

FIRST REGULAR SESSION

HOUSE BILL NO. 438

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SCHAAF (Sponsor), HUBBARD, HOSKINS,
OXFORD AND BLAND (Co-sponsors).

Read 1st time February 2, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1294L.03I

AN ACT

To repeal sections 701.304, 701.306, 701.308, 701.309, and 701.320, RSMo, and to enact in lieu thereof six new sections relating to lead abatement, 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, and 701.320, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 701.304, 701.306,
3 701.308, 701.309, 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
2 government or health department licensed by the department for this purpose, may conduct an
3 inspection or a risk assessment at a dwelling or a child-occupied facility for the purpose of
4 ascertaining the existence of a lead hazard under the following conditions:

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

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

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

12 (4) Either the dwelling's owner or adult occupant or the child-occupied facility's owner
13 or agent grants consent to enter the premises to conduct an inspection or risk assessment; or

14 (5) If consent to enter is not granted, the representative of the department, local

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 government, or local health department may petition the circuit court for an order to enter the
16 premises and conduct an inspection or risk assessment after notifying the dwelling's owner or
17 adult occupant in writing of the time and purpose of the inspection or risk assessment at least
18 forty-eight hours in advance. The court shall grant the order upon a showing that an occupant
19 of the dwelling or a child six or fewer years of age who regularly visits the child-occupied facility
20 has been identified as having an elevated blood lead level as defined by rule.

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

26 3. The director shall assess fees for licenses and accreditation in accordance with rules
27 promulgated pursuant to sections 701.300 to [701.330] **701.348**. All such fees shall be deposited
28 into the state treasury to the credit of the public health services fund established in section
29 192.900, RSMo.

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

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

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

15 (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** of the
2 presence of a lead hazard, the owner shall comply with the requirement for abating or
3 establishing interim controls for the lead hazard in a manner consistent with the
4 [recommendations described] **options provided** by the department and within the applicable
5 time period. If the dwelling or child-occupied facility is a rental or leased property, the owner
6 may remove it from the rental market.

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

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

17 4. [Whenever] **A representative of the department, or a representative of a unit of**
18 **local government or a health department licensed by the department for this purpose, is**
19 **authorized to reenter a dwelling or child-occupied facility to determine if the owner has**
20 **taken the required actions for abating or establishing interim controls for the lead hazard**
21 **in a manner consistent with the options provided by the department, and lead hazards**
22 **have been reduced to an acceptable level. If consent to reenter is not granted, the**
23 **representative of the department, local government, or local health department may**
24 **petition the court for an order to enter the premises to determine if the owner has taken**
25 **the required actions for abating or establishing interim controls for the lead hazard in a**
26 **manner consistent with the options provided by the department, and lead hazards have**
27 **been reduced to an acceptable level. The court shall grant the order upon a showing that**
28 **the representative of the department, local government, or local health department has**
29 **attempted to notify the owner of the dwelling or adult occupant of the dwelling in writing**
30 **of the time and purpose of the reentry at least forty-eight hours in advance.**

31 **5. Upon reentry, if the department[,]** or a representative of a unit of local government[,]
32 or local health department licensed by the department for this purpose, finds[, after providing
33 written notification to the owner,] that **the owner has not taken the required actions [which will**
34 **result in the reduction of a lead hazard in a dwelling or child-occupied facility have not been**
35 **taken] for abating or establishing interim controls for the lead hazard in a manner**
36 **consistent with the options provided by the department, and lead hazards have not been**
37 **reduced to an acceptable level,** the owner shall be deemed to be in violation of sections
38 701.300 to 701.338. Such violation shall not by itself create a cause of action. The department
39 or the local government or local health department shall:

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

42 (2) Order that the owner of the dwelling or child-occupied facility shall cease and abate

43 causing, allowing or permitting the violation and shall take such action as is necessary to comply
44 with this section and the rules promulgated pursuant to this section.

45 [5.] 6. If [no action is taken pursuant to subsection 4 of this section which would result
46 in abatement or interim control of the lead hazard within the stated time period] **upon reentry,**
47 **the lead hazard has not been reduced to an acceptable level,** the following steps may be
48 taken:

49 (1) The local health officer and local building officials may, as practical, use such
50 community or other resources as are available to effect the relocation of the individuals who
51 occupied the affected dwelling or child-occupied facility until the owner complies with the
52 notice; or

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

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

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

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

5

6 **In addition to the specified penalties in section 701.320, failure to notify the department**
7 **prior to the onset of a lead abatement project will result in a fine of one thousand dollars**
8 **imposed against the lead abatement contractor for the first identified offense, two thousand**
9 **dollars for a second identified offense, and thereafter, fines will be double for each**
10 **identified offense.**

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

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

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

18 **3. Upon completion of the abatement, the lead abatement contractor shall submit**
19 **the final inspection certification to the department.**

701.317. 1. An action may be brought by the department, or by the attorney

2 general on his or her own volition or at the request of the department to temporarily or
3 permanently enjoin or restrain any violation of sections 701.300 to 701.337, to enjoin any
4 lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project
5 designer or lead abatement contractor licensed by the department until substantial
6 compliance with sections 701.300 to 701.338 is achieved, or to enjoin any specific action or
7 practice of the lead inspector, risk assessor, lead abatement worker, lead abatement
8 supervisor, project designer or lead abatement contractor. Any action brought under the
9 provisions of this section shall be placed at the head of the docket by the court, and the
10 court shall hold a hearing on any action brought under the provisions of this section no less
11 than fifteen days after the filing of the action.

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

19 3. The lead inspector, risk assessor, lead abatement worker, lead abatement
20 supervisor, project designer or lead abatement contractor which has been cited with a
21 violation of sections 701.300 to 701.338 or the regulations established pursuant thereto is
22 liable to the state for civil penalties of up to one thousand dollars for the first violation and
23 five thousand dollars for each subsequent violation. In the cases of a continuing violation,
24 every day such violation continues shall be deemed a separate violation.

25 4. In accordance with the provisions of this section, if the court imposes a civil
26 monetary penalty, the liability for such penalty shall be incurred immediately upon the
27 imposition of the penalty for the violation regardless of any subsequent correction of the
28 violation by the lead inspector, risk assessor, lead abatement worker, lead abatement
29 supervisor, project designer or lead abatement contractor.

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31 A judgment rendered against any lead inspector, risk assessor, lead abatement worker,
32 lead abatement supervisor, project designer or lead abatement contractor under this
33 subsection shall bear interest as provided in subsection 1 of section 408.040, RSMo.

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

36 6. The penalties collected under this section shall be deposited in the Missouri lead
37 abatement loan fund as established in section 701.337. Such penalties shall not be

38 considered a charitable contribution for tax purposes.

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

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

 701.320. **1.** Except as otherwise provided, violation of the provisions of sections
2 701.308, 701.309, 701.310, 701.311 and 701.316 is a class A misdemeanor.

3 **2. Any second or subsequent violation of the provisions of section 701.309 is a class**
4 **D felony.**