



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/5/2004, by James F. Clayborne Jr.

SYNOPSIS AS INTRODUCED:

New Act

Creates the Childhood Lead Poisoning Reduction Act. Establishes a Lead Poisoning Prevention Commission. Defines the requirements for lead-free and lead-safe property status. Provides that the owner of an affected property may request that the Department of Public Health inspect an affected property to determine whether it complies with the requirements for lead-free and lead-safe property. Provides that a contractor or supervisor performing lead hazard reduction activities shall be accredited by the Director of Public Health. Establishes immunity from civil liability to a person at risk for an affected property owner who complies with the lead-free or lead-safe standards and offers to pay medical expenses, relocation costs, and attorney's fees. Requires insurers to extend liability coverage to rental property owners for losses or damages caused by exposure to lead-based paint. Provides that civil remedies and criminal penalties shall be enforced against any owner of an affected property who fails to comply. Prohibits retaliatory evictions. Provides for the creation of educational programs designed to inform the public of the problem of lead poisoning and its prevention. Requires the Director of Public Health to establish a program for early identification of persons at risk. Creates a private right to injunctive relief.

LRB093 20797 RXD 46714 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Childhood Lead Poisoning Reduction Act.

6 Section 5. Findings. The General Assembly finds that:

7 (a) More than 300,000 American children may have levels of
8 lead in their blood in excess of 10 micrograms per deciliter.
9 Unless prevented or treated, elevated blood lead levels in
10 egregious cases may result in impairment of the ability to
11 think, concentrate, and learn.

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

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

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

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

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

32 (g) Older housing units remain an important part of

1 Illinois housing stock, particularly for those of modest or
2 limited incomes.

3 (h) The possibility of liability exposure among landlords
4 has led many to abandon older properties or to place them in
5 "shell corporations" in order to avoid personal liability.

6 (i) Knowledge of lead-based paint hazards, their control,
7 mitigation, abatement, and risk avoidance is not sufficiently
8 widespread, especially outside urban areas.

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

15 Section 10. Purpose. To promote the elimination of
16 childhood lead poisoning in Illinois, the purposes of this Act
17 are:

18 (a) to significantly reduce the incidence of childhood lead
19 poisoning in Illinois;

20 (b) to increase the supply of affordable rental housing in
21 Illinois in which measures have been taken to reduce
22 substantially the risk of childhood lead poisoning;

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

26 (d) to provide protection from potentially ruinous tort
27 actions for those landlords who undertake specified lead hazard
28 reduction measures;

29 (e) to encourage the testing of children likely to suffer
30 the consequences of lead poisoning so that prompt diagnosis and
31 treatment, as well as the prevention of harm, are possible; and

32 (f) to provide a mechanism to facilitate prompt payment of
33 medical and rehabilitation expenses and relocation costs for
34 those individuals who are affected by childhood lead poisoning.

1 Section 15. Definitions. In this Act:

2 "Abatement" means any set of measures designed to
3 permanently eliminate lead-based paint or lead-based paint
4 hazards. Abatement includes the removal of lead-based paint and
5 dust-lead hazards, the permanent enclosure or encapsulation of
6 lead-based paint, the replacement of components or fixtures
7 painted with lead-based paint, and the removal or permanent
8 covering of soil-based hazards.

9 "Affected property" means a room or group of rooms within a
10 property constructed before 1978 that form a single independent
11 habitable dwelling unit for occupation by one or more
12 individuals that has living facilities with permanent
13 provisions for living, sleeping, eating, cooking, and
14 sanitation. "Affected property" does not include:

15 (1) an area not used for living, sleeping, eating,
16 cooking, or sanitation, such as an unfinished basement;

17 (2) unit within a hotel, motel, or similar seasonal or
18 transient facility unless such unit is occupied by one or
19 more persons at risk for a period exceeding 30 days;

20 (3) an area which is secured and inaccessible to
21 occupants;

22 (4) a unit which is not offered for rent; or

23 (5) any property owned or operated by a unit of
24 federal, State, or local government, or any public,
25 quasi-public, or municipal corporation, if the property is
26 subject to lead standards that are equal to, or more
27 stringent than, the requirements for lead-safe status
28 under subsection (b) of Section 25.

29 "Change in occupancy" means a change of tenant in an
30 affected property in which the property is vacated and
31 possession is either surrendered to the owner or abandoned.

32 "Chewable surface" means an interior or exterior surface
33 painted with lead-based paint that a child under the age of 6
34 can mouth or chew. Hard metal substrates and other materials
35 that cannot be dented by the bite of a child under the age of 6
36 are not considered chewable.

1 "Containment" means the physical measures taken to ensure
2 that dust and debris created or released during lead-based
3 paint hazard reduction are not spread, blown, or tracked from
4 inside to outside of the worksite.

5 "Deteriorated paint" means any interior or exterior paint
6 or other coating that is peeling, chipping, chalking, or
7 cracking, or any paint or coating located on an interior or
8 exterior surface or fixture that is otherwise damaged or
9 separated from the substrate.

10 "Dust-lead hazard" means surface dust in a residential
11 dwelling or a facility occupied by a person at risk that
12 contains a mass per area concentration of lead equal to or
13 exceeding 40 micrograms per square foot on floors or 250
14 micrograms per square foot on interior windowsills based on
15 wipe samples.

16 "Dwelling unit" means a:

17 (1) Single-family dwelling, including attached
18 structures such as porches and stoops; or

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

24 "Elevated blood lead" or "EBL" means a quantity of lead in
25 whole venous blood, expressed in micrograms per deciliter, that
26 exceeds 15 micrograms per deciliter or such other level as may
27 be specifically provided in this Act.

