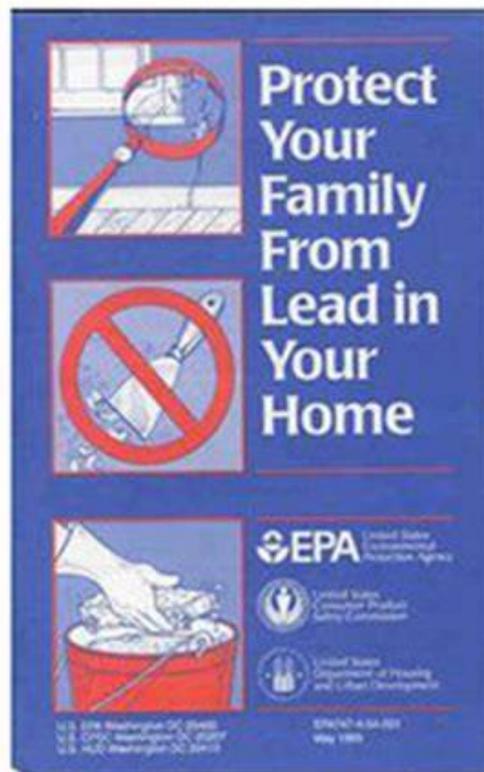


Lead Hazard Mitigation



TITLE 42
State Affairs and Government

CHAPTER 42-128.1
Lead Hazard Mitigation

SECTION 42-128.1-1

§ 42-128.1-1. Short title.

This chapter may be cited and shall be known as the "Lead Hazard Mitigation Act."

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3.)

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SECTION 42-128.1-2

§ 42-128.1-2. Legislative findings.

The general assembly finds and declares that:

- (1) Rhode Island's rental housing stock is older and lead hazards are widespread;
- (2) There has been an insufficient level of lead hazard abatement in Rhode Island's rental housing stock;
- (3) Children in Rhode Island, especially in older urban communities, have been victims of lead poisoning at disproportionately high rates;
- (4) During the 1990's meeting department of health lead hazard abatement standards has ranged between seven thousand dollars (\$7,000) and fifteen thousand dollars (\$15,000) per unit;
- (5) The combination of the high cost of meeting the abatement standards and the system of incentives available for rental property owners in Rhode Island resulted in few properties being improved to state standards as a consequence of voluntary activity by property owners; and
- (6) The US Department of Housing and Urban Development has promulgated regulations for lead hazard control that apply to housing that is federally assisted and require inspections with dust testing.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3.)

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SECTION 42-128.1-3

§ 42-128.1-3. Legislative purposes.

In order to promote the prevention of childhood lead poisoning in Rhode Island, it is the purpose of this chapter:

- (1) To increase the supply of rental housing in Rhode Island in which lead hazards are, at a minimum, mitigated;
- (2) To improve public awareness of lead issues and to educate both property owners and tenants about practices that can reduce the incidence of lead poisoning;
- (3) To resolve disjointed insurance practices arising from lead liabilities exclusions.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3.)

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SECTION 42-128.1-4

§ 42-128.1-4. Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

(1) "At-risk occupant" means a person under six (6) years of age, or a pregnant woman, who has been a legal inhabitant in a dwelling unit for at least thirty (30) days; provided, however, that a guest of any age shall not be considered an occupant for the purposes of this chapter.

(2) "Designated person" means either: (i) A property owner, or the agent of the property owner, who has completed a housing resources commission-approved awareness seminar on lead hazards and their control; or (ii) A person trained and certified as either a lead-hazard-mitigation inspector, an environmental-lead inspector, or a lead-hazard-inspection technician.

(3) "Dwelling" or "dwelling unit" means an enclosed space used for living and sleeping by human occupants as a place of residence, including, but not limited to: a house, an apartment, or condominium, but, for the purpose of this chapter, shall not include hotels or "temporary housing".

(4) "Elderly housing" means a federal, state, or local program that is specifically designed and operated to assist elderly persons, sixty-two (62) years of age, or older, as set forth in a regulatory agreement or zoning ordinance.

(5) "Environmental lead-poisoning level" means a confirmed, venous blood lead level as defined pursuant to § 23-24.6-4.

(6) "Lead abated" means a dwelling and premises that are lead free or lead safe, as those terms are defined in chapter 24.6 of title 23.

(7) "Lead Free" means that a dwelling, dwelling unit, or premises contains no lead, or contains lead in amounts less than the maximum-acceptable environmental lead levels established by regulation by the Rhode Island department of health.

