

H.736

An act relating to lead poisoning prevention

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 38 is amended as follows:

CHAPTER 38. LEAD POISONING PREVENTION

§ 1751. DEFINITIONS

(a) Words and phrases used in this chapter shall have the same ~~definitions~~ meaning as provided in the ~~Federal~~ federal Residential Lead-Based Paint Hazard Reduction Act of 1992 unless there is an inconsistency, in which case any definition provided in this section that narrows, limits, or restricts shall control.

(b) As used in this chapter:

(1) “Abatement” means any set of measures designed to ~~permanently~~ eliminate ~~lead-based paint~~ lead hazards permanently in accordance with standards established by appropriate State and federal agencies. The term includes:

(A) removal of lead-based paint and lead-contaminated dust, permanent containment or encapsulation of lead-based paint, replacement of lead-painted surfaces or ~~fixtures~~ components, and removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(2) “Accredited training program” means a training program that has been approved by the Commissioner of Health to provide training for individuals engaged in lead-based paint activities or RRPM activities. Training program accreditation is issued to a specific training provider who shall receive accreditation for each training discipline that the accredited training program offers as a course.

(3) “Certified” means completion of an accredited training program by an individual.

(4) “Child” or “children” means an individual or individuals under the age of 18 years of age, except where specified as a child or children six years of age or younger.

~~(3)~~(5) “Child care facility” means a child care facility or family child care home as defined in 33 V.S.A. § 3511 that was constructed prior to 1978.

(6) “Child-occupied facility” means a building or portion of a building constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week, provided that each day’s visit lasts at least three hours and the combined weekly visits last at least six hours and the combined annual visits last at least 60 hours. Child-occupied facilities include child care facilities, preschools, and kindergarten classrooms.

(7) “Commercial facility” means any building constructed for the purposes of commercial or industrial activity and not primarily intended for

use by the general public, including office complexes, industrial buildings, warehouses, factories, and storage facilities.

(8) “Component” or “building component” means specific design or structural elements or fixtures of a facility or residential dwelling that are distinguished from each other by form, function, and location. These include interior components such as ceilings; crown moldings; walls; chair rails; doors; door trim; floors; fireplaces; radiators and other heating units; shelves; shelf supports; stair treads; stair risers; stair stringers; newel posts; railing caps; balustrades; windows and trim, including sashes, window heads, jambs, sills, or stools and troughs; built-in cabinets; columns; beams; bathroom vanities; countertops; air conditioners; and exterior components such as painting; roofing; chimneys; flashing; gutters and downspouts; ceilings; soffits; fascias; rake boards; cornerboards; bulkheads; doors and door trim; fences; floors; joists; lattice work; railings and railing caps; siding; handrails; stair risers and treads; stair stringers; columns; balustrades; windowsills or stools and troughs; casings; sashes and wells; and air conditioners.

(9) “Contractor” means any firm, partnership, association, corporation, sole proprietorship, or other business concern as well as any governmental, religious, or social organization or union that agrees to perform services.

(4)(10) “Deteriorated paint” means any interior or exterior lead-based paint or other coating that is peeling, chipping, chalking, or cracking or any

paint or other coating located on an interior or exterior surface or ~~fixture~~
component that is otherwise damaged or separated from the substrate.

~~(5)~~(11) “Due date” means the date by which an owner of rental target housing or a child care facility shall file with the Department the ~~EMP RRPM~~ EMP RRPM compliance statement required by section 1759 of this title. The due date shall be one of the following:

(A) not later than ~~366~~ 365 days after the most recent ~~EMP RRPM~~ EMP RRPM compliance statement or ~~EMP affidavit~~ was received by the Department;

(B) within 60 days after the closing of the purchase of the property if no ~~EMP RRPM~~ EMP RRPM compliance statement was filed with the Department within the past 12 months;

(C) any other date agreed to by the owner and the Department; or

(D) any other date set by the Department.

~~(6)~~(12) “Dwelling” means any residential unit, including attached structures such as porches and stoops, used as the home or residence of one or more persons.

~~(7)~~(13) “Elevated blood lead level” means having a blood lead level of at least five micrograms per deciliter of human blood, or a lower threshold as determined by the Commissioner.

~~(8)~~ “EMP” means ~~essential maintenance practices required by section 1759 of this title.~~

(14) “Facility” means any institutional, commercial, public, private, or industrial structure, installation, or building or private residence and its grounds.

(15) “Firm” means a company, partnership, corporation, sole proprietorship, or individual doing business; an association or business entity; a State or local government agency; or a nonprofit organization.

~~(9)~~(16) “Independent dust clearance” means a visual examination and collection of dust samples, by a ~~lead~~ lead-based paint inspector or ~~lead-risk assessor~~ lead-based paint inspector-risk assessor who has no financial interest in either the work being performed or the property to be inspected; and is independent of both the persons performing the work and the owner of the property. The ~~lead~~ lead-based paint inspector or ~~lead-risk assessor~~ lead-based paint inspector-risk assessor shall use methods specified by the Department and analysis by an accredited laboratory to determine that lead exposures do not exceed limits set by the Department ~~utilizing current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.~~

~~(40)~~(17) “Inspection” means a surface-by-surface investigation to determine the presence of lead-based paint and other lead hazards and the provision of a report explaining the results of the investigation.

~~(44)~~(18) “Interim controls” means a set of measures designed to temporarily to reduce human exposure or likely exposure to lead-based paint

hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of ~~lead-based paint~~ lead hazards or potential hazards, and the establishment of management and resident education programs.

