

CHAPTER 3742: LEAD ABATEMENT

3742.01 Lead abatement definitions.

As used in this chapter:

(A) "Board of health" means the board of health of a city or general health district or the authority having the duties of a board of health under section 3709.05 of the Revised Code.

(B) "Child care facility" means each area of any of the following in which child care, as defined in section 5104.01 of the Revised Code, is provided to children under six years of age:

(1) A child day-care center, type A family day-care home, or type B family day-care home as defined in section 5104.01 of the Revised Code;

(2) A type C family day-care home authorized to provide child care by Sub. H.B. 62 of the 121st general assembly, as amended by Am. Sub. S.B. 160 of the 121st general assembly and Sub. H.B. 407 of the 123rd general assembly;

(3) A preschool program or school child program as defined in section 3301.52 of the Revised Code.

(C) "Clearance examination" means an examination to determine whether the lead hazards in a residential unit, child care facility, or school have been sufficiently controlled. A clearance examination includes a visual assessment, collection, and analysis of environmental samples.

(D) "Clearance technician" means a person, other than a licensed lead inspector or licensed lead risk assessor, who performs a clearance examination.

(E) "Clinical laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of substances derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, or in the assessment or impairment of the health of human beings. "Clinical laboratory" does not include a facility that only collects or prepares specimens, or serves as a mailing service, and does not perform testing.

(F) "Encapsulation" means the coating and sealing of surfaces with durable surface coating specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children.

(G) "Enclosure" means the resurfacing or covering of surfaces with durable materials such as wallboard or paneling, and the sealing or caulking of edges and joints, so as to prevent or control chalking, flaking, peeling, scaling, or loose lead-containing substances from becoming part of house dust or otherwise accessible to children.

(H) "Environmental lead analytical laboratory" means a facility that analyzes air, dust, soil, water, paint, film, or other substances, other than substances derived from the human body, for the presence and concentration of lead.

(I) "HEPA" means the designation given to a product, device, or system that has been equipped with a high-efficiency particulate air filter, which is a filter capable of removing particles of 0.3 microns or larger from air at 99.97 per cent or greater efficiency.

(J) "Interim controls" means a set of measures designed to reduce temporarily human exposure or likely

human exposure to lead hazards. Interim controls include specialized cleaning, repairs, painting, temporary containment, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs.

(K)(1) "Lead abatement" means a measure or set of measures designed for the single purpose of permanently eliminating lead hazards. "Lead abatement" includes all of the following:

- (a) Removal of lead-based paint and lead-contaminated dust;
- (b) Permanent enclosure or encapsulation of lead-based paint;
- (c) Replacement of surfaces or fixtures painted with lead-based paint;
- (d) Removal or permanent covering of lead-contaminated soil;
- (e) Preparation, cleanup, and disposal activities associated with lead abatement.

(2) "Lead abatement" does not include any of the following:

- (a) Preventive treatments performed pursuant to section 3742.41 of the Revised Code;
- (b) Implementation of interim controls;
- (c) Activities performed by a property owner on a residential unit to which both of the following apply:
 - (i) It is a freestanding single-family home used as the property owner's private residence.
 - (ii) No child under six years of age who has lead poisoning resides in the unit.

(L) "Lead abatement contractor" means any individual who engages in or intends to engage in lead abatement and employs or supervises one or more lead abatement workers, including on-site supervision of lead abatement projects, or prepares specifications, plans, or documents for a lead abatement project.

(M) "Lead abatement project" means one or more lead abatement activities that are conducted by a lead abatement contractor and are reasonably related to each other.

(N) "Lead abatement project designer" means a person who is responsible for designing lead abatement projects and preparing a pre-abatement plan for all designed projects.

(O) "Lead abatement worker" means an individual who is responsible in a nonsupervisory capacity for the performance of lead abatement.

(P) "Lead-based paint" means any paint or other similar surface-coating substance containing lead at or in excess of the level that is hazardous to human health as established by rule of the public health council under section 3742.50 of the Revised Code.

(Q) "Lead-contaminated dust" means dust that contains an area or mass concentration of lead at or in excess of the level that is hazardous to human health as established by rule of the public health council under section 3742.50 of the Revised Code.

(R) "Lead-contaminated soil" means soil that contains lead at or in excess of the level that is hazardous to human health as established by rule of the public health council under section 3742.50 of the Revised Code.

(S) "Lead hazard" means material that is likely to cause lead exposure and endanger an individual's health as determined by the public health council in rules adopted under section 3742.50 of the Revised Code. "Lead hazard" includes lead-based paint, lead-contaminated dust, lead-contaminated soil, and lead-contaminated water pipes.

(T) "Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint. The inspection shall use a sampling or testing technique approved by the public health council in rules adopted by the council under section 3742.03 of the Revised Code. A licensed lead inspector or laboratory approved under section 3742.09 of the Revised Code shall certify in writing the precise results of the inspection.

(U) "Lead inspector" means any individual who conducts a lead inspection, provides professional advice regarding a lead inspection, or prepares a report explaining the results of a lead inspection.

(V) "Lead poisoning" means the level of lead in human blood that is hazardous to human health, as specified in rules adopted under section 3742.50 of the Revised Code.

(W) "Lead risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit, child care facility, or school, including information gathering from the unit, facility, or school's current owner's knowledge regarding the age and painting history of the unit, facility, or school and occupancy by children under six years of age, visual inspection, limited wipe sampling or other environmental sampling techniques, and any other activity as may be appropriate.

(X) "Lead risk assessor" means a person who is responsible for developing a written inspection, risk assessment, and analysis plan; conducting inspections for lead hazards in a residential unit, child care facility, or school; interpreting results of inspections and risk assessments; identifying hazard control strategies to reduce or eliminate lead exposures; and completing a risk assessment report.

(Y) "Lead-safe renovation" means the supervision or performance of services for the general improvement of all or part of an existing structure, including a residential unit, child care facility, or school, when the services are supervised or performed by a lead-safe renovator.

(Z) "Lead-safe renovator" means a person who has successfully completed a training program in lead-safe renovation approved under section 3742.47 of the Revised Code.

