

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as “equals” in “unison” with politicians to write laws to govern your life. Big Business has “a VOICE and a VOTE,” according to newly exposed documents. **DO YOU?**

### Voluntary Childhood Lead Exposure Control Act

#### Summary

This Act provides protection from liability against claims of injuries allegedly arising from lead exposure for any residential property owner who voluntarily meets certain lead abatement and maintenance standards for his residential properties. Attaining such a maintenance standard is in no way compulsory. The Act is designed to give property owners certainty that if they meet the standard, they will not be found legally liable. Conversely, not meeting the standard in no way constitutes admission of liability for any property owner.

#### Model Legislation

**Section 1. {Title}** This Act may be cited as the “Voluntary Childhood Lead Exposure Control Act.”

**Section 2. {Definitions}** As used in this Act, unless the context requires otherwise, the term:

(A) “Abatement.” Identifying lead-based paint, identifying or assessing a lead-based paint hazard, or undertaking any the following measures to eliminate a lead-based paint hazard:

- (1) Removing a lead-based paint from a surface and repainting the surface.
- (2) Removing a component, such as a windowsill, painted with lead-based paint and replacing the component.
- (3) Enclosing a surface painted with lead-based paint with paneling, vinyl siding, or another approved material.
- (4) Encapsulating a surface painted with lead-based paint with a sealant.
- (5) Any other measure approved by the Department.

The term includes an inspection and a risk assessment.

(B) “Confirmed lead poisoning.” Means blood lead concentration of 20 micrograms per deciliter or greater in a child under six years of age, determined by the lower of two consecutive blood tests within a six-month period.

(C) “Day care facility.” Means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the need of children under 6 years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(D) “Department.” Means the {insert department} or its authorized agent.

(E) "Dwelling," "Dwelling unit" or "Residential housing unit" means a structure, all or part of which is designed or used for human habitation, including the common areas, the grounds, any outbuildings, or other structures appurtenant to the dwelling, dwelling unit, or residential housing unit.

(F) "Elevated blood lead level." Means a blood lead concentration of 10 micrograms per deciliter or greater in a child under six years of age, determined by the lower of two consecutive blood tests within a six-month period.

(G) "Lead poisoning hazard." Means the presence of readily accessible or mouth-able lead-bearing substances. These hazards measured in accord with the federal guidelines of 1.0 milligram per square centimeter or greater by X-ray fluorescence; or 0.5 percent or greater by chemical analysis; or 50 micrograms per square foot or greater for dust on floors; or 250 micrograms per square foot or greater for dust on window sills; or soil lead concentration of greater than 2000 ppm, which is determined by the state Department to present a hazard in view of the condition and use of the land, and other relevant factors.

(H) "Lead-safe housing" is housing that was built since 1978, or that has been tested by a person that has been certified by the department to perform such testing and either found to have no lead-based paint hazards within the meaning of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, or found to meet the requirements of the maintenance standard.

(I) "Managing agent." Means any person who has charge, care or control of a building or part thereof in which dwelling units or rooming units are leased.

(J) "Maintenance Standard." Means the following:

(1) Repairing and repainting areas of deteriorated paint inside a residential housing unit;

(2) Cleaning the interior of the unit to remove dust that constitutes a lead poisoning hazard;

(3) Adjusting doors and windows to minimize friction or impact on surfaces;

(4) Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992, and amendments thereto.

(K) "Mouth-able lead-bearing substance." Means any substance on surfaces or fixtures five feet or less from the floor or ground that form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are freestanding, containing lead-contaminated dust at a level that constitutes a residential lead poisoning hazard. Mouth-able surfaces or fixtures include doors, door jams, stairs, stair rails, windows, windowsills and baseboards.

(L) "Persistent elevated blood lead level." Means a blood lead concentration of 15-19 micrograms per deciliter in a child under the age of six, determined by the lowest of three consecutive blood tests. The first two blood tests shall be performed within a six month period, and the third blood test shall be performed at least 12 weeks and not more than six months after the second blood test.

