State Legislation Addressing Prevention of Childhood Lead Poisoning:
A Policy Report for the Greater Manchester (NH) Partners Against Lead Poisoning

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Executive Summary

In the fall of 2003, the Greater Manchester (NH) Partners Against Lead Poisoning formed a committee to explore legislative approaches to reducing the risk of childhood lead poisoning in New Hampshire. The purpose of this report is to support those efforts. “State Legislation Addressing Prevention of Childhood Lead Poisoning: A Policy Report for the Greater Manchester (NH) Partners Against Lead Poisoning” includes a summary and analysis of legislation enacted in several northeastern U.S. states, descriptions of strategies and coalitions involved in the process, accounts of the effectiveness of these laws and a brief look at the use of litigation to change laws.

Regulation of lead paint hazards occurs at the federal, state, and local levels. While the federal government sets guidelines and standards, state government has the legal power and duty to implement federal guidelines. Municipalities also play a role, through city ordinances and codes. But a law is only as good as its implementation. In this report, the authors have placed particular emphasis on examining how laws in some of New Hampshire’s neighboring states — Massachusetts, Maryland, Rhode Island and Vermont — are working to protect children from harmful exposures to lead. This information has been gathered from individuals representing a broad range of organizations and agencies working on lead poisoning prevention in each state.

The political, social and economic climates that drive legislation have a powerful effect not only on legal language, but on the way the spirit of the law is translated into action. This “back story” is also relevant to any effort to consider legislative change in the state, and we have included this context along with a synthesis of legal language and other key aspects of each state’s law. This report does not thoroughly analyze administrative regulations and rules, although the authors acknowledge that they are important to understanding statutes in practice. The rules and regulations promulgated by state agencies often lay out in detail the roles and responsibilities of specific individuals who consequently feel the direct impact of a law.

Sources for this report include state and federal statutes, regulations, and cases; literature reviews; interviews and e-mail correspondence with Childhood Lead Poisoning Prevention Program (CLPPP) staff members in several states and with representatives of child health and advocacy groups; and conversations with members of the Legislative Committee of the Greater Manchester Partners Against Lead Poisoning.

Lead laws and public health

Statutory schemes that are most effective in preventing childhood lead poisoning are those that emphasize “primary prevention,” that is, identifying and remediating lead hazards before children are exposed or harmed. “Secondary prevention” measures are reactive, attempting to identify and treat exposed children and to reduce chances of further exposure.

Lead laws may employ incentives (“carrots”) to motivate property owners to identify and ameliorate lead paint hazards and/or consequences (“sticks”) to punish those who
do not comply with the law. Incentives generally take the form of financial relief or legal protection against liability in lead poisoning cases. For example, Massachusetts, Vermont, and Maryland give some form of liability protection for property owners who take specific steps to make properties lead-safe. Massachusetts also provides an income tax credit as an incentive. Consequences for violation of the law generally take the form of civil or criminal penalties.

Incentives alone have not been shown to be an effective means of inducing property owners to ameliorate lead paint hazards. Under Vermont’s law, property owners who perform yearly “Essential Maintenance Practices” are legally assumed to be fulfilling their duties in providing “a reasonable standard of care,” which gives them protection against lawsuits by families of poisoned children. But since there have been no lawsuits against negligent property owners in Vermont, this protection is not effective as an incentive. In addition, there is little enforcement of this standard and no penalties for property owners who fail to perform Essential Maintenance Practices. Consequently, insurers in Vermont are no longer accepting a property owner’s claim of having performed EMPs as grounds for issuing lead liability protection. In Massachusetts, lawsuits against property owners responsible for lead paint exposure resulting in harm to a child have resulted in large settlements, so liability protection does provide an incentive. The private sector provides an additional “stick” since insurers do not provide liability insurance against lead poisoning liability unless property owners are in compliance with the law.

Financial incentives such as subsidies for property maintenance and lead hazard control also work best in states where lead-safe standards exist and are enforced. This is the case in Massachusetts, which provides grants and deferred loans to homeowners and rental property owners for lead hazard control. On the other hand, in states where penalties are not enforced, financial incentives are less effective. In New Hampshire, municipalities report difficulty in enrolling property owners in the highest risk areas in these programs. Rental property owners may be reluctant to have their housing identified as potentially hazardous; or they may be reluctant or unable to spend money on lead work that is discovered, but not covered, by a financial incentive program.

Criminal or civil penalties can be an effective means of prompting compliance with the provisions of lead laws that apply to housing as long as there are resources to implement these schemes. The lead law passed in 2002 by Rhode Island lays out tough penalties for noncompliance, but did not include a funding mechanism for implementation. In contrast, Massachusetts has adequate resources for implementation and enforcement and has levied large fines on property owners found to be negligent.

Initial conditions: Forces driving legislation

The final version of a law is profoundly influenced by the identities and agendas of those who launch the legislative process, the resources available to various interest groups and the number and diversity of the stakeholders included in the legislative process. The impetus for lead legislation can come from public health concerns of the medical community, as was the case in Massachusetts; from political pressure resulting in a statutory or gubernatorial mandate, as were the cases in Vermont and Maryland; or
from the concerns of the insurance industry over liability costs associated with lead-poisoned children, as was the case in Rhode Island.

In some cases, the initial push gathered powerful momentum for a law reflecting the interests of the initiating parties. In Massachusetts, the result was the country’s first comprehensive state lead poisoning prevention law. In other cases, the response to the initial push was formation of an assembly of stakeholders charged with drafting legislation, and the final version of the law is a compromise reflecting the interests of most persuasive of those stakeholders. Vermont’s law reflects the interests of rental property owners who were on the panel that drafted the legislation. The legislative process was short, with little debate. In contrast, the stakeholders brought together by gubernatorial mandate in Maryland defended radically different positions on the direction a new lead law should take. The bill passed after a lengthy legislative process as property owners successfully lobbied for changes reflecting their interests. Child health advocates contend the final version of the law favors the interests of property owners over those of tenants. A similar process took place in Rhode Island, where competing bills were drafted by different interest groups.

In general, the major stakeholder groups fall into two opposing camps: public health, housing and children’s advocates who want property owners to bear the major responsibility and cost for making housing “lead safe” and rental property owners, realtors and insurers who argue that this burden is too costly, and should be shifted to or at least shared by tenants or families.

Money talks: funding mechanisms

A mechanism for funding the administration of a state lead program is vital to its enforcement and implementation. Insufficient funding is most often cited as the greatest barrier to implementation of lead poisoning prevention programs on the state level. All the state programs outlined in this report are, according to interviewees, lacking the resources they need to properly implement and enforce the state’s lead law, and all are feeling the effects of nation-wide state budget deficits.

The Massachusetts lead program subsidizes its education efforts through licensing fees for lead workers, funds abatement through a revolving loan program for property owners and receives a sizable portion of HUD lead hazard control funding. The governor’s campaign to combat lead poisoning in Maryland funneled $50 million over three years to state and city programs for implementation and enforcement of the state’s lead law, though state funding has been reduced since the campaign ended in 2003. Rhode Island’s law, passed in 2002, included no funding appropriation or other revenue-producing mechanism. This has made it nearly impossible to implement the program, and the new law is currently under review. In Vermont, there are no funding mechanisms for the lead program. Fees for lead worker accreditation, certification and licensing support these activities. Most of the states reviewed for this report rely heavily

on funding from the Centers for Disease Control and Prevention, the Department of Housing and Urban Development and from the Environmental Protection Agency.

Litigation as a strategy

Litigation against lead paint manufacturers, property owners and rental property managers has been used to address lead poisoning. Negligence suits against property owners have, in some states, established a duty to protect tenant children from lead poisoning from exposure to lead-based paint. Suits against lead paint manufacturers by injured children and their families have sought to hold paint makers responsible for making an unsafe product, but have been unsuccessful because plaintiffs have not been able to prove that a specific company manufactured the paint that ultimately poisoned the child. Despite litigants’ uneven success in their individual suits, they have significantly contributed to the overall effort to reduce lead poisoning, for as a result of them, state legislatures have become more active in regulating property owners and managers.

A new tactic — states suing the paint industry for injuring the public as a whole by causing an environmental health concern — may be more successful, particularly in light of successful tobacco industry litigation based on a similar premise. Such a suit is currently pending in Rhode Island.

Beyond legislation: Next steps

There are many ways to reduce the risk of childhood lead poisoning that do not rely on legislation. Fostering better collaboration between departments charged with protecting health, targeting education to those with the power to make change in their communities rather than families alone, directing lead-hazard control efforts to high-risk neighborhoods rather than single housing units, and approaching lead paint exposure through a “healthy home” paradigm are all effective tools for reducing lead poisoning incidence. New Hampshire’s Childhood Lead Poisoning Prevention Program has involved a wide range of stakeholders to develop a comprehensive plan including many of these approaches. Most importantly, lead poisoning prevention requires a focus on discovering hazards in housing before children are harmed rather than using the child as the “canary in the coal mine.”

The comments and experiences of those interviewed for this report suggest that the current political and economic climates present serious obstacles for new state legislation aimed at preventing lead poisoning. At the same time, New Hampshire agencies charged with protecting public health and the environment have the power to promulgate new regulations without legislative change. Municipalities, likewise, have the power to enact local ordinances that would support the goals of preventing childhood lead poisoning. The authors suggest that a next step for the Legislative Committee of the Manchester GMPALP might be a review of regulations promulgated by agencies in other states, and a review of city ordinances that have been shown to be effective. This could include the drafting of some model regulations and ordinances that might be adapted by New Hampshire agencies and municipalities.
## Summary of State Programs and Statutes

### Notable aspects of law and program

<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>Notable Aspects</th>
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<tbody>
<tr>
<td><strong>Massachusetts</strong></td>
<td>• emphasizes detection of lead hazards before child is poisoned</td>
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<tr>
<td></td>
<td>• balance of incentives and penalties</td>
</tr>
<tr>
<td></td>
<td>• long established infrastructure</td>
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<tr>
<td></td>
<td>• funding mechanism built into statute</td>
</tr>
<tr>
<td></td>
<td>• universal screening</td>
</tr>
<tr>
<td><strong>Rhode Island</strong></td>
<td>• free universal screening</td>
</tr>
<tr>
<td></td>
<td>• 2002 statute (now under review) includes balance of incentives and penalties</td>
</tr>
<tr>
<td></td>
<td>• 2002 statute emphasizes detection and mitigation of lead hazards before child is poisoned</td>
</tr>
<tr>
<td><strong>Vermont</strong></td>
<td>• clear standard of care</td>
</tr>
<tr>
<td></td>
<td>• do-it-yourself Essential Maintenance Practices are relatively easy for rental property owners to perform</td>
</tr>
<tr>
<td><strong>Maryland</strong></td>
<td>• registry of pre-1950s housing</td>
</tr>
<tr>
<td></td>
<td>• lead hazard control or dust clearance test required at tenant turnovers</td>
</tr>
<tr>
<td></td>
<td>• once a tenant child is poisoned, all units owned by that rental property owner must be brought into compliance</td>
</tr>
<tr>
<td></td>
<td>• owners of pre-1950s rental housing must be in compliance to use rent court or to receive authorization to rent a unit</td>
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</tbody>
</table>

### Criticisms of law or program

<table>
<thead>
<tr>
<th>Commonwealth</th>
<th>Criticisms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Massachusetts</strong></td>
<td>• some property owners view compliance as difficult</td>
</tr>
<tr>
<td><strong>Rhode Island</strong></td>
<td>• property owners view compliance as difficult</td>
</tr>
<tr>
<td></td>
<td>• very little implementation and enforcement because resources have not been garnered to support law</td>
</tr>
<tr>
<td></td>
<td>• recent legislative action has stalled further implementation</td>
</tr>
<tr>
<td><strong>Vermont</strong></td>
<td>• poor compliance among property owners, with no consequence for noncompliance written into statute</td>
</tr>
<tr>
<td></td>
<td>• too few state resources available for enforcement</td>
</tr>
<tr>
<td><strong>Maryland</strong></td>
<td>• poor compliance particularly in highest risk areas</td>
</tr>
<tr>
<td></td>
<td>• compliance only required for pre-1950 rental units</td>
</tr>
<tr>
<td></td>
<td>• liability protection has not been a successful incentive for compliance</td>
</tr>
</tbody>
</table>
### Impetus behind comprehensive legislation

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
</tr>
</thead>
</table>
| **Massachusetts** (1971 law) | - interest in the Boston medical community about lead poisoning  
- new awareness of high prevalence of children with elevated blood lead levels  
- new knowledge about the effects of lead on IQ |
| **Rhode Island** (2002 amendments) | - pressure by the insurance industry to add liability protection to the state’s existing lead law  
- formation of a multi-stakeholder commission by the Childhood Lead Action Project, an advocacy group |
| **Vermont** (1996 law) | - pressure from parent of lead-poisoned child  
- state statute passed, setting up a commission to draft a bill |
| **Maryland** (1995 law) | - lawsuits against rental property owners and insurance industry’s refusal to insure against liability  
- pressure by property owners to avoid lead liability  
- concern by child advocates  
- mandate by governor to set up a commission to draft a bill |

### Major public health advocates

<table>
<thead>
<tr>
<th>State</th>
<th>Advocate(s)</th>
</tr>
</thead>
</table>
| **Massachusetts** | - medical community  
- families of lead poisoned children  
- Massachusetts Law Reform Institute |
| **Rhode Island** | - Childhood Lead Action Project, Providence, RI  
- realtors (during initial passage)  
- some state representatives |
| **Vermont**     | - State Department of Health  
- Vermont Childhood Lead Poisoning Prevention Program |
| **Maryland**    | - Coalition to End Childhood Lead Poisoning, Baltimore, MD |

### Major advocates for economic interests

<table>
<thead>
<tr>
<th>State</th>
<th>Advocate(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Massachusetts</strong></td>
<td>- real-estate lobby</td>
</tr>
<tr>
<td><strong>Rhode Island</strong></td>
<td>- insurance industry</td>
</tr>
</tbody>
</table>
| **Vermont**     | - banking and insurance industry  
- rental property owners |
| **Maryland**    | - property owners                                         |

### Consequences for non-compliance with law

<table>
<thead>
<tr>
<th>State</th>
<th>Consequence(s)</th>
</tr>
</thead>
</table>
| **Massachusetts** | - civil or criminal penalties  
- potential for a lawsuit |
| **Rhode Island** | - civil or criminal penalties  
- potential for a lawsuit |
| **Vermont**     | - potential for lawsuit                                                       |
| **Maryland**    | - civil or criminal penalties  
- potential for lawsuit |
### Incentives for property owners to control lead hazards

<table>
<thead>
<tr>
<th>State</th>
<th>Incentives</th>
</tr>
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</table>
| Massachusetts  | • grants, loans, and income tax credit for lead work  
• liability protection for property owners who complete interim control or abatement |
| Rhode Island   | • income tax credit for lead work  
• guaranteed lead poisoning liability insurance for rental property owners and better rates for those with a Certificate of Conformance |
| Vermont        | • liability protection for property owners who complete yearly Essential Maintenance Practices      |
| Maryland       | • liability protection for property owners who comply with law                                       |

### Source of funding for implementation and enforcement

<table>
<thead>
<tr>
<th>State</th>
<th>Source</th>
</tr>
</thead>
</table>
| Massachusetts  | • a revolving loan program for property owners funds abatement  
• licensing fees from lead workers, realtors and others funds education  
• Boston Department of Neighborhood Development  
• CDC, HUD |
| Rhode Island   | • CDC, HUD                                                                                      |
| Vermont        | • CDC, HUD  
• fees from training programs, certification, and licensing support the Health Department’s accreditation, certification and licensing activities |
| Maryland       | • CDC, HUD  
• state appropriation, with additional appropriations following the governor’s campaign against lead poisoning (which ended in 2003) |
Part I: Reducing Lead Hazards Through Legislation

Background

In April 2000, a two-year-old Sudanese refugee died from lead poisoning as a result of ingesting lead-based paint and dust in and around her Manchester, New Hampshire apartment. The child’s death is tragic evidence that lead poisoning continues to be a serious threat for vulnerable populations.

Although significant gains have been made in the fight against childhood lead poisoning, an estimated half a million children in the United States continue to suffer from high blood lead levels, primarily as a result of exposure to deteriorating lead-based paint and paint-contaminated dust in poorly maintained pre-1950s housing.2 About 10 percent of the nation’s housing units fits this description; most is clustered in urban neighborhoods.

GIS maps produced by the Manchester, New Hampshire, Health Department show a direct correlation between high blood lead levels in city children and neighborhoods where housing falls under the category of “distressed or marginal.” Research has shown that an effective primary prevention strategy is to enact and enforce legislation regarding the management of lead paint in homes, specifically reduction or abatement of lead-paint hazards.

In 2001, the Greater Manchester Partners Against Lead Poisoning commenced work on the development of a community action plan to address lead-paint hazards. Through the work of a Steering Committee, the group identified several recommendations to prevent and manage childhood lead poisoning including education, integrating efforts among community groups, increasing screening and promoting access to lead-safe housing. In the fall of 2003, a Legislative Committee was formed to explore legislative approaches to reducing the risk of lead poisoning.

The purpose of this report is to support those efforts. The report is divided into four parts. Part I, Reducing Lead Hazards Through Legislation, lays out the context for the remaining sections and outlines the role of federal, state, and local governments in regulating lead paint hazards. This section also identifies aspects of an ideal law to prevent lead poisoning. Part II, New Hampshire’s Law, outlines the current New Hampshire lead law, how it was passed and how it is implemented. Part III, Lead Paint Poisoning Prevention in Neighboring States: On the Books and on the Ground, examines the state lead laws in four neighboring states: Massachusetts, Rhode Island, Vermont, and Maryland. These states were chosen because each exemplifies an aspect or approach to lead legislation that may be instructive for New Hampshire. Part IV, Litigation Strategies looks at the role of litigation in reducing and eventually eliminating the environmental health hazard of lead paint. Appendix A: Model Lead Poisoning Prevention Act, was

developed by Professor Don Gifford of the University of Maryland Law School in consultation with the National Paint and Coatings Association.

National organizations have published excellent guidelines to legal language, including samples of model laws or ordinances addressing lead poisoning prevention. But a law is only as good as its implementation. In this report, the authors have placed particular emphasis on the implementation of laws in our neighboring states and the lessons with particular relevance to New Hampshire. This information has been gathered from individuals representing a broad range of organizations and agencies working on lead poisoning prevention in each state.

State laws often delegate to state agencies the authority to promulgate rules and regulations to implement statutes. The scope of this report does not include a thorough review of the rules and regulations promulgated to implement state lead laws. However, the authors emphasize that the rulemaking power of the state executive branch should not be overlooked. Rulemaking often puts “teeth” into the law by spelling out roles and responsibilities of specific parties.

The political, social and economic climates that drive legislation have a powerful effect not only on legal language, but on the way the spirit of the law is translated into action. This background story provides valuable context for current efforts to consider legislative change in the state, and we have provided a summary of this background along with a synthesis of legal language and other key aspects of each state’s law.

Government Responsibilities for Controlling Lead Paint Hazards

Lead poisoning prevention regulation occurs at the federal, state, and local levels. Each governmental entity has a distinct role and appropriate regulatory tools, such as statutes, rules and regulations, ordinances, and case law. In general, the legislative branch of both the state and federal governments is responsible for enacting statutes that 1) spell out the general conditions for regulation, 2) authorize program spending, and 3) give authority to administrative agencies to flesh out the details.

For example, a typical state lead poisoning prevention statute outlines goals to be achieved, sets out program specifics (such as investigation procedures or abatement strategies), and delegates authority to the appropriate state agency to implement the statute. State agencies promulgate rules and regulations that set specific standards and criteria for enforcing statutory norms. Importantly, these rules and regulations must comport with the enabling statute, and not exceed the authority delegated by the legislative branch to the executive branch.

Municipalities operate in a similar manner, enacting ordinances rather than statutes. City ordinances are generally more detailed, leaving less to a rulemaking process.

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Finally, state and federal courts play a role in lead poisoning prevention by passing judgment in suits that interpret statutes, rules, regulations, and ordinances, and by applying common law concepts (such as negligence) to specific instances of lead poisoning.

**Federal Role**

The federal government generally plays an advisory role in three ways: setting guidelines and standards, funding grants to states and municipalities, and conducting research. The main federal agencies that address childhood lead poisoning are the Environmental Protection Agency (EPA), Department of Housing and Urban Development (HUD), and Centers for Disease Control and Prevention (CDC), which is part of the Department of Health and Human Services.

Federal guidelines and standards are set out through statutes such as the Lead-Based Paint Poisoning Prevention Act of 1971, which prohibited the use of lead-based paint on cooking and eating utensils, toys and furniture and on any government-funded residential structures.\(^4\) The Lead Contamination Control Act of 1988 regulated the certification of laboratories that tested for lead in water, set limits for lead in school drinking fountains and required the CDC to fund state Childhood Lead Poisoning Prevention Programs (CLPPPs) for screening, case management and lead education.\(^5\) Under the Residential Lead-Based Paint Hazard Reduction Act of 1992, the EPA promulgated regulations that developed a laboratory accreditation program, standards and procedures for lead dust cleanups and lead-based paint debris disposal, and the well-known requirement for property owners to disclose any known lead hazard when selling or renting housing.

