiction in which an affected property is located shall
 339 order an inspection of an affected property, at the expense of
 340 the owner of the affected property, whenever the director or the
 341 director's designee for the jurisdiction in which such property
 342 is located is notified that a person at risk who resides in the
 343 affected property or spends more than 24 hours per week in the
 344 affected property has an elevated blood lead level greater than
 345 or equal to 15 µg/dL. An inspection under this subsection shall
 346 be completed within 15 days after notification of the director
 347 or the director's designee for the jurisdiction in which such
 348 property is located.

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

354 (7) The owner of an affected property shall pay a fee at
 355 the time of the inspection of an affected property sufficient to
 356 pay the full costs of the inspection.

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357 Section 7. Accreditation of inspectors and contractors
358 performing work.--

359 (1) No person shall act as a contractor or supervisor to
360 perform the work necessary for lead-hazard abatement as defined
361 in this act unless that person is accredited by the director.
362 The director shall accredit for these purposes any person
363 meeting the standards described in one of the following
364 paragraphs:

365 (a) Regulations to be adopted by the director pursuant to
366 this act governing the accreditation of individuals to engage in
367 lead-based paint activities sufficient to satisfy the
368 requirements of 40 C.F.R. s. 745.325 or any applicable successor
369 provisions to 40 C.F.R. s. 745.325.

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

374 (c) Certification by a state or tribal program authorized
375 by the United States Environmental Protection Agency to certify
376 individuals engaged in lead-based paint activities pursuant to
377 40 C.F.R. s. 745.325 or any applicable successor provisions to
378 40 C.F.R. s. 745.325.

379
380 The director shall, by regulation, create exceptions to the
381 accreditation requirement for instances where the disturbance of
382 lead-based paint is incidental.

383 (2) An inspector accredited by the director shall conduct
384 all inspections required by section 6 of this act, or otherwise
385 required by this act. The director shall accredit as an
386 inspector any individual meeting the requirements of paragraph

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387 (a) or paragraph (b):

388 (a) Regulations to be adopted by the director pursuant to
 389 this act governing the accreditation of individuals eligible to
 390 conduct the inspections required by this act; or

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

394 (3) The accreditation of contractors or supervisors of
 395 those performing the work necessary for lead-hazard abatement,
 396 and the accreditation of those performing the inspections
 397 required by this section, shall extend for a period of 3 years
 398 unless the director has probable cause to believe a person
 399 accredited under this section has violated the terms of the
 400 accreditation or engaged in illegal or unethical conduct related
 401 to inspections required by this act, in which case the
 402 accreditation to perform inspections shall be suspended pending
 403 a hearing in accordance with the provisions of state law.

404 (4) The director shall establish by regulation a schedule
 405 of fees for the registration of persons performing lead hazard
 406 abatement and a separate schedule for persons performing
 407 inspections pursuant to this act. Such fees shall be required to
 408 be paid at the time of initial registration and at the time of
 409 subsequent renewal of registration, and shall be sufficient to
 410 cover all costs, including the costs of state personnel,
 411 attributable to accreditation activities conducted under this
 412 section.

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

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416 (b) The Chief Financial Officer shall administer the
 417 account.

418 (c) Funds deposited in the separate account within the
 419 State Housing Trust Fund established under this subsection shall
 420 be invested and reinvested and any investment earnings shall be
 421 paid into the account.

422 (5) The provisions and procedures of the Department of
 423 Business and Professional Regulation shall be used for and shall
 424 apply to the enforcement of violations of this section, any
 425 rules adopted under this act, and any condition of accreditation
 426 issued under this act.

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

428 (1) This section applies to all potential bases of civil
 429 liability for alleged injury or loss to a person caused by the
 430 ingestion of lead by a person at risk in an affected property;
 431 except that this section does not apply to any claim in which
 432 the elevated blood-lead level of the person at risk is
 433 documented to have existed on or before the date 60 days after
 434 the affected property at which the person at risk resides or
 435 otherwise allegedly was exposed to lead has been certified as
 436 lead free under section 5(1) or lead safe under section 5(2).

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

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

443 (b) The property owner or his agent has made a qualified
 444 offer as described in subsection (5) to the person at risk, or
 445 his or her parent or legal guardian, in a case in which the

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446 person at risk has a documented elevated blood lead level of 15
 447 µg/dL or more performed more than 60 days following
 448 certification of the premises as lead safe or lead free pursuant
 449 to section 5, regardless of whether such qualified offer has
 450 been accepted or rejected by the person at risk, or his or her
 451 parent or legal guardian.