(AA) "Manager" means a person, who may be the same person as the owner, responsible for the daily operation of a residential unit, child care facility, or school.

(BB) "Permanent" means an expected design life of at least twenty years.

(CC) "Replacement" means an activity that entails removing components such as windows, doors, and trim that have lead hazards on their surfaces and installing components free of lead hazards.

(DD) "Residential unit" means a dwelling or any part of a building being used as an individual's private residence.

(EE) "School" means a public or nonpublic school in which children under six years of age receive education.

Effective Date: 04-07-2003; 05-18-2005

3742.02 Prohibited acts.

(A) No person shall do any of the following:

(1) Violate any provision of this chapter or the rules adopted pursuant to it;

(2) Apply or cause to be applied any lead-based paint on or inside a residential unit, child care facility, or school, unless the public health council has determined by rule under section 3742.50 of the Revised Code that no suitable substitute exists;

(3) Interfere with an investigation conducted by the director of health or a board of health in accordance with section 3742.35 of the Revised Code.

(B) No person shall knowingly authorize or employ an individual to perform lead abatement on a residential unit, child care facility, or school unless the individual who will perform the lead abatement holds a valid license issued under section 3742.05 of the Revised Code.

(C) No person shall do any of the following when a residential unit, child care facility, or school is involved:

(1) Perform a lead inspection without a valid lead inspector license issued under section 3742.05 of the Revised Code;

(2) Perform a lead risk assessment or provide professional advice regarding lead abatement without a valid lead risk assessor license issued under section 3742.05 of the Revised Code;

(3) Act as a lead abatement contractor without a valid lead abatement contractor's license issued under section 3742.05 of the Revised Code;

(4) Act as a lead abatement project designer without a valid lead abatement project designer license issued under section 3742.05 of the Revised Code;

(5) Perform lead abatement without a valid lead abatement worker license issued under section 3742.05 of the Revised Code;

(6) Effective one year after April 7, 2003, perform a clearance examination without a valid clearance technician license issued under section 3742.05 of the Revised Code, unless the person holds a valid lead inspector license or valid lead risk assessor license issued under that section;

(7) Perform lead training for the licensing purposes of this chapter without a valid approval from the director of health under section 3742.08 of the Revised Code;

(8) Perform interim controls without complying with 24 C.F.R. Part 35.

Effective Date: 04-07-2003; 05-18-2005

3742.03 Adoption of rules.

The public health council shall adopt rules in accordance with Chapter 119. of the Revised Code for the administration and enforcement of sections 3742.01 to 3742.19 and 3742.99 of the Revised Code. The rules shall specify all of the following:

(A) Procedures to be followed by a lead abatement contractor, lead abatement project designer, lead abatement worker, lead inspector, or lead risk assessor licensed under section 3742.05 of the Revised Code for undertaking lead abatement activities and procedures to be followed by a clearance technician, lead inspector, or lead risk assessor in performing a clearance examination;

(B)(1) Requirements for training and licensure, in addition to those established under section 3742.08 of the Revised Code, to include levels of training and periodic refresher training for each class of worker, and to be used for licensure under section 3742.05 of the Revised Code. Except in the case of clearance technicians, these requirements shall include at least twenty-four classroom hours of training based on the Occupational Safety and Health Act training program for lead set forth in 29 C.F.R. 1926.62. For clearance technicians, the training requirements to obtain an initial license shall not exceed six hours and the requirements for refresher training shall not exceed two hours every four years. In establishing the training and licensure requirements, the public health council shall consider the core of information that is needed by all licensed persons, and establish the training requirements so that persons who would seek licenses in more than one area would not

have to take duplicative course work.

(2) Persons certified by the American board of industrial hygiene as a certified industrial hygienist or as an industrial hygienist-in-training, and persons registered as a sanitarian or sanitarian-in-training under Chapter 4736. of the Revised Code, shall be exempt from any training requirements for initial licensure established under this chapter, but shall be required to take any examinations for licensure required under section 3742.05 of the Revised Code.

(C) Fees for licenses issued under section 3742.05 of the Revised Code and for their renewal;

(D) Procedures to be followed by lead inspectors, lead abatement contractors, environmental lead analytical laboratories, lead risk assessors, lead abatement project designers, and lead abatement workers to prevent public exposure to lead hazards and ensure worker protection during lead abatement projects;

(E)(1) Record-keeping and reporting requirements for clinical laboratories, environmental lead analytical laboratories, lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, and lead abatement workers for lead abatement projects and record-keeping and reporting requirements for clinical laboratories, environmental lead analytical laboratories, and clearance technicians for clearance examinations;

(2) Record-keeping and reporting requirements regarding lead poisoning for physicians, in addition to the requirements of section 3701.25 of the Revised Code;

(3) Information that is required to be reported under rules based on divisions (E)(1) and (2) of this section and that is a medical record is not a public record under section 149.43 of the Revised Code and shall not be released, except in aggregate statistical form.

(F) Environmental sampling techniques for use in collecting samples of air, water, dust, paint, and other materials;

(G) Requirements for a respiratory protection plan prepared in accordance with section 3742.07 of the Revised Code;

(H) Requirements under which a manufacturer of encapsulants must demonstrate evidence of the safety and durability of its encapsulants by providing results of testing from an independent laboratory indicating that the encapsulants meet the standards developed by the "E06.23.30 task group on encapsulants," which is the task group of the lead hazards associated with buildings subcommittee of the performance of buildings committee of the American society for testing and materials.

