

FEB 24 2004

COMMERCE, REGULATION & LABOR

HOUSE FILE 2331
BY GREINER and FORD

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to lead abatement and property owner or agent
2 liability.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2331

1 Section 1. NEW SECTION. 135.105D TITLE.

2 This division may be cited as the "Voluntary Childhood Lead
3 Exposure Control Act".

4 Sec. 2. NEW SECTION. 135.105E DEFINITIONS.

5 For the purposes of this division, unless the context
6 otherwise requires:

7 1. "Abatement" means identifying or assessing a lead-based
8 paint hazard, or undertaking any of the following measures to
9 eliminate a lead-based paint hazard:

10 a. Removing a lead-based paint from a surface and
11 repainting the surface.

12 b. Removing a component, such as a windowsill, painted
13 with lead-based paint and replacing the component.

14 c. Enclosing a surface painted with lead-based paint with
15 paneling, vinyl siding, or other approved material.

16 d. Encapsulating a surface painted with lead-based paint
17 with a sealant.

18 e. Any other measure approved by the department.

19 "Abatement" includes an inspection and a risk assessment of
20 a lead-based paint hazard.

21 2. "Confirmed lead poisoning" means a blood lead
22 concentration of twenty micrograms per deciliter or greater in
23 a child under six years of age, determined by the lower of two
24 consecutive blood tests within a six-month period.

25 3. "Day care facility" means a structure used as a school,
26 nursery, child care center, clinic, treatment center, or other
27 facility serving the needs of children under six years of age
28 including the grounds, any outbuildings, or other structures
29 appurtenant to the facility.

30 4. "Department" means the Iowa department of public
31 health.

32 5. "Dwelling" means a structure, all or part of which is
33 designed or used for human habitation, including the common
34 areas, the grounds, any outbuildings, or other structures
35 appurtenant to the dwelling.

1 6. "Lead poisoning hazard" means the presence of readily
2 accessible or mouthable lead-bearing substances, measured in
3 accordance with federal guidelines.

4 7. "Lead-safe housing" means housing that was built on or
5 after 1978, or that has been tested by a person who has been
6 certified by the department to perform such testing, and
7 either found to have no lead-based paint hazards within the
8 meaning of the federal Residential Lead-Based Paint Hazard
9 Reduction Act of 1992, 42 U.S.C. § 4851-4855, and amendments
10 thereto, or found to meet the requirements of the maintenance
11 standard.

12 8. "Maintenance standard" means any of the following:

13 a. Repairing and repainting areas of deteriorated paint
14 inside a dwelling.

15 b. Cleaning the interior of the dwelling to remove dust
16 that constitutes a lead poisoning hazard.

17 c. Adjusting doors and windows in the dwelling to minimize
18 friction or impact on surfaces.

19 d. Providing the occupant of a dwelling with all
20 information required pursuant to the federal Residential Lead-
21 Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851-
22 4855, and amendments thereto.

23 9. "Managing agent" means a person who has charge, care,
24 or control of a building or part thereof, in which a dwelling
25 or day care facility is located.

26 10. "Mouthable lead-bearing substance" means any substance
27 on surfaces or fixtures five feet or less from the floor or
28 ground that form a protruding corner or similar edge, or
29 protrude one-half inch or more from a flat wall surface, or
30 are freestanding, containing lead-contaminated dust at a level
31 that constitutes a residential lead poisoning hazard.

32 Mouthable surfaces or fixtures include doors, door jams,
33 stairs, stair rails, windows, windowsills, and baseboards.

34 11. "Regularly visits" means presence at a dwelling or day
35 care facility where a child with a persistent elevated blood

1 level or a confirmed lead poisoning regularly visits or
2 attends.

3 12. "Supplemental address" means a dwelling or day care
4 facility where a child resided, regularly visited, or attended
5 within the six months immediately preceding the determination
6 of a persistent elevated blood level or a confirmed lead
7 poisoning.

8 Sec. 3. NEW SECTION. 135.105F NOTIFICATION.

9 Upon determination that a lead poisoning hazard exists, the
10 department shall give written notice of the lead poisoning
11 hazard to the owner or managing agent of the dwelling or day
12 care facility containing the lead poisoning hazard, and the
13 department shall require abatement of the lead poisoning
14 hazard. The department shall also require the abatement of a
15 lead poisoning hazard identified at a supplemental address of
16 a child under six years of age with a confirmed lead
17 poisoning.

18 Sec. 4. NEW SECTION. 135.105G ABATEMENT.

19 1. Upon determination that a child under six years of age
20 has a confirmed lead poisoning and that a child resides in,
21 attends, or regularly visits a dwelling or day care facility
22 containing a lead poisoning hazard, the department shall
23 require abatement of the lead poisoning hazard. The
24 department shall also require abatement of a lead poisoning
25 hazard identified at a supplemental address of a child under
26 six years of age with a confirmed lead poisoning.

27 2. If abatement is required pursuant to subsection 1, the
28 owner or managing agent shall, within ninety days, reduce the
29 lead poisoning hazard to below all of the following levels, as
30 approved by the department:

31 a. Floor dust levels shall be less than fifty micrograms
32 per square foot.

33 b. Windowsill dust levels shall be less than two hundred
34 fifty micrograms per square foot.