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

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

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

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

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

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

472 (4) A person may not bring an action against an owner of
 473 an affected property whose property has been certified as lead
 474 free under section 5(1) or lead-safe under section 5(2) for
 475 damages arising from alleged injury or loss to a person at risk

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476 caused by lead-based paint hazard unless he or she documents his
 477 or her alleged injury with a test for elevated blood lead levels
 478 and presents a written notice to the owner of the affected
 479 property or his or her agent or employee of the claim and test
 480 results.

481 (a) If such test results show an elevated blood lead level
 482 of less than 15 µg/dL, the person at risk or his or her parent
 483 or legal guardian shall not recover damages from the owner of
 484 the affected property, or his or her agents, or employees unless
 485 the person at risk or his or her parent or legal guardian can
 486 show by clear and convincing evidence that the damage or injury
 487 to the person at risk resulted from exposure to lead-based paint
 488 and was caused by either:

489 1. Intentional acts by the owner or his or her agents or
 490 employees; or

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

494 (b) If such test results show an elevated blood level of
 495 15 µg/dL or greater, the owner of the affected property or his
 496 or her agent or employee shall have the opportunity to make a
 497 qualified offer under subsection (5).

498 (c) If the concentration of lead in a whole venous blood
 499 sample of a person at risk tested within 60 days after the
 500 person at risk begins residing or regularly spends at least 24
 501 hours per week in an affected property that is certified as
 502 being in compliance with the provisions of section 5(1) or
 503 section 5(2) is equal to or greater than 15 µg/dL, it shall be
 504 presumed that the exposure to lead-based paint occurred before a

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505 person at risk began residing or regularly spending at least 24
 506 hours per week in the affected property.

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

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

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

524 (d) Subject to the exception in section 5(3), acceptance
 525 of a qualified offer by a person at risk, or by a parent, legal
 526 guardian, or other person authorized to respond on behalf of a
 527 person at risk, discharges and releases all potential liability
 528 of the offeror, the offeror's insured or principal, and any
 529 participating co-offeror to the person at risk and to the parent
 530 or legal guardian of the person at risk for alleged injury or
 531 loss caused by the lead-based paint hazard in the affected
 532 property.

533 (e) No owner of an affected property, or his or her agent,
 534 employee, attorney, or anyone acting on his or her behalf, shall

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535 represent to a person at risk, his or her parent or guardian, or
536 anyone acting on his or her behalf that an offer of settlement
537 in an action resulting from a lead-based paint hazard in an
538 affected property is a qualified offer unless the affected
539 property has been certified as lead free under section 5(1) or
540 lead safe under section 5(2) and unless the offeror reasonably
541 believes that the settlement offer satisfies all requirements of
542 this section. Any settlement resulting from a settlement offer
543 purporting to be a qualified offer which does not satisfy the
544 requirements of this section shall, at the election of the
545 person at risk, his or her parent or guardian, or other
546 representative, be deemed null and void and of no legal effect.
547 Further, misrepresentation of a settlement offer as a qualified
548 offer when the offer does not meet these requirements shall
549 subject the offeror to criminal penalties for perjury and/or
550 applicable professional disciplinary action. The statute of
551 limitations for an action by a person at risk with an elevated
552 blood lead level or his or her parent or legal guardian is
553 tolled until the misrepresentation described in this paragraph
554 is discovered.

555 (f) A copy of the qualified offer shall be sent to the
556 director or the director's local designee. The director or the
557 director's local designee shall maintain a copy of the qualified
558 offer in the case management file of the person at risk. In
559 addition, the director or his or her designee also shall
560 directly notify the person at risk or, in the case of a minor,
561 the parent or legal guardian of the minor, of state and local
562 resources available for lead-poisoning prevention and treatment.

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

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

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

572 b. The temporary relocation of the household of the
 573 affected person at risk to lead-safe housing while necessary
 574 lead-hazard reduction treatments are being performed in the
 575 affected property to make the affected property lead safe;

576 2. Medically necessary treatment for the affected person
 577 at risk as determined by the treating physician or other health
 578 care provider or case manager of the person at risk that is
 579 necessary to mitigate the effects of lead poisoning, as defined
 580 by the Department of Health by rule, and in the case of a child,
 581 until the child reaches the age of 18 years; and

582 3. Reasonable attorney's fees, not to exceed the lesser of
 583 \$2,500 or actual time spent in the investigation, preparation,
 584 and presentation of the claim multiplied by an hourly rate of
 585 \$150 per hour.