~~(12)~~(19) “Lead-based paint” means paint or other surface coatings that contain lead in ~~excess of limits established under section 302(e) of the Federal Lead-Based Paint Poisoning Prevention Act~~ an amount:

(A) equal to 1.0 mg/cm² or 0.5 percent by weight or greater;

(B) lower than that described in subdivision (A) of this subdivision (19) as may be established by the Secretary of the U.S. Department of Housing and Urban Development pursuant to Section 302(c) of the Lead-Based Paint Poisoning Prevention Act; or

(C) lower than that described in subdivision (A) of this subdivision (19) as may be established by the Administrator of the U.S. Environmental Protection Agency.

~~(13) “Lead contractor” means any person employing one or more individuals licensed by the Department under this chapter.~~

(20) “Lead-based paint abatement supervisor” means any individual who has satisfactorily completed an accredited training program approved by the Commissioner and has a current license issued by the Department to perform abatement work supervision.

~~(14)~~(21) “~~Lead~~ Lead-based paint abatement worker” means any individual who has satisfactorily completed an accredited training program approved by the ~~Department~~ Commissioner and has a current license issued by the Department to perform ~~abatement~~ abatement work.

(22) “Lead-based paint activities” means:

(A) with regard to target housing or a child care facility: risk assessment, inspection, visual inspection for risk assessment, project design, abatement, visual inspection for clearance, dust clearance after an abatement project, and lab analysis of paint chip or dust wipe samples collected for the purpose of an inspection or risk assessment; and

(B) with regard to a public facility constructed before 1978, a commercial building, bridge, or other structure: inspection, risk assessment, project design, abatement, de-leading, removal of lead from bridges and other superstructures, visual inspection for clearance, dust clearance after an abatement project, and lab analysis of paint chip or dust wipe samples collected for the purposes of an inspection or risk assessment. As used in this subdivision (B), “de-leading” means activities conducted by a person who offers to eliminate or plan for the elimination of lead-based paint or lead-based paint hazards.

~~(15) “Lead designer” means any individual who has satisfactorily completed an accredited training program approved by the Department and has~~

~~a current license issued by the Department to prepare lead abatement project designs, occupant protection plans, and abatement reports.~~

~~(16) “Lead hazard” means any condition that causes exposure to lead inside and in the immediate vicinity of target housing from water, dust, soil, paint, or building materials that would result in adverse human health effects as defined by the Department using current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.~~

~~(17) “Lead inspector” means any individual who has satisfactorily completed an accredited training program approved by the Department and has a current license issued by the Department to conduct inspections.~~

~~(23) “Lead-based paint contractor” means an entity that employs one or more individuals licensed by the Department under this chapter and has a current license issued by the Department to conduct lead-based paint activities or RRPM activities.~~

~~(24) “Lead hazard” means a condition that causes exposure to lead from contaminated dust, lead-contaminated soil, lead-containing coatings, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.~~

~~(25) “Lead-based paint inspector” means an individual who has satisfactorily completed an accredited training program approved by the~~

Commissioner and has a current license issued by the Department to conduct lead-based paint inspections.

~~(18)~~(26) “~~Lead-risk~~ Lead-based paint inspector-risk assessor” means ~~any~~ an individual who has satisfactorily completed an accredited training program approved by the ~~Department~~ Commissioner and has a current license issued by the Department to conduct lead-based paint inspections and risk assessments.

~~(19)~~ “~~Lead-safe renovator~~” means ~~any person who has completed a lead-safe training program approved by the Department and has a current registration issued by the Department to perform renovations in target housing or child-care facilities in which interior or exterior lead-based paint will be disturbed.~~

~~(20)~~ “~~Lead supervisor~~” means ~~any individual who has satisfactorily completed an accredited training program approved by the Department and has a current license issued by the Department to supervise and conduct abatement projects and prepare occupant protection plans and abatement reports.~~

~~(27)~~ “Lead-based paint project designer” means an individual who has satisfactorily completed an accredited training program approved by the Commissioner and has a current license issued by the Department to prepare lead abatement project designs, occupant protection plans, and abatement reports.

~~(28)~~ “Lead-safe RRPM supervisor” means an individual who has completed an accredited RRPM training program approved by the

Commissioner and, if performing services for compensation, has a current license issued by the Department. This individual is authorized to perform or supervise RRPM activities in target housing or a child-occupied facility in which interior or exterior lead-based paint will be disturbed.

(29) “License” means the document issued to an individual, entity, or firm indicating that the standards for licensure for each discipline, category of entity, or firm established in this chapter have been met.

(30) “Licensee” means a person who engages in lead-based paint activities or RRPM activities and has obtained a license to perform such activities for compensation.

(31) “Maintenance” means work intended to maintain and preserve target housing, a child-occupied facility, a pre-1978 facility, a commercial facility, bridge, or other superstructure. It does not include minor RRPM activities.

(32) “Minor RRPM activities” means maintenance and repair activities that disturb less than one square foot of painted surface for interior activities or 20 square feet or less of painted surface for exterior activities if the work does not involve window replacement or demolition of painted surface areas. With regard to removing painted components or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Work, other than emergency renovations, performed in the same room within the

same 30-day period shall be considered the same work for the purposes of determining whether the work is a minor RRPM activity.

~~(21)~~(33) “Occupant” means any person who resides in, or regularly uses, a dwelling, mobile dwelling, or structure.

~~(22)~~(34) “Owner” means any person who, alone or jointly or severally with others:

(A) Has legal title to any dwelling or child care facility with or without actual possession of the property.

~~(B) Has charge, care, or control of any dwelling or child care facility as agent of the guardian of the estate of the owner.~~

~~(C) Has charge, care, or control of any dwelling or child care facility as property manager for the owner if the property management contract includes responsibility for any maintenance services, unless the property management contract explicitly states that the property manager will not be responsible for compliance with section 1759 of this title.~~

~~(D)~~ Is the Chief Executive Officer of the municipal or State agency that owns, leases, or controls the use of publicly owned target housing or a child care facility.