(8) "Lead-hazard-mitigation standards" means standards adopted by the housing resources commission for a dwelling unit and associated common areas that provide for:

(i) A continuing and ongoing responsibility for lead-hazard control that includes: (A) Repair of deteriorated paint; (B) Correction of dust-generating conditions, such as friction or impact areas; (C) Provision of cleanable surfaces to eliminate harmful dust loading; (D) Correction of soil lead hazards; (E) Safe work practices;

(ii) At unit turnover: (A) The provision of information on lead hazards and their avoidance and control to tenants; (B) Documentation of lead-hazard-mitigation compliance; (C) An explicit process for notification by tenants to property owners of instances of deterioration in conditions effecting lead hazards; and

(iii) Maintenance of "lead-hazard control." "Lead-hazard control" means those portions of the lead-hazard-mitigation standard pertaining to repair of deteriorating paint; correction of dust-generating conditions; provision of cleanable surfaces; and correction of soil lead hazards that can be identified by visual inspection as provided for in subdivision (9)(ii) or through inspections conducted in accordance with chapter 24.2 of title 45, "Minimum Housing Standards", and chapter 24.3 of title 45, "Housing Maintenance and Occupancy Code".

(9) "Lead-hazard-mitigation compliance" means an independent, clearance inspection and certificate, as specified in this subdivision, undertaken to determine whether the lead-hazard-mitigation measures have been completed. Said inspection shall be valid for two (2) years, or until the next turnover of the dwelling unit, whichever period is longer. The requirements for a clearance-review inspection shall be met either by an independent clearance inspection or a visual inspection as set forth in this subdivision:

(i) An "independent clearance inspection" means an inspection performed by a person who is not the property owner or an employee of the property owner and who is authorized by the housing resources commission to conduct independent clearance inspections, which shall include: (A) A visual inspection to determine that the lead-hazard controls have been met, and (B) Dust testing in accordance with rules established by the department of health and consistent with federal standards. A certificate of conformance shall be issued by the person who conducted the inspection on the passage of the visual inspection and the required dust testing. An independent clearance inspection shall be required at unit turnover or once in a twenty-four-month (24) period, whichever period is the longer. If the tenancy of an occupant is two (2) years or greater, the certificate of conformance shall be maintained by a visual inspection as set forth in paragraph (ii) of this subdivision.

(ii) A "visual inspection" means a visual inspection by a property owner or designated person to determine that the lead-hazard controls have been met. If the designated person concluded that the lead-hazard controls specified in this chapter have been met, the designated person may complete an Affidavit of Completion of Visual Inspection. The affidavit shall be valid upon its being notarized within thirty (30) days after the completion of the visual inspection and shall set forth:

(A) The date and location that the designated person took the lead-hazard-control awareness seminar;

(B) The date and findings of the lead-hazard evaluation;

(C) The date and description of the lead-hazard-control measures undertaken;

(D) The date of the visual inspection; and

(E) The name and signature of the designated person and date of the Affidavit of Completion of Visual Inspection.

An Affidavit of Completion of Visual Inspection shall be valid for two (2) years after the date it was notarized, or until unit turnover, whichever time period is the longer, and shall be kept by the property owner for a minimum of five (5) years.

(iii) *Presumptive compliance.* A property owner of ten (10) or more dwelling units shall be eligible to obtain a certificate of presumptive compliance from the housing resources commission provided that the following conditions are met: (A) The dwelling units were constructed after 1960 or after 1950 on federally owned or leased lands; (B) There are no major, outstanding minimum-housing violations on the premises; (C) The property owner has no history of repeated lead poisonings; and (D) Independent clearance inspections have been conducted on at least five percent (5%) of the dwelling units, not less than two (2) dwelling units and at least ninety percent (90%) of the independent clearance inspections were passed. "Repeated lead poisoning", for purposes of this paragraph, shall mean a lead-poisoning rate of less than one half percent (.5%) per dwelling-unit year, with dwelling-unit years being calculated by multiplying the number of dwelling units owned by the property owner by the number of years of ownership since 1992. Major minimum housing violations shall be defined by rule by the housing resources commission. The housing resources commission shall not arbitrarily withhold its approval of applications for presumptive compliance. A certificate of presumptive compliance shall be deemed to be satisfactory for purposes of demonstrating compliance with the requirements of this chapter. If a unit qualifies for a presumptive compliance certificate, by itself having passed an independent clearance inspection at least once, that unit's compliance may be maintained by a visual inspection as set forth in this chapter.