Effective Date: 04-07-2003

3742.04 Director of health - powers and duties.

(A) The director of health shall do all of the following:

(1) Administer and enforce the requirements of sections 3742.01 to 3742.19 and 3742.99 of the Revised Code and the rules adopted pursuant to those sections;

(2) Examine records and reports submitted by lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, lead abatement workers, and clearance technicians in accordance with section 3742.05 of the Revised Code to determine whether the requirements of this chapter are being met;

(3) Examine records and reports submitted by physicians, clinical laboratories, and environmental lead analytical laboratories under section 3701.25 or 3742.09 of the Revised Code;

(4) Issue approval to manufacturers of encapsulants that have done all of the following:

- (a) Submitted an application for approval to the director on a form prescribed by the director;
- (b) Paid the application fee established by the director;
- (c) Submitted results from an independent laboratory indicating that the manufacturer's encapsulants satisfy the requirements established in rules adopted under division (H) of section 3742.03 of the Revised Code;
- (d) Complied with rules adopted by the public health council regarding durability and safety to workers and residents.

(5) Establish liaisons and cooperate with the directors or agencies in states having lead abatement, licensing, accreditation, certification, and approval programs to promote consistency between the requirements of this chapter and those of other states in order to facilitate reciprocity of the programs among states;

(6) Establish a program to monitor and audit the quality of work of lead inspectors, lead risk assessors, lead abatement project designers, lead abatement contractors, lead abatement workers, and clearance technicians. The director may refer improper work discovered through the program to the attorney general for appropriate action.

(B) In addition to any other authority granted by this chapter, the director of health may do any of the following:

(1) Employ persons who have received training from a program the director has determined provides the necessary background. The appropriate training may be obtained in a state that has an ongoing lead abatement program under which it conducts educational programs.

(2) Cooperate with the United States environmental protection agency in any joint oversight procedures the agency may propose for laboratories that offer lead analysis services and are accredited under the agency's laboratory accreditation program;

(3) Advise, consult, cooperate with, or enter into contracts or cooperative agreements with any person, government entity, interstate agency, or the federal government as the director considers necessary to fulfill the requirements of this chapter and the rules adopted under it.

Effective Date: 04-07-2003

3742.05 Issuing licenses.

(A)(1) The director of health shall issue lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, and clearance technician licenses. The director shall issue a license to an applicant who meets all of the following requirements:

- (a) Submits an application to the director on a form prescribed by the director;
- (b) Meets the licensing and training requirements established by the public health council under section 3742.03 of the Revised Code;
- (c) Successfully completes the licensing examination for the applicant's area of expertise administered under section 3742.08 of the Revised Code and any training required by the director under that section;
- (d) Pays the license fee established by the public health council under section 3742.03 of the Revised Code;
- (e) Provides the applicant's social security number and any information the director may require to demonstrate the applicant's compliance with this chapter and the rules adopted under it.

(2) An individual may hold more than one license issued under this section, but a separate application is required for each license.

(B) A license issued under this section expires two years after the date of issuance. The director shall renew a license in accordance with the standard renewal procedure set forth in Chapter 4745. of the Revised Code, if the licensee does all of the following:

(1) Continues to meet the requirements of division (A) of this section;

(2) Demonstrates compliance with procedures to prevent public exposure to lead hazards and for worker protection during lead abatement projects established by rule adopted by the public health council under section 3742.03 of the Revised Code;

(3) Meets the record-keeping and reporting requirements for lead abatement projects or clearance examinations established by rule adopted by the public health council under section 3742.03 of the Revised Code;

(4) Pays the license renewal fee established by rule adopted by the public health council under section 3742.03 of the Revised Code.

(C) An individual licensed, certified, or otherwise approved under the law of another state to perform functions substantially similar to those of a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, or clearance technician may apply to the director of health for licensure in accordance with the procedures set forth in division (A) of this section. The director shall license an individual under this division on a determination that the standards for licensure, certification, or approval in that state are at least substantially equivalent to those established by this chapter and the rules adopted under it. The director may require an examination for licensure under this division.

Effective Date: 04-07-2003

3742.06 Contractor restrictions.

All of the following apply to a residential unit, child care facility, or school:

(A) No lead abatement contractor shall provide lead testing services or professional advice regarding lead abatement unless that service or advice is provided by a lead inspector or lead risk assessor who is licensed under section 3742.05 of the Revised Code and is employed by the lead abatement contractor.

(B) No person shall provide advice on the need for lead abatement and then participate in a lead abatement project resulting from that advice unless either of the following applies:

(1) The person is employed as a member of the staff of the owner or manager of the property on which the lead abatement is to be performed;

(2) A written contract for lead abatement is entered into that states both of the following:

(a) The person was involved in the lead testing, or in the provision of professional advice, that led to the lead abatement contract;

(b) The party contracting for lead abatement services should obtain a second opinion to verify any lead test results and assure that the proposed lead abatement or project design is appropriate.

(C) No lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, or clearance technician shall use the services of an environmental lead analytical laboratory that has not been approved by the director of health under section 3742.09 of the Revised Code.

(D) No lead abatement worker shall perform lead abatement without the on-site supervision of a licensed lead abatement contractor.

(E) No person shall have lead-safe renovation performed in lieu of having lead abatement performed on a property at which a lead-poisoned child under six years of age has been identified.

Effective Date: 04-07-2003; 05-18-2005

3742.07 Duties of contractor before commencing project.

(A) Prior to engaging in any lead abatement project on a residential unit, child care facility, or school, the lead abatement contractor primarily responsible for the project shall do all of the following:

(1) Prepare a written respiratory protection plan that meets requirements established by rule adopted under section 3742.03 of the Revised Code and make the plan available to the department of health and all lead abatement workers at the project site;

(2) Ensure that each lead abatement worker who is or will be involved in a lead abatement project has been examined by a licensed physician within the preceding calendar year and has been declared by the physician to be physically capable of working while wearing a respirator;

(3) Ensure that each employee or agent who will come in contact with lead hazards or will be responsible for a lead abatement project receives a license and appropriate training as required by this chapter before engaging in a lead abatement project;

(4) At least ten days prior to the commencement of a project, notify the department of health, on a form prescribed by the director of health, of the date a lead abatement project will commence.

(B) During each lead abatement project, the lead abatement contractor primarily responsible for the project shall ensure that all persons involved in the project follow the worker protection standards established under 29 C.F.R. 1926.62 by the United States occupational safety and health administration.

