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LRB094 17686 LJB 56091 a

1 AMENDMENT TO HOUSE BILL 4853

2 AMENDMENT NO. _____. Amend House Bill 4853, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Procurement Code is amended by
6 adding Section 50-14.5 as follows:

7 (30 ILCS 500/50-14.5 new)

8 Sec. 50-14.5. Lead Poisoning Prevention Act violations.
9 Owners of residential buildings who have committed a willful or
10 knowing violation of the Lead Poisoning Prevention Act are
11 prohibited from doing business with the State of Illinois or
12 any State agency until the violation is mitigated.

13 Section 10. The Lead Poisoning Prevention Act is amended by
14 changing Sections 2, 3, 4, 5, 6, 7.1, 8, 9, and 12 and by adding
15 Sections 6.01, 6.3, 9.2, and 12.1 as follows:

16 (410 ILCS 45/2) (from Ch. 111 1/2, par. 1302)

17 Sec. 2. Definitions. As used in this Act:

18 "Abatement" means the removal or encapsulation of all
19 leadbearing substances in a residential building or dwelling
20 unit.

21 "Child care facility" means any structure used by a child
22 care provider licensed by the Department of Children and Family

1 Services or public school structure frequented by children
2 through 6 years of age.

3 "Delegate agency" means a unit of local government or
4 health department approved by the Department to carry out the
5 provisions of this Act.

6 "Department" means the Department of Public Health of the
7 State of Illinois.

8 "Dwelling" means any structure all or part of which is
9 designed or used for human habitation.

10 "High risk area" means an area in the State determined by
11 the Department to be high risk for lead exposure for children
12 through 6 years of age. The Department shall consider, but not
13 be limited to, the following factors to determine a high risk
14 area: age and condition (using Department of Housing and Urban
15 Development definitions of "slum" and "blighted") of housing,
16 proximity to highway traffic or heavy local traffic or both,
17 percentage of housing determined as rental or vacant, proximity
18 to industry using lead, established incidence of elevated blood
19 lead levels in children, percentage of population living below
20 200% of federal poverty guidelines, and number of children
21 residing in the area who are 6 years of age or younger.

22 "Exposed surface" means any interior or exterior surface of
23 a dwelling or residential building.

24 "Lead abatement contractor" means any person or entity
25 licensed by the Department to perform lead abatement and
26 mitigation.

27 "Lead abatement worker" means any person employed by a lead
28 abatement contractor and licensed by the Department to perform
29 lead abatement and mitigation.

30 "Lead bearing substance" means any item containing or
31 coated with lead such that the lead content is more than
32 six-hundredths of one percent (0.06%) lead by weight; or any
33 dust on surfaces or in furniture or other nonpermanent elements
34 of the dwelling; or ~~and~~ any paint or other surface coating

1 material containing more than five-tenths of one percent (0.5%)
2 lead by weight (calculated as lead metal) in the total
3 non-volatile content of liquid paint;~~it~~ or lead bearing
4 substances containing greater than one milligram per square
5 centimeter or any lower standard for lead content in
6 residential paint as may be established by federal law or
7 regulation; or more than 1 milligram per square centimeter in
8 the dried film of paint or previously applied substance; or
9 item or dust on item ~~object~~ containing lead in excess of the
10 amount specified in the rules and regulations authorized by
11 this Act or a lower standard for lead content as may be
12 established by federal law or regulation.

13 "Lead hazard" means a lead bearing substance that poses an
14 immediate health hazard to humans.

15 "Lead poisoning" means the condition of having blood lead
16 levels in excess of those considered safe under State and
17 federal rules and regulations.

18 "Low risk area" means an area in the State determined by
19 the Department to be low risk for lead exposure for children
20 through 6 years of age. The Department shall consider the
21 factors named in "high risk area" to determine low risk areas.

22 "Mitigation" means the remediation, in a manner described
23 in Section 9, of a lead hazard so that the lead bearing
24 substance does not pose an immediate health hazard to humans.

25 "Owner" means any person, who alone, jointly, or severally
26 with others:

27 (a) Has legal title to any dwelling or residential
28 building, with or without accompanying actual possession
29 of the dwelling or residential building, or

30 (b) Has charge, care or control of the dwelling or
31 residential building as owner or agent of the owner, or as
32 executor, administrator, trustee, or guardian of the
33 estate of the owner.

34 "Person" means any one or more natural persons, legal

1 entities, governmental bodies, or any combination.

2 "Residential building" means any room, group of rooms, or
3 other interior areas of a structure designed or used for human
4 habitation; common areas accessible by inhabitants; and the
5 surrounding property or structures.

