

MAR 18 2000



**WISCONSIN
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ASSOCIATION**

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TO: All State Senators
FROM: Michael Theo and Rick Staff
DATE: March 10, 2000
RE: AB 806 – Regarding Lead Paint Hazards

The Wisconsin Realtors Association (WRA) strongly supports AB 806 – a very important piece of legislation regarding lead paint hazards in residential dwellings. AB 806 passed the Assembly 97-0 and before that passed the Assembly Housing Committee 5-1 and the Joint Finance Committee 16-0.

There is no known opposition to this bill.

Urgency

Wisconsin's housing industry, as well as the children of Wisconsin, need this legislation adopted this session. Both innocent children and innocent property owners simply cannot wait until January 2001 for this legislation.

Due to a recent Wisconsin Supreme Court ruling, property owners in Wisconsin now face substantial new risk of litigation regarding lead paint poisoning. AB 806 provides incentives for property owners to remove or control lead paint hazards in their property by providing limited immunity from lawsuits for those who act to remediate lead paint problems. AB 806 is the product of many hours of work between legislators, Realtors, apartment owners, public health officials, city of Milwaukee officials and the Department of Health and Family Services – all of whom support the bill as amended by the Assembly.

Background

This latest lead paint debate was created by the Wisconsin Supreme Court's decision in *Antwaun A. v. Heritage Mutual Insurance Company*. In the *Antwaun* case, the Court held that landlords have a duty to test for lead-based paint (LBP) whenever they know, or in the use of ordinary care, should know, that there is peeling, flaking, or chipping paint in residential rental property constructed before 1978. This ruling was based on common law negligence theories.

Since the *Antwaun* decision, the market has reacted with understandable fear and uncertainty as to the new potential liability for property owners under the Court's ruling. The *Antwaun* decision confirms a landlord's duty to test for LBP but does not specify what the landlord is to do if LBP is discovered. It is clear that state legislation is necessary to delineate the duties and the standard of care required of rental property owners in light of *Antwaun*.

- More -

Highlights of AB 806

Under the provisions of AB 806, property owners must act only if a child living in their property is found to have elevated blood lead levels. For all other owners, the provisions of this bill are voluntary. Only those property owners seeking liability protections provided in the bill are required to perform lead hazard controls. However, in light of the *Antwaun* decision, it is likely that property owners who can afford to remove or control lead paint hazards will do so to receive protection against lead paint lawsuits.

AB 806 addresses the following key issues:

- **Certified Workers:** Provides for the establishment of clear standards for training and certifying lead rental property owners/workers to work with LBP affecting their properties.
- **Owner Response Standards:** Provides for the establishment of clear standards that property owners can meet in order to receive a certificate indicating that their property is lead free or lead safe as of the date of issuance.
- **Liability Limitations:** Establish clear liability limits for residential property owners who effectively remove or control lead hazards.

1. Certified Worker Standards

- Certification of Rental Property Personnel: DHFS establishes standards for the certification of lead rental property owners/workers who are authorized to test for LBP and other lead hazards affecting their own properties, and to engage in LBP abatement activities which will control or remove the hazards.

2. Owner Response Standards

- Triggering Events: A landlord has a duty to inspect/test for LBP per the *Antwaun* case if deteriorating paint is observed or a tenant notifies the landlord in writing that the paint is chipping, peeling, or flaking affecting a rental property built before 1978. Under current law, the state may inspect a property for LBP if a child under 6 years old has been reported to have elevated blood lead levels and may order the owner to reduce or eliminate the lead hazard.
- Hazard Reduction Standards: Once it is established that a rental unit has a lead hazard, the owner must act to avoid potential liability. The owner has two options -- either make the unit lead free or lead safe. These standards shall be set by DHFS administrative rules.

- **Certification of Compliance:** A certificate of compliance may be issued upon the successful completion of work done to make a unit lead free or lead safe. Upon completion of the work to reduce or eliminate lead hazard, a certified lead inspector/assessor may inspect the property and provide a certificate verifying that the unit is lead safe or lead free as of the date of issuance. The certificate may be revoked if the property owner violates any of the conditions specified by the certificate.
- **Insurance Standards:** With established state standards for assessment, clean up and compliance, it is assumed that the highly competitive private insurance market will begin to seriously consider creating an insurance product for property owners for lead paint hazards.

