



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-4627/2
DAK:kmg:jf

1997 SENATE BILL 502

March 17, 1998 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Health, Human Services, Aging, Corrections, Veterans and Military Affairs.

1 **AN ACT** *to renumber* 254.168 (1) to (7); *to renumber and amend* 254.166 (2)
2 (c) and 254.168 (intro.); *to amend* 254.13 (2), 254.156, 254.162 (1) (intro.),
3 254.166 (1), 254.166 (2) (intro.), 254.17 (3) (b) 3. and (6) (c) and 254.174; *to*
4 *repeal and recreate* 254.17 and 254.172; and *to create* 14.065 (3m), 20.435
5 (5) (fm), 234.495, 254.11 (4e), (4m), (4s), (5m), (8p) and (9g), 254.165, 254.166
6 (2) (c) 2. and 3., 254.166 (2) (e), 254.168 (2m), 254.171, 254.173, 254.177, chapter
7 606 and 901.055 of the statutes; **relating to:** lead hazard control, lead-bearing
8 paint hazard reduction, use of oil overcharge funds for lead hazard reduction
9 in dwellings, providing restricted immunity from civil liability to certain
10 property owners, employes and agents, requiring the Wisconsin housing and
11 economic development authority to promote certain loan programs, granting
12 rule-making authority and making appropriations.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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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:

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on lead poisoning prevention and control. The bill requires owners of occupied dwellings constructed before January 1, 1950, to meet specified maintenance and treatment requirements unless their properties are found to be either lead-free or free of lead-bearing paint hazards. Owners of dwellings constructed on or after January 1, 1950, but before January 1, 1978, are permitted to have their properties inspected to determine whether any lead-bearing paint hazards exist and to follow the essential maintenance practices and lead hazard control requirements and agree to comply with the requirements for responding to notification of a child with lead poisoning which are set forth in the provisions of the bill relating to pre-1950 dwellings. The bill also requires the department of health and family services (DHFS) to inspect dwellings where children with a specified blood lead level reside or frequent.

The bill provides immunity from liability to property owners and their employees and agents for damages relating to lead poisoning or lead exposure if their property has received one of 3 types of certificates specified in the bill. There are 5 exceptions to this immunity from liability. In addition, a grace period on liability is provided to persons for the first 90 days after they become property owners, with an exception for hazards caused by the owner or his or her employees or agents.

The bill also contains provisions regarding admissibility of dust tests for the presence of lead in certain actions and proceedings, establishment of a state residential lead liability fund and use of oil overcharge funds for the reduction of lead hazards in dwellings in conjunction with energy conservation activities.

The bill amends current law to require, instead of permit, the DHFS to promulgate rules requiring facilities serving children under age 6 to obtain written evidence that the children have been tested for lead poisoning and to be inspected for lead hazards. Also, the bill requires the DHFS to promulgate rules relating to the conduct of lead inspections and certificates of lead-free status, abatement and lead hazard reduction; rules setting forth safe work practices to be followed and unsafe work practices to be avoided to prevent exposing occupants to lead hazards; and rules setting forth standard treatment measures that owners of dwellings built before 1950 must employ.

The bill creates a continuing general purpose revenue (GPR) appropriation in the DHFS budget of \$2,500,000 in fiscal year 1998-99, to fund lead-bearing paint hazard reduction activities. Priority is given to grants and interest-free, deferred-payment loans to reduce lead hazards in housing and for the additional purposes of funding lead poisoning education and lead inspections and the expansion of lead poisoning prevention programs to additional counties.

The bill also directs the Wisconsin housing and economic development authority (WHEDA) to aggressively promote its home improvement loan program and rental improvement loan program with property owners whose properties contain lead paint as mechanisms for funding the elimination, abatement or control of lead-bearing paint. WHEDA is also directed to attempt to make loans of \$5,000,000 per year in total under the 2 programs for this purpose.

Further details regarding the provisions of the bill are contained in the notes that follow the SECTIONS of the bill.

In preparing the bill, the special committee adopted the following preamble:

The special committee on lead poisoning prevention and control recognizes that lead poisoning is a significant public health hazard, having a major impact on young

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children. High levels of lead in the blood of young children can cause permanent nervous system damage and even in relatively low levels can cause significant nervous system effects, such as reducing intelligence and attention span, reading and learning disabilities and behavior problems.

While steps have been taken to reduce children's exposure to lead through elimination or reduction of lead in gasoline, cans and pipes and through a ban on lead in paint beginning in 1978, there is still a significant potential for exposure from lead-bearing paint in pre-1978 housing. The potential for exposure is highest in pre-1950 housing, but is also present in housing that was developed between 1950 and 1978, a period when alternatives to lead-bearing paint were becoming available, but were not required to be used.

To address this public health hazard, the special committee is recommending a multifaceted approach, including development of lead-bearing paint housing standards and providing incentives for property owners to meet those standards through limiting their potential liability and increasing the availability of insurance coverage.

1 **SECTION 1.** 14.065 (3m) of the statutes is created to read:

2 14.065 (**3m**) Any proposal submitted under sub. (3) after the effective date of
3 this subsection [revisor inserts date], shall provide for the expenditure of all
4 available oil overcharge funds for the reduction of lead hazards in dwellings that is
5 done to allow for and in conjunction with energy conservation activities.

NOTE: Current s. 14.065 provides for expenditure of oil overcharge funds, which are defined as "any oil overcharge restitution funds which the federal government disburses to this state under any act of congress, court order or administrative action". That section requires the governor to submit to the legislature a proposal for expenditure of the funds. That section also provides for standing committee review of the proposal and final action on the proposal by the joint committee on finance.

This bill provides that any such proposal submitted after the day after publication of the bill must provide for the expenditure of all available oil overcharge funds for the reduction of lead hazards in dwellings that is done to allow for and in conjunction with energy conservation activities.

