

ENGROSSED 1999 ASSEMBLY BILL 806

March 15, 2000 – Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT** *to repeal* 254.17, 254.176 (3) (b) and 254.178 (2) (b); *to renumber and*
2 *amend* 254.166 (2) (c); *to amend* 20.435 (1) (gm), 20.505 (1) (md), 254.15 (1),
3 254.154, 254.166 (1), 254.167 (intro.), 254.167 (1), 254.167 (2), 254.167 (3) and
4 254.174; *to repeal and recreate* 254.172; and *to create* 254.11 (4g), 254.11
5 (4h), 254.11 (5m), 254.11 (8d), 254.11 (8s), 254.11 (9g), 254.166 (2) (c) 2., 254.166
6 (2) (c) 3., 254.166 (2) (e), 254.171, 254.173, 254.179, 254.18, 254.181, 254.182
7 and 901.055 of the statutes; **relating to:** conducting lead investigations,
8 lead-bearing paint hazard control, requirements for certification of lead-free
9 or lead-safe status for dwellings and premises, immunity from liability for lead
10 poisoning or lead exposure, a report on the affordability and availability of
11 liability insurance for lead-bearing paint hazards, granting rule-making

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1 authority, requiring the exercise of rule-making authority and making
2 appropriations.

Analysis by the Legislative Reference Bureau***Engrossment information:***

The text of Engrossed 1999 Assembly Bill 806 consists of the following documents adopted in the assembly on March 9, 2000: Assembly Substitute Amendment 2, as affected by the following Assembly Amendments: Assembly Amendment 1 (as affected by Assembly Amendment 1 thereto). The text also includes the March 14, 2000, chief clerk's correction to Assembly Amendment 1 to Assembly Amendment 1 to the substitute amendment.

Content of Engrossed 1999 Assembly Bill 806:

Under current law, the department of health and family services (DHFS) must develop and implement a comprehensive statewide lead poisoning or lead exposure prevention and treatment program. Under this program, among other things, DHFS may promulgate rules establishing procedures for conducting lead inspections of dwellings and premises, governing lead hazard reduction, certifying persons who perform or supervise performance of lead hazard reduction or lead management activities and establishing requirements for accreditation of lead training courses and approval of lead instructors; the certification and accreditation rules must meet, but may not exceed, federal environmental protection agency requirements. Before promulgating all of these rules, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry and medical or public health professions and persons who are certified to perform or supervise performance of lead hazard reduction or lead management activities. A city, village, town or other political subdivision may enact and enforce ordinances that establish systems of lead poisoning or lead exposure control with the same or higher standards than those specified under the program.

Currently, the governor is required to submit to the legislature a proposal to expend oil overcharge restitution funds disbursed by the federal government to this state.

With specified exceptions, this bill provides immunity from civil and criminal liability for lead poisoning or lead exposure to owners of dwellings or units of dwellings and their employes and agents and prohibits these persons from being subjected to administrative hearings (other than for the enforcement of DHFS rules) if, at the time that the poisoning or exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. This immunity also is provided for acts or omissions of owners, their employes and their agents related to lead poisoning or lead exposure that occur during the first 30 days after the owner acquires a dwelling or unit of a dwelling, unless the poisoning or exposure results from a lead-bearing paint hazard created by the owner, employe or agent. This temporary immunity is extended for an additional 60 days if the owner, employe or agent performs one of several specified actions during the first 30-day

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period and if, during the additional 60-day period, the owner obtains a certificate of lead-free or lead-safe status or if the owner shows by clear and convincing evidence that the property was in compliance by the end of the 90-day period with the standard to obtain the certificate and that the owner obtained the certificate in a reasonable amount of time. If the owner of a dwelling or unit of a dwelling receives written notice from DHFS or a local health department that a child under six years of age residing in the dwelling or unit has an elevated blood lead level (as defined in the bill), the owner must obtain a certificate of lead-free or lead-safe status in a timely manner, based on the reasonable availability of lead risk assessors or other certified persons to conduct necessary activities and on the time required for issuance of a certificate. A certificate obtained in this circumstance must be for at least 12 months' duration. The bill requires DHFS to promulgate rules that set the standards for issuance of a certificate of lead-free status or a certificate of lead-safe status, the procedures by which such a certificate may be issued or revoked and the period of validity of the certificate. Further, the bill specifies conditions that must be specified in the DHFS rules as to successive applications for certificates of lead-safe status for identical premises. DHFS must promulgate rules to create a registry of all premises, dwellings and units of dwellings for which a certificate of lead-free or lead-safe status is issued. Funds for operation of the registry are required to be obtained from fees for the issuance of the certificates. DHFS is authorized to impose a fee of \$50 for the issuance of a certificate of lead-free status and a fee of \$25 for the issuance of a certificate of lead-safe status and must review the fees every two years. DHFS also must, at least quarterly, notify a local health department concerning the issuance of certificates of lead-free or lead-safe status in the area of jurisdiction of the local health department. DHFS also must promulgate rules that specify the requirements for a course of up to 16 hours that a property owner or his or her agent may complete in order to receive certification and the scope of activities that the owner or agent may perform following certification, consistent with federal law. DHFS must review all of these required rules, beginning on January 1, 2003, and every two years thereafter and promulgate changes if necessary to maintain consistency with federal law. DHFS may promulgate rules setting forth safe work practices for demolition of buildings constructed before January 1, 1978.

