

FIRST REGULAR SESSION

SENATE BILL NO. 92

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0426S.02I

AN ACT

To repeal sections 701.300, 701.302, 701.310, 701.312, 701.326, and 701.330, RSMo, and to enact in lieu thereof twelve new sections relating to lead poisoning prevention, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 701.300, 701.302, 701.310, 701.312, 701.326, and 701.330, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 339.185, 701.300, 701.302, 701.310, 701.312, 701.321, 701.325, 701.326, 701.330, 701.331, 701.339, and 701.341, to read as follows:

339.185. By August 28, 2003, the division of professional registration shall:

(1) Require reasonable familiarity of the relevant portions of sections 701.300 to 701.348, RSMo, 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.

701.300. As used in sections 701.300 to [701.338] **701.348**, the following terms mean:

(1) "Abatement",

(a) Any measure regulated solely by the Missouri department of health and senior services designed to permanently eliminate lead hazards, which shall include:

a. The removal of lead-bearing substances, the replacement of lead-painted surfaces or fixtures, or the permanent enclosure or encapsulation of lead-bearing substances; and

b. All preparation, cleanup, disposal, and postabatement clearance testing activities

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

associated with such measures;

(b) "Abatement" shall not include any measure involving a de minimis surface area or activity excluded from this definition by rule;

(2) **"Affected property", a room or 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:**

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

(b) **Unit within a hotel, motel, or similar seasonal or transient facility unless such unit is occupied by one or more persons for a period exceeding thirty days;**

(c) **An area which is secured and inaccessible to occupants; or**

(d) **A unit which is not offered for rent.**

Affected property excludes any property owned or operated by a unit of federal, state, or local government, or any public, quasi-public, or municipal corporation, if the property is subject to lead standards that are equal to, or more stringent than, the requirements for lead-safe status pursuant to section 701.310;

(3) **"Change in occupancy", a change of tenant in an affected property in which the property is vacated and possession is either surrendered to the owner or abandoned;**

(4) **"Chewable surface", an interior or exterior surface painted with lead-based paint that a child under the age of six 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 are not considered chewable;**

(5) **"Child-occupied facility", a building or portion of a building constructed prior to 1978 and visited regularly by the same child who is six or fewer years of age including, but not limited to, day care centers, preschools and kindergarten classrooms. For the purposes of this subdivision, "visited regularly" means a minimum of two visits on different days within any week, provided that each visit lasts at least three hours and the combined weekly visits last at least six hours and the combined annual visits last at least sixty hours;**

(6) **"Containment", 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;**

[3] (7) **"Deleading", the removal of lead-bearing substances;**

[4] (8) **"Department", the department of health and senior services;**

[5] (9) **"Deteriorated lead-bearing substance", any interior or exterior lead-bearing surface coating material as defined by rule that is peeling, chipping, chalking, or cracking or any**

lead-bearing substance located on an interior or exterior surface or fixture that is damaged, deteriorated or otherwise separating from the substrate or a structure component;

[(6)] **(10) "Director", the director of the [department of health and senior services] advisory committee on lead poisoning prevention;**

[(7)] **(11) "Dwelling", either:**

(a) A single-family dwelling, including attached structures such as porches and stoops;

or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling 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 residence of one or more persons;

(12) "Elevated blood lead" or "EBL", a quantity of lead in whole venous blood, expressed in micrograms per deciliter (µg/dL), that exceeds 15 µg/dL or such other level as may be specifically provided pursuant to sections 701.300 to 701.348;

[(8)] **(13) "Encapsulant", a liquid coating or adhesively bonded substance applied to a surface to form a barrier between a lead-bearing substance and the environment;**

[(9)] **(14) "Encapsulation", the application of [an encapsulant] 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;**

[(10)] **(15) "Enclosure", the use of rigid, durable construction materials mechanically fastened to a substrate to act as a barrier between a lead-bearing substance and the environment;**

[(11)] **(16) "Health care professional", any physician, hospital, or other person which is licensed or otherwise authorized in this state to furnish health care services;**

[(12)] **(17) "Interim control", any measure designed to temporarily reduce human exposure or likely human exposure to lead hazards. Such measures may include, but are not limited to, specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead hazards or potential hazards, or the establishment and operation of management and resident education programs;**

[(13)] **(18) "Lead abatement contractor", a person or entity licensed by the department to conduct lead-bearing substance activities at a location other than the contractor's own place of business;**

