



Rep. Harry Osterman

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LRB095 19904 RPM 49508 a

1 AMENDMENT TO HOUSE BILL 5789

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5789, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Lead Poisoning Prevention Act is amended by  
6 changing Sections 2, 6, and 12 as follows:

7 (410 ILCS 45/2) (from Ch. 111 1/2, par. 1302)

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

9 "Abatement" means the removal or encapsulation of all  
10 leadbearing substances in a residential building or dwelling  
11 unit.

12 "Child care facility" means any structure used by a child  
13 care provider licensed by the Department of Children and Family  
14 Services or public school structure frequented by children  
15 through 6 years of age.

16 "Delegate agency" means a unit of local government or

1 health department approved by the Department to carry out the  
2 provisions of this Act.

3 "Department" means the Department of Public Health of the  
4 State of Illinois.

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

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

19 "Exposed surface" means any interior or exterior surface of  
20 a dwelling or residential building.

21 "Lead abatement contractor" means any person or entity  
22 licensed by the Department to perform lead abatement and  
23 mitigation.

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

1 "Lead bearing substance" means any item containing or  
2 coated with lead such that the lead content is more than  
3 six-hundredths of one percent (0.06%) lead by total weight or a  
4 lower standard for lead content as may be established by  
5 federal or State law or regulation; or any dust on surfaces or  
6 in furniture or other nonpermanent elements of the dwelling; or  
7 any paint or other surface coating material containing more  
8 than five-tenths of one percent (0.5%) lead by total weight  
9 (calculated as lead metal) in the total non-volatile content of  
10 liquid paint; or lead bearing substances containing greater  
11 than one milligram per square centimeter or any lower standard  
12 for lead content in residential paint as may be established by  
13 federal law or regulation; or more than 1 milligram per square  
14 centimeter in the dried film of paint or previously applied  
15 substance; or item or dust on item containing lead in excess of  
16 the amount specified in the rules and regulations authorized by  
17 this Act or a lower standard for lead content as may be  
18 established by federal law or regulation. "Lead bearing  
19 substance" does not include firearm ammunition or components as  
20 defined by the Firearm Owners Identification Card Act.

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

23 "Lead poisoning" means the condition of having blood lead  
24 levels in excess of those considered safe under State and  
25 federal rules and regulations.

26 "Low risk area" means an area in the State determined by

1 the Department to be low risk for lead exposure for children  
2 through 6 years of age. The Department shall consider the  
3 factors named in "high risk area" to determine low risk areas.

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

7 "Owner" means any person, who alone, jointly, or severally  
8 with others:

9 (a) Has legal title to any dwelling or residential  
10 building, with or without accompanying actual possession  
11 of the dwelling or residential building, or

12 (b) Has charge, care or control of the dwelling or  
13 residential building as owner or agent of the owner, or as  
14 executor, administrator, trustee, or guardian of the  
15 estate of the owner.

16 "Person" means any one or more natural persons, legal  
17 entities, governmental bodies, or any combination.

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

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

1 (Source: P.A. 94-879, eff. 6-20-06.)

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

3 Sec. 6. Warning statement.

4 (a) Children's products. Effective January 1, 2010, no  
5 person, firm, or corporation shall sell, have, offer for sale,  
6 or transfer toys, furniture, clothing, accessories, jewelry,  
7 decorative objects, edible items, candy, food, dietary  
8 supplements, or other articles used by or intended to be  
9 chewable by children that contain a total lead content in any  
10 component part of the item that is more than 0.004% (40 parts  
11 per million) but less than 0.06% (600 parts per million) by  
12 total weight or a lower standard for lead content as may be  
13 established by federal or State law or regulation, unless that  
14 item bears a warning statement that indicates that at least one  
15 component part of the item contains lead.

16 The warning statement shall be as follows: "WARNING:  
17 CONTAINS LEAD. MAY BE HARMFUL IF EATEN OR CHEWED. MAY GENERATE  
18 DUST CONTAINING LEAD."

19 An entity is in compliance with this subsection (a) if the  
20 warning statement is provided on the children's product or on  
21 the label on the immediate container of the children's product.  
22 This subsection (a) does not apply to any product for which  
23 federal law governs warning in a manner that preempts State  
24 authority.

25 (b) Other leadbearing substances. No person, firm, or

1 corporation shall have, offer for sale, sell, or give away any  
2 lead bearing substance that may be used by the general public,  
3 except as otherwise provided in subsection (a) of this Section,  
4 unless it bears the warning statement as prescribed by federal  
5 regulation. If no regulation is prescribed the warning  
6 statement shall be as follows when the lead bearing substance  
7 is a lead-based paint or surface coating: "WARNING--CONTAINS  
8 LEAD. ~~DRIED FILM OF THIS SUBSTANCE~~ MAY BE HARMFUL IF EATEN OR  
9 CHEWED. MAY GENERATE DUST CONTAINING LEAD. See Other Cautions  
10 on (Side or Back) Panel. Do not apply on toys, or other  
11 children's articles, furniture, or interior, or exterior  
12 exposed surfaces of any residential building or facility that  
13 may be occupied or used by children. KEEP OUT OF THE REACH OF  
14 CHILDREN.". If no regulation is prescribed the warning  
15 statement shall be as follows when the lead bearing substance  
16 contains lead-based paint or a form of lead other than  
17 lead-based paint: "WARNING CONTAINS LEAD. MAY BE HARMFUL IF  
18 EATEN OR CHEWED. MAY GENERATE DUST CONTAINING LEAD. KEEP OUT OF  
19 THE REACH OF CHILDREN.".