(10) "Lead-hazard-mitigation inspector" means either a person approved by the housing resources commission to perform independent clearance inspections under this chapter or inspections required by 24 C.F.R., Part 35, Subpart M [24 C.F.R. § 35.1200 et seq.], or approved by the department of health to conduct inspections pursuant to chapter 24.6 of title 23.

Lead-hazard-mitigation inspectors performing independent clearance inspections shall not have any interest, financial or otherwise, direct or indirect, or engage in any business or employment with regards to:

- (a) The dwelling unit that is the subject of an independent clearance inspection; or
- (b) The contractor performing lead-hazard-control work in the dwelling unit; or
- (c) The laboratory that is used to analyze environmental lead samples for the independent clearance inspection unless the lead-hazard-mitigation inspector discloses his or her relationship with the laboratory to the person requesting the inspection and on the inspection report.

Employees of public agencies and quasi-public agencies that hold a financial interest in the property may perform independent clearance inspections.

(11) "Lead poisoned" means a confirmed venous blood lead level established by the department of health pursuant to § 23-24.6-4(1).

(12) "Lead Safe" means that a dwelling, dwelling unit, or premises has undergone sufficient, lead-hazard reduction to ensure that no significant, environment lead hazard is present and includes, but is not limited to, covering and encapsulation and is evidenced by a lead-safe certificate issued by the department of health.

(13) "Property owner" means any person who, alone or jointly or severally with others:

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

(ii) Shall have charge, care, or control of any dwelling, dwelling unit, or structure as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any person representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant to this chapter, to the same extent as if that person were the owner.

(iii) Notwithstanding the foregoing, no holder of a mortgage or other lien holder who, in enforcing a security interest, acquires title by foreclosure or deed in lieu of foreclosure shall be considered a property owner for purposes of this chapter, if the holder transfers the title within one year after the date the title is acquired; provided, however, if the mortgagee or lien holder, subsequent to acquiring title, is notified of a lead hazard under chapter 24.6 of title 23 or § 42-128.1-8(a)(5), then and in that event, the mortgagee or lien holder shall take any steps to reduce the lead hazard that shall be required under the provisions of chapter 24.6 of title 23 or this chapter, as applicable.

(14) "Temporary housing" means any seasonal place of residence that is rented for no more than one hundred (100) days per calendar year to the same tenant, where no lease renewal or extension can occur, and any emergency shelter intended for night-to-night accommodation.

(15) "Tenant turnover" means the time at which all existing occupants vacate a unit and all new occupants move into the unit.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2; P.L. 2016, ch. 302, § 1; P.L. 2016, ch. 311, § 1.)

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SECTION 42-128.1-5

§ 42-128.1-5. Housing resources commission – Powers and duties with respect to lead hazard mitigation.

(a) General powers and duties. The housing resources commission shall implement and put into full force and effect the powers, duties, and responsibilities assigned to it by this chapter, and shall serve as the lead state agency for lead hazard mitigation, planning, education, technical assistance, and coordination of state projects and state financial assistance to property owners for lead hazard mitigation.

(b) Regulatory guidelines. In developing and promulgating rules and regulations as provided for in this chapter, the housing resources commission shall consider, among other things: (1) the effect on efforts to reduce the incidence of lead poisoning, (2) the ease and cost of implementation, (3) the impact on the ability to conduct real estate transactions fairly and expeditiously, (4) consistency with federal standards, such that the differences between basic federal standards and Rhode Island standards for lead hazard mitigation are, to the extent practicable, minimized, and (5) the direction of effort to locations and housing types, which due to age, condition, and prior history of lead poisoning are more likely to the location of lead poisoning. Said regulations shall include a definition of "turnover" of a dwelling unit and a means for tenants to voluntarily notify property owners of the legal tenancy of an "at-risk" occupant.

(c) Comprehensive strategic plan. In order to establish clear goals for increasing the availability of housing in which lead hazards have been mitigated, to provide performance measures by which to assess progress toward achieving the purposes of this chapter, and to facilitate coordination among state agencies and political subdivisions with responsibilities for housing and housing quality for lead poisoning reduction and for the availability of insurance coverage described in this chapter, the housing resources commission established by chapter 128 of this title shall adopt by April 1, 2003, a four (4) year, comprehensive strategic plan for reducing the incidence of childhood lead poisoning, for increasing the supply of lead-safe housing, and for assuring that pre-1978 in rental housing throughout the state lead hazards have been mitigated.