3. Liability

- Rental property owners are conditionally immune from liability for lead poisoning of tenants if the owner has a certificate of lead-free status or lead-safe status. There would be no immunity, however, if the owner or his employee or agent obtained the certificate by fraud; violated a condition of the certificate; created a LBP hazard during renovation, remodeling, maintenance, or repair after receiving the certificate; or failed to timely respond to notice from a tenant or the health department that a LBP hazard has recurred.
- An owner of a rental unit is conditionally immune from liability for acts or omissions related to lead poisoning for up to 90 days after the owner acquires the unit, except if the lead poisoning results from a lead hazard created by the owner or his or her employees or agents. (Owners however must act to control lead hazards and receive a certificate of compliance in order to receive liability protection.)

Conclusion

We believe Wisconsin's real estate market sincerely needs this legislation. It is important to keep in mind that property owners did not cause this hazard, yet they stand alone in addressing this expensive problem. Insurance companies, banks, paint manufacturers and, for the most part, federal, state and local governments are absent when it comes to funding a solution.

We believe the incentives and protections provided in this legislation protect both the innocent children and the innocent property owners of Wisconsin. Both need your help.

We strongly urge your support for AB 806.


ROBERT W. WIRCH
STATE SENATOR TWENTY-SECOND DISTRICT

AB-806

To: Members, Committee on Economic Development, Housing and Government Operations

From: Senator Bob Wirch, Chair

Date: March 17, 2000

Re: Paper Ballots

Please return your ballots no later than 10:00 a.m. on Monday, March 20th. Your cooperation is appreciated, as always.

Moved by Senator Wirch, that Assembly Bill 650, relating to expenditure of \$9,926 from moneys appropriated to the department of transportation in payment of a claim against the state made by Robert and Dorothy Messner, be recommended for concurrence.

Aye X No _____

Moved by Senator Wirch, that Assembly Bill 651, relating to expenditure of \$13,785.25 from moneys appropriated to the department of transportation in payment of a claim against the state made by the city of West Allis, be recommended for concurrence.

Aye X No _____

Moved by Senator Wirch, that Assembly Bill 652, relating to expenditure of \$56,300 from moneys appropriated to the department of transportation in payment of a claim against the state made by the city of West Allis, be recommended for concurrence.

Aye X No _____

Moved by Senator Wirch, that Assembly Bill 653, relating to expenditure of \$76,150 from moneys appropriated to the department of transportation in payment of a claim against the state made by Walworth County, be recommended for concurrence.

Aye

No

Moved by Senator Wirch, that Assembly Bill 806, relating to conducting lead investigations, lead-bearing paint hazard control, requirements for certification of lead-free or lead-safe status for dwellings and premises, immunity from liability for lead poisoning or lead exposure, a state residential lead liability fund, granting rule-making authority, requiring the exercise of rule-making authority and making appropriations, be recommended for concurrence.

Aye

No

Signature:

Robert Wirch

Date:

3-17-00



ROBERT W. WIRCH
STATE SENATOR TWENTY-SECOND DISTRICT

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Aye _____


No _____

State Capitol, P.O. Box 7882, Madison, Wisconsin 53707-7882 • 608-267-8979

Toll-Free Office Hotline: 1-888-769-4724

Email: Sen.Wirch@legis.state.wi.us • Website: www.legis.state.wi.us/senate/sen22/sen22.html • Fax: (608) 267-0984

Home: 3007 Springbrook Road, Pleasant Prairie, Wisconsin 53158 • (262) 694-7379

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Aye _____

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Aye _____

No _____

Signature:

Mary Dzywicki

Date:

3/20/2000



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Aye _____

No _____

Signature: _____

Dane Zier

Date: _____

3/20/00



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
Aye _____ No _____

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Aye ✓


No _____

Signature:

Rich Johnson

Date:

3-20-2007



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Aye X

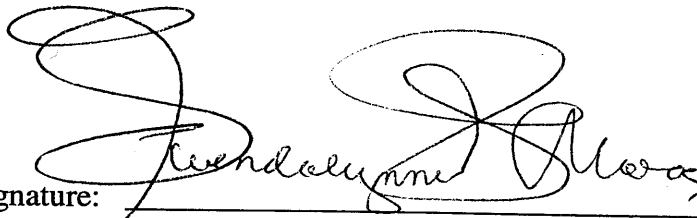
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Aye X

No _____

Signature:



Jendalynn Almas

Date:

March 17, 2000