6 "Risk assessment" means a questionnaire to be developed by
7 the Department for use by physicians and other health care
8 providers to determine risk factors for children through 6
9 years of age residing in areas designated as low risk for lead
10 exposure.

11 (Source: P.A. 89-381, eff. 8-18-95.)

12 (410 ILCS 45/3) (from Ch. 111 1/2, par. 1303)

13 Sec. 3. Lead bearing substance use. No person shall use or
14 apply lead bearing substances:

15 (a) In or upon any exposed surface of a dwelling or
16 dwelling unit;

17 (b) In or around the exposed surfaces of a child care
18 facility or other structure frequented by children;

19 (c) In or upon any fixtures or other objects used,
20 installed, or located in or upon any exposed surface of a
21 dwelling or residential building, or child care facility, or
22 intended to be so used, installed, or located and that, in the
23 ordinary course of use, are accessible to or ~~and~~ chewable by
24 children;

25 (d) In or upon any items, including, but not limited to,
26 clothing, accessories, jewelry, decorative objects, edible
27 items, candy, food, dietary supplements, toys, furniture, or
28 other articles used by or intended to be ~~and~~ chewable by
29 children;

30 (e) Within or upon a residential building or dwelling,
31 child care facility, school, playground, park, or recreational
32 area, or other areas regularly frequented by children.

33 (Source: P.A. 87-175.)

1 (410 ILCS 45/4) (from Ch. 111 1/2, par. 1304)

2 Sec. 4. Sale of items ~~toys or furniture~~ containing lead
3 bearing substance. No person shall sell, have, offer for sale,
4 or transfer toys, ~~or~~ furniture, clothing, accessories,
5 jewelry, decorative objects, edible items, candy, food,
6 dietary supplements, or other articles used by or intended to
7 be chewable by children that contains a lead bearing substance.
8 (Source: P.A. 87-175.)

9 (410 ILCS 45/5) (from Ch. 111 1/2, par. 1305)

10 Sec. 5. Sale of objects containing lead bearing substance.
11 No person shall sell or transfer or offer for sale or transfer
12 any fixtures or other objects intended to be used, installed,
13 or located in or upon any surface of a dwelling or residential
14 building, or child care facility, that contains a lead bearing
15 substance and that, in the ordinary course of use, are
16 accessible to or ~~and~~ chewable by children.
17 (Source: P.A. 87-175.)

18 (410 ILCS 45/6) (from Ch. 111 1/2, par. 1306)

19 Sec. 6. Warning statement. No person, firm, or corporation
20 shall have, offer for sale, sell, or give away any lead bearing
21 substance that may be used by the general public unless it
22 bears the warning statement as prescribed by federal
23 regulation. If no regulation is prescribed the warning
24 statement shall be as follows when the lead bearing substance
25 is a lead-based paint or surface coating: "WARNING--CONTAINS
26 LEAD. DRIED FILM OF THIS SUBSTANCE MAY BE HARMFUL IF EATEN OR
27 CHEWED. See Other Cautions on (Side or Back) Panel. Do not
28 apply on toys, or other children's articles, furniture, or
29 interior, or exterior exposed surfaces of any residential
30 building or facility that may be occupied or used by children.
31 KEEP OUT OF THE REACH OF CHILDREN." If no regulation is

1 prescribed the warning statement shall be as follows when the
2 lead bearing substance contains lead-based paint or a form of
3 lead other than lead-based paint: "WARNING CONTAINS LEAD. MAY
4 BE HARMFUL IF EATEN OR CHEWED. MAY GENERATE DUST CONTAINING
5 LEAD. KEEP OUT OF THE REACH OF CHILDREN.".

6 (a) The generic term of a product, such as "paint" may be
7 substituted for the word "substance" in the above labeling.

8 (b) The placement, conspicuousness, and contrast of the
9 above labeling shall be in accordance with Section 191.101 of
10 the regulations promulgated under the provisions of the Federal
11 Hazardous Substances Act.

12 (Source: P.A. 87-175.)

13 (410 ILCS 45/6.01 new)

14 Sec. 6.01. Warning statement where supplies sold.

15 (a) Any retailer, store, or commercial establishment that
16 offers paint or other supplies intended for the removal of
17 paint shall display, in a prominent and easily visible
18 location, a poster containing, at a minimum, the following:

19 (1) a statement that dry sanding and dry scraping of
20 paint in dwellings built before 1978 is dangerous;

21 (2) a statement that the improper removal of old paint
22 is a significant source of lead dust and the primary cause
23 of lead poisoning; and

24 (3) the phone number and Internet website address of
25 the Department or delegate agency where customers can
26 obtain additional information.