Effective Date: 04-07-2003; 05-18-2005

3742.071 Certifying results of lead risk assessment and options for reducing identified lead hazards.

All of the following apply in the performance of activities by persons licensed under this chapter:

(A) A lead risk assessor shall certify in writing the precise results of a lead risk assessment and options for reducing identified lead hazards.

(B) A clearance technician may perform a clearance examination when the examination is in connection with activities other than a lead abatement project. A clearance examination performed in connection with a lead abatement project shall be performed only by a lead inspector or lead risk assessor.

(C) The director of health may issue an immediate cease work order to a person licensed under this chapter if the director determines that the license holder is violating the terms or conditions of the license in a manner that endangers or materially impairs the health or well-being of an occupant of a residential unit, child care facility, or school or a person employed to perform lead abatement.

Effective Date: 04-07-2003; 05-18-2005

3742.08 Training programs and examination for licensure.

(A)(1) The director of health shall conduct, specify requirements by rule, or approve training programs for licensure of lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, lead abatement workers, and clearance technicians. In accordance with Chapter 119. of the Revised Code, the director shall adopt rules establishing all of the following:

(a) A system for accreditation of training programs and the requirements for accreditation, including curriculum requirements, hour requirements, hands-on training requirements, trainee competency and proficiency requirements, and requirements for quality control;

(b) Fees for application for approval of a training program and for participating in any program conducted by the director;

(c) Any other requirements pertinent to the operation of a training program.

(2) Each applicant for approval of a training program shall submit a completed application to the director on a form the director shall prescribe and provide. The director shall issue evidence of approval to each applicant who meets the requirements of division (A)(1) of this section and the criteria for approval established by rule adopted under this section and pays the fee.

(B) The director shall administer examinations for licensure under this chapter by conducting examinations, contracting pursuant to section 3701.044 of the Revised Code for another entity to conduct the examinations, or approving examinations. In accordance with Chapter 119. of the Revised Code, the director shall adopt rules specifying requirements for the administration of licensing examinations. The rules shall include requirements regarding the qualifications of examination administrators, fees to cover the cost of conducting the examinations, and any other requirements pertinent to the examinations.

If the director implements a system of approving examinations, the rules shall include procedures and criteria for approval and fees for the approval. Each applicant for approval shall submit a completed application to the director on a form the director shall prescribe and provide. The director shall issue evidence of approval to each applicant who meets the criteria for approval established in rules adopted under this division.

Effective Date: 04-07-2003

3742.09 Applying for approval of laboratory.

(A) Any person desiring approval from the director of health for an environmental lead analytical laboratory or a clinical laboratory to perform lead testing shall submit an application for approval to the director on forms that he shall prescribe and provide.

(B) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to establish all of the following:

(1) Procedures and criteria for approval of clinical laboratories and environmental lead analytical laboratories, including lead testing requirements and the qualification of laboratory owners and personnel;

(2) Fees for application for approval of laboratories;

(3) Any other requirements pertinent to the operation of a clinical laboratory or an environmental lead analytical laboratory.

(C) The director shall issue the appropriate approval to any applicant who meets the requirements of division (A) of this section and rules adopted under division (B) of this section, pays the application fee, and demonstrates compliance with the record-keeping and reporting requirements established by rule adopted under section 3742.03 of the Revised Code.

(D) Each clinical laboratory approved under this section shall report to the director the presence, at levels established by rule adopted under section 3742.03 of the Revised Code, of lead, cadmium, mercury, or arsenic in a blood or urine specimen. The report shall be made on a form prescribed by the director.

Effective Date: 07-01-1994

3742.10 Maintaining lists of licenses and training programs.

(A) The director of health shall maintain a list of both of the following:

(1) Lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, lead abatement workers, and clearance technicians licensed under this chapter;

(2) Training programs approved under section 3742.08 of the Revised Code.

(B) Information contained in any list maintained under this section is a public record for the purposes of section 149.43 of the Revised Code and is subject to inspection and copying under section 1347.08 of the Revised Code.

Effective Date: 04-07-2003

3742.11, 3742.12, 3742.13 Amended and Renumbered RC 3742.31, 3742.35, 3742.34.

Effective Date: 04-07-2003

3742.14 Employing inspector, assessor, or clearance technician.

Any property owner or manager, at any time, may employ a lead inspector to conduct a lead inspection; a lead risk assessor to conduct a lead risk assessment; or a clearance technician, lead inspector, or lead risk assessor to conduct a clearance examination of the property, and may provide a copy of the report based on that inspection, assessment, or examination to the director of health. The director shall include the information in the record of the property.

Effective Date: 04-07-2003

3742.15 Complaints.

Any person may file a complaint with the director of health concerning a lead inspector, a lead abatement contractor, a lead risk assessor, a lead abatement project designer, a lead abatement worker, a clearance technician, a clinical laboratory, an environmental lead analytical laboratory, or a training course. The complainant's name shall be confidential and shall not be released without the complainant's written consent. The director may investigate the complaint and take action under this chapter as the director considers appropriate.

Effective Date: 04-07-2003

3742.16 Disciplinary actions.

In accordance with Chapter 119. of the Revised Code, the director of health may refuse to issue or renew, or may suspend or revoke, a license, an accreditation or certification, or an approval of any person, program, or laboratory for one or more of the following reasons:

(A) Violation of any provision of this chapter or the rules adopted under it;

- (B) Failure to pay the fee for the issuance or renewal of a license, an accreditation or certification, or an approval;
- (C) Any material misrepresentation in an application for a license, an accreditation or certification, or an approval;
- (D) Interference with an investigation made pursuant to section 3742.35 of the Revised Code;
- (E) Failure to meet the licensing requirements established by rule adopted under section 3742.03 of the Revised Code;
- (F) Employment or use of lead abatement personnel that are not licensed under this chapter.