The bill changes rules requirements to require that lead investigations, rather than lead inspections, of dwellings and premises be conducted; in addition, the bill requires that, if DHFS is notified that a child under six years of age who is an occupant of a dwelling or premises has an elevated blood lead level, DHFS conduct a lead investigation or ensure that a lead investigation is conducted. DHFS also must notify the occupant of the dwelling or premises or his or her representative of the results of any lead investigations conducted on or in the dwelling or premises and any actions taken to reduce or eliminate the lead hazard. A certified lead risk assessor who conducts a lead investigation of a dwelling or premises must conduct the investigation and issue a report in accordance with DHFS rules and, if the report indicates that the dwelling or premises meets criteria for the issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS is

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authorized to promulgate rules governing lead hazard reduction that DHFS determines are consistent with federal law; this authorization replaces the previous authorization to promulgate numerous rules concerning lead hazard reduction.

The bill eliminates authorization for DHFS to promulgate rules requiring that, after June 30, 1997, owners or operators of rental or leased dwellings or premises have a lead inspection, if any part of the dwelling or premises was constructed before January 1, 1978, and if DHFS determines that the dwellings or premises are likely to contain lead hazards. The bill also eliminates the requirements that certification and accreditation rules meet, but not exceed, federal environmental protection agency requirements.

The bill changes provisions relating to enactment and enforcement of municipal ordinances on lead poisoning or lead exposure control to specify that only the immunity and temporary immunity provisions for owners of dwellings or units of dwellings, as created in the bill, impair the right of a person or entity to sue for damages or equitable relief and that no limitations exist on the right of a municipality to impose a penalty for or restrain the violation of its ordinance on lead poisoning or lead exposure.

The bill authorizes DHFS to request a one-time supplement of general purpose revenues from the joint committee on finance (JCF) to pay initial costs of establishing the registry of properties that are issued certificates of lead-free status or certificates of lead-safe status. If DHFS requests the supplement, DHFS must submit a plan to JCF to expend not more than \$520,000 for fiscal year 2000-01. In addition, the bill provides for a one-time increase of \$215,000 in general purpose revenues to increase DHFS staff, for performance of certification for the performance of lead paint hazard reduction. When moneys received from the imposition of fees for the issuance of certificates of lead-free status and lead-safe status are sufficient, the secretary of administration must transfer to the general fund \$735,000 from the appropriation account into which the fees have been deposited.

The bill requires the office of the commissioner of insurance (OCI) to review the cost and availability of insurance in the private market that insures residential property against liability resulting from lead-bearing paint hazards and to submit a report to the appropriate standing committees of the legislature on whether such insurance is sufficiently available and affordable in the private market. If OCI determines that the insurance is not sufficiently available or affordable, OCI must submit proposed legislation creating a state residential lead liability fund in its 2003-05 biennial budget request, as well as drafting instructions to the legislative reference bureau for the proposed legislation.

The bill provides that any proposal submitted by the governor to the legislature to expend oil overcharge funds must provide for the expenditure of all available funds for reduction of lead paint hazards in dwellings to allow for and in conjunction with energy conservation activities in rental properties owned by persons seeking certificates of lead-free or lead-safe status.

Lastly, the bill expands the membership of the technical advisory committee with which DHFS must consult before promulgating certain rules relating to lead

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hazard control, to include advocates for persons at risk of lead poisoning and a resident of a first class city.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.435 (1) (gm) of the statutes, as affected by 1999 Wisconsin Act
2 9, is amended to read:

3 20.435 (1) (gm) *Licensing, review and certifying activities; fees; supplies and*
4 *services.* The amounts in the schedule for the purposes specified in ss. 146.50 (8),
5 250.05 (6), 252.23, 252.24, 252.245, 254.176, 254.178, 254.179 (1) (d), 254.20 (5) and
6 (8), 254.31 to 254.39, 254.41, 254.47, 254.61 to 254.89 and 255.08 (2) and ch. 69, for
7 the purchase and distribution of medical supplies and to analyze and provide data
8 under s. 250.04. All moneys received under ss. 146.50 (5) (f), (8) (d), 250.04 (3m),
9 250.05 (6), 252.23 (4) (a), 252.24 (4) (a), 252.245 (9), 254.176, 254.178, 254.181,
10 254.20 (5) and (8), 254.31 to 254.39, 254.41, 254.47, 254.61 to 254.89 and 255.08 (2)
11 (b) and ch. 69 and as reimbursement for medical supplies shall be credited to this
12 appropriation account.