6 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert
7 the following amounts for the purposes indicated:

SENATE BILL 502**SECTION 2****1997-98 1998-99**

1

2 20.435 Health and family services, department

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of

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(5) HEALTH SERVICES PLANNING, REGULATION AND

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DELIVERY; AIDS AND LOCAL ASSISTANCE

6

(fm) Lead poisoning prevention pro-

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gram

GPR C

- 0 - 2,500,000

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SECTION 3. 20.435 (5) (fm) of the statutes is created to read:

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20.435 **(5)** (fm) *Lead poisoning prevention program.* As a continuing

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appropriation, the amounts in the schedule for the lead poisoning prevention

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program under s. 254.165.

NOTE: Creates a continuing GPR appropriation in the DHFS budget for purposes related to lead paint hazard reduction, with priority given for grants and interest-free, deferred-payment loans to reduce lead paint hazards in housing. In addition, funds are to be utilized for lead poisoning education and lead inspections and to expand lead poisoning prevention programs to additional counties. For fiscal year 1998-99 (the 2nd year of the 1997-99 biennium), \$2,500,000 GPR is appropriated.

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SECTION 4. 234.495 of the statutes is created to read:

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234.495 Promotion of programs. The authority shall aggressively promote

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its home improvement loan program and rental improvement loan program with

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property owners whose properties contain lead-bearing paint for use in funding the

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elimination, abatement or control of lead-bearing paint. The authority shall

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attempt to make loans of at least \$5,000,000 per year in total under the 2 programs

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for this purpose.

NOTE: Directs WHEDA to aggressively promote its current home improvement loan program and rental improvement loan programs with property owners whose properties contain lead-bearing paint as mechanisms for funding the elimination, abatement or control of lead-bearing paint. WHEDA must attempt to make loans of at least \$5,000,000 per year in total under the 2 programs for that purpose.

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1 **SECTION 5.** 254.11 (4e), (4m), (4s), (5m), (8p) and (9g) of the statutes are created
2 to read:

3 254.11 **(4e)** “Certificate of abatement” means a certificate issued by a certified
4 independent risk assessor which documents that the assessor has found that all
5 lead-bearing painted surfaces in a dwelling or unit have been properly abated, as
6 defined by the department by rule.

7 **(4m)** “Certificate of lead-free status” means a certificate issued by a certified
8 independent lead inspector or a certified independent risk assessor which documents
9 that the inspector or assessor has found that a dwelling or unit contains no
10 lead-bearing paint on any interior or exterior surface, component or fixture.

11 **(4s)** “Certificate of lead hazard reduction” means a certificate issued by a
12 certified independent risk assessor which documents that the assessor has found
13 that all lead-bearing paint that is a lead hazard in a dwelling or unit has been
14 properly controlled.

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

19 **(8p)** “Lead hazard screen” has the meaning specified by rule by the
20 department.

21 **(9g)** “Lead risk assessment” has the meaning specified by rule by the
22 department.

NOTE: New s. 254.11 (4e), (4m) and (4s) define the terms “certificate of abatement”,
“certificate of lead-free status” and “certificate of lead hazard reduction”. These terms
and definitions are based on the terms and descriptions of these terms used in the report
of the lead-based paint hazard reduction and financing task force, entitled *Putting the
Pieces Together: Controlling Lead Hazards in the Nation’s Housing* (known as the

SENATE BILL 502**SECTION 5**

Housing and Urban Development (HUD) task force report). Under SECTION 24 of the bill, the requirements for the issuance, maintenance and revocation of these certificates must be set forth in rules promulgated by the DHFS.

New s. 254.11 (5m) defines the term “elevated blood lead level”, using the current federal centers for disease control and prevention (CDC) recommended threshold for the level at which an environmental investigation of a child’s dwelling must be conducted.

New s. 254.11 (8p) and (9g) define the terms “lead hazard screen” and “risk assessment” as having the meaning specified by the DHFS by rule.

1 **SECTION 6.** 254.13 (2) of the statutes is amended to read:

2 254.13 (2) A person who screens a child under 6 18 years of age for lead
3 poisoning or lead exposure under this subchapter, or any rule promulgated under
4 this subchapter, shall report the results of the screening to the department within
5 the time period for reporting by rule. The department shall promulgate rules
6 specifying the form of the reports required under this subsection. A person making
7 a report under this subsection in good faith is immune from civil or criminal liability
8 that might otherwise be incurred from making the report.

NOTE: Amends current law to require a person who screens a child under age 18, instead of age 6, for lead poisoning to report the results to the DHFS.

9 **SECTION 7.** 254.156 of the statutes is amended to read:

10 **254.156** (title) ~~Definition~~ **Definitions of elevated blood lead level,**
11 **lead-bearing paint and lead poisoning or lead exposure.** Notwithstanding s.
12 254.11 (intro.), ~~(5m)~~, (8) and (9), whenever the centers for disease control and
13 prevention of the federal department of health and human services specifies
14 recommends a standard for the determination of an elevated blood lead level for
15 which an environmental investigation is required that differs from the definition in
16 s. 254.11 (5m) or recommends a standard for the determination of lead-bearing paint
17 or lead poisoning or lead exposure that differs from that specified in s. 254.11 (8) or
18 (9), the department shall promulgate a rule defining “elevated blood lead level”,
19 “lead-bearing paint” or “lead poisoning or lead exposure” to correspond to the
20 specification recommendation of the centers for disease control and prevention.

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1 Rules promulgated under this section supersede s. 254.11 (5m), (8) and (9) with
2 respect to the requirements of this subchapter.

NOTE: Amends current law to require the DHFS to promulgate a rule to change the definition of "elevated blood lead level" whenever the CDC changes its recommended definition for the level at which an environmental investigation must be conducted.