27 (b) The Department shall provide sample posters that
28 commercial establishments may use. The Department shall make
29 these posters available in hard copy and via download from the
30 Department's Internet website.

31 (410 ILCS 45/6.3 new)

32 Sec. 6.3. Information provided by the Department of

1 Healthcare and Family Services.

2 (a) The Director of Healthcare and Family Services shall
3 provide, upon request of the Director of Public Health, an
4 electronic record of all children less than 7 years of age who
5 receive Medicaid, Kidcare, or other health care benefits from
6 the Department of Healthcare and Family Services. The records
7 shall include a history of claims filed for each child and the
8 health care provider who rendered the services. On at least an
9 annual basis, the Director of Public Health shall match the
10 records provided by the Department of Healthcare and Family
11 Services with the records of children receiving lead tests, as
12 reported to the Department under Section 7 of this Act.

13 (b) The Director shall prepare a report documenting the
14 frequency of lead testing and elevated blood and lead levels
15 among children receiving benefits from the Department of
16 Healthcare and Family Services. On at least an annual basis,
17 the Director shall prepare and deliver a report to each health
18 care provider who has rendered services to children receiving
19 benefits from the Department of Healthcare and Family Services.
20 The report shall contain the aggregate number of children
21 receiving benefits from the Department of Healthcare and Family
22 Services to whom the provider has provided services, the number
23 and percentage of children tested for lead poisoning, and the
24 number and percentage of children having an elevated lead
25 level. The Department of Public Health may exclude health care
26 providers who provide specialized or emergency medical care and
27 who are unlikely to be the primary medical care provider for a
28 child. Upon the request of a provider, the Department of Public
29 Health may generate a list of individual patients treated by
30 that provider according to the claims records and the patients'
31 lead test results.

32 (410 ILCS 45/7.1) (from Ch. 111 1/2, par. 1307.1)

33 Sec. 7.1. Child care facilities must require lead blood

1 level screening for admission. By January 1, 1993, each day
2 care center, day care home, preschool, nursery school,
3 kindergarten, or other child care facility, licensed or
4 approved by the State, including such programs operated by a
5 public school district, shall include a requirement that each
6 parent or legal guardian of a child between the ages of 6
7 months through 6 years provide a statement from a physician or
8 health care provider that the child has been risk assessed, as
9 provided in Section 6.2, if the child resides in an area
10 defined as low risk by the Department, or screened for lead
11 poisoning as provided for in Section 6.2, if the child resides
12 in an area defined as high risk. This statement shall be
13 provided prior to admission and subsequently in conjunction
14 with required physical examinations.

15 Nothing in this Section shall be construed to require any
16 child to undergo a lead blood level screening or test whose
17 parent or guardian objects on the grounds that the screening or
18 test conflicts with his or her religious beliefs.

19 Child care facilities that participate in the Illinois
20 Child Care Assistance Program (CCAP) shall annually send or
21 deliver to the parents or guardians of children enrolled in the
22 facility's care an informational pamphlet regarding awareness
23 of lead paint poisoning. Pamphlets shall be produced and made
24 available by the Department and shall be downloadable from the
25 Department's Internet website. The Department of Human
26 Services and the Department of Public Health shall assist in
27 the distribution of the pamphlet.

28 (Source: P.A. 89-381, eff. 8-18-95.)

29 (410 ILCS 45/8) (from Ch. 111 1/2, par. 1308)

30 Sec. 8. Inspection of buildings occupied by a person
31 screening positive. A representative of the Department, or
32 delegate agency, may, after notification that an occupant of
33 the dwelling unit in question is found to have a blood lead

1 value of the value set forth in Section 7, upon presentation of
2 the appropriate credentials to the owner, occupant, or his
3 representative, inspect dwelling or dwelling units, at
4 reasonable times, for the purposes of ascertaining that all
5 surfaces accessible to children are intact and in good repair,
6 and for purposes of ascertaining the existence of lead bearing
7 substances. Such representative of the Department, or delegate
8 agency, may remove samples or objects necessary for laboratory
9 analysis, in the determination of the presence of lead-bearing
10 substances in the designated dwelling or dwelling unit.

11 If a building is occupied by a child of less than 3 years
12 of age screening positive the Department, in addition to all
13 other requirements of this Section, must inspect the dwelling
14 unit and common place area of the child screening positive.

15 The Department shall inspect units where (i) children under
16 the age of 6 reside, at the request of a parent or guardian of
17 the child or (ii) a pregnant woman resides, at the pregnant
18 woman's request.

19 Following the inspection, the Department or its delegate
20 agency shall:

21 (1) Prepare an inspection report which shall:

22 (A) State the address of the dwelling unit.

