

By the Committee on Health, Aging, and Long-Term Care; and
Senator Miller

317-2159B-04

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

1 inspection reports; providing for certification
2 of persons performing lead-hazard-reduction
3 activities by the Department of Health;
4 providing for certification of persons
5 performing inspections; providing for duration
6 of certification; providing certification fees
7 for persons performing lead-hazard abatement
8 and persons performing inspections; providing
9 for deposit of fees; providing for enforcement
10 of the act; providing for reporting of
11 enforcement actions; providing for receivership
12 of properties not meeting certain standards;
13 providing for injunctive relief; providing for
14 notice of intent to seek injunctive relief;
15 providing for recovery of costs and attorney's
16 fees; prohibiting retaliatory evictions;
17 defining the term "retaliatory action";
18 providing for relief for retaliatory eviction
19 and retaliatory action; providing for the
20 establishment of a statewide comprehensive
21 educational program; providing for a public
22 information initiative; providing for
23 distribution of specified literature; providing
24 for a Lead Poisoning Prevention for Properties
25 seminar; requiring the establishment of a
26 program for early identification of persons at
27 risk of elevated levels of lead in the blood;
28 providing for screening of children; providing
29 for screening priorities; providing for the
30 maintenance of records of screenings; providing
31 for reporting of cases of lead poisoning;

1 authorizing the Department of Health to adopt
2 rules; providing an effective date.

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

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6 Section 1. Popular name.--This act may be cited as the
7 "Florida Childhood Lead Poisoning Reduction Act."

8 Section 2. Legislative findings.--

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

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

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

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

25 (5) The dangers posed by lead-based paint can be
26 substantially reduced and largely eliminated by taking
27 measures to prevent paint deterioration and limiting
28 children's exposure to paint chips and lead dust.

29 (6) The deterioration of lead-based paint in older
30 residences results in increased expenses each year for the
31 state in the form of special education and other education

1 expenses, medical care for lead-poisoned children, and
2 expenditures for delinquent youth and others needing special
3 supervision.

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

7 (8) The possibility of liability exposure among
8 landlords has led many to abandon older properties or to place
9 them in shell corporations in order to avoid personal
10 liability.

11 (9) The incidence of childhood lead poisoning can be
12 reduced substantially without significant additional cost to
13 the state by creating appropriate incentives for property
14 owners to make their properties lead-free or lead-safe and by
15 targeting existing state resources used to prevent childhood
16 lead poisoning more effectively.

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

20 (11) A majority of children in this state living in
21 circumstances suggesting a significant possibility that they
22 have elevated levels of lead in their blood are not currently
23 tested for the presence of such elevated blood-lead levels.

24 (12) Early detection of elevated blood-lead levels in
25 children allows treatment and mitigation of the conditions
26 that result in further elevation of blood-lead levels and
27 often can prevent further harm.

28 Section 3. Legislative purposes.--To promote the
29 elimination of childhood lead poisoning in the state, the
30 purposes of this act are to:

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1 (1) Significantly reduce the incidence of childhood
2 lead poisoning in the state.

3 (2) Increase the supply of affordable rental housing
4 in the state in which measures have been taken to reduce
5 substantially the risk of childhood lead poisoning.

6 (3) Improve public awareness of lead safety issues and
7 to educate both property owners and tenants about practices
8 that can reduce the incidence of lead poisoning.

9 (4) Encourage the testing of children likely to suffer
10 the consequences of lead poisoning so that prompt diagnosis
11 and treatment, as well as the prevention of harm, are
12 possible.

13 Section 4. Definitions.--As used in this act, the
14 term:

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

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

28 (a) An area not used for living, sleeping, eating,
29 cooking, or sanitation, such as an unfinished basement;
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1 (b) A unit within a hotel, motel, or similar seasonal
2 or transient facility, unless such unit is occupied by one or
3 more persons at risk for a period exceeding 30 days;

4 (c) An area that is secured and inaccessible to
5 occupants;

6 (d) A unit that is not offered for rent; or

7 (e) Property that is acquired by a governmental agency
8 as a right-of-way for a transportation project, is being held
9 for demolition, and the previous owner or occupant remains in
10 possession for less than 180 days.

