

West's General Laws of Rhode Island Annotated [Currentness](#)

Title 23. Health and Safety

→ [Chapter 24.6. Lead Poisoning Prevention Act \(Refs & Annos\)](#)

→ **§ 23-24.6-1. Short title**

This chapter may be cited as the “Lead Poisoning Prevention Act”.

### **§ 23-24.6-2. Legislative findings**

The general assembly finds, upon the report of the environmental lead task force and the reports, hearings, and records of its own committees and of federal agencies including the environmental protection agency and centers for disease control, that:

- (1) Environmental exposures to even low levels of lead increase a child's risks of developing permanent learning disabilities, reduced concentration and attentiveness and behavior problems, problems which may persist and adversely affect the child's chances for success in school and life.
- (2) Childhood lead poisoning is caused by environmental exposure to lead. The most significant sources of environmental lead are lead based paint in older housing and house dust and soil contaminated by this paint.
- (3) Childhood lead poisoning is completely preventable.
- (4) Rhode Island does not currently have a comprehensive strategy in place for preventing childhood lead poisoning. As a result, tens of thousands of Rhode Island's children are poisoned by lead at levels believed to be harmful with most of these poisoned children going undiagnosed and untreated.
- (5) Childhood lead poisoning is dangerous to the public health, safety, and general welfare of the people and necessitates excessive and disproportionate expenditure of public funds for health care and special education, causing a drain upon public revenue.
- (6) The enactment and enforcement of this chapter is essential to the public interest. It is intended that the provisions of this chapter be liberally construed to effectuate its purposes.
- (7) The magnitude of the childhood lead poisoning in Rhode Island's older homes and urban areas is a result of approved use of lead based materials over an extended period in public buildings and systems and private

housing that a comprehensive approach is necessary to alleviate the cause, identify and treat the children, rehabilitate the affected housing where young children reside, and dispose of the hazardous material. Rhode Island presently does not have the public or the private resources to handle the total problem, requiring prioritizing on a need basis.

### **§ 23-24.6-3. Declaration of purposes**

The purposes of this chapter are: (1) to protect the public health and public interest by establishing a comprehensive program to reduce exposure to environmental lead and prevent childhood lead poisoning, the most severe environmental health problem in Rhode Island; and (2) to establish rigorous, systematic enforcement of requirements for the reduction of lead hazards in properties where children have been lead poisoned; and (3) to define the role of the department of health as the lead state agency charged with: (i) defining lead poisoning, (ii) establishing programs for screening persons, especially children under the age of six (6) years, who are at risk of lead poisoning, (iii) setting standards for eliminating and reducing lead hazards in buildings and premises, including dwellings where a child under the age of six (6) years who has been lead poisoned resides, (iv) providing information to the public and segments thereof about the risks of lead poisoning, and (v) initiating enforcement actions against persons who violate the provisions of this chapter or regulations promulgated pursuant to this chapter. The goal of this chapter is to reduce the incidence of childhood lead poisoning in Rhode Island to the greatest extent feasible.

### **§ 23-24.6-4. Definitions**

For the purposes of this chapter:

(1) "Childhood lead poisoning" means a confirmed venous blood lead level, measured in micrograms of lead per deciliter of whole blood, established by rule by the Rhode Island department of health based on the best available information about the effects of elevated blood lead levels.

(2) "Comprehensive environmental lead inspection" means the inspection of any structure or premises for the presence of lead in various media and includes sampling as may be necessary or expedient in order to determine compliance in the structure or premises with standards for being lead safe or lead free.

(3) "Department" means the state department of health.

(4) "Director" means the director of health.

(5) "Dwelling" means any enclosed space which is wholly or partly used or intended to be used for living or sleeping by human occupants.

(6) “Dwelling unit” means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating.

(7) “Environment intervention blood lead level” means a confirmed concentration, in a person under six (6) years of age, of lead in whole blood of greater than or equal to twenty (20) micrograms per deciliter for a single test or for fifteen (15) to nineteen (19) micrograms per deciliter for two (2) tests taken at least three (3) months apart or as defined by the department consistent with regulations adopted by the U.S. Department of Housing and Urban Development.

(8) “Environmental lead hazard reduction” means activities undertaken by or on behalf of a property owner in order to achieve lead free or lead safe status pursuant to the requirements of this chapter.

(9) “Inspection” means the inspection, other than a comprehensive environmental lead inspection, of any structure or premises undertaken to determine compliance with the requirements of this chapter or with orders issued pursuant to this chapter.

(10) “Insurer” means every medical service corporation, hospital service corporation, health maintenance organization, or other insurance company offering and/or insuring health services; the term includes any entity defined as an insurer under [§ 42-62-4](#).

(11) “Lead contractor” means any person or entity engaged in lead hazard reduction as a business and includes consultants who design, perform, oversee, or evaluate lead hazard reduction projects undertaken pursuant to the requirements of this chapter.

(12) “Lead exposure hazard” means a condition that presents a clear and significant health risk to occupants of the dwelling, dwelling unit, or premises, particularly where there are children under the age of six (6) years.

(13) “Lead free” means that a dwelling, dwelling unit, or premises either contains no lead or contains lead in amounts less than the maximum acceptable environmental lead levels established by department of health regulations.

