

FIRST REGULAR SESSION

SENATE BILL NO. 95

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Pre-filed December 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

0223S.011

AN ACT

To repeal sections 701.304, 701.306, 701.308, 701.309, 701.312, and 701.320, RSMo, and to enact in lieu thereof nine new sections relating to lead poisoning, with penalty provisions.

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

Section A. Sections 701.304, 701.306, 701.308, 701.309, 701.312, and 701.320, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 701.304, 701.305, 701.306, 701.308, 701.309, 701.312, 701.313, 701.317, and 701.320, to read as follows:

701.304. 1. A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, may conduct an inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of ascertaining the existence of a lead hazard under the following conditions:

(1) The department, owner of the dwelling, and an adult occupant of a dwelling which is rented or leased have been notified that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule; and

(2) The inspection or risk assessment occurs at a reasonable time; and

(3) The representative of the department or local government presents appropriate credentials to the owner or occupant; and

(4) Either the dwelling's owner or adult occupant or the child-occupied

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

facility's owner or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

(5) If consent to enter is not granted, the representative of the department, local government, or local health department may petition the circuit court for an order to enter the premises and conduct an inspection or risk assessment after notifying the dwelling's owner or adult occupant in writing of the time and purpose of the inspection or risk assessment at least forty-eight hours in advance. The court shall grant the order upon a showing that an occupant of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility has been identified as having an elevated blood lead level as defined by rule.

2. In conducting such an inspection or risk assessment, a representative of the department, or representative of a unit of local government or health department licensed by the department for this purpose, may remove samples necessary for laboratory analysis in the determination of the presence of a lead-bearing substance or lead hazard in the designated dwelling or child-occupied facility.

3. The director shall assess fees for licenses and accreditation **and levy fines** in accordance with rules promulgated pursuant to sections 701.300 to [701.330] **701.338**. All such fees **and fines** shall be deposited into the state treasury to the credit of the public health services fund established in section 192.900, RSMo.

4. Owners of single family homes who use the dwelling as their primary residence in areas of commercial lead production and transport shall not be fined or made to pay for any type of lead remediation.

701.305. The department of health and senior services shall provide on its Internet website educational information that explains the rights and responsibilities of the property owner and tenants of a dwelling and the lead inspectors, risk assessors, and the lead abatement contractors.

701.306. If the department, or a representative of a unit of local government or health department licensed by the department for this purpose, determines that there is a lead hazard at a dwelling or child-occupied facility which poses a risk of adverse health effects upon young children, the department or its licensed local representative:

(1) Shall provide written notification to the owner and an adult occupant

of the dwelling or the owner or agent of a child-occupied facility of the confirmed presence of a lead hazard which may lead to adverse health effects upon small children who reside in or regularly visit the residence or facility. The written notification shall include [recommendations] **options** appropriate for reduction of the lead hazard to an acceptable level and a reasonable time period for abating or establishing interim controls for any such lead hazard that is accessible to small children who reside in or regularly visit the dwelling or facility; and

(2) May provide written notification to the parents or guardians of children who regularly visit a child-occupied facility of the confirmed presence of a lead hazard that may lead to adverse health effects; and

(3) May provide a copy of the written notification to the local health officers.

701.308. 1. Upon receipt of written notification **as described in section 701.306, RSMo**, of the presence of a lead hazard, the owner shall comply with the requirement for abating or establishing interim controls for the lead hazard in a manner consistent with the [recommendations described] **options provided** by the department and within the applicable time period. If the dwelling or child-occupied facility is a rental or leased property, the owner may remove it from the rental market.

2. Except as provided in subsection 1 of this section, no tenant shall be evicted because an individual with an elevated blood lead level or with suspected lead poisoning resides in the dwelling, or because of any action required of the dwelling owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not operate to prevent the owner of any such dwelling from evicting a tenant for any other reason as provided by law.

3. No child shall be denied attendance at a child-occupied facility because of an elevated blood lead level or suspected lead poisoning or because of any action required of the facility owner as a result of enforcement of sections 701.300 to 701.338. The provisions of this subsection shall not prevent the owner or agent of any such child-occupied facility from denying attendance for any other reason allowed by law.