3 **SECTION 8.** 254.162 (1) (intro.) of the statutes is amended to read:

4 **254.162 (1) INSTITUTIONS AND PROGRAMS PROVIDING SERVICES TO CHILDREN UNDER**
5 **6 YEARS OF AGE.** (intro.) The department ~~may~~ shall promulgate rules requiring the
6 following institutions and programs to obtain written evidence that each child under
7 6 years of age participating in the institution or program has obtained a lead
8 screening, or is exempt from obtaining one, under the recommended lead screening
9 levels and intervals contained in the rules promulgated by the department under s.
10 254.158, if any, within the time periods specified by the department:

NOTE: Amends current law to require, instead of permit, the DHFS to promulgate rules requiring specified institutions and programs which serve children (e.g., day care centers) to obtain written evidence that each child under age 6 participating in the institution or program has obtained a lead screening.

11 **SECTION 9.** 254.165 of the statutes is created to read:

12 **254.165 Lead poisoning prevention program.** (1) Except as provided in
13 sub. (2), from the appropriation account under s. 20.435 (5) (fm), the department
14 shall distribute funds for all of the following:

15 (a) Lead-bearing paint hazard reduction, with a priority for grants and
16 interest-free, deferred-payment loans for the reduction of lead-bearing paint
17 hazards in housing.

18 (b) Lead poisoning education.

19 (c) Lead inspections.

20 (d) The expansion of lead poisoning prevention programs to counties that do
21 not have those programs.

SENATE BILL 502**SECTION 9**

1 **(2)** Before distributing funds under sub. (1), the department shall, each fiscal
2 year, submit to the joint committee on finance a detailed plan for the distribution of
3 the funds. In developing the plan, the department shall consult with the technical
4 advisory committee under s. 254.174, the subunit of the department of
5 administration that deals with housing and the Wisconsin housing and economic
6 development authority. The department may proceed with distribution of the funds
7 if, within 14 days after the submission, the joint committee on finance does not
8 schedule a meeting for the purpose of reviewing the department's plan. If, within 14
9 days after the submission, the joint committee schedules a meeting for the purpose
10 of reviewing the plan, the department may not distribute funds under sub. (1) until
11 the joint committee approves the plan.

NOTE: Requires DHFS to develop and submit a detailed plan to the legislature's joint committee on finance prior to distributing funds from the newly created GPR appropriation in the bill. In developing the plan, DHFS must consult with the technical advisory committee created to advise the department on lead poisoning rules as well as the department of administration's division of housing and WHEDA.

12 **SECTION 10.** 254.166 (1) of the statutes is amended to read:

13 254.166 **(1)** The department may, after being notified that an occupant of a
14 dwelling who is under 6 18 years of age has blood lead poisoning or lead exposure,
15 present official credentials to the owner or occupant of the dwelling or premises, or
16 to a representative of the owner, and request admission to conduct a lead inspection
17 of the dwelling or premises. If the department is notified that an occupant of a
18 dwelling who is under 6 years of age has an elevated blood lead level, the department
19 shall conduct a lead inspection of the dwelling or premises. The lead inspection shall
20 be conducted during business hours, unless the owner or occupant of the dwelling or
21 premises consents to an inspection during nonbusiness hours or unless the
22 department determines that the dwelling or premises presents an imminent lead

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1 hazard. The department shall use reasonable efforts to provide prior notice of the
2 lead inspection to the owner of the dwelling or premises. The department may
3 remove samples or objects necessary for laboratory analysis to determine the
4 presence of a lead hazard in the dwelling or premises. The department shall prepare
5 and file written reports of all inspections conducted under this section and shall
6 make the contents of these reports available for inspection by the public, except for
7 medical information, which may be disclosed only to the extent that patient health
8 care records may be disclosed under ss. 146.82 to 146.835. If the owner or occupant
9 refuses admission, the department may seek a warrant to inspect the dwelling or
10 premises. The warrant shall advise the owner or occupant of the scope of the
11 inspection.

NOTE: Under current law, the DHFS, after being notified that an occupant of a dwelling who is under age 6 has blood lead poisoning or lead exposure, may inspect the dwelling or premises. "Lead poisoning or lead exposure" means a blood lead level of ≥ 10 ug/dL (micrograms per deciLiter). This SECTION amends current law to permit the DHFS to inspect a dwelling or premises after being notified that a child who is under *age 18* has lead poisoning or lead exposure. This SECTION also amends current law to *require* the DHFS to conduct a lead inspection of a dwelling which the DHFS has been notified has an occupant who is under *age 6* and who has an elevated blood lead level (one venous blood lead level test ≥ 20 ug/dL or 2 consecutive venous tests ≥ 15 ug/dL).

12 **SECTION 11.** 254.166 (2) (intro.) of the statutes is amended to read:

13 254.166 (2) (intro.) If the department determines that a lead hazard is present
14 in any dwelling or premises, the department ~~may do any~~ shall do all of the following:

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

17 254.166 (2) (c) (intro.) Notify all of the occupant occupants of the dwelling or
18 premises or ~~that person's representative that~~ those persons' representatives of all of
19 the following:

SENATE BILL 502**SECTION 12**

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

3 **SECTION 13.** 254.166 (2) (c) 2. and 3. of the statutes are created to read:

4 254.166 (2) (c) 2. The results of any lead inspections conducted on or in the
5 dwelling or premises.

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

7 **SECTION 14.** 254.166 (2) (e) of the statutes is created to read:

8 254.166 (2) (e) If an order is issued under par. (d), conduct or require a certified
9 independent lead inspector or certified independent risk assessor to conduct a visual
10 inspection, a check of work completed and dust tests for the presence of lead to ensure
11 compliance.