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12 Affected property excludes any property owned or operated by a
13 unit of federal, state, or local government or by any public,
14 quasi-public, or municipal corporation, if the property is
15 subject to lead standards that are equal to, or more stringent
16 than, the requirements for lead-safe status under section
17 6(2).

18 (3) "Change in occupancy" means a change of tenant in
19 an affected property in which the property is vacated and
20 possession is surrendered to the owner or abandoned.

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

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

30 (6) "Department" means the Department of Health.

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1 (7) "Deteriorated paint" means any interior or
2 exterior paint or other coating that is peeling, chipping,
3 chalking, or cracking, or any paint or coating located on an
4 interior or exterior surface or fixture which is otherwise
5 damaged or separated from the substrate.

6 (8) "Director" means the Director of Lead Paint
7 Poisoning Prevention.

8 (9) "Dust-lead hazard" means surface dust in a
9 residential dwelling or a facility occupied by a person at
10 risk which contains a mass-per-area concentration of lead
11 equal to or exceeding 40 ug/ft2 on floors or 250 ug/ft2 on
12 interior windowsills based on wipe samples.

13 (10) "Dwelling unit" means a:

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

16 (b) Housing unit in a structure that contains more
17 than one separate housing unit and in which each such unit is
18 used or occupied, or intended to be used or occupied, in whole
19 or in part, as the home or separate living quarters of one or
20 more persons.

21 (11) "Elevated blood-lead level" means a quantity of
22 lead in whole venous blood, expressed in micrograms per
23 deciliter (ug/dL), which exceeds 15 ug/dL or such other level
24 as specifically provided in this act.

25 (12) "Encapsulation" means the application of a
26 covering or coating that acts as a barrier between the
27 lead-based paint and the environment and that relies for its
28 durability on adhesion between the encapsulant and the painted
29 surface, and on the integrity of the existing bonds between
30 paint layers and between the paint and the substrate.

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

3 (13) "Exterior surfaces" means:

4 (a) All fences and porches that are part of an
5 affected property;

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

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

10 2. Consist of other buildings that are part of the
11 affected property; and

12 (c) All painted surfaces in stairways, hallways,
13 entrance areas, recreation areas, laundry areas, and garages
14 within a multifamily rental dwelling unit which are common to
15 individual dwelling units and are accessible to a child under
16 the age of 6 years.

17 (14) "Friction surface" means an interior or exterior
18 surface that is subject to abrasion or friction, including,
19 but not limited to, certain window, floor, and stair surfaces.

20 (15) "Hazard reduction" means measures designed to
21 reduce or eliminate human exposure to lead-based hazards
22 through methods that include interim controls, abatement, or a
23 combination of the two.

24 (16) "HEPA-vacuum" or "high efficiency particle air
25 vacuum" means a device capable of filtering out particles of
26 0.3 microns or greater from a body of air at an efficiency of
27 99.97 percent or greater. The term includes the use of a
28 HEPA-vacuum.

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

1 (18) "Inspection" means a comprehensive investigation
2 to determine the presence of lead-based-paint hazards and the
3 provision of a report explaining the results of the
4 investigation.

5 (19) "Interim controls" means a set of measures
6 designed to temporarily reduce human exposure to
7 lead-based-paint hazards. Interim controls include, but are
8 not limited to, repairs, painting, temporary containment,
9 specialized cleaning, clearance, ongoing lead-based-paint
10 maintenance activities, and the establishment and operation of
11 management and resident education programs.

12 (20) "Interior windowsill" means a portion of the
13 horizontal window ledge which protrudes into the interior of a
14 room.

15 (21) "Lead-based paint" means paint or other surface
16 coatings that contain lead equal to or exceeding 1.0 milligram
17 per square centimeter, 0.5 percent by weight, or 5,000 parts
18 per million (ppm) by weight.

19 (22) "Lead-based-paint hazard" means paint-lead
20 hazards and dust-lead hazards.

21 (23) "Local designee" means a municipal, county, or
22 other official designated by the Director of Lead Paint
23 Poisoning Prevention, the Secretary of Community Affairs, or
24 the Secretary of Health as responsible for assisting the
25 director, relevant state agencies, and relevant county and
26 municipal authorities in implementing the activities specified
27 by the act for the geographical area in which the affected
28 property is located.