4. **A representative of the department, or a representative of a unit of local government or health department licensed by the department for this purpose, is authorized to re-enter a dwelling or child-occupied facility to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard**

in a manner consistent with the options provided by the department and lead hazards have been reduced to an acceptable level. If consent to re-enter is not granted, the representative of the department, local government, or local health department may petition the court for an order to enter the premises to determine if the owner has taken the required actions for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and lead hazards have been reduced to an acceptable level. The court shall grant the order upon a showing that the representative of the department, local government, or local health department has attempted to notify the dwelling's owner or adult occupant in writing of the time and purpose of the re-entry at least forty-eight hours in advance.

5. [Whenever] Upon re-entry, if the department[,] or a representative of a unit of local government[,] or local health department licensed by the department for this purpose, finds[, after providing written notification to the owner,] that **the owner has not taken the required actions [which will result in the reduction of a lead hazard in a dwelling or child-occupied facility have not been taken] for abating or establishing interim controls for the lead hazard in a manner consistent with the options provided by the department, and lead hazards have not been reduced to an acceptable level,** the owner shall be deemed to be in violation of sections 701.300 to 701.338. Such violation shall not by itself create a cause of action. The department or the local government or local health department shall:

(1) Notify in writing the owner found to be causing, allowing or permitting the violation to take place; and

(2) Order that the owner of the dwelling or child-occupied facility shall cease and abate causing, allowing or permitting the violation and shall take such action as is necessary to comply with this section and the rules promulgated pursuant to this section.

[5.] 6. If [no action is taken pursuant to subsection 4 of this section which would result in abatement or interim control of the lead hazard within the stated time period], **upon re-entry, the lead hazard has not been reduced to an acceptable level,** the following steps may be taken:

(1) The local health officer and local building officials may, as practical, use such community or other resources as are available to effect the relocation of

the individuals who occupied the affected dwelling or child-occupied facility until the owner complies with the notice; or

(2) The department[,] or representative of a unit of local government or health department licensed by the department for this purpose, [shall] **may** report any violation of sections 701.300 to 701.338 to the prosecuting attorney of the county in which the dwelling or child-occupied facility is located and notify the owner that such a report has been made. The prosecuting attorney shall seek injunctive relief to ensure that the lead hazard is abated or that interim controls are established.

701.309. 1. At least ten days prior to the onset of a lead abatement project, the lead abatement contractor conducting such an abatement project shall:

(1) Submit to the department a written notification as prescribed by the department; and

(2) Pay a notification fee of twenty-five dollars.

2. In addition to the specified penalties in section 701.320, failure to notify the department prior to the onset of a lead abatement project shall result in a fine of one thousand dollars imposed against the lead abatement contractor for the first identified offense, two thousand dollars for the second identified offense, and thereafter, fines shall be doubled for each identified offense.

3. Written notification as prescribed by the department shall include disclosure of any potential lead hazards to the owners and tenants of a dwelling by the licensed risk assessor who conducted the initial risk assessment.

4. If the lead abatement contractor is unable to comply with the requirements of subsection 1 of this section because of an emergency situation as defined by rule, the contractor shall:

(1) Notify the department by other means of communication within twenty-four hours of the onset of the project; and

(2) Submit the written notification and notification fee prescribed in subsection 1 of this section to the department no more than five days after the onset of the project.

5. Upon completion of the abatement, the lead abatement contractor shall submit to the department written notification and the final clearance inspection report.

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

(1) The power to issue, restrict, suspend, revoke, deny and reissue licenses;

(2) The ability to enter into reciprocity agreements with other states that have similar licensing provisions;

(3) Fees for any such licenses;

(4) Training, education and experience requirements; and

(5) The implementation of work practice standards, reporting requirements and licensing standards.