23 (B) Describe the scope of the inspection, the
24 inspection procedures used, and the method of ascertaining
25 the existence of a lead bearing substance in the dwelling
26 unit.

27 (C) State whether any lead bearing substances were
28 found in the dwelling unit.

29 (D) Describe the nature, extent, and location of any
30 lead bearing substance that is found.

31 (E) State either that a lead hazard does exist or that
32 a lead hazard does not exist. If a lead hazard does exist,
33 the report shall describe the source, nature and location
34 of the lead hazard. The existence of intact lead paint does

1 not alone constitute a lead hazard for the purposes of this
2 Section.

3 (F) Give the name of the person who conducted the
4 inspection and the person to contact for further
5 information regarding the inspection and the requirements
6 of this Act.

7 (2) Mail or otherwise provide a copy of the inspection
8 report to the property owner and to the occupants of the
9 dwelling unit. If a lead bearing substance is found, at the
10 time of providing a copy of the inspection report, the
11 Department or its delegate agency shall attach an informational
12 brochure.

13 (Source: P.A. 87-175; 87-1144.)

14 (410 ILCS 45/9) (from Ch. 111 1/2, par. 1309)

15 Sec. 9. Procedures upon determination of lead hazard.

16 (1) If the inspection report identifies a lead hazard, the
17 Department or delegate agency shall serve a mitigation notice
18 on the property owner that the owner is required to mitigate
19 the lead hazard, and shall indicate the time period specified
20 in this Section in which the owner must complete the
21 mitigation. The notice shall include information describing
22 mitigation activities which meet the requirements of this Act.

23 (2) If the inspection report identifies a lead hazard, the
24 owner shall mitigate the lead hazard in a manner prescribed by
25 the Department and within the time limit prescribed by this
26 Section. The Department shall adopt rules regarding acceptable
27 methods of mitigating a lead hazard. If the source of the lead
28 hazard identified in the inspection report is lead paint or any
29 other leaded surface coating, the lead hazard shall be deemed
30 to have been mitigated if:

31 (A) The surface identified as the source of the hazard
32 is no longer in a condition that produces a hazardous level
33 of leaded chips, flakes, dust or any other form of leaded

1 substance, that can be ingested or inhaled by humans, or;

2 (B) If the surface identified as the source of the
3 hazard is accessible to children and could reasonably be
4 chewed on by children, the surface coating is either
5 removed or covered, the surface is removed, or the access
6 to the leaded surface by children is otherwise prevented as
7 prescribed by the Department.

8 (3) Mitigation activities which involve the destruction or
9 disturbance of any leaded surface shall be conducted by a
10 licensed lead abatement contractor using licensed lead
11 abatement workers. The Department may prescribe by rule
12 mitigation activities that may be performed without a licensed
13 contractor or worker. The Department may, on a case by case
14 basis, grant a waiver of the requirement to use licensed lead
15 abatement contractors and workers, provided the waiver does not
16 endanger the health or safety of humans.

17 (4) The Department shall establish procedures whereby an
18 owner, after receiving a mitigation notice under this Section,
19 may submit a mitigation plan to the Department or delegate
20 agency for review and approval.

21 (5) When a mitigation notice is issued for a dwelling unit
22 inspected as a result of an elevated blood lead level in a
23 pregnant woman or a child, or if the dwelling unit is occupied
24 by a child under 6 years of age or a pregnant woman, the owner
25 shall mitigate the hazard within 30 days of receiving the
26 notice; otherwise, the owner shall complete the mitigation
27 within 90 days.

28 (6) An owner may apply to the Department or its delegate
29 agency for an extension of the deadline for mitigation. If the
30 Department or its delegate agency determines that the owner is
31 making substantial progress toward mitigation, or that the
32 failure to meet the deadline is the result of a shortage of
33 licensed abatement contractors or workers, or that the failure
34 to meet the deadline is because the owner is awaiting the

1 review and approval of a mitigation plan, the Department or
2 delegate agency may grant an extension of the deadline.

3 (7) The Department or its delegate agency may, after the
4 deadline set for completion of mitigation, conduct a follow-up
5 inspection of any dwelling for which a mitigation notice was
6 issued for the purpose of determining whether the mitigation
7 actions required have been completed and whether the activities
8 have sufficiently mitigated the lead hazard as provided under
9 this Section. The Department or its delegate agency may conduct
10 a follow-up inspection upon the request of an owner or
11 resident. If, upon completing the follow-up inspection, the
12 Department or its delegate agency finds that the lead hazard
13 for which the mitigation notice was issued is not mitigated,
14 the Department or its delegate agency shall serve the owner
15 with notice of the deficiency and a mitigation order. The order
16 shall indicate the specific actions the owner must take to
17 comply with the mitigation requirements of this Act, which may
18 include abatement if abatement is the sole means by which the
19 lead hazard can be mitigated. The order shall also include the
20 date by which the mitigation shall be completed. If, upon
21 completing the follow-up inspection, the Department or
22 delegate agency finds that the mitigation requirements of this
23 Act have been satisfied, the Department or delegate agency
24 shall provide the owner with a certificate of compliance
25 stating that the required mitigation has been accomplished.

