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BILL SUMMARY

- Provides for the Director of Health to license lead-safe renovators and clearance technicians.
- Establishes prohibitions and procedures for lead abatements and lead-safe renovations.
- Prohibits a person from performing or supervising a lead-safe renovation instead of a lead abatement on a property at which a lead-poisoned child has been identified.
- Permits the Director to issue an immediate cease work order if a license holder's activities endanger the health or well-being of certain persons.
- Establishes essential maintenance practices and preventive treatments required to be implemented by owners of property constructed before January 1, 1950 that is used as a residential unit, child day-care facility, or school.
- Requires that each child at risk of lead poisoning undergo a blood lead screening test.
- Replaces the Child Lead Poisoning Prevention Program with the Childhood Lead Poisoning Prevention Program and establishes requirements governing the program.
- Creates an advisory council to assist in the development and implementation of the Childhood Lead Poisoning Prevention Program and sunsets the council on December 31, 2004.

- Establishes requirements for investigation and risk assessment of a residential unit, child day-care facility, or school that may be the source of a child's lead poisoning.
- Provides for the issuance of a lead hazard control order if the results of a risk assessment indicate that a lead hazard on the property is contributing to a child's lead poisoning.
- Establishes the Lead Poisoning Prevention Fund.
- Requires the Public Health Council to adopt rules governing lead abatement personnel licensure, lead poisoning prevention, and lead hazard control.

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CONTENT AND OPERATION

Background

The federal Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, requires the United States Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) to enact regulations to help address the control of lead hazards in housing. The act also sets forth model training and licensing requirements for persons working to control lead hazards in housing and day care facilities built before 1978. Ohio's current lead abatement law (Chapter 3742. of the Revised Code), effective July 1, 1994, is based on the act's guidance and mandates that the Ohio Department of Health administer Ohio's lead training and lead abatement professional licensing requirements.

Effective October 1, 1998, the EPA authorized Ohio to operate its lead program. This authorization allows Ohio to operate the lead program instead of the EPA. As a condition of authorization, the EPA requires that Ohio operate the program so that it is as protective of health and the environment as an EPA operated program would be if it were based on the model federal regulations.

Lead abatement personnel licensing

(secs. 3742.01, 3742.04, 3742.05, 3742.08, 3742.10, 3742.15, and 3742.161)

The Director of Health has responsibility under existing law to issue lead inspector, lead abatement contractor, lead risk assessor, lead abatement project designer, and lead abatement worker licenses and to discipline license holders

when appropriate. The bill expands the Director's duties to include issuing lead-safe renovator and clearance technician licenses.

A lead-safe renovator conducts lead-safe renovations, which the bill defines as a general improvement of all or part of an existing residential unit, child day-care facility, or school in which the permanent elimination of a lead hazard is incidental rather than the single purpose of the improvement.¹ Lead-safe renovation includes the removal or modification of surfaces or components painted with lead-based paint, the removal of large structures, and window replacement. Lead-safe renovation is distinguishable from lead abatement, because the elimination of lead hazards is the single purpose of lead abatement.²

A clearance technician performs clearance examinations, which are defined by the bill as an examination conducted following a lead abatement or lead-safe renovation to determine whether the lead hazards in a residential unit, child day-care facility, or school have been sufficiently controlled according to standards established by the Public Health Council in rules.³ A clearance examination includes a visual assessment, collection, and analysis of environmental samples. Clearance examinations may also be performed by licensed lead inspectors or lead risk assessors.

¹ "Permanent" means an expected design life of at least 20 years.

² Lead abatement does not include (1) essential maintenance practices and preventive treatments performed on property constructed before 1950, (2) activities performed by a property owner or the owner's agent on the owner's single-family home if it is the owner's residence and no child under six years of age who has lead poisoning resides in the home, (3) lead-safe renovations performed and supervised by a lead-safe renovator, or (4) implementation of interim controls. "Interim controls" means a set of measures designed to reduce temporarily human exposure or likely human exposure to lead hazards, such as specialized cleaning, repairs, painting, temporary containment, clearance, ongoing lead hazard maintenance activities, and the establishment and operation of management and resident education programs. (R.C. 3742.01(J) and (K).)