[(14)] **(19) "Lead abatement project":**

(a) The encapsulation, enclosure or removal of a lead-bearing substance;

(b) "Lead abatement project" shall not include any measure involving a de minimis

surface area or activity excluded from this definition by rule;

[(15)] **(20)** "Lead abatement supervisor", a person licensed by the department to direct, control or supervise personnel in a lead abatement project;

[(16)] **(21)** "Lead abatement worker", a person licensed by the department to work on a lead abatement project;

[(17)] **(22)** "Lead-bearing substance activity", any activity associated with a lead abatement project including, but not limited to, project design, risk assessment, inspection, abatement or deleading under this chapter;

[(18)] **(23)** "Lead-bearing substance",

(a) includes:

a. Any paint or other surface coating materials that contain lead equal to or in excess of one milligram per square centimeter or more than five-tenths percent by weight or such other standard for lead content in paint as may be established by federal law or regulation;

b. Surface dust that contains a concentration of lead specified by rules promulgated by the department that shall be consistent with the purposes of laws enacted by the United States Congress and regulations promulgated or guidance issued by any federal agency;

c. Bare soil that contains a concentration of lead specified by rules promulgated by the department that shall be consistent with the purposes of laws enacted by the United States Congress and regulations promulgated or guidance issued by any federal agency; or

d. Any lead-based paint, lead-based paint hazard or lead-based paint activity consistent with the purposes of laws enacted by the United States Congress and regulations promulgated or guidance issued by any federal agency; and

(b) "Lead-bearing substance" as regulated by the Missouri department of health and senior services does not include any substance generated through the mining, milling or smelting of lead ore or scrap, or generated through lead product manufacturing or use provided that such substance has not migrated off or been transported from the mining, smelting, or manufacturing site and entered a residential area or any other public access environment;

[(19)] **(24)** "Lead hazard", any condition that causes exposure to lead that would result in adverse human health effects from deteriorated lead-bearing substances or lead-bearing substances present in "accessible surfaces", "friction surfaces", or "impact surfaces", as such terms are defined in 15 U.S.C. 2681;

[(20)] **(25)** "Lead inspection", a surface-by-surface investigation to determine the presence of lead-bearing substances and a report or provision of a report which explains the results of such an investigation;

[(21)] **(26)** "Lead inspector", a person licensed by the department to conduct lead inspections;

[(22)] **(27)** "Lead poisoning", the laboratory determination of a human whole blood lead

level as established by the federal Centers for Disease Control;

[(23)] **(28)** "Owner", any person, who alone, jointly or severally with others:

(a) Has legal title to any child-occupied facility, dwelling or dwelling unit, with or without accompanying actual possession thereof; or

(b) Has charge, care or control of any child-occupied facility, dwelling or dwelling unit as owner or agent of the owner, or as executor, administrator, trustee, or guardian of, the estate of the owner;

(29) "Owner", 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;

[(24)] **(30)** "Project designer", a person licensed by the department to conduct activities including, but not limited to, the development and implementation of occupant protection plans, lead-bearing substance abatement and hazard reduction methods, interior dust abatement and cleanup methods, hazard control and reduction methods, clearance standards and testing protocols and integration of lead-bearing substance abatement methods with modernization and rehabilitation projects for lead abatement projects;

[(25)] **(31)** "Risk assessment", an on-site investigation to determine the existence, nature, severity and location of lead hazards, and the provision of a report by the person conducting the risk assessment explaining the results of the investigation and options for reducing lead hazards;

[(26)] **(32)** "Risk assessor", a person licensed by the department to conduct risk assessments;

(33) "Soil-lead hazard", soil on residential real property or on property of a facility occupied by a person 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;

[(27)] **(34)** "Work practice standards", requirements or standards that ensure that lead-bearing substance abatement activities are conducted reliably, effectively and safely.

701.302. 1. There is hereby established the "Advisory Committee on Lead Poisoning **Prevention**".

