

Selected Lead Regulations

The following are a brief selection of lead regulations across the United States that may be useful to the Galveston community in crafting regulations to reduce exposure to lead. This list is by no means complete and should be regarded as an initial list on which to build. In general, the wording is verbatim as enacted and only part of the regulation is included in this list. See URL for the complete regulation. Many regulations, especially in municipalities, are not available online and are sometimes difficult to obtain. Additional discussion of regulatory issues is included in the intervention section (pages 62–81) of *Childhood Lead Poisoning in Galveston, Texas* (www.envirohealthouston.org/files/galvestonleadreport.pdf). Two useful links for finding lead-related regulations include: www.cdc.gov/nceh/lead/grants/contacts/CLPPP%20Map.htm and www.ncsl.org/programs/environ/envhealth/leadStatutesdb.cfm.

HEALTH

Mandatory Blood Lead Screening

Massachusetts: <http://www.mass.gov/Eeohhs2/docs/dph/environmental/lead/1054601.pdf>

460.050: Mandatory Lead Poisoning Screening and Follow-up Schedule.

- (C) Regular Screening of Children for Lead Poisoning.
 - (1) All children shall be screened once between the ages of nine months and 12 months, and again at ages two and three.
 - (2) In addition, children who live in one of the cities and towns at high risk for childhood lead poisoning, as determined by the State Program and distributed to clinicians and the public, shall be screened at age four
- (E) If children have never been screened for lead poisoning, they must be screened at entry to Kindergarten, and present evidence of such screening. If they have previously been screened for lead poisoning, they need not be screened again.

Reporting BLLs

South Carolina: <http://www.scstatehouse.net/code/t44c053.htm> *South Carolina Code of Laws 2007, SECTION 44-53-1360. Program for early diagnosis of cases of childhood lead poisoning; examinations; records.*

- (A) The department may establish a program for the early diagnosis of cases of childhood lead poisoning. The program must provide for systematic examination for lead poisoning of children at risk residing within the State. Examinations must be made by such means and at such intervals as the department determines to be medically necessary.
- The program must give priority in examinations to those children residing, or who have recently resided, in areas where significant numbers of lead poisoning cases have been reported recently or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found.
- (B) When the department is notified of a case of lead poisoning, the department shall examine or refer for examination within thirty days all other children under six years of age, and other children as the department finds advisable to examine, residing or recently residing in the household of the victim or in all other dwelling units in the dwelling of the victim or in a childcare facility occupied by the victim, unless the parents or guardian of the child objects to the examination because it conflicts with his or her religious beliefs or practices.
- The department shall maintain comprehensive records of all examinations conducted pursuant to this section. These records are strictly confidential and may not be released except as required by law or by court order.

Treatment

South Carolina: <http://scstatehouse.net/code/t20c007.htm> Title 20 Domestic Relations, Chapter 7 Children's Code, Subarticle 7 Legal Capacity of Minors, SECTION 20-7-290.

- o Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian when, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available.

LANDLORD / TENANT

Tenants' Rights

Rhode Island: <http://www.health.ri.gov/lead/family/eliminationplan.pdf>

- o Families with children under six years old, as well as pregnant women, are deemed under the Law to have the right to live in housing in which lead hazards are, at a minimum, mitigated and also have the right to injunctive relief.

Michigan:

<http://www.buckfirelaw.com/library/Rights%20of%20Tenants%20in%20Lead%20Poisoning%20Cases.pdf>, from "Rights of Tenants in Lead Poisoning Cases" by Lawrence J. Buckfire, Attorney.

- o Under Michigan law, a landlord cannot institute eviction proceedings if the intent is "primarily as a penalty for the [tenant's] attempt to secure or enforce rights under the lease agreement under the laws of the state." This extends to situations in which the tenant complains to a governmental entity regarding a health or safety code, including complaints to local health departments regarding elevated lead levels in children. In these cases, there are often violations of state or local safety codes due to the hazards in the home.
- o Furthermore, in the case of *Frenchtown Villa v. Meadors* (1982), a landlord can not institute eviction proceedings in month to month lease situations if the tenant asserted a legal right against the landlord. Typically, in a month to month situation, the landlord can terminate the tenancy by simply giving 30 days notice to the tenant. However, the landlord cannot do this if the tenant has asserted a claim or attempted to enforce their rights regarding a health or safety code.