(14) “Lead hazard reduction” means any action or actions designed to reduce exposure to toxic levels of lead which impose an unacceptable risk of exposure in any dwelling or dwelling unit, where a child under the age of six (6) years, with environmental intervention blood lead level or greater resides, or on any premises and may include, but is not limited to: repair, enclosure, encapsulation, or removal of lead based paint and/or lead contaminated dust, soil or drinking water; relocation of occupants; and cleanup measures or ongoing maintenance measures, which may include activities and/or measures that do not present an undue risk to children under age six (6) and can be performed by, or on behalf of, the property owner, without the person performing such activities being licensed or certified.

(15) “Lead safe” means that a dwelling, dwelling unit, or premises has undergone sufficient lead hazard reduction to ensure that no significant environmental lead hazard is present and includes but is not limited to covering and encapsulation.

(16) “Occupant” means any person who legally resides in, or regularly uses, a dwelling, dwelling unit, or structure; provided, however, that a guest of any age shall not be considered an occupant for the purposes of this chapter.

(17) “Owner” means any person who, alone or jointly or severally with others:

(i) Shall have legal title to any dwelling or dwelling unit with or without accompanying actual possession of it, or

(ii) Shall have charge, care, or control of any dwelling or dwelling unit as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any person representing the actual owner shall be bound to comply with the provisions of this chapter and with rules and regulations adopted pursuant to this chapter to the same extent as if that person were the owner. An agent of the owner excludes real estate and property management functions where the agent is only responsible for the property management and does not have authority to fund capital and/or major property rehabilitation on behalf of the owner.

(iii) For purposes of publicly owned property only, the owner shall be defined to be the chief executive officer of the municipal or state agency which owns, leases, or controls the use of the property.

(18) “Person” means any individual, firm, corporation, association, or partnership and includes municipal and state agencies.

(19) “Premises” means a platted lot or part thereof or unplatted lot or parcel of land, or plot of land, occupied by a dwelling or structure and includes any building, accessory structure, or other structure thereon which is or will be frequently used by children under the age of six (6) years.

(20) “Program” means the comprehensive environmental lead program established by this chapter.

(21) “State inspector” means the director, his or her designee, or any inspector employed by the department of health who is authorized by the director to conduct comprehensive environmental lead inspections and/or other inspections for the department.

#### **§ 23-24.6-5. Environmental lead program**

(a) There is established within the department of health an environmental lead program which shall be responsible for creating a coordinated and comprehensive program for lead poisoning prevention, including screening and detection, education, lead hazard reduction, and enforcement. The program shall exercise any and all authorities of the department which may be necessary and appropriate, including but not limited to promulgating and enforcing regulations, which regulations shall set forth a general framework for actions to be taken in response to childhood lead poisoning at different blood lead levels.

(b) The department shall develop an educational program regarding environmental lead exposures and lead poisoning.

(c) The department shall promulgate regulations for acceptable environmental lead levels in dwellings, where a child under the age of six (6) years with environmental intervention blood lead level or greater resides, and in buildings or properties frequently used by children under the age of six (6) years, including standards for lead on painted surfaces and surface coatings, drinking water, household dusts, and soil.

#### **§ 23-24.6-6. Interagency coordinating council on environmental lead**

(a) There is established an interagency coordinating council on environmental lead within the department of health consisting of six (6) members.

(b) The purpose of the council shall be as follows:

(1) To coordinate the activities of its member agencies with respect to: (i) environmental lead policy; (ii) the development of educational materials; (iii) drafting regulations which have as their purpose reducing or preventing lead poisoning; and (iv) enforcement of laws, regulations, and ordinances pertaining to lead poisoning and lead poisoning prevention.

(2) To recommend the adoption of policies with regard to the detection and elimination of the hazards to the public posed by exposure to lead in the environment;

(3) To recommend the adoption of policies with regard to the screening and treatment of individuals suffering from elevated exposures to environmental lead; and

(4) To report on or before March 1 of each year to the governor, speaker of the house and the president of the senate on both the progress of the comprehensive environmental lead program and recommendations for any needed changes in legislation, which report shall at a minimum: (i) provide by city and town, the incidence and levels of lead poisoning; (ii) describe educational programs; (iii) summarize regulations adopted pursuant

to the provisions of this chapter and chapter 128.1 of title 42, and state the number of enforcement actions pursuant to this chapter initiated, the number completed or closed due to successful remediation of lead hazards, the number completed or closed for other reasons (which reasons shall be explained), and the number that remain open (including information on how long such actions have been open and the reasons they have not been completed).

(c) The members of the council shall be as follows:

(1) There shall be five (5) ex officio members: the director, the director of environmental management, the director of human services, the attorney general, and the executive director of the housing resources commission or their designees.

(2) There shall be one local government official, who shall have knowledge of lead hazard reduction programs at the local level, appointed by the president of the Rhode Island League of Cities and Towns.

(3) Deleted by [P.L. 2002, ch. 187, § 2](#); [P.L. 2002, ch. 188, § 2](#).

(d) The members shall elect from among their members a chairperson, a vice chairperson, and secretary.

(e) The council shall meet at the call of the chairperson, but not less than quarterly. The director shall provide any meeting and hearing rooms and secretarial staff that the council may require.