NOTE: SECTION 11 amends current law to *require*, instead of permit, the DHFS to do all of the following if it determines a lead hazard is present in any dwelling or premises:

1. Cause to be posted in a conspicuous place upon the dwelling or premises a notice of the presence of a lead hazard.

2. Inform the local health officer of the results of the lead inspection and provide recommendations to reduce or eliminate the lead hazard.

3. Notify the occupant of the dwelling or premises that a lead hazard is present in the dwelling or premises.

4. Notify the owner of the dwelling or premises of the presence of a lead hazard.

SECTIONS 12 and 13 amend the provision described in item 3., above, to require the DHFS to notify all of the occupants of a dwelling that a lead hazard is present. In addition, under the bill, the DHFS must notify the occupants of the results of any lead inspections conducted on or in the dwelling or premises and any actions taken to reduce or eliminate the lead hazard.

SECTION 14 also requires the DHFS to conduct or require a lead inspector or risk assessor to conduct a visual inspection, a check of work completed and dust tests for the presence of lead to ensure compliance with any order issued by the DHFS requiring reduction or elimination of a lead hazard.

12 **SECTION 15.** 254.168 (intro.) of the statutes is renumbered 254.168 (1) (intro.)
13 and amended to read:

14 254.168 (1) (intro.) Subject to the limitation under s. 254.174, the department
15 may promulgate rules that, after June 30, 1998, require any of the following facilities
16 to have periodic lead inspections at intervals determined by the department or to

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1 otherwise demonstrate that the facility does not contain a lead hazard, if any part
2 of the facility was constructed after January 1, 1950, but before January 1, 1978:

3 **SECTION 16.** 254.168 (1) to (7) of the statutes are renumbered 254.16 (1) (a) to
4 (g).

5 **SECTION 17.** 254.168 (2m) of the statutes is created to read:

6 254.168 (2m) Subject to the limitation under s. 254.174, the department shall
7 promulgate rules that, after June 30, 1998, require any of the facilities specified in
8 sub. (1) (a) to (g) to have periodic lead inspections at intervals determined by the
9 department or to otherwise demonstrate that the facility does not contain a lead
10 hazard, if any part of the facility was constructed before January 1, 1950.

NOTE: Amends current law to require, instead of permit, the DHFS to promulgate rules that, after June 30, 1998, require specified facilities serving children to have periodic lead inspections if any part of the facility was constructed before January 1, 1950. As permitted under current law, the DHFS may promulgate such rules for facilities constructed after January 1, 1950 but before January 1, 1978.

11 **SECTION 18.** 254.17 of the statutes is repealed and recreated to read:

12 **254.17 Prevention and control of lead-bearing paint hazards in**
13 **pre-1950 dwellings. (1) APPLICABILITY.** An owner of an occupied dwelling
14 constructed in this state prior to January 1, 1950, shall do one of the following:

15 (a) Obtain a lead hazard screen or lead risk assessment in accordance with sub.
16 (2), obtain a certificate of lead-free status or 2 consecutive certificates of abatement
17 under sub. (2) (b), meet the requirements of subs. (3) and (5) and agree to comply with
18 sub. (4).

19 (b) Meet the requirements of subs. (3), (5) and (6) and agree to comply with sub.
20 (4). If a certified independent risk assessor determines that an owner is in
21 conformity with this paragraph, the assessor shall issue a certificate of lead hazard
22 reduction.

SENATE BILL 502**SECTION 18**

1 **(2) LEAD HAZARD SCREEN OR LEAD RISK ASSESSMENT.** (a) An owner of a dwelling
2 may have a lead hazard screen or a lead risk assessment conducted to determine
3 whether the dwelling contains any lead hazards. If the owner elects this option, a
4 lead hazard screen or lead risk assessment shall be conducted at least once every 12
5 to 18 months or, if a certificate of lead hazard reduction, lead hazard abatement or
6 lead-free status has been issued for the dwelling, when the certificate expires. The
7 certified independent risk assessor who conducts the lead hazard screen or lead risk
8 assessment shall provide the owner with a report prepared in accordance with rules
9 promulgated under s. 254.167. If the report indicates that the dwelling meets the
10 criteria established by the department by rule for issuing a certificate of lead-free
11 status, a certificate of abatement or a certificate of lead hazard reduction, the
12 assessor shall issue the appropriate certificate.

13 (b) If the owner receives a certificate of lead-free status or 2 consecutive
14 certificates of abatement as the result of one or more lead hazard screens or lead risk
15 assessments, the owner shall be exempt from the requirements in sub. (6).

16 (c) If the owner receives a report for a lead hazard screen which indicates that
17 the dwelling contains a lead hazard, the owner shall obtain a lead risk assessment.

18 (d) If the owner receives a report for a lead risk assessment which indicates that
19 the dwelling contains a lead hazard, the owner shall do one of the following:

20 1. Control identified lead hazards pursuant to sub. (5).

21 2. If the owner owns a multifamily dwelling or multiple dwellings, have a
22 certified independent risk assessor develop a lead hazard control plan that does all
23 of the following:

24 a. Provides for the implementation of essential maintenance practices under
25 sub. (3), for response to any report of a child with lead poisoning or lead exposure

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1 under sub. (4) and for control of identified lead-bearing paint hazards under sub. (5)
2 based on the schedule set forth in the plan using effective lead hazard control
3 techniques and sufficient dust testing for the presence of lead.

4 b. Prioritizes lead hazard controls in any unit occupied or frequented by a child
5 under age 6 by making lead-bearing paint hazard control of those units subject to
6 an accelerated schedule.

7 c. Specifies the percentage of all units in which lead-bearing paint hazards
8 must be controlled within a determined period, with first priority to every unit
9 housing a child under age 6, and requires the owner to phase in implementation of
10 lead hazard control activities in a specified percentage of units within a specified
11 period of time until lead-bearing paint hazards have been controlled in a specified
12 number of the units.