Effective Date: 04-07-2003

3742.17 Liability of licensees and persons contracting with licensees.

(A) Where any person is licensed by the department of health to engage in lead abatement, lead inspection, lead risk assessment, clearance examination, or any other activity under this chapter, the liability of that person, when performing the activity in accordance with procedures established pursuant to state or federal law, for an injury to any individual or property caused or related to the activity shall be limited to acts or omissions of the person during the course of performing the activity that can be shown, based on a preponderance of the evidence, to have been negligent. For the purposes of this section, the demonstration that acts or omissions of a person performing lead abatement, lead inspection, lead risk assessment, clearance examination, or other activities under this chapter were in accordance with generally accepted practice and with procedures established by state or federal law at the time the abatement, inspection, assessment, examination, or other activity was performed creates a rebuttable presumption that the acts or omissions were not negligent.

(B) Where any person contracts with a person licensed as a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, or clearance technician the liability of that person for lead-related injuries caused by the person's contractee in the performance of lead abatement, lead inspection, lead risk assessment, clearance examination, or other activities under this chapter shall be limited to those lead-related injuries arising from acts or omissions that the person knew, or could reasonably have been expected to know, were not in accordance with generally accepted practices or with procedures established by state or federal law at the time the activity took place.

(C) Notwithstanding any other provisions of the Revised Code or rules of a court to the contrary, this section governs all claims for lead-related injuries to individuals or property arising from lead abatement, lead inspection, lead risk assessment, clearance examination, or other activities for which a license is required under this chapter.

Effective Date: 04-07-2003

3742.18 Civil action.

At the request of the director of health, the attorney general may commence a civil action for civil penalties and injunctive and other equitable relief against any person who violates section 3742.02, 3742.06, or 3742.07 of the Revised Code. The action shall be commenced in the court of common pleas of the county in which the violation occurred or is about to occur.

The court shall grant injunctive and other equitable relief on a showing that the person has violated or is about to violate section 3742.02, 3742.06, or 3742.07 of the Revised Code. On a finding of a violation, the court shall assess a civil penalty of not more than one thousand dollars. Each day a violation continues is a

separate violation. All civil penalties collected by the court under this section shall be deposited into the state treasury to the credit of the lead abatement personnel licensing fund created under section 3742.19 of the Revised Code.

Effective Date: 04-07-2003

3742.19 Lead abatement personnel licensing fund.

Except for any licensing examination fee collected and retained by an entity under contract pursuant to division (B) of section 3742.08 of the Revised Code, all fees collected under sections 3742.01 to 3742.18 of the Revised Code; any grant, contribution, or other moneys received for the purposes of those sections; and fines collected under section 3742.99 of the Revised Code shall be deposited into the state treasury to the credit of the lead abatement personnel licensing fund, which is hereby created. The moneys in the fund shall be used solely for the administration and enforcement of sections 3742.01 to 3742.18 of the Revised Code and the rules adopted under those sections.

Effective Date: 04-07-2003

3742.20 Effect of child support default on license.

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the director of health shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license issued pursuant to this chapter.

Effective Date: 03-22-2001

3742.30 Blood lead screening tests for at-risk children.

Each child at risk of lead poisoning shall undergo a blood lead screening test to determine whether the child has lead poisoning. The at-risk children shall undergo the test at times determined by rules the public health council shall adopt in accordance with Chapter 119. of the Revised Code that are consistent with the guidelines established by the centers for disease control and prevention in the public health service of the United States department of health and human services. The rules shall specify which children are at risk of lead poisoning.

Neither this section nor the rules adopted under it affect the coverage of blood lead screening tests by any publicly funded health program, including the medicaid program established by Chapter 5111. of the Revised Code. Neither this section nor the rules adopted under it apply to a child if a parent of the child objects to the test on the grounds that the test conflicts with the parent's religious tenets and practices.

Effective Date: 04-07-2003

3742.31 Child lead poisoning prevention program.

(A) The director of health shall establish, promote, and maintain a child lead poisoning prevention program. The program shall provide statewide coordination of screening, diagnosis, and treatment services for children under age six, including both of the following:

- (1) Collecting the social security numbers of all children screened, diagnosed, or treated as part of the program's case management system;
- (2) Disclosing to the office of Ohio health plans in the department of job and family services on at least an annual basis the identity and lead screening test results of each child screened pursuant to section 3742.30 of the Revised Code. The director shall collect and disseminate information relating to child lead poisoning and

controlling lead hazards.

(B) The director of health shall operate the child lead poisoning prevention program in accordance with rules adopted under section 3742.50 of the Revised Code. The director may enter into an interagency agreement with one or more other state agencies to perform one or more of the program's duties. The director shall supervise and direct an agency's performance of such a duty.

Effective Date: 04-07-2003

3742.32 Advisory council.

(A) The director of health shall appoint an advisory council to assist in the ongoing development and implementation of the child lead poisoning prevention program created under section 3742.31 of the Revised Code. The advisory council shall consist of the following members:

- (1) A representative of the office of Ohio health plans in the department of job and family services;
- (2) A representative of the bureau of child care in the department of job and family services;
- (3) A representative of the department of environmental protection;
- (4) A representative of the department of education;
- (5) A representative of the department of development;
- (6) A representative of the Ohio apartment owner's association;
- (7) A representative of the Ohio help end lead poisoning coalition;
- (8) A representative of the Ohio environmental health association;
- (9) An Ohio representative of the national paint and coatings association.

(B) The advisory council shall do both of the following:

- (1) Provide the director with advice regarding the policies the child lead poisoning prevention program should emphasize, preferred methods of financing the program, and any other matter relevant to the program's operation;
- (2) Submit a report of the state's activities to the governor, president of the senate, and speaker of the house of representatives on or before the first day of March each year.

(C) The advisory council is not subject to sections 101.82 to 101.87 of the Revised Code.

Effective Date: 04-07-2003

3742.34 Delegating authority to board of health.

If the director of health determines that a board of health can satisfactorily enforce sections 3742.35 to 3742.40 of the Revised Code, the director may delegate the authority to enforce those sections to the board. The director may revoke the delegation of authority at any time by written notice delivered to the board of health by certified mail.