(M) "Readily accessible lead-bearing substance." Means any substance containing lead at a level that constitutes a lead poisoning hazard that can be ingested or inhaled by a child under six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, chalking or blistering to the extent that the paint has separated from the substrate.

(N) "Regularly visits." Means presence at a dwelling, dwelling unit, school, or day care facility for at least two days a week for more than three hours per day.

(O) "Supplemental address." Means a dwelling, dwelling unit, school, or day care facility where a child with a persistent elevated blood lead level or a confirmed lead poisoning regularly visits or attends. Supplemental address also means a dwelling, school or day care facility where a child resided, regularly visited or attended within the six months immediately preceding the determination of a persistent elevated blood lead level or a confirmed lead poisoning.

**Section 3. {Reports of blood levels in children}** All laboratories doing business in this State shall report to the Department blood lead levels of one microgram per deciliter or greater for children under six years of age and for individuals whose ages are unknown at the time of testing. Reports shall be made within five working days after test completion on forms provided by the Department or on self-generated forms containing: the child's full name, date of birth, sex, race, address, and Medicaid number, if any; the name, address, and telephone number of the requesting healthcare provider; the name, address and telephone number of the testing laboratory; the laboratory results, the specimen type—venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. Such reports may be made by electronic submissions.

**Section 4. {Examination and Testing}** When the Department has a reasonable belief that a child under six years of age has a persistent elevated blood lead level or a confirmed lead poisoning, the Department shall require, with parental or legal guardian consent, that child to be examined and tested within 30 days. The Department shall require from the parent or legal guardian in the case of a dwelling or dwelling unit; or from the owner or managing agent in the case of school or day care facility information on each child who resides in, regularly visits, or attends, or, who has within the past six months, resided in, regularly visited, or attended the dwelling or facility. The information required shall include each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department.

#### **Section 5. {Investigation to identify lead poisoning hazards}**

(A) When the Department learns of a persistent elevated blood lead level or a confirmed lead poisoning, the Department shall conduct an investigation to identify the lead poisoning hazards to children. The Department shall investigate the dwelling, dwelling unit, school, or day care facility where the child with the persistent elevated blood lead level or the confirmed lead poisoning resides, regularly visits or attends. The Department shall also investigate the supplemental addresses of the child who has a persistent elevated blood lead level or a confirmed lead poisoning.

(B) The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit, school, or day care facility occupied, regularly visited, or attended by a child less than 6 year of age.

(C) In conducting an investigation, the Department may take samples of surface materials, or other materials suspected of containing lead, for analysis and testing.

(D) Such investigations must meet the following conditions.

(1) The investigation occurs at a reasonable time.

(2) The representative of the Department or local government presents appropriate credentials to the owner or occupant.

(3) Either the dwelling's owner or adult occupant grants consent to enter the premises to conduct an investigation without a warrant issued by the appropriate issuing authority, or;

(4) If consent by the owner or adult occupant is not granted, the representative of the Department or local government director may petition the appropriate issuing authority for a warrant to enter the premises and conduct an investigation. If the court finds probable cause exists that the inhabitants of the dwelling are likely to suffer adverse health effects from continued exposure to a lead hazard which may be present within the dwelling, it shall issue the warrant.

**Section 6. {Notification}** Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the dwelling, dwelling unit, school, or day care facility and to all persons residing in or attending the dwelling or facility. The written notice to the owner or managing agent shall include a list of possible methods of abatement of the lead poisoning hazard.

#### **Section 7. {Abatement}**

(A) Upon determination that a child under six years of age has a confirmed lead poisoning of 20 micrograms per deciliter or greater and that child resides in, attends, or regularly visits, a dwelling, dwelling unit, school or day care facility containing lead poisoning hazards, the Department shall require abatement of the lead poisoning hazards. The Department shall also require the abatement of the lead poisoning hazards identified at the supplemental addresses of a child under six years of age with a confirmed lead poisoning of 20 micrograms per deciliter or greater.

(B) When abatement is required under subsection (A) of this section, the owner or managing agent shall have 90 days to reduce the lead poisoning hazard to below the following levels, in methods approved by the Department.