28 "Encapsulation" means the application of a covering or
29 coating that acts as a barrier between the lead-based paint and
30 the environment and that relies for its durability on adhesion
31 between the encapsulant and the painted surface, and on the
32 integrity of the existing bonds between paint layers and
33 between the paint and the substrate. Encapsulation may be used
34 as a method of abatement if it is designed and performed so as
35 to be permanent.

36 "Exterior surfaces" means:

1 (1) all fences and porches that are part of an affected
2 property;

3 (2) all outside surfaces of an affected property that
4 are accessible to a child under the age of 6 and that:

5 (A) are attached to the outside of an affected
6 property; or

7 (B) consist of other buildings that are part of the
8 affected property; and

9 (3) all painted surfaces in stairways, hallways,
10 entrance areas, recreation areas, laundry areas, and
11 garages within a multifamily rental dwelling unit that are
12 common to individual dwelling units and are accessible to a
13 child under the age of 6.

14 "Friction surface" means an interior or exterior surface
15 that is subject to abrasion or friction, including, but not
16 limited to, certain window, floor, and stair surfaces.

17 "Hazard reduction" means measures designed to reduce or
18 eliminate human exposure to lead-based hazards through methods
19 including interim controls or abatement or a combination of the
20 two.

21 "High efficiency particle air vacuum" or "HEPA-vacuum"
22 means a device capable of filtering out particles of 0.3
23 microns or greater from a body of air at an efficiency of
24 99.97% or greater. "HEPA-vacuum" includes use of a HEPA-vacuum.

25 "Impact surface" means an interior or exterior surface
26 that is subject to damage from the impact of repeated sudden
27 force, such as certain parts of door frames.

28 "Inspection" means a comprehensive investigation to
29 determine the presence of lead-based paint hazards and the
30 provision of a report explaining the results of the
31 investigation.

32 "Interim controls" means a set of measures designed to
33 reduce temporarily human exposure to lead-based paint hazards.
34 Interim controls include, but are not limited to, repairs,
35 painting, temporary containment, specialized cleaning,
36 clearance, ongoing lead-based paint maintenance activities,

1 and the establishment and operation of management and resident
2 education programs.

3 "Interior windowsill" means a portion of the horizontal
4 window ledge that is protruding into the interior of a room.

5 "Lead-based paint" means paint or other surface coatings
6 that contain lead equal to or exceeding one milligram per
7 square centimeter or 0.5 % by weight or 5,000 parts per million
8 by weight.

9 "Lead-based paint hazard" means paint-lead hazards and
10 dust-lead hazards.

11 "Lead-contaminated dust" means dust in affected properties
12 that contains an area or mass concentration of lead in excess
13 of the lead content level determined by the Director by
14 regulation.

15 "Director's local designee" means a municipal, county, or
16 other official designated by the Director of Public Health,
17 responsible for assisting the Director or Director of Public
18 Health, relevant State agencies, and relevant county and
19 municipal authorities, in implementing the activities
20 specified by the Act for the geographical area in which the
21 affected property is located.

22 "Owner" means a person, firm, corporation, nonprofit
23 organization, partnership, government, guardian, conservator,
24 receiver, trustee, executor, or other judicial officer, or
25 other entity which, alone or with others, owns, holds, or
26 controls the freehold or leasehold title or part of the title
27 to property, with or without actually possessing it. The
28 definition includes a vendee who possesses the title, but does
29 not include a mortgagee or an owner of a reversionary interest
30 under a ground rent lease.

31 "Owner" includes any authorized agent of the owner,
32 including a property manager or leasing agent.

33 "Paint-lead hazard" means any one of the following:

34 (1) Any lead-based paint on a friction surface that is
35 subject to abrasion and where the dust-lead levels on the
36 nearest horizontal surface underneath the friction surface

1 (e.g., the windowsill or floor) are equal to or greater
2 than the dust-lead hazard levels defined in this
3 subsection;

4 (2) Any damaged or otherwise deteriorated lead-based
5 paint on an impact surface that is caused by impact from a
6 related building material, such as a door knob that knocks
7 into a wall or a door that knocks against its door frame;

8 (3) Any chewable lead-based painted surface on which
9 there is evidence of teeth marks; or

10 (4) Any other deteriorated lead-based paint in or on
11 the exterior of any residential building or any facility
12 occupied by a person at risk.

13 "Permanent" means an expected design life of at least 20
14 years.

15 "Person at risk" means a child under the age of 6 or a
16 pregnant woman who resides or regularly spends at least 24
17 hours per week in an affected property.

18 "Relocation expenses" means all expenses necessitated by
19 the relocation of a tenant's household to lead-safe housing,
20 including moving and hauling expenses, the HEPA-vacuuming of
21 all upholstered furniture, payment of a security deposit for
22 the lead-safe housing, and installation and connection of
23 utilities and appliances.

24 "Soil-lead hazard" means soil on residential real property
25 or on property of a facility occupied by a person at risk that
26 contains total lead equal to or exceeding 400 parts per million
27 in a play area or average of 1,200 parts per million of bare
28 soil in the rest of the yard based on soil samples.

29 "Tenant" means the individual named as the lessee in a
30 lease, rental agreement, or occupancy agreement for a dwelling
31 unit.

32 "Wipe sample" means a sample collected by wiping a
33 representative surface of known area, as determined by ASTM
34 E1728 ("Standard Practice for the Field Collection of Settled
35 Dust Samples Using Wipe Sampling Methods for Lead Determination
36 by Atomic Spectrometry Techniques"), with lead determination

1 conducted by an accredited laboratory participating in the
2 Environmental Lead Laboratory Accreditation Program (NLAP).