35 c. Soil lead levels shall be less than two thousand parts

1 per million, or such other levels higher than two thousand
2 parts per million as determined by the department to prevent a
3 lead poisoning hazard upon consideration of the condition and
4 use of the land, and other relevant factors.

5 3. The owner or managing agent shall notify the department
6 and the occupants of the dates of abatement activities at
7 least three days prior to the commencement of the abatement
8 activities.

9 4. The owner or managing agent may apply to the department
10 for an extension of the abatement deadline. The department
11 may issue an order extending the deadline for thirty days upon
12 proper written application by the owner or managing agent.

13 5. All lead-containing waste and residue of the abatement
14 shall be removed and disposed of by the person performing the
15 abatement in accordance with applicable federal laws and
16 rules.

17 6. The department shall verify by visual inspection that
18 abatement has been completed. The department may also verify
19 abatement completion by residual lead dust monitoring.
20 Compliance with the maintenance standard shall be deemed
21 equivalent to meeting abatement requirements if exterior
22 surfaces of the dwelling or day care facility are also abated
23 or modified to meet the maintenance standard.

24 7. Removal of children from a dwelling or day care
25 facility does not constitute abatement if the property
26 continues to be used for a dwelling or day care facility.

27 Sec. 5. NEW SECTION. 135.105H EFFECT OF COMPLIANCE WITH
28 MAINTENANCE STANDARD.

29 1. An owner or managing agent of a dwelling or day care
30 facility constructed prior to 1978 who is sued by a current or
31 former occupant seeking damages for injuries allegedly arising
32 from exposure to lead-based paint or lead-contaminated dust
33 shall not be deemed liable for such injuries under either of
34 the following circumstances:

35 a. After the owner or managing agent first complied with

1 the maintenance standard, the owner or managing agent has
2 performed the maintenance standard biannually and has obtained
3 a certificate of compliance pursuant to section 135.105I
4 during such occupancy.

5 b. Upon proof by the owner or managing agent that the unit
6 was lead-safe housing and did not contain lead-based paint
7 hazards during the period when the injuries were allegedly
8 sustained.

9 Sec. 6. NEW SECTION. 135.105I CERTIFICATE OF COMPLIANCE.

10 The owner or managing agent of a dwelling or day care
11 facility who has complied with the maintenance standard may
12 apply biannually to the applicable local board of health for a
13 certificate evidencing proof of such compliance. The local
14 board of health shall charge a fee, which shall be set by the
15 board, for issuance of the certificate. The owner or managing
16 agent shall be entitled to the liability relief provided for
17 pursuant to section 135.105H upon obtaining such a
18 certificate.

19 Sec. 7. Section 137.6, Code Supplement 2003, is amended by
20 adding the following new subsection:

21 NEW SUBSECTION. 6. Issue certificates of compliance to
22 the owner or managing agent of a dwelling or day care facility
23 pursuant to section 135.105I.

24 EXPLANATION

25 This bill relates to lead abatement and property owner or
26 agent liability.

27 The bill provides that the Iowa department of public
28 health, upon determining that a lead poisoning hazard exists,
29 shall give written notice of the lead poisoning hazard to the
30 owner or managing agent of a dwelling, dwelling unit, school,
31 or day care facility containing the lead poisoning hazard and
32 the department shall require abatement of such lead poisoning
33 hazard. The department shall additionally require the
34 abatement of the lead poisoning hazard identified at a
35 supplemental address of a child under six years of age with a

1 confirmed lead poisoning of 20 micrograms per deciliter or
2 greater.

3 The bill provides that if abatement is required, the owner
4 or managing agent shall, within 90 days, reduce the lead
5 poisoning hazard to below certain specified levels and
6 requires the owner or managing agent to notify the department
7 and the occupants of the dates of abatement activities at
8 least three days prior to the commencement of the abatement
9 activities. The bill provides that the owner or managing
10 agent may apply for an extension of time of the abatement
11 deadline.

12 The bill provides that all lead-containing waste and
13 residue of the lead abatement shall be removed and disposed of
14 by the person performing the abatement in accordance with
15 applicable federal laws and rules. In addition, the
16 department shall verify by visual inspection that abatement
17 has been completed, and may verify such by residual lead dust
18 monitoring.

19 The bill provides protection from liability for an owner or
20 managing agent of a dwelling or day care facility constructed
21 prior to 1978 who is sued by a current or former occupant
22 seeking damages for injuries allegedly arising from exposure
23 to lead-based paint or lead-contaminated dust if the owner or
24 managing agent had first complied with the maintenance
25 standard specified in the bill, and the owner or managing
26 agent obtained a certificate of compliance during such
27 occupancy, or upon proof by the owner or managing agent that
28 the dwelling or day care facility was lead-safe housing and
29 did not contain lead-based paint during the period when the
30 injuries were allegedly sustained.

31 The bill provides that an owner or managing agent of a
32 dwelling or day care facility who has complied with the
33 maintenance standard may apply biannually to the applicable
34 local board of health for a certificate evidencing proof of
35 such compliance. The bill provides the local board of health

1 shall charge a fee to be determined by the board for issuance
2 of the certificate.

3 The bill provides certain definitions.

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