

1999 DRAFTING REQUEST

Bill

Received: 02/11/2000

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Tom Sykora (608) 266-1194

By/Representing: Dick Sweet

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact: Leg. Council

Alt. Drafters: kahlepj

Subject: Health - public health

Extra Copies: ISR

Pre Topic:

No specific pre topic given

Topic:

Lead hazard control, lead-bearing paint hazard reduction and property owner immunity from liability

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kenneda 02/21/2000	csicilia 02/22/2000		_____			S&L
/1			haueca 02/22/2000	_____	lrb_docadmin 02/22/2000	lrb_docadminS&L 02/23/2000	

FE Sent For: 02/22/2000.



<END>

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/?	kenneda	1 gs 2/22 oo	ch 2/22	1 km 2/22			

FE Sent For:

<END>

Kennedy, Debora

From: Sweet, Richard
Sent: Friday, February 11, 2000 2:20 PM
To: Kennedy, Debora
Cc: Coggs, Spencer; Jauch, Bob; Sykora, Tom; Wirch, Bob; Sappenfield, Anne; Shannon, Pam
Subject: FW: Final draft



SB232.sub.21100.final.
doc

Debora,

Here's the final Realtor's Ass'n. draft of a sub to SB232. At this point, it probably makes sense to start it as a sub to SB232 (under Sen. Jauch's name), but it will also become a separate Assembly bill after your final drafting is done. Do you have any time on Monday to discuss what they intend? I'm tied up until about 10:30, but I have the rest of the day free.

Thanks for your help.

Dick

-----Original Message-----

From: Theo, Mike - VP Public Affairs [mailto:mtheo@wra.org]
Sent: Friday, February 11, 2000 2:05 PM
To: Lead Paint Distribution List
Subject: Final draft

Here's the final draft. Thanks to all. I'm sure the discussions will continue.

<<SB232.sub.21100.final.doc>>

SUBSTITUE AMENDMENT 1 TO SENATE BILL 232

DRAFT

AN ACT to renumber and amend 254.166 (2) (c); to amend 254.166 (1), 254.167, and 254.174; to repeal and recreate 254.172; to repeal 254.17, 254.176(3)(b), and 254.178(2)(b); and to create 254.11 (4m), (4s), (5m), 254.166 (2) (c) 2. and 3., 254.166 (2) (e), 254.171, 254.173, 254.177, chapter 606 and 901.055 of the statutes; relating to: lead hazard control, lead-bearing paint hazard reduction, providing restricted immunity from civil liability to certain property owners, employees and agents, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 254.11 (1?), (4m), (4s), (4?), (4?), (5m), (4?), (4?), (8r), (8?), (8?), (9?) and (9?) of the statutes are created to read:

254.11 (1?) "Abatement" has the meaning specified by rule by the department

✓ (4?) "Certificate of lead-free status" means a certificate issued by a certified lead (Pb) risk assessor or other person credentialed to issue certificates of lead-free status that documents a finding by the assessor or other person that a premises, dwelling or unit has been found to be free of lead-bearing paint as of the date specified on the certificate.

✓ (4?) "Certificate of lead-safe status" means a certificate issued by a certified lead (Pb) risk assessor or other person credentialed to issue certificates of lead-safe status that documents that the assessor or other person detected no lead-bearing paint hazards affecting the premises, dwelling or unit on the date specified on the certificate.

(4?) "Clearance" has the meaning specified by rule by the department.

(4?) "Department" means the department of health and family services.

(5m) "Elevated blood lead level" means a level of lead in blood that is 20 or more micrograms per 100 milliliters of blood as confirmed by one venous blood test or that is 15 or more micrograms per 100 milliliters of blood as confirmed by 2 consecutive venous blood tests that are performed at least 3 months apart.

(8?) "Lead-bearing paint hazard reduction activity" has the meaning specified by rule by the department.

(8?) "Lead-bearing paint hazard" has the meaning specified by rule by the department.

(8?) "Lead investigation" means any measure or set of measures designed to identify the presence of lead or lead hazards, including examination of painted or varnished surfaces, paint, dust, water and other environmental media.

X - not used in context in statute

Deletes

X - is used only in "lead hazard abatement + lead hazard reduction, under DHS rule under 3.254.172 (- defined in 250.01 (2))

unnecessary

criteria?

delete
(9?) "Lead (Pb) property owner/worker" has the meaning specified by rule by the department.

(9?) "Lead (Pb) risk assessor" has the meaning specified by rule by the department.

(10?) "Property check" has the meaning specified by rule by the department.

X, per DS instructions

SECTION 3. 254.166 (1) of the statutes is amended to read:

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

SECTION 4. 254.166 (2) (c) of the statutes is renumbered 254.166 (2) (c) (intro.) and amended to read:

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

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

SECTION 5. 254.166 (2) (c) 2. and 3. of the statutes are created to read:

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

3. Any actions taken to reduce or eliminate the lead hazard.

SECTION 6. 254.166 (2) (e) of the statutes is created to read:

? why change from DS to pl. DS? doesn't agree with occupant

^{delete}
254.166 (2) (e) If an order is issued under par. (d), the department may conduct or require a certified lead (Pb) risk assessor, ~~or other person credentialed for this purpose,~~ to conduct a lead investigation, a check of work completed and dust tests for the presence of hazardous levels of lead to ensure compliance.

SECTION 7. 254.167 of the statutes is amended to read:

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

SECTION 8. 254.17 of the statutes is repealed.

SECTION 9. 254.171 of the statutes is created to read:

254.171 Dwellings and units where child has elevated blood lead level. If an owner of a dwelling or unit receives written notice from the department or a local health department that a child under 6 years of age, who is residing in an owner-occupied dwelling or unit or who is residing in the owner's dwelling or unit ^{under?} per the terms of a rental agreement, has an elevated blood lead level, the owner shall promptly obtain a certificate of lead-free or lead-safe status for the affected unit or dwelling. Nothing in this subsection shall preclude the department or the department's agent from conducting a lead investigation and issuing orders under s. 254.166.

SECTION 10. 254.172 of the statutes is repealed and recreated to read:

254.172 Prevention and control of lead-bearing paint hazards in dwellings and premises. (1) Subject to the limitation under s. 254.174, the department may promulgate rules governing lead hazard reduction ^{that} if the department determines that the rules are not preempted by federal law.