The federal government also provides funding to states to carry out the mandates of the federal statutes. The CDC provides financial and technical assistance to state CLPPPs, and maintains a national database of childhood lead poisoning incidence. HUD funds lead paint abatement or containment activities in residential properties through grants. The federal agencies charged with childhood lead poisoning prevention also perform research on lead poisoning or contract out studies to research institutions. For example, HUD and EPA have worked with organizations such as the National Center for Healthy Homes, to research and evaluate lead hazard control procedures. Ideally, government agencies use this research to guide policy change.

For a more in-depth discussion of the federal role in addressing childhood lead poisoning and a comprehensive collection of federal resources, please see the February 2000 report of the President’s Task Force on Environmental Health Risks and Safety Risks to Children, Eliminating Childhood Lead Poisoning: A Federal Strategy

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State Role

State government has the legal power and duty to protect citizens’ health and welfare, and subsequently plays the most pervasive role in lead paint poisoning prevention by passing legislation that regulates private behavior. The states have authority, through their police powers, to legislate and regulate landlord-tenant relationships, building and housing codes, medical licensing boards, schools and day cares, and other institutions relevant to childhood lead poisoning. State courts can also play a large role in lead paint litigation. Negligence actions against property owners have taken place here, and have contributed to the shape of some states’ lead paint poisoning prevention statutes.

State agencies make regulations that implement the directives of state statutes. Often, these regulations outline roles and responsibilities in far more detail than statutes. For example, the Rhode Island lead statute states that, “It is intended that the provisions of this chapter be liberally construed to effectuate its purposes.”6 The onus of this provision becomes clear in the regulations promulgated by the Rhode Island Department of Health, which place specific and detailed requirements on property owners.

Local Role

Local governments vary greatly in their lead paint regulation activity. Larger cities, such as New York City, Philadelphia, and San Francisco, may put substantial effort and funding into enforcing local and state regulations. In general, municipal governments receive their legal authority from the states, which delegate specific responsibilities and authority. While local governments may not exceed this authority, they may enact ordinances that do not contradict federal and state guidance.

Aspects of an Ideal Law

Statutory schemes that have been shown to be most effective in reducing the incidence of childhood lead poisoning are those that address primary prevention as well as secondary prevention. Primary prevention measures attempt to identify and remediate a lead hazard before a child is poisoned. One benefit of primary prevention, aside from avoiding harm to children and families, is the avoidance of costs associated with a poisoned child.7 Secondary prevention measures attempt to identify and treat children who have already been lead poisoned and to reduce chances of further exposure.

Laws that combine primary and secondary prevention address a broad range of measures such as surveillance, screening, reporting, public outreach, medical and


environmental case management, inspections, risk assessments, disclosure of lead hazards, and most importantly, remediation or abatement of lead hazards.  

A comprehensive state law that addresses primary and secondary prevention can provide state and local programs leverage through “carrots” and “sticks.” For example, a state law with civil or criminal penalties for violation gives local government authority a “stick” to prompt compliance. Incentives such as financial relief or legal protection provide a “carrot” for compliance. A state law also can stimulate market-based incentives, such as the guarantee of insurance coverage for property owners who abide by the law or the formation of a lead inspection and abatement industry, both of which can boost knowledge and compliance.

Important priorities in a comprehensive lead poisoning prevention scheme are:
• discovery and disclosure of hazards;
• relocation of people to safe housing during abatement;
• prioritization of hazard abatement; and
• assessment of penalties for endangerment of people.

Essential strategies to pursue these priorities include:
• mandated disclosure of lead hazards in residential property;
• incentives for infrastructure development;
• mandated federal and state agency coordination to develop uniform standards and safe abatement techniques;
• creation of funding mechanisms for abatement and
• sanctions for failure to comply.

Professor Don Gifford of the University of Maryland Law School has consulted with the National Paint and Coatings Association to develop a Model Lead Poisoning Prevention Act. This Model Act addresses many of the above priorities and strategies, by focusing on 1) elimination of lead hazards in housing, 2) education, and 3) screening and treatment for elevated blood lead levels. For example, the Model Act provides for income tax credits and a state revolving loan fund as a “carrot” for funding abatement activities. Likewise it offers civil liability immunity to landlords who comply with lead-safe standards. In contrast, the Model Act requires the “stick” of uniform enforcement of lead-safe standards by state and municipal officials and mandates taking a property into receivership that is habitually in violation. A copy of the Model Act and an executive summary of it is attached at Appendix A.

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11 ibid.
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Part II: New Hampshire’s Law

New Hampshire’s Lead Paint Poisoning Prevention and Control Act, Title X (Public Health), RSA 130-A was passed in 1993. The law focuses on secondary prevention practices, such as certification of lead abatement contractors and inspectors, certification of training programs for lead abatement contractors, inspectors and risk assessors, certification of laboratories performing blood lead tests, tracking and investigation of elevated blood lead levels in children, and maintenance of a database on childhood lead poisoning incidences. These activities are carried out by the New Hampshire Department of Health and Human Services, Division of Public Health Services (the Department). The Administrative Rules, drafted in accordance with the provisions described within Sec. 130-A:10 Rulemaking, spell out the procedures for enforcement and implementation.

Description of the Statute

New Hampshire’s “lead law” consists of a total of 18 sections, creating the structure within the Department of Health and Human Services for secondary prevention programs. The statute sets out the duties of the commissioner and his delineate rule making authority; the qualifications of lead professionals and contractors; and proper procedures for lead hazard reduction within the State of New Hampshire.

General duties of the Department of Health and Human Services
Sec. 130-A:2 describes the general duties of the Commissioner of the Department of Health and Human Services. Some of these duties include the training, licensure and certification of lead workers and laboratories; implementation of public education programs; comprehensive case management for lead poisoned children; training property owners in management of lead hazards; conducting investigations and inspections, and maintaining a database on incidences of childhood lead poisoning.

Required reporting of blood analysis reports
Sec. 130-A:3 requires reporting results of blood lead analyses for adults and children who reside in New Hampshire (RSA 141-A).

Prohibitions
Under Sec. 130-A:4, use of lead paint containing more than .06 percent lead is prohibited in any child care facility, dwelling or dwelling unit. Sec. 130-A:9 lists other activities that are prohibited, such as performing lead abatement work without a license or without following rules adopted by RSA 130-A:10.

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12 Ultimately these would become the duties of New Hampshire’s Childhood Lead Poisoning Prevention Program (CLPPP).

13 Under rules later promulgated to achieve this statutory duty, results are reported to the New Hampshire CLPPP, which compiles it in a statewide database The NH CLPPP utilizes statistical data on blood lead levels and residential information to develop focused primary prevention educational campaigns. Currently, there are five high-risk communities (areas) within the New Hampshire that are receiving such attention.
Investigations

The Department is required to investigate when an elevated blood lead level is reported in a child six years old or younger. The statute describes three different scenarios that trigger an investigation by the Department:

1. a blood lead level (BLL) of 20 micrograms per deciliter or more is reported from two separate tests, or a health care provider designates a BLL of 20 micrograms per deciliter as elevated;
2. the Commissioner of Health and Human Services has reason to believe a child has access to a lead hazard in the form of chipping or peeling paint or from bare soil in play areas;
3. two consecutive blood samples between 15 - 19.9 micrograms per deciliter drawn at least 90 days apart are reported.

If an investigation is triggered by the first two scenarios, the Department’s investigation must include inspections and testing of environmental samples of any dwellings or child-care facility (Sec. 130-A:5(I)(b)) potentially involved in the poisoning of the child. Moreover the investigation requires “additional information and periodic reports from the child’s health care provider, the owner of the leased dwelling occupied by the child, the owner or operator of any child care facility attended by the child, and any lead worker or lead abatement worker involved in lead hazard reduction at the dwelling or child care facility.” (Sec. 130-A:5(I)(a)). Finally the Department must issue a lead hazard reduction order to the property owner or child care facility, or a notice to the property owner. (Sec. 130-A:5(I)(c)).

In contrast, when an investigation is triggered by the third scenario, the required inspection must occur either during business hours or at a time mutually agreed to by the Department and the property owner. (Sec. 130-A:5(II)(a)). If a lead hazard is identified, the owner of the dwelling must be provided with a notice that lead hazards exist, information on the health consequences of lead poisoning and procedures for lead hazard reduction. Also, the notice must be provided to the occupant, the local health authority and the poisoned child’s health care provider. The property owner is subject to the penalties under RSA 130-A:14 if he or she fails to appear at the inspection without good cause (Sec. 130-A:5(II)(b)).

It is important to underscore that the Department may initiate the same series of investigative actions as when a child has a BLL of 20 micrograms per deciliter, if there is “reason to believe that a lead exposure hazard...for a child exists.” (Sec. 130-A:5(I)). The Department thus has considerable discretion that can be used to increase state enforcement without requiring a statutory change.

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14 The CLPPP reports that the Department investigation requires the collection of “additional information and periodic reports from the child’s health care provider, the owner of the leased dwelling occupied by the child, the owner or operator of any child care facility attended by the child, and any lead worker or lead abatement worker involved in lead hazard reduction at the dwelling or child care facility” (Sec. 130-A:5(I)(a)) no matter what the trigger, even though the statute does not state this. Presumably the Department is exercising the discretion vested by the statute’s phrase “[s]uch investigations shall include, but not be limited to” in Sec. 130-A:5(II).
**Inspections in more detail**

The commissioner must issue an order to the property owner requiring lead hazard reduction when any one of the following lead hazards are identified:

1. The presence of lead-based substances on chewable, accessible, horizontal surfaces that protrude more than one half-inch and are located more than 6 inches but less than 4 feet from the floor or ground (i.e. windowsills);
2. Lead-based substances that are peeling, chipping, chalking or cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated and is likely to become accessible to a child;
3. Lead-based substances on interior or exterior surfaces that are subject to abrasion or friction or subject to damage by repeated impact (Sec. 130-A:6(I), Sec. 130-A:1(XVI)(a)-(c)).

In contrast, the commissioner has the discretion, but is not required, to issue an order to the property owner requiring lead hazard reduction if there is bare soil in play areas or the rest of the yard containing lead in concentrations equal to or greater than allowable limits\(^\text{15}\) (Sec. 130-A:6(I)).

In the event that an order is issued, a copy of the order must be provided to the occupants of the dwelling, occupants of any adjacent or attached dwellings owned by the same owner and where a child resides, and to the local health authority. (Sec. 130-A:6(I)). It must include the findings of the inspection, a description of appropriate methods for lead hazard reduction, a copy of applicable rules, a time period in which the reduction must be completed and the standards for re-occupancy. A lead inspector or lead risk assessor is responsible for verifying lead hazard reduction to the commissioner. (Sec. 130-A:7(II)).

In addition to inspecting rental housing, the Department is authorized to conduct inspections of the following premises:

- a child-care facility if the poisoned child spends more than ten hours a week at the facility;
- the dwelling where the child resides if the child’s parents or guardians own the dwelling, (permission for inspection must be granted by the parents or guardian) or
- any other structure in which the department has reasonable grounds to suspect that a lead exposure hazard may exist (Sec. 130:A-(6)(II)-(IV)).

**Property owner notification**

When a child’s BLL is between 10 to 19.9 micrograms per deciliter, the Department must make a reasonable effort to notify, in writing, the owner of the dwelling where the

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\(^{15}\) Those allowable limits are detailed in New Hampshire Revised Statutes Annotated, Section 130:A-1(XI)(b), which defines bare soil in children’s play areas with 400 parts per million of lead or more, and bare soil in the rest of the yard with 1,200 parts per million average, as a “lead base substance” and, therefore, a lead exposure hazard.
child resides. The notification must specify that the BLL is not a finding that there is a lead hazard in the property, and that the notification is not an order of lead hazard reduction.

**Lead poisoning prevention fund**
The statute creates a nonlapsing fund to “carry out” the law’s provisions. Fees collected under the statute (e.g. for licensing lead inspectors) must be deposited in this fund.

**Relocation of tenants**
The statute does not require rental property owners to temporarily relocate tenants from a unit. But if they do, a temporary relocation must meet the following conditions: the tenant must be offered a suitable replacement dwelling (in same school district if possible); rent must not exceed the original rent; the owner must agree in writing to allow the family to reoccupy the original dwelling as soon as hazard reduction occurs; and the owner must pay reasonable costs of relocation.

The owner may only bring an eviction action if the hazard reduction will take more than 30 days, the replacement dwelling has been offered, reasonable efforts to relocate in same school district have been made, the rent is comparable, and other conditions are met (Sec. 130-A:8-a(II)).

The law prohibits the eviction of a tenant because of the child’s elevated BLL, and creates a presumption that any eviction action instituted by the owner within six months of receiving the notice is based on the presence of the child’s elevated BLL. This prohibition does not prevent the owner of the dwelling from relocating tenants in the event that a lead hazard is discovered.

**Enforcement**
The Commissioner is required to issue a notice of violation if he/she has reason to believe that any provision of Sec. 130-A:9 or any rule adopted under this law has been violated. Any person who has violated any provision of this law is guilty of a misdemeanor for each day the violation exists. (Sec. 130-A:16).

The Commissioner has the discretion to enforce the statute in two distinct ways. First, the Commissioner may impose administrative fines on any person violating any provision of this law. All administrative fines, capped at $2,000 per offense, are deposited in the state’s general fund. (Sec. 130-A:14). The Commissioner may also ask the attorney general to bring a civil suit against a violator and request injunctive relief to force a rental property owner to take a particular action or be prohibited from taking a particular action (as opposed to being issued a civil or criminal penalty) (Sec. 130-A:17).

An owner who sells or transfers a dwelling unit that is under a lead hazard reduction order without disclosing the existence of the order to the prospective owner is subject to administrative fines and penalties. An owner who re-rents such a dwelling for residential purposes without reducing the lead exposure hazard is subject to administrative fines, penalties, and is liable for $1,000 plus costs and reasonable attorney’s fees to a family evicted because of a lead hazard (Sec. 130-A:8-a(IV)).
The Commissioner has the discretion to ask the attorney general to enforce any provision of this law, any rule adopted under this law, or any order issued pursuant to this law as seen fit.

Finally, the statute allows property owners to be held to the normal level of negligence. This means that for property owners to be held “negligent” in lawsuits in New Hampshire state court, the plaintiffs must show that their actual injury was caused by the lead base substance. The statute specifically states that “the mere presence” of that substance does not lead to a conclusion about negligence. (For more on this topic generally, see Part IV: Litigation Strategies). In addition, the presence of a lead-based substance does not violate the “warranty of habitability” or the duty owed by landlords to tenants of providing premises that are livable. (Sec. 130-A:18).

Process Behind the Legislation

The current New Hampshire lead law was passed in 1993 after the New Hampshire Department of Health and Human Services issued a request to the legislature to draft a bill. New science on the effects of lead poisoning combined with a general concern over the high incidence of lead poisoning in the state prompted the department to request an update of the old law, which contained outdated levels of concern in regard to lead poisoning. The original law, first passed in 1979 and amended several times throughout the 1980’s, required rental property owners to abate lead hazards after a child was poisoned. However, the law did not apply statewide; municipalities could choose to adopt it. It also did not provide clear standards on how abatement should be performed. In addition, an eligibility requirement attached to HUD and CDC funding for lead hazard control and lead poisoning prevention required states to enact a lead law with provisions for certifying lead workers, which New Hampshire’s lead law did not include.


The process included a series of hearings and negotiations in both the Senate and the House. The New Hampshire Property Owners’ Association was a vocal adversary of the bill from the start. The country was in a recession and rental property owners in the state were suffering economically and many owned vacant units. They viewed a lead poisoning prevention law requiring them to put more money into their rental units as a threat to their business.

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16 The information for the following sections has been collected from varied sources including conversations with Michelle Dembiec, Program Manager of the New Hampshire Childhood Lead Poisoning Prevention Program; LuAnn Speikers and Heather Fairchild also of the New Hampshire Childhood Lead Poisoning Prevention Program; Brook Dupee of the New Hampshire Department of Health and Human Services; New Hampshire state representative Sharon Nordgren; and Meredith Maruyama of the Manchester, New Hampshire Health Department.
The Department of Health and Human Services, other state agencies and child advocacy organizations were proponents of a lead law with strong protection for children. Dartmouth pediatrician and researcher James Sargent provided moving testimony at a legislative committee hearing. After describing the adverse health effects of deteriorating lead based paint, he displayed a clapboard covered in chipping lead-based paint, saying that the lead was “not an immediate hazard.” Then he dragged a paint scraper across the board, sending dust and flakes of paint across the room and said, “Now it’s an immediate hazard.” The demonstration cemented in many legislators’ minds the need for a law protecting children from lead-based paint hazards.

In crafting the final version of the bill, the state legislature took into consideration the economic interests of rental property owners and small businesses as well as the concerns of those interested in protecting children’s health. After much negotiation, the bill was signed into law in June 1993, six months after it was introduced.

The law has been amended several times since 1993. Changes were made to keep the law consistent with federal standards and regulations as these were updated. For example, a 2003 amendment brought the state law in line with recent changes in the EPA’s definitions of lead based substances with regard to dust lead levels in houses. Efforts were also made to streamline and clarify language.

In 2003 a provision was adding requiring the New Hampshire Department of Health and Human Services to notify a rental property owner when a child in his property has a blood lead level between 10 and 19 micrograms per deciliter (see Investigations above). Prior to this, the notification was sent when a child had a blood lead level of between 15 and 19 micrograms per deciliter. Rental property owners viewed the amendment as an important warning of a potential Order. A concern of child advocates was that rental property owners receiving notification of a moderately elevated blood lead level would begin making repairs of the property without using lead-safe work practices. In response to this, the Department sends recommendations for the proper handling of lead exposure hazards and contact information for further information along with the notification.

**Implementation and Enforcement**

The recorded number of lead poisoned children in New Hampshire is going down, following the trend nationwide. However, screening rates have also fallen in the state. In New Hampshire, and other states without strong primary prevention written into their statutes, screening is used to detect lead hazards through affected children, rather than a means for evaluating the success of lead hazard controls. Primary prevention in the state is largely implemented through local Housing and Urban Development (HUD) grants for lead hazard control as well as local efforts to implement a window replacement program for high-risk neighborhoods.

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Critics of New Hampshire’s lead law point to two shortcomings:

- Owner-occupied dwellings are exempt from most provisions of New Hampshire’s lead statute. Most importantly: the state does not have the authority to conduct an investigation or issue an Order of Lead Hazard Reduction when a child’s blood lead level is elevated as a result of lead hazards in a residence owned by the child’s guardians. (This is also true of the laws of several of New Hampshire’s neighboring states.)

- In laying out the scope of the law, rules promulgated by the Department of Health and Human Services (Part He-P 1601.02 of the New Hampshire Lead Poisoning Prevention and Control Rules) state that maintenance and renovation are not regulated under the state lead law unless these activities are to be performed with the intent to control or abate lead hazards.

The state has found enforcement of the law challenging. One CLPPP staff member has responsibility for all investigations in the state. For several years there was no staff position charged with enforcing orders, and the CLPPP staff member hired two years ago to do this is currently faced with roughly 200 outstanding Orders, some dating back eight years. Consequently, though property owners issued an Order have a time limit of 90 days to reduce lead hazards, this provision is not being enforced.

At present the CLPPP is focusing on the numerous outstanding Orders within the City of Manchester, which accounts for 30 percent of lead poisoning cases in New Hampshire. (The CLPPP has observed that owners often perform lead hazard controls when they become aware that fines are being levied on their peers.) The city has received money from HUD for lead hazard control activities. The CLPPP plans to begin targeting noncompliant rental property owners around the state.

Public health workers and lead poisoning prevention advocates are concerned that state programs for lead poisoning prevention are under-funded. The state funds some salaries and administrative costs, but most of the money for lead poisoning prevention comes from the EPA, CDC and HUD. (CDC funds for lead poisoning prevention were cut in 1999.) Fees from lead-safe renovator courses and from licensing of lead work trainers, risk assessors, lead inspectors and lead contractors are put into a revolving fund for lead poisoning education. Administrative fines issued to rental property owners go into the general state fund.

In addition to resource shortages, the lack of communication between health departments and building and housing departments is seen as an ongoing challenge. Though housing and building codes of some municipalities include provisions for citing lead paint hazards, local inspectors seldom cite property owners for deteriorating lead paint. Public health workers report that some housing inspectors are unaware of the serious consequences of deteriorating lead-based paint; others regard lead hazards as a health issue, not a housing issue. This leads to poor enforcement of existing codes. In addition, housing agency resources say that tenants seldom report lead and other code violations for fear of eviction.
Public health advocates point out that strict enforcement of existing housing and building codes would greatly reduce lead poisoning in New Hampshire. However, realtors and property owners raise the concern that strict enforcement of lead paint hazard violations could result in rental properties being taken off the market, worsening the current affordable housing shortage.