13 **SECTION 2.** 20.505 (1) (md) of the statutes is amended to read:

14 20.505 (1) (md) *Oil overcharge restitution funds.* All federal moneys received
15 as oil overcharge funds, as defined in s. 14.065 (1), for expenditure under proposals
16 approved by the joint committee on finance under s. 14.065 ~~and~~, for transfers under
17 1993 Wisconsin Act 16, section 9201 (1z), and for allocation under 1999 Wisconsin
18 Act ... (this act), section 32 (7).

19 **SECTION 3.** 254.11 (4g) of the statutes is created to read:

20 254.11 (4g) “Certificate of lead-free status” means a certificate issued by a
21 certified lead risk assessor or other person certified under s. 254.176 that documents

1 a finding by the assessor that a premises, dwelling or unit of a dwelling is free of
2 lead-bearing paint as of the date specified on the certificate.

3 **SECTION 4.** 254.11 (4h) of the statutes is created to read:

4 254.11 **(4h)** “Certificate of lead-safe status” means a certificate issued by a
5 certified lead risk assessor or other person certified under s. 254.176 that documents
6 that the assessor detected no lead-bearing paint hazards affecting the premises,
7 dwelling or unit of the dwelling on the date specified on the certificate.

8 **SECTION 5.** 254.11 (5m) of the statutes is created to read:

9 254.11 **(5m)** “Elevated blood lead level” means a level of lead in blood that is
10 any of the following:

11 (a) Twenty or more micrograms per 100 milliliters of blood, as confirmed by one
12 venous blood test.

13 (b) Fifteen or more micrograms per 100 milliliters of blood, as confirmed by 2
14 venous blood tests that are performed at least 90 days apart.

15 **SECTION 6.** 254.11 (8d) of the statutes is created to read:

16 254.11 **(8d)** “Lead-bearing paint hazard” has the meaning specified by rule by
17 the department.

18 **SECTION 7.** 254.11 (8s) of the statutes is created to read:

19 254.11 **(8s)** “Lead investigation” means a measure or set of measures designed
20 to identify the presence of lead or lead hazards, including examination of painted or
21 varnished surfaces, paint, dust, water and other environmental media.

22 **SECTION 8.** 254.11 (9g) of the statutes is created to read:

23 254.11 **(9g)** “Lead risk assessor” has the meaning specified by rule by the
24 department.

25 **SECTION 9.** 254.15 (1) of the statutes is amended to read:

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1 254.15 (1) Develop and implement a comprehensive statewide lead poisoning
2 or lead exposure prevention and treatment program that includes lead poisoning or
3 lead exposure prevention grants under s. 254.151; any childhood lead poisoning
4 screening requirement under rules promulgated under ss. 254.158 and 254.162; any
5 requirements regarding care coordination and follow-up for children with lead
6 poisoning or lead exposure required under rules promulgated under s. 254.164;
7 departmental responses to reports of lead poisoning or lead exposure under s.
8 254.166; any lead ~~inspection~~ investigation requirements under rules promulgated
9 under ss. 254.167; any lead inspection requirements under rules promulgated under
10 254.168 and 254.17; any lead hazard reduction requirements under rules
11 promulgated under s. 254.172; and certification, accreditation and approval
12 requirements under ss. 254.176 and 254.178; any certification requirements and
13 procedures under rules promulgated under s. 254.179; and any fees imposed under
14 s. 254.181.

15 **SECTION 10.** 254.154 of the statutes is amended to read:

16 254.154 This subchapter does not prohibit any city, village, town or other
17 political subdivision from enacting and enforcing ordinances establishing a system
18 of lead poisoning or lead exposure control that provides the same or higher standards
19 than those set forth in this subchapter. Nothing in this subchapter other than s.
20 254.173 (2) and (3) may be interpreted or applied in any manner to impair the right
21 of any person, or entity, municipality or other political subdivision to sue for damages
22 or equitable relief or to restrain a violation of such an ordinance. Nothing in this
23 subchapter may be interpreted or applied in any manner to impair the right of a
24 municipality or other political subdivision to impose a penalty for or restrain the
25 violation of an ordinance specified in this section.