(2) If a certified lead (Pb) risk assessor or other person credentialed for this purpose, ^{or lead-safe} conducts a lead investigation of a dwelling or premises, the investigation shall be conducted and a report shall be issued in accordance with rules promulgated under s. 254.167. If the report indicates that the dwelling or premises meets the criteria established by the department ^{under} by rule for issuing a certificate of lead-free status, the assessor or other credentialed person shall issue a certificate as appropriate. _{254.177(1)(a)}

SECTION 11. 254.173 of the statutes is created to read:

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

1. That a national task force appointed by the federal department of housing and urban development, the task force on lead-based paint hazard reduction and financing, found that 1,700,000 children under 6 years of age have blood lead levels at or above the federally established level of concern. The task force also found that the most common cause of childhood lead poisoning is ingestion of lead-contaminated surface dust from lead-bearing paint and the other significant cause is dust from bare lead-contaminated soil.

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

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

(2) IMMUNITY - CERTIFICATE; RESTRICTIONS. (a) An owner of a dwelling or unit and his or her employes and agents are immune from liability for their acts or omissions related to lead poisoning or lead exposure of a person who resides in or has visited the dwelling or unit if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. This subsection does not apply if it is shown by clear and convincing evidence that one of the following has occurred:

1. The owner or his or her employe or agent obtained the certificate by fraud.
2. The owner or his or her employe or agent violated a condition of the certificate.
3. During renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employe or agent created a lead-bearing paint hazard which was present in the dwelling or unit at the time that the lead poisoning or lead exposure occurred.

4. The owner or his or her employe or agent failed to respond in a timely manner to notification by a tenant, the department or by a local health department that a lead-bearing paint hazard may be present.

5. The lead poisoning or lead exposure was caused by a source of lead in the dwelling or unit other than lead-bearing paint.

?
civil?
criminal?
other?

} new - ok

(3) **TEMPORARY IMMUNITY; EXCEPTION.** An owner of a dwelling or unit and his or her employees and agents are immune from liability for their acts or omissions related to lead poisoning or lead exposure that occurs during the first 90 days after the owner acquires the dwelling or unit, except that this subsection does not apply to lead poisoning or lead exposure that results from a lead-bearing paint hazard created by the owner or his or her employees or agents.

*civil?
criminal?
other?*

[NOTE TO DRAFTERS: please insert a note to this statute that indicates that the lead-safe and lead-free certificate program is completely voluntary and does not operate to create or impose any duties upon property owners and their agents and employees who choose not to seek the liability protections afforded under s. 245.173.]

✓ **SECTION 12.** 254.174 of the statutes is amended to read:

254.174 Technical advisory committees. Before the department may promulgate rules under s. 254.167, 254.168, ~~254.17~~ or 254.172, the department shall appoint a technical advisory committee under s. 227.13 and shall consult with the technical advisory committee on the proposed rules. Any technical advisory committee required under this section shall include representatives from local health departments that administer local lead programs, representatives from the housing industry, persons certified under s. 254.176 and, representatives from the medical or public health professions and advocates for persons at risk of lead poisoning. Any technical advisory committee required under this section before promulgating rules under s. 254.168 shall also include representatives of facilities serving children under 6 years of age.

✓ **SECTION 13.** Section 254.176(3)(b) of the statutes is repealed

✓ **SECTION 14.** ~~254.177~~ of the statutes is created to read:

¹⁷⁹ **254.177 Rules for dwellings and premises.** (1) ~~After consulting with the technical advisory committee under s. 254.174,~~ the department shall promulgate rules on all of the following:

(a) The criteria that a premises, dwelling or unit must meet for the owner of the premises, dwelling or unit to receive a certificate of lead-free or lead-safe status. The rules shall establish the level of testing and sampling that must be performed before a certificate may be issued, how long each type of certificate shall remain in effect, the procedures by which they may be issued and under which they may be revoked, any requirements that an owner must meet to maintain certification, and a mechanism for creating a registry of all properties for which a certificate has been issued. The rules shall require that the expiration date for each certificate be stated on the certificate. The rules shall specify that a certificate of lead-free status remains in effect indefinitely, unless it is revoked because it is determined that the certificate was erroneously issued or that the property is not lead-free. The rules shall provide the criteria for determining the duration of the lead-safe certificate, including ~~but not limited to~~ the condition of the premises, dwelling or unit and the type of lead hazard reduction activity that was performed, unless

standards specify

Subject to

AM; 254.174

man

the lead-safe certificate is revoked earlier because it is determined that the certificate was erroneously issued or that the property is not lead-safe.

*Eliminate
reference
to (a)*

(b) The criteria, if any, that a premises, dwelling or unit must meet for the owner of the premises, dwelling or unit to maintain a certificate of lead-free or lead-safe status.

? be issued? receive?

*Eliminate
source
as (4)*

(c) The criteria that a premises, dwelling or unit must meet to comply with the lead safe standards of a property check, as well as the procedure to be followed by a certified owner/worker or other persons certified to perform lead hazard reduction activities in order to determine if a premises, dwelling or unit complies with the lead safe standards of a property check.

*? criteria to
comply
w/ standard*

254.18

(d) The fee paid by a property owner for an issuance of a certificate of lead-free status or a certificate of lead-safe status, not to exceed \$50 for a lead-free certificate and \$25 for a lead-safe certificate. The fee shall be reviewed every two years and adjusted to reflect actual costs of maintaining the registry of lead-free and lead-safe certificates. **[NOTE TO LEGISLATIVE DRAFTING ATTORNEYS: we need whatever language is appropriate to accomplish this effect – not sure that it belongs here.]**

*may it go over
\$50 v \$25*

*Revised
under
254.174
Moved to
254.154
(2)
D-N.*

(2) The department shall promulgate rules which specify that, if the criteria set forth in the Milwaukee ordinances with respect to the achievement of a lead-free or a lead-safe status meet or exceed the standards promulgated under subsection (1)(a), then the owner of a premises, dwelling or unit that meets the criteria set forth in the Milwaukee ordinances shall be entitled to receive a certificate of lead-free or lead-safe status under this subchapter. Such certificates shall be subject to the provisions of this chapter and all rules promulgated thereunder.

are stricter than

that

** is subject to the mil ordinances rather than the rules*

(1)(a) and

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

? what provisions

(4) The department shall promulgate rules that establish a lead (Pb) property owner/worker designation and a lead (Pb) property owner/worker certification course consisting of no more than 16 hours. To the extent allowed by federal law, the rules shall provide that upon completion of the training and receipt of the certification, a lead (Pb) property owner/worker will be trained in worker safety, and will be authorized to perform and be trained in the skills necessary to perform a lead investigation of the premises, dwelling or unit, sample and test for lead bearing paint, determine if a premises, dwelling or unit meets the lead safe standards for a property check, and engage in lead-bearing paint hazard reduction activities.

for agent

*why rules?
why not
state?*

SECTION 15. 254.?? of the statutes is created to read:

254.???. No sampling or testing required. Sampling or testing of premises, dwellings or units for the presence of lead-bearing paint or a lead hazard is not required

Rules under sub. (1) (a) may not require

prior to lead hazard reduction activities if the presence of lead-bearing paint or a lead hazard is assumed and the activities therefore are performed in a lead-safe manner.