(1) Plan elements. The plan as a minimum shall include elements pertaining to:

(i) Educating people with regard to lead hazards and how they can be avoided, mitigated, and/or abated;

(ii) Programs to assist low and moderate income owners of property to eliminate lead hazards and to achieve lead-safe conditions;

(iii) Coordination of the enforcement of laws pertaining to lead hazard control, mitigation and abatement including the Lead Poisoning Prevention Act, chapter 24.6 of title 23, and minimum housing codes and standards;

(iv) Coordination of efforts with local governments and other agencies to improve housing conditions;

(v) Financing lead abatement efforts in Rhode Island, including, but not limited to, assistance to low and moderate income property owners, education and outreach, and enforcement by state and local officials;

(vi) An assessment of the availability of insurance for lead hazard liability, which shall be designed and implemented in cooperation with the department of business regulation.

(2) Implementation program. The comprehensive strategic plan shall include an implementation program, which shall include performance measurers and a program of specific activities that are proposed to be undertaken to accomplish the purposes of this chapter and to achieve goals and elements set forth by the plan. The implementation program shall be updated annually according to a schedule set forth in the plan.

(3) Reporting. The commission shall report annually to the governor and the general assembly, no later than March of each year, on the progress made in achieving the goals and objectives set forth in the plan, which report may be integrated with or issued in conjunction with the report of the commission on environmental lead submitted pursuant to § 23-24.6-6.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

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SECTION 42-128.1-6

§ 42-128.1-6. Education.

(a) In order to achieve the purposes of this chapter, a statewide, multifaceted, ongoing educational program designed to meet the needs of tenants, property owners, realtors and real estate agents, insurers and insurance agents, local building officials, and health providers and caregivers is hereby established.

(b) The governor, in conjunction with the department of health and the housing resources commission, shall sponsor a series of public service announcements on radio, television, and print media about the nature of lead hazards, the importance of lead hazard control and mitigation, and the purposes and responsibilities set forth in this chapter. In developing and coordinating this public information initiative the sponsors shall seek the participation and involvement of private industry organizations, including those involved in real estate, insurance, mortgage banking, and pediatrics.

(c) Within sixty (60) days after the regulations set forth in § 42-128.1-7 for lead hazard control and mitigation go into effect, the housing resources commission in conjunction with the department of health shall:

(1) Create culturally and linguistically appropriate material outlining the rights and responsibilities of parties affected by this chapter;

(2) Establish guidelines and a trainer's manual for a not more than three (3) hours lead hazard control awareness seminar for rental property owners or designated persons, which shall be forwarded to all public and private colleges and universities in Rhode Island, to other professional training facilities, and to professional associations and community organizations with a training capacity, with the stipulation this seminar be offered for a maximum fee of fifty dollars (\$50.00) per participant. The housing resources commission shall approve the proposals to offer the seminar from institutions, provided those proposals are consistent with the guidelines. An electronic version of this awareness seminar shall be created and approved by the housing resources commission for computer Internet access. Said awareness seminar shall also be produced and made available in both VHS and DVD format for rental or purchase at a reasonable cost not to exceed five dollars (\$5.00) for the rental version and fifteen dollars (\$15.00) for the purchased version. Said seminar shall be available to tenants, property owners and other interested parties.

(3) Adopt rules for the dissemination of information about the requirements of this chapter to all prospective owners of pre-1978 dwellings during the real estate transaction, settlement, or closing;

(4) Solicit requests, to the extent that these partnerships are not already established, to enter into ongoing, funded partnerships, to provide specific counseling information services to tenants and affected parties on their rights and responsibilities with regard to lead hazards and lead poisoning.

(d) The department of business regulation shall, with regard to its responsibilities for the profession of real estate brokers and salespersons, adopt rules, with the concurrence of the housing resources commission and the department of health which shall be effective not later than June 30, 2004: (1) requiring proof of reasonable familiarity with the knowledge of duties and responsibilities under the provisions of the Lead Poisoning Prevention Act, chapter 24.6 of title 23, and this chapter, for the licensure or renewal of licenses of real estate brokers and salespersons in accordance with § 5-20.5-6 after July 1, 2004; and (2) providing, pursuant to § 5-20.5-18, an educational program for real estate brokers and salespersons regarding such duties and responsibilities.