~~(E)~~(C) Is a person who has taken full legal title of a dwelling or child care facility through foreclosure, deed in lieu of foreclosure, or otherwise.

“Owner” does not include a person who holds indicia of ownership given by the person in lawful possession for the primary purpose of assuring repayment

of a financial obligation. Indicia of ownership includes interests in real or personal property held as security or collateral for repayment of a financial obligation such as a mortgage, lien, security interest, assignment, pledge, surety bond, or guarantee and includes participation rights of a financial institution used for legitimate commercial purposes in making or servicing the loan.

(35) “Owner’s representative” means a person who has charge, care, or control of a dwelling or child care facility as property manager, agent, or guardian of the estate.

(36) “Public facility” means a house of worship; courthouse; jail; municipal room; State or county institution; railroad station; school building; social hall; hotel, restaurant, or building used or rented to boarders or roomers; place of amusement; factory; mill; workshop or building in which persons are employed; building used as a nursery, convalescent home, or home for the aged; tent or outdoor structure used for public assembly; and barn, shed, office building, store, shop, shop other than a workshop, or space where goods are offered for sale, wholesale, or retail. It does not include a family residence registered as a child care facility.

(37) “Renovation” means the modification of any existing structure or portion of an existing structure that results in the disturbance of a painted surface unless the activity is performed as part of a lead-based paint abatement activity or is a minor RRPM activity. Renovation includes the following when

it results in the disturbance of a painted surface: the removal, modification, re-coating, or repair of a painted surface or painted component of a surface; the removal of building components; a weatherization project; and interim controls that disturb painted surfaces. “Renovation” includes the performance of activities for the purpose of converting a building or part of a building into target housing or a child-occupied facility when it results in the disturbance of a painted surface.

(38) “RRPM” means the Renovation, Repair, Painting, and Maintenance Program that pertains to projects that disturb lead-based paint on target housing and child-occupied facilities.

(39) “RRPM activities” means lead-safe renovation, repair, painting, and maintenance practices as required by section 1759 of this chapter and as adopted by rule by the Commissioner. It does not include minor RRPM activities.

(40) “RRPM firm” means a company, partnership, corporation, sole proprietorship, or individual doing business; association; or other business entity that regularly engages in RRPM activities for compensation and that employs or contracts with persons to perform RRPM activities as determined by the Department.

~~(23)~~(41) “Rental target housing” means target housing offered for lease or rental under a rental agreement as defined in 9 V.S.A. § 4451. “Rental target housing” does not include a rented single room located within a dwelling

in which the owner of the dwelling resides unless a child six years of age or younger resides in or is expected to reside in that dwelling.

(42) “Repair” means the restoration of paint or other coatings that have been damaged, including the repair of permanent containment around lead-based paint materials in a facility. Repair of previously encapsulated lead-based paint may involve filling damaged areas with non-lead paint substitutes and reencapsulating. It shall not include minor RRPM activities.

~~(24)~~(43) “Risk assessment” means an on-site investigation by a ~~lead risk assessor~~ lead-based paint inspector-risk assessor to determine and report the existence, nature, severity, and location of lead hazards, including information gathering about the age and history of the property and occupancy by children six years of age or younger, visual inspection, limited wipe sampling, or other environmental sampling techniques, other appropriate risk assessment activities, and a report on the results of the investigation.

~~(25)~~(44) “Screen,” “screened,” or “screening” relating to blood lead levels, means the initial blood test to determine the presence of lead in a human.

(45) “Superstructure” means a large steel or other industrial structure, such as a bridge or water tower, that may contain lead-based paint.

~~(26)~~(46) “Target housing” means any dwelling constructed prior to 1978, except any 0-bedroom dwelling or any dwelling located in multiple-unit buildings or projects reserved for the exclusive use of elders or persons with

disabilities, unless a child six years of age or younger resides in or is expected to reside in that dwelling. "Target housing" does not include units in a hotel, motel, or other lodging, including condominiums that are rented for transient occupancy for 30 days or less.

§ 1752. ACCREDITATION OF TRAINING PROGRAMS;

~~CERTIFICATION AND LICENSURE OF ENVIRONMENTAL
LEAD INSPECTORS AND LEAD CONTRACTORS,
SUPERVISORS, AND WORKERS~~ INDIVIDUALS, ENTITIES, OR
FIRMS INVOLVED IN LEAD-BASED PAINT OR RRPM
ACTIVITIES

(a) ~~Not later than six months after promulgation of final federal regulations under section 402 of the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the~~ The Department shall develop a program to administer and enforce ~~the~~ lead-based paint activities and RRPM activities with regard to training and certification licensing standards, ~~regulations~~ rules, or other requirements established by the ~~Administrator of the federal Environmental Protection Agency~~ Commissioner, which are at least as protective of human health and the environment as the applicable federal programs, for persons engaged in lead-based paint activities and RRPM activities performed on target housing, child-occupied facilities, pre-1978 facilities, commercial facilities, and bridges or other superstructures.

(b) ~~The Secretary shall adopt emergency rules, and not later than January 1, 1994, the Secretary shall adopt permanent rules,~~ Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 establishing standards and specifications for the accreditation of training programs ~~both within and outside Vermont for~~ lead-based paint activities and RRPM activities, including the mandatory topics of instruction, the knowledge and performance standards that must be demonstrated by graduates in order to be certified or licensed, and required accreditation qualifications for training programs and instructors. ~~Such~~ The standards shall be designed to protect children, their families, and workers from improperly conducted lead-based paint activities and RRPM activities, and shall be at least as protective of human health and the environment as the federal ~~program~~ programs. Hands-on instruction and instruction for identification and proper handling of historic fabric and materials shall be components of the required training.