✓ SECTION 16. Subsection (2)(b) of 254.178 of the statutes is repealed.

✗ SECTION 17. 254.179 of the statutes is created to read:

No -
is same as
curr.
law under
254.154

254.179. **Effect on local ordinances.** Sections 254.11 to 254.178 shall not supersede any local ordinance adopted by a city of the first class. [NOTE TO DRAFTERS: We need whatever language is appropriate to accomplish this effect - state law does not interfere with Milwaukee ordinance lead-bearing paint program]

array

✗ SECTION 18. Chapter 606 of the statutes is created to read:

CHAPTER 606

STATE RESIDENTIAL LEAD LIABILITY FUND

606.01 Definitions. In this chapter:

- (1) "Certificate of lead-free status" has the meaning given in s. 254.11 (4m).
- (2) "Certificate of lead-safe status" has the meaning given in s. 254.11 (??).

unless

606.05 Issuance of policies. The state residential lead liability fund may issue policies that insure residential property in this state against liability resulting from lead-bearing paint hazards. A policy may be issued by the fund only for property for which a certificate of lead-free status or a certificate of lead-safe status is in effect. A policy may not cover periods during which a certificate is not in effect.

not

606.10 Rules. (1) Policies shall be issued under s. 606.05 only if the manager makes a determination, as specified by rule, that insurance providing residential property owners with liability coverage for lead-bearing paint hazards is not either reasonably priced or sufficiently available in the private insurance market. The manager shall review the availability and pricing of this insurance and report to the legislature no later than 12 months after the effective date of the rules promulgated by the department of health and family services pursuant to ss. 254.167, 254.168, and 254.177, and at two-year intervals thereafter. Prior to making this determination, the manager shall work with insurers to encourage the offering of this coverage.

affordable
new

(2) The manager shall promulgate rules specifying premiums, coverage limits and covered expenses for policies issued under s. 606.05 and may promulgate other rules necessary to administer the state residential lead liability fund. The manager shall specify premiums at a level that the manager determines will be sufficient to pay all costs of the fund. The fund may not pay damages to a claimant when it is found by a court by clear and convincing evidence that one or more of the conditions in s. 254.173(2) (a) to (e) exist.

606.12 Fund termination. If the manager has not made the determination under s. 606.10(1) by _____ (8 years after the effective date of this chapter), this chapter does not apply after that date. } *and*

✓ **SECTION 19.** 901.055 of the statutes is created to read:

901.055 Admissibility of results of dust testing for the presence of lead. The results of a test for the presence of lead in dust are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding unless the test was conducted by a person who is certified for this purpose by the department. *of h + fs*

✓ **SECTION 20. Nonstatutory provisions; health and family services.** (1) The department *of h + fs* shall submit in proposed form the rules required under section 254.177 of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subsection.

(2) When developing the rules required under section 254.177, the department *of h + fs* shall consider the standards employed in the Milwaukee ordinances with respect to lead-bearing paint hazards and lead-bearing paint hazard reduction activities and the achievement of a lead-free and lead-safe status.

✓ **SECTION 21. Initial applicability.** The treatment of section 254.173 of the statutes first applies to lead poisoning or lead exposure that occurs on the effective date of this subsection.

✓ **SECTION 22. Effective dates.** This act takes effect on the day after publication, except as follows:

The treatment of sections 254.11 (4m), (4s), (5m), 254.166 (1) (c) 2. and 3. and (e), 254.172, 254.173 and 901.055 and chapter 606 of the statutes, the renumbering of section 254.168 (1) to (7) of the statutes and the renumbering and amendment of sections 254.166 (2) (c) take effect on the first day of the 16th month beginning after publication.

(END)

Dick,

Here is an additional concern just relayed to us by the DHFS:

✓ SECTION 17. 254.179 of the statutes is created to read:

254.179. **Effect on local ordinances.** Sections 254.11 to 254.178 shall not supersede any local ordinance adopted by a city of the first class which meets or exceeds the standards set by state law. [NOTE TO DRAFTERS: We need whatever language is appropriate to accomplish this effect – state law does not interfere with any stricter Milwaukee ordinance lead-bearing paint program]

Thanks.

From Dick Sweet 2/14:

"Property check" should be deleted.

F

Rick Stafford 241-2047
Debra Conrad

Kennedy, Debora

From: Sweet, Richard
Sent: Friday, February 11, 2000 3:07 PM
To: Kennedy, Debora; Sappenfield, Anne; Shannon, Pam
Subject: FW: 232 Substitute Amendment - Local Ordinance Provision



232MilwChange.doc

-----Original Message-----

From: Conrad, Debbie - Attorney [mailto:dconrad@wra.org]
Sent: Friday, February 11, 2000 2:57 PM
To: SWEET, DICK; BOUSHON, GAIL
Subject: 232 Substitute Amendment - Local Ordinance Provision

A concern raised by the DHFS.

<<232MilwChange.doc>>

Thanks,
Debbi Conrad

Dick,

Here is an additional concern just relayed to us by the DHFS:

SECTION 17. 254.179 of the statutes is created to read:

254.179. **Effect on local ordinances.** Sections 254.11 to 254.178 shall not supersede any local ordinance adopted by a city of the first class which meets or ~~exceeds~~ ^{may} the standards set by state law. [NOTE TO DRAFTERS: We need whatever language is appropriate to accomplish this effect – state law does not interfere with any stricter Milwaukee ordinance lead-bearing paint program] ^{is stricter than}

Thanks.

- 4539

2/17 Conference w/ Rick Staff, Wis Realtors Assn.
+ Leg Council attys

X not used as stand-alone item

1. Search for abatement in bill - needs to be defined?

D-NOTE

may delete

Credentialed for this purpose -

Draft has no procedures for certif. - by rule?
Draft defines I.R. as by rule

X 3. Lead inspection is required in a.i. at 254.167 (8A) -
draft uses "lead investigation" + defines -
is anything left of "lead inspection" was
should be replaced?

w/c Gail

4

What abt. references to ~~invest~~ inspection in
254.167? - Include in changes to investigation

Dwellings or dwelling unit defined

What does dwelling or unit in 254.171 mean?