586 (h) An offeror is required to pay reasonable expenses for
 587 the medically necessary treatments under subparagraph (g)2. only
 588 if coverage for these treatments is not otherwise provided by
 589 Medicaid or by a health insurance plan under which the person at
 590 risk has coverage or in which the person at risk is enrolled.
 591 The health insurance plan shall have no right of subrogation
 592 against the party making the qualified offer.

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593 (i) The amounts payable under a qualified offer made under
 594 this section are subject to the following aggregate maximum
 595 caps:

596 1. Twenty-five thousand dollars for all medically
 597 necessary treatments as provided and limited in subparagraph
 598 (g)2.; and

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

601
 602 All payments under a qualified offer as specified in paragraph
 603 (g) shall be paid to the provider of the service, except that
 604 payment of incidental expenses may be paid directly to the
 605 person at risk or, in the case of a child, to the parent or
 606 legal guardian of the person at risk. The payments under a
 607 qualified offer may not be considered income or an asset of the
 608 person at risk, the parent of a person at risk who is a child,
 609 or the legal guardian for purposes of determining eligibility
 610 under any state or federal entitlement program.

611 (j) A qualified offer shall include a certification by the
 612 owner of the affected property, under the penalty of perjury,
 613 that the owner has complied with the applicable provisions of
 614 section 5 and this section in a manner that qualified the owner
 615 to make a qualified offer.

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

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

621 (6)(a) An owner of an affected property who is not in
 622 compliance with the provisions of either section 5(1) or section

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623 5(2) during the period of residency of a person at risk is
 624 presumed to have failed to exercise reasonable care with respect
 625 to lead-based paint hazards during that period in an action
 626 seeking damages on behalf of the person at risk for alleged
 627 injury or loss resulting from exposure to lead-based paint
 628 hazards in the affected property.

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

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

636 Section 9. Enforcement.--

637 (1) Owners of affected properties who fail to comply with
 638 the provisions of section 5 shall be deemed in violation of this
 639 act. The Office of the Attorney General and any local
 640 authorities responsible for the enforcement of housing codes
 641 shall enforce vigorously civil remedies or criminal penalties
 642 provided for by law arising out of the failure to comply with
 643 the requirements of this act and may seek injunctive relief
 644 where appropriate.

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

648 (b) The director or his or her designee shall issue an
 649 annual report outlining specifically the enforcement actions
 650 brought pursuant to section 13, the identity of the owners of
 651 the affected properties, the authority bringing the enforcement

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652 action, the nature of the action, and a description of the
653 criminal penalties and/or civil relief.

654 (c) After the second written notice from the director, the
655 director's local designee, the Department of Community Affairs,
656 the state or local housing authority, the Department of Health,
657 or the local health department of violations of the provisions
658 of this act occurring within an affected property, or after two
659 criminal or civil actions brought by either state or local
660 officials to enforce this act arising out of violations
661 occurring within an affected property, unless the violations
662 alleged to exist are corrected, the affected property shall be
663 considered abandoned, and the Attorney General, the director or
664 his or her designee, the Secretary of Community Affairs, the
665 secretary's local designee, the state or local housing
666 authority, the Department of Health, the local health
667 department, or any other officials having jurisdiction over the
668 affected property shall have the specific power to request the
669 court to appoint a receiver for the property. The court in such
670 instances may specifically authorize the receiver to apply for
671 loans, grants, and other forms of funding necessary to correct
672 lead-based paint hazards and meet the standards for lead-safe or
673 lead-free status, and to hold the affected property for such
674 period of time as the funding source may require to ensure that
675 the purposes of the funding have been met. The costs of such
676 receivership shall constitute a lien against the property that,
677 if not discharged by the owner upon receipt of the receiver's
678 demand for payment, shall constitute grounds for foreclosure
679 proceedings instituted by the receiver to recover such costs.

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

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

684 (2) If an owner of an affected property fails to comply
 685 with such standards, a private right of action shall exist that
 686 allows a person at risk or the parent or legal guardian of a
 687 person at risk to seek injunctive relief from a court with
 688 jurisdiction against the owner of the affected property in the
 689 form of a court order to compel compliance with the requirements
 690 of this act.