(e) The housing resources commission, in conjunction with the department of health, is hereby authorized to develop, offer, engage in, contract for and/or provide any other educational or informational programs that they may deem necessary to accomplish the purposes of this chapter, including, but not limited to: programs to assist families to find housing that is lead free, lead safe or lead hazard mitigated or abated; to train lead hazard mitigation inspectors and local building officials and persons engaged in renovating and/or improving housing about controlling or mitigating lead hazards in pre-1978 housing. Said programs shall provide information about lead hazard mitigation requirements at retail hardware and paint stores and home-improvement centers, including, as a minimum, signs of sufficient size with large enough lettering to be easily seen and read, which contains the following language:

WARNING

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

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2; P.L. 2006, ch. 216, § 57.)

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SECTION 42-128.1-12

§ 42-128.1-7. Lead hazard mitigation.

The housing resources commission shall adopt, no later than April 1, 2003, rules:

- (1) For housing constructed prior to 1978, which require property owners to certify at the time of transfer that the dwelling and/or premises meet the requirements for lead hazard mitigation or lead hazard abatement, or that the party or parties acquiring the property are notified of the potential lead hazards, and at the time of rental of units that the requirements for meeting the appropriate standards have been met;
- (2) For a lead hazard mitigation standard;
- (3) For any training, certification or licensing necessary to carry out the provisions of this chapter; and
- (4) For a process to receive, investigate, and decide whether the correction of a lead hazard, pursuant to § 42-128.1-8(a)(3) and (d) was satisfactory. These rules shall establish an expeditious procedure to determine whether the allegation of unsatisfactory correction has merit. The process may be integrated with or make use of the technical assistance service provided for in § 42-128.1-13.
- (5) For a process to grant a variance to subsections 42-128.1-8(a)(3), (a)(5), and (b), where there exists a hardship as to financing lead hazard mitigation, or where materials, personnel, or weather delays the mitigation completion.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

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SECTION 42-128.1-13

§ 42-128.1-8. Duties of property owners of pre-1978 rental dwellings.

(a) Property owners of pre-1978 rental dwellings, which have not been made lead safe or have not been lead hazard abated shall comply with all the following requirements:

(1) Learn about lead hazards by taking a lead hazard awareness seminar, himself or herself or through a designated person;

(2) Evaluate the dwelling unit and premises for lead hazards consistent with the requirements for a lead hazard control evaluation;

(3) Correct identified lead hazards by meeting and maintaining the lead hazard mitigation standard;

(4) Provide tenants: (i) basic information about lead hazard control; (ii) a copy of the independent clearance inspection; and (iii) information about how to give notice of deteriorating conditions;

(5) Correct lead hazards within thirty (30) days after notification from the tenant of a dwelling unit with an at risk occupant, or as provided for by § 34-18-22.

(b) New property owners of a pre-1978 rental dwelling that is occupied by an at risk occupant shall have up to sixty (60) days to meet requirements for lead hazard mitigation, if those requirements were not met by the previous owner at the time of transfer, provided that the new property owner has the property visually inspected within thirty (30) business days after assuming ownership to determine conformity with the lead hazard control standard.

(c) The requirements for lead hazard mitigation shall apply to the first change in ownership or tenancy after November 1, 2005; provided further, that unless requested and agreed to by an at-risk occupant, meeting the lead hazard mitigation standard shall not be construed to authorize a property owner to compel or cause a person, who is in tenancy on January 1, 2004, and remains in tenancy continuously thereafter, to vacate a rental unit temporarily or otherwise.

(d) If the tenant receives no response to the notification to the property owner of deteriorating conditions affecting lead hazards, if the response is in the tenant's opinion unsatisfactory, or if the remedy performed is in the tenant's opinion unsatisfactory, the tenant may request a review of the matter by the housing resources commission. After its review of the matter, the housing resources commission shall either send notice to the property owner in which notice shall be issued in a manner substantially similar to a notice of violation issued by the director pursuant to the Housing

Maintenance Code, chapter 24.3 of title 45, or promptly inform the tenant of the reasons why the notice is not being issued.

(e) Notwithstanding the foregoing, the provisions of this chapter shall not apply to common areas in condominium complexes that are owned and operated by condominium associations, or to pre-1978 rental dwelling units that are:

(1) Lead-safe or lead free; or

(2) Temporary housing; or

(3) Elderly housing; or

(4) Comprised of two (2) or three (3) units, one of which is occupied by the property owner; or

The department of health shall report to the legislature annually on the number of children who are lead poisoned in any of the exempted dwelling units as referred to in subdivision (e)(4) of this section.