(c) The Commissioner shall ~~certify risk assessors, designers, laboratories, inspectors, lead safe renovation contractors, lead contractors, supervisors, abatement workers, and other persons engaged in lead-based paint activities~~ when such persons have license consulting contractors, analytical contractors, lead-based paint abatement supervisors, lead-based paint abatement workers, project designers, inspector-risk assessors, RRPM firms, and RRPM supervisors, who have successfully completed an accredited training program

and met ~~such~~ other requirements as the ~~Secretary~~ Commissioner may, by rule, impose.

(d) The Commissioner shall certify individuals engaged in RRPM activities for no compensation and who have successfully completed an accredited training program and met all other requirements as the Commissioner may impose by rule.

(e) After the adoption of rules pursuant to ~~subsection (b)~~ of this section, ~~no~~ a person shall not perform lead-based paint activities or RRPM activities for compensation without first obtaining a license from the Commissioner. The Commissioner may grant a license to a person who holds a valid license from another state.

~~(e)(f)~~ Nothing in this chapter shall be construed to limit the authority of the Secretary; or the Commissioner of Health, ~~the Commissioner~~ of Labor, or ~~the Commissioner~~ of Environmental Conservation under the provisions of any other law.

§ 1753. ACCREDITATION, ~~REGISTRATION, CERTIFICATION, AND~~
LICENSE, PERMIT, NOTIFICATION, REGISTRATION, AND
ADMINISTRATIVE FEES

(a) The Commissioner shall assess fees for accrediting training programs ~~and for certifications, registrations, licenses, and license renewals,~~ and permits issued in accordance with this chapter. Fees shall not be imposed on any ~~state~~

State or local government, agent of the State, or nonprofit training program and may be waived for the purpose of training State employees.

(b) Each accredited training program, ~~registrant~~, and licensee shall be subject to the following annual fees, except where otherwise noted:

Training <u>Lead-based paint training courses</u>	\$480.00 per year
Lead contractors <u>Lead-based paint contractor entity license</u>	\$600.00 per year
Lead workers <u>Lead-based paint abatement worker license</u>	\$60.00 per year
Lead supervisors <u>Lead-based paint abatement supervisor license</u>	\$120.00 per year
Lead inspectors <u>Lead-based paint inspector license</u>	\$180.00 per year
Lead risk assessors <u>Lead-based paint inspector-risk assessor license</u>	\$180.00 per year
Lead designers <u>Lead-based paint project designer license</u>	\$180.00 per year
Laboratories	\$600.00 per year
<u>Lead-safe RRPM training course accreditation</u>	<u>\$560.00 initial,</u> <u>\$340.00 renewal</u> <u>every four years</u>

Lead-safe RRPM firm license \$300.00 every five
years

Lead-safe ~~renovators~~ RRPM supervisor license \$50.00 per year

(c) Each ~~lead~~ licensee seeking to complete a lead-based paint abatement project or RRPM activities project involving prohibited or unsafe work practices shall be subject to the following permit fees:

(1) ~~Lead abatement project~~ Project permit fee \$50.00.

(2) ~~Lead abatement project~~ Project permit revision fee \$25.00.

(d) Fees imposed by this section and monies collected under section 1766 of this chapter shall be deposited into the ~~Lead~~ Lead-Based Paint Abatement Accreditation and Licensing Special Fund. Monies in the Fund may be used by the Commissioner only to support ~~departmental~~ Departmental accreditation, ~~registration,~~ certification, ~~and~~ licensing, education, and training activities related to this chapter. The Fund shall be subject to the provisions of 32 V.S.A. chapter 7, subchapter 5.

§ 1754. PUBLIC EDUCATION

(a) ~~Beginning January 1, 1994, the~~ The Commissioner of ~~Health~~ shall prepare and distribute clear and simple ~~printed~~ materials describing the dangers of lead poisoning, the need for parents to have their child screened, how to have a child tested, and recommended nutrition and housekeeping practices. The Commissioner shall work with persons and organizations involved in

occupations that may involve ~~lead-based paint~~ lead hazards or childhood lead poisoning to distribute the materials to their tenants, clients, patients, students, or customers, such as realtors, subcontractors, apartment owners, public housing authorities, pediatricians, family practitioners, nurse clinics, child clinics, other health care providers, child care and preschool operators, and kindergarten teachers. The Commissioner shall also identify those points in time or specific occasions when members of the public are in contact with public agencies and lead might be an issue, such as building permits, home renovations, the WIC program, and programs established under 33 V.S.A. chapters 10, 11, and 12, and make the materials available on these occasions.

(b) The Commissioner shall prepare an appropriate media campaign to educate the public on lead poisoning prevention. ~~The Commissioner shall encourage professional property managers, rehab and weatherization contractors, minimum housing inspectors, social workers, and visiting nurses to attend education and awareness workshops.~~ The campaign shall include education targeting owner-occupied residences regarding the importance of following safe maintenance and work practices when there is a potential for exposure to lead-based paint.