#### **§ 23-24.6-7. Screening by health care providers**

(a) The department shall promulgate regulations establishing the means by which and the intervals at which children under six (6) years of age shall be screened for lead poisoning. The department is also authorized to require screening for lead poisoning in other high risk groups.

(b) Each physician registered or licensed by Rhode Island or any agency of Rhode Island shall screen children under six (6) years of age for lead poisoning at the intervals and using the methods specified in the regulations adopted pursuant to subsection (a). Each licensed, registered or approved health care facility serving children under six (6) years of age, including but not limited to hospitals, clinics, and health maintenance organizations, shall take appropriate steps to ensure that their patients receive screening for lead poisoning at the intervals and using the methods specified in these regulations.

(c) All health care programs funded in whole or in part with state money and having child health components shall include, require, and/or provide for screening children under six (6) years of age for lead poisoning at the intervals and using the methods specified in the regulations promulgated under this section.

(d) The provisions of this section shall not apply if the parents of the child object to the child undergoing blood lead screening on the grounds that the screening conflicts with their religious tenets and practices.

(e) All blood samples taken by physicians or other health care providers licensed in Rhode Island or by licensed, registered, or approved health care facilities in Rhode Island from children under the age of six (6) years for the purpose of screening for blood lead level shall be sent to the state laboratory in the department of health for laboratory analysis.

(f) The department shall, at least annually, analyze and summarize all of the lead screening information provided by physicians, health care facilities, and laboratories and provide this information to all other local and state agencies involved with case management and lead hazard reduction. An analysis and summary of the data shall also be made available, at least annually, to the health care community, to the general assembly, and the general public in a format that is easily understandable to non-technical readers.

#### **§ 23-24.6-8. Screening prior to child care or school enrollment**

(a) Each child care provider licensed, certified, or approved by any Rhode Island state agency shall obtain from a parent or guardian of each child in care under the age of six (6) years, but not less than nine (9) months of age, evidence that the child has been screened for lead poisoning or a certificate signed by the parent or guardian stating that blood testing is contrary to that person's beliefs.

(b) Each public and private nursery school and kindergarten shall, prior to initial enrollment of a child, obtain from a parent or guardian of the child evidence that the child has been screened for lead poisoning according to guidelines established under § 23-24.6-7, or a certificate signed by the parent or guardian stating that blood testing is contrary to that person's beliefs.

#### **§ 23-24.6-9. Reimbursement by third party payers**

Screening for lead poisoning and lead screening related services for children under six (6) years of age as required by department regulations and diagnostic evaluations for lead poisoning for children under six (6) years of age, including but not limited to confirmatory blood lead testing, shall be a covered health benefit and be reimbursable under any general or blanket policy of accident or health insurance offered by an insurer except for supplemental policies which only provide coverage for specific diseases, hospital indemnity medicare supplements, or other supplemental policies. The department of human services shall pay for the lead screening and lead screening related and diagnostic evaluation services where the patient is eligible for medical assistance under the provisions of chapter 8 of title 40. The department of health shall pay for the lead screening and lead screening related and diagnostic evaluation services where the patient is not covered by any health insurance. All companies which are self insured for health care services will be encouraged by the department to participate as other insurers.

#### **§ 23-24.6-10. Lead screening restricted receipt account**

The director shall establish procedures for lead screening, laboratory testing, and reimbursement. The state laboratory services shall be billed to and reimbursed by insurers. Fees shall be set based upon the rates paid by the insurers to private laboratories for blood lead analysis. All reimbursement fees paid to the department shall be deposited into the general fund. General revenue appropriations for the lead screening program shall be used for:

- (1) Administration of the comprehensive environmental lead program, including performance of environmental lead inspections by state inspectors for enforcement purposes, and development, administration, and coordination of a comprehensive educational program on environmental lead exposures and lead poisoning;
- (2) Provision of comprehensive environmental lead inspections and technical assistance on appropriate environmental lead hazard reduction to families of significantly lead poisoned Rhode Island children and to families of uninsured and underinsured lead poisoned Rhode Island children on a priority basis by blood lead level; regulations clearly identifying the blood lead level corresponding to significant lead poisoning and the mechanism for prioritizing by blood lead level shall be promulgated;
- (3) Provision of comprehensive environmental lead inspections and technical assistance on appropriate environmental lead hazard reduction to preschools, day care facilities, nursery schools, public and private elementary schools, and foster homes and shelters serving children under the age of six (6) years;
- (4) Provision of funds to the department of environmental management for enforcement of fugitive dust regulations designed to reduce or eliminate the hazards caused by removal of leaded paint from the exterior of structures;
- (5) Administration of a childhood blood lead testing program by the department's division of laboratories, including processing, analyzing, and reporting childhood blood lead samples;
- (6) Provision of the necessary blood lead screening and follow up blood lead testing for uninsured and underinsured preschool children in Rhode Island; and
- (7) Development of a data management system which can be used to track cases of lead poisoning to ensure that they receive timely and appropriate medical treatment, to monitor homes for environmental lead inspections and lead hazard reduction, and to investigate the extent of childhood lead poisoning in Rhode Island.

#### **§ 23-24.6-11. Reporting of cases of lead poisoning**

Any physician registered or licensed by Rhode Island or any agency of Rhode Island or any employee of a li-

censed, registered, or approved health care facility making the diagnosis of childhood lead poisoning shall report that diagnosis to the director within ten (10) business days of the diagnosis.