(1) Floor lead dust levels are less than 50 micrograms per square foot;

(2) Windowsill lead dust levels are less than 250 micrograms per square foot;

(3) Soil lead levels are less than 2000 ppm, or such other levels higher than 2000 ppm as determined by the Department to prevent a hazard in light of the condition and use of the land and other relevant factors.

(C) The owner or managing agent shall notify the Department and the occupants of the dates of abatement activities at least three days prior to the commencement of the abatement activities.

(D) An owner or managing agent may apply to the Department for an extension of the deadline for abatement. The Department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(E) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal laws and rules.

(F) The Department shall verify by visual inspection that abatement has been completed. The Department may also verify abatement completion by residual lead dust monitoring. Compliance with the maintenance standard shall be deemed equivalent to meeting abatement requirements as long as exterior surfaces are also addressed.

(G) Removal of children from dwelling, school, or day care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or day care facility.

### **Section 8. {Effect of compliance with maintenance standard}**

(A) Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust, shall not be deemed liable:

(1) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under Section 2, subsection 10, provided the owner has repeated the steps provided for in the maintenance standard biannually and obtained a certificate of compliance under Section 9 biannually during such occupancy; or

(2) if the owner is able to show that the unit was lead-safe housing containing no lead-based paint hazards during the period when the injuries were sustained.

**Section 9. {Certificate of evidence of compliance}** An owner of a unit who has complied with the maintenance standard may apply biannually to the Department for and upon presentation of acceptable proof of compliance shall be provided by the Department a certificate evidencing such compliance. The owner shall be entitled to the liability relief provided for in Section 8 upon obtaining such certificate or certificates.

### **Section 10. {Discrimination in financing}**

(A) No bank or financial institution in the business of lending money for the purchase, sale, construction, rehabilitation, improvement, or refinancing of real property or the lending of money secured by an interest in real property may refuse to make such loans merely because of the presence of lead-based paint on the residential real property or in the residential housing unit provided that the owner is in compliance with the maintenance standard and has obtained a certificate of compliance under Section 9 biannually.

(B) Nothing in this section shall:

(1) require a financial institution to extend a loan or otherwise provide financial assistance if it is clearly evident that health-related issues, other than those related to lead-based paint, make occupancy of the housing accommodation an imminent threat to the health or safety of the occupant, or;

(2) be construed to preclude a financial institution from considering the fair market value of the property that will secure the proposed loan.

(3) Imply liability on any bank or financial institution lending money for the purchase, sale, construction, rehabilitation, improvement or refinancing of real property or the lending of money secured by an interest in real property, from any legal action pertaining to the property owner.

(C) Failure to meet the maintenance standard shall not be deemed a default under existing mortgages.

**Section 11. {Resident responsibilities}**

(A) In any residential housing unit occupied by a child less than six years old who has an elevated blood lead level of 10 micrograms per deciliter or greater, the Department shall advise, in writing, the owner or managing agent and the child's parents or legal guardian as to the importance of carrying out routine cleaning activities in the unites they occupy, own or manage. Such cleaning activities shall include:

(1) Wiping clean all window sills with a damp cloth or sponge at least weekly;

(2) Regularly washing all surfaces accessible to children;

(3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of such conditions within 72 hours of discovery; and

(4) Identifying and understanding potential lead poisoning hazards in the environment of each child under the age of six in the unit (including vinyl mini-blinds, playground equipment, and painted surfaces), and taking steps to prevent children from ingesting lead such as encouraging children to wash their face and hands frequently and especially after playing outdoors.

**Section 12. {Implementation}** The Department shall adopt rules under {insert chapter} of the General Statutes to implement this act.

**Section 13. {Severability clause}**

**Section 14. {Repealer clause}**

**Section 15. {Effective date}**

Were your laws repealed?

*Adopted by the Natural Resources Task Force at the November 14, 1998 Task Force Meeting. Approved by the full ALEC Board of Directors December, 1998.*

**ALEC EXPOSED**

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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