~~(c) The Commissioner shall develop a program or approve a program, or both, to train owners and managers of rental target housing and child care facilities and their employees to perform essential maintenance practices. The names and addresses of all persons who attend the approved training program~~

~~shall be maintained as a public record that the Commissioner shall provide to the Department of Housing and Community Development.~~

§ 1755. UNIVERSAL SCREENING TESTING

~~(a) The Commissioner shall publish guidelines that establish the methods by which and the intervals at which children should be screened and given a confirmation test for elevated blood lead levels, according to the age of the children and their probability of exposure to lead. The guidelines shall take into account the recommendations of the U.S. Centers for Disease Control and Prevention and the American Academy of Pediatrics and shall be updated as those recommendations are changed. The Commissioner shall recommend screening for lead in other high risk groups. The Commissioner shall ensure that all health care providers who provide primary medical care to children six years of age or younger are informed of the guidelines. Once the Department has implemented lead screening reports within the immunization registry, the Department shall use the information in the registry to inform health care providers of their screening rates and to take, within available resources, other measures necessary to optimize screening rates, such as mailings to parents and guardians of children ages one and two, outreach to day care facilities and other community locations, screening at district offices, and educating parents and guardians of children being served.~~

~~(b) Annually, the Commissioner shall determine the percentage of children six years of age or younger who are being screened in accordance with the~~

~~guidelines. If fewer than 85 percent of one year olds and fewer than 75 percent of two year olds as specified in the guidelines are receiving screening, the Secretary shall adopt rules to require that all health care providers who provide primary medical care to young children shall ensure that their patients are screened and tested according to the guidelines, beginning January 1, 2011.~~ All health care providers who provide primary health care to children shall test children one and two years of age for elevated blood lead levels in accordance with rules adopted by the Commissioner.

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§ 1757. CHILDREN WITH ELEVATED BLOOD LEAD LEVELS

(a) ~~Upon receiving a report that a child has a screening test result of 10 or more micrograms of lead per deciliter of blood, or a lower level as determined by the Commissioner, the Commissioner shall take prompt action to ensure that the child obtains a confirmation test.~~ The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 regarding:

(1) the method and frequency with which children shall be tested for elevated blood lead levels;

(2) the reporting requirements for the lead test result; and

(3) the action required for children found to have elevated blood lead levels.

(b) If the child has an elevated blood lead level, the Commissioner shall provide information on lead hazards to the parents or guardians of the child.

(c) If a child six years of age or younger has a confirmed blood lead level at or above ~~10 micrograms of lead per deciliter of blood~~ the level determined by the Commissioner, and if resources permit, the Commissioner:

(1) Shall, with the consent of the parent or guardian, provide an inspection of the dwelling occupied by the child or the ~~child-care~~ child-occupied facility the child attends by a ~~state~~ State or private ~~lead-risk assessor~~ lead-based paint inspector-risk assessor, and develop a plan in consultation with the parents, owner, physician, and others involved with the child to minimize the exposure of the child to lead. The plan developed under this subdivision shall require that any lead hazards identified through the inspection be addressed. The owner of rental target housing or a child care facility shall address those lead hazards within the owner's control, and shall not be required to abate lead hazards if interim controls are effective.

(2) May inspect and evaluate other dwelling units in the building in which the child is living if it is reasonable to believe that a child six years of age or younger occupies, receives care in, or otherwise regularly frequents the other dwellings in that building.

(d) Nothing in this section shall be construed to limit the Commissioner's authority under any other provision of Vermont law.

§ 1758. ~~HOUSING REGISTRY~~

~~(a) The Department shall issue certificates to all persons who satisfactorily complete a training program on performing essential maintenance practices for lead-based hazard control and shall compile a list of those persons' names.~~

~~(b) If additional funds are appropriated to the Department in fiscal year 1998, on or before October 1, 1997, the Department of Housing and Community Development shall establish and maintain a list of housing units that (1) are lead free, or (2) have undergone lead hazard control measures and passed independent dust clearance tests. The registry shall be maintained as a public record.~~

~~(c) The Department for Children and Families shall identify all child care facilities in which the owners have completed essential maintenance practices or lead hazard control measures and provide the findings to the Department annually. [Repealed.]~~

§ 1759. ~~ESSENTIAL MAINTENANCE PRACTICES~~ RRPM

ACTIVITIES

(a)(1) RRPM activities include activities that disturb lead-based paint on target housing and child-occupied facilities, unless the property has been certified as lead-free pursuant to subsection (e) of this section. RRPM practices for target rental housing and child care facilities shall minimally include regular inspection of painted surfaces for deterioration, prompt and

safe repairs to deteriorated paint, and specialized cleaning after any work that disturbs painted surfaces and at tenant turnover.

(2) Essential maintenance practices (EMP) RRPM activities, including worksite preparation and cleanup of work areas, in rental target housing and child-care child-occupied facilities shall be performed only by a person who has successfully completed an EMP accredited RRPM training program approved by the Commissioner or a person who works under the direct, on-site supervision of a person who has successfully completed such the training, unless the property is exempt pursuant to subsection (b) or (e) of this section. That person shall comply with section 1760 of this title and shall take all reasonable precautions to avoid creating lead hazards during any renovations, remodeling, maintenance, or repair project that disturbs more than one square foot of lead based paint, pursuant to guidelines issued by the Department. The following essential maintenance practices shall be performed in all rental target housing and child care facilities, unless a lead inspector or a lead risk assessor has certified that the property is lead free:

(1)(3) Install window well inserts in all windows or protect window wells by another method approved by the Department. A person engaging in RRPM activities shall comply with section 1760 of this chapter and related rules adopted by the Commissioner.

(2)(4) At least once a year, with the consent of the tenant, and at each change of tenant, perform visual on-site inspection of all interior and exterior

~~painting surfaces and components at the property to identify deteriorated paint~~
A person engaging in RRPM activities shall take all reasonable precautions to avoid creating lead hazards during any RRPM project that is not a minor RRPM activity.

~~(3)(5) Promptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior or exterior surface located within any area of the dwelling to which access by tenants is not restricted. An owner shall assure that all surfaces are free of deteriorated lead-based paint within 30 days after deteriorated lead-based paint has been visually identified or within 30 days after receipt of a written or oral report of deteriorated lead-based paint from any person including the Department, a tenant, or an owner of a child care facility. Because exterior paint repairs cannot be completed in cold weather, any exterior repair work identified after November 1 shall be completed no later than the following May 31, provided that access to surfaces and components with lead hazards and areas directly below the deteriorated surfaces is clearly restricted~~ RRPM activities performed for compensation shall be conducted only by a licensed RRPM supervisor or under the direct, on-site supervision of a licensed RRPM supervisor.