#### **§ 23-24.6-12. Comprehensive environmental lead inspections**

The department shall develop and promulgate regulations for:

(1) Conducting comprehensive environmental lead inspections, which regulations shall, at a minimum, include procedures for:

(i) Inspecting, testing, and/or sampling of drinking water, household dust, painted surfaces, soil, and/or other appropriate fixed surfaces that may contain lead;

(ii) Notification of owners, occupants, and mortgagees and lienholders and/or the posting of warnings when unacceptable environmental lead levels are identified during an inspection; and

(iii) Notifying the department of the results of inspections;

(2) For other inspections necessary to accomplish the purposes of this chapter; and

(3) Collection of environmental media samples, including, but not limited to, dust, soil, paint, pewter, pottery, and water, and field analysis of their lead content.

#### **§ 23-24.6-13. State inspectors**

(a) The director, or his or her designee, or any state inspector is authorized to inspect during business hours, or by appointment at another time agreed to by the inspector and the owner, occupant, or other person in charge of a dwelling, dwelling unit, or premises:

(1) Any dwelling, dwelling unit, or premises for the purpose of conducting a comprehensive environmental lead inspection, or other inspection, as part of the treatment and follow up for a child identified as being lead poisoned;

(2) Any structure or premises that is used as a preschool, day care facility, nursery school, public or private elementary school or schoolyard, public playground, or foster home or shelter serving children under the age of six (6) years for the purpose of conducting a comprehensive environmental lead inspection, or other inspection;

(3) Any dwelling, dwelling unit, or premises for the purpose of conducting a comprehensive environmental lead inspection, or other inspection, in response to any complaint to the department by an occupant or the parent or guardian of any minor who is an occupant renting or leasing the dwelling, dwelling unit, or premises of the existence of a lead exposure hazard for a child under the age of six (6) years residing in that dwelling, dwelling unit, or premises; or

(4) Any dwelling, dwelling unit, structure, or premises identified in subsection (a)(1), (2), or (3) of this section which is undergoing a lead hazard reduction or a regulated renovation or rehabilitation at a reasonable time, without prior notice, as part of an enforcement inspection.

(b) The owner, occupant, or other person in charge of a dwelling, dwelling unit, or premises shall, upon presentation of proper identification by the state inspector, for the limited purpose of inspection for lead, grant the inspector entry and free access to every part of the dwelling, dwelling unit, or premises where lead may pose a hazard to the health and safety of children under the age of six (6) years. If any owner, occupant, or other person in charge of a dwelling, dwelling unit, or premises fails or refuses to permit this access and entry to the structure or premises under his or her control or any part of it, the state inspector may, upon a showing that probable cause exists for the inspection and for the issuance of a court order directing compliance with the inspection requirements of this section, petition and obtain an order from a court of competent jurisdiction. Any person refusing to comply with an order issued pursuant to this section shall be subject to any penalties as may be authorized by law for violation of a court order.

#### **§ 23-24.6-14. Inspection of child care facilities**

(a) The director shall promulgate regulations requiring that as a condition of licensure all preschools, day care facilities, nursery schools, public and private elementary schools and schoolyards, public playgrounds, and shelters and foster homes serving children under the age of six (6) years in Rhode Island:

(1) Receive comprehensive environmental lead inspections at specified intervals; and

(2) Demonstrate that they are either lead free or lead safe.

(b) The director, shall, using state inspectors, conduct comprehensive environmental lead inspections for all these facilities at the specified intervals.

#### **§ 23-24.6-15. Inspections of rental property**

(a) The director shall, in conjunction with the housing resources commission, promulgate regulations permitting state inspectors to conduct such lead inspections as may be appropriate in response to any complaint to

the department or the housing resources commission, by an occupant or the parent or guardian of any child under the age of six (6) years who is an occupant renting or leasing a dwelling, dwelling unit, or premises of the existence of a lead exposure hazard for a child under the age of six (6) years in that dwelling, dwelling unit, or premises. These regulations will allow for response to the complaints to be prioritized based upon the age of the structure and the nature and degree of hazard present.

(b) Whenever a comprehensive environmental lead inspection has been performed either pursuant to a complaint or otherwise, the owner and/or any real estate agent or property manager involved in renting or leasing the dwelling, dwelling unit, or premises shall provide the results of the inspection to occupants pursuant to regulations promulgated by the department, as follows:

(1) Those persons occupying the dwelling, dwelling unit, or premises at the time the inspection is performed shall be notified of the results within five (5) business days after the owner receives the results;

(2) All persons who are prospective occupants shall be notified of the inspection results if a significant lead hazard exists, before any lease is signed or before occupancy begins in cases where no lease is signed;

(3) This notice provision terminates with the performance of the necessary lead reduction actions required to reach at least the “lead safe” level. The department shall provide the owner with a certification of lead reduction for the dwelling.

(c) Failure to provide inspection results and/or educational materials pursuant to this chapter shall subject the lessor or his or her agent to a civil penalty of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.