3 Section 20. Lead Poisoning Prevention Commission.

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

6 (1) The duties of the Commission are to:

7 (A) report to the Governor, the President of the
8 Senate, and the Speaker of the House in writing by
9 October 1, 2005, recommending legislation providing
10 effective measures providing both additional
11 incentives for all affected property owners to bring
12 their premises into compliance with the lead safe
13 standards outlined in subsection (b) of Section 25,
14 additional means of enforcement and penalties for
15 those property owners who fail to achieve compliance.
16 The incentives to be considered should include, among
17 others, state income or local property tax credits and
18 revolving loan funds;

19 (B) study and collect information on the
20 effectiveness of this Act in fulfilling its
21 legislative purposes as defined in Section 10;

22 (C) make policy recommendations, in addition to
23 those mandated by subparagraph (A), regarding how best
24 to achieve the legislative purposes of this Act as set
25 forth in Section 10;

26 (D) consult with the responsible departments of
27 state government on the implementation of this Act; and

28 (E) write and submit a report by October 1, 2005 to
29 the Governor, the President of the Senate, and the
30 Speaker of the House, on the results of implementing
31 this Act.

32 (2) The Commission shall consist of 9 members. The
33 membership shall include:

34 (A) the Director of Public Health or his or her
35 local designee;

1 (B) the Director of the Illinois Housing
2 Development Authority or his or her local designee;

3 (C) one member of the State Senate, appointed by
4 the President;

5 (D) one member of the State House of
6 Representatives appointed by the Speaker; and

7 (E) five members appointed by the Governor
8 including:

9 (i) a child advocate;

10 (ii) a health care provider;

11 (iii) a representative of local government;

12 and

13 (iv) two owners of rental property in the
14 State.

15 (3) The Commission shall be chaired by the Director of
16 Public Health.

17 (4) Members of the Commission shall serve without
18 additional compensation.

19 Section 25. Requirements for lead-free status and
20 lead-safe status.

21 (a) Requirements for lead-free property status. An
22 affected property is lead-free if:

23 (1) the affected property was construed after 1978; or

24 (2) the owner of the affected property submits to the
25 Director of the Public Health for the jurisdiction in which
26 such property is located an inspection report which
27 indicates that the affected property has been tested for
28 the presence of lead in accordance with standards and
29 procedures established by the regulations promulgated by
30 the Director and states that:

31 (A) all interior surfaces of the affected property
32 are lead-free; and

33 (B) all exterior painted surfaces of the affected
34 property that were chipping, peeling, or flaking have
35 been restored with non-lead-based, or no exterior

1 painted surfaces of the affected property are
2 chipping, peeling, or flaking.

3 (b) Requirements for lead-safe property status. An
4 affected property is lead-safe if the following treatments to
5 reduce lead-based paint hazards have been completed by someone
6 certified under Section 35 of this Act and in compliance with
7 the regulations established by the Director of Public Health:

8 (1) visual review of all exterior and interior painted
9 surfaces;

10 (2) removal and repainting of chipping, peeling, or
11 flaking paint on exterior and interior painted surfaces;

12 (3) stabilization and repainting of any interior or
13 exterior painted surface which have lead-based paint
14 hazards;

15 (4) repair of any structural defect that is causing the
16 paint to chip, peel, or flake that the owner of the
17 affected property has knowledge of, or with the exercise of
18 reasonable care, should have knowledge of;

19 (5) stripping and repainting, replacing, or
20 encapsulating all interior windowsills and window troughs
21 with vinyl, metal, or any other durable materials which
22 render the surface smooth and cleanable;

23 (6) installation of caps of vinyl, aluminum, or any
24 other material in a manner and under conditions approved by
25 the Director of Public Health in all window wells in order
26 to make the window wells smooth and cleanable;

27 (7) fixing the top sash of all windows in place in
28 order to eliminate the friction caused by movement of the
29 top sash, except for a treated or replacement window that
30 is free of lead-based paint on its friction surfaces;

31 (8) re-hanging all doors as necessary to prevent the
32 rubbing together of a lead-painted surface with another
33 surface;

34 (9) making all bare floors smooth and cleanable;

35 (10) ensuring that all kitchen and bathroom floors are
36 overlaid with a smooth, water-resistant covering; and

1 (11) HEPA-vacuuming and washing of the interior of the
2 affected property with high phosphate detergent or its
3 equivalent, as determined by the Director of Public Health.

4 (c) Repairs to comply with standards.

5 (1) Whenever an owner of an affected property intends
6 to make repairs or perform maintenance work that will
7 disturb the paint on interior surfaces of an affected
8 property, the owner shall give any tenant in such affected
9 property at least 48 hours' written advance notice and
10 shall make reasonable efforts to ensure that all persons
11 who are not persons at risk are not present in the area
12 where work is performed and that all persons at risk are
13 removed from the affected property when the work is
14 performed.

15 (2) A tenant shall allow access to an affected
16 property, at reasonable times, to the owner to perform any
17 work required under this Act.

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

24 (4) If an owner has made all reasonable efforts to
25 cause the tenant to temporarily vacate an affected property
26 in order to perform work that will disturb the paint on
27 interior surfaces, and the tenant refuses to vacate the
28 affected property, the owner may not be liable for any
29 damages arising from the tenant's refusal to vacate.