ENGROSSED ASSEMBLY BILL 806**SECTION 11**

1 **SECTION 11.** 254.166 (1) of the statutes is amended to read:

2 254.166 (1) The department may, after being notified that an occupant of a
3 dwelling or premises who is under 6 years of age has blood lead poisoning or lead
4 exposure, present official credentials to the owner or occupant of the dwelling or
5 premises, or to a representative of the owner, and request admission to conduct a lead
6 ~~inspection~~ investigation of the dwelling or premises. If the department is notified
7 that an occupant of a dwelling or premises who is a child under 6 years of age has
8 an elevated blood lead level, the department shall conduct a lead investigation of the
9 dwelling or premises or ensure that a lead investigation of the dwelling or premises
10 is conducted. The lead ~~inspection~~ investigation shall be conducted during business
11 hours, unless the owner or occupant of the dwelling or premises consents to an
12 ~~inspection~~ investigation during nonbusiness hours or unless the department
13 determines that the dwelling or premises presents an imminent lead hazard. The
14 department shall use reasonable efforts to provide prior notice of the lead ~~inspection~~
15 investigation to the owner of the dwelling or premises. The department may remove
16 samples or objects necessary for laboratory analysis to determine the presence of a
17 lead hazard in the dwelling or premises. The department shall prepare and file
18 written reports of all ~~inspections~~ lead investigations conducted under this section
19 and shall make the contents of these reports available for inspection by the public,
20 except for medical information, which may be disclosed only to the extent that
21 patient health care records may be disclosed under ss. 146.82 to 146.835. If the owner
22 or occupant refuses admission, the department may seek a warrant to ~~inspect~~
23 investigate the dwelling or premises. The warrant shall advise the owner or
24 occupant of the scope of the ~~inspection~~ lead investigation.

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1 **SECTION 12.** 254.166 (2) (c) of the statutes is renumbered 254.166 (2) (c) (intro.)
2 and amended to read:

3 254.166 **(2)** (c) (intro.) Notify the occupant of the dwelling or premises or ~~that~~
4 ~~person's~~ the occupant's representative ~~that~~ of all of the following:

5 1. That a lead hazard is present on or in the dwelling or premises ~~and may~~
6 ~~constitute a health hazard.~~

7 **SECTION 13.** 254.166 (2) (c) 2. of the statutes is created to read:

8 254.166 **(2)** (c) 2. The results of any lead investigations conducted on or in the
9 dwelling or premises.

10 **SECTION 14.** 254.166 (2) (c) 3. of the statutes is created to read:

11 254.166 **(2)** (c) 3. Any actions taken to reduce or eliminate the lead hazard.

12 **SECTION 15.** 254.166 (2) (e) of the statutes is created to read:

13 254.166 **(2)** (e) If an order is issued under par. (d), conduct or require a certified
14 lead risk assessor or other person certified under s. 254.176 to conduct a lead
15 investigation, a check of work completed and dust tests for the presence of hazardous
16 levels of lead to ensure compliance with the order.

17 **SECTION 16.** 254.167 (intro.) of the statutes is amended to read:

18 **254.167 Conduct of lead inspection investigation.** (intro.) Subject to the
19 limitation under s. 254.174, the department may promulgate rules establishing
20 procedures for conducting lead ~~inspections~~ investigations of dwellings and premises.
21 ~~Any rules promulgated under this section shall meet, but not exceed, any~~
22 ~~requirements under regulations promulgated by the administrator of the federal~~
23 ~~environmental protection agency under section 402 of the federal toxic substances~~
24 ~~control act, as created by section 1021 of P.L. 102-550. The rules promulgated under~~
25 this section may include the following:

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1 **SECTION 17.** 254.167 (1) of the statutes is amended to read:

2 254.167 (1) Specific procedures for ~~inspecting~~ investigating, testing or
3 sampling painted, varnished or other finished surfaces, drinking water, household
4 dust, soil and other materials that may contain lead.

5 **SECTION 18.** 254.167 (2) of the statutes is amended to read:

6 254.167 (2) Specific procedures for the notification of owners, operators,
7 occupants or prospective occupants, mortgagees and lienholders of lead levels
8 identified during ~~an inspection~~ a lead investigation and of any health risks that are
9 associated with the lead level and condition of the lead found during the ~~inspection~~
10 lead investigation.

11 **SECTION 19.** 254.167 (3) of the statutes is amended to read:

12 254.167 (3) The form of lead ~~inspection~~ investigation reports, the requirements
13 for filing the reports with the department and the procedures by which members of
14 the public may obtain copies of ~~inspection~~ lead investigation reports.

15 **SECTION 20.** 254.17 of the statutes is repealed.

16 **SECTION 21.** 254.171 of the statutes is created to read:

17 **254.171 Dwellings and units of dwellings where child has elevated**
18 **blood lead level.** If an owner of a dwelling or unit of a dwelling receives written
19 notice from the department or a local health department that a child under 6 years
20 of age, who resides in the owner's owner-occupied dwelling or unit or who resides in
21 the owner's dwelling or unit under the terms of a rental agreement, has an elevated
22 blood lead level, the owner shall obtain a certificate of lead-free status or certificate
23 of lead-safe status for the affected dwelling or unit in a timely manner, based on the
24 reasonable availability of lead risk assessors or other persons certified under s.
25 254.176 to conduct any necessary lead investigation or lead hazard reduction

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1 activities and based on the time required for issuance of a certificate of lead-free
2 status or a certificate of lead-safe status. A certificate of lead-safe status obtained
3 under this section may not be for less than 12 months in duration. Nothing in this
4 section precludes the department or the department's agent from conducting a lead
5 investigation or issuing an order under s. 254.166.