Regardless of whether a new law is passed, regulations have potential for giving the law “teeth.” For example, a regulation promulgated in 2000 by the Department of Health Services requires Orders of Lead Hazard Reduction to be attached to the deed of a property. Before this, new owners were sometimes unaware of an outstanding Order. In addition, properties under an Order were sometimes transferred multiple times, with each owner deferring lead hazard work to the next — sometimes for years. This regulation will make it easier for the state to track the progress of an Order.

Overall, high-risk areas in New Hampshire continue to be high-risk. For example, in downtown Manchester, the highest-risk housing is marginal or distressed and its tenants are typically low-income. Public health workers point out that tenants often lack the resources, knowledge, or confidence to advocate for effective solutions to the lead poisoning problem and that rental property owners typically do not have incentives to address lead hazards.
Part III: Lead Paint Poisoning Prevention in Neighboring States: On the Books and on the Ground

The severity of lead paint hazards, the prevalence of poisoning, the political, social and economic climate all influence the direction states take to control lead poisoning. The authors have chosen Massachusetts, Rhode Island, Vermont and Maryland as cases for review after consultation with current literature and lead poisoning experts across the country. The laws in these states represent a range of approaches, they were drafted at different times and their varying successes in enforcement reflect differing political and economic climates. Each provides lessons for New Hampshire.

The Massachusetts lead law is the oldest comprehensive state lead law in the nation. It is also one of the most far-reaching, particularly in primary prevention, and the state has a well-established infrastructure for enforcement. The Rhode Island law is very new and compares to the Massachusetts law in its breadth. But the current political climate and nationwide budget deficits are obstacles to implementation and enforcement of the law, which is currently under challenge. Vermont’s lead statute establishes a clear standard of responsibility for property owners through its “Essential Maintenance Practices” but outlines no penalties for failing to apply that standard. Maryland’s statute establishes a public registry of housing built prior to 1950 and requires rental property owners of this housing to ameliorate lead hazards at tenant turnovers. But for owners of housing built between 1950 and 1978 these provisions are optional (even though housing in that category also contains lead-based paint). In addition, enforcement on this scale has proven to be a challenge.

Massachusetts

The Massachusetts statute, first passed in 1971, is believed to the best example of a comprehensive law that emphasizes primary prevention of childhood lead poisoning. The state has had ample experience in regulating lead-based paint hazards and is distinguished by being the first state in the U.S. to pass a comprehensive lead poisoning prevention law. In addition to a long established history and infrastructure for lead hazard control, the law’s 1993 amendment provided mechanisms for funding lead poisoning prevention activities in the state.

The most notable aspect of the Massachusetts law is its emphasis on identifying children at risk and detecting properties with lead hazards before a child is poisoned. The law requires property owners to permanently abate lead hazards in any housing unit inhabited by a child under six years old. The foundation of Massachusetts’s lead law is this requirement:

“Whenever a child under six years of age resides in any premises in which any paint, plaster or other accessible structural material contains dangerous levels of

lead, the owner shall abate or contain said paint, plaster or other accessible structural materials…” (Sec. 197(a)).

Property owners are held liable for injury resulting from unabated lead hazards, even if they claim to have not been aware that lead hazards existed. Conversely, property owners are awarded limited liability protection if they do perform lead abatement. A 1993 amendment allows property owners to use interim control measures, in accordance with an emergency lead management plan, for up to two years before permanent abatement or containment of the lead hazard is required (Sec. 197).

Overall, the Massachusetts lead law is seen as a model for its balance of “carrots” and “sticks,” incentives and penalties that are effective in reducing the risk of lead poisoning. A 1999 study found that state-mandated abatement in Massachusetts correlated with lowered blood lead levels in children.

Obstacles to implementation and enforcement remain. Public health officials say they are hampered by insufficient funding and a general lack of resources. They also point out there is a widespread belief that lead from paint is no longer a health threat of any significance. This perception extends to the medical community. The state CLPPP continues to develop broad-based initiatives as well as systematic approaches to incorporate lead awareness into other programs and organizations.

Description of the Statute

Administration of the program
Massachusetts’s lead law calls for the creation of a Program for Lead Poisoning Control within the Massachusetts Department of Public Health, the state entity responsible for administering programs and working with other state agencies for lead poisoning prevention, screening of children, diagnosis and treatment of lead poisoning and elimination of lead hazards (Sec. 190). This statutorily mandated program has evolved into the Massachusetts Childhood Lead Poisoning Prevention Program (MA CLPPP).

There is also an advisory committee, appointed by the governor, made up of physicians or public health professionals, a representative of community development corporations, parents of children under six years old who live in lower-income urban areas, and representatives from a rental housing association, a bankers’ association, an association of realtors, and the property and casualty insurance industry (Sec. 190).

Public education
The state’s lead education and publicity program is required, among other things, to include specific information in its educational materials. In addition to describing

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safety measures, ways to reduce the risk of lead exposure, and the availability of community and health care resources, educational materials must include information regarding lead paint abatement financing. A representative from the banking industry must be involved with the development of this information. These educational materials must be made available to hospitals, physicians, community health centers, educational institutions, day care centers, and programs providing public assistance or social services (Sec. 192, Sec. 192B).

**Screening**
One of the most important aspects of the Massachusetts law is the provision for universal screening of children under six years old and the development of guidelines for medical follow-up. This “identification program” prioritizes screenings for children living in areas with a high incidence of lead poisonings. Geographically indexed records of all screenings are used to determine areas of high incidence. When a case of lead poisoning is reported, the director of the program is required to screen all other children under six years old who reside or recently resided in the household of the poisoned child (Sec. 193).

**Inspections**
In addition to the identification of poisoned children through screening, the director of the Massachusetts CLPPP is also required to develop a comprehensive program for the detection of sources of lead poisoning. Again, the “detection program” prioritizes inspections in areas of high lead poisoning incidence where children under six years old live. It is important to note that inspections of premises occur as a preventive measure because the inspection is conducted before a child is poisoned. The general purpose is to identify and correct the lead hazard before a child becomes exposed.

In addition to the general detection program that inspects premises preventatively, any person can request an inspection of his or her premises, and the program is required to conduct the inspection, generally within ten days. Inspections also occur with each reported case of an elevated blood lead level. The program is authorized to apply for search warrants if the occupants of the premises where the poisoned child lives refuse to allow the inspection (Sec. 194).

**Enforcement**
Enforcement is achieved primarily through the tort system. The law makes it easier for a poisoned child to win a lawsuit because the property owner is held strictly liable (Sec. 199(a)). Strict liability means the property owner is responsible for any damages resulting from the poisoning, even if the owner did not know about the lead hazard. In addition, property owners are liable for punitive damages, if they fail to comply with an order to abate or contain a lead hazard (Sec. 199(b)). The punitive damages are calculated by tripling the actual damages incurred by the poisoned child. Thus, punitive damages can be considerable, providing important legal leverage.

As part of the “carrot and stick” approach, a property owner is granted immunity from the strict liability if the owner has a letter issued by the Department of Public Health certifying compliance with the statute. Property owners who have a letter of compliance are held to the standard of reasonable care in the event a child living in the premises is
poisoned (Sec. 197C, Sec. 199). The effect of this statutory structure of property owner liability is twofold: it creates a high liability risk by holding property owners strictly liable and allowing punitive damages, while at the same time provides property owners the opportunity to shield themselves from the high risk of liability by complying with the law.

**Other aspects**

- All health care providers are required to report every case of lead poisoning to the director of the MA CLPPP, who maintains a database of incidences of childhood lead poisonings (Sec. 191).

- The MA Department of Housing and Community Development conducts a loan program for lead abatement and containment. At least half of the fund is directed for use in high-risk areas (Sec. 197E).

- A task force investigates, tests and approves new methods of lead paint abatement or containment (Sec. 192A).

- There are restrictions on the use of lead-based paint (Sec. 196). A unique aspect of this law is the enforcement of this provision; any violation of this section is punishable by a fine of $200-$500, and imprisonment of up to six months if the person willfully violates the restrictions (Sec. 196(b)).

- A state lead poisoning laboratory was established to analyze children’s blood samples for lead and to analyze paint samples and samples of other materials to detect the presence of dangerous levels of lead (Sec. 195).

- Disclosure of lead hazards at sale of property is required (Sec. 197A),

- Certification and licensing lead workers is required (Sec. 197B).

**Process Behind the Legislation**

In 1971, the state of Massachusetts passed the first comprehensive state lead poisoning prevention law in the nation. One factor behind the passage of this landmark piece of legislation was growing scientific evidence that lead has serious deleterious effects on young children. In 1943, Dr. Randolph Byers, a professor of neurology at Harvard, did research at Children’s Hospital Boston establishing a link between elevated blood lead levels in children and IQ deficits in lead-exposed children. The Lead Industries Association immediately challenged these findings. In 1956, Dr. Julian Chisholm of Johns Hopkins University wrote an influential paper identifying childhood lead poisoning as a disease of the urban poor, reflecting the post-war migration of the poor into the inner cities. Both papers were important in fueling efforts to combat lead poisoning.

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23 The information in the following sections was collected from several sources including interviews with Paul Hunter, Director of the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP); Thomas Plant of the Boston CLPPP; Dr. John Graef of Children’s Hospital Boston; and the Massachusetts CLPPP and Boston CLPPP websites.
Another factor was the political climate of social change of the 1960s and 1970s. There was a new and growing interest in the government to address poverty and the problems that it caused. Several years before the passage of the Massachusetts lead law, President Johnson had declared the War on Poverty and set up the Office of Economic Opportunity, funded by the Department of Health, Education, and Welfare (later the Department of Health and Human Services). In Boston, people in social services and in the medical community were becoming interested in what were referred to as the marker diseases of poverty: tuberculosis, rheumatic fever, childhood lead poisoning, and other illnesses related to overcrowding in old deteriorating houses.

Increased federal government interest provided a source of funding to study these issues. The wide scope of childhood lead poisoning in Massachusetts became visible in 1968 when two Massachusetts doctors performed hair lead analyses on a group of children from Roxbury, an inner-city neighborhood in Boston. They found that 40 percent of the children had elevated hair lead levels (the accepted level of concern for lead poisoning for children was 60 micrograms per deciliter—six times that of today).

At this time, when a child had an elevated blood lead level, a public health nurse case manager would notify the Department of Housing, which would send an inspector to the property to collect paint chip samples which were sent to the Department of Health to be analyzed. The entire process could take up to two months. Poisoned children were hospitalized and often discharged when a replacement house was found. These houses were seldom inspected for lead hazards, so many children continued to be exposed to lead. There would be typically no follow-up on whether lead hazards were abated.

Doctors at Children’s Hospital Boston formed the Citizens’ Committee to End Lead Poisoning, which included nurses and others from Children’s and the greater Boston hospital community. A lawyer from the Massachusetts Law Reform Institute offered to draft legislation and to find legislators to sponsor it, and the Law Review choreographed the movement of the bill through the legislature, organized lobbyists, and involved the media.

A local television news story featuring a doctor from Children’s Hospital and a four-year-old Latino child admitted to Children’s Hospital with a blood lead level of 80 micrograms per deciliter was important to bringing public awareness to lead poisoning. The doctor took the child to the state house for testimony. A severely lead poisoned child who was white, suburban, and middle class, also provided testimony.

Property owners were not organized as an interest group. Realtors, the most vocal adversary to the bill, successfully lobbied the legislature into changing the bill’s language from requiring property owners to de-lead all interior walls to de-leading only as far as a child could reach.

Since the law essentially took lead paint off the market, many thought it would impose undo hardship on hardware stores obliged to deal with large inventories of lead based paint. However, legislators were reluctant to be seen as being against fighting lead poisoning of the poor, and the law was signed in 1971.
Enforcement of the law was strengthened in the mid-1980s, after a tenant in the Section 8 housing program (the Housing Choice Voucher Program), which provides financial assistance to low-income renters, sued the Boston Housing Authority on grounds that the city neglected to abate lead hazards on the property, resulting in the lead poisoning of a child. Under the Section 8 program, local housing authorities are required by the US Department of Housing and Urban Development to ensure that units in the program are safe and well maintained. The threat of liability provided an incentive to step up efforts to enforce compliance with the 1971 law in all Section 8 housing. This was a crucial step in reducing the number of houses with lead paint hazards.

In 1989 the law was once again amended. The Federal HUD standard for lead hazards at the time only addressed loose chipping paint; Massachusetts standards were more stringent, requiring abatement of paint, plaster or “any accessible surface” that contains “dangerous amounts” of lead-based paint. A rental property owners’ association from Merrimack Valley wanted to amend state law to be consistent with HUD standards, lowering the Massachusetts definition of a lead hazard. A bill was drafted and went to the Massachusetts House Health Care Committee, chaired by Representative John McDonough from the Roxbury and Jamaica Plain district of Boston, one of the highest risk areas for lead poisoning in Boston. The committee held hearings, conducted research and had discussions with a variety of stakeholders. Stephanie Pollack of the Conservation Law Foundation joined the committee and advocated strong changes. McDonough and Pollack took the opportunity provided by the opening up of the legislative process to strengthen and streamline the original law.

The final bill introduced many changes to the 1971 law. It strengthened requirements for lead-safe work practices, increased incentives for property owners to comply (including the creation of a state income tax credit for abatement), and finally, required universal blood lead screening of Massachusetts children. The bill was signed in January of 1989.

As enforcement increased, a broader constituency of property owners was affected. Some found it increasingly difficult to get insurance because of potential liability in lead poisoning cases. 1993 amendments to the Massachusetts law reflected pressure from property owners and staff changes within the House Health Care Committee. The major components of the amendment include allowing property owners to use interim controls (rather than full abatement) for two years as a cost-saving measure; increasing the state income tax credit for compliant property owners; and finally, awarding liability protection to property owners with certification that they had performed interim control or abatement. Aside from some later amendments clarifying or slightly modifying the law, this version of the law stands today.


Implementation and Enforcement

The Massachusetts lead law is an example of a balanced “carrot and stick” approach—a strong statute that includes civil or criminal penalties for violations along with a number of incentives:

- A property owner who performs lead abatement on his/her property is entitled to a state income tax credit of up to $1,500 of the amount spent per unit for total abatement per unit or up to $500 per unit for interim control.
- Property owners can use interim controls for up to two years before full abatement has to occur, giving them more time to abate hazards, while protecting them from liability.
- A number of grants and loans are available to property owners to help them pay for lead hazard control. Since funding for lead hazard control became available through the U.S. Department of Housing and Urban Development (HUD), Massachusetts has received approximately 20 percent of all awards. The state CLPPP attributes this to the state’s comprehensive lead program and extensive infrastructure.

The Massachusetts law provides several mechanisms that generate funding for lead prevention activities. The 1993 amendment set up a revolving loan program administered by the Massachusetts Housing Finance Agency in which homeowners and small-scale rental property owners can get a deferred loan for lead abatement that is not due until the property is sold, transferred, or refinanced. Loan repayments are put into a state fund for lead abatement. The state collects funds through the Lead Education Trust Fund also established by the 1993 amendment. When lead abatement contractors, inspectors, realtors, insurers, bankers, and mortgage brokers apply for annual licenses from the state, they are required to pay a $25 surcharge that is put into the trust for lead education.

Most enforcement is through the private sector because of the threat of civil liability against rental property owners. Most insurance and mortgage companies require rental property owners to abate lead hazards to avoid the liability associated with lead poisoning. This has reduced the need for enforcement via the public sector. In approximately 10 percent of the cases in which a child found to be is lead-poisoned, property owners are brought to court for failing to mitigate lead hazards.

Screening rates in the state have remained fairly constant between 1998 and 2003, hovering around 75 percent for children nine months to four years. Screening rates top 90 percent in some high-risk areas and are much lower than the state average in other areas where the percentage of older housing is very low.

Incidence of lead poisoning, as defined as blood lead levels greater than or equal to 20 micrograms per deciliter, has been slowly decreasing in Massachusetts for the last fifteen years. Increases have also been reported in the number of houses that have been de-leaded, families who have access to lead-safe rental housing and successful outreach programs for tenants and homeowners.
In 2001, the Lead Action Collaborative, a partnership of government agencies, non-profit organizations and foundations, hosted a conference on childhood lead poisoning. Conference attendees developed “The Blueprint to End Childhood Lead Poisoning in Boston,” a plan to end childhood lead poisoning in Boston by 2005. In addition to increasing targeted education efforts and training community groups to develop and sustain their own outreach programs, the Blueprint includes specific plans for ensuring the effectiveness of related policies and regulations through advocacy and coalition building.


Rhode Island

Roughly half of all Rhode Island housing contains lead-based paint, with most of the highest risk housing concentrated in low-income urban areas. Though Rhode Island continues to report more than twice the rate of poisonings as the rest of the country, detection is high, with 80 percent of the state’s children screened. In 1976 Rhode Island established one of the first state CLPPPs to address the high rates of lead poisoning in the state.

The state did not pass a lead poisoning law until 1991, when legislation was prompted by an advocacy group, the Child Lead Action Project. Although at the time this law was seen as innovative, it included few primary prevention measures. The law was amended in 1996 to require disclosure of lead hazards to potential buyers or renters, universal screening of children under six, lead-safe certification for all licensed day care facilities and lead inspections of houses in which a child has been poisoned. The Rhode Island law is unique in requiring health insurance policies to cover the cost of screening for lead poisoning and related services, including diagnostic evaluations.

In 2002, in response to mounting concern over property owner liability related to childhood lead poisoning cases, the law was amended into a comprehensive Lead Poisoning Prevention Act. The law establishes reasonable standards and the legal right for families with young children to live in housing that is free of lead hazards. It also imposes civil fines and other penalties for property owners who violate provisions for inspections and hazard reduction. The law was written in several versions, each effective on specified dates. Final versions were to become effective on July 1, 2007. The "phase-in" structure of the statute was a compromising tool that was useful in negotiating with parties opposed to the bill.

The Rhode Island law does not include a mechanism for funding its provisions. This has proven to be an enormous obstacle to full phase-in of the law, which was rolled back in June of this year. The statute allows for a great deal of discretion by state administrators to promulgate regulations, some of which are being challenged by rental property owners and realtors as being prohibitively costly.
The entire law is currently under intense scrutiny by the state legislature and liability issues for property owners are a key issue. Changes to the law have already begun. In July 2004, the Rhode Island General Assembly passed an amendment that creates an incentive for property owners — a state income tax credit of $5,000 for performing lead abatement and $1,500 and for lead mitigation. The tax credit is initially targeting lower-income property owners.

The statute summary below focuses on the final phase of the law passed in 2002, unless otherwise indicated. The section on implementation focuses more on regulations, particularly their effect on rental property owners.

**Description of the Statute**

*Administration of the program*

Similar to Massachusetts, the Rhode Island law calls for the development of a “comprehensive environmental lead program” within the Department of Health, which is responsible for developing the state’s primary lead poisoning prevention practices (Sec. 23-24.6-5(a)). As in Massachusetts, the Rhode Island Childhood Lead Poisoning Prevention Program (RI CLPPP) fulfills that statutory mandate. In addition, the statute requires the formation of a Commission of Environmental Lead to advise on the state’s environmental lead policy. The commission is to consist of the following members: Director of the state Department of Health, Director of Children, Youth and Families, Commissioner of Elementary and Secondary Education, a member of the House and a member of the Senate, a parent, representatives from the League of Cities and Towns, a local housing authority, a local building official, a local housing inspector, members of a housing industry organization and a local housing court, a community health nurse, an environmental professional, and two community representatives (Sec. 23-23.6-6(a)-(e)).

*Educational program*

The Rhode Island Department of Health is required to develop educational programs regarding environmental lead exposure and lead poisoning (Sec. 23-24.6-5(b)).

*Screening*

Universal screening of children under six years old is required. Hospitals, clinics, health maintenance organizations and health care facilities are required to take steps to ensure that all patients under six years old are screened. The department must analyze lead screening information at least once a year (Sec. 23-24.6-7(a)-(f)). The law requires that childhood lead poisoning cases are reported to the state Director of Health (Sec. 23-24.6-11).

A unique aspect of the Rhode Island law is the requirement that health insurance policies cover the cost of screening for lead poisoning and related services, including diagnostic evaluations. The state Department of Health pays for the same services for patients who are either eligible for state medical assistance or are uninsured. Sec. 23-24.6-9.

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Every child-care facility licensed by the state must obtain information regarding the screening status of each child enrolled in the facility. Also, each public and private nursery school or kindergarten must obtain information regarding the screening status of each child before initial enrollment (Sec. 23-24.6-8(a)-(b)).

Inspections
As a condition of receiving a state license, all preschools, day care facilities, nursery schools, public and private elementary schools and schoolyards, public playgrounds, shelters and foster homes serving children under six years old are required to have a comprehensive environmental lead inspection conducted by a state inspector at certain intervals, and to demonstrate that their facilities are “lead safe” (Sec. 23-24.6-14). The statute defines “lead safe” as meaning “that a dwelling, dwelling unit, or premises has undergone sufficient lead hazard reduction to ensure that no significant environment lead hazard is present and includes but is not limited to covering and encapsulation” (Sec. 23-24.6-4(12)).

