

By: Delegate Hubbard

Requested: October 26, 1995

Introduced and read first time: January 10, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 Lead Functions - Transfer to Department of Health and Mental Hygiene

3 FOR the purpose of transferring the Lead Poisoning Prevention Program from the
4 Department of the Environment to the Department of Health and Mental Hygiene;
5 transferring certain blood lead reporting requirements to the Department of Health
6 and Mental Hygiene; transferring lead paint abatement accreditation functions and
7 lead paint abatement enforcement to the Department of Health and Mental
8 Hygiene; providing that the Department of Health and Mental Hygiene and its
9 Secretary are the successors of the Department of the Environment and its
10 Secretary for certain purposes; providing for the continuity of certain laws,
11 regulations, contracts, and transactions; making provisions of this Act severable;
12 requiring the publisher of the Annotated Code of Maryland to make certain
13 corrections necessitated by this Act; deleting references to an obsolete testing
14 procedure; correcting certain errors; providing for a delayed effective date; and
15 generally relating to lead poisoning prevention.

16 BY transferring

17 Article - Environment
18 Section 6-301 through 6-303, respectively, and the subtitle "Subtitle 3. Lead-Based
19 Paint"; 6-801 through 6-852 and the subtitle "Subtitle 8. Reduction of Lead
20 Risk in Housing"; 6-1001 through 6-1005 and the subtitle "Subtitle 10.
21 Accreditation of Lead Paint Abatement Services"
22 Annotated Code of Maryland
23 (1993 Replacement Volume and 1995 Supplement)

24 to be

25 Article - Health - General
26 Section 17-601 through 17-603, respectively, and the subtitle "Subtitle 6.
27 Lead-Based Paint"; 18-801 through 18-852 to be under the amended subtitle
28 "Subtitle 8. Lead Poisoning Prevention Program"; 18-861 through 18-865, to
29 be under the new part "Part IX. Accreditation of Lead Paint Abatement
30 Services"
31 Annotated Code of Maryland
32 (1994 Replacement Volume and 1995 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article - Health - General
3 Section 17-603, 18-804, 18-807(b)(2)(iii)2., 18-818, 18-819(k)(1), 18-821(c),
4 18-822(b)(1), 18-839(a) and (b), 18-843(a), 18-846(a), 18-847(c), and 18-850
5 and 18-861 through 18-865
6 Annotated Code of Maryland
7 (1994 Replacement Volume and 1995 Supplement)
8 (As enacted by Section 1 of this Act)

9 BY repealing and reenacting, with amendments,
10 Article 48A - Insurance Code
11 Section 734 through 737
12 Annotated Code of Maryland
13 (1994 Replacement Volume and 1995 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Real Property
16 Section 8-208.2(a)
17 Annotated Code of Maryland
18 (1988 Replacement Volume and 1995 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That Section(s) 6-301 through 6-303, respectively, and the subtitle
21 "Subtitle 3. Lead-Based Paint"; 6-801 through 6-852, respectively, and the subtitle
22 "Subtitle 8. Reduction of Lead Risk in Housing"; 6-1001 through 6-1005, respectively,
23 and the subtitle "Subtitle 10. Accreditation of Lead Paint Abatement Services" of Article
24 - Environment of the Annotated Code of Maryland be transferred to be Section(s)
25 17-601 through 17-603, respectively, and the subtitle "Subtitle 6. Lead-Based Paint";
26 18-801 through 18-852, respectively to be under the amended subtitle "Subtitle 8. Lead
27 Poisoning Prevention Program"; 18-861 through 18-865, respectively, to be under the
28 new part "Part IX. Accreditation of Lead Paint Abatement Services" of Article - Health
29 - General of the Annotated Code of Maryland.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
31 read as follows:

32 **Article - Health - General**

33 17-603.

34 (a) A medical laboratory shall report to the Department the results of all blood
35 lead [or erythrocyte protoporphylin] tests performed on any child 18 years and under.

36 (b) The Department shall report the results of blood lead [or erythrocyte
37 protoporphylin] tests indicating an elevated blood lead level, as defined by regulation,
38 to[;

39 (1) The] THE local health department in the jurisdiction where the child
40 resides[; and

3

1 (2) The Department of Health and Mental Hygiene].