29 (24) "Owner" means a person, firm, corporation,
30 nonprofit organization, partnership, government, guardian,
31 conservator, receiver, trustee, executor, or other judicial

1 officer, or other entity which, alone or with others, owns,
2 holds, or controls the freehold or leasehold title or part of
3 the title to property, with or without actually possessing it.
4 The definition includes a vendee who possesses the title, but
5 does not include a mortgagee or an owner of a reversionary
6 interest under a ground rent lease. The term includes any
7 authorized agent of the owner, including a property manager or
8 leasing agent.

9 (25) "Paint-lead hazard" means any one of the
10 following:

11 (a) Any lead-based paint on a friction surface that is
12 subject to abrasion and where the dust-lead levels on the
13 nearest horizontal surface underneath the friction surface,
14 such as the windowsill or floor, are equal to or greater than
15 the dust-lead-hazard level of a mass-per-area concentration of
16 lead equal to or exceeding 40 ug/ft² on floors or 250 ug/ft²
17 on interior windowsills based on wipe samples;

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

22 (c) Any chewable lead-based painted surface on which
23 there is evidence of teeth marks; or

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

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

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

1 (28) "Relocation expenses" means all expenses
2 necessitated by the relocation of a tenant's household to
3 lead-safe housing, including moving and hauling expenses, the
4 HEPA-vacuuming of all upholstered furniture, payment of a
5 security deposit for the lead-safe housing, and installation
6 and connection of utilities and appliances.

7 (29) "Tenant" means the individual named as the lessee
8 in a lease, rental agreement, or occupancy agreement for a
9 dwelling unit.

10 (30) "ug/ft2" means microgram per foot squared.

11 (31) "ug/dL" means microgram (millionth of a gram) per
12 deciliter.

13 (32) "Wipe sample" means a sample collected by wiping
14 a representative surface of known area, as determined by the
15 American Society of Testing Materials in standard
16 E1728-Standard Practice for the Field Collection of Settled
17 Dust Samples Using Wipe Sampling Methods for Lead
18 Determination by Atomic Spectrometry Techniques, with lead
19 determination conducted by an accredited laboratory
20 participating in the Environmental Lead Laboratory
21 Accreditation Program.

22 Section 5. Director of Lead Poisoning Prevention;
23 Program for Prevention of Lead Poisoning; Lead Poisoning
24 Prevention Commission.--

25 (1) The Secretary of Health shall appoint a Director
26 of Lead Poisoning Prevention who shall serve at the pleasure
27 of the secretary. The director shall be responsible, subject
28 to the authority of the secretary, for carrying out and
29 administering all programs created pursuant to this act. To
30 the extent necessary, the director shall designate which local
31 government officials shall assist him or her in carrying out

1 these duties. The director may contract with any agency or
2 agencies, individuals, or groups for the provision of
3 necessary services, subject to appropriation.

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

11 (3) The Lead Poisoning Prevention Commission is
12 created.

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

14 1. Report to the Governor, the President of the
15 Senate, and the Speaker of the House of Representatives in
16 writing by October 1, 2005, recommending legislation providing
17 both additional incentives for all affected property owners to
18 bring their premises into compliance with the lead-safe
19 standards outlined in section 6(2) and additional means of
20 enforcement and penalties for those property owners who fail
21 to achieve compliance. The incentives to be considered should
22 include, among others, local property tax credits and
23 revolving loan funds.

24 2. Study and collect information on the effectiveness
25 of this act in fulfilling its legislative purposes as defined
26 in section 3.

27 3. Make policy recommendations, in addition to those
28 mandated by subparagraph 1., regarding how best to achieve the
29 legislative purposes of this act as set forth in section 3.
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1 4. Consult with the responsible departments of state
2 government and applicable state agencies on the implementation
3 of this act.

4 5. Prepare and submit a report by October 1, 2005, to
5 the Governor, the President of the Senate, and the Speaker of
6 the House of Representatives on the results of implementing
7 this act.

8 (b) The commission shall consist of 10 members. The
9 membership shall include:

10 1. The Director of Lead Poisoning Prevention.

11 2. The Secretary of Community Affairs or his or her
12 designee.

13 3. The Secretary of Environmental Protection or his or
14 her designee.

15 4. One member of the Senate, appointed by the
16 President of the Senate.