Nothing contained herein shall be construed to prevent an owner who is seeking to obtain lead liability insurance coverage in the policy from complying with the provisions of this chapter, by securing and maintaining a valid and in force letter of compliance or conformance in force.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2004, ch. 221, § 2; P.L. 2004, ch. 223, § 2; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

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SECTION 42-128.1-9

§ 42-128.1-9. Insurance coverage.

(a) The department of business regulation shall, by January 1, 2003, establish a uniform policy with regard to exclusion for lead poisoning and shall adopt any rules and requirements that may be necessary to assure the availability of insurance coverage for losses and damages caused by lead poisoning, in accordance with the provisions of this chapter, which policy and rules shall apply to liability coverage available to property owners. The department of business regulation shall have the authority and is empowered, consistent with the requirements of chapter 35 of this title, to promulgate rules and regulations, which shall enable it to compile and analyze data and to make determinations with regard to the availability of and rates for lead liability coverage.

(b) Except as otherwise provided by this chapter, no insurance company licensed or permitted by the department of business regulation to provide liability coverage to rental property owners shall exclude, after October 31, 2005, coverage for losses or damages caused by lead poisoning. The department of business regulation shall not permit, authorize or approve any exclusion for lead poisoning, except as specifically provided for by this chapter, that was not in effect as of January 1, 2000, and all previously approved exclusions shall terminate October 31, 2005. As of November 1, 2005, coverage for lead poisoning shall be included in the policy or offered by endorsement, as set forth in this section.

(c) All insurers issuing commercial lines insurance policies and personal lines insurance policies covering pre-1978 rental housing in compliance with: (i) the requirements of this chapter for lead hazard mitigation; (ii) with the requirements of chapter 24.6 of title 23 for lead safe housing, within the state of Rhode Island; or (iii) relying on a valid certificate of compliance or conformance shall, effective November 1, 2005, include in the policy coverage for liability for injury, damage, or death resulting from occurrences of lead poisoning in an amount equal to and no less than the underlying policy limits for personal injury/bodily injury coverage provided under the policy so issued to a residential rental property owner. The property owner shall, if requested by the insurer, present to the insurance company, either: (1) proof of certificate of compliance of an independent clearance inspection and of any affidavit of visual inspection required to maintain the validity of the independent clearance inspection; (2) proof of meeting the mitigation standard in the form of a clearance exam showing that lead hazards are mitigated; or (3) proof of abatement. This proof shall be prima facie evidence of compliance with the requirements of this chapter. In any subsequent renewal, the insurer may require any continuing proof whenever the certificate is expiring, has expired, or is otherwise invalidated.

(d) For residential rental properties that have not been brought into compliance with the requirements for lead hazard mitigation pursuant to this chapter or for lead hazard reduction pursuant to chapter 24.6 of title 23 or which do not have a valid certificate of compliance or conformance, effective November 1, 2005, for residential rental property owners who own or owned a substantial legal or equitable interest in one property and have had no more than one un-remediated dwelling unit at which a child was poisoned prior to November 1, 2005, and for residential property owners who own or owned more than one property and have had no more than two (2) un-remediated dwelling units at which a child was poisoned prior to November 1, 2005, an insurance company, which provides liability insurance to a residential rental property owner, shall either offer lead liability coverage for bodily injury, which shall be equal to the underlying limits of liability coverage for the property, by endorsement, or shall assist the insured in placing lead liability coverage through the program commonly known as the Rhode Island FAIR Plan either directly or through one of the insurance company's agents or brokers, and the Rhode Island FAIR Plan shall make available liability coverage for damages caused by lead poisoning to the class of property owners described in this subsection. If the insured seeks lead liability coverage with the FAIR Plan, the FAIR Plan may use reasonable underwriting guidelines, as approved by the department of business regulation, to underwrite the property. Any property owner, who fails to remediate a property, after a notice of violation subsequent to October 31, 2005, and any property which is not remediated after notice of a violation subsequent to October 31, 2005, shall not be eligible to receive an offer of coverage and shall be subject to cancellation and non-renewal of that coverage if the property is not found to be in compliance with the lead law within ninety (90) days of the date of issuance of the notice by the director, or the housing resources commission, as applicable.