"Dwelling" is defined in 254.11 (5)
Is used there as dwelling or ~~unit~~ 254.173

w/c

254.173 (2) language omits "civil" for liability -

is the intent to have it apply to criminal liab., too?

Should it? (Yes, add can't be prosecuted under admin. proceedings)

7. 254.177 (1)(a) - Inconsistent about the period of time
a certificate of lead free status remains in effect (Indefinitely)

w/c Gail

(Property check is not out) (leg council)

8. SECTION 20 (2) - DHFS to consider rules under 254.177 - shouldn't this be on-going,
rather than temporary? (NO - D-NOTE)

(Elim D-NOTE)

and 254.177(2)

Keep - see changed lang.

9. How does proposed 254.179 differ from 254.154?

10. 254-166(1) - How does DHFS "ensure" lead investig. is
completed? Doesn't this mean owner/occup. must comply?
If so, is inconsistent w/ following language (conduct or)

2/13 From Charlie Morgan - 4539

One-time \$ 735,200 GPR 20.435(1)(a)

2000-01 } For initial staff costs + one-time costs of
establishing registry for lead-free +
20.805(4)(a) lead-safe housing

JT finance: 520,000 → ~~base~~ ^{registry} (2)(a)

dept & makes plan + goes before JT fin -
215,200 → (1)(a) periodic review

Starting 1/1/01 5.0 FT GPR project positions
until later of July, or
passage of biennial budget.

~~Purpose: regulate personnel who
do assessments~~
for certification of personnel for
lead-paint hazard reduction

✓ 20.435(1)(gm) - revenue from certif. fees is
deposited under this approp.

6-8017 Rachel Carahell

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Senate Bill 232**In Response to the Legislature's Request for Staffing and Administration Resources & GPR Commitment**

Given that the latest draft of SB 232 significantly increases the responsibilities and workload for DHFS, it was agreed that program revenue generated by the fees of the certification program will support the staff related to state-administered aspects of certification and the associated registry. The proposal establishes a certificate of either lead-safe or lead-free which in turn confers immunity from legal liability. Based on other programs of either similar scope or mission, the fees associated with those programs and the expected costs incurred for DHFS administration, the bill should include a \$50 fee for lead-free certification and a \$25 fee for lead-safe certification. The actual fee will be set by rule.

The prevailing decision of the workgroup was that the program revenue should be limited in its application to state administration of the lead certification program, including the registry. The costs of state administration are outlined below, first examining the costs of the registry itself and other goods and services necessary for the program's operation. Following this is the detail on staff positions.

One-time start-up costs:**Creation of New Database System for Registry – \$650,000**

One-time costs to develop and implement a database for the certificate registry, and for related hardware, software and training. This includes development of a system through which a certified lead company will directly submit information to DHFS via the Internet and DHFS will respond by returning a verification in the form of a uniquely numbered certificate. In addition, the system will generate reports and bills for the certificates registered.

XRF Analyzer – \$15,000

One-time costs to purchase 1 x-ray fluorescence (XRF) analyzer to measure the amount of lead in painted or coated surfaces. The XRF will be used for conducting enforcement investigations involving issuance of certificates of lead-free status.

Ongoing annual costs:

- \$50,000 - Annual costs to maintain the certificate registry database.
- \$80,000 – Annual costs for fees paid to the Occupational Health Lab to process samples obtained during the enforcement process. (20 per day x \$16 each x 250 work days = \$80,000) [Note: The Occupational Health Lab may need authorization for additional staff to handle a large increase in samples received from both DHFS and private consultants.]
- \$40,000 – Annual costs for additional enforcement travel and for training of enforcement staff.
- \$1,000 – printing and mailing costs associated with certification

FTE authority under the certification's program revenue:**5.0 New FTE \$225,000:**

- **1 Environmental Health Specialist, Senior** – This position will be responsible for providing statewide verification of the accurate issuance of certificates of lead-free or lead-safe status, work practice compliance activities, complaint investigations and technical assistance.
- **2 Regulatory Specialists** – Coordinate the enforcement of certification standards by enforcement staff, inspect work-site practice, and issue certificates of lead-free or lead-safe status. These positions will also enter enforcement actions into the enforcement database, resolving errors in enforcement data, preparing and processing routine enforcement actions, and tracking enforcement actions to ensure timely completion. The senior position of these two specialists will consult with legal counsel and management regarding enforcement activities, prepare notices of noncompliance and prepare hearing documents when required, and take the lead in promulgating applicable Wisconsin Administrative Code.
- **2 Program Assistants** – These positions will be responsible for processing certification (licensure) applications of new lead companies and industry professionals, e.g. additional inspectors, risk assessors and property owners. In addition, they will be responsible for registering certificates of lead-free and lead-safe and entering certificate information into a certificate database, which is to be developed, and for resolution of errors in the data.

And 4.5 Existing FTE that will be transferred \$254,500:

In addition, there are 4.5 FTE positions that will be dedicated to this certification program that should be funded under the auspices of the certification program and will be transferred to this funding source. These positions are collectively responsible for:

- overall management oversight of the program, including the rule-making process, implementation and enforcement of program requirements.
- programmatic oversight of the development, implementation, and maintenance of the certificate registry database.
- development of the property owner/worker certification course and accreditation of trainers to provide the course.
- training instructors for the new lead property owner/worker course and training currently certified lead consultants in the certificate registration process and provide assurance of accreditation standards for courses that prepare individuals for certification to perform lead investigations and lead hazard reduction.
- fiscal monitoring of the program and for all administrative activities related to fiscal processes.
- all administrative activities related to training and conferences provided by the program, such as registration and working with site coordinators.



TUESDAY 12:00 noon

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4539/P 1

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~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

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1 AN ACT ...; relating to: conducting lead investigations, lead-bearing paint
2 hazard control, requirements for certification of lead-free or lead-safe status
3 for dwellings and premises, immunity from liability for lead poisoning or lead
4 exposure, a state residential lead liability fund, granting rule-making
5 authority, requiring the exercise of rule-making authority and making
6 appropriations.

Analysis by the Legislative Reference Bureau

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 these rules, DHFS must consult with a technical advisory committee that includes representatives from local health departments, the housing industry, 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.

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 if, at the time 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 related to lead poisoning or lead exposure of owners, their employes and agents that occur during the first 90 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. 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 promptly obtain a certificate of lead-free or lead-safe status. 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 certificates. Further, 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 issuance of the certificates. DHFS also must promulgate rules that specify the requirements for a course 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, that are preliminary to activities and standards required to obtain a certificate of lead-free or lead-safe status. 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 ~~investigation~~ ^{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 issuance of a certificate of lead-free or lead-safe status, issue the appropriate certificate. DHFS may promulgate rules governing lead hazard reduction that DHFS determines are not preempted by federal law.