6 **SECTION 22.** 254.172 of the statutes is repealed and recreated to read:

7 **254.172 Prevention and control of lead-bearing paint hazards in**
8 **dwelling and premises. (1)** Subject to the limitation under s. 254.174, the
9 department may promulgate rules governing lead hazard reduction that the
10 department determines are consistent with federal law.

11 **(2)** If a certified lead risk assessor or other person certified under s. 254.176
12 conducts a lead investigation of a dwelling or premises, he or she shall conduct the
13 lead investigation and issue a report in accordance with any rules promulgated
14 under s. 254.167. If the report indicates that the dwelling or premises meets criteria
15 under s. 254.179 (1) (a) for issuance of a certificate of lead-free or of a certificate of
16 lead-safe status, the lead risk assessor or other person shall issue the appropriate
17 certificate, subject to s. 254.181.

18 **SECTION 23.** 254.173 of the statutes is created to read:

19 **254.173 Immunity from liability for lead poisoning or lead exposure;**
20 **restrictions. (1) LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds all
21 of the following:

22 1. That a national task force appointed by the federal department of housing
23 and urban development, the task force on lead-based paint hazard reduction and
24 financing, found that 1,700,000 children under 6 years of age have blood lead levels
25 at or above the federally established level of concern. The task force also found that

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1 the most common cause of childhood lead poisoning is ingestion of
2 lead-contaminated dust and chips from lead-bearing paint. The other significant
3 cause is dust from bare lead-contaminated soil.

4 2. That high levels of lead in a child's blood can cause permanent nervous
5 system damage and even relatively low blood lead levels can cause significant
6 nervous system effects. Of 58,797 children who were screened in this state in fiscal
7 year 1995-96, 11,170, or 19%, were newly identified as having blood lead levels that
8 constitute lead poisoning or lead exposure.

9 (b) The legislature encourages property owners to address the problems
10 associated with lead-bearing paint by bringing their property into compliance with
11 the applicable state standards and finds that an appropriate method to so encourage
12 property owners is to hold them not liable with respect to a person who develops lead
13 poisoning or lead exposure in the property. The purpose of these standards and this
14 restriction on liability is to reduce the exposure of children and others to
15 lead-bearing paints, thereby substantially reducing the number of persons who
16 develop lead poisoning or lead exposure. In addition, these standards and this
17 restriction on liability will improve the quality of this state's housing stock and result
18 in greater availability of insurance coverage for lead hazards.

19 **(2) IMMUNITY; CONDITIONS; RESTRICTIONS.** An owner of a dwelling or unit of a
20 dwelling and his or her employes and agents are immune from civil and criminal
21 liability and may not be subject to an agency proceeding under ch. 227, other than
22 for the enforcement of rules promulgated by the department under this subchapter,
23 for their acts or omissions related to lead poisoning or lead exposure of a person who
24 resides in or has visited the dwelling or unit if, at the time that the lead poisoning
25 or lead exposure occurred, a certificate of lead-free status or a certificate of lead-safe

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1 status was in effect for the dwelling or unit. This subsection does not apply if it is
2 shown by clear and convincing evidence that one of the following has occurred:

3 (a) The owner or his or her employe or agent obtained the certificate by fraud.

4 (b) The owner or his or her employe or agent violated a condition of the
5 certificate.

6 (c) During renovation, remodeling, maintenance or repair after receiving the
7 certificate, the owner or his or her employe or agent created a lead-bearing paint
8 hazard that was present in the dwelling or unit of the dwelling at the time that the
9 lead poisoning or lead exposure occurred.

10 (d) The owner or his or her employe or agent failed to respond in a timely
11 manner to notification by a tenant, by the department or by a local health
12 department that a lead-bearing paint hazard might be present.

13 (e) The lead poisoning or lead exposure was caused by a source of lead in the
14 dwelling or unit of the dwelling other than lead-bearing paint.

15 **(3) TEMPORARY IMMUNITY; EXCEPTION.** (a) An owner of a dwelling or unit of a
16 dwelling and his or her employes and agents are immune from civil and criminal
17 liability and may not be subject to an agency proceeding under ch. 227, other than
18 for the enforcement of rules promulgated by the department under this subchapter,
19 for their acts or omissions related to lead poisoning or lead exposure that occur
20 during the first 30 days after the owner acquires the dwelling or unit, except that this
21 subsection does not apply to lead poisoning or lead exposure that results from a
22 lead-bearing paint hazard created by the owner or his or her employe or agent.
23 Except as provided in par. (b), immunity under this subsection is extended for an
24 additional 60 days if the owner of the dwelling or unit of a dwelling or his or her
25 employe or agent has done one of the following during that first 30-day period:

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1 1. Completed a lead investigation report or entered into a contract for a lead
2 investigation with respect to the dwelling or unit.