30 (5) If an owner has made all reasonable efforts to gain
31 access to an affected property in order to perform any work
32 required under this Act, and the tenant refuses to allow
33 access, even after receiving reasonable advance notice of
34 the need for access, the owner may not be liable for any
35 damages arising from the tenant's refusal to allow access.

1 Section 30. Inspection of affected properties.

2 (a) Voluntary inspections.

3 (1) An owner of an affected property at any time after
4 the effective date of this Act may request that the
5 Director of the Department of Public Health or a Director's
6 local designee inspect an affected property to determine
7 whether it complies with the requirements of lead-free as
8 specified in subsection (a) of Section 25 or the
9 requirements of lead-safe as specified in subsection (b) of
10 Section 25. Such inspection shall be completed within 30
11 days following the owner's request.

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

15 (A) entitled to the liability protection
16 provisions of Section 40; and

17 (B) in compliance with all state and local
18 requirements, whether included in housing codes or
19 ordinances or any other regulatory or criminal
20 statutes or ordinances, governing lead paint contained
21 in an affected property.

22 (b) Mandatory compliance. The Lead Poisoning Prevention
23 Commission established by Section 20 shall either develop a
24 proposal for mandatory inspections of all affected properties
25 to be implemented by January 1, 2006, or shall develop
26 alternative measures of enforcement and penalties to ensure
27 that all affected properties comply with either the lead-free
28 standard described in subsection (a) of Section 25 or the
29 lead-safe standard described in subsection (b) of Section 25
30 within a reasonable period of time following January 1, 2006.

31 (c) Expedited inspection. The Director of Public Health or
32 the Director's local designee for the jurisdiction in which
33 such property is located shall order an inspection of an
34 affected property, at the expense of the owner of the affected
35 property, whenever the Director of Public Health or the
36 Director's local designee for the jurisdiction in which such

1 property is located, after January 1, 2005, is notified that
2 the affected property reasonably appears to comply with neither
3 the lead-free standard or the lead-safe standard as those
4 standards are defined in Section 25 and a person at risk
5 resides in the affected property or spends more than 24 hours
6 per week in the affected property. An inspection required under
7 this subsection shall be completed within 90 days after
8 notification of the Director of Public Health or the Director's
9 local designee for the jurisdiction in which such property is
10 located.

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

25 (e) Inspection report. The inspector shall submit a
26 verified report of the result of the inspection to the
27 Executive Director of the Illinois Housing Development
28 Authority or the Executive Director's designee, and the
29 Director of the Department of Public Health or the Director's
30 local designee for the jurisdiction in which such property is
31 located, the owner, and the tenant, if any, of the affected
32 property.

33 (f) Inspection fees. The owner of an affected property
34 shall pay a fee at the time of the inspection of an affected
35 property sufficient to pay the full costs of the inspection

1 Section 35. Accreditation of inspectors and contractors
2 performing work.

3 (a) Accreditation of persons performing lead hazard
4 reduction activities. No person shall act as a contractor or
5 supervisor to perform the work necessary for lead-hazard
6 abatement as defined in this Act unless that person is
7 accredited by the Director of Public Health. The Director shall
8 accredit for these purposes any person meeting the standards
9 described in one of the following subsections:

10 (1) Regulations to be adopted by the Director of Public
11 Health pursuant to this Act governing the accreditation of
12 individuals to engage in lead-based paint activities
13 sufficient to satisfy the requirements of 40 Code of
14 Federal Regulations (C.F.R.) 745.325 (2001) or any
15 applicable successor provisions to 40 C.F.R. 745.325
16 (2001).

17 (2) Certification by the United States Environmental
18 Protection Agency to engage in lead-based paint activities
19 pursuant to 40 C.F.R. 745.226 (2001) or any applicable
20 successor provisions to 40 C.F.R. 745.226 (2001).

21 (3) Certification by a state or tribal program
22 authorized by the United States Environmental Protection
23 Agency to certify individuals engaged in lead-based paint
24 activities pursuant to 40 C.F.R. 745.325 (2001) or any
25 applicable successor provisions to 40 C.F.R. 745.325
26 (2001). The Director of Public Health shall, by regulation,
27 create exceptions to the accreditation requirement for
28 instances where the disturbance of lead-based paint is
29 incidental.

30 (b) Accreditation of persons performing inspections. An
31 inspector accredited by the Director shall conduct all
32 inspections required by Section 30 of this Act, or otherwise
33 required by this Act. The Director of Public Health shall
34 accredit as an inspector any individual meeting the following
35 requirements:

36 (1) Regulations to be adopted by the Director pursuant

1 to this Act governing the accreditation of individuals
2 eligible to conduct the inspections required by this Act;
3 or

4 (2) Certification to conduct risk assessments by the
5 EPA pursuant to 40 C.F.R. 745.226(b) (2001) or any
6 applicable successor provisions to 40 C.F.R. 745.226
7 (2001).

8 (c) Duration of certification. The accreditation of
9 contractors or supervisors of those performing the work
10 necessary for lead hazard abatement, and the accreditation of
11 those performing the inspections required by this Section,
12 shall extend for a period of 3 years unless the Director of
13 Public Health has probable cause to believe a person accredited
14 under this Section has violated the terms of the accreditation
15 or engaged in illegal or unethical conduct related to
16 inspections required by this Act, in which case the
17 accreditation to perform inspections shall be suspended
18 pending a hearing in accordance with the provisions of state
19 law.

20 (d) Registration fees. The Director shall establish by
21 regulation a schedule of fees for the registration of persons
22 performing lead hazard abatement and a separate schedule for
23 persons performing inspections pursuant to this Act. Such fees
24 shall be required to be paid at the time of initial
25 registration and at the time of subsequent renewal of
26 registration, and shall be sufficient to cover all costs,
27 including the costs of state personnel, attributable to
28 accreditation activities conducted under this Section.