2. [The director shall issue temporary risk assessor licenses to persons who, as of August 28, 1998, are licensed by the department as lead inspectors. The temporary risk assessor licenses issued pursuant to this subsection shall expire upon the same date as the expiration date of such person's lead inspector license. The director shall set forth standards and conditions under which temporary risk assessor licenses shall be issued.] **The director shall require, as a condition of licensure, lead abatement contractors to purchase and maintain liability insurance. The director shall require a licensee or an applicant for licensure to provide evidence of their ability to indemnify any person that may suffer damage from lead-based paint activities of which the licensee or applicant may be liable. The licensee or applicant may provide proof of liability insurance in an amount to be determined by the director which shall not be less than three hundred thousand dollars.**

701.313. 1. Any local community organization, government agency, or quasi-government agency issuing grants or loans for lead abatement projects must provide written notification to the department no later than ten days prior to the onset of a lead abatement project. The written notification shall include, but not be limited to, the name of the lead abatement contractor, the address of the property on which the lead abatement project shall be conducted, and the date on which the lead abatement project shall be conducted.

2. If the local community organization, government agency, or

quasi-government agency fails to provide written notification for each property pursuant to subsection 1 of this section, a fine of two hundred fifty dollars shall be levied by the department.

3. If the local community organization, the government agency, or quasi-government agency is unable to comply with the requirements in subsection 1 of this section due to an emergency situation, as defined by the department, the local community organization, government agency, or quasi-government agency shall:

(1) Notify the department by other means of communication within twenty-four hours of the onset of the lead abatement project; and

(2) Provide written notification to the department no later than five days after the onset of the lead abatement project.

701.317. 1. An action may be brought by the department, or by the attorney general on his or her own volition or at the request of the department to temporarily or permanently enjoin or restrain any violation of sections 701.300 to 701.338, to enjoin any lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer or lead abatement contractor licensed by the department until substantial compliance with sections 701.300 to 701.338 is achieved, or to enjoin any specific action or practice of the lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead abatement contractor. Any action brought pursuant to the provisions of this section shall be placed at the head of the docket by the court, and the court shall hold a hearing on any action brought pursuant to the provisions of this section no less than fifteen days after the filing of the action.

2. The department may bring an action in circuit court to recover a civil penalty against the licensed lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead abatement contractor as provided by this section. Such action shall be brought in the circuit court for the county in which the violation occurred. The circuit court shall determine the amount of penalty to be assessed within the limits set out in this section. Appeals may be taken from the judgment of the circuit court as in other civil cases.

3. The lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead abatement contractor

which has been cited with a violation of sections 701.300 to 701.338 or the regulations established pursuant thereto is liable to the state for civil penalties of up to one thousand dollars for the first violation and five thousand dollars for each subsequent violation, excluding the fines specified in section 701.309. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

4. In accordance with the provisions of this section, if the court imposes a civil monetary penalty, the liability for such penalty shall be incurred immediately upon the imposition of the penalty for the violation regardless of any subsequent correction of the violation by the lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer or lead abatement contractor. A judgment rendered against any lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer or lead abatement contractor pursuant to this subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

5. The imposition of any remedy provided for in sections 701.300 to 701.338 shall not bar the imposition of any other remedy.

6. The penalties collected pursuant to this section shall be deposited in the "Missouri Lead Abatement Loan Fund" as established in section 701.337, RSMo. Such penalties shall not be considered a charitable contribution for tax purposes.

7. To recover any civil penalty, the moving party shall prove by clear and convincing evidence that the violation occurred.

8. The licensed lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead abatement contractor licensed by the department against whom an action to recover a civil penalty is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo, at any time prior to hearing. If such licensed lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead abatement contractor licensed by the department agrees to confess judgment, the amount of the civil penalty recommended by the moving party in its petition shall be reduced by twenty-five percent and the confessed judgment shall be entered by the circuit court at the reduced amount.

701.320. 1. Except as otherwise provided, violation of the provisions of

sections 701.308, 701.309, 701.310, 701.311 and 701.316 is a class A misdemeanor.

2. Any subsequent violation of the provisions of sections 701.308, 701.309, 701.310, 701.311, and 701.316 is a class D felony.

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