Inspections of rental properties by state inspectors are permitted only as a response to a complaint raised by an occupant who is the parent or guardian of a child under the age of six. No inspections are mandated by the statute.

A property owner is required to provide the results of any inspection to current or prospective occupants if a significant hazard was discovered (Sec. 23-24.6-15 (a)-(b)(1),(2)). However, if a property owner renders the dwelling “lead safe” he is no longer required to provide notice to occupants (Sec. 23-24.6-15(b)(3)).

Enforcement & penalties
Failure to provide inspection results (Sec. 23-24.6-15) subjects a property owner to a civil penalty of $100-$500 for each violation (Sec. 23-24.6-15(c)).

If a lead hazard is not corrected after the second notice of violation has been issued, and the dwelling is occupied by either a pregnant woman or a child under the age of six years, the dwelling is considered abandoned and a public nuisance. At this point, the Department of Health, Attorney General, or local government has the power to ask the court to appoint a receiver for the property. The court can authorize the receiver to obtain financing to correct the lead hazards (Sec. 23-24.6-23(d)).

A property owner has committed a felony if three conditions occur: (1) the owner received notice that his property is high risk (as defined in Sec. 23-24.6-23(e)(1)); (2) the property owner failed to abate the lead hazard within the time schedule in the compliance order; and (3) a child is subsequently found to be lead poisoned. Under this situation, the property owner is subject to imprisonment for at least one year and up to five years, and/or a fine between $5,000-$20,000.

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27 As a comparison, the Rhode Island statute defines “lead free” as meaning that “a dwelling, dwelling unit or premises either contains no lead or contains lead in amounts less than the maximum acceptable environmental lead levels established by department of health regulations” (Sec. 23-24.6-4(10)).

28 There are other conditions in which inspections are required by regulation.
For any violations of provisions regarding inspections, lead hazard reduction, licensure or certification, or violations of orders issued under this law as well as rules or regulations adopted pursuant to those provisions, the director can order civil fines of $100 per day per violation (Sec. 23-23.6-27(a)). The director has the authority to subpoena witnesses and request the production of documents in the event that a property owner requests a hearing (Sec. 23-24.6-27(b)-(c)). Lastly, if a person does not pay fines levied against him, a lien on the property can be entered (Sec. 23-24.6-27(d)).

Process Behind the Legislation

In 1991, Rhode Island passed its first lead poisoning prevention law, which emphasized provisions for secondary prevention. The law was amended in 1996 to contain more primary prevention, and again in 2002. That current version of the law was triggered initially by concerns of the insurance industry over liability costs associated with lead-poisoned children in neighboring states. This was the beginning of a four-year struggle to “get it right”, according to Roberta Hazen Aaronson, executive director of the Childhood Lead Action Project, a statewide organization located in Providence, RI.

Legislation came on the heels of a legislative commission established to look at the issue. In addition to members of the insurance industry, the commission was composed of lead poisoning prevention advocates, builders, realtors, state legislators, the Rhode Island Department of Health and trial lawyers. The first version of the bill reflected the insurance industry’s wish to limit costs associated with the high risk of liability. A senator sponsored this version of the bill, which emphasized measures designed to encourage rental property owners to implement lead hazard controls.

The Childhood Lead Action Project responded by drafting its own bill with aid from a law firm with a history of successful lead paint and tobacco settlements. This version included stiff penalties for rental property owners who failed to deal with lead hazards. The Project formed a “Get the Lead Out” Coalition and launched a three-year campaign of intensive lobbying, attending and speaking at public hearings, seeking media coverage, and mounting postcard/letter campaigns to politicians. In year four, the Senate sponsor agreed to amend his version of the bill, incorporating most of the changes advocated by the Childhood Lead Action Project. The law that was subsequently passed by the General Assembly is a compromise between the interests espoused by the Get the Lead Out Coalition and those represented by the insurance industry.

The regulations promulgated under the 2002 put a number of specific responsibilities on property owners. The new lead law mandated that owners of rental properties built

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29 Information in the following sections was gathered from varied sources including interviews with Roberta Hazen Aaronson, executive director of the Providence-based Childhood Lead Action Project; Elizabeth Colon of the Childhood Lead Action Project; a series of articles written from 2001 to present in the Providence Journal by environmental writer Peter Lord (http://www.projo.com); the Rhode Island Childhood Lead Poisoning Prevention Program website (http://www.healthri.org/lead/family/about.htm); and The Alliance for Healthy Homes’ Innovative Strategies for Addressing Lead Hazards in Distressed and Marginal Housing: A Collection of Best Practices.
before 1978 take state-sponsored Lead Awareness Classes in order to learn to identify and safely remediate lead hazards, have their properties inspected and mitigate lead hazards. Rental property owners were also required to inform tenants when lead hazards exist, and the regulations impose penalties on property owners who retaliate against tenants who complain about lead hazards.

In preparation for the 2004 phase-in of the law, regulations promulgated by the Department of Health required the state’s Housing Resources Commission to produce and distribute education materials for property owners and tenants and to administer the Lead Awareness Classes for rental property owners. The Commission was also required to conduct a media campaign informing tenants and owners of their rights and responsibilities.

To read a detailed account of the passage of this amendment, see the series of articles in the Providence Journal online at http://www.projo.com/cgi-bin/include.pl/extra/lead/aftermath/body.htm.

Implementation and Enforcement

Major provisions of Rhode Island’s new Lead Poisoning Prevention Law were to have been phased in on July 1, 2004. Others were to become effective when the bill was passed in 2002. However, the state Health Department and Housing Resources Commission did not begin hold Lead Awareness Classes or conduct an education and media campaign, as they were required to do by regulation, until 2004, attributing the delay to insufficient funding and staff shortages.

This led rental property owners to claim they were not given sufficient warning by the state about the new regulations. Many reported being turned away from required Lead Awareness Classes that were full. Others complained that classes were too costly, and the costs of mitigating lead hazards in all rental units would force them to stop renting to families with children.

In June 2004, rental property owners and the Rhode Island Association of Realtors successfully lobbied to roll back the July 1, 2004 phase-in of the state’s new lead law, postponing it to July 2005. While the phase-in is being postponed, a commission made up of four Senators and four House members is studying the current lead law over the next year to suggest changes. Lead poisoning prevention advocates in the state say they are concerned that legislators are already making moves to weaken the law.

Meanwhile, screening rates in Rhode Island are among the highest in New England. According to the Rhode Island CLPPP website, roughly 80 percent of Rhode Island


children up to age six were screened in 2003. Of those screened, 7.1 percent had blood lead levels greater or equal to 10 micrograms per deciliter. (This is down from 8.2 percent in 2002 and 20.4 percent in 1995.)

The number of houses that have been made lead-safe is increasing, both in response to enforcement actions and as a result of increased federal funding from HUD and from Community Development Block Grants, as well as town bonds and other local funding. The RI Housing Mortgage and Finance Corporation, which administers the state lead hazard control program, requires housing that receives its funding to be made lead-safe. The agency is also working on the Medicaid-reimbursable window replacement program.

A new web site produced by the state Housing Resources Commission and the Rhode Island CLPPP tracks data on rental property owner compliance and publishes a list of properties that are high-risk, have multiple poisonings and ongoing violations.

The newly formed Rhode Island Lead Collaborative (coordinated by the Childhood Lead Action Project) is working to ensure implementation of the educational objectives of the law, such as the distribution of fact-sheets and rental property owners’ booklets. The Childhood Lead Action Project has two community educators in Providence who inform the community about the law. The Project has mounted a “Hold the Line” campaign asking the state to retain the current budget on lead poisoning prevention during a time of budget cuts. The Project is also asking the state to transfer two staff positions to the state housing agency in order to facilitate implementation and enforcement of the state lead law.

A regulation that was scheduled to be phased in next summer would allow rental property owners who have performed lead hazard mitigation and who have a Certificate of Conformance to pay significantly less for lead liability insurance than those rental property owners who have not. Child advocates believe this could serve as a powerful enforcement tool, providing a market-based solution where government enforcement could fall short. In addition, after July 2005 insurers will no longer be able to exclude lead liability from coverage.

For more information on Rhode Island’s lead poisoning prevention efforts, please refer to the Childhood Lead Action Project (http://www.lead safekids.org/), the HELP Lead Safe Center (http://www.helpleadsafe.org/html/what.htm), the Rhode Island Department of Human Services, and the Rhode Island Department of Health.

Vermont

Lead poisoning in Vermont affects both high- and low-income families, and is as prevalent in rural as urban areas. According to the Vermont Childhood Lead Poisoning Prevention Program, approximately three percent of children screened in Vermont have elevated blood lead levels; this rate has gone down slightly in recent years, following national trends. Burlington, Vermont’s largest city, has the highest prevalence of lead poisoning in the state, a fact related more to its population size than demographics or socio-economic factors. The state does not have any particularly high-risk areas,
measured by percentage of cases in the total population, although Barre and Rutland have a slightly higher prevalence of lead poisoning than other towns.

Childhood lead poisoning became a concern for the state in 1994, when the state formed a commission to study the issue and recommend legislation. The Vermont state legislature passed its lead law, Act 165, in 1996. An important and unique aspect of the Vermont law is the presumption that all paint is lead-based, unless a certified inspector determines that the paint it is not (Sec. 1759(a)). This presumption prevents rental property owners from claiming that they were unaware of the presence of lead-based paint in a pre-1978 house.

The 1996 legislation requires property owners of pre-1978 rental housing to provide current and prospective tenants written information on existing lead paint hazards and to post a notice in their buildings informing tenants to report deteriorated paint to the owner. The law also requires these owners to complete a state-sponsored lead paint hazard training and to perform yearly Essential Management Practices (EMPs) that are outlined in depth in Section 1759 of the statute.

Essential Maintenance Practices are a collection of interim controls and preventive measures that include visually inspecting for deteriorated exterior and interior paint, installing window well inserts, stabilizing deteriorated paint, following certain precautions when disturbing paint, using safety measures to prevent the spread of dust, and performing special cleaning techniques at the conclusion of work. EMPs are designed to be easy and inexpensive for rental property owners to do; the only capital investment are window well liners and a HEPA (high-efficiency particulate air filter) vacuum that can be shared by neighboring rental property owners to cut cost.

Owners are required annually to submit to insurance carriers and the state Department of Health a signed affidavit that EMPs have been performed. Owners of child care facilities are also required to do these things. In exchange for performing EMPs, property owners are protected by insurance from lawsuits by families of lead poisoned children. Other than liability risk, the law does not spell out any consequences for failing to comply with the statute.

These provisions of the Vermont law provide a clear standard of responsibility for property owners, which means that a property owner who fails to provide that standard can be found guilty of negligence unambiguously. In addition, the do-it-yourself EMPs were designed to be a low-cost “carrot” that would encourage property owners to adopt this standard. However, there are no consequences to property owners who fail to take the classes or to employ the Essential Maintenance Practices. In addition, no fines or injunctions have been imposed on property owners, including those who have been found to be clearly negligent in addressing known lead hazards on their properties.
Description of the Statute

Administration of the program
The Vermont Department of Health is charged with the development and administration of the state’s lead poisoning prevention program. The department is responsible for many activities, such as public education, inspections, and adopting and enforcing rules regarding lead screening. The Vermont Childhood Lead Poisoning Prevention Program is administered by the Department of Health.

Essential Maintenance Practices
Essential Maintenance Practices are described in Sec. 1759.

Education
The state Commissioner of Health is responsible for the creation of public education materials and trainings. The Commissioner is required to develop or approve a program to train owners and property managers of rental target housing (defined at Sec. 1751(19)) and child-care facilities (defined at Sec. 1751(3) built before 1978 and their employees to perform EMPs.

A public record of all those attending approved training programs is supposed to be maintained, and the Department of Housing and Community Affairs provided with the record (Sec. 1754(c)).

In addition, the Commissioner is directed to “work with” organizations or professions that may be involved with lead paint hazards (such as realtors, subcontractors, apartment owners, public housing authorities, pediatricians family practitioners, nurse clinics, child clinics, other health care providers, child care center operators, and kindergarten teachers) to distribute educational materials to their clients, patients, students, or customers.

The Commissioner is also directed to identify situations in which people come in contact with public agencies when lead hazards might be an issue and to make educational materials available in those situations (Sec. 1754(a)). The provision provides examples, such as the application of building permits, home renovations, and application to ANFC (Aid to Needy Families with Children) and WIC (Women, Infants, and Children) programs.

Finally, the Commissioner is required to prepare a media campaign to educate the public on how to prevent lead poisoning. However, there is no requirement to actually conduct a media campaign; the provision only requires the preparation of a campaign (Sec. 1754(b)). In addition the Commissioner is given responsibility to “encourage” professional property managers, rehab and weatherization contractors, housing inspectors, social workers, and visiting nurses to attend education and awareness workshops (Sec. 1754(b)).

Screening
The statute delegates to the Department of Health the authority to set guidelines determining the methods and intervals at which children under six are screened. The
determination must be based on the age of the child and the probability of exposure to high-dose sources of lead. The provision also requires that the recommendations of the US Centers for Disease Control and Prevention and the American Academy of Pediatrics be taken into account for the determination of methods and intervals (Sec. 1755(a)). Two years after the guidelines are set, if the commissioner finds that less than 75 percent of children below the age of six are being screened, then the commissioner must adopt rules that require health care providers to screen and test patients under age six (Sec. 1755(e)).

The screening provision also instructs the commissioner of the Department of Banking, Insurance, Securities and Health Care Administration to determine if lead screening should be included as a common benefit and how such a benefit could be financed (Sec. 1755(b)).

Primary care health care providers are required to advise parents and guardians of children below six about the availability and advisability of screening for lead poisoning (Sec. 1755(c)).

Vermont law also makes it mandatory for health care providers or laboratories to report any diagnosis of lead poisoning to the Department of Health. Sec. 1755(d). A lead poisoning is defined at the blood lead level of 10 micrograms per deciliter or higher (Sec. 1751(16)).

**Inspections**

Although lead poisoning is defined at 10 micrograms per deciliter, a required property inspection by the Department of Health is triggered when a child is severely poisoned, which is a blood lead level of 20 micrograms per deciliter (Sec. 1757(b), 1751(22)). In addition to inspecting the dwelling unit or child care facility of the poisoned child, the commissioner is also allowed to inspect and evaluate other dwelling units in the same building where the poisoned child lives if there is a reasonable belief that any child under six years of age lives or regularly frequents those other dwelling units (Sec. 1757(b)).

In addition to the required inspection of the home, the commissioner must work with the parents, property owner, health care provider and others involved to develop a plan to minimize the child’s exposure to further lead hazards (Sec. 1757(c)).

**Enforcement**

The statute defines the “duty of care” of owners of rental properties or child care facilities as taking “reasonable care to prevent exposure to, and the creation of, lead-based paint hazards” (Sec. 1761(a)). A property owner can present evidence of

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32 Although screening rates are low (in 2003, 68 percent of one year olds and 19 percent of two year olds were screened), new rules requiring screening have not been adopted (although the percentage of two year old screened in 2003 does reflect new state recommendations that all two year olds be screened, not just those deemed high-risk).

33 A common benefit is any aspect of health insurance that the state mandates to be offered by any health insurance carrier working in Vermont.
compliance with the statute, such as performance of EMPs, to show reasonable care in a
tort action (Sec. 1761(a)). On the flip side, a tenant can use evidence of noncompliance
to show a breach of reasonable care to prove negligence (Sec. 1761(a)).

If a child under six years of age is severely lead poisoned as a result of a violation of the
duty of care, the child has a cause of action against the property owner to recover
damages and other relief (Sec. 1761(c)). If a person is otherwise injured by a breach of
the duty of reasonable care, the person has a cause of action against the owner for
equitable relief (Sec. 1761(b)).

A property owner with certification under Sec. 1760 by a licensed inspector that lead
hazards have been controlled and that the premises contain no lead-contaminated dust
is granted civil immunity (Sec. 1761(d)). Immunity does not apply in cases of fraud,
violations of the certification, or if hazards were created after the certification inspection
occurred (Sec. 1761(d)(1)-(4)). Compliance with the statute serves as a presumption of
habitability in defense of a breach of habitability suit brought by a poisoned child with
blood lead levels between 10 and 20 micrograms per deciliter (Sec. 1761(h)).

Other aspects
- The Department of Health oversees certification and training of inspectors,
  abatement workers, risk assessors and the certification of lead-related work (Sec.
  1752).
- Funds collected from the fees for the training programs, certifications and
  licenses will be used for the creation and support of a fund used exclusively for
  supporting the department’s accreditation, certification and licensing activities
  (Sec. 1753).
- The commissioner of health is required to provide an annual report to the
  legislature, which includes screening and testing data, the number of poisonings,
  estimates of the costs incurred to prevent, correct or treat poisonings, and an
  analysis of barriers to screening and any recommendations for action (Sec. 1756).

Process Behind the Legislation

In the early 1990s, the Vermont Health Department did a study on the prevalence of
lead poisoning in the state and estimated that 15 percent of Vermont children had
elevated blood lead levels. At the same time, a parent of a poisoned child lobbied her
local legislator to have childhood lead poisoning addressed by the state. In response,
legislators passed a statute forming a study commission to examine the issue.

In 1994, the Lead Paint Hazard Commission was set up to research lead poisoning in
the state and to draft an appropriate bill. The 13 members of the Commission included
high-level banking and insurance industry representatives, high-level employees of the

34 The information in the following sections was gathered from several sources including interviews with
Karen Garbarino, formerly of the Vermont Childhood Lead Poisoning Prevention Program; Amy Sayre of
the Vermont Childhood Lead Poisoning Prevention Program; Ron Rupp of the Vermont Lead-Based
Paint Hazard Reduction Board; the Alliance for Healthy Homes report Innovative Strategies for Addressing
Lead Hazards in Distressed and Marginal Housing: A Collection of Best Practices; and the Vermont Dept. of
Health website (http://www.healthyvermonters.info/hp/lead/leadguide.shtml).
state housing authority and the state health department, rental property owners, a state senator and representative and a parents’ advocate. Under the strong leadership of the chairman, who was from the state’s Housing and Finance Agency, the Commission spent months researching lead poisoning and educating itself before embarking on the drafting of a bill.

Simultaneously, Karen Garbarino, the one-member Vermont Childhood Lead Poisoning Prevention Program, traveled statewide engaging in grassroots organizing and education of rental property owners in an effort to rally their support for a new bill.

The Commission examined the lead law of Massachusetts and fashioned the Vermont bill in a very different way. Vermont’s political culture and the predominance of small-scale rental property owners were thought to be unsuited for government intervention and strong enforcement. The Massachusetts model of abatement was also viewed as too costly for Vermont and unlikely to win sufficient political support.

The resulting “Essential Maintenance Practices” approach crafted by the Commission was an attempt to reduce the lead paint risk while giving both rental property owners and the state control over the costs of lead hazard reduction. The Commission was encouraged to develop this clear standard of responsibility regarding lead based paint by members of the state’s insurance industry who asserted that the lack of a clear standard in Vermont was an impediment to providing rental property owners coverage for liability. This led to the tacit assumption that property owners who performed EMPs would be covered by liability insurance. This incentive was seen as sufficient to prompt compliance, and no penalties were written into the statute to force property owners to perform EMPs.

The bill presented in 1996 to the Vermont legislature represented a collaborative effort of stakeholders, which proved to be the key to its successful passage into law. The bill was passed the same year it was presented and changed very little as it became a law.

**Implementation and Enforcement**

There are no regulations associated with the 1996 Vermont lead statute. (A 1994 law on lead abatement — passed so the state could apply for HUD funding for lead hazard control — did result in regulations relating to the certification of lead abatement contractors.)

The Vermont Department of Health administers the state’s Childhood Lead Poisoning Prevention Program and enforces the state lead law. Lead is also regulated by the Health Department-run Lead and Asbestos Regulatory Program. Vermont does not have municipal health departments; instead the state health department runs county health boards that are staffed by state employees. Lead hazard reduction work is performed by the Vermont Lead-Based Paint Hazard Reduction Program. The program has two certified lead abatement contractors.

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35 Vermont Department of Health website.  
The Health Department does not see itself as an enforcement agency, according to staff in the department, and although it has that authority it has never issued fines or injunctions for lack of compliance. Consequently its efforts have emphasized education and “encouragement” of rental property owners, according to the state CLPPP. The CLPPP also asserts that the Health Department’s authority to prompt compliance with the law appears to be assumed by rental property owners. The Department seldom encounters owners who refuse to control lead hazards when a child’s blood lead levels are elevated. When rental property owners are recalcitrant or if their property has repeatedly poisoned children, the Health Department does take a more aggressive approach, involving state lawyers in some cases. However, the Department is reluctant to take too aggressive an approach for fear of triggering a lobby to overturn the current state law.