691 (3) A court shall not grant the injunctive relief
 692 requested pursuant to section 13, unless, at least 30 days prior
 693 to the filing requesting the injunction, the owner of the
 694 affected property has received written notice of the violation
 695 of standards contained in section 5 and has failed to bring the
 696 affected property into compliance with the applicable standards.
 697 This notice to the owner of the affected property is satisfied
 698 when any of the following has occurred:

699 (a) A person at risk or his or her parent, legal guardian,
 700 or attorney has notified the owner of an affected property that
 701 the property fails to meet the requirements for either lead-free
 702 status under section 5(1) or for lead-safe status under section
 703 5(2);

704 (b) The director or his or her designee, a local or state
 705 housing authority, or the Department of Health has notified the
 706 owner of the affected property of violations of the provisions
 707 of the act occurring within an affected property; or

708 (c) A criminal or civil action pursuant to section 13 has
 709 been brought by either state or local enforcement officials to

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710 enforce this act arising out of violations occurring within an
 711 affected property.

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

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

718 Section 11. Retaliatory evictions prohibited.--

719 (1) An owner of an affected property may not evict or take
 720 any other retaliatory action against a person at risk or his or
 721 her parent or legal guardian in response to the actions of the
 722 person at risk or his or her parent or legal guardian for:

723 (a) Providing information to the owner of the affected
 724 property, the director, the director's designee for the
 725 jurisdiction in which such property is located, the Secretary of
 726 Community Affairs, the secretary's designee for the jurisdiction
 727 in which such property is located, the Department of Health, the
 728 Department of Community Affairs, local health officials, or
 729 local housing officials concerning lead-based paint hazards
 730 within an affected property or elevated blood levels of a person
 731 at risk; or

732 (b) Enforcing any of his or her rights under this act.

733 (2) For purposes of this section, a "retaliatory action"
 734 includes any of the following actions in which the activities
 735 protected under section 14(1) are a material factor in
 736 motivating said action:

737 (a) A refusal to renew a lease;

738 (b) Termination of a tenancy;

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

742 (d) Any form of constructive eviction.

743 (3) A person at risk or his or her parent or legal
744 guardian subject to an eviction or retaliatory action under this
745 section is entitled to relief deemed just and equitable by the
746 court and is eligible for reasonable attorney's fees and costs.

747 Section 12. Educational programs.--

748 (1) In order to achieve the purposes of this act, a
749 statewide, multifaceted, ongoing educational program designed to
750 meet the needs of tenants, property owners, health care
751 providers, early childhood educators and care providers,
752 realtors and real estate agents, insurers and insurance agents,
753 and local building officials is hereby established.

754 (2) The Governor, in conjunction with the director and the
755 Lead Poisoning Prevention Council, shall sponsor a series of
756 public service announcements on radio, television, the Internet,
757 and print media about the nature of lead-based paint hazards,
758 the importance of standards for lead poisoning prevention in
759 properties, the importance of lead-free and lead-safe housing,
760 and the purposes and responsibilities set forth in this act. In
761 developing and coordinating this public information initiative,
762 the sponsors shall seek the participation and involvement of
763 private industry organizations, including those involved in real
764 estate, insurance, mortgage banking, and pediatrics.

765 (3) Within 120 days after the effective date of this act,
766 the director, in consultation with the Lead Poisoning Prevention
767 Council and the Lead Poisoning Prevention Commission, shall
768 develop culturally and linguistically appropriate information

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769 pamphlets regarding childhood lead poisoning, the importance of
 770 testing for elevated blood lead levels, prevention of childhood
 771 lead poisoning, treatment of childhood lead poisoning, and where
 772 appropriate, the requirements of this act. It is a requirement
 773 of this act that these information pamphlets be distributed to
 774 parents or the other legal guardians of children 6 years of age
 775 or younger on the following occasions:

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

780 (b) By the health care provider at the time of the child's
 781 birth and at the time of any childhood immunization or
 782 vaccination unless it is established that such information
 783 pamphlet has been provided previously to the parent or legal
 784 guardian by the health care provider within the prior 12 months;
 785 and

786 (c) By the owner or operator of any child care facility or
 787 preschool or kindergarten class on or before October 15 of the
 788 calendar year.