2 (c) The Department shall adopt regulations to:

3 (1) Govern the reporting requirements of laboratories to the Department
4 under subsection (a) of this section; and

5 (2) Provide for the reporting of information by the Department to local
6 health departments [and the Department of Health and Mental Hygiene].

7 18-804.

8 Affected property is exempt from the provisions of Part IV of this subtitle if the
9 owner submits to the Department an inspection report that:

10 (1) Indicates that the affected property has been tested for the presence of
11 lead-based paint in accordance with standards and procedures established by the
12 Department by regulation;

13 (2) States that all exterior surfaces and interior surfaces of the affected
14 property are lead-free; and

15 (3) Is verified by the [Department accredited] inspector, ACCREDITED
16 UNDER § 18-862 OF THIS SUBTITLE, who performed the test.

17 18-807.

18 (b) (2) Of the 18 members:

19 (iii) 16 shall be appointed by the Governor as follows:

20 2. The Secretary of [Health and Mental Hygiene] THE
21 ENVIRONMENT or the Secretary's designee;

22 18-818.

23 (a) Any person performing lead-contaminated dust testing or conducting
24 inspections required by this subtitle:

25 (1) Shall be accredited by the Department;

26 (2) May not be a related party to the owner; and

27 (3) Shall submit a verified report of the result of the lead-contaminated
28 dust testing or visual inspection to the Department, the owner, and the tenant, if any, of
29 the affected property.

30 (b) A report submitted to the Department under subsection (a) of this section
31 that certifies compliance for an affected property with the risk reduction standard shall be
32 conclusive proof that the owner is in compliance with the risk reduction standard for the
33 affected property during the period for which the certification is effective, unless there is:

34 (1) Proof of actual fraud as to that affected property;

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1 (2) Proof that the work performed in the affected property was not
2 performed by or under the supervision of personnel accredited under [§ 6-1002] § 18-862
3 of this [title] SUBTITLE; or

4 (3) Proof that the owner failed to respond to a complaint regarding the
5 affected property as required by [§ 6-819] § 18-819 of this subtitle.

6 18-819.

7 (k) (1) The statement verified by the owner and the tenant of work performed
8 on the affected property in accordance with subsection (f)(1) of this section or the final
9 report of the inspector verifying that work was performed on the affected property in
10 accordance with subsection (f)(2) of this section shall create a rebuttable presumption,
11 that may be overcome by clear and convincing evidence, that the owner is in compliance
12 with the modified risk reduction standard for the affected property unless there is:

13 (i) Proof of actual fraud as to that affected property; or

14 (ii) Proof that the work performed on the affected property was not
15 performed by or under the supervision of personnel accredited under [§ 6-1002] § 18-852
16 of this [title] SUBTITLE.

17 18-821.

18 (c) All hazard reduction treatments required to be performed under this subtitle
19 shall be performed by or under the supervision of personnel accredited under [§ 6-1002]
20 § 18-852 of this [title] SUBTITLE.

21 18-822.

22 (b) (1) Notwithstanding [§ 6-803] § 18-803 of this subtitle, following an
23 environmental investigation in response to a report of a lead poisoned person at risk, a
24 local jurisdiction may order an abatement, as defined in [§ 6-1001] § 18-861 of this
25 [title] SUBTITLE, in any residential property.

26 18-839.

27 (a) Whenever a qualified offer is made under this part, the qualified offer shall
28 include payment for reasonable expenses and costs up to the amount specified in [§
29 6-840] § 18-840 of this subtitle for:

30 (1) The relocation of the household of the person at risk to lead-safe
31 housing of comparable size and quality that may provide:

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

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

38 (2) Medically necessary treatment for the affected person at risk as
39 determined by the treating physician or other health care provider or case manager of the

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1 person at risk that is necessary to mitigate the effects of lead poisoning, as defined by the
2 Department by regulation, and, in the case of a child, until the child reaches the age of 18
3 years.