Public health workers say the Health Department’s lack of resources contributes to weak enforcement. Though the costs of accreditation, certification, and licensing are financed through fees for trainings and certification, no other state funds are directed to lead poisoning prevention. Most of the lead poisoning prevention budget comes from the CDC, the EPA, and HUD.

Rental property owners of pre-1978 housing are required to take Essential Maintenance Practice training classes and to perform yearly Essential Maintenance Practices that include an inspection and lead-safe cleaning in all housing property. They are also required to send an affidavit of performance, signed by a notary public, to the state Health Department and their insurance company. Roughly 30 percent of property owners send in affidavits of performance each year. The state does not follow up on rental property owners’ affidavits of performance, and there are no penalties for rental property owners who fail to turn them in. Many rental property owners are not even aware that they need to send one in every year. In practice, compliance is voluntary.

Each year, the Vermont Lead-Based Paint Hazard Reduction Program offers 15 to 20 free Essential Maintenance Practices (EMP) classes to rental property owners and homeowners throughout the state. Approximately 400 to 500 Vermonters attend these classes yearly, and program administrators say the program seems to be very well received. However, class attendance and compliance with yearly EMPs has gone down since an initial burst of compliance that came with the passage and implementation of the law. By the beginning of 1999, 7,000 property owners had taken EMP classes. In the past five years, a little more than 1,000 additional Vermonters had taken them.

The “carrot” of reducing liability risk to property owners through the clear standard of care outlined in EMPs has not proven to be a strong incentive. One official estimates that approximately 20 percent of rental property owners comply with the statute. An accurate figure is not known because the Health Department has no method of tracking

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36 The Alliance for Healthy Homes’ Innovative Strategies for Addressing Lead Hazards in Distressed and Marginal Housing: A Collection of Best Practices.

rental property owners in the state. Lawsuits against negligent rental property owners have not occurred in the state, so liability protection is not a motivating factor.

Although they backed the state lead legislation, insurance companies have not played the major role in enforcement that was expected. Many do not inform policyholders of the requirement to file a yearly affidavit; some do not collect affidavits of performance. Insurers argue that rental property owners can file affidavits of performance without carrying out Essential Maintenance Practices since follow-up lead inspections are not required by law. Some refuse to cover property owners for liability in a lead poisoning suit even if they claim to be performing EMPs. This has contributed to poor compliance by property owners. Requiring dust clearance tests after the performance of yearly EMPs would strengthen their effectiveness, however there have been no efforts to initiate this change.

The state has no means of monitoring compliance with the law. For example, there is no registry of rental units that may contain lead hazards, and no statewide list of rental property owners. However, the Vermont Department of Health maintains a public record of rental property owners who have taken Essential Maintenance Practices courses. They have also begun posting online names of people who have taken the courses and are willing to perform EMPs for hire. In addition, renters can ask the state Health Department if their rental property owner has filed an affidavit of performance. The state CLPPP is looking into a way to communicate with town clerks to get lists of property owners and renters in individual towns. This would give the state more tools to use to monitor compliance.

For more information about the Vermont lead poisoning prevention law and the Vermont lead program, please refer to the Vermont Department of Health website at http://www.healthyvermonters.info/hp/lead/leadguide.shtml or the Vermont Lead-Based Paint Hazard Reduction Program website at http://www.vhcb.org/lead3.html.

**Maryland**

The current Maryland Lead Risk Reduction in Housing law was passed by the legislature in April 1994 and became fully effective on February 24, 1996. This law was triggered by property owner concerns over the rising risk of liability for lead poisoning cases and by child advocates’ concerns over the high incidence of childhood lead poisoning in the state.

Maryland is similar to New England states in its prevalence of deteriorating pre-1978 housing. Lead poisoning affects all races and socio-economic backgrounds. Roughly three percent of Maryland children statewide have elevated blood lead levels according to 2002 data. There are high rates of lead poisoning in both rural and urban areas, although most poisonings occur in older rental housing in the city of Baltimore where over 9 percent of children have elevated blood lead levels.

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38 It is estimated by state officials that it is a common occurrence for rental property owners to hire a neighbor or friend to perform EMPs.
The 1996 law established a presumption that all pre-1950 rental housing in the state contained dangerous lead hazards unless proven otherwise (through lead-free certification). There are two useful mechanisms for tracking the compliance status of units mandated to be enrolled under the law: 1) a registry of all pre-1950 rental housing and 2) a requirement that certain risk reduction measures must be performed and a unit inspected (by visual or lead dust inspection) at each tenant turnover. Property owners must also provide certain educational materials and a copy of the inspection to the tenant prior to occupancy.

As an incentive, property owners who comply with these provisions and who agree to make a “qualified offer” to pay medical expenses and relocation costs of any tenant family whose child (under the age of 6) develops a blood lead level greater than 20 micrograms per deciliter are granted limited liability protection. In addition, lawmakers added a provision to the state Insurance Code making it more difficult for insurance companies to exclude lead poisoning liability in their policies.

Under the 1996 law, “affected units” are defined as rental property units built before 1950. This leaves owners of rental properties built between 1950 and 1978 — housing generally recognized as containing lead-based paint — free to opt in or out of these provisions on a voluntary basis in exchange for limited liability protection. According to the Maryland Department of the Environment’s 2003 data, 11 percent have done so. Compliance for mandated units is much higher, at roughly 50 percent, according to 2003 data.

The 1996 law includes a number of enforcement mechanisms including criminal penalties for rental property owners who violate the law and escrow remedies for tenants who occupy a unit that is not in compliance. A Lead Poisoning Prevention Fund, supported by fees and penalties collected under the lead law, was established to support various provisions of the law. The law also requires that laboratories report the results of all blood lead screening tests to local health departments. One strength of the law is that once a child has been poisoned in a rental property, all property owned by that rental property owner must be brought into compliance.

In 1997, a separate law (HB1221) was passed to identify children at risk of lead poisoning. The 1997 Childhood Lead Screening Law requires universal screening of all at-risk Maryland children under six. Children are determined to be “at-risk” based on age of housing, value of housing, and poverty level in their neighborhood.

In May 2004, the Maryland governor signed into law a bill put forth by the Coalition to End Childhood Lead Poisoning requiring that rental property owners be in compliance with the lead law before they can utilize rent court to evict or collect rent from tenants. This bill attempts to address one aspect of what some see as a deficiency of the current law (HB1245).

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Though regulations promulgated pursuant to the statute lay out additional guidelines, authority and duties, they are not significantly different from the statute.

**Description of the Statute**

**Administration of the program**
The Maryland lead law is administered by the Department of the Environment and the Department of Health and Mental Hygiene. A 19-member Lead Poisoning Prevention Commission at the Department of the Environment is responsible for reviewing and commenting annually on the state lead program and implementation of the law and for submitting the findings in a yearly report to the governor. Membership of the Commission includes a state senator, state representative, representatives of the state departments of Health and Mental Hygiene, Housing and Community Development, and Human Resources, the Insurance Commissioner, representatives of local government, an insurer that offers premises liability, a financial institution that makes loans secured by rental property, owners of rental property built before 1950 and owners of rental property built after 1949, and individuals including a child advocate, health care provider, parent of a lead poisoned child, a lead hazard identification professional, and a child care provider (Sec. 6-807).

**Public education**
Rental property owners must provide tenants with an information packet on lead poisoning prepared by the Department of the Environment at the beginning of tenancy and every two years thereafter (Sec. 6-823).

**Screening**
A separate law pertains to screenings. The Childhood Lead Screening Law was passed in 1997 and requires universal screenings for all at-risk Maryland children under six. The law establishes a Childhood Lead Screening Program administered by the MD Department of Health and Mental Hygiene. It also requires the MD Department of the Environment to assist local governments with case management of lead poisoned children (HB 1138).

**Inspections**
Inspectors must be state-accredited and must submit to the state a certified report of a property owner’s compliance if the appropriate risk reduction measures have been performed (Sec. 6-818). The state has the authority to spot-check properties that have been certified as having gone through risk reduction measures (Sec. 6-852). Inspections are required after lead hazard control work has been performed in a rental property and at tenant turnover.

**Enforcement**
Property owners are required to perform lead risk reduction measures in accordance with the standards laid out in this section. Measures include the removal or repainting of peeling, chipping, and flaking lead-based paint. Risk reduction measures must be

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40 “At-risk” children are those deemed low-, moderate-, or high-risk based on age of housing, poverty index and median housing value in their neighborhood.
done at tenant turnover. An inspector must certify that risk reduction measures have been performed in accordance with the law (Sec. 6-815).

Rental property owners must perform risk reduction measures in order to be granted liability protection. Property owners are responsible for the temporary relocation costs if tenants are forced to move so risk reduction requirements can be fulfilled (Sec. 6-817).

There is a presumption that a poisoned person with a specified blood lead level discovered 30 days after moving in or beginning to spend regular time at a certified affected property was exposed to lead elsewhere (Sec. 6-830).

Noncompliance with the law presumes negligence on part of the rental property owner (Sec. 6-838). Administrative penalties will be imposed on property owners who fail to register their properties (Sec. 6-849). Limitation of penalties is described in Sec. 6-850.

“Qualified Offer”
A property owner or the owner’s insurer or agent may make a qualified offer to a person at risk or the legal guardian of a child at risk (“tenant”) within 30 days of receiving notice of a blood lead level of 20 micrograms per deciliter or more (Sec. 6-831). The qualified offer includes payment of reasonable expenses for relocation of the tenant household to lead-safe housing of comparable size and quality. This may be a permanent relocation (in which relocation expenses, a rent subsidy, and incidental expenses are paid by the owner) or a temporary relocation while lead hazard reduction is being performed on the affected property (Sec. 6-839). The maximum payments made under the qualified offer are $7,500 for medically necessary treatments for lead poisoning and $9,500 for relocation expenses (Sec. 6-840).

The property owner must send notice of the qualified offer to the tenant and the local health department. The health department must notify the tenant (within 5 business days) of state and local resources available for lead poisoning prevention and treatment (Sec. 6-832). A tenant may accept or reject the offer within 30 days after receipt (Sec. 6-834). Once a qualified offer is accepted, the tenant releases the property owner of all potential liability for injury or loss caused by lead based paint in the affected property (Sec. 6-835).

The property owner is not liable to a tenant for injury or loss due to lead if the qualified offer is not accepted, if, during the period of time in which the lead exposure occurred, the property owner provided the tenant with the lead information packet described in Sec. 6-823 and a notice of tenants’ rights described in Sec. 6-820 and registered the property and performed risk reduction measures (Sec. 6-836).

The tenant household may not move back into the affected property until it has been certified as lead-safe (Sec. 6-841).

Under Section 6-838, noncompliance with the law by the rental property owner presumes negligence in a lawsuit to recover damages for injury or loss due to lead hazards in the affected property.
**Other aspects**

- The Lead Poisoning Prevention Commission was required to provide recommendations on developing a window replacement program that would provide a financial incentive or assistance to property owners of affected properties. When submitting recommendations, the Commission was to consider feasibility and desirability of merging a window replacement program with existing housing programs (Sec. 6-809). The state now funds and administers a Lead Hazard Reduction Grant and Loan Program that provides homeowners and rental property owners with grants or loans for window replacement.

- The statewide registry requires an owner of a rental property built before 1950 and any owner of a pre-1978 rental property who elects to opt-in to the law to submit the following information (Sec. 6-811):
  - Name and address of owner
  - Address of affected property
  - Information about property manager and/or any other agents of the owner related to the affected property
  - Name and address of insurance companies providing property insurance or lead hazard coverage
  - If property was built before or after 1950
  - Date of latest change in occupancy
  - Date and nature of treatments performed to achieve a risk reduction standard under Sec. 6-815 or 6-819.
  - Date of the most recent, if any, certification of compliance with Sec. 815

- The property owner must make reasonable efforts to ensure that residents of the property are not present when lead risk reduction is being performed. The property owner must also pay for temporary relocation costs of tenants if they must vacate the property for 24 hours or more during lead risk reduction (Sec. 6-821).

- The statute does not affect the duties and obligations of a property owner to comply with other state and local housing and other regulations and does not affect the state or local authority to enforce these regulations or to order abatement in a property. Whenever there is a conflict between the requirements of an abatement order and the provisions of the statute, the more stringent provision shall be used (Sec. 6-822).

- A property owner is required to disclose an obligation to perform lead risk reduction treatments to prospective buyers (Sec. 6-824).

- Lead Poisoning Prevention Fund consists of fees and penalties collected under the lead law, and is to be used to support department activities under the lead law (Sec. 6-844).

- Since 2003, paint retailers must display an informational poster provided by the Department of the Environment (Sec. 6-848.1).
The Process Behind the Legislation

An increase in litigation in the early 1980s against Maryland rental property owners held responsible for poisoning children resulted in many insurers excluding lead liability from policies in Maryland. This left rental property owners without protection from lawsuits by families of lead poisoned children. At the same time, concern over the high incidence of lead poisoning in Maryland prompted the legislature to pass a law in 1984 that required the reporting of elevated blood lead levels to a statewide registry. The law also established the Maryland Childhood Lead Poisoning Prevention Program.

In 1986, the state promulgated landmark regulations for lead-safe work practices in response to research at the Baltimore-based Kennedy Krieger Institute showing a correlation between elevated blood lead levels and lead dust generated from renovations.

In the early 1990s, child health advocates again pushed for legislation to reduce the incidence of lead poisoning. Meanwhile, rental property owners began lobbying for protection against liability. In 1993, in response to the divergent goals of these two groups of stakeholders, the Maryland Lead Poisoning Prevention Commission was set up to make recommendations for a state lead bill that would reduce lead poisoning and give property owners the legal protection they sought. The Commission was made up of health and housing representatives, insurance interests and property owners, all appointed by the governor. The Commission’s recommendations formed much of the original draft of the bill presented to the state legislature in 1994.

During legislative hearings the Coalition to End Childhood Lead Poisoning, a non-governmental Baltimore-based lead poisoning prevention organization, played an advocacy role. Several board members of the Coalition were also part of the Commission.

In the year-and-a-half between the introduction of the draft bill and the passage of the law in 1994, the bill changed dramatically. The issue that generated the most controversy was liability protection for the state’s property owners. Child advocates argued that provisions granting immunity for property owners went too far in protecting property owners at the expense of children.

Proponents of a law emphasizing primary prevention advocated for window replacement and “lead-free” treatments as a lead abatement requirement, and a mandatory lead dust test in housing that had undergone lead hazard control. Property owners argued that being forced to provide lead-free housing would be prohibitively expensive. In the final version of the bill, the window replacement provision was deferred, and property owners were required to provide “risk reduced,” not “lead-

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41 The information in the following sections were gathered from varied sources including interviews with the Coalition to End Childhood Lead Poisoning, a non-profit organization based in Baltimore, Maryland; Barbara Conrad of the Maryland CLPPP; Rebecca Fahey of the Maryland Department of the Environment, Lead Enforcement Division; and the Maryland Department of the Environment and the Maryland Childhood Lead Poisoning Prevention Program websites.
free,” housing. (Though critics of the law see this as a shortcoming, Maryland’s “risk reduction” standard is no weaker than that of Massachusetts, Rhode Island, and Vermont.)

The 1996 law requires owners of pre-1950s housing to perform lead-safe treatments at tenant turnovers, but they have two options for demonstrating compliance: a certified lead dust clearance test or lead hazard control followed by a certified visual inspection. Primary prevention advocates point out that visual inspections are far less accurate in detecting lead hazards than lead clearance tests.

Finally, because of strong lobbying by rental property owners, the final version of the bill required lead-safe compliance only for pre-1950 housing rather than structures built prior to 1960 or 1978, benchmarks related to the use of lead-based paint in housing. (Most lead poisonings occur in the city of Baltimore, where the use of lead based paint was banned in 1951.)

Implementation and Enforcement

The Maryland Department of the Environment is charged with administration and enforcement of the state’s lead law. Limited resources and a shortage of housing inspectors resulted in weak enforcement in the year after the law was passed. This changed after a series of newspaper articles about lead poisoning appeared in the Baltimore Sun. The public response to the series led to a governor-sponsored state campaign in 2000 that resulted in a $50 million three-year commitment for enforcement and lead hazard reduction, with most resources directed toward the city of Baltimore.

The Maryland Lead Screening Program, administered by the Department of Health and Mental Hygiene, promotes lead screening and education. In Baltimore, free lead screenings are available through the city health department to children and pregnant women. Though screening is required under the 1997 Childhood Lead Screening Law for high-risk children (those receiving Medicaid or living in Baltimore or other areas where housing is old and poverty is high), screening rates in the state remain at 20 percent, with slightly higher rates in Baltimore City.

In the last decade, blood lead levels of screened children in Maryland have dropped considerably. In 1995, 18 percent of children up to six had blood lead levels 10µg/dl or above; in 2002 the rate had dropped to 2.9 percent. Though children’s blood lead levels have dropped nationally during that period, public health officials cite a greater rate of decline in incidence of elevated blood lead levels after 1996 when the Maryland law was passed.


43 “Lead Statistics by Mapping.” Maryland Department of the Environment website. Available: http://www.mde.state.md.us/Programs/LandPrograms/LeadCoordination/lead_mapping.asp
During the governor’s campaign, the number of properties being registered increased, as did the number of inspections and risk reductions in rental units. In 2001, 20,000 rental units were certified as having undergone lead risk reduction. In 2002 in Baltimore, over 300 civil or administrative actions were initiated by the city against non-compliant rental property owners. There were 450 to 500 enforcement actions per year statewide.

As the governor’s campaign came to an end in fiscal year 2004, there was a reduction in state funds put toward enforcement and lead hazard control, particularly in the city of Baltimore. Funding for fiscal year 2005 has been reduced even more. Public health officials say that although the governor’s campaign left an extensive infrastructure for enforcement, there is not enough money to put it to use. Since the governor’s campaign focused on Baltimore, the decrease in funds is slowing down enforcement in that city. General shortages of funds on the state level have made it difficult to replace state lead poisoning prevention staff vacancies, among other things.

In addition, the “carrot” of liability protection has not been sufficient to prompt broad compliance among property owners. Only half of the owners of pre-1950s housing are in full compliance with Maryland’s 1996 lead law. That drops to 11 percent for owners of housing units built between 1950 and 1978. There is particularly low compliance in the highest-risk areas — low-income neighborhoods where property values are also low — because those owners typically spend little money on maintenance and lead risk reduction.

The “qualified offer” provision has also fallen short as an incentive to property owners to do lead work, and as a protection for children. The intention of the provision was not only to protect rental property owners from liability but to provide financial resources to poisoned children quickly rather than through lengthy court proceedings associated with lawsuits. But a qualified offer can only be made by a property owner who is in compliance with the law, and the since the law was passed it has become clear that the majority of lead-poisoned children live in units that are not in compliance with the law.

A phase-in provision of the 1996 statute required owners of pre-1950 rental units to register, perform risk reduction measures, and have an inspection in 50 percent of their


46 Barbara Conrad, Maryland Childhood Lead Poisoning Prevention Program.

47 Rental property owners who distribute brochures to tenants, without providing lead-reduction treatments to dwellings, are seen as being in “partial compliance;” slightly more owners have reached this level of compliance than those reaching “full compliance.”
units by 2001 and 100 percent of their units by 2006. The phase-in provision was meant to allow owners to come into compliance over time, even if some units did not turn over for several years. The state lead program sees this phase-in provision as a “foot in the door” for enforcement. When investigating a case of an elevated blood lead level in a rental unit, state enforcers have the authority to check other rental units owned by the same individual to make sure the owner is in compliance with the phase-in requirements.

The Coalition to End Childhood Lead Poisoning, in collaboration with the National Center for Healthy Housing, the Maryland Department of the Environment, and the Baltimore Health Department, recently introduced a new interactive website on which Baltimore residents can look up information about available lead-safe housing.

For more information about the Maryland lead poisoning prevention laws and the Maryland lead program, please refer to the Coalition to End Childhood Lead Poisoning website at http://www.leadsafe.org/ or the Maryland Department of the Environment website at http://www.mde.state.md.us/Programs/LandPrograms/LeadCoordination/index.asp
Part IV: Litigation Strategies

Lead Paint Litigation

Private parties and governmental bodies have litigated the issue of lead paint poisoning in both state and federal courts for several decades. Defendants in these actions include lead paint manufacturers and rental property owners and property owners and managers. Plaintiffs have asked courts to hold these classes of defendants accountable under a variety of legal theories, including negligence, negligence per se, strict liability, public nuisance, and breach of contract. Although Mary Alorout, the mother of Sunday Abek, the Sudanese child who died in 2000 in Manchester, New Hampshire of acute lead poisoning, successfully settled her suit against the rental property owner and property manager for $700,000, plaintiffs representing lead-poisoned children more typically fail to recover in this kind of litigation. A review of published cases in state and federal courts shows that a recurrent problem is proving that the defendant property owners breached a duty to their renters; courts are unwilling to impute knowledge about a lead paint hazard and instead require plaintiffs to show specifically how the defendants became aware of the hazard that caused the poisoning.