The bill creates, in the office of the commissioner of insurance, a state residential lead liability fund to issue policies that insure residential property against

no. 9 However, DHFS may waive this requirement in a city of the first class (Milwaukee).

liability resulting from lead-bearing paint hazards if a certificate of lead-free status or a certificate of lead-safe status is in effect for the property. Policies must be issued by the fund if the fund "manager" (defined in current law as the commissioner of insurance) makes a determination, by rule, that this liability coverage is not sufficiently affordable or sufficiently available in the private insurance market. The state residential lead liability fund terminates if, after ^{eight} ~~10~~ years, the manager has not made this determination.

The bill eliminates authorization for DHFS to promulgate rules requiring that, after June 30, 1997, owners or operators of rental or leased dwelling 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 specifies that the statutes relating to lead poisoning or lead exposure treatment and prevention may not be interpreted to supercede ordinances of ~~state~~ ^{of} Milwaukee that relate to the liability of an owner of property with respect to a lead-based paint hazard. Further, if the criteria specified in Milwaukee ordinances that relate the achieving a lead-free or lead-safe status are the same ^{as} or higher than the standards promulgated by DHFS by rule, the owner of a dwelling, unit or premises that meets the ordinance criteria is subject to the ordinances, rather than to the rules and is entitled to receive a certificate of lead-free status or a certificate of lead-safe status.

The bill authorizes DHFS to request a supplement of general purpose revenues from the joint committee on finance (JCF) to pay initial costs of establishing a 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 an increase in general program revenues to increase DHFS staff, for performance of certification for the performance of lead paint hazard reduction.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

as affected by 1999 Wisconsin Act 9,

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SECTION 1. 20.435 (1) (gm) of the statutes is amended to read:

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20.435 (1) (gm) *Licensing, review and certifying activities; fees; supplies and services.* The amounts in the schedule for the purposes specified in ss. 146.50 (8), 250.05 (6), 252.23, 252.24, 252.245, 254.176, 254.178, 254.179 (1) (d), 254.20 (5) and (8), 254.31 to 254.39, 254.41, 254.47, 254.61 to 254.89 and 255.08 (2) and ch. 69, for

SECTION 1

1 the purchase and distribution of medical supplies and to analyze and provide data
2 under s. 250.04. All moncyys received under ss. 146.50 (5) (f), (8) (d), 250.04 (3m),
3 250.05 (6), 252.23 (4) (a), 252.24 (4) (a), 252.245 (9), 254.176, 254.178, 254.18, 254.20
4 (5) and (8), 254.31 to 254.39, 254.41, 254.47, 254.61 to 254.89 and 255.08 (2) (b) and
5 ch. 69 and as reimbursement for medical supplies shall be credited to this
6 appropriation account.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9.

7 **SECTION 2.** 254.11 (4g) of the statutes is created to read:

8 254.11 (4g) "Certificate of lead-free status" means a certificate issued by a
9 certified lead risk assessor that documents a finding by the assessor that a premises,
10 dwelling or unit of a dwelling is free of lead-bearing paint as of the date specified on
11 the certificate. ✓

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

13 254.11 (4h) "Certificate of lead-safe status" means a certificate issued by a
14 certified lead risk assessor that documents that the assessor detected no
15 lead-bearing paint hazards affecting the premises, dwelling or unit of the dwelling
16 on the date specified on the certificate. ✓

17 **SECTION 4.** 254.11 (5m) of the statutes is created to read:

18 254.11 (5m) "Elevated blood lead level" means a level of lead in blood that is
19 any of the following:

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

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

3 SECTION 5. 254.11[^] (8d) of the statutes is created to read:

4 254.11 (8d) “Lead-bearing paint hazard” has the meaning specified by rule by
5 the department.

6 SECTION 6. 254.11[^] (8s) of the statutes is created to read:

7 254.11 (8s) “Lead investigation” means a measure or set of measures designed
8 to identify the presence of lead or lead hazards, including examination of painted or
9 varnished surfaces, paint, dust, water and other environmental media.

10 SECTION 7. 254.11[^] (9g) of the statutes is created to read:

11 254.11 (9g) “Lead risk assessor” has the meaning specified by rule by the
12 department.

13 SECTION 8. 254.15[^] (1) of the statutes is amended to read:

14 254.15 (1) Develop and implement a comprehensive statewide lead poisoning
15 or lead exposure prevention and treatment program that includes lead poisoning or
16 lead exposure prevention grants under s. 254.151; any childhood lead poisoning
17 screening requirement under rules promulgated under ss. 254.158 and 254.162; any
18 requirements regarding care coordination and follow-up for children with lead
19 poisoning or lead exposure required under rules promulgated under s. 254.164;
20 departmental responses to reports of lead poisoning or lead exposure under s.
21 254.166; any lead ~~inspection~~ investigation requirements under rules promulgated
22 under ss. 254.167; ; any lead inspection requirements under rules promulgated
23 under 254.168 and 254.17; any lead hazard reduction requirements under rules
24 promulgated under s. 254.172; and certification, accreditation and approval
25 requirements under ss. 254.176 and 254.178; any certification requirements and

SECTION 8

1 procedures under rules promulgated under s. 254.179; and any fees imposed under
2 s. 254.18.

3 History: 1979 c. 221; 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1993 a. 27 ss. 434, 435; Stats. 1993 s. 254.15; 1993 a. 183; 1993 a. 450 ss. 21, 43.

3 SECTION 9. 254.154 of the statutes is renumbered 254.154 (1) and amended to

4 read:

5 254.154 ~~Local authority~~ (1) This subchapter does not prohibit any city,
6 village, town or other political subdivision from enacting and enforcing ordinances
7 establishing a system of lead poisoning or lead exposure control that provides the
8 same or higher standards than those set forth in this subchapter. Nothing in this
9 subchapter may be interpreted to supercede ordinances of a city of the first class that *stet*
10 relate to the liability of an owner of property with respect to a lead-based paint
11 hazard. Nothing in this subchapter may be interpreted or applied in any manner to
12 impair the right of any person, entity, municipality or other political subdivision to
13 sue for damages or equitable relief or to restrain a violation of such an ordinance.

14 History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 436; Stats. 1993 s. 254.16; 1993 a. 450 s. 48; Stats. 1993 s. 254.154.