4 (b) An offeror is required to pay reasonable expenses for the medically necessary
5 treatments under subsection (a)(2) of this section if coverage for these treatments is not
6 otherwise provided by the Maryland Medical Assistance Program under Title 15, Subtitle
7 1 of [the Health - General Article] THIS ARTICLE or by a third-party health insurance
8 plan under which the person at risk has coverage or in which the person at risk is
9 enrolled.

10 18-843.

11 (a) (1) Except as provided in this subsection and subsection (b) of this section,
12 and in cooperation with the DEPARTMENT OF THE ENVIRONMENT, THE Department of
13 Housing and Community Development, the State Department of Assessments and
14 Taxation, and other appropriate governmental units, the Department shall provide for
15 the collection of an annual fee for every rental dwelling unit in the State.

16 (2) The annual fee for an affected property is \$10.

17 (3) (i) Subject to the provisions of subparagraphs (ii) and (iii) of this
18 paragraph, on or before December 31, 1999, the annual fee for a rental dwelling unit built
19 after 1949 that is not an affected property is \$5. After December 31, 1999, there is no
20 annual fee for a rental dwelling unit built after 1949 that is not an affected property.

21 (ii) The owner of a rental dwelling unit built after 1949 that is not an
22 affected property may not be required to pay the fee provided under this paragraph if the
23 owner certifies to the Department that the rental dwelling unit is leadfree pursuant to [§
24 6-804] § 18-804 of this subtitle.

25 (iii) An owner of a rental dwelling unit who submits a report to the
26 Department that the rental dwelling unit is lead free pursuant to [§ 6-804] § 18-804 of
27 this subtitle shall include a \$5 processing fee with the report.

28 18-846.

29 (a) A local health department that receives the results of a blood lead test under
30 [§ 6-303 of this title] § 17-603 OF THIS ARTICLE indicating that a person at risk has an
31 EBL greater than or equal to 15 ug/dl shall notify:

32 (1) The person at risk, or in the case of a minor, the parent of the person at
33 risk, of the results of the test; and

34 (2) The owner of the affected property in which the person at risk resides or
35 regularly spends at least 24 hours per week of the results of the test.

36 18-847.

37 (c) A person who violates the provisions of this section is subject to the penalties
38 provided in § 4-309 of [the Health - General Article] THIS ARTICLE.

39 18-850.

1 (a) Except as provided in [§ 6-849] § 18-849 of this subtitle, in addition to any
2 other remedies provided in this subtitle, the provisions and procedures of §§ 7-256
3 through 7-264 and 7-266(b) of [this article] THE ENVIRONMENT ARTICLE shall be used
4 and shall apply to enforce violations of this subtitle, provided that the penalty imposed
5 under § 7-266(b)(2)(i) of [this article] THE ENVIRONMENT ARTICLE may not exceed
6 \$250 per day for any violation of this subtitle which is not cured within 20 days after
7 receipt of notice of the violation by the owner.

8 (b) If an accredited supervisor falsely verifies that work was performed on an
9 affected property pursuant to [§ 6-819(f)] § 18-819(F) of this subtitle, the owner of the
10 affected property who employs the supervisor and who has actual knowledge of the false
11 verification shall be subject to a civil penalty not to exceed \$15,000.

12 18-861.

13 (a) In this [subtitle] PART the following words have the meanings indicated.

14 (b) "Abatement" means a set of measures designed to eliminate or reduce
15 lead-based paint hazards in residential, public, or commercial buildings, bridges, or other
16 structures or superstructures in accordance with standards established by the Department
17 which may include:

18 (1) The removal of lead-based paint and lead-contaminated dust, the
19 containment or encapsulation of lead-based paint, the replacement or demolition of
20 lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;
21 and

22 (2) All preparation, cleanup, disposal, and postabatement clearance testing
23 activities associated with these measures.

24 (c) "Lead containing substance" means:

25 (1) Any paint, plaster, or surface encapsulation material containing more
26 than 0.50 percent lead by weight calculated as lead metal in the dried solid or more than
27 0.7 milligrams lead per square centimeter as measured by an X-ray fluorescence analyzer;
28 or

29 (2) Such other standards consistent with an applicable federal definition as
30 the Department may set by regulation.