2. The members of the committee shall consist of twenty-seven persons who shall be appointed by the governor with the advice and consent of the senate, except as otherwise provided in this subsection. At least five of the members of the committee shall be

African-Americans or representatives of other minority groups disproportionately affected by lead poisoning. The members of the committee shall include:

(1) The director of the department of health and senior services or the director's designee, who shall serve as an ex officio member;

(2) The director of the department of economic development or the director's designee, who shall serve as an ex officio member;

(3) The director of the department of natural resources or the director's designee, who shall serve as an ex officio member;

(4) The director of the department of social services or the director's designee, who shall serve as an ex officio member;

(5) The director of the department of labor and industrial relations or the director's designee, who shall serve as an ex officio member;

(6) One member of the senate, appointed by the president pro tempore of the senate, and one member of the house of representatives, appointed by the speaker of the house of representatives;

(7) A representative of the office of the attorney general, who shall serve as an ex officio member;

(8) A member of a city council, county commission or other local governmental entity;

(9) A representative of a community housing organization;

(10) A representative of property owners;

(11) A representative of the real estate industry;

(12) One representative of an appropriate public interest organization and one representative of a local public health agency promoting environmental health and advocating protection of children's health;

(13) A representative of the lead industry;

(14) A representative of the insurance industry;

(15) A representative of the banking industry;

(16) A parent of a currently or previously lead-poisoned child;

(17) A representative of the school boards association or an employee of the department of elementary and secondary education, selected by the commissioner of elementary and secondary education;

(18) Two representatives of the lead abatement industry, including one licensed lead abatement contractor and one licensed lead abatement worker;

(19) A physician licensed under chapter 334, RSMo;

(20) A representative of a lead testing laboratory;

(21) A lead inspector or risk assessor;

(22) The chief engineer of the department of transportation or the chief engineer's

designee, who shall serve as an ex officio member;

(23) A representative of a regulated industrial business; and

(24) A representative of a business organization.

3. The governor shall appoint, with the advice and consent of the senate, a director of lead poisoning prevention. The director shall chair the advisory committee on lead poisoning prevention. The director shall be responsible for carrying out and administering all programs created pursuant to the provisions of sections 701.300 to 701.348; and shall issue and from time to time, amend, such rules and regulations as may be necessary;

4. Subject to appropriation, the director, working in coordination with the advisory committee on lead poisoning prevention, 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.

[2.] 5. The committee shall make recommendations relating to actions to:

(1) Eradicate childhood lead poisoning by the year 2012;

(2) Screen children for lead poisoning;

(3) Treat and medically manage lead-poisoned children;

(4) Prevent lead poisoning in children;

(5) Maintain and increase laboratory capacity for lead assessments and screening, and a quality control program for laboratories;

(6) Abate lead problems after discovery;

(7) Identify additional resources, either through a tax or fee structure, to implement programs necessary to address lead poisoning problems and issues;

(8) [Provide an educational program on lead poisoning for the general public and health care providers] **In order to achieve the purposes of sections 701.300 to 701.348, a statewide educational program shall be 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 including:**

(a) A series of public service announcements on radio, television, the Internet, 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 sections 701.300 to 701.348. 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;

(b) The director, in consultation with the advisory committee, shall develop information pamphlets regarding childhood lead poisoning, the importance of testing for elevated blood levels, prevention of childhood lead poisoning, and treatment of childhood lead poisoning. The information pamphlets shall be distributed to parents or the other legal guardians of children six years of age or younger on the following occasions:

a. 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 or any other woman of childbearing age;

b. 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 months; and

c. By the owner or operator of any child care facility, pre-school, or kindergarten class on or before October 15 of the calendar year;

(9) Determine procedures for the removal and disposal of all lead contaminated waste in accordance with the Toxic Substances Control Act, as amended, 42 U.S.C. 2681, et seq., solid waste and hazardous waste statutes, and any other applicable federal and state statutes and regulations.

[3.] 6. The committee members shall receive no compensation but shall, subject to appropriations, be reimbursed for actual and necessary expenses incurred in the performance of their duties. All public members and local officials shall serve for a term of **[two] four** years and until their successors are selected and qualified, and other members shall serve for as long as they hold the office or position from which they were appointed.

[4.] 7. No later than December fifteenth of each year, the committee shall provide a written annual report of its recommendations for actions as required pursuant to subsection **[2] 5** of this section to the governor and general assembly, including any legislation proposed by the committee to implement the recommendations.

[5.] 8. The committee shall submit records of its meetings to the secretary of the senate and the chief clerk of the house of representatives in accordance with sections 610.020 and 610.023, RSMo.

9. The director in consultation with the advisory committee shall establish guidelines and a training manual for a three-hour "Lead-Safe Housing Awareness Seminar". Such courses shall be offered by professional associations and community organizations with a training capacity, existing accredited educational institutions, and for-profit educational providers.