³ The Public Health Council consists of seven members appointed by the Governor. It is responsible for adopting rules in a number of public health areas, but has no executive or administrative duties. Under the bill, a "child day-care facility" means any area of a child day-care center, type A family day-care home, type B family day-care home, type C family day-care home, preschool program, or school child program in which child day-care is provided to children less than six years of age. "School" means a public or non-public school in which children less than six years of age receive education (R.C. 3742.01(E)).

As part of the Director's new duties, the Director must conduct, specify requirements by rules, or approve training programs for licensure of lead-safe renovators and clearance technicians and maintain a list of licensed lead-safe renovators and clearance technicians. In addition, the bill requires that an applicant for any of the licenses issued under the lead abatement personnel law provide the applicant's social security number to the Director.

The bill requires that the Director 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, lead-safe renovators, and clearance technicians. The bill permits the Director to refer improper work discovered through the program to the Attorney General for appropriate action. The Director's authority to examine records and reports submitted by lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, and lead abatement workers is expanded to include records and reports submitted by lead-safe renovators and clearance technicians.

Performance of lead abatement activities

Additional duties of lead abatement contractors and lead-safe renovators

(secs. 3742.06 and 3742.07)

Lead abatement contractors have a number of duties under existing law. For example, a lead abatement contractor is prohibited from providing lead testing services or professional advice regarding lead abatement unless that service or advice is provided by a licensed lead inspector or lead risk assessor who is employed by the lead abatement contractor. The bill expands existing provisions governing lead abatement to lead-safe renovation and prohibits a person from performing or supervising a lead-safe renovation instead of a lead abatement on a property at which a lead-poisoned child under six years of age has been identified.⁴ In addition, the bill requires that the lead abatement contractor or lead-safe renovator primarily responsible for a lead abatement project or lead-safe renovation ensure that all persons involved follow the worker protection standards established by the United States Occupations Safety and Health Administration.

⁴ "Lead poisoning" means the level of lead in human blood that is hazardous to human health, as specified by the Public Health Council in rules (R.C. 3742.01(V)).

Immunity from civil liability

(sec. 3742.17)

Current law provides immunity from civil liability for injury or damage that results from acts or omissions of persons licensed to engage in lead abatement, lead inspection, lead risk assessment, or other activity under the lead abatement law unless they are negligent. The bill expands that immunity to persons licensed to perform lead-safe renovation or clearance examinations. Similarly, the bill expands existing immunity for persons who contract with lead inspectors, lead abatement contractors, lead risk assessors, lead abatement project designers, or lead abatement workers to include persons who contract with lead-safe renovators or clearance technicians. As under current law, immunity from liability does not apply to 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.

Prohibitions

(sec. 3742.02)

Current law prohibits any person from doing any of the following: (1) applying or causing to be applied any lead-based paint on or inside any structure other than the individual's private residence unless the Public Health Council determines that no suitable substitute exists or (2) interfering with an inspection conducted by the Director of Health or a board of health. The bill instead prohibits any person from doing any of the following:

(1) Applying or causing to be applied any lead-based paint on or inside any residential unit, child day-care facility, or school unless the Public Health Council determines that no suitable substitute exists;

(2) Interfering with an investigation required by the bill;

(3) Effective one year after the bill's effective date, performing a lead clearance examination without a valid clearance technician license unless the person holds a valid lead inspector or lead risk assessor license;

(4) Effective one year after the bill's effective date, performing or supervising a lead-safe renovation without a valid lead-safe renovator license;

(5) Performing lead training without approval from the Director.