31 (d) "Person" includes any public or municipal corporation, or any agency, bureau,
32 department, or instrumentality of federal, State, or local government.

33 (e) "Provide lead paint abatement services" means to engage in the risk
34 assessment, inspection, or abatement of lead-containing substances.

35 18-862.

36 (a) Except as provided in subsection (c) of this section, unless the person is
37 accredited by the Department under this [subtitle] PART, a person may not:

38 (1) Act as a contractor or supervisor for the purpose of providing lead paint
39 abatement services;

7

1 (2) Provide training to others who provide lead paint abatement services; or

2 (3) Engage in the inspection of lead-based paint hazards.

3 (b) The Department shall, by regulation, create exceptions to the accreditation
4 requirement for instances where the disturbance of lead-containing substance is
5 incidental.

6 (c) An individual who acts only as a worker or project designer need not be
7 accredited, but must be trained.

8 18-863.

9 (a) The Department shall adopt regulations to carry out the provisions of this
10 [subtitle] PART.

11 (b) Regulations adopted under this [subtitle] PART may include:

12 (1) Initial and continuing standards and procedures for accreditation,
13 including education, training, examination, and job performance standards;

14 (2) Standards and procedures for renewal of accreditation;

15 (3) Standards and procedures for modification, suspension, or revocation of
16 accreditation;

17 (4) Different standards and procedures for different lead paint abatement
18 services;

19 (5) Recognition of accreditation or similar approvals of persons by other
20 governmental entities; and

21 (6) Such other provisions as may be necessary to effectuate the purposes of
22 this [subtitle] PART.

23 (c) The Department shall review and revise its certification and other regulations
24 under this [subtitle] PART as necessary to ensure continued eligibility for federal
25 funding of lead-hazard activities in the State.

26 (d) The Department shall set reasonable fees for the accreditation of persons who
27 provide lead paint abatement services sufficient to cover the Department's direct and
28 indirect costs of administering this [subtitle] PART.

29 18-864.

30 (a) There is a Lead Accreditation Fund.

31 (b) (1) All fees collected under [§ 6-1003(d)] § 18-863(D) OF THIS PART and
32 fines and penalties imposed under [§ 6-1005] § 18-865 of this [subtitle] PART shall be
33 deposited in the Lead Accreditation Fund.

34 (2) The Department may apply for and accept any funds or grants from any
35 federal, State, local, or private source for credit to the Fund that might assist with
36 development, establishment, administration, and education and enforcement activities of
37 the Lead Paint Abatement Services Accreditation Program under this [subtitle] PART.

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1 (c) The Department shall use the Lead Accreditation Fund for activities by the
2 Department that are related to processing, monitoring and regulating the accreditation of
3 lead paint abatement services, and for program development of these activities.

4 (d) (1) The Lead Accreditation Fund shall be a continuing, nonlapsing special
5 fund, and is not subject to § 7-302 of the State Finance and Procurement Article.

6 (2) The State Treasurer shall hold and the State Comptroller shall account
7 for the Accreditation Fund.

8 (3) The Accreditation Fund shall be invested and reinvested. Any
9 investment earnings shall be paid into the Accreditation Fund.

10 18-865.

11 Except as otherwise provided, the provisions and procedures of § 6-420 through §
12 6-422 and § 7-266(b) of [this article] THE ENVIRONMENT ARTICLE shall be used and
13 shall apply to enforce violations of:

14 (1) This [subtitle] PART;

15 (2) Any regulations adopted under this [subtitle] PART; and

16 (3) Any condition of accreditation issued under this [subtitle]PART.

17 **Article 48A - Insurance Code**

18 734.

19 (a) In this subtitle the following words have the meanings indicated.

20 (b) "Administration" means the Maryland Insurance Administration.

21 (c) "Affected property" means a property that contains at least one rental
22 dwelling unit.

23 (d) "Authorized insurer" means an insurer that:

24 (1) Holds a certificate of authority in the State;

25 (2) Issues or issues for delivery in the State third party bodily injury liability
26 insurance under:

27 (i) Homeowners' coverage;

28 (ii) Owners', landlords', and tenants' coverage; or

29 (iii) Other premises liability coverage; and

30 (3) Is subject to regulation by the Maryland Insurance Administration.