3 2. Entered into a contract for lead hazard reduction with respect to the dwelling
4 or unit.

5 3. Registered for a course under s. 254.179 (1) (e).

6 4. Received certification under s. 254.176.

7 (b) Immunity under par. (a) for an additional 60 days following the first 30 days
8 after an owner acquires a dwelling or unit of a dwelling applies only if all of the
9 following occur:

10 1. The owner obtains a certificate of lead-free status or a certificate of lead-safe
11 status for the dwelling or unit.

12 2. The owner shows by clear and convincing evidence that the property was in
13 compliance with the standard to obtain a certificate of lead-free status or a
14 certificate of lead-safe status by the end of the 90-day period and that the owner
15 obtained the certificate in a reasonable amount of time following the owner's acts to
16 achieve compliance.

17 **SECTION 24.** 254.174 of the statutes is amended to read:

18 **254.174 Technical advisory committees.** Before the department may
19 promulgate rules under s. 254.167, 254.168, ~~254.17~~ or 254.172 or 254.179, the
20 department shall appoint a technical advisory committee under s. 227.13 and shall
21 consult with the technical advisory committee on the proposed rules. Any technical
22 advisory committee required under this section shall include representatives from
23 local health departments that administer local lead programs, representatives from
24 the housing industry, persons certified under s. 254.176 ~~and~~, representatives from
25 the medical or public health professions, advocates for persons at risk of lead

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1 poisoning and a resident of a 1st class city. Any technical advisory committee
2 required under this section before promulgating rules under s. 254.168 shall also
3 include representatives of facilities serving children under 6 years of age.

4 **SECTION 25.** 254.176 (3) (b) of the statutes is repealed.

5 **SECTION 26.** 254.178 (2) (b) of the statutes is repealed.

6 **SECTION 27.** 254.179 of the statutes is created to read:

7 **254.179 Rules for dwellings and premises. (1)** Subject to s. 254.174 and
8 after review of ordinances of cities, towns and villages in this state, the department
9 shall, by use of a research-based methodology, promulgate as rules all of the
10 following:

11 (a) Except as provided in s. 254.18, the standards for a premises, dwelling or
12 unit of a dwelling that must be met for issuance of a certificate of lead-free status
13 or a certificate of lead-safe status to the owner of the premises, dwelling or unit of
14 a dwelling, with the goal of long-term lead hazard reduction.

15 (b) The procedures by which a certificate of lead-free status or a certificate of
16 lead-safe status may be issued or revoked.

17 (c) The period of validity of a certificate of lead-free status or a certificate of
18 lead-safe status, including all of the following:

19 1. Authorization for the certificate of lead-free status to remain in effect unless
20 revoked because of erroneous issuance or because the premises, dwelling or unit of
21 the dwelling is not free of lead-bearing paint. The rules shall specify that the face
22 of the certificate shall indicate that the certificate is valid unless revoked.

23 2. The standards limiting the length of validity of a certificate of lead-safe
24 status, including the condition of a premises, dwelling or unit of a dwelling, the type
25 of lead hazard reduction activity that was performed, if any, and any other

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1 requirements that must be met to maintain certification, unless the certificate is
2 earlier revoked because of erroneous issuance or because the premises, dwelling or
3 unit of the dwelling is not safe from lead-bearing paint hazards. The rules shall
4 specify that the face of the certificate shall indicate the certificate's length of validity.
5 The rules shall further specify that applications for certificates of lead-safe status
6 for identical premises may be made only as follows:

7 a. A person may apply for no more than 2 successive certificates of lead-safe
8 status that have a duration of less than 12 months and, if again applying for a
9 certificate of lead-safe status, shall apply for a certificate that has a duration of 12
10 months or more.

11 b. A person to whom subd. 2. a. applies shall, if applying for a certificate of
12 lead-safe status that is additional to the certificates specified in subd. 2. a. and that
13 has a duration of less than 12 months, provide the department with a reason for the
14 necessity for issuance of a certificate of that duration.

15 c. A person to whom subd. 2. a. and b. applies shall, if applying for a certificate
16 of lead-safe status that is additional to the certificates specified in subd. 2. a. and b.
17 and that has a duration of less than 12 months, provide the department with clear
18 and convincing evidence of the necessity for issuance of a certificate of that duration.

19 (d) A mechanism for creating a registry of all premises, dwellings or units of
20 dwellings for which a certificate of lead-free status or a certificate of lead-safe status
21 is issued.

22 (e) The requirements for a course of up to 16 hours that a property owner or his
23 or her employe or agent may complete in order to receive certification of completion
24 and the scope of the lead investigation and lead hazard reduction activities that the

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1 owner, employe or agent may perform following certification, to the extent consistent
2 with federal law.

