

H.863 – Summary of Lead Provisions – Secs. 25-37
Prepared by Wendy Morgan, Office of Attorney General – May 21, 2008

Findings and Intent

The purpose of the act is to decrease Vermonter’s exposure to lead in pre-1978 housing and child care facilities because lead is highly toxic to humans, particularly young children, and can cause irreversible damage including neurological damage and decreases in I.Q, and because the primary source of lead for Vermont children is lead-based paint.

Definitions

The act regulates “lead hazards,” defined as “any condition that causes exposure to lead inside and in the immediate vicinity of [pre-1978] housing from water, dust, soil, or building materials”. The act also harmonizes the state and federal definitions for categories of persons who are licensed, certified or registered to work with lead hazards.

Fees

Vermont Department of Health has authority to assess fees for training programs; for certifications, registrations, and licenses; and for lead abatement project permits.

Screening and Confirmation Testing of Blood Lead Levels

The Commissioner of Health shall publish guidelines for screening of young children and other high risk groups. Once lead screening information is incorporated into the immunization registry, the Department shall inform health care providers of their screening rates, and shall take other measures, within available resources, to optimize screening rates.

Annually the Commissioner shall determine the release information on the number of children screened within the guidelines. If fewer than 85% of one-year-olds and fewer than 75% of two-year-olds are being screened, the Agency of Human Services shall adopt rules to require that all primary health care providers of young children ensure that their patients are screened and tested according to the guidelines, beginning January 1, 2011.

Health care providers shall not be liable for not performing a screening or confirmation test if a parent or guardian refuses to consent or fails to follow through on a referral.

The results of lead screenings and testings of all Vermonters shall be sent to the Department, including all identifying information required by the Department.

Children with Elevated Blood Lead Levels

Children with screening results of 10 micrograms of lead per deciliter of blood shall receive a confirmation test.

The families of children with screening results at or above five micrograms per deciliter but below 10 micrograms per deciliter shall receive information on lead hazards.

If a young child (age six or younger) has a confirmed blood lead level at or above 10 micrograms of lead per deciliter of blood, the Department shall, if resources permit, inspect the child’s home and develop a plan to minimize exposure of the child to lead. The plan shall require that any

lead hazards identified be addressed. Owners shall address those that are within the owner's control and shall not be required to abate lead hazards if interim controls are effective.

As under existing law, the Department may inspect and evaluate other dwelling units in the building in which the child is living if it is reasonable to believe that a young child occupies or regularly frequents those other dwelling units.

Essential Maintenance Practices (EMPs) for pre-1978 Rental Housing and Child Care Facilities

EMPs must be performed by person who has been certified by Department or who work under the direct, on-site supervision of a person who has been certified, and shall be performed in a lead-safe manner.

The following EMPs must be performed annually in all pre-1978 rental housing and child care facilities unless the property has been certified as lead-free:

- Install window well inserts in all windows.
- Annually and at change of tenant, inspect all interior and exterior painted surfaces for deteriorated paint.
- Promptly and safely remove or stabilize deteriorated paint to which access by tenants is not restricted. Must be done within 30 days of identification, except that exterior work identified after November 1 shall be completed by the following May 31 as long as access directly below the deteriorated surface is clearly restricted.
- Annually remove all visible paint chips for ground.
- At least once per year, thoroughly clean all interior horizontal surfaces (except ceiling) in common area, and do same in dwellings at each change of tenant.
- Post in prominent place a notice, including contact information; emphasizing importance of promptly reporting deteriorated paint to owner or owner's agent.

After completing EMPs in pre-1978 rental housing, the owner of must file an EMP Compliance Statement with the Department and with the owner's liability insurance carrier, and shall give a copy of the statement with written materials approved by the Department to each tenant. The owner must provide the statement and materials to approved tenants before entering into a lease agreement.

After completing EMPs in pre-1978 child care facility, the owner must file an EMP Compliance Statement with the Department of Health, the Department for Children and Families, and the owner's liability insurance carrier, and with the tenant of the facility, if any.

Any request for an extension of time to file the AMP Compliance Statement shall be in writing and sent to the Department of Health at least 10 days before the due date. The Department may grant or deny an extension.

Unsafe Work Practices

No person shall disturb more than on square foot of lead-based paint using unsafe work practices in pre-1978 housing or child care facilities. All paint in such buildings is presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based.

Unsafe work practices include:

- Removing paint by dry scraping, machine sanding, grinding, or open flame torching.
- Uncontained hydro-blasting, high-pressure washing, abrasive blasting or sandblasting.
- Using heat guns above 1,100 degrees or methylene chloride chemical strippers.
- Failing to limit access to work areas, to enclose interior work with plastic sheathing, or to use protective clothing.
- Failing to mist painted surfaces before disturbing paint or to wet paint debris before sweeping.

Enforcement and Penalties

Starting January 1, 2010, the Department can issue tickets for the failure to file the EMP Compliance Statement by the due date. The civil penalties will be up to \$50 if filed within 30 days of due date or \$150 if not filed at all or filed more than 30 days after due date, *plus* \$250 unless the owner can demonstrate that the EMPs were in fact completed by the due date. Appeal is to Judicial Bureau. (Prior to 2010, enforcement is only under current law with an Assurance of Discontinuance, Consent Decree or court action.)

Duty of Reasonable Care, Negligence and Liability

Owners of pre-1978 housing or child care facilities must take reasonable care to prevent exposure to or creation of lead hazards. Evidence of compliance with the chapter may be admissible as evidence of reasonable care. A person who suffers an injury proximately caused by an owner's breach of this duty may recover damages and other relief. The owner may seek contribution from others responsible, in whole or in part for the child's blood lead level.

A landlord is not liable to a tenant for failure to provide habitable housing with regards to lead if the landlord is currently compliant with EMP requirements or has completed a work plan issued by the Department (which normally is issued only when a child has a confirmed blood lead level above 10 micrograms per deciliter). Exceptions to this immunity are limited to fraud or subsequent acts of the owner.

Transfer of Real Estate

Prior to executing a purchase and sale agreement for pre-1978 housing, and at the time of sale, the seller must provide materials approved by VDH.

For pre-1978 rental housing, prior to executing a purchase and sale agreement, seller must verify that EMPs have been completed and that EMP Compliance Statement has been filed with Department. At the time of sale, seller must provide information on EMPs and transfer remaining enforcement obligations to the buyer. Within 60 days of closing, the buyer must bring the property into full EMP compliance or obtain an extension of time for compliance.

Construction

This act does not regulate firearms, ammunition, or shooting ranges, or circumstances resulting from shooting, handling, storing, or casting and reloading ammunition.