10. The committee shall establish a program for early identification of persons

with elevated blood lead levels. Such program shall systematically screen children under six years of age in the target populations identified in this section 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 and twenty-four months or at ages thirty-six to seventy-two 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 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.

11. In developing screening programs to identify persons 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 and twenty-four months or at ages thirty-six to seventy-two months if they have not previously been screened;
- (2) Children under the age of six exhibiting delayed cognitive development or other symptoms of childhood lead poisoning;
- (3) Persons residing in the same household, or recently residing in the same household, as another person with a blood lead level of 10 µg/dL or greater;
- (4) Persons 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 residing, or who have recently resided, in affected properties contained in buildings which during the preceding three years have been subject to enforcement actions, receivership actions, or where injunctive relief has been sought;
- (6) Persons 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 years have been subject to enforcement actions, receivership actions, or where injunctive relief has been sought; and
- (7) Persons 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 10 µg/dL or greater.

12. The director shall maintain comprehensive records of all screenings conducted pursuant to this section. Such records shall be indexed 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 names of

tested individuals removed for privacy purposes, shall be public records.

13. 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.

701.310. 1. [Any abatement of the lead hazard from the dwelling or child-occupied facility shall be performed in a manner so as not to endanger the health of its occupants or persons performing the abatement.

2. To the extent permitted by federal regulations, an individual who is an owner, a partner in a partnership owning, or a corporate officer in a corporation owning a dwelling and who is not licensed pursuant to section 701.312 may personally perform lead abatement within a dwelling that he or she owns, unless the residential dwelling is occupied by a person or persons other than the owner, or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. Prior to beginning such abatement, the owner shall consult with the department regarding the most effective method of conducting such lead abatement activities and of the proper procedures in performing those activities.] **An affected property shall comply with the requirements of either lead-free status, as defined by subsection 3 of this section, or lead-safe status, as defined by subsection 4 of this section, on or before August 28, 2005, except as otherwise provided in subsection 2 of this section.**

2. **An owner of five 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 1 of this section. The extension of time in which to comply shall be for a period of three years beyond the deadline specified in subsection 1 of this section, meaning that the extended deadline for compliance shall be August 28, 2008. 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 an extension is sought is not occupied by a person; and**

(2) **The owner of the affected property has complied with the requirements of subsection 1 of this section for more than fifty percent of the other affected properties which the owner owns or in which he or she has a beneficial interest.**

3. **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 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) All exterior painted surfaces of the affected property that were chipping, peeling, or flaking have been restored with non-lead-based paint or no exterior painted surfaces of the affected property are chipping, peeling, or flaking.

4. An affected property is lead-safe if the following treatments to reduce lead-based paint hazards have been completed by someone certified pursuant to section 701.312:

(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 of 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.

5. 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 hours' written advance notice and shall make reasonable efforts to ensure that all persons are not present in the area where work is performed.

6. A tenant shall allow access to an affected property, at reasonable times, to the owner to perform any work required pursuant to sections 701.300 to 701.348.

7. If a tenant must vacate an affected property for a period of twenty-four 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.

8. 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.

9. If an owner has made all reasonable efforts to gain access to an affected property in order to perform any work required pursuant to sections 701.300 to 701.348, 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.

10. In order to maintain exemption from the provisions of sections 701.300 to 701.348, the owner of any affected property with lead-based paint on any exterior surface which has been certified as lead-free pursuant to this section shall submit to the director or the director's designee for the jurisdiction in which such property is located every three years a certification, by an inspector, accredited pursuant to the provisions of section 701.312, stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

701.312. 1. The director of the department of health and senior services shall develop a program to license lead inspectors, risk assessors, lead abatement supervisors, lead abatement workers, project designers and lead abatement contractors. The director shall promulgate rules and regulations including, but not limited to:

- (1) The power to issue, restrict, suspend, revoke, deny and reissue licenses;
- (2) The ability to enter into reciprocity agreements with other states that have similar licensing provisions;
- (3) Fees for any such licenses;
- (4) Training, education and experience requirements; and
- (5) The implementation of work practice standards, reporting requirements and licensing standards.

2. The director shall issue temporary risk assessor licenses to persons who, as of August 28, 1998, are licensed by the department as lead inspectors.