29 (1) Fees collected pursuant to this subsection will be
30 held in a continuing, non-lapsing special fund to be used
31 for accreditation purposes under this Section.

32 (2) The State Treasurer shall hold and the State
33 Comptroller shall account for this fund.

34 (3) The fund established under this subsection shall be
35 invested and reinvested and any investment earnings shall
36 be paid into the fund.

1 (e) Enforcement. The provisions and procedures of
2 appropriate state statutes governing violation of business and
3 professional licensing statutes shall be used and shall apply
4 to enforce violations of this Section, any regulations adopted
5 under this subtitle, and any condition of accreditation issued
6 under this Act.

7 Section 40. Liability protection and the qualified offer.

8 (a) Scope of application. This Section applies to all
9 potential bases of civil liability for alleged injury or loss
10 to a person caused by the ingestion of lead by a person at risk
11 in an affected property; except that this Section does not
12 apply to any claim in which the elevated blood lead level of
13 the person at risk is documented to have existed on or before
14 the date, 60 days after the affected property where the person
15 at risk resides or otherwise allegedly was exposed to lead, has
16 been certified as lead-free under subsection (a) of Section 25
17 or lead-safe under subsection (b) of Section 25.

18 (b) Requirements for immunity from liability. A property
19 owner and his or her agents and employees are immune from civil
20 liability to a person at risk, his or her parents, or legal
21 guardian for injuries or damages resulting from the ingestion
22 of lead contained in an affected property if:

23 (1) the property has been certified as lead-free under
24 subsection (a) of Section 25 or as lead-safe under
25 subsection (b) of Section 25; and

26 (2) the property owner or his agent has made a
27 qualified offer as defined in subsection (e), to the person
28 at risk or his or her parent or legal guardian, in a case
29 in which the person at risk has a documented elevated blood
30 lead level of 15 micrograms per deciliter or more performed
31 more than 60 days following certification of the premises
32 as lead-safe or lead-free pursuant to Section 25,
33 regardless of whether such qualified offer has been
34 accepted or rejected by the person at risk, or his or her
35 parent or legal guardian.

1 (c) Exceptions to immunity. The immunity described in
2 subsection (b) does not apply if it is shown that one of the
3 following has occurred:

4 (1) the owner or his or her employee or agent obtained
5 the certification or lead-free or lead-safe status by
6 fraud;

7 (2) the owner or his or her employee or agent violated
8 a condition of the certification;

9 (3) during renovation, remodeling, maintenance or
10 repair after receiving the certificate, the owner or his or
11 her employee or agent created a lead-based paint hazard
12 that was present in the affected property at the time the
13 person at risk either was exposed to a lead-based paint
14 hazard or first was tested with an elevated blood lead
15 level greater than 15 micrograms per deciliter;

16 (4) the owner or his or her employee or agent failed to
17 respond in a timely manner to notification by a tenant, by
18 the Director of Public Health, by the Director's local
19 designee for the jurisdiction in which such property is
20 located, or by a local housing or health department that a
21 lead-based paint hazard might be present; or

22 (5) the lead poisoning or lead exposure was caused by a
23 source of lead in the affected property other than
24 lead-based paint.

25 (d) Documentation and notification of injury. A person may
26 not bring an action against an owner of an affected property
27 whose property has been certified as lead-free under subsection
28 (a) of Section 25 or lead-safe as certified under subsection
29 (b) of Section 25 for damages arising from alleged injury or
30 loss to a person at risk caused by lead-based paint hazard
31 unless he or she documents his or her alleged injury with a
32 test for elevated blood levels and presents a written notice to
33 the owner of the affected property or his or her agent or
34 employee of the claim and test results.

35 (1) If such test results show an elevated blood level
36 of less than 15 micrograms per deciliter, the person at

1 risk, or his or her parent or legal guardian, shall not
2 recover damages from the owner of the affected property,
3 his or her agents, or employees unless the person at risk,
4 his or her parent, or legal guardian can show by clear and
5 convincing evidence that the person at risk damage or
6 injury resulted from exposure to lead-based paint and was
7 caused by either:

8 (A) intentional acts by the owner, his or her
9 agents, or employees; or

10 (B) actions of the owner, his or her agents, or
11 employees with knowledge, with a substantial certainty
12 that such actions would injure the person at risk or
13 others similarly situated.

14 (2) If such test results show an elevated blood level
15 of 15 micrograms per deciliter or greater, the owner of the
16 affected property or his or her agent or employee shall
17 have the opportunity to make a qualified offer under
18 subsection (e).

19 (3) If the concentration of lead in a whole venous
20 blood sample of a person at risk tested within 60 days
21 after the person at risk begins residence or regularly
22 spends at least 24 hours per week in an affected property
23 that is certified as being in compliance with the
24 provisions of subsections (a) or (b) of Section 25 is equal
25 to or greater than 15 micrograms per deciliter, it shall be
26 presumed that the exposure to lead-based paint occurred
27 before a person at risk began residing or regularly
28 spending at least 24 hours per week in the affected
29 property.

30 (e) Qualified offer.

31 (1) A qualified offer as defined in this subsection may
32 be made to a person at risk by the owner of the affected
33 property, an insurer of the owner, or an agent, employee,
34 or attorney of the owner.