17 5. One member of the House of Representatives,
18 appointed by the Speaker of the House of Representatives.

19 6. Five members appointed by the Governor, including:

20 a. A child advocate.

21 b. A health care provider.

22 c. A representative of local government.

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

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

26 (d) Members of the commission shall serve without
27 compensation.

28 Section 6. Requirements for lead-free and lead-safe
29 property status.--

30 (1) An affected property is lead-free if:

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

2 or

3 (b) The owner of the affected property submits to the
4 director or the director's designee for the jurisdiction in
5 which such property is located an inspection report that
6 indicates that the affected property has been tested for the
7 presence of lead in accordance with standards and procedures
8 established by rules adopted by the department and states
9 that:

10 1. All interior surfaces of the affected property are
11 lead-free; and

12 2.a. All exterior painted surfaces of the affected
13 property which were chipping, peeling, or flaking have been
14 restored with paint that is not lead-based paint; or

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

17 (2) An affected property is "lead-safe" if the
18 following treatments to reduce lead-based-paint hazards have
19 been completed by someone certified under section 8 and in
20 compliance with the rules established by the department:

21 (a) Visually reviewing all exterior and interior
22 painted surfaces;

23 (b) Removing and repainting chipping, peeling, or
24 flaking paint on exterior and interior painted surfaces;

25 (c) Stabilizing and repainting any interior or
26 exterior painted surfaces that have lead-based-paint hazards;

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

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1 (e) Stripping and repainting, replacing, or
2 encapsulating all interior windowsills and window troughs with
3 vinyl, metal, or any other durable material that renders the
4 surface smooth and cleanable;

5 (f) Installing caps of vinyl, aluminum, or any other
6 material in a manner and under conditions approved by the
7 director in all window wells in order to make the window wells
8 smooth and cleanable;

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

13 (h) Rehanging all doors as necessary to prevent the
14 rubbing together of a lead-painted surface with another
15 surface;

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

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

19 (k) HEPA-vacuuming and washing of the interior of the
20 affected property with high phosphate detergent or its
21 equivalent, as determined by the director.

22 (3) The department shall adopt rules limiting the
23 effective time for each lead-safe certification based on the
24 known effectiveness of the controls used to mitigate the lead
25 hazard. This shall include evaluations that are done by the
26 property owner or his or her designee. The rules shall require
27 that the property owner notify the department of any
28 substantial change in the property, either intentional or
29 accidental, which could impact the lead-safe status.

30 (4)(a) Whenever an owner of an affected property
31 intends to make repairs or perform maintenance work that will

1 disturb the paint on interior surfaces of an affected
2 property, the owner shall give any tenant in such affected
3 property at least 48 hours' written advance notice and shall
4 make reasonable efforts to ensure that all persons who are not
5 persons at risk are not present in the area where work is
6 performed and that all persons at risk are removed from the
7 affected property when the work is performed.

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

11 (c) If a tenant must vacate an affected property for a
12 period of 24 hours or more in order to allow an owner to
13 perform work that will disturb the paint on interior surfaces,
14 the owner shall pay the reasonable expenses that the tenant
15 incurs and that are directly related to the required
16 relocation.

17 (d) If an owner has made all reasonable efforts to
18 cause the tenant to temporarily vacate an affected property in
19 order to perform work that will disturb the paint on interior
20 surfaces, and the tenant refuses to vacate the affected
21 property, the owner is not liable for any damages arising from
22 the tenant's refusal to vacate.

23 (e) If an owner has made all reasonable efforts to
24 gain access to an affected property in order to perform any
25 work required under this act, and the tenant refuses to allow
26 access, even after receiving reasonable advance notice of the
27 need for access, the owner is not liable for any damages
28 arising from the tenant's refusal to allow access.

29 Section 7. Voluntary inspection; mandatory
30 inspection.--

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1 (1) An owner of an affected property at any time may,
2 at the owner's expense, have a certified inspector perform an
3 inspection of the affected property to determine whether it
4 complies with the requirements for lead-free property status
5 as specified in section 6(1) or the requirements for lead-safe
6 property status as specified in section 6(2). The inspector
7 performing the voluntary inspection shall submit a verified
8 report of the result of the inspection to the director or the
9 director's designee for the jurisdiction in which such
10 property is located, to the owner, and to the tenant, if any,
11 of the affected property.