The temporary risk assessor licenses issued pursuant to this subsection shall expire upon the same date as the expiration date of such person's lead inspector license. The director shall set

forth standards and conditions under which temporary risk assessor licenses shall be issued.

3. No person shall act as a contractor or supervisor to perform the work necessary for lead-hazard abatement as defined in sections 701.300 to 701.348 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:

(1) Regulations to be adopted by the director pursuant to sections 701.300 to 701.348 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 (2001) or any applicable successor provisions to 40 C.F.R. 745.226 (2001);

(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).

4. 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 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 in which case the accreditation to perform inspections shall be suspended pending a hearing in accordance with the provisions of state law.

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

6. An inspector accredited by the director shall conduct all inspections required by sections 701.300 to 701.348. The director shall accredit as an inspector any individual meeting the requirements of this section:

(1) Regulations to be adopted by the director governing the accreditation of individuals eligible to conduct the inspections required by sections 701.300 to 701.348; 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).

7. 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 701.300 to 701.348. Such fees shall be

required to be paid at the time of initial registration and at the time of subsequent renewal of registration, and shall be sufficient to cover all costs attributable to accreditation activities conducted pursuant to this section.

8. Fees collected pursuant to this subsection will be held in the "Lead Paint Removal Fund", which is hereby created, to be used for accreditation purposes pursuant to this section and registration purposes pursuant to section 701.326. Notwithstanding the provisions of section 33.080, RSMo, moneys in the fund shall not revert to general revenue.

9. The state treasurer shall hold and the state auditor shall account for this fund.

701.321. 1. Owners of affected properties who fail to comply with the provisions of sections 701.300 to 701.348 shall be guilty of a class A misdemeanor. The office of the attorney general may seek injunctive relief where appropriate.

2. Any civil or criminal action by state or local officials to enforce the provisions of sections 701.300 to 701.348 shall be reported to the director.

3. After the second written notice from the director or local department of health of violations of the provisions of sections 701.300 to 701.348 occurring within an affected property, or after two criminal or civil actions pursuant this section brought by either state or local officials to enforce the provisions of sections 701.300 to 701.348 arising out of violations occurring within an affected property, unless the violations alleged to exist are corrected, the affected property shall be considered abandoned, and the attorney general, the director, 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 period of time as the funding source 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.

4. The director shall issue an annual report outlining specifically the enforcement actions brought pursuant to this section, 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.

701.325. 1. A person shall be deemed to have a right, effective August 28, 2005,

to housing which is lead-free or lead-safe as outlined in sections 701.300 to 701.348.

2. If an owner of an affected property fails to comply with such standards, a private right of action shall exist that allows a person or the parent or legal guardian of a person 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 sections 701.300 to 701.348.

3. A court shall not grant the injunctive relief requested pursuant to this section, unless, at least thirty 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 sections 701.300 to 701.348 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, 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 or for lead-safe status pursuant to section 701.310;

(2) The local department of health has notified the owner of the affected property of violations of the provisions of sections 701.300 to 701.348 occurring within an affected property; or

(3) A criminal or civil action pursuant to this section has been brought by either state or local enforcement officials to enforce the provisions of sections 701.300 to 701.348 arising out of violations occurring within an affected property.

4. A person who prevails in an action pursuant to this section is entitled to an award of the costs of the litigation and to an award of reasonable attorneys' fees in an amount to be fixed by the court.

5. Cases brought before the court under this section shall be granted an accelerated hearing.

701.326. 1. The department of health and senior services shall establish and maintain a lead poisoning information reporting system which shall include a record of lead poisoning cases which occur in Missouri along with the information concerning these cases which is deemed necessary and appropriate to conduct comprehensive epidemiologic studies of lead poisoning in this state and to evaluate the appropriateness of lead abatement programs.

2. The director of the department of health and senior services shall promulgate rules and regulations specifying the level of lead poisoning which shall be reported and any accompanying information to be reported in each case. Such information may include the patient's name, full residence address, and diagnosis, including the blood lead level. Such information may include pathological findings, the stage of the disease, environmental and known occupational factors, method of treatment and other relevant data from medical

histories. Reports of lead poisoning shall be filed with the director of the department of health and senior services within a period of time specified by the director. The department shall prescribe the form and manner in which the information shall be reported.

3. The attending health care professional of any patient with lead poisoning shall provide to the department of health and senior services the information required pursuant to this section.