Maryland: http://www.lead-safe.org/content/homes_and_lead/index.cfm?pageId=138

- o The owner of any dwelling units covered by this law may not evict or take any other retaliatory action against a tenant "primarily" as a result of the tenant providing information to the landlord in accordance with this law. Prohibited retaliatory actions include:
 - 1) arbitrary refusal to renew a lease,
 - 2) termination of tenancy,
 - 3) arbitrary rent increase, or decrease in service to which a tenant is entitled, or
 - 4) any kind of constructive eviction.
- o A tenant who was subjected to a retaliatory eviction or other prohibited action is eligible for the relief and reasonable attorney's fees and costs as provided in the state law prohibiting retaliatory actions by landlords.

Removal of the "innocent owner clause"

Rhode Island: <http://www.health.ri.gov/lead/family/eliminationplan.pdf>

- o The Mitigation Law removes the "innocent owner" clause, which held property owners responsible for fixing lead hazards only after a child was poisoned on their property. Without

this clause, property owners who disregard obligations to correct lead hazards and repeatedly allow children to be poisoned are committing a felony as of July 1, 2005. The Law also serves to increase the availability of lead liability insurance and to resolve formerly disjointed insurance practices. If a property owner complies with the law, coverage for damages caused by lead poisoning could automatically be part of the property owner's liability insurance. For compliant property owners, there are no exclusions from coverage, thus virtually eliminating the risk of renting to families with small children.

Landlord Obligations

South Carolina:

- *S.C. Code Ann. §44-53-1430(c).* Order to owner or manager of a dwelling or child care facility to remove, replace, or secure and cover any lead-based substances on exposed surfaces within thirty days, right to appeal within thirty days to court of jurisdiction, court shall affirm, modify or revoke dept decision within thirty days.
- *S.C. Code Ann. §44-53-1440.* Rental of dwelling which has been posted and ordered to be cleared of lead hazards prohibited if to be occupied by children under six (6).
- *S.C. Code Ann. §44-53-1470.* Authorizes director or rep., in case owner fails to correct or remove a dangerous lead condition within specified time, to (1) enter and remove the lead hazard at cost of owner, or state shall acquire lien on property, and/or (2) with consent of owner, request court to declare property unfit for human habitation and prohibit the lease, renting or occupying as a residence or child care facility until lead hazard abated.
- *S.C. Code Ann. §44-53-1470.* Authorizes director or rep., in case owner fails to correct or remove a dangerous lead condition within specified time, to (1) enter and remove the lead hazard at cost of owner, or state shall acquire lien on property, and/or (2) with consent of owner, request court to declare property unfit for human habitation and prohibit the lease, renting or occupying as a residence or child care facility until lead hazard abated.

Maryland: http://www.lead-safe.org/content/homes_and_lead/index.cfm?pagelid=102 *Maryland's Reduction of Lead Risk in Housing Law, 1994*

- This program requires owners of older residential properties to meet certain risk reduction standards while providing the protection of limited liability for owners who comply.
- Owners of all rental dwelling units built before 1950 must comply with this law. Failure to do so will restrict an owners ability to access District (Rent) Court, discussed further below in HB1245. Owners of units built between 1950 and 1978 may choose to comply and thus benefit from limited liability protection. To comply with the law & obtain liability protection, owners must do the following:
 - 1. Register all rental dwelling units (\$15 annual fee per unit) with the Maryland Department of the Environment. When an owner acquires a new affected property, the owner has 30 days after acquisition to register that property.
 - 2. Meet Full Risk Reduction Standards upon each change in tenant occupancy before the unit is re-rented.
 - 3. Distribute, by verifiable method, the following publications: a) "Protect Your Family From Lead In Your Home" b) "Lead Poisoning Prevention Notice of Tenant's Rights," and c) copy of the current Lead Hazard Inspection Certificate to all new tenants at the inception of a new tenancy. For existing tenants, they must receive copies of the first two publications every two years by a verifiable method.