That said, there still is a role for litigation in reducing and eventually eliminating the environmental health hazard of lead paint poisoning. A review of the literature clearly shows a relationship between states with active litigation against property owners and the development of extensive statutory enforcement schemes. Alorout’s attorney, Andru Volinsky, signaled as much in the 11/1/03 Manchester Union Leader article about the settlement: even though he prevailed in court against the rental property owner and property manager, he noted that “since her [Sunday’s] death, … no one in New Hampshire has introduced any legislation to strengthen laws concerning lead paint and protect children.” Although New Hampshire legislators have not yet responded to this call, those in other states have. Whether due to public outrage over infamous cases or because property owners and their insurers fear the impact of litigation, state policy makers have reacted. For example, New Hampshire’s neighbors to the south and west have addressed property owner negligence expressly in their lead poisoning prevention statutes. Vermont’s law sets out a definition for the standard of care owed to children under six years of age by their rental property owners, as well as presumptive immunity from suit if these property owners prove compliance with this standard. Massachusetts also offers property owners a similar shield from suits when they complete a lead paint risk assessment and comply with recommended controls. But in addition, this state holds property owners strictly liable for failing to remedy lead paint hazards pointed out by state enforcement officials, because it is highly foreseeable that such a failure could result in lead paint poisoning. In this manner, Massachusetts policymakers clearly signal a serious intent to use the threat of litigation to encourage property owners to take responsibility for abating or controlling lead paint hazards.

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As one writer put it, when commenting on the comprehensive nature of Massachusetts’ and Maryland’s statutes, “Not coincidentally, these states have also experienced the most lead-poisoning litigation.” Clifford L. Rechtschaffen. 1997. The Lead Poison Challenge: An Approach for California and Other States. 21 Harvard Environmental Law Review 387, 422.
Currently, the lead paint industry is actively working to lobby state legislatures to protect property owners from the threat of litigation. For example, a recent article from the Louisville Courier-Journal describes a bill introduced by that state’s lawmakers to require owners of older buildings to certify them as lead “free” or “safe.” It was offered after a November, 2003 approval of a $3.5 million jury verdict against the Louisville Housing Authority for failing to remove lead from soil outside a lead-poisoned child’s family apartment. But the bill, which was authored by paint industry representatives, also includes an immunity clause that would protect even those property owners who fail to achieve these standards. The National Paint and Coatings Association is promoting similar bills this year in Illinois, Missouri, and Florida, based on a model statute drafted by a University of Maryland law professor, with the express goal of curbing lead paint litigation. Although provisions of current Maryland, New Jersey, and Rhode Island statutes form the basis for the model, the version offered by the paint industry in Kentucky (and perhaps other states) appears to lack the close nexus between liability protection and clean-up requirements necessary to achieve the dual goals of eliminating lead paint poisoning and costly and piecemeal enforcement through litigation.

Litigation Against Lead Paint Manufacturers

Almost all cases brought against lead paint manufacturers have proved unsuccessful for the parties bringing them. Those brought by individual lead poisoned parties, like the plaintiff in Santiago v. Sherwin-Williams Co., 3 F.3d 546 (D. Mass. 1993), have lost because they were unable to precisely identify which paint manufacturer in their marketplace produced the paint that ultimately poisoned the child. See also City of New York v. Lead Industries, 700 N.Y.S. 2d 361 (1999). As Neil Leifer, a plaintiff’s attorney active in this kind of litigation, concluded, courts have a difficult time resolving the equities of the case: should all paint manufacturers in a market be held liable for most likely one manufacturer’s action of selling the paint to that victim?

Nonetheless litigation against lead paint manufacturers continues, but in an evolved form. Given improvements in science and technology, injured plaintiffs can more easily date and identify paint chips to source them to their manufacturer. Mr. Leifer is using this technology in a new suit in Chicago. Plaintiffs’ attorneys have also evolved in their strategizing about causes of action. Rather than focusing on injury to private individuals, litigants are now claiming that lead paint manufacturers have injured the public. Fashioned, in a way, on the successful public health litigation by state governments over tobacco use, the Rhode Island suit provides an example of claiming injury to the overall health of state citizens because government buildings are an environmental hazard due to lead-based paint. Providence, Rhode Island rests at the epicenter of the Northeast’s lead-based paint covered pre-1950 housing stock: 20 percent of its entering kindergarteners in 2003 — one in every five — had elevated blood lead levels. This suit was tried to a jury in 2002 and resulted in a mistrial because the jury could not unanimously agree. The case is now set for a new trial, to begin on April 5, 2005.

An interesting industry source on this point is www.leadlawsuits.com, which exhaustively chronicles its seemingly endless victories in court.
Litigation Against Property Owners and Managers

Lawmakers have approached lead paint poisoning in children by imposing legal duties on rental property owners to protect tenants from lead paint hazards via tort law. This state-by-state court regulation has resulted in a fragmented body of case law. Consequently some state legislatures have jumped into the fray, to clarify in statute the common law negligence principles at play.

To be successful in tort, a plaintiff must show that:
1. the rental property owner has a duty to protect the tenant,
2. the rental property owner breached that duty,
3. the tenant suffered actual injury, and
4. the rental property owner’s breach caused this injury.\(^{50}\)

To date, lead paint litigation against property owners has focused almost exclusively on the first element, with various state and federal courts exploring whether rental property owners have a duties to disclose and control lead-paint hazards.\(^ {51}\) On the first duty of disclosure, the success of injured plaintiffs has turned on whether or not courts require that rental property owners have actual knowledge of the presence of lead paint on the premises. Although given current knowledge about paint on pre-1978 building might lead courts to impute this knowledge to property owners, in fact few courts have taken this path.\(^ {52}\) On the second duty of control or abatement, courts have usually not held defendants liable for plaintiff injuries under the theory that rental property owners do not have a general duty to inspect leased property for unknown defects nor repair defects unless specifically agreed to. These common law duties again turn on the level of rental property owner knowledge.\(^ {53}\)

\(^{50}\) See, e.g., *Richwind Joint Venture v. Brunson*, 645 A.2d 1147, 1151 (Md. 1994).

\(^{51}\) For a helpful, general discussion of this topic, see Thomas J. Miceli et al., *Protecting Children from Lead-Based Paint Poisoning: Should Rental property owners Bear the Burden?*, 23 Boston College Environmental Affairs Law Review 1, 20 - 38 (1995).

\(^{52}\) Compare *Hayes v. Hambruch*, 841 F. Supp. 706, 711 n.2 (D. Md. 1994) (observing outcomes of litigation in mid-1970s, when lead poisoning was not a well known problem and thus rental property owners could reasonably be unaware of potential dangers to children) with *Richwind Joint Venture*, 645 A.2d at 1156 (where the Maryland Court of Appeals concluded that the rental property owner should have known or had “reason to know” the potential dangers, given that parties “(1) were aware of the peeling paint, (2) knew the house was old, and (3) knew that older homes often contained lead-based paint.”

\(^{53}\) Although the case law is scattered on this point, there is an interesting, even oddly ironic, trend of holding rental property owners to a higher standard for keeping common areas free of lead hazards than individual family dwellings. Compare *Winston Properties v. Sanders*, 565 N.E.2d 1280, 1281 (Ohio Ct. App. 1989) (holding that rental property owner did have duty because tenants’ notice about defective paint in the dwelling was not sufficient notice of presence of lead-based paint) with *Norwood v. Lazarus*, 634 S.W.2d 584, 586-87 (Mo. Ct. App. 1982) (holding rental property owner responsible for lead poisoning resulting from peeling paint on common area porches and hallways).
Appendix A

A Model Lead Poisoning Prevention Act*

*Developed by Professor Don Gifford of the University of Maryland Law School in consultation with the National Paint and Coatings Association
Executive Summary

Model Lead Poisoning Prevention Act

The Model Lead Poisoning Prevention Act (“Model Act” or “Act”) seeks to dramatically reduce and eventually eliminate the incidence of childhood lead poisoning, while preserving older housing as an affordable residential option, particularly for those with modest incomes.

The Model Act focuses on the specific actions that will substantially prevent childhood lead poisoning. Lead poisoning in children often occurs from the ingestion or inhalation of dust containing lead from deteriorating or abraded lead-based paint in older, poorly maintained residences.

The Model Act proposes a three-pronged approach to reduce childhood lead poisoning:

1. Elimination of lead hazards in housing;
2. Education; and
3. Screening for and treatment of elevated blood lead levels.

The evidence is compelling that avoiding and controlling deteriorating or abraded paint can help significantly in preventing childhood lead poisoning. This Model Act accomplishes these objectives by setting clear housing standards and enforcing them with a “carrot and stick” approach—liability protection for property owners whose rental units are “lead-safe’ and other financial incentives for compliance, coupled with strong enforcement of the new standards.

Under Section 9 of the Act, an owner who complies with the lead-safe standards is immune from further civil liability if he also offers to pay the medical expenses, relocation costs, and attorneys’ fees of a victim of lead poisoning subject to reasonable limits. Landlords in compliance with the standards also are guaranteed insurance coverage for lead poisoning claims. Conversely, the proposed statute provides a presumption of liability if the landlord fails to comply with the lead-safe standards.

Section 11 provides property owners with an income tax credit in the maximum amount of $2,500 per unit and creates a state revolving loan fund to assist them in making their housing lead-safe.

Because consistent enforcement of lead-safe housing standards is critical to eliminating lead poisoning, Section 13 mandates that these standards be vigorously enforced by state and local authorities. The Model Act also includes a provision allowing a court to place a property habitually in violation of lead-safe standards in receivership. It also creates a private right to lead-safe housing enforceable by injunction.
Section 16 of the Model Act calls for a comprehensive educational program with the objectives of educating families and property owners about how to prevent and treat childhood lead poisoning, and informing property owners, real estate agents, and those in the insurance industry about the requirements of the Act.

Section 17 outlines a program for screening “at risk” children for lead poisoning.

The Model Act anticipates the appointment of a single official responsible and accountable for administering the Model Act and eliminating childhood lead poisoning. The Director of Lead Poisoning Prevention will coordinate with the state departments of housing and health, as well as local authorities and other state agencies.
Section 1. Title.

This chapter may be cited and shall be known as the “Lead Poisoning Prevention Act.”

Section 2. Legislative Findings.

(A) Nearly three-hundred thousand American children may have levels of lead in their blood in excess of 10 micrograms per deciliter (µg/dL). Unless prevented or treated, elevated blood lead levels in egregious cases may result in impairment of the ability to think, concentrate, and learn.

(B) A significant cause of lead poisoning in children is the ingestion of lead particles from deteriorating or abraded lead-based paint from older, poorly maintained residences.

(C) The health and development of these children and many others are endangered by chipping or peeling lead-based paint or excessive amounts of lead-contaminated dust in poorly maintained homes.

(D) Ninety percent (90%) of lead-based paint still remaining in occupied housing exists in units built before 1960, with the remainder in units built before 1978.

(E) The dangers posed by lead-based paint can be substantially reduced and largely eliminated by taking measures to prevent paint deterioration and limiting children’s exposure to paint chips and lead dust.
The deterioration of lead-based paint in older residences results in increased expenses each year for the State in the form of special education and other education expenses, medical care for lead-poisoned children, and expenditures for delinquent youth and others needing special supervision.

Older housing units remain an important part of this State’s housing stock, particularly for those of modest or limited incomes.

The existing system of enforcing housing codes has proven ineffective in inducing widespread lead-based paint hazard abatement, mitigation, and control.

The financial incentives currently in place have not proven sufficient to motivate landlords and other property owners to undertake widespread and effective lead-based paint hazard abatement, mitigation, and control.

Insurance coverage generally is not available to landlords or other property owners to protect them against potentially ruinous legal actions brought on behalf of lead-poisoned children.

The possibility of liability exposure among landlords has led many to abandon older properties or to place them in “shell corporations” in order to avoid personal liability.

Knowledge of lead-based hazards, their control, mitigation, abatement, and risk avoidance is not sufficiently widespread, especially outside urban areas.

Section 3. Legislative Purposes.

To promote the elimination of childhood lead poisoning in [STATE], the purposes of this Act are:

(A) to substantially reduce, and eventually eliminate, the incidence of childhood lead poisoning in [STATE];

(B) to increase the supply of affordable rental housing in [STATE] in which measures have been taken to reduce substantially the risk of childhood lead poisoning;

(C) to make enforcement of lead hazard control standards in [STATE] more certain and more effective;

(D) to improve public awareness of lead safety issues and to educate both property owners and tenants about practices that can reduce the incidence of lead poisoning;

(E) to provide protection from potentially ruinous tort action for those landlords who undertake specified lead hazard reduction measures;

(F) to assure the availability and affordability of liability insurance protection to those landlords and other owners who undertake specified lead hazard reduction measures;
(G) to mandate the testing of children likely to suffer the consequences of lead poisoning so that prompt diagnosis and treatment—as well as the prevention of harm—are possible;

(H) to provide a mechanism to facilitate prompt payment of medical and rehabilitation expenses and relocation costs for those remaining individuals who are affected by childhood lead poisoning; and

(I) to define the scope of authority of state agencies and departments for lead hazard control, mitigation, education, and insurance availability, and to provide for the coordination of these efforts.

Section 4. Director of Lead Poisoning Prevention.

(A) Director of Lead Poisoning Prevention. The Governor shall appoint a Director of Lead Poisoning Prevention who shall serve at the pleasure of the Governor. The Director shall be responsible, subject to the authority of the Governor, for carrying out and administering all programs created pursuant to the provisions of this Act. To the extent necessary, the Director shall designate which officer(s) in local governments shall assist him in carrying out these duties. The Director may contract with any agency or agencies, individual(s), or group(s) for the provision of necessary services, subject to appropriation; and shall issue from time to time, amend, such rules and regulations as may be necessary; provided, however, that such rules, regulations, and amendments shall be filed with the [appropriate legislative committees responsible for health matters and housing matters] at least thirty (30) days before the effective date of such rules, regulations, and amendments.

(B) Lead Poisoning Prevention Coordinating Council. The Director shall chair a Lead Poisoning Prevention Coordinating Council that also shall include a designee of the Governor from [the department of housing] and a designee of the Governor from [the department of health].

(C) Creation of Program for Prevention of Lead Poisoning. Subject to an appropriation, the Director, working in coordination with the Lead Poisoning Prevention Council, shall establish a statewide program for the prevention, screening, diagnosis, and treatment of lead poisoning, including elimination of the sources of such poisoning, through such research, educational, epidemiologic, and clinical activities as may be necessary.

(D) Lead Poisoning Prevention Commission. The Governor shall appoint a Lead Poisoning Prevention Commission.

(1) The duties of the Commission are to:

(a) study and collect information on the effectiveness of this Act in fulfilling its legislative purposes as defined in Section 3;

(b) make policy recommendations on achieving the legislative purposes of this Act set forth in Section 3;
consult with the Director of Lead Poisoning Prevention and the responsible departments of state government on the implementation of this Act; and

write and submit a report annually to the Governor on the results of implementing this Act.

The Commission shall consist of fifteen members. The membership shall include:

(a) the Director of Lead Poisoning Prevention and the additional two members of the Lead Poisoning Coordinating Council as described in subsection 4(B) above;

(b) one member of the State Senate, appointed by the President;

(c) one member of the State House of Representatives [Delegates] appointed by the Speaker; and

(d) nine members appointed by the Governor including:

(i) a child advocate;

(ii) a health care provider;

(iii) a parent of a lead-poisoned child;

(iv) a representative of local government;

(v) two owners of rental property in the state;

(vi) a representative from the insurance industry that offers premises liability coverage in the state;

(vii) either a lead hazard control professional/contractor or a lead hazard identification professional; and

(viii) one other member of the public whose experience and expertise indicate his or her contributions to the Commission will be meaningful.

The terms of the members are as follows:

(a) the term of a member appointed by the Governor is four (4) years;

(b) a member appointed by the President or the Speaker serves at the pleasure of the appointing officer;

(c) the terms of the first members may be shortened or lengthened so that the terms of future members are staggered;
(d) at the end of a term, a member continues to serve until a successor is appointed and qualifies;

(e) a member who is appointed after a term had begun serves only for the remainder of the term and until a successor is appointed.

Section 5. Requirements for Lead-Free Status and Lead-Safe Status.

(A) **Requirements; Deadline.** An affected property shall comply with the requirements of either “lead-free” status, as defined by subsections 5(C), or “lead-safe” status, as defined by subsection 5(D), on or before [two (2) years following effective date of this Act], except as otherwise provided in subsection 5(B) below.

(B) **Extension of Time for Compliance.** An owner of five (5) or more affected properties may apply to the Director or the Director’s local designee for an extension of time in which to comply with the requirement of subsection 5(A). The extension of time in which to comply shall be for a period of three (3) years beyond the deadline specified in subsection 5(A), meaning that the extended deadline for compliance shall be [five (5) years following the effective date of this Act]. The Director shall grant the owner’s request for an extension if and only if:

(1) the owner of the affected property states under penalty of perjury that the affected property for which the extension is sought is not occupied by a person at risk; and

(2) the owner of the affected property has complied with the requirements of subsection 5(A) for more than fifty percent (50%) of the other affected properties which the owner owns or in which he or she has a beneficial interest.

(C) **Requirements for “Lead-free” Property Status.** An affected property is “lead-free” if:

(1) the affected property was constructed after 1978; or

(2) the owner of the affected property submits to the Director or the Director’s designee for the jurisdiction in which such a property is located an inspection report which indicates that the affected property has been tested for the presence of lead in accordance with standards and procedures established by the regulations promulgated by the Director and states that:

(a) all interior surfaces of the affected property are lead-free; and

(b) (i) all exterior painted surfaces of the affected property that were chipping, peeling, or flaking have been restored with non-lead-based paint; or
(ii) no exterior painted surfaces of the affected property are chipping, peeling, or flaking.

(3) In order to maintain exemption from the provisions of this Act, the owner of any affected property with lead-based paint on any exterior surface which has been certified as “lead-free” pursuant to subsection (2) shall submit to the Director or the Director’s designee for the jurisdiction in which such property is located every three (3) years a certification, by an inspector, accredited pursuant to the provisions of Section 7, stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

(D) Requirements for “Lead-Safe” Property Status. An affected property is lead-safe if the following treatments to reduce lead-based paint hazards have been completed by someone certified under Section 7 of this Act and in compliance with the regulations established by the Director:

(1) visual review of all exterior and interior painted surfaces;

(2) removal and repainting of chipping, peeling, or flaking paint on exterior and interior painted surfaces;

(3) stabilization and repainting of any interior or exterior painted surface which have lead-based paint hazards;

(4) repair of any structural defect that is causing the paint to chip, peel, or flake that the owner of the affected property has knowledge of or, with the exercise of reasonable care, should have knowledge of;

(5) stripping and repainting, replacing, or encapsulating all interior windowsills and window troughs with vinyl, metal, or any other durable materials which render the surface smooth and cleanable;

(6) installation of caps and vinyl, aluminum, or any other material in a manner and under conditions approved by the Director in all window wells in order to make the window wells smooth and cleanable;

(7) fixing the top sash of all windows in place in order to eliminate the friction caused by movement of the top sash, except for a treated or replacement window that is free of lead-based paint on its friction surfaces;

(8) re-hanging all doors as necessary to prevent the rubbing together of a lead-painted surface with another surface;

(9) making all bare floors smooth and cleanable;

(10) ensuring that all kitchen and bathroom floors are overlaid with a smooth, water-resistant covering; and

(11) HEPA-vacuuming and washing of the interior of the affected property with high phosphate detergent or its equivalent, as determined by the Director.
(E) **Repairs to Comply With Standards.**

(1) Whenever an owner of an affected property intends to make repairs or perform maintenance work that will disturb the paint on interior surfaces of an affected property, the owner shall give any tenant in such affected property at least forty-eight (48) hours’ written advance notice and shall make reasonable efforts to ensure that all persons who are not persons at risk are not present in the area where work is performed and that all persons at risk are removed from the affected property when the work is performed.

(2) A tenant shall allow access to an affected property, at reasonable time, to the owner to perform any work required under this Act.

(3) If a tenant must vacate an affected property for a period of 24 hours or more in order to allow an owner to perform work that will disturb the paint on interior surfaces, the owner shall pay the reasonable expenses that the tenant incurs directly related to the required relocation.

(4) If an owner has made all reasonable efforts to cause the tenant to temporarily vacate an affected property in order to perform work that will disturb the paint on interior surfaces, and the tenant refuses to vacate the affected property, the owner may not be liable for any damages arising from the tenant’s refusal to vacate.

(5) If an owner has made all reasonable efforts to gain access to an affected property in order to perform any work required under this Act, and the tenant refuses to allow access, even after receiving reasonable advance notice of the need for access, the owner may not be liable for any damages arising from the tenant’s refusal to allow access.

Section 6. **Inspection of Affected Properties.**

(A) **Frequency of Inspection.**

(1) Initial inspection of each affected property shall occur on or before [two (2) years following the effective date of the Act], except as provided in subsection 5(B).

(2) Subsequent inspections shall occur at intervals of not greater than three (3) years.