13 d. Requires the owner to inform each tenant with whom a child under age 6
14 resides of the availability of unoccupied units in which all lead-bearing paint
15 hazards have been controlled and to seek to match each tenant with whom a child
16 under age 6 resides with a unit that contains no lead-bearing paint hazards.

17 e. Establishes a protocol for maintenance and specialized cleaning of units at
18 the time of occupant turnover.

19 f. Establishes a strategy and protocol for lead-bearing paint hazard control in
20 common areas, based on the results of the lead risk assessment.

21 g. Establishes a schedule for ongoing monitoring by a certified independent
22 risk assessor, including periodic visual inspection of the dwelling and sampling of
23 dust levels for the presence of lead.

24 **(3) ESSENTIAL MAINTENANCE PRACTICES.** An owner shall perform the following
25 essential maintenance practices:

SENATE BILL 502**SECTION 18**

1 (a) *Visual inspection and repair.* 1. Visually inspect for deteriorating paint
2 every 12 months. An owner of a rental or leased dwelling shall also conduct such an
3 inspection at the time of unit tenant or lessee turnover.

4 2. Promptly repair deteriorating paint and the cause of deterioration. The
5 department may specify by rule a minimum square footage per room of deteriorating
6 paint to which this subdivision would not apply and shall define the term “promptly”
7 by rule.

8 (b) *Tenant notification.* For a rental or leased dwelling, do all of the following:

9 1. Comply with environmental protection agency real estate lead disclosure
10 and notification requirements.

11 2. Inform tenants of how to report deteriorating paint to the owner.

12 3. Provide tenants with a form developed by the department by rule on which
13 tenants may list the ages of any children under age 6 residing in the rental or leased
14 dwelling.

15 4. Inform tenants of how they may report any changes to the information
16 provided in the form.

17 (c) *Training maintenance staff.* For a rental or leased dwelling, at a minimum,
18 require the person responsible for maintenance to complete an 8-hour training
19 course that provides basic information on lead-bearing paint hazards and good
20 practices for operations and maintenance and interim controls. The person
21 responsible for maintenance shall ensure that maintenance workers either complete
22 the 8-hour training course or have a clear understanding of lead-bearing paint
23 hazards, unsafe work practices, occupant protection and methods for cleaning areas
24 where dust with lead may be present. The person responsible for maintenance shall
25 provide adequate oversight of workers who have not taken the training course.

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1 (d) *Safe work practices.* In performing any repair or remodeling, including
2 repairs required under par. (a) 2., follow the safe work practices and avoid the unsafe
3 work practices established by the department by rule under s. 254.177 (1) (c) and (d).

4 **(4) RESPONSE TO NOTIFICATION OF CHILD WITH LEAD POISONING OR LEAD EXPOSURE.**

5 (a) The owner of a dwelling who receives notification that a child under age 18 who
6 resides in the dwelling has lead poisoning or lead exposure shall do all of the
7 following:

8 1. Cooperate with department or local health department officials
9 investigating the child's case under s. 254.166.

10 2. Take precautions to protect occupants and their belongings from exposure
11 to lead in the course of lead hazard reduction in occupied dwellings, including
12 temporary relocation of occupants and their belongings as necessary.

13 (b) No owner of a dwelling who receives notification that a child under age 18
14 who resides in the dwelling has lead poisoning or lead exposure may retaliate by
15 seeking to evict the occupant, coercing the occupant to vacate the dwelling, raising
16 the rent or turning off the utilities.

17 **(5) CONTROL OF IDENTIFIED LEAD HAZARDS.** (a) *Timing of hazard controls.* If an
18 inspection under s. 254.172 (1) or an assessment of a dwelling under sub. (2)
19 indicates that the dwelling contains a lead hazard, the owner shall control the lead
20 hazard as follows:

21 1. For an interior lead hazard in a dwelling or unit for which the owner receives
22 a form under sub. (3) (b) indicating that a child under age 6 is a resident, the hazard
23 shall be controlled as soon as possible but no later than 30 days from the date of the
24 inspector's or assessor's report. In other dwellings or units, the owner shall make
25 repairs no later than at the time of unit occupant turnover.

SENATE BILL 502**SECTION 18**

1 2. For a lead hazard in an interior common area of a multifamily dwelling
2 known to be occupied or frequented by a child under age 6, the hazard shall be
3 controlled as soon as possible but no later than 30 days from the date of the
4 inspector's or assessor's report.

5 3. For a lead hazard on an exterior porch, the hazard shall be controlled as soon
6 as possible but no later than 30 days from the date of the inspector's or assessor's
7 report, except that, for hazards discovered between October 1 and May 1, the hazard
8 shall be controlled no later than the following June 1.

9 4. For exterior lead hazards other than those under subd. 3., as soon as possible
10 but no later than 60 days from the date of the inspector's or assessor's report, except
11 that, for hazards discovered between October 1 and May 1, the hazard shall be
12 controlled no later than the following June 1.

13 (b) *Hazard control options.* The owner shall control a lead hazard in the
14 manner that the owner determines is most appropriate using interim control
15 activities or lead hazard abatement, or a combination of them, unless one of the
16 following conditions exists:

17 1. The inspector's or assessor's report indicates that interim controls are
18 inappropriate.

19 2. Interim controls on a surface or component have twice failed to reduce the
20 lead hazard.

21 3. The department, the local health department or a court has ordered the lead
22 hazard to be abated, as defined by the department by rule.

23 (c) *Work practices.* The owner shall avoid unsafe practices and follow the safe
24 work practices established by the department by rule under s. 254.177 (1) (c).

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1 (d) *Occupant protection.* The owner shall take precautions to protect occupants
2 and their belongings from lead exposure in the course of lead hazard control
3 activities in occupied units, including temporary relocation of occupants and their
4 belongings as necessary.