12 (2) Any affected property certified as lead-free or
13 lead-safe following a voluntary inspection pursuant to
14 subsection (1) shall be deemed in compliance with all state
15 and local requirements, whether included in housing codes,
16 ordinances, or any other regulatory or criminal statutes or
17 ordinances governing lead paint contained in an affected
18 property.

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

27 (4) After July 1, 2005, the director or the director's
28 designee for the jurisdiction in which an affected property is
29 located shall order an inspection of an affected property, at
30 the expense of the owner of the affected property, whenever
31 the director or the director's designee for the jurisdiction

1 in which such property is located is notified that there is
2 reasonable evidence that the affected property is not in
3 compliance with either the lead-free standard or the lead-safe
4 standard as those standards are defined in section 6 and a
5 person at risk resides in the affected property or spends more
6 than 24 hours per week in the affected property. An
7 inspection required under this subsection shall be completed
8 within 90 days after notification of the director or the
9 director's designee for the jurisdiction in which such
10 property is located.

11 (5) The director or the director's designee for the
12 jurisdiction in which an affected property is located shall
13 order an inspection of an affected property, at the expense of
14 the owner of the affected property, whenever the director or
15 the director's designee for the jurisdiction in which such
16 property is located is notified that a person at risk who
17 resides in the affected property or spends more than 24 hours
18 per week in the affected property has an elevated blood-lead
19 level greater than or equal to 15 ug/dL. An inspection under
20 this subsection shall be completed within 15 days after
21 notification of the director or the director's designee for
22 the jurisdiction in which such property is located.

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

28 Section 8. Certification of inspectors and contractors
29 performing work.--

30 (1) A person may not act as a contractor or supervisor
31 to perform the work necessary for lead-hazard abatement as

1 defined in this act unless that person is certified by the
2 department. The department shall certify for these purposes
3 any person meeting the standards described in:

4 (a) Regulations to be adopted by the department
5 pursuant to this act governing the certification of
6 individuals to engage in lead-based paint activities
7 sufficient to satisfy the requirements of 40 C.F.R. s. 745.325
8 or any applicable successor provisions to 40 C.F.R. s.
9 745.325;

10 (b) Certification by the United States Environmental
11 Protection Agency to engage in lead-based paint activities
12 pursuant to 40 C.F.R. s. 745.226 or any applicable successor
13 provisions to 40 C.F.R. s. 745.226; or

14 (c) Certification by a state or tribal program
15 authorized by the United States Environmental Protection
16 Agency to certify individuals engaged in lead-based paint
17 activities pursuant to 40 C.F.R. s. 745.325 or any applicable
18 successor provisions to 40 C.F.R. s. 745.325.

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20 The department shall, by rule, create exceptions to the
21 certification requirement for instances in which the
22 disturbance of lead-based paint is incidental.

23 (2) A person may not act as an inspector to determine
24 whether affected property complies with the requirements for
25 lead-free property status as specified in section 6(1) or the
26 requirements for lead-safe property status as specified in
27 section 6(2) unless the person is certified by the department.
28 An inspector certified by the director shall conduct all
29 inspections required by section 7 or otherwise required by
30 this act. The director shall certify as an inspector any

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1 individual meeting the requirements of paragraph (1)(a) or
2 paragraph (1)(b):

3 (a) Rules to be adopted by the department pursuant to
4 this act governing the certification of individuals eligible
5 to conduct the inspections required by this act; or

6 (b) Certification to conduct risk assessments by the
7 United States Environmental Protection Agency pursuant to 40
8 C.F.R. s. 745.226(b) or any applicable successor provisions to
9 40 C.F.R. s. 745.226.

10 (3) The certification of contractors or supervisors of
11 those performing the work necessary for lead-hazard abatement,
12 and the certification of those performing the inspections
13 required by this section, shall extend for 3 years unless the
14 department has probable cause to believe a person certified
15 under this section has violated the terms of the certification
16 or engaged in illegal or unethical conduct related to
17 inspections required by this act, in which case the
18 certification to perform inspections shall be suspended
19 pending a hearing in accordance with the provisions of chapter
20 120, Florida Statutes.