31 (e) (1) "Department" means the Department of [the Environment] HEALTH
32 AND MENTAL HYGIENE.

33 (2) "Department" includes a designee of the Secretary of [the
34 Environment] HEALTH AND MENTAL HYGIENE.

1 (f) "Owner" has the meaning stated in [§ 6-801(o)] § 18-801(O) of the
2 [Environment] HEALTH - GENERAL Article.

3 735.

4 (a) Notwithstanding subsection (f) of this section, upon the inception or renewal
5 of a policy, an insurer may provide for a lead hazard exclusion with respect to a policy of
6 insurance covering an affected property.

7 (b) A lead hazard exclusion contained in a contract of insurance issued or
8 renewed on or after January 1, 1995 shall be waived with respect to an affected property
9 which is covered under the policy, to the extent of a qualified offer made or to be made
10 under Part V of Title [6] 18, Subtitle 8 of the [Environment] HEALTH - GENERAL
11 Article, if:

12 (1) The affected property is in compliance with the provisions of Part III of
13 Title [6] 18, Subtitle 8 of the [Environment] HEALTH - GENERAL Article;

14 (2) Without regard to whether a change in occupancy has occurred, and at
15 the election of the insured, the affected property:

16 (i) Passes the test for lead-contaminated dust under [§ 6-816] §
17 18-816 of the [Environment] HEALTH - GENERAL Article; or

18 (ii) Has undergone the lead hazard reduction treatments and complies
19 with the risk reduction standards under [§ 6-815(a)(2)] § 18-815(A)(2) of the
20 [Environment] HEALTH - GENERAL Article; and

21 (3) The insured submits to the authorized insurer a current verified report
22 of an accredited inspector under [§ 6-818] § 18-818 of the [Environment] HEALTH -
23 GENERAL Article certifying that the affected property complies with the standards set
24 forth in paragraph (2) of this subsection.

25 (c) An authorized insurer may exclude coverage for lead hazard with respect to
26 an affected property in excess of the amount of a qualified offer made or to be made
27 under Part V of Title [6] 18, Subtitle 8 of the [Environment] HEALTH - GENERAL
28 Article.

29 (d) This section applies only to coverage for lead hazard and does not affect
30 coverage for property damage or any other form of coverage provided in a policy or
31 contract of insurance.

32 (e) In lieu of waiver of a lead hazard exclusion under subsection (a) of this
33 section, and with the prior approval of the Administration, an authorized insurer may
34 offer an alternative form of coverage for a qualified offer made with respect to an
35 affected property under Part V of Title [6] 18, Subtitle 8 of the [Environment] HEALTH
36 - GENERAL Article.

37 (f) (1) An insurer may cancel or nonrenew lead hazard coverage or reimpose an
38 exclusion only if:

39 (i) The insured fails to:

40 1. Pay the applicable premium;

11

1 (a) The Administration may adopt regulations necessary to carry out the
2 provisions of this subtitle.

3 (b) The Administration shall review policy forms and endorsements to implement
4 and enforce compliance with the provisions of this subtitle [and §§ 234A(f) and 240(a)(4)
5 of this article].

6 **Article - Real Property**

7 8-208.2.

8 (a) Notwithstanding the provisions of § 8-208.1 of this article, a landlord of real
9 property subject to the provisions of Title [6] 18, Subtitle 8 of the [Environment]
10 HEALTH - GENERAL Article may not evict or take any other retaliatory action against a
11 tenant primarily as a result of the tenant providing information to the landlord under
12 Title [6] 18, Subtitle 8 of the [Environment] HEALTH - GENERAL Article.

13 SECTION 3. AND BE IT FURTHER ENACTED, That the following functions of
14 the Department of the Environment, and the personnel assigned to them, be, and they
15 are hereby transferred to the Department of Health and Mental Hygiene effective July 1,
16 1997:

17 (1) blood lead testing and reporting under Title 17, Subtitle 6 of the Health
18 - General Article, as enacted by this Act;

19 (2) lead poisoning prevention and case management under §§ 18-801
20 through 18-852 of the Health - General Article, as enacted by this Act; and

21 (3) accreditation of lead abatement services and lead paint abatement
22 enforcement under §§ 18-861 through 18-865 of the Health - General Article, as enacted
23 by this Act.