35 (2) To qualify for the protection of liability under
36 subsection (b), a qualified offer must be made in writing

1 and delivered by certified mail return receipt requested,
2 within 30 days after the owner of the affected property,
3 his or her agent, or employee receives notice of the
4 elevated blood level referred to in subsection (d)(2).

5 (3) A qualified offer made under this subsection may be
6 accepted or rejected by a person at risk, or if a person at
7 risk is a minor, such person's parent or legal guardian. If
8 the qualified offer is not accepted within 30 days of
9 receipt of the qualified offer, it shall be deemed to have
10 been rejected. By mutual agreement, the parties may extend
11 the period for acceptance of the qualified offer.

12 (4) Subject to the exception in subsection (e)(5),
13 acceptance of a qualified offer by a person at risk, or by
14 a parent, legal guardian, or other person authorized to
15 respond on behalf of a person at risk, discharges and
16 releases all potential liability of the offeror, the
17 offeror's insured or principal, and any participating
18 co-offeror to the person at risk and to the parent or legal
19 guardian of the person at risk for alleged injury or loss
20 caused by the lead-based paint hazard in the affected
21 property.

22 (5) No owner of an affected property, or his or her
23 agent, employee, attorney or anyone else acting on his or
24 her behalf shall represent to a person at risk, his or her
25 parent or guardian, or anyone else acting on his or her
26 behalf, that an offer of settlement in an action resulting
27 from a lead-based paint hazard in an affected property is a
28 qualified offer unless the affected property have been
29 certified as lead-free under subsection (a) of Section 25
30 or lead-safe under subsection (b) of Section 25 and unless
31 the offeror reasonably believes that the settlement offer
32 satisfies all requirements of this Section. Any settlement
33 resulting from a settlement offer purporting to be a
34 qualified offer which does not satisfy the requirements of
35 this Section, shall at the election of the person at risk,
36 his or her parent or guardian, or other representative, be

1 deemed null and void and of no legal effect. Further,
2 misrepresentation of a settlement offer as a qualified
3 offer when in fact the offer does not meet these
4 requirements may subject the offeror to criminal penalties
5 under the appropriate criminal statute for perjury and
6 professional disciplinary codes where applicable. The
7 statute of limitations for an action by a person at risk
8 with an elevated blood level, his or her parent or legal
9 guardian is tolled until the misrepresentation described
10 in this subsection is discovered.

11 (6) A copy of the qualified offer shall be sent to the
12 Director of Public Health, the Director's local designee,
13 or the local health department. The Director of Public
14 Health, the Director's local designee, or the local health
15 department shall maintain a copy of the qualified offer in
16 the case management file of the person at risk. In
17 addition, the Director of Public Health, the Director's
18 local designee, or the local health department also shall
19 directly notify the person at risk, or in the case of a
20 minor, the parent or legal guardian of the minor, of state
21 and local resources available for lead poisoning
22 prevention and treatment.

23 (7) A qualified offer shall include payment for
24 reasonable expenses and costs incurred by the person at
25 risk with an elevated blood level of 15 micrograms per
26 deciliter or greater for:

27 (A) the relocation of the household of the person
28 at risk to a lead-safe dwelling unit of comparable size
29 and quality that may provide either:

30 (i) the permanent relocation of the household
31 of the affected person at risk to lead-safe
32 housing, including relocation expenses, a rent
33 subsidy, and incidental expenses; or

34 (ii) the temporary relocation of the household
35 of the affected person at risk to lead-safe housing
36 while necessary lead hazard reduction treatments

1 are being performed in the affected property to
2 make that affected property lead-safe.

3 (B) medically necessary treatment for the affected
4 person at risk as determined by the treating physician
5 or other health care provider or case manager of the
6 person at risk that is necessary to mitigate the
7 effects of lead poisoning, as defined by the Department
8 of Public Health by regulation, and in the case of a
9 child, until the child reaches the age of 18; and

10 (C) reasonable attorney's fees, not to exceed the
11 lesser of \$2,500 or actual time spent in the
12 investigation, preparation, and presentation of the
13 claim multiplied by an hourly rate of \$150 per hour.

14 (8) An offeror is required to pay reasonable expenses
15 for the medically necessary treatments under subsection
16 (e) (7) (B) of this Section only if coverage for these
17 treatments is not otherwise provided by Medicaid, state
18 medical assistance program, or by a health insurance plan
19 under which the person at risk has coverage or in which the
20 person at risk is enrolled. The health insurance plan shall
21 have no right of subrogation against the party making the
22 qualified offer.

23 (9) Aggregate maximum amounts payable. The amounts
24 payable under a qualified offer made under this Section are
25 subject to the following aggregate maximum caps:

26 (A) \$25,000 for all medically necessary treatments
27 as provided and limited in subsection (e) (7) (B);

28 (B) \$10,000 for all relocation benefits as
29 provided and limited in subsection (e) (7) (A).

30 All payments under a qualified offer specified in
31 subsection (e) (7) shall be paid to the provider of the service,
32 except that payment of incidental expenses may be paid directly
33 to the person at risk, or in the case of a child, to the parent
34 or legal guardian of the person at risk.

35 The payments under a qualified offer may not be considered
36 income or an asset of the person at risk, the parent of a

1 person at risk who is a child, or the legal guardian, for
2 purposes of determining eligibility under any state or federal
3 entitlement program.

4 (10) Certification of compliance. A qualified offer shall
5 include a certification by the owner of the affected property,
6 under the penalties of perjury, that the owner has complied
7 with the applicable provisions of Section 25 and of this
8 Section in a manner that qualified the owner to make a
9 qualified offer.