5 (e) *Dust testing for the presence of lead.* The owner shall have dust testing for
6 the presence of lead that conforms with guidelines or regulations created by the
7 federal department of housing and urban development performed by a certified
8 independent risk assessor or a certified independent lead inspector at the conclusion
9 of lead hazard control activities.

10 **(6) STANDARD TREATMENTS.** Unless exempted under sub. (2) (b), an owner shall
11 ensure that standard treatments are performed as follows:

12 (a) *Who may perform.* Standard treatments shall be performed by trained
13 maintenance staff who have sufficient knowledge of lead hazards.

14 (b) *Elements of standard treatments.* Standard treatments shall consist of
15 treatment measures established by the department by rule under s. 254.177 (1) (e).

16 (c) *Timing of standard treatments.* For owner-occupied dwellings, standard
17 treatments shall be performed every 12 months in a dwelling which has been
18 occupied continuously for at least 12 months by a family with a child under age 6.
19 For rental or leased dwellings, standard treatments shall be performed every 12
20 months in the dwelling or a unit of the dwelling for which the owner receives a form
21 under sub. (3) (b) indicating that a child under age 6 resides there. In addition,
22 owners of rental or leased dwellings shall perform standard treatments at the time
23 of unit occupant turnover unless those treatments were performed in the unit within
24 the last 12 months.

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NOTE: Repeals and recreates the provision of current law relating to lead inspections of rental and leased property. Specifically, this SECTION creates requirements for prevention and control of lead-bearing paint hazards in an occupied dwelling constructed prior to January 1, 1950.

The bill requires owners of pre-1950 dwellings to either: (1) obtain a lead hazard screen or risk assessment, obtain a certificate of lead-free status or 2 consecutive certificates of abatement, perform essential maintenance practices, control identified lead hazards and agree to comply with required actions when notified of a child with lead poisoning or lead exposure; or (2) perform essential maintenance practices and standard treatments, control identified lead hazards and agree to comply with required actions when notified of a child with lead poisoning or lead exposure. The bill specifies how often lead hazard screens or risk assessments must be conducted and how an owner must respond to the results. The bill also gives owners of multifamily dwellings or multiple dwellings the option of developing a lead hazard control plan to conduct lead hazard controls in phases.

For the standard treatments, the bill specifies that they must be done by trained maintenance staff. For owner-occupied dwellings, the bill requires that standard treatments be done every 12 months in dwellings in which a child under age 6 lives. For rental or leased dwellings, standard treatments must be performed every 12 months in a unit if the owner receives a form indicating that a child under age 6 lives in the unit. Standard treatments must also be performed at unit turnover in rental or leased properties unless they were performed in the last 12 months.

The essential maintenance practices require the owner to perform a visual inspection for deteriorating paint every 12 months. An owner of rental or leased property must also conduct such an inspection at the time of unit turnover. The owner must promptly repair deteriorating paint and the cause of deterioration.

Under the essential maintenance practices, an owner of a rental or leased dwelling must comply with the federal Environmental Protection Agency (EPA) real estate lead disclosure and notification requirements and must inform tenants of how to report deteriorating paint to the owner. An owner of a rental or leased dwelling must also require the person responsible for maintenance to complete an 8-hour training course that provides basic information on lead-bearing paint hazards and good practices for operations and maintenance and interim controls. Under the bill, the person responsible for maintenance must ensure that maintenance workers are properly trained or supervised. Finally, any owner of a dwelling constructed prior to 1950, in performing any repair or remodeling, must use safe work practices to avoid creating lead-bearing paint hazards during on-site work that disturbs paint that may contain lead and must avoid unsafe paint removal practices.

The bill also specifies how an owner must respond to notification that a child under age 18 who resides in the owner's dwelling has lead poisoning or lead exposure. The bill prohibits the owner from retaliating against a tenant based on such a notification.

The bill also specifies time limits for controlling lead hazards, based upon where in the dwelling they are located, and the options for hazard control. The bill requires the owner to use safe work practices and protect occupants and their belongings when controlling lead hazards. Finally, the bill requires dust testing for the presence of lead by a certified independent risk assessor or lead inspector at the conclusion of lead hazard control activities.

1 **SECTION 19.** 254.17 (3) (b) 3. and (6) (c) of the statutes, as affected by 1997
2 Wisconsin Act (this act), are amended to read:

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1 254.17 (3) (b) 3. Provide tenants with a form developed by the department by
2 rule on which tenants may list the ages of any persons under age 6 18 residing in the
3 rental or leased dwelling.

4 **(6) (c) *Timing of standard treatments.*** For owner-occupied dwellings, standard
5 treatments shall be performed every 12 months in a dwelling which has been
6 occupied continuously for at least 12 months by a family with a child under age 6 18.
7 For rental or leased dwellings, standard treatments shall be performed every 12
8 months in the dwelling or a unit of the dwelling for which the owner receives a form
9 under sub. (3) (b) indicating that a child under age 6 18 resides there. In addition,
10 owners of rental or leased dwellings shall perform standard treatments at the time
11 of unit occupant turnover unless those treatments were performed in the unit within
12 the last 12 months.

NOTE: Amends s. 254.17 (3) (b) and (6) (c), as created by the bill, to require that owners perform standard treatments every 12 months in dwellings or units in which a child resides who is under age 18, instead of age 6.

Under the effective date clause of the bill, this provision takes effect 5 years after the general effective date of the act.

13 **SECTION 20.** 254.171 of the statutes is created to read:

14 **254.171 Demolition of buildings constructed before January 1, 1978.**

15 If the department promulgates rules under s. 254.177 (2), a person who demolishes
16 a building constructed before January 1, 1978, shall comply with the rules in the
17 course of the demolition.

NOTE: Requires a person who demolishes a building constructed before January 1, 1978, to comply with any rules promulgated by the department under s. 254.177 (2) in the course of the demolition.