Rent Escrow

Maryland: http://www.lead-safe.org/content/homes_and_lead/index.cfm?pagelid=138

- Rent Escrow is a process in which a tenant may file a Complaint For Rent Escrow in the District Court for the county in which they reside. If established, all rent is paid into the District

Court escrow account until the Landlord has completed all repairs ordered by the Court. To set up Rent Escrow, the following conditions must be met:

- 1. There is a written or oral lease with between the tenant and landlord for the rental home
- 2. There is a dangerous or defective condition in your rental home which poses a threat to the life, health and safety of those living in your rental home
- 3. Provide Notice by sending a Notice of Defect by certified mail, return receipt requested, to your Landlord telling him about the dangerous conditions in your home
- 4. Your Landlord has failed to repair the chipping, peeling or flaking paint or other dangerous defects in your home.
- The following defenses are available to the landlord against a tenants petition for Rent Escrow: 1) lack of notice by the tenant of the dangerous or defective conditions, 2) the lack of dangerous or defective conditions in the rental home, 3) the dangerous or defective conditions have been repaired, 4) the dangerous or defective conditions were caused by the tenant's family or guests, and 5) the tenant refused the landlord entry into the rental home to make the repairs.

Certification Requirements

Vermont: <http://www.cdc.gov/nceh/lead/grants/Vermont/Vermontscreen.pdf> § 1752. Accreditation of training programs; certification and licensure of environmental lead inspectors and lead contractors, supervisors and workers

- No 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 department shall develop a program to administer and enforce the lead-based paint activities training and certification standards, regulations, or other requirements established by the administrator of the federal Environmental Protection Agency for persons engaged in lead-based paint activities.
- (c) The commissioner shall certify risk assessors, designers, laboratories, inspectors, lead contractors, supervisors, abatement workers, and other persons engaged in lead-based paint activities when such persons have successfully completed an accredited training program and met such other requirements as the secretary may, by rule, impose.
- (d) After the adoption of rules pursuant to subsection (b) of this section, no person shall perform lead-based paint activities 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.

Cleveland, Ohio: http://caselaw.lp.findlaw.com/clevelandcodes/cco_part2_240.html from Part Two – Health Code, Title I – Nuisances and General Provisions, Chapter 240.05: Lead Abatement and Lead-Paint Removal Permit Required; Application; Fees; Permit Suspension or Revocation

- (b) No person shall perform any lead hazard abatement or any exterior power-assisted and/or manual lead-based paint removal on target housing located in the City without first obtaining a permit from the Commissioner of Assessments and Licenses. For purposes of section, 'target housing' includes all secondary or appurtenant structures that were constructed prior to 1978 and are on the parcel upon which the target housing is located. A permit is not required under this section if all of the following apply: (1) the person uses the target housing as their personal residence; (2) the person personally performs, or performs with the assistance of only members of his or her family or household, only manual exterior lead-based paint removal on the structure on the property; (3) No child under six years of age who has lead poisoning resides in the structure.
- (c) The commissioners and inspectors of the Division of Environment and Department of Building and Housing are authorized to issue an order to immediately stop working to any person performing work that requires a permit that has not obtained a permit or to any person

performing work in violation of any prohibition in Chapter 3742 of the Revised Code or this Chapter of the codified ordinances.

Housing Registry / Legal Benefits of Certification

Vermont: <http://www.cdc.gov/nceh/lead/grants/Vermont/Vermontscreen.pdf>

- § 1758. (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 affairs shall establish and maintain a list of housing units which (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 of social and rehabilitation services 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. (Added 1995, No. 165 (Adj. Sess.), § 5.)