~~(4) If more than one square foot of deteriorated paint is found on any exterior wall surface or fixture not covered by subdivision (3) of this subsection, the owner shall:~~

~~(A) promptly and safely repair and stabilize the paint and restore the surface; or~~

~~(B) prohibit access to the area, surface, or fixture to assure that children will not come into contact with the deteriorated lead-based paint.~~

~~(5) For any outdoor area, annually remove all visible paint chips from the ground on the property.~~

~~(6) At least once a year, using methods recommended by the Department, thoroughly clean all interior horizontal surfaces, except ceilings, in common areas accessible to tenants.~~

~~(7) At each change of tenant, thoroughly clean all interior horizontal surfaces of the dwelling, except ceilings, using methods recommended by the Department.~~

~~(8) Post, in a prominent place in buildings containing rental target housing units or a child care facility, a notice to occupants emphasizing the importance of promptly reporting deteriorated paint to the owner or to the owner's agent. The notice shall include the name, address, and telephone number of the owner or the owner's agent.~~

~~(b) The owner of rental target housing shall perform all the following:~~

~~(1) File with the Department by the due date an EMP compliance statement certifying that the essential maintenance practices have been performed, including all the following:~~

~~(A) The addresses of the dwellings in which EMP were performed.~~

~~(B) The dates of completion.~~

~~(C) The name of the person who performed the EMP.~~

~~(D) A certification of compliance with subdivision (4) of this subsection.~~

~~(E) A certification that subdivisions (2) and (3) of this subsection have been or will be complied with within 10 days.~~

~~(2) File the statement required in subdivision (1) of this subsection with the owners' liability insurance carrier and the Department.~~

~~(3) Provide a copy of the statement to all tenants with written materials regarding lead hazards approved by the Department.~~

~~(4) Prior to entering into a lease agreement, provide approved tenants with written materials regarding lead hazards approved by the Department, along with a copy of the owner's most recent EMP compliance statement. The written materials approved by the Department pursuant to this subdivision shall include information indicating that lead is highly toxic to humans, particularly young children, and may even cause permanent neurological damage A homeowner residing in and intending to perform RRPM activities in his or her own private residence:~~

~~(1) is exempt from this section;~~

~~(2) shall comply with section 1760 of this chapter; and~~

~~(3) shall dispose of all lead-based paint in accordance with the rules adopted by the Department of Environmental Conservation.~~

~~(c) The owner of the premises of a child care facility shall perform all of the following:~~

~~(1) File with the Department by the due date an EMP compliance statement certifying that the essential maintenance practices have been performed, including all the following:~~

~~(A) The address of the child care facility.~~

~~(B) The date of completion of the EMP.~~

~~(C) The name of the person who performed the EMP.~~

~~(D) A certification that subdivision (2) of this subsection has been or will be complied with within 10 days.~~

~~(2) File the statement required in subdivision (1) of this subsection with the owner's liability insurance carrier; the Department for Children and Families; and with the tenant of the facility, if any An owner of rental target housing or a child care facility or the owner's representative shall:~~

~~(1) file with the Department an RRPM compliance statement pursuant to rules adopted by the Commissioner, unless the property is exempt pursuant to subsection (e) of this section; and~~

~~(2) abide by any rules pertaining to the maintenance of lead-based paint and provision of notice to tenants as may be prescribed by the Commissioner.~~

~~(d)(1) An owner who desires an extension of time for filing the EMP compliance statement shall file a written request for an extension from the Department no later than 10 days before the due date. The Department may~~

~~grant or deny an extension~~ Prior to entering into a lease agreement, an owner or owner's representative shall provide approved tenants with written materials approved by the Department regarding lead hazards and a copy of the owner's most recent RRPM compliance statement. The written materials approved by the Department pursuant to this subsection shall include information indicating that lead is highly toxic to humans, particularly young children, and may cause permanent neurological damage, even at low exposure levels.

(2) An owner of a facility, or owner's representative, shall fully inform a tenant who intends to operate a child care facility on the premises of the requirements of this section.

(e)(1) A property is exempt from this section if a written inspection report from a licensed lead-based paint inspector-risk assessor states that all accessible surfaces are free of lead-based paint and the owner and person performing RRPM activities have been provided with a copy of the report.

(2) An owner of rental target housing or a child care facility or owner's representative shall provide a copy of the written inspection report to the Department for review and determination of exempt status.

(3) A new written inspection report shall be required to maintain exempt status if lead hazards are created as a result of RRPM activities performed or if previously inaccessible components are exposed after the date of the original written inspection report.

(4) If a property has been remodeled, it is not exempt from this section unless the full requirements of this section have been met.

(f) The Commissioner may adopt rules pursuant to 3 V.S.A. chapter 25 as necessary for the implantation, administration, and enforcement of this section.