21 (4) The department shall establish by rule a schedule
22 of fees for the certification of persons performing
23 lead-hazard abatement and a separate schedule for persons
24 performing inspections pursuant to this act. Such fees shall
25 be required to be paid at the time of initial certification
26 and at the time of subsequent renewal of certification, and
27 shall be sufficient to cover all costs pursuant to this
28 section. Fees collected pursuant to this subsection shall be
29 deposited in the Department of Health Administrative Trust
30 Fund to be used for certification purposes under this section.

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1 (5)(a) A person who violates any provision of this
2 section commits a misdemeanor of the first degree, punishable
3 as provided in section 775.082 or section 775.083, Florida
4 Statutes.

5 (b) The department may deny a certification or
6 certification renewal if it determines that an applicant does
7 not meet all requirements of this section or has violated any
8 provision of this section. Any applicant who is denied
9 certification or recertification under this section is
10 entitled to a hearing, after reasonable notice, after filing a
11 written request for a hearing in accordance with chapter 120,
12 Florida Statutes.

13 (6) In addition to any administrative action
14 authorized by chapter 120, Florida Statutes, the department
15 may impose a fine, which may not exceed \$500 for each
16 violation, for a violation of this section, for a violation of
17 any rule adopted under this section, or for a violation of any
18 of the provisions of chapter 386, Florida Statutes. Notice of
19 intent to impose such a fine shall be given by the department
20 to the alleged violator. Each day that a violation continues
21 may constitutes a separate violation for which the department
22 may impose a fine.

23 (7)(a) The department may issue citations that may
24 contain an order of correction or an order to pay a fine, or
25 both, for violations of this section or the a rule adopted by
26 the department, when a violation of this section or a rule is
27 enforceable by an administrative or civil remedy, or when a
28 violation of this section or rules is a misdemeanor of the
29 second degree. A citation issued under this section
30 constitutes a notice of proposed agency action.

31

1 (b) The citation must be in writing and must describe
2 the particular nature of the violation, including specific
3 reference to the provisions of law or rule allegedly violated.

4 (c) A fine imposed by a citation issued by the
5 department may not exceed \$500 for each violation. Each day
6 the violation exists constitutes a separate violation for
7 which a citation may be issued.

8 (d) The department shall inform the recipient, by
9 written notice pursuant to sections 120.569 and 120.57,
10 Florida Statutes, of the right to an administrative hearing to
11 contest a citation within 21 days after the date the citation
12 is received. The citation must contain a conspicuous statement
13 that, if the recipient fails to appear to contest the citation
14 after having requested a hearing, the recipient has waived his
15 or her right to contest the citation and must pay an amount up
16 to the maximum fine.

17 (e) The department may reduce or waive the fine
18 imposed by a citation. In determining whether to reduce or
19 wave the fine, the department must consider the gravity of
20 the violation, the person's attempts at correcting the
21 violation, and the person's history of previous violations for
22 which enforcement actions were taken under this section or
23 other provisions of law or rule.

24 (f) Any person who willfully refuses to sign and
25 accept a citation issued by the department commits a
26 misdemeanor of the second degree, punishable as provided in
27 section 755.082 or section 775.083, Florida Statutes.

28 (g) The department shall deposit any fines it collects
29 under this section into the Department of Health
30 Administrative Trust Fund to be used for the costs of
31 administering the certification process under this section.

1 Section 9. Enforcement.--

2 (1) Owners of affected properties who fail to comply
3 with the provisions of section 6 shall be deemed in violation
4 of this act. The Office of the Attorney General and any local
5 authorities responsible for the enforcement of housing codes
6 shall vigorously enforce civil remedies or criminal penalties
7 provided for by law which arise out of the failure to comply
8 with the requirements of this act and may seek injunctive
9 relief where appropriate.

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

13 (b) The director or his or her designee shall issue an
14 annual report outlining specifically the enforcement actions
15 brought pursuant to this section, the identity of the owners
16 of the affected properties, the authority bringing the
17 enforcement action, the nature of the action, and a
18 description of the criminal penalties or civil relief.