The bill maintains provisions prohibiting any person from doing the following:



(1) Violating the law or rules governing lead poisoning prevention and lead hazard control;

(2) Knowingly authorizing or employing an individual to perform lead abatement without a valid license;

(3) Performing a lead inspection, lead risk assessment, or lead abatement without the appropriate license;

(4) Acting as a lead abatement contractor or lead abatement project designer without the appropriate license.

Rulemaking authority--licensing of lead abatement personnel and performance of lead abatement activities

(sec. 3742.03)

Current law requires that the Public Health Council adopt rules governing the administration and enforcement of the law governing the licensing of lead abatement personnel and the performance of lead abatement activities. The bill expands the Council's rulemaking authority to include the new categories of licensure the bill creates (lead-safe renovators and clearance technicians) and the new activities permitted by the bill (lead-safe renovation and clearance examinations). The bill also requires the Public Health Council to adopt rules that specify environmental sampling techniques for use in collecting samples of dust, in addition to the existing authority to specify environmental sampling techniques for use in collecting samples of air, water, paint, and other materials.

Enforcement of law governing licensing of lead abatement personnel and performance of lead hazard control activities

Cease work orders

(sec. 3742.161)

Under the bill, the Director is authorized to issue an immediate cease work order to a license holder 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 day-care facility, or school or a person employed to perform a lead abatement or lead-safe renovation.

Civil penalties and injunctive relief

(secs. 3742.18 and 3742.19)

Under current law, the Attorney General may file a civil action against a person who violates the law governing the licensing of lead abatement personnel and the performance of lead hazard control activities. The bill gives a person affected by a lead hazard created in a residential unit, child day-care facility, or school as a result of the violation the right to intervene in the action. The bill maintains current law requiring the court to grant injunctive and other equitable relief on a showing that a violation has occurred or is about to occur. On finding a violation, the court must assess a civil penalty of not more than \$1,000, with each day the violation continues constituting a separate violation. The bill changes the name of the Lead Program Fund to the Lead Abatement Personnel Licensing Fund and requires that all civil penalties, except those awarded to a person who intervenes in the action, be deposited into the state treasury to the credit of the Fund.

Criminal penalties

(sec. 3742.99)

Under current law, at the request of the Director of Health, a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer may commence a criminal action against a person who violates any provision of the Lead Abatement Chapter (Chapter 3742. of the Revised Code). The bill limits violations for which a criminal action can be commenced to the prohibitions described above, the duties of a lead abatement contractor primarily responsible for a project, and the provisions governing lead abatement and lead-safe renovation. It also permits a board of health to request that an action be commenced.

Control of lead hazards on property constructed before 1950

Essential maintenance practices

(secs. 3742.41 and 3742.43)

Within two years of the bill's effective date, the owner of a property constructed before January 1, 1950 that is used as a residential unit, child day-care facility, or school must implement, or have the property manager implement, all of the following essential maintenance practices for the control of lead hazards:

(1) Use only safe work practices 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 day-care facility or school to report concerns about potential lead hazards by posting notices in conspicuous locations and by annually providing written notices to the tenants or parents, guardians, or custodians;

(5) Perform specialized cleaning to control lead-contaminated dust;

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

(7) Maintain an affidavit of essential maintenance practices for at least three years that document all essential maintenance practices.⁵

The areas of a residential unit, child day-care facility, or school subject to these requirements include (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 that the owner or manager considers to be associated with the operation of the unit, facility, or school, including garages, play equipment, and fences, and (3) the lot or land that the unit, facility, or school occupies. An owner who violates the requirements is subject to judicial relief and liability provisions.

A person who implements the essential maintenance practices must do all of the following in the area of the residential unit, facility, or school in which the practices are being performed:

- Allow only persons performing the essential maintenance practice access to the area;
- Cover the area with six mil polyethylene plastic or its equivalent;
- Protect workers;
- Protect occupants' belongings by covering or removing them from the area;

⁵ *The Director may require that the affidavit be notarized.*

- Wet down all painted surfaces before disturbing the surfaces;
- Wet down debris before sweeping or vacuuming.