18 **SECTION 21.** 254.172 of the statutes is repealed and recreated to read:

19 **254.172 Prevention and control of lead-bearing paint hazards in**
20 **dwellings constructed between 1950 and 1977. (1)** If the owner of a dwelling

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1 constructed in this state on or after January 1, 1950, but before January 1, 1978, has
2 a certified independent lead inspector or risk assessor conduct an inspection of the
3 dwelling, the inspection shall be conducted and a report shall be issued in accordance
4 with rules promulgated under s. 254.167. If the report indicates that the dwelling
5 meets the criteria established by the department by rule for issuing a certificate of
6 lead-free status, a certificate of abatement or a certificate of lead hazard reduction,
7 the inspector or assessor shall issue a certificate as appropriate.

8 (2) If a certified independent risk assessor determines that the owner of a
9 dwelling constructed in this state on or after January 1, 1950, but before January 1,
10 1978, meets the requirements of s. 254.17 (3) and (5) and agrees to comply with s.
11 254.17 (4), the inspector or assessor shall issue a certificate of lead hazard reduction.

NOTE: Repeals and recreates the provision of current law relating to lead hazard reduction. Specifically, this SECTION creates voluntary requirements for the prevention and control of lead-bearing paint hazards in dwellings built on or after January 1, 1950 but before January 1, 1978.

The bill permits owners of dwellings constructed on or after January 1, 1950 but before January 1, 1978 to either have a certified independent lead inspector or risk assessor conduct an inspection of the dwelling or meet the essential maintenance practices and lead hazard control requirements and agree to comply with the required actions when notified of a child with lead poisoning or lead exposure for pre-1950 dwellings.

12 **SECTION 22.** 254.173 of the statutes is created to read:

13 **254.173 Immunity from liability for lead poisoning or lead exposure;**
14 **restrictions. (1) LEGISLATIVE FINDINGS AND PURPOSE.** (a) The legislature finds all
15 of the following:

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

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

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

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

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

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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) The owner or his or her employe or agent created a lead-bearing paint
5 hazard during renovation, remodeling, maintenance or repair after receiving the
6 certificate.

7 (d) The owner or his or her employe or agent failed to respond in a timely
8 manner to notification by the department or by a local health department that a
9 lead-bearing paint hazard has recurred.

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

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

NOTE: Provides that an owner of a dwelling or unit and his or her employes or agents are not liable for damages for lead poisoning or lead exposure of a person who resides in or is visiting the dwelling or unit if, at the time the lead poisoning or lead exposure occurred, one of 3 types of certificates have been issued for the dwelling or unit. The bill also provides that this restriction on liability does not apply if it is shown by clear and convincing evidence that one of 5 sets of circumstances exist.

In addition, the bill provides that an owner of a dwelling or unit and his or her employes and agents are not liable for lead poisoning or lead exposure that occurs during the first 90 days after the person becomes the owner of the dwelling or unit, except where the lead poisoning or lead exposure results from a lead-bearing paint hazard created by the owner or his or her employes or agents.

The Wisconsin supreme court has rejected the retroactive application of limits on liability. [*Martin v. Richards*, 192 Wis. 2d 156, 531 NW2d 70 (1995).] Consistent with that decision, the limits on liability in this bill apply only prospectively to lead poisoning or lead exposure that occurs after the general effective date of the bill. See SECTION 28.

18 **SECTION 23.** 254.174 of the statutes is amended to read:

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1 **254.174 Technical advisory committees.** Before the department may
2 promulgate rules under s. 254.167, 254.168, or 254.17 ~~or 254.172~~, the department
3 shall appoint a technical advisory committee under s. 227.13 and shall consult with
4 the technical advisory committee on the proposed rules. Any technical advisory
5 committee required under this section shall include representatives from local
6 health departments that administer local lead programs, representatives from the
7 housing industry, persons certified under s. 254.176 ~~and~~, representatives from the
8 medical or public health professions, advocates for persons at risk of lead poisoning
9 and advocates for children. Any technical advisory committee required under this
10 section before promulgating rules under s. 254.168 shall also include representatives
11 of facilities serving children under 6 years of age.

NOTE: Amends the current provision requiring appointment of a technical advisory committee to advise the DHFS on proposed lead rules, to include as members of the committee advocates for persons at risk of lead poisoning and advocates for children.

12 **SECTION 24.** 254.177 of the statutes is created to read:

13 **254.177 Rules for dwellings.** (1) After consulting with the technical
14 advisory committee under s. 254.174, the department shall promulgate rules on all
15 of the following:

16 (a) The criteria that a dwelling must meet for the owner of the dwelling to
17 receive a certificate of lead-free status, a certificate of abatement and a certificate
18 of lead hazard reduction. The rules shall establish the level of testing which must
19 be performed before a certificate may be issued, how long each type of certificate shall
20 remain in effect, the procedures by which they may be issued and under which they
21 may be revoked, any requirements that an owner must meet to maintain certification
22 and a mechanism for creating a registry of all properties for which a certificate has
23 been issued. The rules shall require that the expiration date for each certificate be

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1 stated on the certificate. The rules shall specify that a certificate of lead-free status
2 remains in effect indefinitely, that a certificate of abatement remains in effect for no
3 more than 20 years unless it is revoked earlier and that a certificate of lead hazard
4 reduction remains in effect for no more than 2 years, depending on the type of lead
5 hazard reduction activity that was performed, unless it is revoked earlier.

NOTE: Creates a provision requiring the DHFS to promulgate rules that set forth the criteria a dwelling must meet for the owner to receive a certificate of lead-free status, a certificate of abatement or a certificate of lead hazard reduction. The bill provides that the rules must require that the expiration date for each certificate be stated on the certificate. The bill specifies the criteria which must be included in the rules such as the procedures for issuing, maintaining and revoking the certificates. The bill also limits how long the certificates of abatement and lead hazard reduction may remain in effect.