3 (2) By January 1, 2003, and every 2 years thereafter, the department shall
4 review the rules under sub. (1) and shall promulgate changes to the rules if necessary
5 in order to maintain consistency with federal law.

6 (3) Subject to s. 254.174, the department may promulgate rules that set forth
7 safe work practices that shall be followed in the demolition of a building constructed
8 before January 1, 1978, to avoid exposure by persons to lead hazards in the area of
9 the demolition.

10 **SECTION 28.** 254.18 of the statutes is created to read:

11 **254.18 Lead hazard reduction in dwellings and premises.** Sampling or
12 testing of dwellings, units of dwellings or premises for the presence of lead-bearing
13 paint or a lead hazard is not required before lead hazard reduction activities are
14 conducted if the presence of lead-bearing paint or a lead hazard is assumed and the
15 lead hazard reduction activities are performed in a lead-safe manner.

16 **SECTION 29.** 254.181 of the statutes is created to read:

17 **254.181 Certificate of lead-free status and certificate of lead-safe**
18 **status; fees and notification.** (1) The department may impose a fee of \$50 for
19 issuance of a certificate of lead-free status and a fee of \$25 for issuance of a certificate
20 of lead-safe status. Fees under this section may not exceed actual costs of issuance
21 and of maintaining the registry under s. 254.179 (1) (d). The department shall review
22 the fees every 2 years and adjust the fees to reflect the actual costs.

23 (2) The department shall, at least quarterly, notify a local health department
24 concerning issuance of certificates of lead-free status and certificates of lead-safe
25 status in the area of jurisdiction of the local health department.

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1 **SECTION 30.** 254.182 of the statutes is created to read:

2 **254.182 Repayment to general fund.** The secretary of administration shall
3 transfer from the appropriation account under s. 20.435 (1) (gm) to the general fund
4 the amount of \$735,000 when the secretary of administration determines that
5 program revenues from fees imposed under ss. 254.176 (3) (e) and (4), 254.178 (2) (d)
6 and 254.181 are sufficient to make the transfer.

7 **SECTION 31.** 901.055 of the statutes is created to read:

8 **901.055 Admissibility of results of dust testing for the presence of lead.**
9 The results of a test for the presence of lead in dust are not admissible during the
10 course of a civil or criminal action or proceeding or an administrative proceeding
11 unless the test was conducted by a person certified for this purpose by the
12 department of health and family services.

13 **SECTION 32. Nonstatutory provisions.**

14 (1) RULES CONCERNING LEAD FOR DWELLINGS, UNITS OF DWELLINGS AND PREMISES.
15 The department of health and family services shall submit in proposed form the rules
16 required under section 254.179 (1) of the statutes, as created by this act, to the
17 legislative council staff under section 227.15 (1) of the statutes no later than the first
18 day of the 7th month beginning after the effective date of this paragraph. In
19 submitting the rules, the department shall include a summary of the differences
20 between standards under the rules proposed to meet the requirement of section
21 254.179 (1) (a) of the statutes, as created by this act, and standards under a similar
22 ordinance of a 1st class city.

23 (2) SUPPLEMENT FOR REGISTRY OF LEAD-FREE OR LEAD-SAFE PROPERTIES. The
24 department of health and family services may request the joint committee on finance
25 to supplement, from the appropriation account under section 20.865 (4) (a) of the

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1 statutes, the appropriation account under section 20.435 (1) (a) of the statutes, to pay
2 initial costs of establishing under section 254.179 (1) (d) of the statutes, as created
3 by this act, a registry of properties that are issued certificates of lead-free status or
4 certificates of lead-safe status. If the department of health and family services
5 requests supplementation of the appropriation account under section 20.435 (1) (a)
6 of the statutes, the department shall submit a plan to the joint committee on finance
7 to expend not more than \$520,000 for fiscal year 2000-01. If the cochairpersons of
8 the committee do not notify the secretary of the department within 14 working days
9 after the date of the department's submittal that the committee intends to schedule
10 a meeting to review the request, the appropriation account shall be supplemented
11 as provided in the request. If, within 14 working days after the date of the
12 department's submittal, the cochairpersons of the committee notify the secretary of
13 the department that the committee intends to schedule a meeting to review the
14 request, the appropriation account shall be supplemented only as approved by the
15 committee. Notwithstanding section 13.101 (3) (a) 1. of the statutes, the committee
16 is not required to find that an emergency exists.

17 (3) REGISTRY OF LEAD-FREE AND LEAD-SAFE PROPERTIES; LIMITATION ON FUNDING.

18 Notwithstanding section 16.42 (1) (e) of the statutes, in submitting information
19 under section 16.42 of the statutes for purposes of the 2001-2003 biennial budget
20 bill, the department of health and family services shall submit information
21 concerning the appropriation under section 20.435 (1) (a) of the statutes as though
22 any supplementation, under SECTION 32 (2) of this act, of the dollar amount of that
23 appropriation had not been made.