Effective Date: 04-07-2003

3742.35 Investigations.

When the director of health or a board of health authorized to enforce sections 3742.35 to 3742.40 of the Revised Code becomes aware that an individual under six years of age has lead poisoning, the director or board shall conduct an investigation to determine the source of the lead poisoning. The director or board may conduct such an investigation when the director or board becomes aware that an individual six years of age or older has lead poisoning. The director or board shall conduct the investigation in accordance with rules adopted under section 3742.50 of the Revised Code.

In conducting the investigation, the director or board may request permission to enter the residential unit, child care facility, or school that the director or board reasonably suspects to be the source of the lead poisoning. If the property is occupied, the director or board shall ask the occupant for permission. If the property is not occupied, the director or board shall ask the property owner or manager for permission. If the occupant, owner, or manager fails or refuses to permit entry, the director or board may petition and obtain an order to enter the property from a court of competent jurisdiction in the county in which the property is located.

As part of the investigation, the director or board may review the records and reports, if any, maintained by a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, lead abatement worker, or clearance technician.

Effective Date: 04-07-2003; 05-18-2005

3742.36 Risk assessment of residential unit, day-care facility, or school.

When the director of health or an authorized board of health determines pursuant to an investigation conducted under section 3742.35 of the Revised Code that a residential unit, child care facility, or school is a possible source of the child's lead poisoning, the director or board shall conduct a risk assessment of that property in accordance with rules adopted under section 3742.50 of the Revised Code.

Effective Date: 04-07-2003; 05-18-2005

3742.37 Lead hazard control order.

(A) If the results of a risk assessment conducted under section 3742.36 of the Revised Code indicate that one or more lead hazards identified in a residential unit, child care facility, or school are contributing to a child's lead poisoning, the director of health or authorized board of health immediately shall issue an order to have each lead hazard in the property controlled. The areas of the unit, facility, or school that may be subject to the lead hazard control order include the following:

- (1) The interior and exterior surfaces and all common areas of the unit, facility, or school;
- (2) Every attached or unattached structure located within the same lot line as the unit, facility, or school, including garages, play equipment, and fences;
- (3) The lot or land that the unit, facility, or school occupies.

(B) A lead hazard control order issued under this section shall be in writing and in the form the director shall prescribe. The director or board shall specify in the order each lead hazard to be controlled and the date by which the unit, facility, or school must pass a clearance examination demonstrating that each lead hazard has been sufficiently controlled. The director or board may include in the order a requirement that occupants of the unit, facility, or school whose health may be threatened vacate the unit, facility, or school until the unit, facility, or school passes the clearance examination.

The director or board shall have the order delivered to the owner and manager of the unit, facility, or school. If the order applies to a building in which there is more than one residential unit, the director or board shall have a copy of the order delivered to the occupants of each unit or require that the owner or manager of the building deliver a copy of the order to the occupants of each unit. If the order applies to a child care facility or school, the director or board shall have a copy of the order delivered to the parent, guardian, or custodian of each child under six years of age who receives child care or education at the facility or school or require the owner or manager of the facility or school to have a copy of the order so delivered.

Effective Date: 04-07-2003; 05-18-2005

3742.38 Owner or manager to cooperate and choose method of control.

The owner and manager of a residential unit, child care facility, or school that is subject to a lead hazard control order issued under section 3742.37 of the Revised Code shall cooperate with the director of health or board of health that issued the order in controlling each lead hazard specified in the order. The owner or manager shall choose a method of controlling each lead hazard that enables the residential unit, child care facility, or school to pass a clearance examination. The method chosen may be the owner or manager's personal preference, a proposal made by a person under contract with the owner or manager, or a recommendation that the director or board may provide. The owner or manager shall inform the director or board of the method that the owner or manager chooses to control each lead hazard.

Effective Date: 04-07-2003; 05-18-2005

3742.39 Clearance examination.

A residential unit, child care facility, or school remains subject to a lead hazard control order issued under section 3742.37 of the Revised Code until the unit, facility, or school passes a clearance examination. After the unit, facility, or school passes the clearance examination, the director of health or board of health that issued the order shall provide the owner and manager of the unit, facility, or school with information on methods of maintaining control of each lead hazard specified in the order. In the case of a residential unit in which an individual who is not the owner or manager resides, the director or board also shall provide the information to the individual residing in the unit.

Effective Date: 04-07-2003; 05-18-2005

3742.40 Prohibiting use of unit, facility, or school.

If the owner and manager of a residential unit, child care facility, or school fails or refuses for any reason to comply with a lead hazard control order issued under section 3742.37 of the Revised Code, the director of health or board of health that issued the order shall issue an order prohibiting the owner and manager from permitting the unit, facility, or school to be used as a residential unit, child care facility, or school until the unit, facility, or school passes a clearance examination. On receipt of the order, the owner or manager shall take appropriate measures to notify each occupant, in the case of a residential unit, and the parent, guardian, or custodian of each child attending the facility or school, in the case of a child care facility or school, to vacate the unit, facility, or school until the unit, facility, or school passes a clearance examination. The director or board shall post a sign at the unit, facility, or school that warns the public that the unit, facility, or school has a lead hazard. The sign shall include a declaration that the unit, facility, or school is unsafe for human occupation, especially for children under six years of age and pregnant women. The director or board shall ensure that the sign remains posted at the unit, facility, or school and that the unit, facility, or school is not used as a residential unit, child care facility, or school until the unit, facility, or school passes a clearance examination.

Effective Date: 04-07-2003; 05-18-2005

3742.41 Presumptions relative to property constructed prior to 1-1-50.

(A) A property constructed before January 1, 1950, that is used as a residential unit, child care facility, or school shall be legally presumed not to contain a lead hazard and not to be the source of the lead poisoning of an individual who resides in the unit or receives child care or education at the facility or school if the owner or manager of the unit, facility, or school successfully completes both of the following preventive treatments:

(1) Follows the essential maintenance practices specified in section 3742.42 of the Revised Code for the control of lead hazards;

(2) Covers all rough, pitted, or porous horizontal surfaces of the inhabited or occupied areas within the unit, facility, or school with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, carpet, or linoleum.