§ 1760. PRESUMPTION OF LEAD-BASED PAINT; PROHIBITED AND UNSAFE WORK PRACTICES

(a) All paint in target housing ~~and child care, child-occupied facilities, and pre-1978 public facilities, commercial facilities, and bridges or other superstructures~~ is presumed to be lead-based unless ~~a lead inspector or lead risk assessor has determined that it is not lead-based~~ the component affected by the RRPM activity is exempt pursuant to subsection (c) of this section. Unsafe work practices are prohibited and include the following, unless specifically authorized ~~by permit~~ by the Department:

(1) Removing lead-based paint by:

(A) open flame burning or torching;

(B) use of heat guns operated above 1,100 degrees Fahrenheit;

(C) dry scraping or dry sanding;

(D) ~~machine sanding or grinding~~ powered tools;

(E) ~~uncontained hydro-blasting~~ hydro-blasting or high-pressure washing;

(F) abrasive blasting or sandblasting ~~without containment and high-efficiency particulate exhaust controls; and~~

(G) chemical stripping ~~using methylene chloride products.~~

(2) Failing to employ one or more of the ~~following~~ lead-safe work practices: practice standards that the Commissioner shall adopt by rule.

~~(A) limiting access to interior and exterior work areas;~~

~~(B) enclosing interior work areas with plastic sheathing or other effective lead dust barrier;~~

~~(C) using protective clothing;~~

~~(D) misting painted surfaces before disturbing paint;~~

~~(E) wetting paint debris before sweeping to limit dust creation;~~

~~(F) any other measure required by the department.~~

(b) ~~No~~ A person shall not disturb more than one square foot or more of interior or exterior lead-based paint using unsafe work practices in target housing or in child care, child-occupied facilities, pre-1978 public facilities, commercial facilities, and bridges or other superstructures.

(c) A component is exempt from this section if a written inspection report by a licensed lead-based paint inspector or lead-based paint inspector-risk assessor states that the component affected by an RRPM activity is free of lead-based paint, and the owner or firm, or both, conducting the activity has been provided with a copy of the report. Removal of all paint from a component does not exempt the component from the requirements of this section.

§ 1760a. ENFORCEMENT; ADMINISTRATIVE ORDER; PENALTIES

~~(a) A person who violates section 1759 of this title commits a civil violation and shall be subject to a civil penalty as set forth in this subsection which shall be enforceable by the Commissioner in the Judicial Bureau pursuant to the provisions of 4 V.S.A. chapter 29.~~

~~(1) An owner of rental target housing who fails to comply with subdivisions 1759(b)(1), (2), and (3) of this title by the due date or an owner of a child care facility who fails to comply with subsection 1759(c) of this title by the due date shall pay a civil penalty of not more than \$50.00 if the owner comes into compliance within 30 days after the due date; otherwise the owner shall pay a civil penalty of not more than \$150.00.~~

~~(2) An owner who cannot demonstrate by a preponderance of the evidence that essential maintenance practices were performed by the due date shall pay an additional penalty of not more than \$250.00.~~

~~(b) Nothing in this section shall limit the Commissioner's authority under any other provisions of law. [Repealed.]~~

§ 1761. DUTY OF REASONABLE CARE; NEGLIGENCE; LIABILITY

(a) ~~Owners~~ An owner of rental target housing and owners of or a child care facilities facility or an owner's representative shall take reasonable care to prevent exposure to, and the creation of, lead hazards. In an action brought under this section, evidence of actions taken or not taken to satisfy the

requirements of this chapter, including performing ~~EMP~~ RRPM activities, may be admissible evidence of reasonable care or negligence.

(b) Any person who suffers an injury proximately caused by an owner's breach of this duty of reasonable care shall have a cause of action to recover damages and for all other appropriate relief.

(c) The owner of rental target housing or a child care facility or the owner's representative shall not be liable to a tenant of the housing or facility in an individual action for habitability under common law or pursuant to 9 V.S.A. chapter 63 or chapter 137, 10 V.S.A. chapter 153, or 12 V.S.A. chapter 169 for injury or other relief claimed to be caused by exposure to lead if, during the relevant time period, the owner is in compliance with section 1759 of this ~~title~~ chapter and any of the following, should they exist:

(1) ~~the conditions of a lead risk assessor's certification, pursuant to Vermont regulations for lead control, that all identified lead hazards have been controlled and the housing or facility has passed an independent dust clearance test~~ specific recommendations of a lead-based paint risk assessment report provided by a lead-based paint inspector-risk assessor;

(2) any plan issued pursuant to section 1757 of this ~~title~~ chapter; or

(3) any assurance of discontinuance, order of the Commissioner, or court order regarding lead hazards.

(d) The immunity under subsection (c) of this section shall not be available if:

(1) there was fraud in the ~~certification process~~ RRPM compliance statement under section 1759 of this chapter; or

(2) the owner ~~violated conditions of the certification~~ or owner's representative did not follow the recommendations of a lead-based paint risk assessment report provided by a licensed lead-based paint inspector-risk assessor; or

(3) the owner or owner's representative created or allowed for the creation of lead hazards during renovation, remodeling, maintenance, or repair ~~after the certification~~; or

(4) the owner or the owner's representative failed to respond in a timely fashion to notification that lead hazards may have recurred on the premises.

(e) A defendant in an action brought under this section or at common law has a right to seek contribution from any other person who may be responsible, in whole or in part, for the child's blood lead level.

(f) Nothing in this section shall be construed to limit the right of the Commissioner or any agency or instrumentality of the State of Vermont to seek remedies available under any other provision of Vermont statutory law.

§ 1762. SECURED LENDERS AND FIDUCIARIES; LIABILITY

(a) A person who holds indicia of ownership in rental target housing or a child care facility furnished by the owner or person in lawful possession, for the primary purpose of assuring repayment of a financial obligation, and who takes full legal title through foreclosure or deed in lieu of foreclosure or

otherwise shall not be liable as an owner of the property for injury or loss claimed to be caused by exposure to lead of a child on the premises, provided that, on or before the 120th day after the date of possession, the person:

(1) performs ~~essential maintenance practices~~ RRPM activities as required by section 1759 of this ~~title~~ chapter; and

(2) fully discloses to all potential purchasers, operators, or tenants of the property any information in the possession of such person or the person's agents, regarding the presence of ~~lead-based paint~~ lead hazards or a lead-poisoned child on the property and, upon request, provides copies of all written reports on ~~lead-based paint~~ lead hazards to potential purchasers, operators, or tenants.