#### **§ 23-24.6-16. Notice prior to residential property transfer**

(a) The department shall issue regulations for the disclosure of lead exposure hazards and potential lead exposure hazards in a residential dwelling, dwelling unit, or premise that is offered for sale or lease. These regulations, at the minimum, shall incorporate the requirements of § 1018 of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992 (PL 102-550), 42 U.S.C. § 4852d, shall not be inconsistent with the requirements for lead hazard mitigation established pursuant to the provisions of chapter 128.1 of title 42, and shall additionally require an owner of a residential dwelling, dwelling unit, or premise offered for sale or lease to provide copies of any outstanding notice of violation and of results of any lead inspection performed in the dwelling, dwelling unit, or premise and copies of educational materials developed by the department, including information about the requirements of this section and programs that provide financial assistance for comprehensive environmental lead inspections or lead hazard reduction.

(b) The department shall prepare written materials concerning environmental lead exposures and lead hazards

which shall be made available to real estate brokers and agents. The materials shall also be made available to the general public by the department.

(c) The duties required under this section are not exclusive and do not replace or alter any duty imposed upon the owner to perform lead hazard reduction as required by this chapter.

(d) In no instance shall the receipt of the disclosures required by this section operate as or be construed as a bar to relief or in any manner be used as an affirmative defense for an owner, operator, or real estate agent in any statutory or common law action.

(e) The department shall establish and maintain a registry of real estate for which a comprehensive environmental lead inspection has been performed. The registry shall be cross-indexed by the owners' name, street address, as well as the assessor's lot and plat number for the applicable city or town.

#### **§ 23-24.6-17. Lead hazard reduction**

(a) The director shall promulgate lead hazard reduction regulations. These regulations shall:

(1) Specify the circumstances under which owners of dwellings, dwelling units, or premises must undertake lead hazard reduction in order to remedy conditions that present a clear and significant health risk to occupants of the dwelling, dwelling unit, or premises;

(2) Define lead hazard reduction with respect to both the sources of lead that must be treated and acceptable and unacceptable treatment methods;

(3) Require owners to make all reasonable efforts to ensure that occupants are not present during the lead hazard reduction; variances may be granted according to regulations; provided, that the owners are not responsible for providing alternative housing. If the occupants refuse to vacate the premises after all reasonable efforts by the owner to ensure compliance within this section, then the owners are exempt from any liability arising out of the occupants' noncompliance. If the occupants are required to vacate the premises for a three (3) day period or longer, there shall be a pro-rata adjustment or abatement of the rent during the period of lead hazard reduction;

(4) Specify containment and clean up measures to be taken as part of lead hazard reduction activities;

(5) Contain measures to protect the occupational safety and health of lead inspectors, contractors, supervisors, workers, and other persons who perform lead hazard reduction which may be more, but not less, stringent than applicable federal standards; and

(6) Specify the circumstances under which owners of dwellings, dwelling units, or premises must undertake lead hazard reduction to at least the lead safe level of [FN1] protect occupants and neighbors.

(b)(1) Until November 1, 2005, the owner of any dwelling, dwelling unit, or premises shall be considered as an “innocent owner”, and liability as to lead poisoning is limited to the reduction of any lead hazard as determined by a comprehensive environmental lead inspection within the requirements of the Housing Maintenance and Occupancy Code, chapter 24.3 of title 45. The “innocent owner” provision will cease upon the owner’s unreasonable failure to correct any lead paint violation within ninety (90) days of notice as provided in that chapter. Provided, any owner who has received notices on three (3) or more properties shall be presumed to be an unreasonable failure to correct.

(2) “Innocent owner” status, and the limits on liability set forth in this subsection, shall not apply to any incident of childhood lead poisoning reported to the department on or after November 1, 2005, and liability for lead poisonings after November 1, 2005, but shall include such correction of lead hazards as may be required by this chapter.

(c) The owner of any dwelling, dwelling unit, or premises who fails to provide for lead hazard reduction as required by department regulations shall be issued a notice of violation by the director in the manner provided by the Housing Maintenance and Occupancy Code, chapter 24.3 of title 45. In addition to any other enforcement authority granted under this chapter, the department shall have the authority to utilize pertinent provisions of that code in enforcing this section in the same manner as an enforcing officer under the code, including but not limited to the provisions of §§ 45-24.3-17 -- 45-24.3-21, except that the director or his or her designee may provide a reasonable time up to ninety (90) days for the correction of any violation alleged and, except where there exists a hardship as to financing the lead hazard reduction, or where material, personnel, or weather delays the reduction completion. Except as herein provided, if after ninety (90) days following the date of issuance of a notice of violation by the department, the owner has failed to correct the lead hazards, the department shall issue a second notice of violation.

(d)(1) One or more lead paint waste depositories shall be established and be in operation by January 1, 1993. The department of environmental management shall work with the solid waste management corporation to promulgate regulations governing these lead paint waste depositories.

(2) Each lead paint waste depository may set fees to cover the costs of lead paint waste storage, reduction, consolidation, incineration, and/or out of state disposal.

[FN1] Probably should be “to”.

#### **§ 23-24.6-18. Revisions to Housing Maintenance and Occupancy Code**

Nothing in this chapter shall alter the responsibilities of owners and occupants, or the authority of enforcing

officers, under the Housing Maintenance and Occupancy Code, chapter 24.3 of title 45.