(B) The owner or manager of a residential unit, child care facility, or school has successfully completed the preventive treatments specified in division (A) of this section if the unit, facility, or school passes a clearance examination in accordance with standards for passage established by rules adopted under section 3742.49 of the Revised Code.

(C) The legal presumption established under this section is rebuttable in a court of law only on a showing of clear and convincing evidence to the contrary.

Effective Date: 04-07-2003; 05-18-2005

3742.42 Essential maintenance practices.

(A) In completing the essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code, the owner or manager of a residential unit, child care facility, or school shall do all of the following:

(1) Use only safe work practices, which include compliance with section 3742.44 of the Revised Code, to prevent the spread of lead-contaminated dust;

(2) Perform visual examinations for deteriorated paint, underlying damage, and other conditions that may cause exposure to lead;

(3) Promptly and safely repair deteriorated paint or other building components that may cause exposure to lead and eliminate the cause of the deterioration;

(4) Ask tenants in a residential unit, and parents, guardians, and custodians of children in a child care facility or school, to report concerns about potential lead hazards by providing written notices to the tenants or parents, guardians, and custodians or by posting notices in conspicuous locations;

(5) Perform specialized cleaning in accordance with section 3742.45 of the Revised Code to control lead-contaminated dust;

(6) Cover any bare soil on the property, except soil proven not to be lead-contaminated;

(7) Maintain a record of essential maintenance practices for at least three years that documents all essential maintenance practices;

(8) Successfully complete a training program in essential maintenance practices that has been approved under section 3742.47 of the Revised Code.

(B) The areas of a residential unit, child care facility, or school that are subject to division (A) of this section include all of the following:

- (1) The interior surfaces and all common areas of the unit, facility, or school;
- (2) Every attached or unattached structure located within the same lot line as the unit, facility, or school that the owner or manager considers to be associated with the operation of the unit, facility, or school, including garages, play equipment, and fences;
- (3) The lot or land that the unit, facility, or school occupies.

Effective Date: 04-07-2003; 05-18-2005

3742.43 Implementing essential maintenance practices.

A person who implements the essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code shall do all of the following in the area of the residential unit, child care facility, or school in which the essential maintenance practices are being performed:

- (A) Allow only persons performing the essential maintenance practices access to the area;
- (B) Cover the area with six mil polyethylene plastic or its equivalent;
- (C) Protect workers in a manner consistent with the requirements a lead abatement contractor must meet pursuant to division (B) of section 3742.07 of the Revised Code;
- (D) Protect occupants' belongings by covering or removing them from the area;
- (E) Wet down all painted surfaces before disturbing the surfaces;
- (F) Wet down debris before sweeping or vacuuming.

Effective Date: 04-07-2003; 05-18-2005

3742.44 Unsafe work practices.

(A) The following activities shall be considered unsafe work practices due to the likelihood that engaging in the activities will create lead hazards, and in no event shall any person engage in the following activities when implementing the essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code:

- (1) Open flame burning or torching;
- (2) Machine sanding or grinding without a HEPA local vacuum exhaust tool;
- (3) Abrasive blasting or sandblasting without a HEPA local vacuum exhaust tool;
- (4) Use of a heat gun operating above one thousand one hundred degrees fahrenheit;
- (5) Charring paint;
- (6) Dry sanding;
- (7) Dry scraping, except when done as follows:

- (a) In conjunction with a heat gun operating at not more than one thousand one hundred degrees fahrenheit;
- (b) Within one foot of an electrical outlet;
- (c) To treat defective paint spots totaling not more than two square feet in an interior room or space or twenty square feet on an exterior surface.

(8) Uncontained hydroblasting or high-pressure washing;

(9) Paint stripping in a poorly ventilated space using a volatile stripper that is considered a hazardous substance under 16 C.F.R. 1500.3 or a hazardous chemical under 29 C.F.R. 1910.1200 or 29 C.F.R. 1926.59 in the type of work being performed.

(B) A person may engage in the following activities when implementing the essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code, but only if licensed under this chapter or trained in essential maintenance practices as required by this chapter:

- (1) Machine sanding or grinding performed with a HEPA local vacuum exhaust tool;
- (2) Abrasive blasting or sandblasting performed with a HEPA local vacuum exhaust tool;
- (3) Hydroblasting or high-pressure washing if the activity is contained.

Effective Date: 04-07-2003

3742.45 Specialized cleaning methods.

(A) Specialized cleaning methods used to control lead-contaminated dust when implementing the essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code may include any of the following:

- (1) Cleaning potentially lead-contaminated surfaces with a detergent;
- (2) Vacuuming potentially lead-contaminated surfaces with a HEPA vacuum;
- (3) Covering potentially lead-contaminated soil.

(B) A person who uses or provides for others to use the specialized cleaning methods specified in division (A) of this section shall ensure that the cleaning is performed as follows:

(1) The common areas of a building with more than one residential unit must undergo specialized cleaning at least annually, including hallways, stairways, laundry rooms, recreational rooms, playgrounds, boundary fences, and other portions of the building and its surroundings that are generally accessible to all residents.

(2) The interior of a residential unit that is vacated by its occupants must undergo specialized cleaning before it may be reoccupied.

(3) A child care facility or school must undergo specialized cleaning at least annually at a time when children are not present at the facility or school.

(4) In a residential unit, child care facility, or school, on completion of any maintenance or repair work that disturbs surfaces suspected or known to be painted with lead-based paint, the maintenance or repair work area must undergo specialized cleaning if the area of the disturbed surfaces suspected or known to be painted with lead-based paint totals more than one of the following:

- (a) Twenty square feet or two square meters on exterior surfaces;

(b) Two square feet or two-tenths of one square meter in any one interior room or space;

(c) Ten per cent of the total surface area on an interior or exterior component with a small surface area, such as window sills, baseboards, and trim.

Effective Date: 04-07-2003; 05-18-2005

3742.46 Who may perform essential maintenance practices.

The essential maintenance practices portion of the preventive treatments specified in section 3742.41 of the Revised Code need not be performed by an individual who is licensed under this chapter as a lead abatement contractor or lead abatement worker. Effective two years after the effective date of this section, any individual, other than a licensed lead abatement contractor or lead abatement worker, who performs the essential maintenance practices must have successfully completed a training program in essential maintenance practices that has been approved by the director of health under section 3742.47 of the Revised Code.