(3) The requirement for a subsequent inspection may be satisfied by certification of the owner with the Director or the Director’s designee for the jurisdiction in which such property is located, under penalty of perjury, that the tenants occupying an affected property have not changed since the last inspection and that no one residing within the affected property is a person at risk.
If the requirement for re-inspection of an affected property has been satisfied by certification pursuant to subsection 6(A)(3) above, the requirement for a re-inspection under subsection 6(A)(2) is reactivated by either a change in tenancy or the residence of a person at risk within the affected property.

(B) *Expedited Inspection.* The Director or the Director’s designee for the jurisdiction in which such property is located shall order an inspection of an affected property, at the expense of the owner of the affected property, whenever the Director or the Director’s designee for the jurisdiction in which such property is located, after [date two (2) years following the effective date of this Act], is notified that the affected property reasonably appears to comply with neither the lead-free standard nor the lead-safe standard as those standards are defined in Section 5 and a person at risk resides in the affected property or spends more than 24 hours per week in the affected property. An inspection required under this subsection shall be completed within ninety (90) days after notification of the Director or the Director’s designee for the jurisdiction in which such property is located.

(C) *Emergency Inspection.* The Director or the Director’s designee for the jurisdiction in which such property is located shall order an inspection of an affected property, at the expense of the owner of the affected property, whenever the Director or the Director’s designee for the jurisdiction in which such property is located, after [the effective date of this Act] is notified that a person at risk who resides in the affected property or spends more than 24 hours per week in the affected property has an elevated blood lead level greater than or equal to 15 µg/dL. An inspection under this subsection shall be completed within fifteen (15) days after notification of the Director or the Director’s designee for the jurisdiction in which such property is located.

(D) *Inspection Report.* The inspector shall submit a verified report of the result of the inspection to the Director or the Director’s designee for the jurisdiction in which such property is located, the owner, and the tenant, if any, of the affected property.

Section 7. Accreditation of Inspectors and Contractors Performing Work.

(A) *Accreditation of Persons Performing Lead Hazard Reduction Activities.* No person shall act as a contractor or supervisor to perform the work necessary for lead-hazard abatement as defined in this Act unless that person is accredited by the Director. The Director shall accredit for these purposes any person meeting the standards described in one of the following subsections:

(1) Regulations to be adopted by the Director pursuant to this Act governing the accreditation of individuals to engage in lead-based paint activities sufficient to satisfy the requirements of 40 Code of Federal Regulations (C.F.R.) 745.325 (2001) or any applicable successor provisions to 40 C.F.R. 745.325 (2001).

(2) Certification by the United States Environmental Protection Agency to engage in lead-based paint activities pursuant to 40 C.F.R. 745.226

(3) Certification by a state or tribal program authorized by the United States Environmental Protection Agency to certify individuals engaged in lead-based paint activities pursuant to 40 C.F.R. 745.325 (2001) or any applicable successor provisions to 40 C.F.R. 745.325 (2001).

The Director shall, by regulation, create exceptions to the accreditation requirement for instances where the disturbances of lead-based paint is incidental.

(B) **Accreditation of Persons Performing Inspections.** An inspector accredited by the Director shall conduct all inspections required by Section 5 or 6 of this Act, or otherwise required by this Act. The Director shall accredit as an inspector any individual meeting the requirements of subsections 7(B)(1) or (2) below:

(1) Regulations to be adopted by the Director pursuant to this Act governing the accreditation of individuals eligible to conduct the inspections required by this Act; or

(2) Certification to conduct risk assessments by the EPA pursuant to 40 C.F.R. 745.226(b) (2001) or any applicable successor provisions to 40 C.F.R. 745.226 (2001).

(C) **Duration of Certification.** The accreditation of contractors or supervisors of those performing the work necessary for lead hazard abatement, and the accreditation of those performing the inspections required by this section, shall extend for a period of three (3) years unless the Director has probable cause to believe a person accredited under this section has violated the terms of the accreditation or engaged in illegal or unethical conduct related to inspections required by this Act in which case the accreditation to perform inspections shall be suspended pending a hearing in accordance with the provisions of state law.

(D) **Registration Fees.** The Director shall establish by regulation a schedule of fees for the registration of persons performing lead hazard abatement and a separate schedule for persons performing inspections pursuant to this Act. Such fees shall be required to be paid at the time of initial registration, and shall be sufficient to cover all costs of state personnel, attributable to accreditation activities conducted under this Section.

(1) Fees collected pursuant to this subsection will be held in a continuing non-lapsing special fund to be used for accreditation purposes under this Section.

(2) The State Treasurer shall hold and the State Comptroller shall account for this fund.

(3) The fund established under this subsection shall be invested and reinvested and any investment earnings shall be paid into the fund.
(E) **Enforcement of This Section.** The provisions and procedures of [appropriate state statutes governing violation of business and professional licensing statutes] shall be used and shall apply to enforce violations of this Section, any regulations adopted under this subtitle, and any condition of accreditation issued under this Act.

Section 8. Registration of Affected Properties.

(A) **Date of Registration.** On or before [two (2) years following the effective date of this Act], the owner of an affected property shall register the affected property with the Director or the Director’s designee for the jurisdiction in which such property is located.

(B) **Contents of Registration.** The owner shall register each affected property using forms prepared by the Director, including the following information:

1. the name and address of the owner;
2. the address of the affected property;
3. if applicable, the name and address of each property manager employed by the owner to manage the affected property;
4. the name and address of each insurance company providing property insurance or lead hazard coverage for the affected property, together with the policy numbers of that insurance or coverage;
5. the name and address of a resident agent, other agent of the owner, or contact person in the State with respect to the affected property;
6. the date of construction of the affected property;
7. the date of the latest change in occupancy of the affected property; and
8. the latest date, if any, on which the affected property has been certified to be in compliance with the provisions of Section 5 of this Act, and the name and address of the person conducting the inspection.

(C) **Renewal of Registration.** Registration shall be renewed every two (2) years; however, owners shall update the information contained in the owner’s registration within thirty (30) days after any change in the registration information.

(D) **Records in Public Domain.** The information provided by an owner under this Section shall be open to the public.

(E) **Registration Fees.** The Director shall establish by regulation a schedule of fees for the registration of affected properties, required to be paid at the time of initial registration and at the time of subsequent renewals of registration,
sufficient to cover all costs, including the costs of state personnel, involved with registration activities conducted under this Section.

(1) Fees collected pursuant to this subsection will be held in a continuing, non-lapsing special fund to be used for registration purposes under this Section.

(2) The State Treasurer shall hold and the State Comptroller shall account for this fund.

(3) The fund established under this subsection shall be invested and reinvested and any investment earnings shall be paid into the fund.

(4) An owner of an affected property who fails to pay the fees imposed under this subsection shall be liable for a civil penalty of triple the cumulative amount of any and all unpaid registration fees or $150, whichever is greater, together with all the costs of collection, including reasonable attorneys’ fees. These penalties shall be collected in a civil action in any court of competent jurisdiction. Any unpaid penalty shall constitute a lien against the affected property.

Section 9. Liability Protection and the Qualified Offer.

(A) Scope of Application. This Section applies to all potential bases of civil liability for alleged injury or loss to a person caused by the ingestion of lead by a person at risk in an affected property; except that this Section does not apply to any claim in which the elevated blood lead level of the person at risk is documented to have existed on or before sixty (60) days after the affected property where the person resides other otherwise allegedly was exposed to lead has been certified as lead-safe under Section 5(B) or lead-safe under Section 5(C).

(B) Requirements for Immunity From Liability. A property owner and his or her agents and employees are immune from civil liability to a person at risk, his or her parents or legal guardian, for injuries or damages resulting from the ingestion of lead contained in an affected property if:

(1) the property has been certified as lead-safe under subsection 5(C) or as lead-safe under subsection 5(D); and

(2) the property owner or his agent has made a “qualified offer” as defined in subsection 9(E) below to the person at risk, or his or her parent or legal guardian, in a case in which the person at risk has a documented elevated blood lead level of 15 µg/dL or more.

54 The decision to provide compensation for the purposes of treatment at an elevated blood lead level of 15µg/dL is suggested by the findings and recommendations of the Centers for Disease Control and Prevention. Center for Disease Control and Prevention, Preventing Lead Poisoning in Young Children (1991); available at http://aepo-xdv-www.epo.cdc.gov/wonder/preuid/p0000029/p0000029.asp. The CDC states that “[I]nterventions for individual children should begin at blood lead levels of 15µg/dL.” At this level and above, according to the CDC, children should also receive individual case management, including nutritional and educational interventions and more frequent screening. Also, if levels in the range of 15 to 19µg/dL
performed more than sixty (60) days following certification of the premises as lead-safe or lead-free pursuant to Section 5, regardless of whether such qualified offer has been accepted or rejected by the person at risk, or his or her parent or legal guardian.

(C) **Exceptions to Immunity.** The immunity described in the previous subsection does not apply if it is shown that one of the following had occurred:

1. the owner or his or her employee or agent obtained the certification of lead-free or lead-safe status by fraud;

2. the owner or his or her employee or agent violated a condition of the certification;

3. during renovation, remodeling, maintenance or repair after receiving the certificate, the owner or his or her employee or agent created a lead-based paint hazard that was present in the affected property at the time the person at risk either was exposed to a lead-based paint hazard or first was tested with an elevated blood lead level greater than 15µg/dL;

4. the owner or his or her employee or agent failed to respond in a timely manner to notification by a tenant, by the Director, by the Director’s designee for the jurisdiction in which such property is located, or by a local health department that a lead-based paint hazard might be present;

5. the lead poisoning or lead exposure was caused by a source of lead in the affected property other than lead-based paint.

(D) **Documentation and Notification of Injury.** A person may not bring an action against an owner of an affected property whose property has been certified as lead-free under subsection 5(C) or lead-safe under subsection 5(D) for damages arising from alleged injury or loss to a person at risk caused by lead-based paint hazard unless he or she documents his or her alleged injury with a test for elevated blood lead levels and presents a written notice to the owner of the affected property or his or her agent or employee of the claim and test results.

1. If such test results show an elevated blood lead level of less than 15µg/dL, the person at risk or his or her parent or legal guardian, shall not recover damages from the owner of the affected property, his or her agents, and/or employees unless the person at risk, his or her parent or legal guardian can show by clear and convincing evidence that the person at risk’s damage or injury results from exposure to lead-based paint and was caused by either:

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persist, environmental investigation and remediation is warranted, according to the CDC. The CDC guidelines provide that medical evaluation and environmental investigation and remediation should be done for all children with blood lead levels greater than or equal to 20µg/dL. The same report acknowledges that adverse effects on central nervous system functioning have been identified at blood lead levels as low as 10µg/dL.
(a) intentional acts by the owner, his or her agents or employees, or

(b) actions of the owner, his or her agents or employees with knowledge with a substantial certainty that such actions would injure the person at risk or others similarly situated.

(2) If such test results show an elevated blood lead level of 15µg/dL or greater, the owner of the affected property or his/her agent or employee shall have the opportunity to make a “qualified offer” under subsection 9(E).

(3) If the concentration of lead in a whole venous blood sample of a person at risk tested within sixty (60) days after the person at risk begins residence or regularly spends at least 24 hours per week in an affected property that is certified as being in compliance with the provisions of subsection 5(C) or 5(D) is equal to or greater than 15µg/dL, it shall be presumed that the exposure to lead-based paint occurred before a person at risk began residing or regularly spending at least 24 hours per week in the affected property.

(E) Qualified Offer.

(1) A qualified offer as defined in this section may be made to a person at risk by the owner of the affected property, an insurer of the owner, or an agent, employee, or attorney of the owner (“offeror”).

(2) To qualify for the protection of liability under subsection 9(A), a qualified offer must be made in writing and delivered by certified mail return receipt requested within thirty (30) days after the owner of the affected property, his or her agent or employee receives notice of the elevated blood lead level referred to in subsection 9(D).

(3) A qualified offer made under this Section may be accepted or rejected by a person at risk or, if a person at risk is a minor, such person’s parent or legal guardian. If the qualified offer is not accepted within thirty (30) days of receipt of the qualified offer, it shall be deemed to have been rejected. By mutual agreement, the parties may extend the period for acceptance of the qualified offer.

(4) Subject to the exception in subsection E(5), acceptance of a qualified offer by a person at risk, or by a parent, legal guardian, or other person authorized to respond on behalf of a person at risk, discharges and releases all potential liability of the offeror, the offeror’s insured or principal, and any participating co-offeror to the person at risk and to the parent or legal guardian of the person at risk for alleged injury or loss caused by the lead-based paint hazard in the affected property.

(5) No owner of an affected property, or his or her agent, employee, attorney or anyone else acting on his or her behalf shall represent to a person at risk, his or her parent or guardian, or anyone else acting on
his or her behalf, that an offer of settlement in an action resulting
from a lead-based paint hazard in an affected property is a “qualified
offer” unless the affected property have been certified as “lead-free”
under subsection 5(C) or “lead-safe” under subsection 5(D) and
unless the offeror reasonably believes that the settlement offer
satisfies all requirements of this Section. Any settlement resulting
from a settlement offer purporting to be a “qualified offer” which
does not satisfy the requirements of this Section, shall at the election
of the person at risk, his or her parent or guardian, or other
representative, be deemed null and void and of no legal effect.
Further, misrepresentation of a settlement offer as a “qualified offer”
when in fact the offer does not meet these requirements may subject
the offeror to criminal penalties under [appropriate criminal statute
for perjury] and/or professional disciplinary codes where applicable.
The statute of limitations for an action by a person at risk with an
elevated blood lead level, his or her parent, or legal guardian is tolled
until the misrepresentation described in this paragraph 9(E)(5) is
discovered.

(6) A copy of the qualified offer shall be sent to the Director, [the
Director’s local designee and/or the local health department]. The
Director, [the Director’s local designee and/or the local health
department] shall maintain a copy of the qualified offer in the case
management file of the person at risk. In addition, the Director, [the
Director’s local designee and/or the local health department] also
shall directly notify the person at risk, or in the case of a minor, the
parent or legal guardian of the minor, of state and local resources
available for lead poisoning prevention and treatment.

(7) A qualified offer shall include payment for reasonable expenses and
costs incurred by the person at risk with an elevated blood lead level
of 15µg/dL or greater for:

(a) the relocation of the household of the person at risk to a lead-
safe dwelling unit of comparable size and quality that may
provide either:

(i) the permanent relocation of the household of the
affected person at risk to lead-safe housing, including
relocation expenses, a rent subsidy, and incidental
expenses; or

(ii) the temporary relocation of the household of the
affected person at risk to lead-safe housing while
necessary lead hazard reduction treatments are being
performed in the affected property to make that
affected property lead-safe; and

(b) medically necessary treatment for the affected person at risk as
determined by the treating physician or other health care
provider or case manager of the person at risk that is
necessary to mitigate the effects of lead poisoning, as defined
by the [department of health] by regulation, and in the case of
a child, until the child reaches the age of eighteen (18) years; and

(c) reasonable attorneys’ fees, not to exceed the lesser of Two Thousand Five Hundred Dollars ($2,500) or actual time spent in the investigation, preparation, and presentation of the claim multiplied by an hourly rate of One Hundred and Fifty Dollars ($150) per hour.

(8) An offeror is required to pay reasonable expenses for the medically necessary treatments under subsection (E)(7)(b) of this Section only if coverage for these treatments is not otherwise provided by [Medicaid—state medical assistance program] or by a health insurance plan under which the person at risk has coverage or in which the person at risk is enrolled. The health insurance plan shall have no right of subrogation against the party making the qualified offer.

(9) **Aggregate Maximum Amounts Payable.** The amounts payable under a qualified offer made under this Section are subject to the following aggregate maximum caps:

(a) [$25,000] for all medically necessary treatments as provided and limited in subsection (E)(7)(a);

(b) [$10,000] for all relocation benefits as provided and limited in subsection (E)(7)(b).

All payments under a qualified offer specified in subsection (E)(7) shall be paid to the provider of the service, except that payment of incidental expenses may be paid directly to the person at risk, or in the case of a child, to the parent or legal guardian of the person at risk.

The payments under a qualified offer may not be considered income or an asset of the person at risk, the parent of a person at risk who is a child, or the legal guardian, for the purposes of determining eligibility under any state or federal entitlement program.

(10) **Certificate of Compliance.** A qualified offer shall include a certification by the owner of the affected property, under the penalties of perjury, that the owner has complied with the applicable provisions of Section 5 and of this Section in a manner that qualified the owner to make a qualified offer.

(11) **Offers of Compromise.** A qualified offer shall not be treated as an offer of compromise for the purposes of admissibility in evidence, notwithstanding that the amount is not in controversy.

(12) **Regulations.** The Director may adopt regulations that are necessary to carry out the provisions of this Section.
(F) **Presumption of Negligence in Case Against Non-Complying Property Owner.**

(1) An owner of an affected property, who is not in compliance with the provisions of either subsection 5(C) or subsection 5(D) during the period of residency of a person at risk, is presumed to have failed to exercise reasonable care with respect to lead-based paint hazards during that period in an action seeking damages on behalf of the person at risk for alleged injury or loss resulting from exposure to lead-based paint hazards in the affected property.

(2) the owner has the burden of rebutting this presumption by clear and convincing evidence.

(3) The plaintiff in an action against an owner of an affected property described in subsection (F)(1) above, in addition to recovering all other legally cognizable damages, including punitive damages where appropriate, shall be entitled to recover reasonable attorneys’ fees.

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**Section 10.** **Availability of Insurance Coverage.**

(A) **Exclusion of Lead Hazards Prohibited.** Except as otherwise provided by this Act, no insurer licensed or permitted by the [department responsible for insurance regulation] to provide liability coverage to rental property owners shall exclude, after [26 months following the effective date of this Act or sixty (60) days after certification under Section 5(C) or 5 (D) of an affected property covered under a policy, whichever date occurs earlier], coverage for losses or damages caused by exposure to lead-based paint. The [department responsible for insurance regulation] shall not permit, authorize or approve any exclusion for injury or damage resulting from exposure to lead-based paint, except as specifically provided for in this chapter, that was not in effect as of the date of the enactment of this Act, and all previously approved exclusions shall terminate on or before [26 months following the effective date of this Act or sixty (60) days after certification under Section 5(C) or 5 (D) of an affected property covered under a policy, whichever date occurs earlier].

(B) **Lead Hazard Coverage Mandated.** All insurers issuing liability insurance policies, including commercial lines insurance policies, personal lines insurance policies, and/or any other policies, covering affected properties that are in compliance with the requirements of this Act shall offer coverage for bodily injury caused by exposure to lead-based paint. Such coverage must encompass any and all claims made more than sixty (60) days after certification of the affected property as lead-free under subsection 5(C) or lead-safe under subsection 5(D) asserting injury resulting from exposure to lead-based paint on the premises of an affected property. Policy limits for such coverage shall be in an amount equal to or greater than the underlying policy limits of the applicable policy insuring the affected property.

(1) Liability coverage under this subsection for losses or damages caused by lead-based paint at the insured premises may be limited to the damages defined under subsection 9(E).
(2) Notwithstanding the foregoing, in order for the owner of the affected property to be eligible for the liability coverage under this subsection, such owner may, at the time insurance is sought, be required to present to the insurer proof of meeting the lead-free standard under subsection 5(C) or lead-safe standard under subsection 5(D) in the form of an affidavit signed by the owner or designated party that certification has been provided pursuant to inspection under Section 6 and that the property has been properly registered under Section 8.

(C) **Endorsements May Be Offered for Properties Not in Compliance.** Nothing in this Act shall prevent insurers from offering an endorsement for personal injury/bodily injury liability coverage for injuries resulting from the exposure to lead-based paint for properties not in compliance with the provisions of either subsection 5(C) or subsection 5(D).

(D) **Determination of Rates for Lead Hazard Coverage.** Rates for the coverage specified in subsection (B) above shall be approved by the [department responsible for insurance regulation] using the following standards:

1. Such rates must not be excessive, inadequate, or unfairly discriminatory; and

2. In establishing such rates, consideration will be given to:
   
   a. past and prospective loss experience;
   b. a reasonable margin for profits and contingencies;
   c. past and prospective expenses;
   d. such other data as the department may deem necessary; and
   e. the past history of owner with regard to lead poisoning or any other liability or violations of ordinances or statutes relating to the affected property or similar properties reasonably believed by the insurer to be relevant.

3. **Authorization for Market Assistance Plan or Joint Underwriting Plan If Necessary.** The [department responsible for insurance regulation] shall determine within [two (2) years following effective date of this Act] the availability in [STATE] of the liability personal injury/bodily injury coverage described in subsection 10(B) above, and may if such coverage is not generally available, establish a market assistance plan or take other measures to assure the availability of such coverage that offers a liability limit which is a least Three Hundred Thousand Dollars ($300,000) or shall require that such coverage be made available through a joint underwriting plan.