789 (4) The director, in conjunction with the Department of
 790 Community Affairs, within 120 days after the effective date of
 791 this act shall establish guidelines and a trainer's manual for a
 792 Lead Poisoning Prevention for Properties Awareness Seminar with
 793 a total class time of 3 hours or less. Such courses shall be
 794 offered by professional associations and community organizations
 795 with a training capacity, existing accredited educational
 796 institutions, and for-profit educational providers. All such
 797 offerings shall be reviewed and approved, on the criteria of

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798 seminar content and qualifications of instructors, by the
 799 Department of Community Affairs.

800 Section 13. Screening program.--

801 (1) The director shall establish a program for early
 802 identification of persons at risk with elevated blood lead
 803 levels. Such program shall systematically screen children under
 804 6 years of age in the target populations identified in
 805 subsection (2) for the presence of elevated blood lead levels.

806 Children within the specified target populations shall be
 807 screened with a blood-lead test at age 12 months and age 24
 808 months, or between the ages of 36 months and 72 months if they

809 have not previously been screened. The director shall, after
 810 consultation with recognized professional medical groups and

811 such other sources as he or she deems appropriate, promulgate
 812 regulations establishing: (a) The means by which and the

813 intervals at which such children under 6 years of age shall be
 814 screened for lead poisoning and elevated blood lead levels; and

815 (b) Guidelines for the medical follow up of children found
 816 to have elevated blood lead levels.

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

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

823 (b) Children under the age of 6 years exhibiting delayed
 824 cognitive development or other symptoms of childhood lead
 825 poisoning;

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

829 (d) Persons at risk residing, or who have recently
 830 resided, in buildings or geographical areas in which significant
 831 numbers of cases of lead poisoning or elevated blood lead levels
 832 have recently been reported;

833 (e) Persons at risk residing, or who have recently
 834 resided, in affected properties contained in buildings which
 835 during the preceding 3 years have been subject to enforcement
 836 actions, injunctive relief actions, or receivership actions for
 837 violations of lead poisoning prevention regulations as specified
 838 by the director; and

839 (f) Persons at risk residing in other buildings or
 840 geographical areas in which the director reasonably determines
 841 there is a significant risk of affected individuals having a
 842 blood lead level of 10 µg/dL or greater.

843 (3) The director shall maintain comprehensive records of
 844 all screenings conducted pursuant to this section. Such records
 845 shall be indexed geographically and by owner in order to
 846 determine the location of areas of relatively high incidence of
 847 lead poisoning and other elevated blood lead levels. Such
 848 records shall be public records.

849
 850 All cases or probable cases of lead poisoning, as defined by
 851 regulation by the director, found in the course of screenings
 852 conducted pursuant to this section shall be reported immediately
 853 to the affected individual, to his or her parent or legal
 854 guardian if he or she is a minor, and to the director.

855 Section 14. Definitions.--

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856 (1) "Abatement" means any set of measures designed to
 857 permanently eliminate lead-based paint or lead-based paint
 858 hazards. Abatement includes the removal of lead-based paint and
 859 dust-lead hazards, the permanent enclosure or encapsulation of
 860 lead-based paint, the replacement of components or fixtures
 861 painted with lead-based paint, and the removal or permanent
 862 covering of soil-based hazards.

863 (2) "Affected property" means a room or group of rooms
 864 within a property constructed before 1978 that form a single
 865 independent habitable dwelling unit for occupation by one or
 866 more individuals that has living facilities with permanent
 867 provisions for living, sleeping, eating, cooking, and
 868 sanitation. Affected property does not include:

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

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

874 (c) An area which is secured and inaccessible to
 875 occupants; or

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

877
 878 Affected property excludes any property owned or operated by a
 879 unit of federal, state, or local government, or any public,
 880 quasi-public, or municipal corporation, if the property is
 881 subject to lead standards that are equal to, or more stringent
 882 than, the requirements for lead-safe status under section 5(2).

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

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

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

895 (6) "Deteriorated paint" means any interior or exterior
 896 paint or other coating that is peeling, chipping, chalking, or
 897 cracking, or any paint or coating located on an interior or
 898 exterior surface or fixture that is otherwise damaged or
 899 separated from the substrate.

900 (7) "Director" means the Director of Lead Paint Poisoning
 901 Prevention.

902 (8) "Dwelling unit" means a:

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

905 (b) Housing unit in a structure that contains more than
 906 one separate housing unit and in which each such unit is used or
 907 occupied, or intended to be used or occupied, in whole or in
 908 part, as the home or separate living quarters of one or more
 909 persons.