4. When a case of lead poisoning is reported to the director, the director shall inform such local boards of health, public health agencies, and other persons and organizations as the director deems necessary; provided that, the name of any child contracting lead poisoning shall not be included unless the director determines that such inclusion is necessary to protect the health and well-being of the affected individual.

5. The department shall also establish and maintain a list of affected properties. 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.

6. 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 701.310, and the name and address of the person conducting the inspection.

7. Registration shall be renewed every two years; however, owners shall update the information contained in the owner's registration within thirty days after any change in the registration information.

8. Information provided by an owner pursuant to this section shall be open to the public.

9. 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 involved with registration activities conducted pursuant to this section.

10. Fees collected pursuant to this subsection will be held in lead paint removal fund pursuant to section 701.312.

11. The state treasurer shall hold and the state auditor shall account for this fund.

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

13. 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 one hundred fifty dollars, 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.

701.330. 1. (1) A qualified offer may be made to a person by the owner of the affected property, an insurer of the owner, or an agent, employee, or attorney of the owner or "offeror".

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

(3) A qualified offer made pursuant to this section may be accepted or rejected by a person or, if a person is a minor, such person's parent or legal guardian. If the qualified offer is not accepted within thirty 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 this section, acceptance of a qualified offer by a person, or by a parent, legal guardian, or other person authorized to respond on behalf of a person, discharges and releases all potential liability of the offeror, the offeror's insured or principal, and any participating co-offeror to the person and to the parent or legal guardian of the person 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, 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 or lead-safe pursuant to section 701.310 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, 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 with an elevated blood level, his or her parent, or legal guardian is tolled until the misrepresentation described in this section is discovered.

(6) A copy of the qualified offer shall be sent to the director and the local health department. The director and the local health department shall maintain a copy of the qualified offer in the case management file of the person. In addition, the director or the local health department also shall directly notify the person, 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.

2. A qualified offer shall include payment for reasonable expenses and costs incurred by the person with an elevated blood level of 15 µg/dL or greater for:

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

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

(b) The temporary relocation of the household of the affected person 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

(2) Medically necessary treatment for the affected person as determined by the treating physician or other health care provider or case manager of the person 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 years; and

(3) Reasonable attorneys' fees, not to exceed the lesser of two thousand five hundred dollars or actual time spent in the investigation, preparation, and presentation of the claim multiplied by an hourly rate of one hundred and fifty dollars per hour.

3. An offeror is required to pay reasonable expenses for the medically

necessary treatments pursuant to this section only if coverage for these treatments is not otherwise provided by Medicaid or by a health insurance plan under which the person has coverage or in which the person is enrolled. The health insurance plan shall have no right of subrogation against the party making the qualified offer.

4. The amounts payable under a qualified offer made pursuant to this section are subject to the following aggregate maximum caps:

(1) Twenty-five thousand dollars for all medically necessary treatments as provided and limited in this section; and

(2) Ten thousand dollars for all relocation benefits as provided and limited in this section.

5. All payments under a qualified offer specified in this section shall be paid to the provider of the service, except that payment of incidental expenses may be paid directly to the person, or in the case of a child, to the parent or legal guardian of the person.

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

7. 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 this section in a manner that qualified the owner to make a qualified offer;

8. A qualified offer shall not be treated as an offer of compromise for purposes of admissibility in evidence, notwithstanding that the amount is not in controversy.

9. An owner of an affected property, who is not in compliance with the provisions of section 701.310 during the period of residency of a person, 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 for alleged injury or loss resulting from exposure to lead-based paint hazards in the affected property.

10. The owner has the burden of rebutting this presumption by clear and convincing evidence.

11. The plaintiff in an action against an owner of an affected property described in this section, in addition to recovering all other legally damages, including punitive damages where appropriate, shall be entitled to recover reasonable attorneys' fees.

12. No individual or organization providing information to the department in accordance with sections 701.318 to 701.330 shall be deemed to be, or be held, liable, either civilly or

criminally, for divulging confidential information unless such individual or organization acted in bad faith, negligently, or with malicious purpose.

[2.] 13. Nothing in sections 701.318 to 701.330 shall be construed to compel any individual to submit to a medical or health department examination, treatment or supervision of any kind.

[3.] 14. Any violation of sections 701.318 to 701.330 is an infraction.