**Section 11. Tax Credit.**

(A) **Income Tax Credit for Bringing Property Into Compliance with the Act.** An individual, corporation, or other business entity, shall be entitled to an
income tax credit for removal of lead-based paint or other repairs or renovations of an affected property necessary to comply with the provisions of subsections 5(C) or 5(D) of this Act when he, she or it:

(1) has required the removal of lead-based paint hazards or other repairs or renovations described above performed by a contractor accredited pursuant to Section 7 of this Act;

(2) pays for the removal of lead-based paint hazards or other repairs or renovations identified in this subsection; and

(3) obtains written certification by an inspector, accredited pursuant to Section 7 of this Act, that the required removal of lead-based paint hazards or other repairs or renovations for the affected property has been completed in accordance with all applicable requirements and that the affected property can now be certified as either lead-free under Section 5(C) of this Act or as lead-safe under Section 5(D) of this Act.

(B) **Credit Available to Homeowner.** The tax credit in this section shall be available to someone who owns and occupies his or her own dwelling unit in the same manner and to the same extent as it is available to the owner of an affected property who leases the premises.

(C) **Amount of Credit.** The tax credit shall be equal to the amount actually paid for the lead-based paint hazard reduction up to a maximum of two thousand five hundred dollars ($2,500) per affected property.

(D) **Carry-Over of Credit.** Any amount of tax credit not used in the taxable year of certification may be carried forward and applied to the individual’s tax liability for any one or more of the succeeding five (5) taxable years. The credit may not be applied until all other credits available to the taxpayer for that taxable year have been applied.

### Section 12. Lead-Safe or Lead-Free Property Revolving Loan Fund.

(A) **Creation and Funding.** There is created, as a separate fund within the treasury, the Lead-Safe or Lead-Free Property Revolving Loan Fund. The fund shall consist of proceeds received from the sale of bonds pursuant to subsection 12(B), and any sums that the state may from time to time appropriate, as well as donation, gifts, bequests, or otherwise from any public or private source, which money is intended to assist owners of residential properties in meeting the standards for either lead-free or lead-safe certification.

(B) **Sale of Bonds.** The State shall issue bonds in an amount specified for the purpose of funding the Lead-Safe or Lead-Free Property Revolving Loan Fund.

(1) Any bonds issued or to be issued pursuant to this subsection shall be subject to all the requirements and conditions established by the State for the sale of bonds.
(2) The interest rate and other terms upon which bonds are issued pursuant to this subsection shall not create a prospective obligation of the State in excess of the amount of revenues that can reasonably be expected from the loan repayments, interests on such loans, and fees that the State can reasonably expect to charge under the provisions of this Act.

(3) All money received from the sale of bonds shall be deposited into the Lead-Safe or Lead-Free Property Revolving Loan Fund.

(C) Administration and Disbursement. The treasurer shall contract with [an appropriate existing agency of state government or a private contractor] for the administration and disbursement of funding. The Director shall adopt rules and regulations in conjunction with the [department of housing] which provide for the orderly and equitable disbursement and repayment of funds.

(D) Eligibility for Loans. Funds placed in the Lead-Safe or Lead-Free Property Revolving Loan Fund shall be made available, at the discretion of the Director, to the owners of affected properties or non-profit organizations for the purpose of bringing affected properties into compliance with either subsection 5(C) or subsection 5(D). An owner of a pre-1978 property who owns and occupies the dwelling unit shall be eligible for loans under this Section in the same manner, and to the same extent, as an owner of an affected property.

(E) Loans Through Intermediaries. Loans made available under the provisions of this Section may be made directly, or in cooperation with other public and private lenders, or any agency, department, or bureau of the federal government or the state.

(F) Reinvestment of Repayment Proceeds. The proceeds from the repayment of any loans made for that purpose shall be deposited in and returned to the Lead-Safe or Lead-Free Property Revolving Loan Fund to constitute a continuing revolving fund for the purposes provided in this Section.

(G) Compliance With Requirements for Federal Assistance. The Director, [department of housing], and/or other appropriate state department or agency shall take any action necessary to obtain federal assistance for lead hazard reduction to be used in conjunction with the Lead-Safe or Lead-Free Property Revolving Loan Fund.

Section 13. Enforcement.

(A) Full Enforcement of Criminal Violations and Civil Remedies. [Note—the exact wording of this subsection 13(A) will vary considerably depending upon a state’s division of responsibilities for enforcing housing codes and criminal penalties for violations of housing codes between local and state authorities.] Owners of affected properties who fail to comply with the provisions of Section 5 shall be deemed in violation of [state housing code] and/or [local housing code]. The [office of the attorney general] and [any local authority responsible for the enforcement of housing codes] shall enforce vigorously civil remedies and/or criminal penalties provided for by
law arising out of failure to comply with the requirements of this Act and may seek injunctive relief where appropriate.

(B) Reporting of Enforcement Actions.

(1) Any civil or criminal action by state or local officials to enforce the provisions of this Act shall be reported to the Director.

(2) The Director shall issue an annual report outlining specifically the enforcement actions brought pursuant to subsection 13(A), the identity of the owners of the affected properties, the authority bringing the enforcement action, the nature of the action, and describing the criminal penalties and/or civil relief.

(C) Receivership of Properties Not Meeting Standards. After the second written notice from the Director, [the Director’s local designee, the state of local housing authority, or the state or local department of health] of violations of the provisions of this Act occurring within an affected property, or after two criminal or civil actions pursuant to subsection 13(A) brought by either state or local officials to enforce this Act arising out of violations alleged to exist are corrected, the affected property shall be considered abandoned, and the attorney general, the Director, [the Director’s local designee,] [the state or local housing authority,] [the state or local department of health,] and /or [any other officials having jurisdiction over the affected property] shall have the specific power to request the court to appoint a receiver for the property. The court in such instances may specifically authorize the receiver to apply for loans, grants, and other forms of funding necessary to correct lead-based paint hazards and meet the standards for lead-safe or lead-free status, and to hold the affected property for such a period of time as the funding course may require to assure that the purposes of the funding have been met. The costs of such receivership shall constitute a lien against the property that, if not discharged by the owner upon receipt of the receiver’s demand for payment, shall constitute grounds for foreclosure proceedings instituted by the receiver to recover such costs.

Section 14. Private Right to Injunctive Relief.

(A) Right to Lead-Free or Lead-Safe Housing. A person at risk shall be deemed to have a right, effective [two (2) years following the effective date of this Act], to housing which is lead-free or lead-safe as outlined in this Act.

(B) Private Right of Action for Injunctive Relief. If an owner of an affected property fails to comply with such standards, a private right of action shall exist that allows a person at risk or the parent or legal guardian of a person at risk to seek injunctive relief from a court with jurisdiction against the owner of the affected property in the form of a court order to compel compliance with the requirements of this Act.

(C) Notice of Intent to Seek Injunctive Relief. A court shall not grant the injunctive relief requested pursuant to subsection 14(B), unless, at least thirty (30) days prior to the filing requesting the injunction, the
owner of the affected property has received written notice of the violation of standards contained in Section 5 and has failed to bring the affected property into compliance with the applicable standards. This notice to the owner of the affected property is satisfied when any of the following has occurred:

(1) a person at risk, his or her parent or legal guardian, or attorney, has notified the owner of an affected property that the property fails to meet the requirements for either lead-free status under subsection 5(C) or for lead-safe status under 5(D).

(2) [a local or state housing authority or department of health] has notified the owner of the affected property of violations of the provisions of the Act occurring within an affected property; or

(3) a criminal or civil action pursuant to subsection 13(A) has been brought by either state or local enforcement officials to enforce this Act arising out of violations occurring within an affected property.

(D) **Right to Recover Litigation Costs and Attorneys’ Fees.** A person who prevails in an action under subsection 13(B) is entitled to an award of the costs of the litigation and to an award of reasonable attorney’s fees in an amount to be fixed by the court.

(E) **Accelerated Hearing.** Cases brought before the court under this Section shall be granted an accelerated hearing.

**Section 15. Retaliatory Evictions Prohibited.**

(A) **Actions Protected.** An owner of an affected property may not evict or take any other retaliatory action against a person at risk or his or her parent or legal guardian in response to the actions of the person at risk, his or her parent or legal guardian in:

(1) providing information to the owner of the affected property, the Director, the Director’s designee for the jurisdiction in which such property is located, [department of health], [department of housing], local health officials, or local housing officials concerning lead-based paint hazards within an affected property or elevated blood lead levels of a person at risk; or

(2) enforcing any of his or her rights under this Act.

(B) **Definition of Retaliatory Eviction.** For purposes of this Section, a retaliatory action includes any of the following actions in which activities protected under subsection 15(A) are material factor in motivating said action:

(1) a refusal to renew a lease;
(2) termination of a tenancy;

(3) an arbitrary rent increase or decrease in services to which the person at risk or his or her parent or legal guardian is entitled; or

(4) any form of constructive eviction.

(C) Remedies. A person at risk or his or her parent or legal guardian subject to an eviction or retaliatory action under this Section is entitled to the relief as may be provided by statute and/or any further relief deemed just and equitable by the court, and is eligible for reasonable attorneys’ fees and costs.

Section 16. Educational Programs.

(A) Comprehensive Educational Program Established. In order to achieve the purposes of this Act, a statewide, multifaceted, ongoing educational program designed to meet the needs of tenants, property owners, health care providers, early childhood educators and care providers, realtors and real estate agents, insurers and insurance agents, and local building officials, is hereby established.

(B) Public Information Initiative. The Governor, in conjunction with the Director and Lead Poisoning Prevention Council, shall sponsor a series of public service announcements on radio, television, the World Wide Web, and print media about the nature of lead-based paint hazards, the importance of lead-free and lead-safe housing, and the purposes and responsibilities set forth in this Act. In developing and coordinating this public information initiative the sponsors shall seek the participation and involvement of private industry organizations, including those involved in real estate, insurance, mortgage banking, and pediatrics.

(C) Distribution of Literature About Childhood Lead Poisoning. Within one hundred twenty (120) days following the effective date of this Act, the Director, in consultation with the Lead Poisoning Prevention Council and the Lead Poisoning Prevention Commission, shall develop culturally and linguistically appropriate information pamphlets regarding childhood lead poisoning, the importance of testing for elevated blood lead levels, prevention of childhood lead poisoning, treatment of childhood lead poisoning, and where appropriate, the requirements of this Act. It is a requirement of this Chapter that these information pamphlets be distributed to parents or the other legal guardians of children six (6) years of age or younger on the following occasions:

(1) by the owner of any affected property or his or her agents or employees at the time of the initiation of a rental agreement to a new tenant whose household includes a person at risk or any other woman of childbearing age;

(2) by the health care provider at the time of the child’s birth and at the time of any childhood immunization or vaccine unless it is
established that such information pamphlet has been provided previously to the parent or legal guardian by the health care provider within the prior twelve (12) months; and

(3) by the owner or operator of any child care facility, pre-school, or kindergarten class on or before October 15 of the calendar year.

(D) **Lead-Safe Housing Seminars.** The Director, in conjunction with the [department of housing], within one hundred twenty (120) days following the effective date of this Act, shall establish guidelines and a trainer’s manual for a “Lead-Safe Housing Awareness Seminar” with a total class time of three (3) hours or less. Such courses shall be offered by professional associations and community organizations with a training capacity, existing accredited educational institutions, and for-profit educational providers. All such offerings proposals shall be reviewed and approved, on the criteria of seminar content and qualifications of instructors, by the [department of housing].

(E) **Adoption of Regulations and Distribution of Information Regarding Insurance Requirements.** The [department responsible for insurance regulation] within eighteen (18) months after the effective date of this Act, shall

(1) adopt rules for and issue an advisory bulletin to all state licensed, admitted insurers providing liability coverage for property owners regarding their responsibilities under this Act; and

(2) adopt rules for and issue an advisory bulletin to all state licensed insurance agents and brokers outlining the provisions of this Act and the new requirements for state licensed, admitted insurers.

(F) **Real Estate Brokers and Salespersons—Education and Licensing Requirements.** The [department responsible for regulation of real estate brokers and salespersons], within eighteen (18) months after the effective date of this Act shall:

(1) require reasonable familiarity of the relevant portions of this Act for the licensure or renewal of licenses of real estate brokers and salespersons; and

(2) develop an educational program for real estate brokers and salespersons regarding such duties and responsibilities.

**Section 17. Screening Program.**

(A) **Screening of Children.** The Director shall establish a program for early identification of persons at risk with elevated blood lead levels. Such program shall systematically screen children under six (6) years of age in the target populations identified in subsection (B) for the presence of elevated blood lead levels. Children within the specified target populations shall be screened with a blood lead test at ages twelve (12) and twenty-four (24) months or at ages thirty-six (36) to seventy-two (72) months if they have not
previously been screened. The Director shall, after consultation with recognized professional medical groups and such other sources as he or she deems appropriate, promulgate regulations establishing (1) the means by which and the intervals at which such children under six (6) years of age shall be screened for lead poisoning and elevated blood lead levels and (2) guidelines for the medical follow-up on children found to have elevated blood lead levels.

(B) Screening Priorities. In developing screening programs to identify persons at risk with elevated blood lead levels, the Director shall give priority to persons within the following categories:

(1) all children enrolled in Medicaid at ages twelve (12) and twenty-four (24) months or at ages thirty-six (36) to seventy-two (72) months if they have not previously been screened;\(^{55}\)

(2) children under the age of six (6) exhibiting delayed cognitive development or other symptoms of childhood lead poisoning;

(3) persons at risk residing in the same household, or recently residing in the same household, as another person at risk with a blood lead level of 10µg/dL or greater;

(4) persons at risk residing, or who have recently resided, in buildings or geographical areas where significant numbers of cases of lead poisoning or elevated blood lead levels have recently been reported;

(5) persons at risk residing, or who have recently resided, in affected properties contained in buildings which during the preceding three (3) years have been subject to enforcement actions described in subsection 13(A), receivership actions under subsection 13(C), or where injunctive relief has been sought pursuant to Section 14;

(6) persons at risk residing, or who have recently resided, in other affected properties with the same owner as another building containing affected properties which during the preceding three (3) years have been subject to enforcement actions described in subsection 13(A), receivership actions under subsection 13(C), or where injunctive relief had been sought pursuant to Section 14; and

(7) persons at risk residing in other buildings or geographical areas where the Director reasonably determines there to be a significant risk of affected individuals having a blood lead level of 10µg/dL or greater.

(C) Director to Maintain Records of Screenings and Inform Designated Individuals. The Director shall maintain comprehensive records of all screenings conducted pursuant to this Section. Such records shall be indexed


\(^{56}\) Ibid.
geographically and by owner in order to determine the location of areas of relatively high incidence of lead poisoning and other elevated blood lead levels. Such records, with the name of tested individuals removed for privacy purposes, shall be public records.

All cases or probable cases of lead poisoning, as defined by regulation by the Director, found in the course of screenings conducted pursuant to this Section shall be reported immediately to the affected individual, to his or her parent or legal guardian if he or she is a minor, and to the Director.

Section 18. Definitions.

(A) “Abatement” means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of “permanent”). Abatement includes the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-based hazards.

(B) “Affected property” means a room or a group of rooms within a property constructed before 1978 that form a single independent habitable dwelling unit for occupation by one or more individuals that has living facilities with permanent provisions for living, sleeping, eating, cooking, and sanitation. “Affected property” does not include:

(1) an area not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement;

(2) unit within a hotel, motel, or similar seasonal or transient facility unless such a unit is occupied by one or more persons at risk for a period exceeding thirty (30) days;

(3) an area which is secured and inaccessible to occupant; or

(4) a unit which is not offered for rent.

(C) “Change in occupancy” means a change of tenant in an affected property in which the property is vacated and possession is either surrendered to the owner or abandoned.

(D) “Chewable surface” means an interior or exterior surface painted with lead-based paint that a child under the age of six (6) can mouth or chew. Hard metal substrates and other materials that cannot be dented by the bite of a child under the age of six (6) are not considered chewable.

(E) “Containment” means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown, or tracked from inside to outside of the worksite.

(F) “Deteriorated paint” means any interior or exterior paint or other coating that is peeling, chipping, chalking, or cracking, or any paint or coating
located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(G) “Director” means the Director of Lead Paint Poisoning Prevention.

(H) “Dust-lead hazard” means surface dust in a residential dwelling or a facility occupied by a person at risk that contains a mass per area concentration of lead equal to or exceeding 40µg/ft² on floors or 250µg/ft² on interior windowsills based on wipe samples.

(I) “Dwelling unit” means a:

1. Single-family dwelling, including attached structures such as porches and stoops; or
2. Housing unit in a structure that contains more than one separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of one or more persons.

(J) “Elevated blood lead” or “EBL” means a quantity of lead in whole venous blood, expressed in micrograms per deciliter (µg/dL), that exceeds 15µg/dL or such other level as may be specifically provided in a particular subsection of this Act.

(K) “Encapsulation” means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of “permanent”).

(L) “Exterior surfaces” means:

1. all fences and porches that are part of an affected property;
2. all outside surfaces of an affected property that are accessible to a child under the age of six (6) and that:
   a. are attached to the outside of an affected property; or
   b. consist of other buildings that are part of the affected property; and
3. all painted surfaces in stairways, hallways, entrance areas, recreation areas, laundry areas, and garages within a multifamily rental dwelling unit that are common to individual dwelling units and are accessible to a child under the age of six (6).

(M) “Friction surface” means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.
“g” means gram, “mg” means milligram (thousandth of a gram), and “µg” means microgram (millionth of a gram).

“Hazard reduction” means measures designed to reduce or eliminate human exposure to lead-based hazards through methods including interim controls or abatement or a combination of the two.

“High efficiency particle air vacuum” or “HEPA-vacuum” means a device capable of filtering out particles of 0.3 microns or greater from a body of air at an efficiency of 99.97% or greater. “HEPA-vacuum” includes the use of a HEPA-vacuum.

“Impact surface” means an interior surface that is subject to damage from the impact of repeated sudden force, such as certain parts of door frames.

“Inspection” means a comprehensive investigation to determine the presence of lead-based paint hazards and the provision of a report explaining the results of the investigation.

“Interim controls” means a set of measures designed to reduce temporarily human exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

“Interior windowsill” means a portion of the horizontal window ledge that is protruding into the interior of a room.

“Lead-based paint” means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

“Lead-based paint hazard” means paint-lead hazards and dust-lead hazards.

“Lead-contaminated dust” means dust in affected properties that contains an area or mass concentration of lead in excess of the lead content level determined by the Director by regulation.

“Director’s local designee” means a municipal, county, or other official designated by the Director of Lead Paint Poisoning Prevention as responsible for assisting the Director, relevant state agencies, and relevant county and municipal authorities, in implementing the activities specified by the Act for the geographical area in which the affected property is located.

“Owner” means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls, the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease. “Owner” includes any
authorized agent of the owner, including a property manager or leasing agent.

(Z) “Paint-lead hazard” means any one of the following:

(1) Any lead-based paint on a friction surface that is subject to abrasion and where the dust-lead levels on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) are equal to or greater than the dust-lead hazard levels defined in subsection 18(H), above;

(2) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building material (such as a door knob that knocks into a wall or a door that knocks against its door frame);

(3) Any chewable lead-based painted surface on which there is evidence of teeth marks;

(4) Any other deteriorated lead-based paint in or on the exterior of any residential building or any facility occupied by a person at risk.

(AA) “Permanent” means an expected design life of at least twenty (20) years.

(BB) “Person at risk” means a child under the age of six (6) years or a pregnant woman who resides or regularly spends at least twenty-four (24) hours per week in an affected property.

(CC) “Relocation expenses” means all expenses necessitated by the relocation of a tenant’s household for lead-safe housing, including moving and hauling expenses, the HEPA-vacuuming of all upholstered furniture, payment of security deposit for the lead-safe housing, and installation and connection of utilities and appliances.

(DD) “Soil-lead hazard” means soil on residential real property or on property of a facility occupied by a person at risk that contains total lead equal to or exceeding 400 parts per million (g/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

(EE) “Tenant” means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

(FF) “Wipe sample” means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728 (“Standard Practice for the Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques”), with lead determination conducted by an accredited laboratory participating in the Environmental Lead Laboratory Accreditation Program (NLAP).
Model State Act
Lead Poisoning Prevention Act

Sources

Section 2. Legislative Findings.


Section 3. Legislative Purposes.


Section 4. Responsibilities of Director of Lead Poisoning Prevention.


Section 5. Requirements for Lead-Free Status and Lead-Safe Status.


Section 7. Accreditation of Inspectors and Contractors Performing Work.


Section 8. Registration of Affected Properties.


Section 9. Liability Protection and the Qualified Offer.


Section 10. Availability of Insurance Coverage Guaranteed.


Section 11. Tax Credit.

Source: Adapted from R.I. Gen. Laws § 44-30-97 (2000); see also Maryland provisions.

Section 12. Revolving Loan Fund.

Source: Adapted from R.I. Gen Laws § 44-30-97 (2000); see also Maryland provisions.

Section 13. Enforcement.
Section 14. Private Right to Injunctive Relief.


Section 15. Retaliatory Evictions Prohibited.

Source: Adapted from Md. Real Property Code § 8-208.2 (1999).

Section 16. Educational Programs.


Section 17. Screening Program.


Section 18. Definitions.