910 (9) "Elevated blood lead level" or "EBL" means a quantity
 911 of lead in whole venous blood, expressed in micrograms per
 912 deciliter (µg/dL), that exceeds 15 µg/dL or such other level as
 913 may be specifically provided in this act.

914 (10) "Encapsulation" means the application of a covering
 915 or coating that acts as a barrier between the lead-based paint

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916 and the environment and that relies for its durability on
 917 adhesion between the encapsulant and the painted surface, and on
 918 the integrity of the exiting bonds between paint layers and
 919 between the paint and the substrate. Encapsulation may be used
 920 as a method of abatement if it is designed and performed so as
 921 to be permanent.

922 (11) "Exterior surfaces" means:

923 (a) All fences and porches that are part of an affected
 924 property;

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

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

928 2. Consist of other buildings that are part of the
 929 affected property; and

930 (c) All painted surfaces in stairways, hallways, entrance
 931 areas, recreation areas, laundry areas, and garages within a
 932 multifamily rental dwelling unit that are common to individual
 933 dwelling units and are accessible to a child under the age of 6
 934 years.

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

938 (13) "g" means gram.

939 (14) "Hazard reduction" means measures designed to reduce
 940 or eliminate human exposure to lead-based hazards through
 941 methods including interim controls or abatement or a combination
 942 of the two.

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

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946 (16) "Inspection" means a comprehensive investigation to
947 determine the presence of lead-based paint hazards and the
948 provision of a report explaining the results of the
949 investigation.

950 (17) "Interim controls" means a set of measures designed
951 to reduce temporarily human exposure to lead-based paint
952 hazards. Interim controls include, but are not limited to,
953 repairs, painting, temporary containment, specialized cleaning,
954 clearance, ongoing lead-based paint maintenance activities, and
955 the establishment and operation of management and resident
956 education programs.

957 (18) "Interior windowsill" means a portion of the
958 horizontal window ledge that is protruding into the interior of
959 a room.

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

964 (20) "Lead-based paint hazard" means paint-lead hazards
965 and dust-lead hazards.

966 (21) "Local designee" means a municipal, county, or other
967 official designated by either the Director of Lead Paint
968 Poisoning Prevention, the Secretary of Community Affairs or the
969 Secretary of Health as responsible for assisting the director,
970 relevant state agencies, and relevant county and municipal
971 authorities, in implementing the activities specified by the act
972 for the geographical area in which the affected property is
973 located.

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

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975 (23) "Owner" means a person, firm, corporation, nonprofit
 976 organization, partnership, government, guardian, conservator,
 977 receiver, trustee, executor, or other judicial officer, or other
 978 entity which, alone or with others, owns, holds, or controls the
 979 freehold or leasehold title or part of the title to property,
 980 with or without actually possessing it. The definition includes
 981 a vendee who possesses the title, but does not include a
 982 mortgagee or an owner of a reversionary interest under a ground
 983 rent lease. Owner includes any authorized agent of the owner,
 984 including a property manager or leasing agent.

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

986 (a) Any lead-based paint on a friction surface that is
 987 subject to abrasion and where the dust-lead levels on the
 988 nearest horizontal surface underneath the friction surface
 989 (e.g., the windowsill or floor) are equal to or greater than the
 990 dust-lead hazard level of a mass per area concentration of lead
 991 equal to or exceeding 40 µg/ft² on floors or 250 µg/ft² on
 992 interior windowsills based on wipe samples;

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

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

999 (d) Any other deteriorated lead-based paint in or on the
 1000 exterior of any residential building or any facility occupied by
 1001 a person at risk.

1002 (25) "Permanent" means an expected design life of at least
 1003 20 years.

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1004 (26) "Person at risk" means a child under the age of 6
 1005 years or a pregnant woman who resides or regularly spends at
 1006 least 24 hours per week in an affected property.

1007 (27) "Relocation expenses" means all expenses necessitated
 1008 by the relocation of a tenant's household to lead-safe housing,
 1009 including moving and hauling expenses, the HEPA-vacuuuming of all
 1010 upholstered furniture, payment of a security deposit for the
 1011 lead-safe housing, and installation and connection of utilities
 1012 and appliances.

1013 (28) "Tenant" means the individual named as the lessee in
 1014 a lease, rental agreement, or occupancy agreement for a dwelling
 1015 unit.

1016 (29) "µg" means microgram (millionth of a gram).

1017 Section 15. This act shall take effect July 1, 2004.