15. The provisions of 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 in an affected property; except that this section does not apply to any claim in which the elevated blood lead level of the person is documented to have existed on or before the date sixty days after the affected property where the person resides or otherwise allegedly was exposed to lead has been certified as lead-free or lead-safe pursuant to section 701.310.

16. A property owner and his or her agents and employees are immune from civil liability to a person, 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-free or as lead-safe pursuant to section 701.310; and

(2) The property owner or his agent has made a qualified offer as defined in this section to the person, or his or her parent or legal guardian, in a case in which the person has a documented elevated blood lead level of 15 µg/dL or more performed more than sixty days following certification of the premises as lead-safe or lead-free pursuant to section 701.310, regardless of whether such qualified offer has been accepted or rejected by the person, or his or her parent or legal guardian.

17. The immunity described in the previous subsection does not apply if it is shown that one of the following has 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 either was exposed to a lead-based paint hazard or first was tested with an elevated blood lead level greater than 15 µg/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.

18. A person may not bring an action against an owner of an affected property whose property has been certified as lead-free or lead-safe pursuant to section 701.310 for damages arising from alleged injury or loss to a person caused by lead-based paint hazard unless he or she documents his or her alleged injury with a test for elevated blood 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 level of less than 15 µg/dL, the person 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, his or her parent or legal guardian can show by clear and convincing evidence that the person's damage or injury resulted from exposure to lead-based paint and was caused by either:

(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 or others similarly situated.

(2) If such test results show an elevated blood level of 15 µg/dL or greater, the owner of the affected property or his/her agent or employee shall have the opportunity to make a qualified offer pursuant to section;

(3) If the concentration of lead in a whole venous blood sample of a person tested within sixty days after the person begins residence or regularly spends at least twenty-four hours per week in an affected property that is certified as being in compliance with the provisions of section 701.310 is equal to or greater than 15 µg/dL, it shall be presumed that the exposure to lead-based paint occurred before a person began residing or regularly spending at least twenty-four hours per week in the affected property.

19. The director may adopt regulations that are necessary to carry out the provisions of this section.

701.331. 1. Except as otherwise provided by sections 701.300 to 701.348, no insurer licensed or permitted by the department of insurance to provide liability coverage to rental property owners shall exclude, sixty days after certification pursuant to section 701.312 of an affected property covered under a policy, coverage for losses or damages caused by exposure to lead-based paint. The department of

insurance 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 August 28, 2003, and all previously approved exclusions shall terminate on or before sixty days after certification section 701.312 of an affected property covered under a policy.

2. 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 sections 701.300 to 701.348 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 days after certification of the affected property as lead-free or lead-safe 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;

(2) Notwithstanding the provisions of this section, 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 or lead-safe standard in the form of an affidavit signed by the owner or designated party that certification has been provided pursuant to inspection and that the property has been properly registered pursuant to sections 701.300 to 701.348.

3. Nothing in sections 701.300 to 701.348 shall prevent insurers from offering an endorsement for personal injury/bodily injury liability coverage for injuries resulting from exposure to lead-based paint for properties not in compliance with the provisions of section 701.310.

4. Rates for the coverage specified in subsection 2 of this section shall be approved by the department of insurance 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.

5. The department of insurance shall determine within two years following August 28, 2003, the availability in Missouri of the liability personal injury/bodily injury coverage described in this section, 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 at least three hundred thousand dollars or shall require that such coverage be made available through a joint underwriting plan.

701.339. 1. 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 this section, and any sums that the state may from time to time appropriate, as well as donations, 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.

2. The committee 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 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 in excess of the amount of revenues that can reasonably be expected from the loan repayments, interests on such loans, and fees that the committee can reasonably expect to charge under the provisions of sections 701.300 to 701.348;

(3) All money received from the sale of bonds shall be deposited into the lead-safe or lead-free property revolving loan fund.

3. 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 section 701.310. An owner of a pre-1978 property who owns and occupies the dwelling unit shall be eligible for loans pursuant to this section in the same manner, and to the same extent, as an owner of an affected property.

4. 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.

5. 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.

6. The director 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.

701.341. 1. 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 section 701.310 when he, she, or it:

(1) Has the required removal of lead-based paint hazards or other repairs or renovations described above performed by a contractor accredited pursuant to section 701.312;

(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 701.312, 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 or as lead-safe pursuant to 701.310.

2. 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.

3. 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 per affected property.

4. 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 taxable years. The credit may not be applied until all other credits available to the taxpayer for that taxable year have been applied.