Presumption that no lead hazard exists on completion of preventive treatments

(sec. 3742.42)

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

- (1) Follows the essential maintenance practices specified in the bill;
- (2) Covers all horizontal surfaces within the unit, facility, or school that are rough, pitted, or porous with a smooth cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

The owner or manager of a residential unit, child day-care facility, or school has successfully completed these preventive treatments if the unit, facility, or school passes a clearance examination. The presumption established by the bill is rebuttable only on a showing of clear and convincing evidence to the contrary.

Specialized cleaning methods

(sec. 3742.45)

Under the bill, specialized cleaning methods used as essential maintenance practices or preventive treatments to control lead-contaminated dust 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;⁶

⁶ "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% or greater efficiency (R.C. 3742.01(I)).

(3) Covering potentially lead-contaminated soil.

A person who uses or provides for others to use specialized cleaning methods as an essential maintenance practice or preventive treatment must ensure that the cleaning is performed as follows:

- The common areas of the 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.
- A residential unit that is vacated by its occupants must undergo specialized cleaning before it may be reoccupied.
- A child day-care facility or school must undergo specialized cleaning at least annually at a time when children are not present at the facility or school.
- A residential unit, child day-care facility, or school must undergo specialized cleaning on the completion of any maintenance or repair work that disturbs lead-contaminated dust.

Who may perform essential maintenance practices and preventive treatments

(secs. 3742.44, 3742.46, and 3742.47)

In general, the bill does not require that essential maintenance practices and preventive treatments be performed by an individual licensed as a lead abatement contractor, lead abatement worker, or lead-safe renovator. The bill permits only a licensed person to engage in the following activities when performing essential maintenance practices or preventive treatments:

- (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) Contained hydroblasting or high-pressure washing.

A person who performs or supervises essential maintenance practices or preventive treatments must have successfully completed a training program approved by the Department of Health in the identification and control of lead

hazards unless the person is a licensed lead abatement contractor, lead abatement worker, or lead-safe renovator. The training program may not last longer than one day.

The bill requires a person seeking approval of a not more than one-day training program in the identification and control of lead hazards to apply to the Director for approval. The Director is required to prescribe an application form and establish an application fee. The fee must be reasonable and cannot exceed the Director's expenses in approving training programs. If the applicant submits an application, the nonrefundable application fee, and the training program meets requirements the Public Health Council establishes in rules, the Director is required to approve the program.

Unsafe work practices

(sec. 3742.44)

The bill specifies certain activities as unsafe work practices due to the likelihood that engaging in the activities will create lead hazards and prohibits any person from engaging in those practices when implementing essential maintenance practices or preventive treatments. Unsafe work practices include the following:

- Open flame burning or torching;
- Machine sanding or grinding without a HEPA local vacuum exhaust tool;
- Abrasive blasting or sandblasting without a HEPA local vacuum exhaust tool;
- Use of a heat gun operating above one thousand one hundred degrees fahrenheit;
- Charring paint;
- Dry sanding;
- Dry scraping, except when done in conjunction with a heat gun operating at no more than one thousand one hundred degrees fahrenheit, within one foot of an electrical outlet, or 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.
- Uncontained hydroblasting or high-pressure washing;

- Paint stripping in a poorly ventilated space using a volatile stripper that is considered a hazardous substance or hazardous chemical under federal regulations in the type of work being performed.

Exception to essential maintenance practices requirement

(sec. 3742.41)

The requirement that a person perform essential maintenance practices does not apply to the following persons:

- (1) The owner of a freestanding single-family home occupied by the owner;
- (2) The owner or manager of a residential unit designated and used exclusively by senior citizens or disabled adults and only as a residence;
- (3) The owner or manager of a one-room residential unit designed for single-occupancy and used exclusively by an adult and only as a residence.