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

22 (d) ~~(b)~~ The placement, conspicuousness, and contrast of the  
23 above labeling shall be in accordance with 16 C.F.R. 1500.121.

24 (e) A retail entity with no role or control over the  
25 manufacture, importation, or distribution of a product covered  
26 under subsection (a) or subsection (b) of this Section and no

1 reasonable means of knowing the lead content of a product  
2 covered under subsection (a) or subsection (b) of this Section  
3 is not responsible for compliance with those subsections.  
4 Nothing in this Section shall require a retail entity to test a  
5 product to determine lead content.

6 (f) Subsection (b) of this Section does not apply to any  
7 component part of a consumer electronic product, including, but  
8 not limited to, personal computers, audio and video equipment,  
9 calculators, wireless phones, game consoles, and handheld  
10 devices incorporating a video screen used to access interactive  
11 software and their associated peripherals, that is not  
12 accessible to a child through normal and reasonably foreseeable  
13 use and abuse of the product. A component part is not  
14 accessible under this subsection (f) if the component part is  
15 not physically exposed by reason of a sealed covering or casing  
16 and does not become physically exposed through reasonably  
17 foreseeable use and abuse of the product. Paint, coatings, and  
18 electroplating, singularly or in any combination, are not  
19 sufficient to constitute a sealed covering or casing for  
20 purposes of this Section.

21 (g) Notwithstanding any other rulemaking authority that  
22 may exist, neither the Governor nor any agency or agency head  
23 under the jurisdiction of the Governor has any authority to  
24 make or promulgate rules to implement or enforce the provisions  
25 of this amendatory Act of the 95th General Assembly. If,  
26 however, the Governor believes that rules are necessary to

1 implement or enforce the provisions of this amendatory Act of  
2 the 95th General Assembly, the Governor may suggest rules to  
3 the General Assembly by filing them with the Clerk of the House  
4 and the Secretary of the Senate and by requesting that the  
5 General Assembly authorize such rulemaking by law, enact those  
6 suggested rules into law, or take any other appropriate action  
7 in the General Assembly's discretion. Nothing contained in this  
8 amendatory Act of the 95th General Assembly shall be  
9 interpreted to grant rulemaking authority under any other  
10 Illinois statute where such authority is not otherwise  
11 explicitly given. For the purposes of this amendatory Act of  
12 the 95th General Assembly, "rules" is given the meaning  
13 contained in Section 1-70 of the Illinois Administrative  
14 Procedure Act, and "agency" and "agency head" are given the  
15 meanings contained in Sections 1-20 and 1-25 of the Illinois  
16 Administrative Procedure Act to the extent that such  
17 definitions apply to agencies or agency heads under the  
18 jurisdiction of the Governor.

19 (Source: P.A. 94-879, eff. 6-20-06.)

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 cause the Department to issue  
25 a written warning for a first offense and shall be a petty



1 offense for a second or subsequent offense if the violation  
2 occurs at the same location within 12 months after the first  
3 offense.

4 (b) In cases where a person is found to have mislabeled,  
5 possessed, offered for sale or transfer, sold or transferred,  
6 or given away lead-bearing substances, a representative of the  
7 Department shall confiscate the lead-bearing substances and  
8 retain the substances until they are shown to be in compliance  
9 with this Act.

10 (c) In addition to any other penalty provided under this  
11 Act, the court in an action brought under subsection (e) may  
12 impose upon any person who violates or does not comply with a  
13 notice of deficiency and a mitigation order issued under  
14 subsection (7) of Section 9 of this Act or who fails to comply  
15 with subsection (3) or subsection (5) of Section 9 of this Act  
16 a civil penalty not exceeding \$2,500 for each violation, plus  
17 \$250 for each day that the violation continues.

18 Any civil penalties collected in a court proceeding shall  
19 be deposited into a delegated county lead poisoning screening,  
20 prevention, and abatement fund or, if no delegated county or  
21 lead poisoning screening, prevention, and abatement fund  
22 exists, into the Lead Poisoning Screening, Prevention, and  
23 Abatement Fund established under Section 7.2.

24 (c-5) In addition to any other penalty provided under this  
25 Act, the court in an action brought under subsection (e) of  
26 this Section may impose a civil penalty not exceeding \$2,500

1 for each violation, plus \$250 for each day the violation  
2 continues for any violation of Section 4, Section 5, or Section  
3 6 of this Act. Any penalties collected in a court proceeding  
4 shall be deposited into the Lead Poisoning Screening,  
5 Prevention, and Abatement Fund established under Section 7.2 of  
6 this Act.

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

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

24 (Source: P.A. 94-879, eff. 6-20-06.)".