10 (11) Offers of compromise. A qualified offer shall not be
11 treated as an offer of compromise for purposes of admissibility
12 in evidence, notwithstanding that the amount is not in
13 controversy.

14 (12) Regulations. The Director of Public Health may adopt
15 regulations that are necessary to carry out the provisions of
16 this Section.

17 (f) Presumption of negligence in a case against
18 non-complying property owner.

19 (1) An owner of an affected property, who is not in
20 compliance with the provisions of either subsection (a) of
21 Section 25 or subsection (b) of Section 25 during the
22 period of residency of a person at risk, is presumed to
23 have failed to exercise reasonable care with respect to
24 lead-based paint hazards during that period in an action
25 seeking damages on behalf of the person at risk for alleged
26 injury or loss resulting from exposure to lead-based paint
27 hazards in the affected property.

28 (2) The owner has the burden of rebutting this
29 presumption by clear and convincing evidence.

30 (3) The plaintiff in an action against an owner of an
31 affected property described in subsection (f)(1), in
32 addition to recovering all other legally cognizable
33 damages, including punitive damages where appropriate,
34 shall be entitled to recover reasonable attorney's fees.

35 Section 45. Enforcement.

1 (a) Full enforcement of criminal violations and civil
2 remedies. Owners of affected properties who fail to comply with
3 the provisions of either subsection (a) of Section 25 or
4 subsection (b) of Section 25 shall be deemed in violation of
5 any applicable housing codes. The Office of the Illinois
6 Attorney General and any local authorities responsible for the
7 enforcement of housing codes shall enforce vigorously civil
8 remedies and criminal penalties provided for by law arising out
9 of the failure to comply with the requirements of this Act and
10 may seek injunctive relief where appropriate.

11 (b) Reporting of enforcement actions. Any civil or criminal
12 action by state or local officials to enforce the provisions of
13 this Act shall be reported to the Director of Public Health or
14 his or her local designee. The Director of Public Health or his
15 or her local designee shall issue an annual report outlining
16 specifically the enforcement actions brought pursuant to
17 subsection (a), the identity of the owners of the affected
18 properties, the authority bringing the enforcement action, the
19 nature of the action, and describing the criminal penalties and
20 civil relief.

21 (c) Receivership of properties not meeting standards.
22 After the second written notice from the Director of Public
23 Health, the Director of Public Health's local designee, or the
24 local department of health, of violations of the provisions of
25 this Act occurring within an affected property, or after two
26 criminal or civil actions pursuant to subsection (a) brought by
27 either State or local officials to enforce this Act arising out
28 of violations occurring within an affected property, unless the
29 violations alleged to exist are corrected, the affected
30 property shall be considered abandoned, and the Attorney
31 General, the Director of Public Health, or the Director of
32 Public Health's local designee, or the local department of
33 health, or any other officials having jurisdiction over the
34 affected property shall have the specific power to request the
35 court to appoint a receiver for the property. The court in such
36 instances may specifically authorize the receiver to apply for

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

10 Section 50. Private right to injunctive relief.

11 (a) Right to lead-free or lead-safe housing. A person at
12 risk shall be deemed to have a right to housing which is either
13 lead-free or lead-safe as outlined in this Act.

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

22 (c) Notice of intent to seek injunctive relief. A court
23 shall not grant the injunctive relief requested pursuant to
24 subsection (b), unless, at least 30 days prior to the filing
25 requesting the injunction, the owner of the affected property
26 has received written notice of the violation of standards
27 contained in Section 25 and has failed to bring the affected
28 property into compliance with the applicable standards. This
29 notice to the owner of the affected property is satisfied when
30 any of the following has occurred: (1) a person at risk, his or
31 her parent or legal guardian, or attorney, has notified the
32 owner of an affected property that the property fails to meet
33 the requirements for either lead-free status under subsection
34 (a) of Section 25 or lead-safe status under subsection (b) of
35 Section 25; (2) a local or state housing authority or the

1 Department of Public Health has notified the owner of the
2 affected property of violations of the provisions of the Act
3 occurring within an affected property; or (3) a criminal or
4 civil action pursuant to subsection (a) of Section 45 has been
5 brought by either State or local enforcement officials to
6 enforce this Act arising out of violations occurring within an
7 affected property.

8 (d) Right to recover litigation costs and attorney's fees.
9 A person who prevails in an action under subsection (b) is
10 entitled to an award of the costs of the litigation and to an
11 award of reasonable attorney's fees in an amount to be fixed by
12 the court.

13 (e) Accelerated hearing. Cases brought before the court
14 under this Section shall be granted an accelerated hearing.

15 Section 55. Retaliatory evictions prohibited.

16 (a) Actions protected. An owner of an affected property may
17 not evict or take any other retaliatory action against a person
18 at risk or his or her parent or legal guardian in response to
19 the actions of the person at risk, his or her parent or legal
20 guardian in:

21 (1) providing information to the owner of the affected
22 property, the Director of Public Health, or the Director of
23 Public Health's local designee for the jurisdiction in
24 which such property is located, local health officials, or
25 local housing officials concerning lead-based paint
26 hazards within an affected property or elevated blood
27 levels of a person at risk; or

28 (2) enforcing any of his or her rights under this Act.

29 (b) A retaliatory action includes any of the following
30 actions in which the activities protected under subsection (a)
31 are a material factor in motivating the action:

32 (1) a refusal to renew a lease;

33 (2) a termination of a tenancy;

34 (3) an arbitrary rent increase or decrease in services
35 to which the person at risk or his or her parent or legal

1 guardian is entitled; or

2 (4) any form of constructive eviction.