14 SECTION 10. 254.154 (2) of the statutes is created to read:

15 254.154 (2) If the criteria specified in ordinances of a city of the first class that
16 relate to achieving a lead-free or lead-safe status are the same as or higher than the
17 standards promulgated as rules under s. 254.179 (1) (a), the owner of a dwelling, unit
18 of a dwelling or premises that meets the criteria specified in the ordinances is subject
19 to the ordinances, rather than the rules under s. 254.179 (1) (a) and is entitled to
20 receive a certificate of lead-free status or a certificate of lead-safe status, as
21 appropriate, under this subchapter. If issued, the certificate of lead-free status and
22 the certificate of lead-safe status are subject to this subchapter and rules
23 promulgated under this subchapter.

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

except that the department may waive this requirement in a city of the first class

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

SECTION 12

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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.

History: 1979 c. 221; 1989 a. 31; 1993 a. 27 s. 433; Stats. 1993 s. 254.14; 1993 a. 450 ss. 39 to 41; Stats. 1993 s. 254.166.

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.

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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.

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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 to conduct a lead investigation, a check of work completed and dust
15 tests for the presence of hazardous levels of lead to ensure compliance with the order.

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

17 **254.167 Conduct of lead inspection investigation.** (intro.) Subject to the
18 limitation under s. 254.174, the department may promulgate rules establishing
19 procedures for conducting lead ~~inspections~~ investigations of dwellings and premises.
20 Any rules promulgated under this section shall meet, but not exceed, any
21 requirements under regulations promulgated by the administrator of the federal
22 environmental protection agency under section 402 of the federal toxic substances

1 control act, as created by section 1021 of P.L. 102-550. The rules promulgated under
2 this section may include the following:

History: 1993 a. 450.

3 [^]
SECTION 17. 254.167 (1) of the statutes is amended to read:

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

History: 1993 a. 450.

7 [^]
SECTION 18. 254.167 (2) of the statutes is amended to read:

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

History: 1993 a. 450.

13 [^]
SECTION 19. 254.167 (3) of the statutes is amended to read:

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

History: 1993 a. 450.

17 [^]
SECTION 20. 254.17 of the statutes is repealed.

18 [^]
SECTION 21. 254.171 of the statutes is created to read:

19 **254.171 Dwellings and units of dwellings where child has elevated**
20 **blood lead level.** If an owner of a dwelling or unit of a dwelling receives written
21 notice from the department or a local health department that a child under 6 years
22 of age, who resides in the owner's owner-occupied dwelling or unit or who resides in
23 the owner's dwelling or unit under the terms of a rental agreement, has an elevated

1 blood lead level, the owner shall promptly obtain a certificate of lead-free status or
2 certificate of lead-safe status for the affected dwelling or unit. Nothing in this
3 section precludes the department or the department's agent from conducting a lead
4 investigation or issuing an order under s. 254.166.

5 **SECTION 22.** 254.172[^] of the statutes is repealed and recreated to read:

6 **254.172 Prevention and control of lead-bearing paint hazards in**
7 **dwelling and premises.** (1) Subject to the limitation under s. 254.174, the
8 department may promulgate rules governing lead hazard reduction that the
9 department determines are not preempted by federal law.

10 (2) If a certified lead risk assessor conducts a lead investigation of a dwelling
11 or premises, he or she shall conduct the lead investigation and issue a report in
12 accordance with any rules promulgated under s. 254.167. If the report indicates that
13 the dwelling or premises meets criteria under s. 254.179 (1) (a) for issuance of a
14 certificate of lead-free or of a certificate of lead-safe status, the lead risk assessor
15 shall issue the appropriate certificate, subject to s. 254.18.

16 **SECTION 23.** 254.173[^] of the statutes is created to read:

17 **254.173 Immunity from liability for lead poisoning or lead exposure;**
18 **restrictions.** (1) LEGISLATIVE FINDINGS AND PURPOSE. (a) The legislature finds all
19 of the following:

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

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lead-contaminated surface dust from lead-bearing paint, the other significant cause
is dust from bare lead-contaminated soil.

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

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

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(2) IMMUNITY; CONDITIONS; RESTRICTIONS. An owner of a dwelling or unit of a dwelling and his or her employes and agents are immune from civil and criminal liability and may not be subject to an agency proceeding under ch. 227 for their acts or omissions related to lead poisoning or lead exposure of a person who resides in or has visited the dwelling or unit if, at the time that the lead poisoning or lead exposure occurred, a certificate of lead-free status or a certificate of lead-safe status was in effect for the dwelling or unit. This subsection does not apply if it is shown by clear and convincing evidence that one of the following has occurred:

SECTION 23

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

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

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

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

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

13 (3) TEMPORARY IMMUNITY; EXCEPTION. An owner of a dwelling or unit of a
14 dwelling and his or her employes and agents are immune from civil and criminal
15 liability and may not be subject to an agency proceeding under ch. 227 for their acts
16 or omissions related to lead poisoning or lead exposure that occur during the first 90
17 days after the owner acquires the dwelling or unit, except that this subsection does
18 not apply to lead poisoning or lead exposure that results from a lead-bearing paint
19 hazard created by the owner or his or her employe or agent.

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

21 **254.174 Technical advisory committees.** Before the department may
22 promulgate rules under s. 254.167, 254.168, ~~254.17~~ ^{or} 254.172 ~~or~~ ^{or} 254.179, the
23 department shall appoint a technical advisory committee under s. 227.13 and shall
24 consult with the technical advisory committee on the proposed rules. Any technical
25 advisory committee required under this section shall include representatives from

1 local health departments that administer local lead programs, representatives from
2 the housing industry, persons certified under s. 254.176 and , representatives from
3 the medical or public health professions and advocates for persons at risk of lead
4 poisoning. Any technical advisory committee required under this section before
5 promulgating rules under s. 254.168 shall also include representatives of facilities
6 serving children under 6 years of age.

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

8 History: 1993 a. 450.

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

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

10 **254.179 Rules for dwellings and premises.** (1) Subject to s. 254.174, the
11 department shall promulgate as rules all of the following:

12 (a) Except as provided in sub. (3), the standards for a premises, dwelling or unit
13 of a dwelling that must be met, including the level of testing and sampling required
14 to be performed, for issuance of a certificate of lead-free status or a certificate of
15 lead-safe status to the owner of the premises, dwelling or unit of a dwelling.

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

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

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

SECTION 27

1 2. The standards limiting the length of validity of a certificate of lead-safe
 2 status, including the condition of a premises, dwelling or unit of a dwelling, the type
 3 of lead hazard reduction activity that was performed and any other requirements
 4 that must be met to maintain certification, unless the certificate is earlier revoked
 5 because of erroneous issuance or because the premises, dwelling or unit of the
 6 dwelling is not safe from lead-bearing paint hazards. The rules shall specify that
 7 the face of the certificate shall indicate the certificate's length of validity.