Enforcement

(secs. 3742.50 and 3742.51)

Action by the state. The bill permits the Attorney General, at the request of the Director of Health, to file a civil suit against a person who fails to implement essential maintenance practices for the control of lead hazards as required by the bill. The lawsuit must be filed in a court of competent jurisdiction in the county in which the violation occurred or is about to occur. Any person affected by a lead hazard created in a residential unit, child day-care facility, or school as a result of the violation has the right to intervene in the action.

The court must grant injunctive and other equitable relief on a showing that the person has violated or is about to violate the bill's requirements concerning essential maintenance practices. On a finding of a violation, the court must assess a civil penalty of not more than \$1,000. Each day a violation continues is a separate violation unless the court determines that the person is making a good faith effort to end the violation. Except for civil penalties awarded to a person who intervenes in the action, all civil penalties must be deposited into the state treasury to the credit of the Lead Poisoning Prevention Fund.

Action by private parties. A person affected by a lead hazard in a residential unit, child day-care facility or school is permitted by the bill to petition a court of competent jurisdiction in the county where the unit, facility, or school is located for an injunction enjoining another person from allowing the lead hazard

to be created or to continue to exist. The court must grant the injunctive relief on a showing that the lead hazard exists.

Any person affected by a lead hazard in a unit, facility, or school may file an action for civil penalties against a person who fails to implement essential maintenance practices for the control of lead hazards as required by the bill. The Director or board of health has the right to intervene in the action. The court must grant the relief sought on a showing that the person has failed to implement essential maintenance practices for the control of lead hazards as required by the bill. The penalties are the same as in an action commenced by the Attorney General. In addition to assessing a civil penalty, the court may award the costs of litigation, including reasonable attorney's and expert witness fees, if appropriate.

The bill prohibits an action from being commenced sooner than 30 days after the person intending to sue has notified both the person against whom the lawsuit will be brought and the Director or the board of health with jurisdiction in the case. An action may be brought immediately if it is brought on behalf of a child identified with lead poisoning. The bill specifies that it does not change any current rights of action or criminal or civil penalties. The injunctive and other relief is in addition to any other remedies available to the person affected by the lead hazard.

Mandatory lead screening testing

(sec. 3701.61)

The bill requires that each child at risk of lead poisoning undergo a blood lead screening test to determine whether the child has lead poisoning. The Public Health Council is required to adopt rules in accordance with the Administrative Procedure Act (Chapter 119. of the Revised Code) to specify which children are at risk of lead poisoning and when the at-risk children must undergo the test. The bill specifies that neither it nor rules adopted under it affect the coverage of lead blood screening tests by any publicly funded health program, including Medicaid.

Childhood Lead Poisoning Prevention Program

(secs. 3742.04 and 3742.31)

Under current law, the Department of Health is required to establish, promote, and maintain a child lead poisoning prevention program that provides statewide coordination of screening, diagnosis, and treatment services for children under age six in accordance with rules adopted by the Public Health Council. The Director is to collect and disseminate information relating to lead poisoning and

lead abatement and is required to submit a report of the child lead poisoning program to the Governor and General Assembly each March.

The bill instead creates in the Department of Health the Childhood Lead Poisoning Prevention Program, which is required to do all of the following as part of statewide-coordinated efforts to identify and prevent lead poisoning in children, especially children under six years of age:

- (1) Oversee blood lead screenings;
- (2) Distribute money in the Lead Poisoning Prevention Fund;
- (3) Operate a comprehensive educational and community outreach program that is directed at parents, property owners, tenants, contractors, health care professionals, and child day-care providers and focused on areas the program determines to have a high risk for childhood lead poisoning;
- (4) Provide information regarding lead hazards, methods of reducing risks of childhood lead poisoning by controlling lead hazards, and procedures to obtain screening, diagnosis, and treatment services for children under six years of age;
- (5) Develop a case management system to coordinate services available for children with lead poisoning and the children's families;⁷
- (6) Collect and distribute information concerning childhood lead poisoning and controlling lead hazards;
- (7) In accordance with a methodology the Director of Health selects, conduct research pertaining to childhood lead poisoning that does all of the following:
 - (a) Identifies the extent to which lead hazards are present in Ohio and the areas within Ohio where the risk of childhood lead poisoning is the greatest;
 - (b) Determines the most effective methods of identifying children with lead poisoning and preventing lead poisoning among the children at greatest risk;
 - (c) Evaluates Ohio's capacity to deliver services to children with lead poisoning and their families;
 - (d) Sets priorities in efforts to prevent childhood lead poisoning so that the resources available for education, screening, case management, investigations, and

⁷ *The bill requires that the child's social security number be collected as part of the case management system.*

lead hazard control may be concentrated in areas with the greatest need and on activities that may have the greatest impact;

(e) Examines any other issue the Director and advisory council consider relevant.

The Director is required to operate the Childhood Lead Poisoning Prevention Program in accordance with rules adopted by the Public Health Council. The bill authorizes the Director to enter into an inter-agency agreement with one or more other state agencies to perform one or more of the program's duties, but the Director must supervise and direct an agency's performance of such a duty.

The bill's requirements replace current law that requires the Director to conduct research and disseminate information on the number, extent, and general location of lead contaminated structures and to update the information when the Director receives reports of lead inspections and assessments and permits the Director to cooperate with other state agencies to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities.

Advisory Council

(sec. 3742.32)

The bill requires the Director of Health to appoint an advisory council to assist in the development and implementation of the Childhood Lead Poisoning Prevention Program. The advisory council's membership must include individuals with expertise or personal interest in preventing childhood lead poisoning. The Director is permitted to reimburse the advisory council's members for actual and necessary expenses incurred in attending the advisory council's meetings. The advisory council must (1) give the Director advice regarding the policies the Program should emphasize, preferred methods of financing the Program, and any other matter relevant to the Program's operation and (2) submit a report of the Program's activities to the Governor, President of the Senate, and Speaker of the House of Representatives by March 1 of each year. The bill abolishes the advisory council on December 31, 2004.

Property where child lead poisoning is suspected

Enforcement authority

(sec. 3742.34)

The Director of Health has authority under continuing law to enforce its provisions concerning property where child lead poisoning is suspected, but the Director may delegate that authority to the board of health if the Director determines that the board can satisfactorily enforce the law. The Director may revoke that delegation at any time by written notice to the board.

Investigations

(secs. 3742.02, 3742.16, and 3742.35)

Current law permits the Director of Health or his authorized representative to request that the occupant, owner, or manager of a building permit the Director or representative to enter and inspect a structure where the Director suspects, due to a child's elevated blood lead levels, that lead poisoning has occurred. If entry is refused, the Director may petition the common pleas court of the county in which the structure is located for an order of inspection.

The bill provides that when the Director or a board of health authorized to enforce the law governing lead abatement becomes aware that an individual under six years of age has lead poisoning, the Director or board is required to conduct an investigation to determine the source of the lead poisoning. The Director or board is *permitted* to conduct 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 must conduct the investigation in accordance with rules adopted by the Public Health Council. The bill prohibits a person from interfering with an investigation and permits the Director to discipline the holder of a lead abatement personnel license who does so.

In conducting the investigation, the Director or board may request permission to enter the residential unit, child day-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 must ask the occupant for permission. If not occupied, the Director or board must ask the property owner or manager. If permission is refused, the Director or board may petition a court of competent jurisdiction for an order to inspect the property. The bill maintains a provision that permits the Director and board to review records and reports of a lead inspector, lead abatement contractor, lead risk assessor, lead abatement project

designer, or lead abatement worker and expands it to include the records and reports of a lead-safe renovator, or clearance technician.