(a) Rates for lead poisoning liability coverage, as specified in subsections (c) and (d) of this section, shall be approved by the department of business regulation, notwithstanding any limits on rate approval authority established by the provisions of chapter 65 of title 27 and subject to the provisions of §§ 27-44-6 and 27-44-7, using the following standards:

(1) That they are not excessive, inadequate, or unfairly discriminatory;

(2) That consideration is given to:

(i) Past and prospective loss experience within the state of Rhode Island;

(ii) A reasonable margin for profits and contingencies;

(iii) Past and prospective expenses specifically applicable to the state of Rhode Island:

(iv) Any other data, including data compiled in other states, especially regarding experience data for lead liability coverage, that the department may deem necessary; and

(v) Past history of the owner with regard to lead poisoning or any associated violations.

(b) The department of business regulation shall have the authority and is empowered, consistent with the requirements of chapter 35 of this title, to promulgate rules and regulations to enable it to compile and analyze data and to make determinations with regard to the availability of and rates for lead liability coverage. In order to effect the purposes of this section insurers shall file, on or before October 1, 2004, the proposed language of endorsements for lead liability coverage and the proposed rates for that coverage with the department.

(c) All endorsements, rates, forms and rules for lead liability coverage approved by the department of business regulation to be effective on or after July 1, 2004 are hereby extended to be effective November 1, 2005. Prior to November 1, 2005, insurers and advisory organizations shall continue to utilize all endorsements, rates, forms and rules in effect on June 30, 2004 for lead liability coverage. The department shall not approve any new endorsements, rates, forms or rules for lead liability coverage in pre-1978 residential rental properties unless the filings are submitted in accordance with the provisions of this act. The department is hereby authorized to promulgate reasonable rules and regulations to carry out the provisions of this section.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2004, ch. 221, § 2; P.L. 2004, ch. 223, § 2; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

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SECTION 42-128.1-18

§ 42-128.1-10. Right to housing where lead hazards are corrected.

(a) Pregnant women and families with children under six (6) years of age shall be deemed to have a right to housing in which lead hazards have been mitigated or abated.

(b) *Injunctive Relief.* Effective November 1, 2005, if the property owner of a rental dwelling fails to comply with such standards for lead hazard mitigation, or abatement, as applicable, a right of private action shall exist that allows households that include an at risk occupant to seek injunctive relief from a court with jurisdiction against the property owner in the form of a court order to compel compliance with requirements for lead hazard control or mitigation. A person who prevails is entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court. Cases brought before the court under this section shall be granted an accelerated hearing.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2004, ch. 221, § 2; P.L. 2004, ch. 223, § 2; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

TITLE 42

State Affairs and Government

CHAPTER 42-128.1

Lead Hazard Mitigation

SECTION 42-128.1-19

§ 42-128.1-11. Enforcement.

(a) The standards for lead hazard control and for lead hazard mitigation in pre-1978 housing shall be considered basic housing standards and shall be enforceable through the provisions of this chapter and through procedures established in chapter 24.2 of title 45 and chapter 24.3 of title 45.

(b) *Minimum Housing Standards and Housing Maintenance and Occupancy Code.* In order to establish consistency between state and local programs pertaining to enforcement of standards for housing and housing occupancy and to provide for broadly available, multiple means of identifying instances of noncompliance with this chapter and enforcing the requirements of this chapter, the following provisions regarding Minimum Housing Standards and Housing Maintenance and Occupancy Code shall be effective:

(1) The ordinances, rules, and regulations for "Minimum Housing Standards" adopted pursuant to § 45-24.2-3 shall, on or before November 1, 2005, include provisions for lead hazard control.

(2) The Housing Maintenance and Occupancy Code, established by chapter 24.3 of title 23, shall, effective November 1, 2005, include provisions consistent with a continuing and ongoing responsibility for lead hazard mitigation as required by the department of health standards.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2004, ch. 221, § 2; P.L. 2004, ch. 223, § 2; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

TITLE 42

State Affairs and Government

CHAPTER 42-128.1

Lead Hazard Mitigation

SECTION 42-128.1-20

§ 42-128.1-12. Independent evaluation.

In order to assure the effectiveness of the lead hazard awareness mitigation program established by this chapter and to recommend any changes, which may be necessary to appropriate, the auditor general shall:

(1)(i) Conduct a performance audit for the period ending December 31, 2003, of the duties and responsibilities assigned to the state agencies and to political subdivisions by this chapter and by the Lead Poisoning Prevention Act, chapter 24.6 of title 23, and of the effectiveness of this chapter in meeting its purposes. The auditor general may contract with independent firms and organizations with expertise in lead poisoning prevention and lead hazard mitigation to assist with the evaluation of matters set forth in this subsection.