26 (8) When mitigation notices are issued for 2 or more
27 dwelling units in a building within a 5-year time period, the
28 Department may inspect common areas in the building and shall
29 inspect units where (i) children under the age of 6 reside, at
30 the request of a parent or guardian of the child or (ii) a
31 pregnant woman resides, at the pregnant woman's request. All
32 lead hazards must be mitigated in a reasonable time frame, as
33 determined by rules adopted by the Department by December 31,
34 2006.

1 (Source: P.A. 87-175; 87-1144.)

2 (410 ILCS 45/9.2 new)

3 Sec. 9.2. Owner's obligation to post notice. The owner of a
4 dwelling unit or residential building who has received a
5 mitigation notice under Section 9 of this Act shall post
6 notices in common areas of the building specifying the
7 identified lead hazards. The posted notices, drafted by the
8 Department and sent to the property owner with the notification
9 of lead hazards, shall indicate the following:

10 (1) that a unit or units in the building have been
11 found to have lead hazards;

12 (2) that other units in the building may have lead
13 hazards;

14 (3) that the Department recommends that children 6
15 years of age or younger receive a blood lead screening; and

16 (4) where to seek further information.

17 Once the Department determines that a lead hazard has been
18 mitigated, the owner may remove notices posted pursuant to this
19 Section.

20 (410 ILCS 45/12) (from Ch. 111 1/2, par. 1312)

21 Sec. 12. Violations of Act.

22 (a) Violation of any Section of this Act other than Section
23 6.01 or Section 7 shall be punishable as a Class A misdemeanor.
24 A violation of Section 6.01 shall be a petty offense.

25 (b) In cases where a person is found to have mislabeled,
26 possessed, offered for sale or transfer, sold or transferred,
27 or given away lead-bearing substances, a representative of the
28 Department shall confiscate the lead-bearing substances and
29 retain the substances until they are shown to be in compliance
30 with this Act.

31 (c) In addition to any other penalty provided under this
32 Act, the court in an action brought under subsection (e) may

1 impose upon any person who violates or does not comply with a
2 notice of deficiency and a mitigation order issued under
3 subsection (7) of Section 9 of this Act or who fails to comply
4 with subsection (3) or subsection (5) of Section 9 of this Act
5 a civil penalty not exceeding \$2,500 for each violation, plus
6 \$250 for each day that the violation continues.

7 Any civil penalties collected in a court proceeding shall
8 be deposited into a delegated county lead poisoning screening,
9 prevention, and abatement fund or, if no delegated county or
10 lead poisoning screening, prevention, and abatement fund
11 exists, into the Lead Poisoning Screening, Prevention, and
12 Abatement Fund established under Section 7.2.

13 (d) Whenever the Department finds that an emergency exists
14 that requires immediate action to protect the health of
15 children under this Act, it may, without administrative
16 procedure or notice, cause an action to be brought by the
17 Attorney General or the State's Attorney of the county in which
18 a violation has occurred for a temporary restraining order or a
19 preliminary injunction to require such action as is required to
20 meet the emergency and protect the health of children.

21 (e) The State's Attorney of the county in which a violation
22 occurs or the Attorney General may bring an action for the
23 enforcement of this Act and the rules adopted and orders issued
24 under this Act, in the name of the People of the State of
25 Illinois, and may, in addition to other remedies provided in
26 this Act, bring an action for a temporary restraining order or
27 preliminary injunction as described in subsection (d) or an
28 injunction to restrain any actual or threatened violation or to
29 impose or collect a civil penalty for any violation.

30 (Source: P.A. 92-447, eff. 8-21-01.)

31 (410 ILCS 45/12.1 new)

32 Sec. 12.1. Attorney General and State's Attorney report to
33 General Assembly. The Attorney General and State's Attorney

1 offices shall report to the General Assembly annually the
2 number of lead poisoning cases that have been referred by the
3 Department for enforcement due to violations of this Act or for
4 failure to comply with a notice of deficiency and mitigation
5 order issued pursuant to subsection (7) of Section 9 of this
6 Act.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".