#### **§ 23-24.6-19. Fugitive dust**

(a) The department of environmental management shall revise its air pollution control regulation number 5 relating to “fugitive dust”, developed under authority conferred by the Clean Air Act, chapter 23 of title 23, so as to prevent the uncontrolled dispersal of lead bearing dust into the air and soil. The revised regulations shall control all sandblasting and powered sanding of exterior surfaces with lead containing paint or surface coatings under conditions specified by the department of environmental management.

(b) In addition to any other authority currently held, the department of environmental management shall have the authority to conduct soil sampling and other appropriate environmental lead sampling in enforcing the air pollution control regulation number 5 relating to “fugitive dust”.

#### **§ 23-24.6-19.1. Sale of abrasive materials for removal of paint**

Every hardware store and retail store which sells abrasive materials which may be used to remove paint shall post a conspicuous sign, provided by the department of health, of sufficient size with large enough lettering to be easily seen and read, in each area of the store where abrasive materials are displayed for sale which contains the following:

#### **WARNING**

Use of abrasive material (sandpaper, steel wool, drill disks and pads, etc.) in your home to remove paint may increase the risk of childhood lead poisoning. For more information please contact the Rhode Island department of health.

#### **§ 23-24.6-20. Licensure or certification of environmental lead inspectors and lead contractors, supervisors, and workers**

(a) The department shall provide for the certification of training programs for environmental lead inspectors and for lead contractors, supervisors, workers, and other persons engaged in environmental lead hazard reduction pursuant to the provisions of this chapter. The department shall establish standards and specifications for training courses including, at a minimum, the required length of different training programs, mandatory topics of instruction, and required qualifications for training programs and instructors. Hands on instruction shall be a component of the required training.

(b) The department shall establish procedures and issue regulations requiring the certification of environment-

al lead inspectors and the licensure or certification, as appropriate, of all lead contractors, supervisors, workers, and other persons engaged in environmental lead hazard reduction pursuant to the provisions of this chapter. These regulations:

(1) Shall prescribe the requirements for licensure and certification and the conditions and restrictions governing the renewal, revocation, and suspension of licenses and certificates; requirements for licensure and for renewal of licensure shall include, but not be limited to, the following:

(i) Compliance with the lead hazard reduction regulations in [§ 23-24.6-17](#); and

(ii) Required training of environmental lead inspectors and of lead contractors, supervisors, workers, and other persons engaged in environmental lead hazard reduction in subjects including but not limited to safe work practices, instruction in health risks, precautionary measures, protective equipment, and other practices including practices to prevent contamination of the residential premises, ambient discharges and ground contamination, respiratory protection, new lead hazard reduction techniques and technologies, applicable federal and state regulation, and hands on instruction for equipment and techniques to be used; a minimum of twenty (20) hours of training shall be required as a condition of licensure for workers; additional hours of training shall be required for supervisors and contractors; annual refresher training shall also be required;

(2) May provide for Rhode Island to reciprocally certify and/or license persons certified and/or licensed by other states with comparable requirements.

(c) No person shall enter into, engage in, or conduct comprehensive environmental lead inspections or environmental lead hazard reduction activities covered by department regulations once those regulations have been promulgated as specified in [§ 23-24.6-12](#) without having successfully completed a certified training program and without having been certified or licensed, as appropriate, by the department. Each trained and certified or licensed person shall be issued a photo identity card.

(d) The department shall, in conjunction with the housing resources commission, develop and periodically update lists of all licensed and certified inspectors, contractors, supervisors, workers and other persons who perform environmental lead hazard reduction in Rhode Island and make those lists available to interested parties and the public.

(e)(1) The department shall enforce the provisions of this section as appropriate and shall have all necessary powers for enforcement.

(2) The department may revoke, suspend, cancel, or deny any certification or any license, at any time, in accordance with chapter 35 of title 42 if it believes that the terms or conditions of these are being violated or that

the holder of, or applicant for, the certification or license has violated any regulation of the department or any other state law or regulation. Any person aggrieved by a determination by the department to issue, deny, revoke or suspend any certification or license may request an adjudicatory hearing.

(3) When any person violates the terms or conditions of any certification or license issued under this section or any state law or regulation, the director shall have the power by written notice to order the violator to cease and desist immediately. The department may file a written complaint with the district court in the jurisdiction in which the violation occurred. Punishment by fine not to exceed one thousand dollars (\$1,000) under this section may be in addition to the suspension of any license or certification.

(4) Any state inspector may issue an immediate cease work order to any person who violates the terms or conditions of any license or certification issued under this section or any provision of this chapter or any regulation or order issued under this chapter if the violation will endanger or materially impair the health or well being of any occupant, any environmental lead inspector, or any contractor, supervisor, worker, or other person engaged in environmental lead hazard reduction.

(f) Nothing in this section shall be construed to limit the authority of the department of health, the department of labor and training, or the department of environmental management under the provisions of any other law.

#### **§ 23-24.6-21. Laboratory testing and reporting requirement certification**

(a) Laboratory analyses of all clinical and environmental media samples collected to demonstrate compliance with this act or with regulations promulgated pursuant to this act shall only be conducted by a laboratory which has been licensed or certified (as appropriate) by the director pursuant to chapter 16.2 of this title entitled "Laboratories."

(b) All laboratories performing blood lead analyses on samples taken from children under six (6) years of age shall report the results of such analyses to the department in accordance with regulations promulgated by the department.