Cleveland, Ohio: http://caselaw.lp.findlaw.com/clevelandcodes/cco_part2_240.html from Part Two – Health Code, Title I – Nuisances and General Provisions, Chapter 240.08 Lead-Based Paint Free Certificates and Lead Maintenance Certificates; Fee

- (b) The owner of a property constructed before 1978, which is used as a residential unit, child day-care facility, or school may obtain a Lead Maintenance Certificate. The certificate entitles the owner, manager, or agent of the property to a legal presumption that the property does not contain a lead-based paint hazard and is not the source of the lead poisoning of an individual who resides in the unit or receives child-care or education at the facility or school. The owner of the property shall comply with the provisions of this section applicable to obtaining a Lead Maintenance Certificate to be entitled to that presumption. The legal presumption established under this section applies to any enforcement action under this Code and is rebuttable in a court of law only on a showing of clear and convincing evidence to the contrary.

Tenant Lead Law Notification

Massachusetts: http://www.mass.gov/Eeohhs2/docs/dph/environmental/lead/tenant_note.pdf

- Before renting a home built before 1978, the property owner and the new tenant must sign two copies of this Tenant Lead Law Notification and Tenant Certification Form, and the property owner must give the tenant one of the signed copies to keep. If any of the following forms exist for the unit, tenants must also be given a copy of them: lead inspection or risk assessment report, Letter of Compliance, or Letter of Interim Control. This form is for compliance with both Massachusetts and federal lead notification requirements.

New York City, New York: http://www.nyc.gov/html/hpd/html/homeowners/lead_paint.shtml#tenants

- The law requires annual notifications by owners to all occupants as well as to occupants upon lease-up, lease renewal, and agreement to lease or commencement of occupancy inquiring if there are children under 6 years of age residing in the unit. Owners must include a notice about owner responsibilities under the law with each lease and must provide a pamphlet informing occupants about lead. There is also a requirement that owners physically inspect units whose occupants do not respond to determine if there is a child under 6 residing in the unit.

GALVESTON, TX

Exterior Sanding Regulation #93-110 (11/19/1993), with revision #95-35 (5/12/1995)

On November 17, 1993, Galveston officials closed two parks because of reported lead soil contamination, which then led to the November 19, 1993 Ordinance No. 93-110. A revised Ordinance 95-35 dated May 12, 1995, provided a penalty clause. The current Chapter 18.5, "Lead Abatement," of the City of Galveston Building Code applies to *all* structures built before 1978, defined as "all residential and commercial structures, or parts removed from such structures, including but not limited to doors, windows, shutters, or awnings, with the corporate limits of the city." The ordinance does not apply to piers, bridges, ships, boats or other water vessels, or water storage tanks. The regulations target the removal of exterior paint on pre-1978 buildings. Key points include:

- Dropcloths must be secured to the base of the work area of the structure and must extend 30 feet to the property line, whichever is less. If the property line is less than 30 feet, the dropcloths shall extend onto the neighboring property, with the consent of the adjacent property owner(s).
- If a building has three or more stories, dropcloths must extend an additional five feet for every story greater than two.
- All vegetation must be covered with dropcloths.
- After completion of work each day, the dropcloths must be carefully folded and disposed of, and all paint and paint dust removed from the premises, adjacent properties and public rights-of-way, to the extent reasonably possible. All window sills and other ledges must be brushed off, and all work area swept and wiped with water and a preferably phosphate-containing detergent.
- Windows must be kept closed during the paint-removal process except when working on a window area.
- No work can be conducted during rain or when the wind exceeds 15 miles per hour.
- No power-assisted equipment can be used for exterior paint removal except under the direct supervision at all times of an individual who has received a city lead-abatement permit. Only city-approved, EPA-approved or state-approved methods using power-assisted equipment can be used. A separate permit is required for each site.
- Any healthcare provider or veterinarian receiving notification of a BLL ≥ 10 $\mu\text{g}/\text{dL}$ must report the case to the GCHD within 30 days.

Both homeowners and contractors can be fined not less than \$100 or more than \$2,000 per day for noncompliance. For a copy of the complete ordinance, contact the City of Galveston Building Division at 409.767.3520 or buildingdivision@cityofgalveston.org. The ordinance is not currently available on the city's website.