24 SECTION 4. AND BE IT FURTHER ENACTED, That with respect to functions
25 transferred by this Act, the Department of Health and Mental Hygiene is the successor of
26 the Department of the Environment, and the Secretary of Health and Mental Hygiene is
27 the successor of the Secretary of the Environment. In every law, executive order,
28 regulation, policy, or document created by any official, employee, or unit of this State, the
29 names and titles of that department and official mean the name and term of the successor
30 agency or official for lead reporting, lead poisoning prevention, and lead accreditation
31 functions, as provided in this Act.

32 SECTION 5. AND BE IT FURTHER ENACTED, That the following funds are
33 transferred from the Department of the Environment to the Department of Health and
34 Mental Hygiene effective July 1, 1997:

35 (1) the Lead Poisoning Prevention Fund;

36 (2) the Lead Accreditation Fund; and

37 (3) federal funds received or to be received by the Department of the
38 Environment for blood lead testing and reporting, lead poisoning prevention, including
39 case management, and accreditation of lead abatement services.

1 SECTION 6. AND BE IT FURTHER ENACTED, That every person who, as of
2 June 30, 1997, is employed by the Department of the Environment in a lead reporting,
3 lead poisoning prevention, case management, lead paint abatement enforcement, or lead
4 accreditation function in a position authorized by the State budget is hereby transferred
5 to the Department of Health and Mental Hygiene, effective July 1, 1997, without any
6 change or loss of rights or status, except as otherwise specifically provided in this Act.

7 SECTION 7. AND BE IT FURTHER ENACTED, That, except as otherwise
8 provided in this Act, nothing in this Act affects the term of office of an appointed
9 member of any board, commission, committee, or other agency or unit. A person who is
10 a member of such a unit on the effective date of this Act shall remain a member for the
11 balance of the term to which the member was appointed, unless the member sooner dies,
12 resigns, or is removed pursuant to the provisions of law.

13 SECTION 8. AND BE IT FURTHER ENACTED, That, except as expressly
14 provided to the contrary in this Act, any transaction affected by or flowing from any
15 statute here amended, repealed, or transferred, and validly entered into before the
16 effective date of this Act and every right, duty, or interest following from it remains valid
17 after the effective date of this Act and may be terminated, completed, consummated, or
18 enforced pursuant to law.

19 SECTION 9. AND BE IT FURTHER ENACTED, That, except as otherwise
20 provided in this Act, all permits and licenses, applications for permits and licenses,
21 regulations, proposed regulations, standards and guidelines, proposed standards and
22 guidelines, orders and other directives, forms, plans, memberships, special funds,
23 appropriations, grants, applications for grants, contracts, properties, investigations,
24 administrative and judicial proceedings, rights to sue and be sued, and all other duties
25 and responsibilities associated with those functions transferred by this Act shall continue
26 in effect under the Department of Health and Mental Hygiene or the appropriate board,
27 commission, or other unit within the Department of Health and Mental Hygiene, until
28 completed, withdrawn, cancelled, modified, or otherwise changed pursuant to law.

29 SECTION 10. AND BE IT FURTHER ENACTED, That pursuant to the plan of
30 reorganization proposed by this Act, in coordination with the Director of Legislative
31 Reference, the publishers of the Annotated Code of Maryland are hereby directed to
32 correct any cross-references, agency names, and titles that are rendered incorrect by this
33 Act, in accordance with this section.

34 SECTION 11. AND BE IT FURTHER ENACTED, That if any provision of this
35 Act or the application thereof to any person or circumstance is held invalid for any reason
36 in a court of competent jurisdiction, the invalidity does not affect other provisions or any
37 other application of this Act which can be given effect without the invalid provision or
38 application, and for this purpose the provisions of this Act are declared severable.

39 SECTION 12. AND BE IT FURTHER ENACTED, That this Act shall take effect
40 July 1, 1997.