6 (b) Specifying the requirements for a form, as required under s. 254.17 (3) (b).
7 The form shall contain a statement that the dwelling was constructed prior to
8 January 1, 1978, and may, therefore, contain a lead-based paint hazard. The form
9 shall also contain a statement of the effects of lead poisoning or lead exposure on
10 children.

NOTE: Creates a provision requiring the DHFS to promulgate rules that develop a form on which tenants may disclose the ages of any children under age 6 residing in the dwelling or unit that the tenant is renting or leasing. The bill requires that the form contain a statement that the dwelling was constructed prior to January 1, 1978 and may, therefore, contain a lead hazard. The form must also contain a statement of the effects of lead poisoning or lead exposure on children.

11 (c) Setting forth safe work practices which shall be followed in performing any
12 repair or remodeling of a dwelling built prior to January 1, 1950, as required under
13 s. 254.17 (3) (d) and (5) (c) and may be followed in performing such work on a dwelling
14 built prior to January 1, 1978. These safe work practices shall include at least all
15 of the following:

16 1. Taking precautions to prevent the spread of dust in which lead is present.
17 These may include limiting access to the work area to workers only, covering the
18 work area with polyethylene plastic that is at least 6 mil in thickness or the

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1 equivalent, protecting workers, protecting occupants' belongings by covering or
2 removing them from the work area, misting painted surfaces with water before
3 disturbing and wet-sweeping debris.

4 2. Performing specialized cleaning upon completion of work using methods that
5 have been proven successful in cleaning up lead-contaminated dust and debris and
6 that are appropriate to the circumstances.

NOTE: Creates a provision requiring the DHFS to promulgate rules that set forth
safe work practices which must be followed in any repair, remodeling or lead hazard
control activity on a dwelling constructed prior to January 1, 1950 and may be followed
in performing such work on a dwelling constructed prior to January 1, 1978.

7 (d) Setting forth unsafe work practices which shall be avoided in performing
8 any repair or remodeling of a dwelling built prior to January 1, 1950, as required
9 under s. 254.17 (3) (d) and (5) (c) and may be avoided in performing such work on a
10 dwelling built prior to January 1, 1978. These unsafe work practices shall include
11 at least all of the following:

12 1. Using power sanders, power planers or abrasive blasters unless a vacuum
13 attachment that prevents the escape of dust in which lead is present is used.

14 2. Using methylene chloride strippers.

15 3. Uncontained water blasting.

16 4. Dry scraping. The department may specify a maximum square footage per
17 room which may be dry scraped in the rules.

18 5. Open flame burning.

19 6. Operating heat guns above 1,100 degrees Fahrenheit.

NOTE: Creates a provision requiring the DHFS to promulgate rules that set forth
safe unsafe work practices which must be avoided in any repair, remodeling or lead
hazard control activity on a dwelling constructed prior to January 1, 1950 and may be
avoided in performing such work on a dwelling built before January 1, 1978.

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1 (e) Setting forth standard treatment measures which owners of dwellings
2 constructed prior to January 1, 1950, are required to perform under s. 254.17 (6).

3 These treatment measures shall include at least all of the following:

4 1. Repairing deteriorated paint using safe work practices.

5 2. Providing smooth and cleanable surfaces including floors, window sills and
6 window wells.

7 3. Correcting conditions in which painted surfaces are rubbing, binding or
8 being crushed, unless the paint does not contain lead.

9 4. Covering or restricting access to bare soil, unless it is found not to be
10 lead-contaminated.

11 5. Performing specialized cleaning of work areas upon completion of other
12 standard treatments.

13 6. Performing dust testing for the presence of lead of the work area which
14 conforms with guidelines or regulations created by the federal department of
15 housing and urban development following completion of standard treatments.

NOTE: Creates a provision requiring the DHFS to promulgate rules that set forth
standard treatment measures which owners of dwellings constructed prior to January 1,
1950 are required to perform under s. 254.17 (6).

16 (f) Defining the term “abated” for the purposes of the definition of “certificate
17 of abatement” in s. 254.11 (4e) and for the purposes of s. 254.17 (5) (b) 3.

NOTE: Creates a provision requiring the DHFS to promulgate rules defining
“abated”.

18 **(2)** The department may promulgate rules that set forth safe work practices
19 which must be followed in the demolition of a building constructed before January
20 1, 1978, to avoid exposure of persons in the area of the demolition to lead hazards.

NOTE: Creates a provision permitting the DHFS to promulgate rules that set forth
safe work practices which must be followed in the demolition of a building constructed
prior to January 1, 1978.

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

NOTE: Creates a state residential lead liability fund to issue policies that insure residential property against liability resulting from lead-bearing paint hazards if one of 3 types of certificates is in effect for the property. Policies may be issued by the fund only 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 available in the private insurance market.

4 **SECTION 26.** 901.055 of the statutes is created to read:

5 **901.055 Admissibility of results of dust testing for the presence of lead.**

6 The results of a test for the presence of lead in household dust are not admissible
7 during the course of a civil or criminal action or proceeding or an administrative
8 proceeding unless the test was conducted by a lead inspector or lead risk assessor
9 who is certified by the department of health and family services and who is not the
10 owner of the property at which the test was performed or the owner's employe or
11 agent.

NOTE: Specifies the inadmissibility of results of dust testing for the presence of lead under certain circumstances.

12 **SECTION 27. Nonstatutory provisions; health and family services.**

13 (1) RULES. The department of health and family services shall submit in
14 proposed form the rules required under section 254.177 of the statutes, as created
15 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
16 later than the first day of the 7th month beginning after the effective date of this
17 subsection.

NOTE: Requires the submission of rules to the legislative council rules clearinghouse by a specified time.

18 **SECTION 28. Initial applicability.**