19 (c) After the second written notice from the director,
20 the director's local designee, the Department of Community
21 Affairs, the state or local housing authority, the Department
22 of Health, or the local health department of violations of the
23 provisions of this act occurring within an affected property,
24 or after two criminal or civil actions brought by state or
25 local officials to enforce this act arising out of violations
26 occurring within an affected property, unless the violations
27 alleged to exist are corrected, the affected property shall be
28 considered abandoned, and the Attorney General, the director
29 or his or her designee, the Secretary of Community Affairs,
30 the secretary's local designee, the state or local housing
31 authority, the Department of Health, the local health

1 department, or any other officials having jurisdiction over
2 the affected property shall have the specific power to request
3 the court to appoint a receiver for the property. The court
4 in such instances may specifically authorize the receiver to
5 apply for loans, grants, and other forms of funding necessary
6 to correct lead-based-paint hazards and meet the standards for
7 lead-safe or lead-free status, and to hold the affected
8 property for such period of time as the funding source may
9 require to ensure that the purposes of the funding have been
10 met. The costs of such receivership shall constitute a lien
11 against the property which, if not discharged by the owner
12 upon receipt of the receiver's demand for payment, constitutes
13 grounds for foreclosure proceedings instituted by the receiver
14 to recover such costs.

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

16 (1) A person at risk shall be deemed to have a right
17 to housing that is lead-free or lead-safe under the standards
18 set forth in this act.

19 (2) If an owner of an affected property fails to
20 comply with such standards, a person at risk or the parent or
21 legal guardian of a person at risk has a private right of
22 action to seek injunctive relief from a court with
23 jurisdiction against the owner of the affected property in the
24 form of a court order to compel compliance with the
25 requirements of this act.

26 (3) A court may not grant the injunctive relief
27 requested pursuant to this section, unless, at least 30 days
28 prior to the filing requesting the injunction, the owner of
29 the affected property has received written notice of the
30 violation of standards contained in section 6 and has failed
31 to bring the affected property into compliance with the

1 applicable standards. The requirement that the owner of the
2 affected property receive notice is satisfied if:

3 (a) A person at risk or his or her parent, legal
4 guardian, or attorney has notified the owner of an affected
5 property that the property fails to meet the requirements for
6 either lead-free status under section 6(1) or for lead-safe
7 status under section 6(2);

8 (b) The director or his or her designee, a local or
9 state housing authority, or the Department of Health has
10 notified the owner of the affected property of violations of
11 the provisions of the act occurring within an affected
12 property; or

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

17 (4) A person who prevails in an action under
18 subsection (2) is entitled to an award of the costs of the
19 litigation and to an award of reasonable attorney's fees in an
20 amount to be fixed by the court.

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

23 Section 11. Retaliatory evictions prohibited.--

24 (1) An owner of an affected property may not evict or
25 take any other retaliatory action against a person at risk or
26 his or her parent or legal guardian in response to the actions
27 of the person at risk or his or her parent or legal guardian
28 for:

29 (a) Providing information to the owner of the affected
30 property, the director, the director's designee for the
31 jurisdiction in which such property is located, the Secretary

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

1 series of public service announcements on radio, television,
2 the Internet, and print media about the nature of
3 lead-based-paint hazards, the importance of standards for lead
4 poisoning prevention in properties, the importance of
5 lead-free and lead-safe housing, and the purposes and
6 responsibilities set forth in this act. In developing and
7 coordinating this public information initiative, the sponsors
8 shall seek the participation and involvement of private
9 industry organizations, including those involved in real
10 estate, insurance, mortgage banking, and pediatrics.

11 (3) By January 1, 2005, the director, in consultation
12 with the Lead Poisoning Prevention Commission, shall develop
13 culturally and linguistically appropriate information
14 pamphlets regarding childhood lead poisoning, the importance
15 of testing for elevated blood-lead levels, prevention of
16 childhood lead poisoning, treatment of childhood lead
17 poisoning, and where appropriate, the requirements of this
18 act. These information pamphlets shall be distributed to
19 parents or the other legal guardians of children 6 years of
20 age or younger on the following occasions:

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

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

31

1 (c) By the owner or operator of any child care
2 facility or preschool or kindergarten class on or before
3 October 15 of the calendar year.