3 (c) Remedies. A person at risk or his or her parent or
4 legal guardian subject to an eviction or retaliatory action
5 under this Section is entitled to the relief as may be provided
6 by statute or any further relief deemed just and equitable by
7 the court, and is eligible for reasonable attorney's fees and
8 costs.

9 Section 60. Educational programs.

10 (a) Distribution of literature about childhood lead
11 poisoning. Within 120 days following the effective date of this
12 Act, the Director of Public Health, in consultation with the
13 Lead Poisoning Prevention Commission, shall develop culturally
14 and linguistically appropriate information pamphlets regarding
15 childhood lead poisoning, the importance of testing for
16 elevated blood levels, prevention of childhood lead poisoning,
17 treatment of childhood lead poisoning, and where appropriate,
18 the requirements of this Act. It is a requirement of this Act
19 that the information pamphlets be distributed to parents or the
20 other legal guardians of children 6 years of age or younger on
21 the following occasions:

22 (1) by the owner of any affected property or his or her
23 agents or employees at the time of the initiation of a
24 rental agreement to a new tenant whose household includes a
25 person at risk or any other woman of childbearing age. The
26 owner of the affected property or his or her agents or
27 employees also shall specify whether the affected property
28 has been inspected and whether or not it complies with the
29 standards for either lead-safe status or lead-free status;

30 (2) by the health care provider at the time of the
31 child's birth and at the time of any childhood immunization
32 or vaccine unless it is established that such information
33 pamphlet has been provided previously to the parent or
34 legal guardian by the health care provider within the prior
35 12 months; and

1 (3) by the owner or operator of any child care
2 facility, pre-school, or kindergarten class on or before
3 October 15 of the calendar year.

4 (b) Lead-safe housing seminars. The Director of Public
5 Health, within 120 days following the effective date of this
6 Act, shall establish guidelines and a trainer's manual for a
7 Lead-Safe Housing Awareness Seminar with a total class time of
8 3 hours or less. Such courses shall be offered by professional
9 associations and community organizations with a training
10 capacity, existing accredited educational institutions, and
11 for-profit educational providers. All such offerings proposals
12 shall be reviewed and approved, on the criteria of seminar
13 content and qualifications of instructors, by the Illinois
14 Department of Public Health.

15 Section 65. Screening program.

16 (a) Screening of children. The Director of Public Health or
17 his or her local designee shall establish a program for early
18 identification of persons at risk with elevated blood lead
19 levels. Such program shall systematically screen children
20 under 6 years of age in the target populations identified in
21 subsection (b) for the presence of elevated blood lead levels.
22 Children within the specified target populations shall be
23 screened with a blood lead test at ages 12 and 24 months or at
24 ages 36 to 72 months if they have not previously been screened.
25 The Director of Public Health shall, after consultation with
26 recognized professional medical groups and such other sources
27 as he or she deems appropriate, promulgate regulations
28 establishing, (i) the means by which and the intervals at which
29 such children under 6 years of age shall be screened for lead
30 poisoning and elevated blood lead levels; and (ii) guidelines
31 for the medical follow-up on children found to have elevated
32 blood lead levels.

33 (b) Screening priorities. In developing screening programs
34 to identify persons at risk with elevated blood lead levels,
35 the Director of Public Health shall give priority to persons

1 within the following categories:

2 (1) all children enrolled in Medicaid at ages 12 and 24
3 months or at ages 36 to 72 months if they have not
4 previously been screened;

5 (2) children under the age of 6 exhibiting delayed
6 cognitive development or other symptoms of childhood lead
7 poisoning;

8 (3) persons at risk residing in the same household, or
9 recently residing in the same household, as another person
10 at risk with a blood lead level of 10 micrograms per
11 deciliter or greater;

12 (4) persons at risk residing, or who have recently
13 resided, in buildings or geographical areas where
14 significant numbers of cases of lead poisoning or elevated
15 blood lead levels have recently been reported;

16 (5) persons at risk residing, or who have recently
17 resided, in affected properties contained in buildings
18 which during the preceding 3 years have been subject to
19 enforcement actions described in subsection (a) of Section
20 45, receivership actions under subsection (c) of Section
21 45, or where injunctive relief has been sought pursuant to
22 Section 50;

23 (6) persons at risk residing, or who have recently
24 resided, in other affected properties with the same owner
25 as another building containing affected properties which
26 during the preceding 3 years have been subject to
27 enforcement actions described in subsection (a) of Section
28 45, receivership actions under subsection (c) of Section
29 45, or where injunctive relief has been sought pursuant to
30 Section 50; and

31 (7) persons at risk residing in other buildings or
32 geographical areas where the Director reasonably
33 determines there to be a significant risk of affected
34 individuals having a blood lead level of 10 micrograms per
35 deciliter or greater.

36 (c) Director to maintain records of screenings and inform

1 designated individuals. The Director of Public Health or his or
2 her local designee shall maintain comprehensive records of all
3 screenings conducted pursuant to this Section. Such records
4 shall be indexed geographically and by owner in order to
5 determine the location of areas of relatively high incidence of
6 lead poisoning and other elevated blood lead levels. These
7 comprehensive records shall be communicated to the Director of
8 Public Health or his or her local designee on an ongoing basis.
9 Such records, with the names of tested individuals removed for
10 privacy purposes, shall be public records. All cases or
11 probable cases of lead poisoning, as defined by regulation by
12 the Director of Public Health, found in the course of
13 screenings conducted pursuant to this Section shall be reported
14 immediately to the affected individual, to his or her parent or
15 legal guardian if he or she is a minor, and to the Director.