(b) The immunity provided in subsection (a) of this section shall expire 365 days after the secured lender or fiduciary takes full legal title.

(c) A person who holds legal title to rental target housing or a child care facility as an executor, administrator, trustee, or the guardian of the estate of the owner and demonstrates that in that fiduciary capacity the person does not have either the legal authority or the financial resources to fund capital or major property rehabilitation necessary to conduct ~~essential maintenance practices~~ RRPM activities shall not be personally liable as an owner for injury or loss caused by exposure ~~to lead by~~ of a child on the premises to lead. However, nothing in this section shall limit the liability of the trust estate for

such claims and those claims may be asserted against the trustee as a fiduciary of the trust estate.

§ 1763. PUBLIC FINANCIAL ASSISTANCE; RENTAL TARGET

HOUSING AND CHILD CARE FACILITIES

Every State agency or instrumentality that makes a commitment to provide public financial assistance for the purchase or rehabilitation of rental target housing or child care facilities shall give priority to projects in which the property is ~~lead-free~~, exempt pursuant to subsection 1759(e) of this chapter or lead-based paint hazards have been or will be identified and controlled and have passed or will pass an independent dust clearance test that determines that the property contains no lead-contaminated dust prior to occupancy or use. Priority rental target housing projects may include units occupied by severely lead-poisoned children and units in a building that are likely to contain ~~lead-based paint~~ lead hazards. ~~For purposes of~~ As used in this section, “public financial assistance” means any grant, loan, or allocation of tax credits funded by the State or the federal government, or any of their agencies or instrumentalities.

§ 1764. LEAD INSPECTORS; FINANCIAL RESPONSIBILITY

The Commissioner ~~may~~ shall require that a licensee or an applicant for a license under subsection 1752(d) of this ~~title~~ chapter provide evidence of ability to ~~properly~~ indemnify properly a person who suffers damage from lead-based paint activities or RRPM activities such as proof of effective liability

insurance coverage or a surety bond in an amount to be determined by the Commissioner, which shall not be less than \$300,000.00. This section shall not restrict or enlarge the liability of any person under any applicable law.

§ 1765. LIABILITY INSURANCE

(a) If the Commissioner of Financial Regulation determines that lead-based paint hazards have substantially diminished the availability of liability insurance for owners of rental target property or child care facilities and that a voluntary market assistance plan will not adequately restore availability, the Commissioner shall order liability insurers to provide or continue to provide liability coverage or to participate in any other appropriate remedial program as determined by the Commissioner, provided the prospective insured is otherwise in compliance with the provisions of this chapter.

* * *

§ 1766. ENFORCEMENT; ADMINISTRATIVE PENALTIES

(a) A person who violates this chapter may be subject to an administrative penalty not to exceed \$5,000.00 for each determination of a separate violation. If the Commissioner determines that a violation is continuing, each day's continuance may be deemed a separate offense beginning from the date the violator is served with notice of the violation.

(b) The Commissioner may use the enforcement powers as set forth in chapter 3 of this title to enforce any violations of this chapter or of any related rules, permits, or orders issued.

§ 1767. TRANSFER OF OWNERSHIP OF TARGET HOUSING; ~~RISK~~
~~ASSESSMENT; EMP~~ RRPM COMPLIANCE

(a) Prior to the time a purchase and sale agreement for target housing is executed, the seller shall provide the buyer with materials approved by the Commissioner, including a lead ~~paint~~ hazard brochure and materials on other lead hazards in housing. The seller shall also provide a disclosure form that shall include any lead-based paint inspection or risk assessment report or letter of exemption, assurance of discontinuance, administrative order, or court order the terms of which are not completed and, if the property is rental target housing, verification that the ~~EMP have been completed~~, RRPM was utilized pursuant to this chapter and that a current ~~EMP~~ RRPM compliance statement has been filed with the Department.

(b) At the time of ~~sale~~ purchase of target housing, sellers and other transferors shall provide the buyer or transferee with any materials delineated in subsection (a) of this section not previously disclosed and a lead-safe renovation practices packet approved by the Commissioner and shall disclose any lead-based paint inspection or risk assessment report or letter of exemption, assurance of discontinuance, administrative order, or court order not disclosed pursuant to subsection (a) of this section the terms of which are not completed.

* * *

(d) Prior to the time of ~~sale~~ purchase of rental target housing, the real estate agents, sellers, and other transferors of title shall provide the buyer or transferee with information approved by the Commissioner explaining ~~EMP~~ RRPM obligations.

(e) A buyer or other transferee of title of rental target housing shall at the time of sale or transfer of ownership, or both, disclose this transfer to the Department.

(f) A buyer or other transferee of title to rental target housing who has purchased or received a building or unit that is not in full compliance with section 1759 of this ~~title~~ chapter shall bring the rental target housing into compliance with section 1759 of this ~~title~~ chapter within 60 days after the closing. Within the 60-day period, the buyer or transferee may submit a written request for an extension of time for compliance, which the Commissioner may grant in writing for a stated period of time for good cause only. Failure to comply with this subsection shall result in ~~a mandatory civil~~ an administrative penalty in accordance with section 1766 of this chapter.

~~(f) This section shall not apply to target housing that has been certified lead free.~~

(g) Noncompliance with this section shall not affect marketability of title.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon the Commissioner of Health's written confirmation to the Speaker of the House and the Senate President Pro

Tempore, which shall be posted on the General Assembly's website, that the
U.S. Environmental Protection Agency has authorized the program as
administered by Vermont.