(ii) The auditor general's report shall be submitted to the governor, the speaker of the house, the president of the senate, the chairperson of the housing resources commission and the director of health, on or before March 31, 2005, and shall contain, as appropriate, recommendations: (A) to make the programs established by this chapter and by the Lead Poisoning Prevention Act more effective in achieving their respective purposes; and (B) to address any unreasonable hardships caused by this chapter or likely to be caused by this chapter with its full implementation July 1, 2005.

(iii) The performance audit required by this subdivision shall, in addition to the examination of effectiveness of administration and the efficiency and adequacy of state agencies and political subdivisions in the performance of their duties under this chapter and the Lead Poisoning Prevention Act, include consideration of the following matters:

(A) The number and type and date of public service announcements required by § 42-128.1-6(1);

(B) The availability and distribution of education materials specified by § 42-128.1-6(2)(i);

(C) The number, date and location of lead hazard awareness seminars and the number of persons who have participated in those seminars;

(D) The number of "mitigation inspectors," average length of time necessary to conduct the inspections, the cost of meeting standards per inspection, and the availability of inspectors to conduct the inspections, at a reasonable cost needed in the various geographic areas of the state;

(E) The availability of programs to assist property owners, especially low and moderate income property owners;

(2) Conduct a performance audit for the period ending June 30, 2007, of the duties and responsibilities, as assigned by this chapter, to state agencies and political subdivisions and of the effectiveness of this chapter in meeting its purposes, especially with regard to increasing the supply of housing in which lead hazards have been mitigated and in reducing the incidence and severity of lead poisoning in Rhode Island. The auditor general may contract with independent firms and organizations with expertise in lead poisoning prevention and lead hazard mitigation to assist with the evaluation of matters set forth in this chapter. The auditor general's report shall be submitted to the governor, the speaker of the house, the president of the senate, the chairperson of the housing resources commission and the director of health, on or before January 1, 2008, and shall contain, as appropriate, recommendations: (i) to make the programs established by this chapter more effective in achieving the respective purposes; and (ii) to redress any unreasonable hardships caused by this chapter or likely to be caused by this chapter.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2004, ch. 221, § 2; P.L. 2004, ch. 223, § 2; P.L. 2005, ch. 142, § 2; P.L. 2005, ch. 143, § 2.)

State Affairs and Government

CHAPTER 42-128.1 Lead Hazard Mitigation

SECTION 42-128.1-13

§ 42-128.1-13. Rhode Island lead hazard technical assistance service.

(a) Establishment and purposes. (1) The Rhode Island housing resources commission shall establish a "Rhode Island lead hazard technical assistance service" program for the purposes of providing technical assistance to property owners to achieve compliance with this chapter and the Lead Poisoning Prevention Act, chapter 24.6 of title 23.

(2) The services of the program shall subject to appropriation, include, but shall not be limited to: evaluation of the need for lead hazard mitigation in a dwelling; review of independent inspection results; identification of and arranging funding for conduction lead hazard abatement and mitigation, and supplying any materials, assistance, and services that may be needed by property owners to achieve compliance with this chapter and the Lead Poisoning Prevention Act in an affordable manner.

(b) Historic properties. On or before November 1, 2005, the housing resources commission, in conjunction with the historic preservation and heritage Commission, shall initiate the following activities to assist owners of historic properties to comply with the provisions of this chapter: (i) provide technical assistance; (ii) identify financial resources available for compliance; and (iii) seek additional resources for this purpose.

(c) Cooperation with Rhode Island housing and mortgage finance corporation. The housing resources commission is hereby authorized to cooperate with the Rhode Island housing and mortgage finance corporation in putting the provisions of this section into effect, and the Rhode Island housing and mortgage finance corporation is hereby authorized to exercise its powers under § 42-55-5.1 to provide for the implementation of this section.

(d) Exercise of powers. The housing resources commission is hereby expressly authorized to exercise any or all of its general powers set forth in § 42-128-7 to accomplish the purpose of this section.

History of Section.

(P.L. 2002, ch. 187, § 3; P.L. 2002, ch. 188, § 3; P.L. 2005, ch. 142, § 2; P.L. 2005, ch.

143, § 2.)