(c) [Deleted by P.L. 2003, ch. 59, § 3 and by P.L. 2003, ch. 72, § 3.]

#### **§ 23-24.6-22. Licensure and certification--Receipts**

The director shall assess fees for certifications and licenses issued in accordance with rules and regulations promulgated pursuant to the authority conferred by this chapter, provided that those fees are assessed only after procedures in accordance with chapter 35 of title 42 have been followed. All fees shall be deposited into the general fund as general revenue.

### § 23-24.6-23. Compliance and enforcement

(a) Except as provided in this chapter, the inspection, enforcement, and penalties for violations of the provisions of this chapter shall be in accordance with the provisions and procedures set forth in §§ 23-1-19 --23-1-25. In addition to the provisions for enforcement of this section found elsewhere in this chapter, there shall be the following powers of enforcement, which shall be in addition to other provisions of the general laws pertaining to enforcement of the laws of this state and shall not be deemed to limit or replace such other provisions. The provisions of this section shall be liberally construed and shall be considered an essential responsibility of the state to protect public health and welfare.

(b) The department shall establish a comprehensive integrated enforcement program, which shall be designed: (1) to assure that enforcement is certain, predictable, and effective as a means of reducing the incidence of childhood lead poisoning; (2) to direct enforcement efforts to places, areas, and types of structures where there is a high incidence of childhood lead poisoning; and (3) to identify and give priority to addresses where there are multiple instances of childhood lead poisoning and to identify and as consistent with law to provide for the prosecution of persons at whose properties there have been multiple instances of childhood lead poisoning and lead hazards have not been corrected. In order to effectuate the provisions of this subsection, the department of health: (i) shall maintain a list as a public document of the addresses of properties that are not lead safe and in which more than three (3) children lived at the time their blood was tested for lead concentration and at least two (2) of these children were lead poisoned, (ii) shall maintain a database with the names and addresses of owners of rental housing at the time any child residing in the rental housing was tested positive for lead poisoning for which a second notice of violation has been issued and lead hazards have not been corrected as required pursuant to the provisions of this chapter, which database shall be public and provided to government and nonprofit agencies that are attempting to prevent lead poisoning or to enforce lead poisoning regulations, and (iii) shall notify the attorney general of all second notices of violation, issued pursuant to the provisions of § 23-24.6-17, to which there has not been a response meeting the requirements of law within thirty (30) days after the notice.

(c) The attorney general shall maintain an office of lead advocate, which office shall have, in addition to any other powers that the attorney general may assign to it, the power:

(1) To investigate any alleged failures to comply with the lead hazard reduction, to initiate either a civil or criminal cause of action, or both, to compel compliance via injunctive relief and/or impose penalties and fines, as appropriate;

(2) To bring any actions that may be necessary or appropriate to secure the performance by state agencies and political subdivisions the duties assigned to them by this section;

(3) To notify in writing on behalf of the attorney general any person, who has received a second notice of violation issued by the department of health and has not responded consistent with the requirements of law within thirty (30) days, of the person's obligations under law and the potential penalties for continued violations; and

(4) To establish guidelines to prevent retaliatory actions by property owners against tenants on the basis of complaints or notices of violations arising from this chapter and chapter 128.1 of title 42, or based on the presence of a pregnant woman or child under age six (6) who in any manner seeks to enforce their right to housing in which lead hazards have been corrected in accordance with this chapter or chapter 128.1 of title 42. These guidelines shall define retaliatory actions, including, but not limited to, arbitrary termination of tenancy or other form of constructive eviction, arbitrary refusal to renew a lease, or arbitrary and unreasonable increase in rent or decrease in services to which the tenant is entitled, for all tenants, whether or not they have leases or are tenants at will. It shall be unlawful to take retaliatory actions against tenants arising from enforcement of the provisions of this chapter or chapter 128.1 of title 42; this prohibition against retaliatory actions applies whether or not the tenant has a lease. Damages and remedies for retaliatory actions under this paragraph shall be as provided for in chapter 18 of title 34.

(5) No provision of this chapter shall derogate the common law or any statutory authority of the attorney general, nor shall any provision be construed as a limitation on the common law or statutory authority of the attorney general.

(d) Receivership of properties not meeting standards. Following the second notice of violation, issued by the department of health pursuant to the provisions of § 45-24.3-17(e) for failure to meet the applicable lead hazard reduction for rental dwellings occupied by a pregnant woman or a child under the age of six (6) years unless the violations alleged to exist are corrected or a plan for correction has been approved by the department, the unit may be considered abandoned and a public nuisance, which is a menace to public health, as the term “abandon” or “abandonment” and “public nuisance” defined by § 34-44-2. In those instances the department of health, the attorney general, a nonprofit corporation as provided for in § 34-44-3, or the city or town in which the unit is located 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 hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met.

(e) High risk premises and dwellings. (1) The department of health shall notify the property owner where both the following conditions have been met: (i) there have been three (3) or more at risk children under the age of six (6) years with at least environmental intervention blood levels and (ii) fifty percent (50%) of children under the age of six (6) years from the premises who have been tested have had at least environmental intervention blood lead levels, that the premises present a high risk of lead poisoning.