Risk assessments

(secs. 3742.36 and 3742.071)

When the Director of Health or an authorized board of health determines pursuant to an investigation that a residential unit, child day-care facility, or school is a possible source of a child's lead poisoning, the Director or board is required to conduct a risk assessment of that property in accordance with rules adopted by the Public Health Council.⁸ A lead risk assessor or environmental lead analytical laboratory or clinical laboratory must certify in writing the precise results of a lead risk assessment and options for reducing identified lead hazards.

Lead hazard control orders

(secs. 3742.37, 3742.38, 3742.39, and 3742.40)

If the results of the risk assessment indicate that one or more lead hazards are contributing to a child's lead poisoning, the Director or board must immediately issue an order to have each lead hazard in the property controlled. The areas that may be subject to the lead hazard control order include:

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

A lead hazard control order issued under this section must be in writing and in the form prescribed by the Director. The Director or board is to 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. When specifying the date by which the unit, facility, or school must pass the clearance examination, the Director or board must consider whether the child whose lead poisoning initiated the investigation of the

⁸ "Lead risk assessment" means on-site investigation to determine and report the existence, nature, severity, and location of lead hazards in a residential unit, child day-care facility, or school (R.C. 3742.01(W)).

unit, facility, or school is the victim of an environmental hazard or immediate medical emergency as determined in accordance with rules adopted by the Public Health Council. 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 it passes the clearance examination.

The Director or board must have the order delivered to the owner and manager of the unit, facility, or school. If the order applies to a building with more than one residential unit, the Director or board must have a copy of the order delivered to each unit or require that the owner or manager of the building deliver a copy of the order to each unit. If the order applies to a child day-care facility or school, the Director or board must have a copy of the order delivered to the parent, guardian, or custodian of each child under six years of age who receives child day 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.

Compliance with lead hazard control order. The owner and manager of a residential unit, child day-care facility, or school that is subject to a lead hazard control order is required to cooperate with the Director or board that issued the order in controlling each lead hazard specified in the order. The owner or manager must choose a method of controlling each lead hazard that enables the residential unit, child day-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 is to inform the Director or board of the method that the owner or manager chooses to control each lead hazard.

Duration of lead hazard control order. A residential unit, child day-care facility, or school remains subject to a lead hazard control order until it passes a clearance examination. After the unit, facility, or school passes the clearance examination, the Director or board that issued the order must 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 must provide the information to the individual residing in the unit.

Failure or refusal to comply with lead hazard control order. If the owner and manager of a residential unit, child day-care facility, or school fails or refuses for any reason to comply with a lead hazard control order, the Director or board must issue an order prohibiting the owner and manager from using the unit, facility, or school as a residential unit, child day-care facility, or school until it passes a clearance examination. On receipt of the order, the owner or manager is

required to 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 day-care facility or school, that the unit, facility, or school must be vacated until it passes a clearance examination.

The Director or board must 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 must include a declaration that the unit, facility, or school is unsafe for human occupation, especially children under six years of age and pregnant women. The Director or board are to ensure that the sign remains posted at the unit, facility, or school and that it is not used as a residential unit, child day-care facility, or school until it passes a clearance examination.

Lead Poisoning Prevention Fund

(sec. 3742.52)

The bill creates the Lead Poisoning Prevention Fund, which includes any money appropriated to the Department of Health for the administration and enforcement of the law and rules governing the control of lead hazards and all civil penalties awarded to the Department or a board of health. Grants, contributions, and other money collected by the Department for the purpose of preventing lead poisoning must be deposited in the state treasury to the credit of the Fund.

Money in the Fund may be used only for the purposes of the Childhood Lead Poisoning Prevention Program, including providing financial assistance to individuals who are unable to pay for (1) costs associated with obtaining lead tests and lead poisoning treatment for children under six years of age who are uninsured, underinsured, ineligible for Medicaid or another government health program, and do not have access to another source of funds to cover the tests and any indicated treatment and (2) costs associated with having essential maintenance practices, preventive treatments, or lead abatement performed.