Effective Date: 04-07-2003

3742.47 Applying for approval of training program.

(A) A person seeking approval of a training program in either essential maintenance practices or lead-safe renovation shall apply for approval to the director of health. The application shall be made on a form prescribed by the director and shall include the fee established under division (B) of this section. The director shall issue approval to the applicant if the applicant demonstrates to the satisfaction of the director that the training program will meet the following requirements and any other training program requirements established by rules adopted under section 3742.50 of the Revised Code:

(1) Conducts the training program in a period of time that does not exceed six hours;

(2) Administers an examination established by rule of the public health council at the end of the training program to each person who completes the training;

(3) Grades each examination not later than one week after its completion and determines whether the person who took the examination received a passing score;

(4) Not later than one week after the examination is completed provides written proof of training program completion to each person who completes the program and passes the examination.

(B) The director of health shall establish an application fee for approving training programs under this section. The fee shall be reasonable and shall not exceed the expenses incurred in conducting the approval of training programs. An application fee submitted under division (A) of this section is nonrefundable.

Effective Date: 04-07-2003

3742.48 Training program in lead-safe renovation.

Any person who supervises or performs services for the general improvement of all or part of an existing structure, including a residential unit, child care facility, or school, may undertake a training program in lead-safe renovation approved under section 3742.47 of the Revised Code. After successfully completing the program, the person may represent to the public that the services are being supervised or performed by a lead-safe renovator. Regardless of whether a training program in lead-safe renovation has been completed, the person is not subject to licensure under this chapter solely for supervising or performing services for the general improvement of all or part of an existing structure.

Effective Date: 04-07-2003; 05-18-2005

3742.49 Recommendations for controlling hazards considering historic nature of property.

The director of health, in consultation with the individual authorized by the governor to act as the state historic preservation officer, shall develop recommendations for controlling lead hazards that take into consideration the historic nature of the property in which the hazards are located. The director shall provide periodic notifications of the recommendations to all persons licensed under this chapter. All lead hazard control orders issued under section 3742.37 of the Revised Code shall inform the recipient of the recommendations developed under this section.

In no event shall a person use the recommendations as justification for refusing to comply with a lead hazard control order issued under section 3742.37 of the Revised Code.

Effective Date: 04-07-2003

3742.50 Adoption of rules by public health council.

(A) The public health council shall adopt rules in accordance with Chapter 119. of the Revised Code establishing all of the following:

(1) Procedures necessary for the development and operation of the child lead poisoning prevention program established under section 3742.31 of the Revised Code;

(2) Standards and procedures for conducting investigations and risk assessments under sections 3742.35 and 3742.36 of the Revised Code;

(3) Standards and procedures for issuing lead hazard control orders under section 3742.37 of the Revised Code, including standards and procedures for determining appropriate deadlines for complying with lead hazard control orders;

(4) The level of lead in human blood that is hazardous to human health, consistent with the guidelines issued by the centers for disease control and prevention in the public health service of the United States department of health and human services;

(5) The level of lead in paint, dust, and soil that is hazardous to human health;

(6) Standards and procedures to be followed when implementing preventive treatments for the control of lead hazards pursuant to section 3742.41 of the Revised Code that are based on information from the United States environmental protection agency, department of housing and urban development, occupational safety and health administration, or other agencies with recommendations or guidelines regarding implementation of preventive treatments;

(7) Standards that must be met to pass a clearance examination;

(8) Procedures for approving under section 3742.47 of the Revised Code training programs in essential maintenance practices and lead-safe renovation and requirements, in addition to those specified in section 3742.47 of the Revised Code, that a program must meet to receive approval;

(9) The examination to be administered by a training program approved under section 3742.47 of the Revised Code and the examination's passing score.

(B) The public health council shall establish procedures for revising its rules to ensure that the child lead

poisoning prevention activities conducted under this chapter continue to meet the requirements necessary to obtain any federal funding available for those activities, including requirements established by the United States environmental protection agency, United States department of housing and urban development, or any other federal agency with jurisdiction over activities pertaining to child lead poisoning prevention.

Effective Date: 04-07-2003

3742.51 Lead poisoning prevention fund.

(A) There is hereby created in the state treasury the lead poisoning prevention fund. The fund shall include all moneys appropriated to the department of health for the administration and enforcement of sections 3742.31 to 3742.50 of the Revised Code and the rules adopted under those sections. Any grants, contributions, or other moneys collected by the department for purposes of preventing lead poisoning shall be deposited in the state treasury to the credit of the fund.

(B) Moneys in the fund shall be used solely for the purposes of the child lead poisoning prevention program established under section 3742.31 of the Revised Code, including providing financial assistance to individuals who are unable to pay for the following:

(1) Costs associated with obtaining lead tests and lead poisoning treatment for children under six years of age who are not covered by private medical insurance or are underinsured, are not eligible for the medicaid program established under Chapter 5111. of the Revised Code or any other government health program, and do not have access to another source of funds to cover the cost of lead tests and any indicated treatments;

(2) Costs associated with having lead abatement performed or having the preventive treatments specified in section 3742.41 of the Revised Code performed.

Effective Date: 04-07-2003

3742.99 Violator subject to criminal action.

(A) At the request of the director of health or a board of health, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer may commence a criminal action against any person who violates any provision of section 3742.02, 3742.06, or 3742.07 of the Revised Code, any rule adopted under this chapter that is directly related to any of the provisions of those sections, or any order issued pursuant to this chapter that is directly related to any of the provisions of those sections.

(B) Upon conviction, the person is subject to:

(1) A fine of not more than one thousand dollars or imprisonment for not more than six months, or both, for a first offense;

(2) A fine of at least one thousand but not more than five thousand dollars or imprisonment for at least six months but not more than three years, or both, for a second or subsequent offense. Each day of violation is a separate offense.

Effective Date: 04-07-2003