(2) A property owner who receives notice that the premises are high risk: (i) shall have thirty (30) days in which to conduct a comprehensive lead inspection that shows that lead hazards have been corrected to the lead safe standard, or (ii) shall present a compliance schedule to the department of health to meet the lead safe standard, which compliance schedule shall be subject to approval by the department of health and shall provide for achieving the lead hazard reduction within ninety (90) days. The requirements of the compliance schedule shall be deemed to have been met if a comprehensive lead inspection shows that the lead safe stand-

ard has been met at the premises.

(3) A property owner who fails to meet the requirements of subdivision (2) of this subsection shall be notified that the premises are declared unsafe for habitation by children under six (6). A list of property owners so notified and of addresses of premises for which the notice has been given shall be a public record.

(4) A copy of this notice shall be sent to the town clerk or recorder of deeds in the city or town where the property is located, to be recorded pursuant to the provisions of chapter 13 of title 34. The property owner, so notified, shall post and maintain a warning at the primary entrance to the premises and to each dwelling unit therein declaring that the unit is unsafe for children under six (6) years of age. If the property owner shall fail to make or maintain the posting herein required, the department of health shall post the premises as provided for in [§ 23-24.6-12\(2\)](#).

(5) Any property owner who receives notice that a dwelling unit is high risk and who fails to abate lead hazards in accordance with a compliance schedule as provided in subdivision (2) of this subsection and there is a subsequent instance of an at risk occupant with an environmental intervention blood lead level, which is attributable in whole or in part to conditions in the dwelling unit, shall be deemed to have committed a criminal offense and may be punished by imprisonment for not more than five (5) years and/or by a fine of not more than twenty thousand dollars (\$20,000).

(6) Any property owner who receives notice that a dwelling unit is high risk and who has substantially completed the required remediation as determined by the department may become reclassified from “high risk” to “abatement in progress” contingent upon adherence to the approved compliance schedule for the remaining remediation efforts.

(f) Nothing in this section shall be deemed to limit or impair the existing rights of parties to take action to compel property owners to improve or maintain property under common law or pursuant to any of the general laws of the state of Rhode Island.

#### **§ 23-24.6-24. Exemptions**

Notwithstanding any other law, any and all certification and licensure fees charged and costs incurred pursuant to the provisions of this chapter shall not be subject to reimbursement to any municipality by operation of any mandate of this chapter.

#### **§ 23-24.6-25. Interpretation and severability**

The provisions of this chapter shall be liberally construed and shall be held to be in addition to, and not in sub-

stitution for or a limitation of, the provisions of any other law. If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the remainder of the chapter and the application of the provisions to any other person or circumstances shall not be affected by this invalidity.

#### **§ 23-24.6-26. Rules and regulations**

The director is authorized to adopt, modify, or repeal and promulgate rules and regulations as are in accord with the purposes of §§ 23-24.6-1--23-24.6-27, and shall be subject to the Administrative Procedures Act, chapter 35 of title 42. All rules and regulations promulgated by the director shall provide for the use of “lead safe” reduction as the preferred method where possible to meet the requirements of this chapter. The rules shall provide for notification, pursuant to the provisions of § 23-24.6-12, to occupants of a premise, of lead hazards following a comprehensive environmental lead inspection at the premises when there is a reasonable likelihood that given the age, type, and condition of the premises that significant lead hazards are present in other dwelling units.

#### **§ 23-24.6-27. Administrative fines**

(a) In addition to any other enforcement authority granted under this chapter, whenever on the basis of any information, the department determines that a person has violated or is in violation of § 23-24.6-12, 23-24.6-13, 23-24.6-14 or 23-24.6-15 regarding inspections, § 23-24.6-17 regarding lead hazard reduction, or § 23-24.6-20 regarding licensure or certification, any rule or regulation promulgated pursuant to any of these sections, or any orders issued under any of these sections, rules or regulations, the director may issue an order civilly fining the person one hundred dollars (\$100) per day for any current or past violation, requiring compliance immediately or within a specified time period, or both. Each day of continued violation may be considered a separate violation. Each violation in any premises may be considered a separate violation.

(b) Within thirty (30) days after any order issued pursuant to this section is served, the order shall become final unless the person or persons named in the order request a hearing. Upon that request, the director shall conduct a hearing as soon as reasonably possible.

(c) In connection with any proceeding under this section the director may issue subpoenas for attendance and testimony of witnesses and the production of papers, books, documents, and other materials.

(d) If any person liable to pay any civil fine neglects or refuses to pay after demand, the amount together with interest and any other costs that may accrue shall be a lien in favor of the state upon only the real property of the person which is subject to the order only after the lien has been entered and recorded in the city/town in which the property is situated.

(e) In determining the amount of any civil fine pursuant to this section, the director shall consider the willful-

ness of the violation, the ability of the violator to comply, damage or injury to public health and welfare, the costs incurred by the state, and any other relevant factors.

(f) The director shall issue regulations to implement this section. At a minimum, the regulations shall set forth how long after receiving any order from the director or any other notice of a violation a person has to comply with the law before civil fines will be assessed, the circumstances in which no grace period will apply, the circumstances in which any grace period may be extended, and the procedure and times frames to request an extension.

(g) Any fines levied pursuant to this section shall be done in lieu of any civil penalties issued pursuant to § 45-24.3-18(a), and no housing authority shall issue any civil penalty for the same violation.

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