Rulemaking authority for the Childhood Lead Poisoning Prevention Program and lead hazard control

(sec. 3742.49)

The bill requires the Public Health Council to adopt rules establishing all of the following:

(1) Procedures necessary for the development and operation of the Childhood Lead Poisoning Prevention Program;

(2) Standards and procedures for conducting investigations and risk assessments;

(3) Standards and procedures for issuing lead hazard control orders, including standards and procedures for determining appropriate deadlines for complying with lead hazard control orders;

(4) The method of determining whether a child whose lead poisoning initiates an investigation of a residential unit, child day-care facility, or school is the victim of an environmental hazard or immediate medical emergency;

(5) The level of lead in human blood that is hazardous to human health, based on information from the Centers for Disease Control and Prevention;

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

(7) Standards and procedures to be followed when implementing essential maintenance practices or preventive treatments for the control of lead hazards 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 essential maintenance practices or preventive treatments;

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

(9) Procedures for approving training programs in the identification and control of lead hazards and requirements a program must meet to receive approval.

The bill requires that the Public Health Council establish procedures for revising its rules to ensure that childhood lead poisoning prevention activities conducted pursuant to the bill continue to meet the requirements necessary to obtain any federal funding available for those activities.

Employment of lead inspectors, lead risk assessors, or clearance technicians

(sec. 3742.14)

Under current law, any property owner or manager may employ a lead inspector or lead risk assessor to conduct an inspection or assessment of a structure and provide a copy of the report to the Director of Health. The Director is required to include the information in the record of the property. The bill permits an owner or manager to 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 provide a copy of the report to the Director, who must include the information in the property record.

Ohio School Facilities Commission to consider lead safety

(sec. 3318.031)

Current law requires the Ohio School Facilities Commission to consider student and staff safety when reviewing design plans for classroom facility construction projects and is empowered to require changes in design plans it believes advance or improve student and staff safety in the proposed facility after consulting with appropriate education and law enforcement personnel. The bill requires that the Commission also consider the health of students and staff in reviewing design plans and permits it to require changes that improve student and staff health as a condition of approval after consulting with health officials. To carry out its duties, the bill requires the Commission to review and if necessary amend any construction and design standards used in its project approval process including standards for lead safety in classroom facilities constructed before 1978 in which services are provided to children under six years of age.

Charter schools

(sec. 3314.03)

The bill requires that a contract between a sponsor and the governing authority of a charter school specify how the school will comply with the law governing lead poisoning prevention and lead hazard control.⁹

Historic preservation

(sec. 3742.48)

The Director, in consultation with the State Historic Preservation Officer appointed by the Governor, must develop recommendations for controlling lead hazards that consider the historic nature of the property in which the hazards are located. The Director must advise property owners, property managers, and others of the recommendations by including them in the education materials distributed through the Childhood Lead Poisoning Prevention Program. The Director is required to provide periodic notification of the recommendations to anyone licensed under the lead hazard control law. All lead hazard control orders must inform the recipient of the recommendations, but no one may use the

⁹ *Sponsors of charter schools include local boards of education and the State Board of Education.*

recommendations as justification for refusing to comply with a lead hazard control order.

Duties of Superintendent of Insurance

(Section 3)

The bill requires the Superintendent of Insurance, within one year of the bill's effective date, to determine the extent to which insurance policies are available that provide property owners and lead abatement contractors with liability coverage for lead hazards, lead poisoning, efforts to control lead hazards, and the results of lead abatement projects. If the Superintendent determines that the market for liability insurance has not developed, the Superintendent is required to take appropriate measures to encourage the development of liability insurance policies to meet those needs.

Encapsulants

(sec. 3742.04)

The bill changes the term "lead abatement systems or products" throughout the lead hazard control law to "encapsulants."¹⁰

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 05-10-01 | pp. 414-415 |

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¹⁰ "Encapsulation" means a method of lead abatement or lead-safe renovation that involves 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.