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

of completion

11 (e) The requirements for a course of up to 16 hours that a property owner or his
 12 or her agent may complete in order to receive certification and the scope of activities
 13 that the owner or agent may perform following certification, to the extent consistent
 14 with federal law, that are preliminary to activities and standards required under par.
 15 (a) to obtain a certificate of lead-free status or a certificate of lead-safe status.

16 (2) Subject to s. 254.174, the department may promulgate rules that set forth
 17 safe work practices that shall be followed in the demolition of a building constructed
 18 before January 1, 1978, to avoid exposure by persons to lead hazards in the area of
 19 the demolition.

20 (3) Rules under sub. (1) (a) may not require sampling or testing of dwellings,
 21 units of dwellings or premises for the presence of lead-bearing paint or a lead hazard
 22 before lead hazard reduction activities are conducted if the presence of lead-bearing
 23 paint or a lead hazard is assumed and the lead hazard reduction activities are
 24 performed in a lead-safe manner.

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

1 **254.18 Certificate of lead-free status and certificate of lead-safe**
2 **status; fees.** Although the department shall review fees for issuance of certificates
3 of lead-free status and certificates of lead-safe status every 2 years and adjust the
4 fees to reflect costs of maintaining the registry under s. 254.179 (1) (d), the
5 department may impose a fee for issuance of a certificate of lead-free status that may
6 not exceed \$50 and may impose a fee for issuance of a certificate of lead-safe status
7 that may not exceed \$25.

INSERT 15-7

8 **SECTION 29.** 901.055[^] of the statutes is created to read:

9 **901.055 Admissibility of results of dust testing for the presence of lead.**

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

14 **SECTION 30. Nonstatutory provisions.**

15 (1) RULES CONCERNING LEAD FOR DWELLINGS, UNITS OF DWELLINGS AND PREMISES

16 ~~16~~ (a) The department of health and family services shall submit in proposed form
17 the rules required under section 254.179 (1) of the statutes, as created by this act,
18 to the legislative council staff under section 227.15 (1) of the statutes no later than
19 the first day of the 7th month beginning after the effective date of this paragraph.

20 (b) In developing the rules required under section 254.179 (1) of the statutes,
21 as created by this act, the department of health and family services shall consider
22 the standards specified in the ordinances of the city of Milwaukee with respect to
23 lead-bearing paint hazards, lead-bearing paint hazard reduction activities and the
24 achievement of lead-free or lead-safe status.

SECTION 30

1 (2) SUPPLEMENT FOR REGISTRY OF LEAD-FREE OR LEAD-SAFE PROPERTIES. The
2 department of health and family services may request the joint committee on finance
3 to supplement, from the appropriation account under section 20.865 (4) (a) of the
4 statutes, the appropriation account under section 20.435 (1) (a) of the statutes, to pay
5 initial costs of establishing under section 254.179 (1) (d) of the statutes, as created
6 by this act, a registry of properties that are issued certificates of lead-free status or
7 certificates of lead-safe status. If the department of health and family services
8 requests supplementation of the appropriation account under section 20.435 (1) (a)
9 of the statutes, the department shall submit a plan to the joint committee on finance
10 to expend not more than \$520,000 for fiscal year 2000-01. If the cochairpersons of
11 the committee do not notify the secretary of the department within 14 working days
12 after the date of the department's submittal that the committee intends to schedule
13 a meeting to review the request, the appropriation account shall be supplemented
14 as provided in the request. If, within 14 working days after the date of the
15 department's submittal, the cochairpersons of the committee notify the secretary of
16 the department that the committee intends to schedule a meeting to review the
17 request, the appropriation account shall be supplemented only as approved by the
18 committee. Notwithstanding section 13.101 (3) (a) 1. of the statutes, the committee
19 is not required to find that an emergency exists.

20 (3) REGISTRY OF LEAD-FREE AND LEAD-SAFE PROPERTIES; LIMITATION ON FUNDING.
21 Notwithstanding section 16.42 (1) (e) of the statutes, in submitting information
22 under section 16.42 of the statutes for purposes of the 2001-2003 biennial budget
23 bill, the department of health and family services shall submit information
24 concerning the appropriation under section 20.435 (1) (a) of the statutes as though

Subsection

1 any supplementation under ~~SECTION 30~~ (2) ~~of the dollar amount of that~~
2 appropriation had not been made. *a.r.*

3 (3) LEAD PAINT HAZARD REDUCTION; LIMITATION ON FUNDING. Notwithstanding
4 section 16.42 (1) (e) of the statutes, in submitting information under section 16.42
5 of the statutes for purposes of the 2001-2003 biennial budget bill, the department
6 of health and family services shall submit information concerning the appropriation
7 under section 20.435 (1) (a) of the statutes as though the increase in the dollar
8 amount of that appropriation by SECTION 31 (1) of this act had not been made. *a.r.*

9 **SECTION 31. Appropriation changes.**

10 (1) CERTIFICATION FOR PERFORMANCE OF LEAD PAINT HAZARD REDUCTION. In the
11 schedule under section 20.005 (3) of the statutes for the appropriation to the
12 department of health and family services under section 20.435 (1) (a) of the statutes,
13 as affected by the acts of 1999, the dollar amount is increased by \$215,000 for fiscal
14 year 2000-01 to increase the authorized FTE positions for the department by 5.0
15 project positions on January 1, 2001, until July 1, 2001, or the day after publication
16 of the 2001-2003 biennial budget act, whichever is later, and ^{to} provide supporting
17 costs to perform certification for performance of lead paint hazard reduction.

18 **SECTION 32. Initial applicability.** *create auto ref (A)*

19 (1) IMMUNITY FROM LIABILITY FOR LEAD POISONING OR LEAD EXPOSURE. The
20 treatment of section 254.173 of the statutes first applies to lead poisoning or lead
21 exposure that occurs on the effective date of this subsection. *create auto ref (B)*

22 **SECTION 33. Effective dates.** This act takes effect on the day after publication,
23 except as follows:

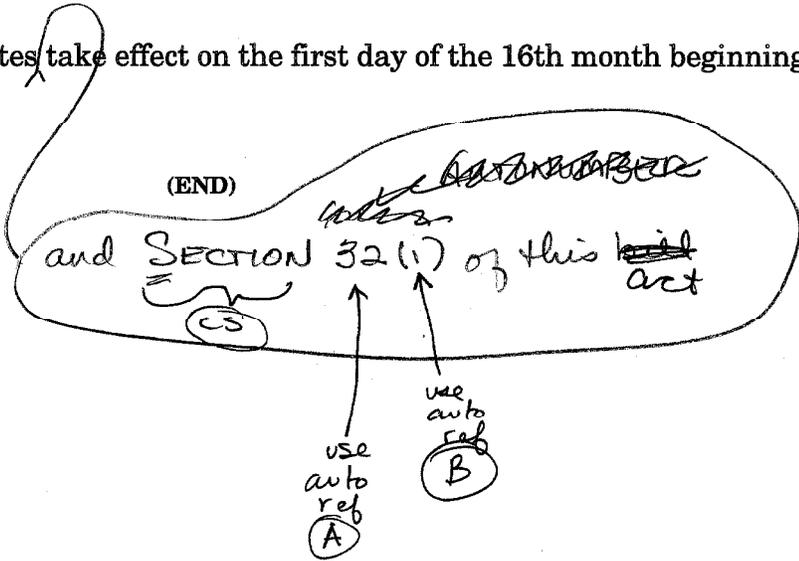
24 (1) The treatment of sections 254.11 (8d), 254.166 (2) (c) and (e), 254.172,
25 254.173 and 901.055 of the statutes and the creation of 254.166 (2) (c) 2. and 3. and

SECTION 33

1 chapter 606 of the statutes take effect on the first day of the 16th month beginning
2 after publication.

INSERT 18-2

3



INSERT 15-7

1 SECTION 1. Chapter 606 of the statutes is created to read:

2 CHAPTER 606

3 STATE RESIDENTIAL LEAD

4 LIABILITY FUND

5 **606.01 Definitions.** In this chapter:

6 (2) "Certificate of lead-free status" has the meaning given in s. 254.11 (4g).

7 (2) "Certificate of lead-safe status" has the meaning given in s. 254.11 (4h).

8 **606.05 Issuance of policies.** (1) If the manager makes a determination, as
9 specified by rule, that insurance providing residential property owners with liability
10 coverage for lead-bearing paint hazards is not either sufficiently affordable or
11 sufficiently available in the private insurance market, the state residential lead
12 liability fund shall offer policies that insure residential property in this state against
13 liability resulting from lead-bearing paint hazards. Prior to making the
14 determination, the manager shall work with insurers to encourage the offering of
15 this coverage. *→ in the private market*

16 (2) A policy may be issued by the fund only for property for which a certificate
17 of lead-free status or a certificate of lead-safe status is in effect. A policy may not
18 cover periods during which a certificate is not in effect.

19 **606.10 Rules and reports.** (1) The manager shall promulgate rules
20 specifying premiums, coverage limits and covered expenses for policies issued under
21 s. 606.05 and may promulgate other rules necessary to administer the state
22 residential lead liability fund. The manager shall specify premiums at a level that
23 the manager determines will be sufficient to pay all costs of the fund. The fund may

1 not pay damages to a claimant when it is found by a court by clear and convincing
2 evidence that one or more of the conditions in s. 254.173 (2) (a) to (e) exist.

3 (2) The manager shall, on an ongoing basis, review the cost and availability of
4 insurance in the private insurance market that provides residential property owners
5 with liability coverage for lead-bearing paint hazards. No later than 12 months after
6 the effective date of the rules promulgated by the department of health and family
7 services under s. ~~254.177 (1) and (2)~~, and every 2 years after the first report is
8 submitted, the manager shall submit a report to the legislature under s. 13.172 (2)
9 on the cost and availability of this insurance in the private market.

10 ~~SECTION 2. 606.15 of the statutes is created to read:~~

11 **606.15 Termination of fund.** If the manager has not made the determination
12 under s. 606.05 (1) by a date that is 8 years after the effective date of this section ...
13 [revisor inserts date], the manager shall publish a notice in the Wisconsin
14 Administrative Register stating that the state residential lead liability fund
15 terminates on the date specified in this section.

16 **SECTION 3.** Chapter 606 of the statutes, as created by 1999 Wisconsin Act ...
17 (this act), is repealed.

(END OF INSERT)

INSERT 18-2

18 (0) STATE RESIDENTIAL LEAD LIABILITY FUND.
19 (a) *Creation.* The creation of chapter 606 of the statutes takes effect on the first
20 day of the 16th month beginning after publication.

Eff date
par.

9 (2)

- 1 ~~(b) Amendment~~ The repeal of chapter 606 of the statutes takes effect on the
- 2 date stated in the notice published by the manager of the state residential lead
- 3 liability fund in the Wisconsin Administrative Register under section 606.15.

(END OF INSERT)

DRAFTER'S NOTE

-4539/1
DAK:gs:...

sol.

To Representative Sykora:

¶

This bill creates an immunity from civil and criminal liability and a prohibition on being subjected to an agency proceeding, for the lead poisoning or lead exposure of a person residing in or visiting the property if a certificate of lead-free status or of lead-safe status was in effect at the time of occurrence of the poisoning or exposure. The bill also creates a state residential lead liability fund for issuance of policies providing liability coverage for lead-bearing paint hazards; the policies may be issued only for property for which a certificate of lead-free status or of lead-safe status is in effect. What would the market be for the policies, given the immunity provisions?

DAK

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4539/1dn
DAK:cjs:ch

February 22, 2000

To Representative Sykora:

This bill creates, for residential property owners, an immunity from civil and criminal liability and a prohibition on being subjected to an agency proceeding, for the lead poisoning or lead exposure of a person residing in or visiting the property if a certificate of lead-free status or of lead-safe status was in effect at the time of occurrence of the poisoning or exposure. The bill also creates a state residential lead liability fund for issuance of policies providing liability coverage for lead-bearing paint hazards; the policies may be issued only for property for which a certificate of lead-free status or of lead-safe status is in effect. What would the market be for the policies, given the immunity provisions?

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137

Barman, Mike

From: Barman, Mike
Sent: Tuesday, February 22, 2000 4:09 PM
To: Montgomery, John
Cc: Hughes, Carolyn
Subject: 99-4539/1 (per your request)(OKed by Carolyn in Sykora's office)



99-4539/1



99-4539/1.dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/22/2000

To: Representative Sykora

Relating to LRB drafting number: LRB-4539

Topic

Lead hazard control, lead-bearing paint hazard reduction and property owner immunity from liability

Subject(s)

Health - public health

1. JACKET the draft for introduction

Tom Sykora

in the Senate ____ or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction

Tom Sykora

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Debora A. Kennedy, Managing Attorney
Telephone: (608) 266-0137

02-23-00

Note: Sykora's office made a request to jacket LRB 99-4539/1 & also to send out for a early FE.

Just as the jacket was ready to be picked-up Sykora's office called and asked us to hold the jacket because they might be re-drafting it.

Hold For Now