4 (4) By January 1, 2005, the director, in conjunction
5 with the Department of Community Affairs, shall establish
6 guidelines and a trainer's manual for a Lead Poisoning
7 Prevention for Properties Awareness Seminar with a total class
8 time of 3 hours or less. The seminar shall be offered by
9 professional associations and community organizations with a
10 training capacity, existing accredited educational
11 institutions, and for-profit educational providers. The
12 seminar shall be reviewed and approved, based on the seminar
13 content and qualifications of instructors, by the Department
14 of Community Affairs.

15 Section 13. Screening program.--

16 (1) The director shall establish a program for early
17 identification of persons at risk of having elevated
18 blood-lead levels. Such program shall systematically screen
19 children under 6 years of age in the target populations
20 identified in subsection (2) for the presence of elevated
21 blood-lead levels. Children within the specified target
22 populations shall be screened with a blood-lead test at age 12
23 months and age 24 months, or between the ages of 36 months and
24 72 months if they have not previously been screened. The
25 director shall establish:

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 followup of children
30 found to have elevated blood-lead levels.

31

1 The director shall consult with recognized professional
2 medical groups and such other sources as he or she deems
3 appropriate to develop the screening requirements.

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

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

11 (b) Children under the age of 6 years exhibiting
12 delayed cognitive development or other symptoms of childhood
13 lead poisoning;

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

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

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

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

31

1 (3) The director shall maintain comprehensive records
2 of all screenings conducted pursuant to this section. Such
3 records shall be indexed geographically and by owner in order
4 to determine the location of areas of relatively high
5 incidence of lead poisoning and other elevated blood-lead
6 levels.

7
8 All cases or probable cases of lead poisoning found in the
9 course of screenings conducted pursuant to this section shall
10 be reported within 5 working days to the affected individual,
11 to his or her parent or legal guardian if he or she is a
12 minor, and to the director.

13 Section 14. Rule authority.--The department shall
14 adopt the rules necessary for the duties conferred upon it
15 under the "Florida Childhood Lead Poisoning Reduction Act"
16 pursuant to sections 120.536 and 120.54, Florida Statutes.

17 Section 15. This act shall take effect July 1, 2004.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2202

4 The committee substitute makes the following changes to SB
5 2202:

6 Removes language that created a Lead Poisoning Prevention
7 Coordinating Council and adds the Secretary of Environmental
8 Protection or designee to the Lead Poisoning Prevention
9 Commission.

10 Provides definitions for department, dust-lead hazard,
11 dwelling unit, HEPA-vacuum, "ug/dL", "ug/ft2", and wipe
12 sample. Requires the department to promulgate rules limiting
13 the effective time for each "lead-safe" certification based on
14 the known effectiveness of the controls used to mitigate the
15 lead-hazard, which shall include evaluations that are done by
16 the property owner or his or her designee. The rules must
17 require that the property owner notify the department of any
18 substantial change in the property, either intentional or
19 accidental, that could impact the "lead-safe" status.

20 Provides that an owner of an affected property at any time
21 may, at the owner's expense, have a certified inspector
22 perform an inspection of the affected property to determine
23 whether it complies with the requirements for lead-free and
24 lead-safe property status. The inspector performing the
25 voluntary inspection must submit a verified report of the
26 result of the inspection to the director or the director's
27 designee, to the owner, and to the tenant of the affected
28 property.

29 Establishes standards for certification, rather than
30 accreditation, of inspectors and contractors performing work
31 and gives the department, rather than the director, the
32 authority to establish and implement these standards. Requires
33 the department to establish, by rule, fee schedules for the
34 certification of individuals performing lead-hazard abatement
35 and for inspectors, and provides requirements for payment of
36 fees. Fees must be deposited into the department's
37 Administrative Trust Fund to be used for certification
38 purposes. The bill provides penalties and prohibitions for
39 violating certification requirements and gives the department
40 the authority to impose fines or issue citations for
41 violations of the certification provisions or any rules
42 adopted. The fines collected must be deposited into the
43 department's Administrative Trust Fund.

44 Deletes Section 8 of the bill that provided for liability
45 protection for property owners that applied to all potential
46 civil liability for alleged injury or loss due to lead
47 ingestion attributable to a property covered by this bill.

48 Removes the requirement that records collected under the
49 screening program shall be public records.

50 Provides rule authority to the department, pursuant to ss.
51 120.536 and 120.54, F.S., to implement the provisions of the
52 act.