24 (4) LEAD PAINT HAZARD REDUCTION; LIMITATION ON FUNDING. Notwithstanding

25 section 16.42 (1) (e) of the statutes, in submitting information under section 16.42

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1 of the statutes for purposes of the 2001–2003 biennial budget bill, the department
2 of health and family services shall submit information concerning the appropriation
3 under section 20.435 (1) (a) of the statutes as though the increase in the dollar
4 amount of that appropriation by SECTION 33 (1) of this act had not been made.

5 (5) LEAD PAINT HAZARDS OUTREACH AND ABATEMENT. In submitting information
6 under section 16.42 (1) of the statutes for purposes of the 2001–2003 biennial budget
7 bill, the department of health and family services shall submit a proposal, including
8 a request for additional funding, to conduct lead paint hazards outreach and
9 abatement activities.

10 (6) REHABILITATION OF RENTAL PROPERTY FOR LOW-INCOME PERSONS. In submitting
11 information under section 16.42 (1) of the statutes for purposes of the 2001–2003
12 biennial budget bill, the Wisconsin housing and economic development authority
13 shall submit a proposal for lead hazard reduction activities for and rehabilitation of
14 rental property for low-income persons in Wisconsin.

15 (7) ALLOCATION OF OIL OVERCHARGE FUNDS TO ENERGY PROGRAMS.
16 Notwithstanding section 14.065 of the statutes, the secretary of administration shall
17 allocate all oil overcharge restitution funds and all accruing interest earnings on
18 those funds under section 20.505 (1) (md) of the statutes that are not approved for
19 expenditure on the effective date of this subsection, for reduction of lead paint
20 hazards in dwellings that is done to allow for and in conjunction with energy
21 conservation activities in rental properties owned by persons who seek a certificate
22 of lead-free status, as defined in section 254.11 (4g) of the statutes, as created by this
23 act, or a certificate of lead-safe status, as defined in section 254.11 (4h) of the
24 statutes, as created by this act. In awarding moneys under this subsection, the

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1 department of administration shall give priority to projects that emphasize
2 comprehensive lead removal plans for rental properties.

3 (8) REPORT ON LIABILITY INSURANCE FOR LEAD PAINT HAZARDS. The office of the
4 commissioner of insurance shall review the cost and availability of insurance in the
5 private market that provides residential property owners with liability coverage for
6 lead-bearing paint hazards. On the basis of the review, the office shall, no later than
7 October 1, 2002, prepare and submit to the appropriate standing committees of the
8 legislature in the manner provided under section 13.172 (3) of the statutes a report
9 on whether such insurance is sufficiently affordable and sufficiently available in the
10 private insurance market. If the office determines and provides in its report that
11 such insurance is not either sufficiently affordable or sufficiently available in the
12 private insurance market, the office shall submit drafting instructions to the
13 legislative reference bureau for proposed legislation to create a state residential lead
14 liability fund and shall include such proposed legislation in its 2003–05 biennial
15 budget request under section 16.42 of the statutes.

16 **SECTION 33. Appropriation changes.**

17 (1) CERTIFICATION FOR PERFORMANCE OF LEAD PAINT HAZARD REDUCTION. In the
18 schedule under section 20.005 (3) of the statutes for the appropriation to the
19 department of health and family services under section 20.435 (1) (a) of the statutes,
20 as affected by the acts of 1999, the dollar amount is increased by \$215,000 for fiscal
21 year 2000–01 to increase the authorized FTE positions for the department by 5.0
22 positions on January 1, 2001, and to provide supporting costs to perform certification
23 for performance of lead paint hazard reduction.

24 (2) SUPPLEMENT FOR REGISTRY OF LEAD-FREE OR LEAD-SAFE PROPERTIES. In the
25 schedule under section 20.005 (3) of the statutes for the appropriation to the joint

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1 committee on finance under section 20.865 (4) (a) of the statutes, as affected by the
2 acts of 1999, the dollar amount is increased by \$520,000 for fiscal year 2000–01 to
3 increase funding to provide payment for initial costs of establishing a registry of
4 properties that are issued certificates of lead–free status or certificates of lead–safe
5 status.

6 **SECTION 34. Initial applicability.**

7 (1) IMMUNITY FROM LIABILITY FOR LEAD POISONING OR LEAD EXPOSURE. The
8 treatment of section 254.173 of the statutes first applies to lead poisoning or lead
9 exposure that occurs on the effective date of this subsection.

10 **SECTION 35. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of sections 254.11 (8d), 254.166 (2) (c) and (e), 254.172,
13 254.173 and 901.055 of the statutes, the creation of section 254.166 (2) (c) 2. and 3.
14 of the statutes and SECTION 34 (1) of this act take effect on the first day of the 16th
15 month beginning after publication.

16 (END)